

The Role of Land Deed Officials on Electronic Mortgage Registration Systems

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Abstract

This study aims to determine the Role of Land Deed Making Officials in Electronic Mortgage Registration. This type of legal research uses normative legal research. The approach used in this research is the Legislative Approach, Conceptual Approach and Case Approach. The technique of collecting legal materials was carried out by using secondary data collection methods, namely literature studies. The analysis of legal materials was carried out by qualitative data analysis and the conclusion of this study was to use the deductive method. The research results show that registration of Mortgage Rights with a certificate of Land rights that do not belong to the debtor can still be done manually. Likewise with the role of PPAT, PPAT continues to register and deliver the APHT itself along with the necessary files to the Land Office counters to be recorded in the land book so that later a certificate of Mortgage will be issued, and registration of Mortgage Rights through the HT-e system is not required to be implemented in every office. In terms of facilities, supporting data and human resources.

Keywords: Land deed officials, Electronic Mortgage, Registration Systems

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1. INTRODUCTION

In the credit agreement process, in general, a debtor¹ can do it with anyone, either individually or with any financial institutions such as cooperatives, banks and others commonly referred to as creditors.² It's just that a debtor will not be able to automatically get what he wants from a creditor to get credit or a loan. This means that each creditor has a standard operating procedure (SOP) in terms of extending credit to debtors.

For example, creditors such as banks, as it is known, apply an analytical instrument known as the five C's of credit or 5 C's, namely character (character, capital (capital), capacity (ability, collateral (guarantee) and conditions of economy (economic conditions)).³

Collateral⁴ is used as one of the analysis of credit granting because the collateral function in credit is very important, it gives the creditor the right and power to get the repayment of the proceeds from the sale of guaranteed goods if the debtor does not pay off his debt at a predetermined time.⁵ The principle is that the existence of this guarantee solely.⁶ The guarantee referred to can be in the form of movable objects and immovable objects.

In normal practice, a time-stamped debtor provides guarantees to the creditor in the form of immovable property, namely land ownership rights that can be encumbered with mortgages. In Law Number 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land, Article 1 point 1 explains that what is meant by Mortgage Rights is:

"Mortgage rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, as follows or not. other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors. "

Judging from the process of imposition of Mortgage Rights, it is carried out through 2 (two) stages of activity, namely the stage of granting mortgage rights and the stage of issuing Mortgage Certificate. At the Granting of Mortgage Rights stage, it is carried out by making a Deed of Granting Mortgage Rights by the

¹ Dalam Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah, Pasal 1 angka 3 menjelaskan yang dimaksud dengan debitur adalah pihak yang berutang dalam suatu hubungan utang- piutang tertentu.

² *Ibid.* Pasal 1 angka 2 menjelaskan bahwa yang dimaksud dengan kreditur adalah pihak yang berpiutang dalam suatu hubungan utang-piutang tertentu.

³ Sutarno, *Aspek-Aspek Hukum Perkreditan Bank*, Alfabeta, Jakarta, 2003, Hlm. 92-94

⁴ Yang dimaksud dengan 'Jaminan' sebagaimana dikutip oleh Salim berdasarkan kesimpulan dari seminar badan pembinaan hukum nasional di Yogyakarta tanggal 20 s.d. 30 Juli 1977 adalah menjamin dipenuhinya kewajiban yang dapat dinilai dengan uang yang timbul dari suatu perikatan hukum. Oleh karena itu, hukum jaminan erat sekali dengan hukum benda. Salim HS, *Perkembangan Hukum Jaminan di Indonesia*, Rajawali Pers, Jakarta, 2017, hlm. 22.

⁵ Sutarno, *Op.Cit.*, Hal. 142

⁶ Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan di Indonesia Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan*, Badan Pembinaan Hukum Nasional Departemen Kehakiman, Jakarta, 1998, hlm. 1

Official Land Deed Maker (PPAT).¹ Furthermore, the Deed of Granting Mortgage Rights (APHT) made by PPAT must be registered at the local Regency / City or Territory Land Office no later than 7 (seven) working days after the signing of the Deed of Granting Mortgage Rights (APHT).

The Official for Making Land Deeds (PPAT) is required to send the Deed of Granting Mortgage Rights (APHT) along with other necessary documents to the Land Office. Furthermore, the Land Office will issue a Mortgage Certificate in accordance with applicable regulations.

The process mentioned above in the current digitalization era with the support of advances in information technology, has mostly changed from manual systems to electronic systems. A system that is fully digitalized by utilizing electronic devices is a necessity that is difficult for anyone, including the State, to stop. No one can deny that with this progress various kinds of innovations can be created by all stakeholders, especially the State through its apparatus to make it easier to provide services to its people.

Such conditions in the current era are commonly referred to as electronic government. Electronic government or e-Government comes from English, namely electronics government (e-gov), digital government, online government is the use of information technology and services for its citizens, business affairs, and other matters relating to government.²

By responding to these developments, the Ministry of Agrarian Affairs / National Land Agency is trying to provide a breakthrough or innovation in the mortgage registration process by utilizing advances in information technology. This innovation can be seen by the issuance of a set of regulations, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 9 of 2019 concerning Electronically Integrated Mortgage Services, hereinafter referred to as Agrarian Regulation Number 9 of 2019, which has changed the mechanism for registering Mortgage Rights.

Where previously creditors and debtors only needed to make a Deed of Granting Mortgage Rights (APHT) before the Official for Making Land Deeds (PPAT) and submit other necessary documents, then PPAT was the one who was obliged to register and bring the Deed of Granting Mortgage Rights, land certificates, and the necessary documents to the Land Office in order to issue a Certificate of Mortgage. After the Mortgage Certificate is issued, the PPAT is obliged to submit the Mortgage Certificate and Land Certificate which have been encumbered with the Mortgage Rights to the creditor.

Agrarian Ministerial Regulation Number 9 of 2019 states that registration of Mortgage Rights can be done without having to come with files to the Land Office. Files or letters including the Deed of Granting Mortgage Rights (APHT) made by PPAT only need to be uploaded in the system provided by the Indonesian National Land Agency (BPN). Agrarian Regulation Number 9 Year 2019 states in Article 10 paragraph (1):

"In the case of service application in the form of Mortgage registration, the requirements for the application in the form of APHT shall be submitted by PPAT in the form of an Electronic Document."

Based on the provisions of this article, PPAT is only obliged to submit the Deed of Granting Mortgage Rights electronically, while the documents or other documents required for Registration of Mortgage Rights in the Agrarian Regulation Number 9 of 2019 state that it is the Registered User who is obliged to submit it. In Article 1 point 10 explains what is meant by "Registered Users are service users who meet the requirements as users of the HT-e System with rights and obligations regulated by the Ministry.". Furthermore, in the Agrarian Regulation Number 9 of 2019 in article 9 paragraph (5) states "the requirements in the form of a Certificate of Land Rights or Ownership of Apartment Units must be in the name of the debtor". The article states that the certificate to be encumbered with a Mortgage must be in the name of the debtor. Whereas in practice, the certificate that will be encumbered with a mortgage is not always in the name of the debtor.

In Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations (UUPA) and Law Number 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land, there are no articles that prohibit the granting of Mortgage Certificates not on behalf of the debtor.

Agrarian Regulation Number 9 of 2019 does not explain further about Registration of Mortgage Rights with certificates that are not in the name of the debtor. This has resulted in a vacuum in the norm regarding the mechanism for registration of insurance rights with certificates that are not in the name of the debtor. Based on the aforementioned problems, the Researchers wants to examine The Role of Land Deed Making Officials on Electronic Mortgage Registration.

2. RESEARCH METHOD

This type of legal research uses normative legal research. The approach used in this research is the Legislative Approach, Conceptual Approach and Case Approach. Types and sources of legal materials used in this study are

¹ Yang dimaksud dengan PPAT menurut ketentuan pemerintah no. 37/1998, 5 maret 1998 sebagaimana dikutip oleh Sihombing adalah Pejabat Umum yang diberi kewenangan untuk membuat akta-akta autentik tentang perbuatan hukum spesifik tentang hak atas tanah atau hak punya atas unit rumah susun; umumnya jabatan ini dirangkap oleh Notaris. B.F. Sihombing, *Sistem Hukum PPAT dalam Hukum Tanah Indonesia*, Prenada media Group, Jakarta, 2019, hlm. 17.

² https://id.wikipedia.org/wiki/Pemerintahan_elektronik, pada tanggal 13 Desember 2019.

primary legal materials, which are binding legal materials, and consist of statutory regulations. Secondary legal materials are legal materials that can help analyze primary legal materials, for example, draft laws, research results. Tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials, for example, the Big Indonesian Dictionary and the legal dictionary. The technique of collecting legal materials was carried out by using secondary data collection methods, namely literature studies. The analysis of legal materials was carried out by qualitative data analysis and the conclusion of this study was to use the deductive method.

3. DISCUSSION

A. The Role of PPAT in Registration of Mortgage Rights on Land Rights Certificates that are not in the Name of the Debtor After the Integrated Electronic Mortgage Services

Land Deed Making Official (PPAT) is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units. According to Article 1 point 4 of the UUHT, it is stated that the PPAT is a public official who is given the authority to make arrangements for the transfer of land rights, the deed of assigning land rights and the deed of granting the authorization to impose guarantees.

PPAT is appointed by the State Minister for Agrarian Affairs / Head of the National Land Agency (BPN) and each is given a specific work area. According to Article 4 of PP. 37/1998 regarding the Regulation on the Position of Land Deed Making Official (PPAT) that PPAT is only authorized to make deeds regarding land rights or ownership rights to apartment units located within their working area, except in special cases requiring permission from the Head of the BPN Regional Office Province. The task given specifically to PPAT is to carry out part of the land registration activities, which are assigned by UUPA to the Government. The task of the PPAT in land registration is the preparation of certain land deeds and these deeds serve as the source of the data needed in order to maintain the data stored in the Land Office.

The types and forms of certain deeds that can be made by PPAT have been regulated in the Regulation of the Head of the National Land Agency (Perkaban) Number 8 of 2012 in Article 96 (1), namely:

1. Sale and Purchase Deed;
2. Deed of Exchange;
3. Deed of grant;
4. Deed of Entry into the Company;
5. Deed of Sharing of Rights Sharing;
6. Deed of Granting Mortgage Rights;
7. Deed of Granting Building Use Rights / Right of Use over Freehold Land;
8. Power of Attorney to Impose Mortgage Rights.

The Deed of Granting Security Rights can be said to be one of the most frequently drafted deeds by PPAT because many people have pledged their land to banks to get money quickly. It is easier to say that it is easier to impose a land title with a mortgage than selling it because the granting of a mortgage does not require the payment of taxes such as buying and selling land.

The process of imposition of Mortgage Rights according to the UUHT is carried out through two stages of activity, namely:

1. The stage of granting Mortgage Rights by making a Deed of Granting Mortgage Rights (APHT) by PPAT, which is preceded by a guaranteed debt-receivable agreement;
2. The registration stage by the Land Office, which is the time when the Mortgage Rights are born.

The provisions regarding this matter are described in Articles 10 - 15 of the UUHT, so in order for the imposition of a legal Mortgage, it must fulfill the Principle of Specialty (Article 11 (1) of the UUHT) and the Principle of Publicity (Article 13 of the UUHT).

The principle of specialty contains, namely:

1. Name and identity of the holder and giver of mortgage rights;
2. Domicile of the parties;
3. Clear designation of secured debts;
4. Value of dependents; and
5. A clear description of the object of the mortgage right.

Meanwhile, the Publicity Principle, which is the security right given must also be registered at the Land Office so that the existence of mortgage rights and what is mentioned in the APHT can be easily identified by third parties or interested people.¹

The stage of granting Mortgage Rights is preceded by a promise to be given a Mortgage right as a guarantee for repayment of the agreed credit. This promise must be stated in and is an inseparable part of the Accounts

¹ Frida Husni Hasbullah, Hukum Kebendaan Perdata Hak-Hak Yang Memberi Kenikmatan Jilid I, Ind- Hill Co, Jakarta, 2002, hlm. 142-143

Receivable Agreement or other agreement that gives rise to the debt (Article 10 UUHT). The agreement must be written either by deed under hand or in authentic form. A copy of the Credit Agreement is shown to PPAT to acknowledge that the provision of mortgage rights has been agreed and the assignment of debts that are guaranteed mortgage rights.

Before carrying out the making of APHT, PPAT is obliged to conduct an examination at the local Land Office regarding the suitability of the certificate of land title or ownership rights to apartment units which will be guaranteed by the lists in the office, in which case the original certificate is shown. PPAT is obliged to refuse the making of APHT if it turns out that the certificate submitted to it is not a document issued by the local Land Office or the data contained in it no longer matches the lists in the Land Office. According to Article 39 (1) letter f PP No. 24/1997 regarding Land Registration, PPAT is obliged to refuse requests to make APHT, if the land to be the object of mortgage rights is in dispute or dispute.

After being preceded by the making of a debt-receivable agreement and checking / examining the certificate which is used as collateral, then the guarantee is granted at the PPAT Office by making APHT by the PPAT whose form and content have been stipulated in the Regulation of the Head of the National Land Agency (Perkaban) No. 8 of 2012 concerning the Border Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration. Granting of Mortgage must be attended by the guarantor of the mortgage, the creditor as the recipient of the mortgage and 2 (two) witnesses.

APHT is made 2 sheets, all of which are original, then signed by the Giver of the Mortgage, Creditors who receive the Mortgage and 2 witnesses and the PPAT. Before the deed is signed, PPAT is obliged to read it to the parties concerned and provide an explanation of the content and purpose of the deed. The first sheet of the deed is kept at the PPAT office, the second sheet and one copy of it which has been signed by PPAT to be legalized as a copy by the Head of the Land Office for the creation of a Certificate of Mortgage, along with the necessary documents submitted to the Head of the Land Office concerned. According to the provisions of Article 13 paragraph (2) UUHT must be submitted no later than 7 working days after signing the APHT. If there is a delay in the submission of the files it does not result in the cancellation of the APHT concerned, then even though it is late, the Head of the Land Office is still obliged to process it. But PPAT is responsible for all consequences including losses suffered by the parties concerned caused by the delay in sending the file.

The granting of a mortgage right in front of the PPAT only fulfills a special signal, while the mortgage itself has not yet been born and the creditor has not yet obtained a special position. Publicity requirements must be fulfilled for birth, namely registration by the Land Office. Registration of Mortgage Rights is carried out by the Land Office on the basis of the data in the APHT as well as registration files received from the PPAT by making a Land Title Book. With the creation of the land book, the Mortgage Rights are born and the creditor becomes the creditor of the Mortgage holder with a position preceding the other creditors. Considering the importance of the birth date of the insurance rights for creditors by the UUHT, the date of creation of the Mortgage Land Book is determined with certainty, in Article 13 (4) of the UUHT the date of making the land book of the Mortgage Rights is the 7th day after receipt of complete documents required for registration of the Mortgage .

After the Land Title Book is made, the head of the Land Office shall record the security right in the Land Book and copy it to the Certificate of Land Rights or Ownership Rights for apartment units which are used as collateral. Within 7 working days after the Land Book is made by the Head of the Land Office, a Certificate of Mortgage Rights is issued as a proof of the existence of the related mortgage rights. The Certificate of Mortgage consists of a copy of the Land Title Book and a copy of the APHT, both of which are made by the Head of the Land Office and bound together in the document cover on the cover of the certificate affixed with the words "FOR JUSTICE BASED ON ALMIGHTY GOD". The certificate has the same executive power as a court decision which has permanent legal force and is valid as a substitute for the gross acte Hypotheek, as long as it concerns land rights in the implementation of "parate executie" based on Article 20 UUHT (Article 14 UUHT).

After the issuance of Agrarian Regulation Number 9 of 2019 concerning Electronic Integrated Mortgage Services, it changed the mechanism or procedure for registering Mortgage Rights. With this regulation, it shows that the Government, especially the Ministry of Agrarian Affairs / BPN, is trying to take advantage of technological advances in order to improve insurance services. Electronic Integrated Mortgage Services are expected to fulfill the principles of openness, timeliness, speed, convenience and affordability in the context of public services, as well as to adapt to legal developments, technology and the needs of the community.

Article 1 number 6 of the Agrarian Regulation Number 9 of 2019 explains that Integrated Electronic Mortgage Services, hereinafter referred to as HT-el, are a series of mortgage service processes in the context of maintaining land registration data which are carried out through an integrated electronic system. Then in Article 1 point 6, it is stated that the electronic system is a series of electronic devices and procedures that have the function of preparing, collecting, processing, analyzing, storing, displaying, announcing, sending and / or distributing electronic information. Types of insurance services that can be requested via HT-e include:

1. Registration of Mortgage Rights;

2. Transfer of Mortgage Rights;
3. Change of creditor name; and
4. Abolition of Mortgage Rights.

Article 7 paragraph (1) states users of HT-el system services, including:

Individuals / legal bodies as creditors as regulated in the laws and regulations governing Mortgage Rights; and the said State Ministry civil servants serve Mortgage Rights.

Furthermore, paragraph (2) explains that the individual / legal entity as referred to in paragraph (1) letter a must be a Registered User on the HT-el system. Article 1 point 10 explains that what is meant by registered users is a service user who meets the requirements as a user of the HT-e system with rights and obligations regulated by the Ministry. The requirements referred to, namely (Article 7 paragraph (3)):

1. Having electronic domicile, is the domicile of the parties in the form of a verified electronic mail address and / or cell phone number;
2. Certificate of registration with the Financial Services Authority;
3. Statement of compliance with the requirements and criteria as well as approval of the provisions as a Registered User; and other terms determined by the Ministry.

Basically HT-el does not change the mortgage granting process. Granting of a Fixed Mortgage shall be preceded by a debt agreement either with an authentic deed or under the title deed and followed by the signing of the APHT before the PPAT and submitting the required documents to PPAT. The existence of HT-el changes the mechanism for registering the Mortgage Rights which is carried out at the Land Office, which is very important in granting Mortgage Rights because by registering and creating a land book, the Mortgage Rights by the Land Office is a birthright and gives special rights to the holder. Mortgage Rights (creditors).

Broadly speaking, the mechanism of HT-e-mail mortgage services is as follows:

1. Registered users apply for Mortgage services electronically through the HT-e system.
2. The file of the requirements for the mortgage service application is in accordance with the provisions of laws and regulations and the applicant also makes a Statement Letter regarding the accountability for the validity and correctness of the submitted electronic document data, all of which are made in the form of an electronic document.
3. In the event that the application for services is in the form of Mortgage registration, the requirements for the application in the form of APHT are submitted by PPAT in the form of Electronic Documents, the submission of the APHT is done through the HT-el system.
4. Service requests received by the HT-e system will receive proof of application registration issued by the system, which at least contains the application registration file number, application registration date, applicant name and service fee payment code.
5. This Mortgage Service is subject to fees in accordance with the provisions of laws and regulations regarding Non-Tax State Revenue that apply to the Ministry. After obtaining proof of application registration, the applicant makes a fee payment through the perception bank.
6. After the application data and application registration fee are confirmed by the electronic system, the HT-e system will process the recording of the Mortgage Rights in the land book. Recording in the land book is carried out by the Head of the Land Office, while the creditor can record the Insured Rights in the Certificate of Land Rights or Ownership of Apartment Units by printing the notes issued by the HT-e System and attaching it to the Certificate of Land Rights or Ownership of the Unit. Flats.
7. Before the results of the mortgage service are issued, the Head of the Land Office or the appointed official must examine the concept of HT-el certificate and the completeness of the application.
8. After all stages are completed, the results of the mortgage service will be issued in the form of a Certificate of Mortgage and a Note of Mortgage in the land book and a Certificate of Land Rights or Ownership of a Flat. This document is published on the seventh day after the submission of a confirmed application in the form of an electronic document, to maintain the integrity and authenticity of the document. The Certificate of Mortgage issued by the HT-e System is given an electronic signature.

So far, registration of Mortgage Rights is done manually by submitting physical evidence at the Land Office counter. Physical evidence in the form of application for registration, required documents and submission of APHT are all carried out by PPAT and until the issuance of the certificate of the PPAT Mortgage Receives it from the Land Office then submits it to the Mortgage recipient (creditor) for safekeeping.

Meanwhile, in the Agrarian Regulation Number 9 of 2019, it states that those who conduct and submit applications and requirements for HT-e applications are Registered Users, as previously explained, what is meant by registered users, namely creditors and State Civil Apparatus. PPAT's own obligations in the Ministerial Regulation are spelled out in Article 10, namely:

1. In the event that the application for services is in the form of Mortgage registration, the requirements for the application in the form of APHT shall be submitted by APHT in the form of an electronic document;
2. The APHT is submitted through an electronic system that is integrated with the Ht-el System;

Based on this article, in other words, PPAT is only obliged to submit APHT that has been signed by the parties and for the required documents it is the creditor's obligation. Agrarian Regulation Number 9 of 2019 stipulates that the certificate which is used as collateral must be in the name of the debtor, this is regulated in Article 9 paragraph (5) which reads "the requirement in the form of a Certificate of Land Rights or Ownership of a Flat Unit must be in the name of the debtor". Mortgage givers who are not debtors themselves actually have been commonplace in society so far or before the HT-e system existed, the mechanism for registering Mortgages with mortgage givers who are not debtors or with certificates. registration of Mortgage Rights with the mortgage provider is the debtor itself.

In the UUHT itself, it does not explicitly regulate whether or not the object of the Mortgage can be owned by a third party (not a debtor). The definition of the object of the Mortgage is regulated in Article 4 of the UUHT, namely that the object of the Mortgage consists of Property Rights, Business Use Rights, Building Use Rights and Use Rights on State Land. Whereas the giver of the Mortgage according to Article 8 of the UUHT is an individual or legal entity that can have property rights, business use rights, building use rights and usage rights over State land. Based on these two definitions, the UUHT does not provide limitations regarding ownership of the object of the Mortgage, so it is possible that the object of the Mortgage is the property of a third party.

The UUHT does not clearly state the third party as the guarantor of the Mortgage Rights, but in several articles in the UUHT it mentions that a third party can be involved in providing guarantees of maternal rights, as in Article 4 paragraph (4) which reads:

"Mortgage rights can also be imposed on the land rights along with buildings, plants and existing or future works that are an integral part of the land and which are the property of the land rights holder whose imposition is expressly stated in the Deed of Granting Mortgage Rights. concerned."

The sound of the Article is made clear in the explanation of Article 4 paragraph (5) of the UUHT which reads:

"As a consequence of the provisions as referred to in paragraph (4), the imposition of Mortgage for buildings, plants and works that are an integral part of the land whose owner is other than the holder of the land rights must be carried out simultaneously with the granting of the Mortgage Rights on the land concerned and stated in a Deed of Granting Mortgage Rights, which is signed jointly by the owner and the holder of the land rights or their proxies, both as parties who grant the Mortgage.

The article states that there is a possibility that the land which is guaranteed by the Mortgage may be in the form of land belonging to a third party, which is seen in the sentence "land rights including buildings, plants and existing or future works of work whose owners are other than the holders of land rights. " To be able to exercise this right in the imposition of the Mortgage, the owner or proxies must be involved in signing the Deed of Granting Mortgage that the goods / objects are also tied up in the imposition of the Security Rights.¹

Another article that can explain the involvement of third parties in guarantees of Mortgage Rights is the explanation of Article 3 paragraph (2) of the UUHT which states "in relation to the Debtor and the Giver of the Mortgage, if not the Debtor himself who gives him." So from the sound of the explanation, it can be said that land rights may not belong to the debtor himself but can be given by a third party.

Apart from Article 9 paragraph (5) of the Agrarian Ministerial Regulation Number 9 of 2019, there are no other articles that pertain to the certificate to which the Mortgage Rights must be imposed on the name of the debtor, likewise there is no article in the Ministerial Regulation that prohibits the giver of the Mortgage Right not a debtor. In other words, the imposition of Mortgage Rights on land rights belonging to third parties (not debtors) can still be done. The existence of Article 9 paragraph (5) in the Ministerial Regulation indicates that the HT-el system has not been able to register Mortgage Rights with Mortgage givers who are not debtors themselves.

Taking a deeper look at the Agrarian Ministerial Regulation Number 9 of 2019 itself in Article 3 paragraph (2) states "Mortgage services as referred to in paragraph (1) can be carried out electronically through the HT-el system." The word "can" in the article implies that there is an option in obtaining Mortgage registration services, which can be manual as before or through the HT-e system. Therefore, registration of a mortgage with a certificate of land title that does not belong to the debtor itself can still be done manually. Likewise with the role of PPAT, PPAT continues to register and deliver the APHT itself along with the necessary files to the Land Office socket to be recorded in a land book so that later a Certificate of Insurance Rights will be issued.

In contrast to the certificate of land rights belonging to the debtor itself, PPAT only needs to submit APHT through the HT-e System in the form of an Electronic Document and submit proof of completion of submission of the document to the applicant. The results of the HT-el system in the form of a Mortgage Certificate and Mortgage Rights records in the land book and land title certificates in the form of electronic documents will be submitted directly to the applicant through the HT-e System.

¹ Ignatius Ridwan Widyadharma, Hak Tanggungan Atas Tanah Beserta Benda yang Berkaitan dengan Tanah, Semarang: Universitas Diponegoro, 1996, Hlm. 10

B. Electronic Registration of Mortgage Rights According to the Mortgage Law and Agrarian Ministerial Regulation Number 9 of 2019 concerning Electronically Integrated Mortgage Services

Since the issuance of the UUPA on September 24, 1960, there have been many changes to the prevailing land laws in Indonesia and have become a bright spot for the dualism of land laws that prevailed before. The UUPA has a new set of land rights, namely Hak Milik, Land Use Rights, Building Use Rights and Use Rights, as well as the new land guarantee rights institution, namely the Mortgage Rights. All of them are substitutes for land rights and security rights over land which are regulated in various old land law instruments.⁵³ At that time, there was no specific law on Mortgage Rights, Mortgage Rights in the UUPA itself are contained in Article 52 which explains the object Mortgage right.

The new Mortgage Rights Law was enacted and promulgated on April 9, 1996. Mortgage rights have the main elements, namely:

1. Mortgage Rights are collateral rights over land for debt repayment;
2. Objects of mortgage rights are land rights in accordance with UUPA;
3. Mortgage rights can be imposed on the land (land rights) only and can also be charged along with other objects which are an integral part of the land;
4. The guaranteed debt must be a certain debt;
5. Giving priority to certain creditors over other creditors.¹

Mortgage rights give priority or precedence to creditors holding the mortgage right (*droit de preference*). In the definition of mortgage rights in Article 1 point 1 of the UUHT, the security right gives priority to certain creditors (preferred) over other creditors (regular / concurrent creditors). Furthermore, it is explained in Number 4 of the General Explanation of UUHT that "if the debtor is in default, the creditor holding the mortgage has the right to sell through a public auction of land which is used as collateral according to the provisions of the relevant laws and regulations, with pre-emptive rights over other creditors. Of course, this priority position does not reduce the preference for state receivables according to the prevailing legal provisions. "

The birth of the Mortgage is when the Mortgage is registered at the Land Office and recorded in the land book at the Land Office. In article 13 paragraph (1) of the UUHT, it is stated that the Granting of Mortgage Rights must be registered at the Land Office. Furthermore, in the explanation of the article, it is explained that "one of the principles of Mortgage Rights is the principle of publicity, therefore registering the provision of Mortgage Rights is an absolute prerequisite for the end of the Mortgage Rights and binding Mortgage Rights to third parties."

The process of imposition of Mortgage Rights is carried out through two stages of activity as explained by the author in the previous discussion, namely the stage of granting collateral rights by making APHT by PPAT and the registration stage by the Land Office. Although the UUHT has explained the process of imposition and registration of Mortgage Rights, a special policy is still needed regarding the mechanism regarding the imposition and registration of Mortgage Rights. Therefore, the government issued Government Regulation Number 24 of 1997 concerning Land Registration, and the one that organizes and implements land registration is the National Land Agency (BPN) represented by the Land Office in each Regency / City. Article 9 paragraph (1) of Government Regulation Number 24 Year 1997 states that the objects of land registration include:

1. Plots of land which are owned with ownership rights, business use rights, building use rights and usage rights;
2. Land management rights;
3. Waqf land;
4. Ownership rights over apartment units;
5. Mortgage rights;
6. State land.

Article 1 number 1 PP Number 24 Year 1997 explains that what is meant by Land Registration is a series of activities carried out by the government continuously, continuously and regularly, including collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates of proof of their rights for land parcels for which there are already rights and ownership rights to apartment units and certain rights that impose them Land registration aims to:

1. To provide legal certainty and legal protection to holders of rights over a land parcel, apartment unit and other registered rights so that they can easily prove themselves as holders of the rights concerned;
2. To provide information to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal arrangements regarding registered land parcels and apartment units, for the implementation of an orderly land administration.

¹ Remy Sjahdeini, Hak Tanggungan Asas-Asas Ketentuan-Ketentuan Pokok dan Masalah Yang dihadapi Oleh Perbankan (Suatu Kajian Mengenai Undang-Undang Hak Tanggungan), Alumni, Bandung, 1999, hlm. 11

The Minister of Agrarian Affairs / Head of the National Land Agency who is in charge of carrying out land registration according to the mandate of Government Regulation Number 24 of 1997 will immediately issue a Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration. In the Agrarian Regulation No. 3/1997, it describes in detail the mechanisms and conditions required for land registration, including registration of Mortgage Rights.

Along with the progress of the times with all the technology, the government, especially in this case the Minister of Agrarian Affairs / National Land Agency, is trying to change the land registration mechanism, namely registration of Mortgage Rights from manual to electronic by utilizing developing technology. For this reason, the Minister of Agrarian Affairs / Head of the Agrarian Agency issued Regulation Number 9 of 2019 concerning Electronically Integrated Mortgage Services. Registration of Mortgage Rights to the Land Office which was previously done face-to-face because the submission of the documents required for registration must be submitted directly to the Land Office, but now that this regulation has been issued, registration of Mortgage can be done only by computer through the electronic Mortgage System that has been prepared. by BPN without having to come to the counter at the Land Office.

The consideration of the drafting of the Agrarian Regulation Number 9 of 2019 is described in the "weighing" section of the regulation, namely "that to improve mortgage services that meet the principles of openness, timeliness, speed, convenience and affordability in the framework of public services, as well as to adjust legal, technological developments. and the needs of the community, it is necessary to take advantage of information technology so that procedures for mortgage services can be integrated electronically so that it becomes more effective and efficient. " Furthermore, in article 3 the Ministerial Regulation explains:

1. Mortgage services are carried out in accordance with the provisions of laws and regulations governing service standards and land arrangements within the Ministry.
2. Mortgage services as referred to in paragraph (1) can be carried out electronically through the HT-el system.

The word "can" in paragraph (2) of the article implies that there are options in the service of Mortgage Rights, namely manually as described in the UUHT and Agrarian Regulation No. 3 of 1997 or through the HT-el system. Then in Article 4 it explains:

1. The HT-el system is administered by the Land Office.
2. The HT-el system as referred to in paragraph (1) shall be implemented in stages according to the readiness of supporting data.
3. The Minister shall determine the Land Office which operates the HT-el System in accordance with the readiness of supporting data as referred to in paragraph (2).

This article shows that the HT-el system will be implemented in stages, meaning that not all Land Offices are required to implement HT-el servants, it all depends on the readiness of each Land Office. Given that not all Land Offices that are scattered in every Regency / City in Indonesia have readiness both in terms of facilities and human resources. Agrarian Regulation No.9 of 2019 can be said to be the starting gate for electronic land registration services, because making changes requires time to get used to it.

4. CONCLUSION

Based on the description that the author has described above, a conclusion can be drawn as follows:

1. Article 9 paragraph (5) of the Agrarian Ministerial Regulation Number 9 of 2019 states that the certificate of land rights to be borne by the Mortgage must be in the name of the debtor himself. Meanwhile, the word "can" in Article 3 paragraph (2) implies that there is an option in the Mortgage registration service, which can be manually or through the HT-el system. So that Article 9 paragraph (5) does not mean that the imposition of a Mortgage with a certificate. Land rights not in the name of the debtor are prohibited, but the article shows that the HT-el system is not ready to register a Mortgage with a certificate of land rights or ownership rights to a house unit. Arrangement is not on behalf of the debtor but on behalf of a third party. Therefore, registration of Mortgage Rights with a certificate of Land rights that do not belong to the debtor can still be done manually. Likewise with the role of PPAT, PPAT continues to register and deliver the APHT itself along with the necessary files to the Land Office counters to be recorded in the land book so that later a Certificate of Insurance Rights will be issued.
2. Based on the description of Article 3 paragraph (2) of the Agrarian Regulation Number 9 of 2019, it provides an option that it is possible for Mortgage services to be carried out manually or with the HT-el System and Article 4 which states that the HT-el System will be held gradually according with the readiness of supporting data, it can be interpreted that registration of Mortgage Rights through the HT-el system is not yet required to be implemented in every Land Office but rather looks at the readiness of each Land Office both in terms of facilities, supporting data and human resources.

Suggestion

From the above conclusions, several suggestions can be put forward which are expected to be material for thought in order to provide solutions to the problems faced, namely:

1. It is necessary to revise the Agrarian Regulation Number 9 of 2019 so that it can carry out the registration process for Mortgage Rights in various forms of circumstances, both with certificates of land rights / ownership rights to apartment units in the name of the debtor himself or on behalf of others.
2. In addition to the existence of Article 9 paragraph (5) of the Agrarian Ministerial Regulation Number 9 of 2019 concerning certificates to be bound with guarantees of Mortgage Rights with the HT-el system, it must be on behalf of the debtor, another explanation is needed which confirms how the mechanism for registering the Mortgage Rights to the certificate of rights is needed. on land / ownership rights to apartment units that are not in the name of the debtor after the enactment of the Agrarian Regulation Number 9 of 2019 so that there is no confusion in the community.

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