

Problems of Electronic Mortgage Implementation for the Banking Activities

Mukhidin^{1✉} and Achmad Irwan Hamzani²

^{1,2} Faculty of Law, Universitas Pancasakti Tegal

Abstract

Banking credit is a basic need for the community, especially business actors. In the development of Mortgage Rights in Indonesia, the Government provides services including electronically integrated Registration of Mortgage Rights based on the Regulation of the Head of the National Land Agency No. 9 of 2019 and ATR/BPN Ministerial Regulation No. 5 of 2020 concerning Electronic Mortgage Services and / or hereinafter referred to as "HT-el". The problems formulated in this study are first, what are the problems in the implementation of Electronic Mortgage Rights in the banking world? Second, how to solve the problems faced by users of Electronic Mortgage Rights services for the banking world. Problems / obstacles in the implementation of Electronic Mortgage services based on ATR/BPN Ministerial Regulation No. 5 of 2020, which has been implemented simultaneously nationally since July 8, 2020, are many and have become a challenge for Electronic Mortgage Users, especially Land Deed Officials and Creditors. The resolution of problems and obstacles faced by Electronic Mortgage Users, especially Land Deed Officials and Creditors, refers to the Technical Guidelines made by the Ministry of ATR / KBPN, April 29, 2020 because basically these problems and obstacles are mostly related to the IT system and the Electronic HT Service server. Users (Land Deed Official and Creditors) must always confirm these IT problems to the Electronic HT service organizer, namely the local Land Office, so that Electronic Mortgage Users, in this case Land Deed Official and Creditors, must be skilled and adequate in using all the tools needed to complete the granting of Mortgage Rights until the Electronic Mortgage Rights Certificate is issued.

Keywords: Problematics, Electronic Mortgage, Banking

Abstrak

Kredit perbankan merupakan kebutuhan dasar bagi masyarakat, khususnya para pelaku usaha. Dalam perkembangan Hak Tanggungan di Indonesia, Pemerintah menyediakan layanan termasuk Pendaftaran Hak Tanggungan yang terintegrasi secara elektronik berdasarkan Peraturan Kepala Badan Pertanahan Nasional Nomor 9 Tahun 2019 dan Permen ATR/BPN Nomor 5 Tahun 2020 tentang Pelayanan Hak Tanggungan secara Elektronik dan/atau selanjutnya disebut dengan "HT-el". Masalah yang dirumuskan pada penelitian ini adalah pertama, Problematika apa saja dalam pelaksanaan Hak Tanggungan Secara Elektronik pada dunia perbankan? Kedua, bagaimana penyelesaian problematika yang dihadapi oleh pengguna pelayanan Hak Tanggungan Elektronik bagi dunia perbankan. Problema/kendala dalam pelaksanaan layanan Hak Tanggungan Elektronik berdasar Permen ATR/KBPN RI No. 5 Tahun 2020 yang telah dilaksanakan serentak secara Nasional sejak 8 Juli 2020 ini banyak sekali dan menjadi tantangan bagi Pengguna Hak Tanggungan Elektronik terutama Pejabat Pembuat Akta Tanah dan Kreditor. Penyelesaian problem dan kendala yang dihadapi oleh Pengguna Hak Tanggungan Elektronik terutama Pejabat Pembuat Akta Tanah dan Kreditor mengacu pada Petunjuk Teknis yang dibuat oleh Kementerian ATR/KBPN, 29 April 2020 karena pada dasarnya problem dan kendala tersebut sebagian besar berkaitan dengan sistem IT dan server Layanan HT Elektronik tersebut. Pengguna (Pejabat Pembuat Akta Tanah dan Kreditor) harus selalu mengkonfirmasi problem IT tersebut kepada penyelenggara layanan HT Elektronik yaitu Kantor Pertanahan setempat, sehingga Pengguna Layanan Hak Tanggungan Elektronik yang dalam hal ini Pejabat Pembuat Akta Tanah dan Kreditor harus terampil dan memadai dalam menggunakan segala perangkat yang dibutuhkan guna menyelesaikan pemberian Hak Tanggungan sampai keluarnya Sertipikat Hak Tanggungan Secara Elektronik

Kata kunci: Problematika, Hak Tanggungan Elektronik, Perbankan

Introduction

Banking credit is a basic need for the community, especially business people. So important is this issue that the Government provides various means including supporting capital by providing credit facilities through financial institutions, both state-owned and private institutions in order to boost the nation's economy. The provision of credit by banks cannot be separated from the guarantee for the repayment of the credit. Noting the growth and development of the business world today, entrepreneurs usually utilize credit facilities provided by the government in an effort to increase the need for capital that encourages the smooth running of their business. Credit facilities are channeled through financial institutions by entering into a credit agreement (Nurwulan, 2021).

The position of banks as financial institutions whose operational activities are within the scope of the business of collecting funds from the public and managing these funds by investing them back into the community in the form of providing credit until the funds return to the bank (Sjahputra, 2002). In practice, it can be seen that most of the objects that become objects of collateral in credit agreements at banks are land based on data on Mortgage Rights issued in 2019 up to October 10, 2019 totaling 1,390 in the City of Yogyakarta Until now, the No. of Electronic Mortgage Certificates totaling 142,477 issued by 454 Land Offices in 33 Provinces with a total of 1,150 creditor partners Bank Legal Entities (Rahman, 1995).

With regard to the practice of granting credit secured by land rights, a security right institution is needed that is able to provide legal certainty for interested parties in realizing a prosperous, just and prosperous society in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to the Land or abbreviated as "UUHT" was then formed to meet the needs of the community regarding this matter.⁶ In connection with this, in the development of Mortgage Rights in Indonesia, the Government provides services including electronic integrated Registration of Mortgage Rights based on the Regulation of the Head of the National Land Agency No. 9 of 2019 and Minister's Regulation ATR / BPN No. 5 of 2020 concerning Electronic Mortgage Services and / or hereinafter referred to as "HT-el".

Based on Minister's Regulation ATR/BPN No. 5 of 2020 concerning Electronically Integrated Mortgage Rights Services, Perkabab No. 9 of 2019 is declared invalid. The consideration letter a of ATR/BPN Ministerial Regulation No. 5 of 2020 states that this regulation is intended to implement electronically integrated mortgage services in order to improve mortgage services that meet the

principles of openness, timeliness, speed, convenience and affordability for public services, as well as to adjust legal developments, technology and community needs.

According to UUHT Article 10 paragraph (2) "The granting of Mortgage Rights is carried out by making a Deed of Granting Mortgage Rights by a Land Deed Official (*PPAT*) in accordance with applicable laws and regulations,". *PPAT* carries out its authority and duties to make Deed of Granting Mortgage Rights (*APHT*) as stipulated in Article 11 of UUHT which contains the mandatory requirements of *APHT* and regarding the promises that can be included in the *APHT*. After *APHT* is made by *PPAT*, the Mortgage Right must be registered at the Land Office in accordance with the mandate of Article 13 paragraph (1) of *UUHT*. The registration of the Mortgage Right is carried out by the Land Office by making a land book of the Mortgage Right and recording it in the land book of the land right which is the object of the Mortgage Right and copying the record on the certificate of the land right concerned.

With the issuance of Agrarian Regulation No. 9/2019, the Government of Indonesia aims to improve Mortgage Rights services that fulfill the principles of openness, timeliness, speed, convenience, effectiveness and efficiency. The issuance of the ATR/BPN Ministerial Regulation concerned has consequences for changes in the procedure for granting Mortgage Rights, which was originally carried out manually to be based on an integrated electronic system ([Imanda, 2020](#)).

Users of Electronic Mortgage Rights other than *PPATs* are creditors who are usually financial institutions (banks) and can also be individuals. For the banking world, of course, it is hoped that the Electronic Mortgage Service can provide benefits, including the timeliness of the registration of Mortgage Rights on the seventh day after it is registered. The registration can be more economical because there is no need to come to the local Land Office. The mechanism in Conventional Mortgage Rights, the Bank authorizes *PPAT* and entrusts the payment of Mortgage Rights registration fees, *PPAT* pays the registration fee, takes the Certificate from the Land Office, then the Bank receives a certificate that has been given a note. So with the conventional system, almost everything is done by *PPAT*. With the implementation of simultaneous national services for electronic Mortgage Rights since July 8, 2020 based on ATR/BPN Ministerial Regulation No. 5 of 2020, there are currently no more services from BPN for conventional Mortgage Rights. The simultaneous implementation of the Electronic Mortgage Rights service without going through an adequate transition period and socialization ([Nadira, 2019](#)).

Research Problems

First, what are the problems in the implementation of Electronic Mortgage Rights in the banking world and *Second*, how to solve the problems faced by users of Electronic Mortgage Rights services for the banking world.

Research Methods

Normative Juridical Research is a method of legal research conducted by examining library materials or secondary materials only (Soerdjono and Sri, 1994; Roni, 1994; Amirudin and Zainal, 2004; Achmad, 2009). This research is a Normative Juridical Research on issues concerning Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to the Land or abbreviated as "UUHT", then Regulation of the Head of the National Land Agency No. 9 of 2019 and ATR/BPN Ministerial Regulation No. 5 of 2020 concerning Electronic Mortgage Services and / or hereinafter referred to as "HT-el".

The data analysis method is carried out by collecting data through the review of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of the synchronization of laws regarding mortgage rights and regulations on electronic mortgage services.

To analyze the legal materials that have been collected, this research uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing a policy related to improving the performance of the legal system in Indonesia and then assessing whether its application is in accordance with the normative provisions. Primary legal materials, namely research materials derived from laws and regulations related to the title and problems formulated.

Discussion

1. Problems in the Implementation of Electronic Mortgage Rights in the Banking World

Since 2016, it has been changed based on the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency No. 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration PPAT/Land Deed Making Officials who make land deeds, by, and in front of him guided by regulations to make deeds regarding certain legal telatah (Simatupang, 2022).

In short, the narrow scope, fundamental duties and according to Gover No. 37 of 1998; AJB; Akta Tukar Menukar; Akta Hibah; Akta inbreng; APHB; APHGB / Hak Pakai on HM land; APHT, and Akta Pemberian Kuasa Membebaskan Hak Tanggungan which all relate to Indonesian land. ITE brings enormous changes to human life, users or managers of communication systems and IT systems. The view expressed by Achmad Ramli, that; ICT has changed human civilization in globalization. In addition, the development of IT has caused the world to become borderless and caused significant social changes to take place so quickly. The digital banking era 4.0 is an opportunity for banks to innovate more in providing services to customers.

This innovation is needed to respond to competition along with the rapid growth of financial technology (fintech), with disruption from digitalization in the industrial revolution 4.0 if not addressed agilely. Currently, the implementation of electronic transactions in more detail is regulated by the 2012 ITE Law in electronic transactions. The latest at this time is cybernotary applying the principles of security and control to the world of notaries, focusing on deed minutes, grosse, copies of deeds, and deed excerpts as cybernotary products which in fact, we both know are gradually applying in Indonesian notaries.

Users of Electronic Mortgage Rights other than PPATs are creditors who are usually financial institutions (banks) and can also be individuals. For the banking world, it is certainly expected that the Electronic Mortgage service can provide benefits including the timeliness of registration of Mortgage Rights on the seventh day after registration. then there is also ease of asset management (no need to scan the Mortgage Rights certificate) and can also make reporting and monitoring of the No. and value of Mortgage rights throughout the branches of the Bank concerned ([Harsono, 1999](#)).

Various problems / obstacles in the implementation of Electronic Mortgage services based on ATR/BPN Ministerial Regulation No. 5 of 2020, which has been implemented simultaneously nationally since July 8, 2020, are numerous and become a challenge for Electronic Mortgage Users, especially PPATs and Creditors, including:

1. If not registered, PPAT data can be deleted, until now many PPATs have not updated their personal data.
2. Only registered, validated and verified creditors can use the ATR BPN partner application, in fact there are still many Banking institutions that have not applied for Electronic HT Service Registration so that as a user they do not have an account that must be registered.

3. The validation of certificates and the period for checking land rights certificates that want to be encumbered by mortgage rights at the Land Office is often long and has not been in accordance with the time period in the SOP for various reasons.
4. PPATs experience many problems when inputting data based on the APHT they make and supporting data in PDF file format, including statements made by PPATs responsible for the correctness of documents both formally and materially, this is burdensome for PPATs.
5. Change of Creditor's Name, Roya and Revision of Mortgage Rights, submitted by the Creditor, when contacting the Land Office often takes a long time to respond, so that the repair time becomes late and disadvantages the user.
6. The ranking of Mortgage Rights which is the authority of the BPN to determine is often wrong, even though the PPAT has inputted it correctly, for example for syndicated loans the PPAT has inputted all bank/financial institution codes as creditors of the Mortgage Recipient, but the BPN has inputted the wrong creditors of the Mortgage Recipient.
7. When the server error, the HT rating is wrong and must re-pay PNBPN.
8. Physical data and digital data discrepancies that often occur and after PPAT informs the Land Office, the response is slow.
9. Regarding the subject of the debtor that is different from the Holder of the Land Rights pledged, PPAT often makes mistakes in entering the data of the Land Rights Holder in the Deed of Agreement Making menu.
10. Implementation of Electronic Mortgage Rights for Individual Creditors.
11. Mortgage Rights files that are closed due to rejection and not immediately corrected by HT Users, both PPAT and Creditors.
11. Bureaucratic Agility and the Effectiveness of Discretionary Policies in Handling Covid 19 in Indonesia

2. **Resolving Problems faced by Users of Electronic Mortgage Services for the Banking World**

The certificate of Mortgage Rights is a proof that a person has a security right that is imposed on the land rights owned by the pledgor (debtor), which gives the holder of the Mortgage Rights priority over other creditors. The certificate of Mortgage Rights is handed over to the holder of the Mortgage Rights.

Various problems / obstacles in the implementation of Electronic Mortgage services based on ATR/BPN Ministerial Regulation No. 5 of 2020, which has been implemented simultaneously nationally since July 8, 2020, are numerous and have

become a challenge for Electronic Mortgage Users, especially PPATs and Creditors, including:

1. If not registered, PPAT data can be deleted, until now many PPATs have not updated their data.
2. Only registered, validated and verified creditors can use the ATR BPN partner application, in fact there are still many Banking institutions that have not applied for Electronic HT Service Registration so that as a user they do not have an account that must be registered.
3. The validation of certificates and the period for checking land rights certificates that want to be encumbered by mortgage rights at the Land Office is often long and has not been in accordance with the time period in the SOP for various reasons.
4. PPATs experience many problems when inputting data based on the APHT they make and supporting data in PDF file format, including statements made by PPATs responsible for the correctness of documents both formally and materially, this is burdensome for PPATs.
5. Change of Creditor's Name, *Roya* and Revision of Mortgage Rights, submitted by the Creditor, when contacting the Land Office often takes a long time to respond, so that the repair time becomes late and disadvantages the user.
6. The ranking of Mortgage Rights which is the authority of the BPN to determine is often wrong, even though the PPAT has inputted it correctly, for example for syndicated loans the PPAT has inputted all bank/financial institution codes as creditors of the Mortgage Recipient, but the BPN has inputted the wrong creditors of the Mortgage Recipient.
7. When the server error, the HT rating is wrong and must re-pay PNBPN.
8. Physical data and digital data discrepancies that often occur and after PPAT informs the Land Office, the response is slow.
9. Regarding the subject of the debtor that is different from the Holder of the Land Rights pledged, PPAT often makes mistakes in entering the data of the Land Rights Holder in the Deed of Agreement Making menu.
10. Implementation of Electronic Mortgage for Individual Creditors.
11. Mortgage Rights files that are closed due to rejections and not immediately corrected by HT Users, both PPAT and Creditors.
12. If the debtor defaults based on Article 6 of UUHT, the creditor has the right to sell the object of HT, how is the arrangement for the implementation of HT objects electronically.

Article 10 paragraph (3) of Law No. 4 of 1996 concerning Mortgage Rights states that the Object of Mortgage Rights in the form of Land Rights originating from the conversion of old rights that have met the requirements to be registered but the registration has not been carried out, then the granting of Mortgage Rights is carried out simultaneously with the application for registration of the relevant Land Rights. With the comprehensive enactment of Electronic Mortgage, the provisions of Article 10 paragraph (3) of UU HT cannot be implemented, because Electronic HT is based on land data that is already titled and registered at the local Land Office. It will be a problem for users, at least it can be seen that ATR/BPN Ministerial Regulation No. 5 of 2020 which regulates this Electronic HT Service has not accommodated the provisions of Article 10 paragraph (3) of the UUHT above. If the PPAT wants to make an APHT with the collateral of land rights that have not been titled, how is the registration of the Mortgage Rights because now the BPN no longer accepts conventional registration.

Land Rights that have not been titled based on Article 10 paragraph (3) of UU HT above is allowed, if it is to be done then the PPAT will use the current custom by using SKMHT / Power of Attorney to Impose Mortgage Rights, then registering the conversion / pensertipatan and then the APHT is installed. Therefore, the Land Office should continue to accept manual/conventional Registration of Mortgage Rights for land rights pledged as collateral but not yet titled in order to fulfill the provisions of Article 10 paragraph (3) of the UUHT. The Ministry of ATR/KBPN with regard to the problems of this Electronic Integrated Mortgage Registration service has made its Technical Guidelines on April 29, 2020,20 but the facts of the problems and obstacles that arise from the implementation of Electronic HT services based on ATR/BPN Ministerial Regulation No. 5 of 2020 still exist and even many as described above.

The above Technical Guidelines are intended as guidelines for the Land Office and Electronic Mortgage Service Users with the aim of standardization, guidance and more detailed instructions in Electronic Mortgage Services. The scope of this Technical Guideline includes;

1. Electronic Mortgage System Service Users, in this case consisting of three pillars, namely the Land Office, PPAT and Creditors;
2. The object of the Mortgage;
3. Preparation;
4. Implementation by PPAT and Creditor;
5. Implementation by the Land Office;
6. Manual Mortgage Advanced Services; and

From what is described in the Technical Guidelines above, there is no formula that accommodates the implementation of Article 10 paragraph (3) of the UUHT.

Conclusion

From the above discussion it can be concluded as follows: *First*, Problems / obstacles in the implementation of Electronic Mortgage services based on ATR/BPN Ministerial Regulation No. 5 of 2020 which has been implemented simultaneously nationally since July 8, 2020, are many and become a challenge for Electronic Mortgage Users, especially PPAT and Creditors.

Second, the resolution of problems and obstacles faced by Electronic Mortgage Users, especially PPAT and Creditors, refers to the Technical Guidelines made by the Ministry of ATR / KBPN, April 29, 2020, because basically these problems and obstacles are mostly related to the IT system and the Electronic HT Service server. Users (PPAT and Creditors) must always confirm these IT problems to the Electronic HT service organizer, namely the local Land Office, so that Electronic Mortgage Users, in this case PPAT and Creditors, must be skilled and adequate in using all the tools needed to complete the granting of Mortgage Rights until the Electronic Mortgage Rights Certificate is issued.

References

- Aziz Bahri, "Kajian Yuridis Pelaksanaan Pelelangan Objek Hak Tanggungan secara Elektronik", Jurnal Hukum (Online), Universitas Mataram, bulan April 2019.
- Boedi Harsono, Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya, Djambatan Edisi Revisi, Jakarta, 1999
- Government Regulation 37 of 1998 in conjunction with Government Regulation 24 of 2016 on the Regulation of the Position of Land Deed Official, State Gazette of the Republic of Indonesia of 2016 No. 120, Supplement to State Gazette of the Republic of Indonesia No. 5893. *Peraturan Pemerintah 37 Tahun 1998 jo PP 24 Tahun 2016 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, Lembaran Negara Republik Indonesia Tahun 2016 Nomor 120, Tambahan Lembaran Negara Republik Indonesia Nomor 5893.*
- Government Regulation No. 24 of 1997 concerning Land Registration, State Gazette of the Republic of Indonesia of 1997 No. 59, Supplement to State Gazette of the Republic of Indonesia 3696. *Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, Lembaran Negara Republik Indonesia Tahun 1997 Nomor 59, Tambahan Lembaran Negara Republik Indonesia 3696.*
- Hasannudin Rahman, Aspek-aspek Pemberian Kredit Perbankan di Indonesia, Citra Aditya Bakti, Bandung, 1995

- I Wayan Jody Bagus Wiguna. "Tinjauan Yuridis Terkait Pendaftaran Hak Tanggunga Secara Elektronik", *Acta Comitas: Jurnal Hukum Kenotariatan*, Vol. 3, No. 2, Juni 2020, hlm. 79-88.
- Iman Sjahputra, *Problematika Hukum Internet Indonesia*, PT. Prenhallindo, Jakarta, 2002
- Law No. 4 of 1996 on Mortgage Rights, State Gazette of the Republic of Indonesia of 1996 No. 42, Supplement to State Gazette of the Republic of Indonesia No. 3632. *Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan, Lembaran Negara Republik Indonesia Tahun 1996 Nomor 42, Tambahan Lembaran Negara Republik Indonesia Nomor 3632.*
- Law No. 5 of 1960 concerning Agrarian Principles, State Gazette of the Republic of Indonesia of 1960 No. 104, Supplement to State Gazette No. 2043. (*Undang-Undang Nomor 5 Tahun 1960 tentang Pokok-Pokok Agraria, Lembaran Negara Republik Indonesia Tahun 1960 Nomor 104, Tambahan Lembaran Negara Nomor 2043*).
- Meyer Simatupang, Frans. 2022. "Mekanisme Pendaftaran Hak Tanggungan Elektronik Dan Akibat Hukumnya". *Recital Review* 4 (1):62-89. <https://doi.org/10.22437/rr.v4i1.9213>
- Nadia Imanda, Lahirnya hak tanggungan menurut Peraturan Pemerintah Agraria tentang Pelayanan Hak Tanggungan Terintegrasi Secara elektronik, *Notaire*, Volume 3 Nomor 1, Februari 2020
- Nurul Nadira. "Pendaftaran Hak Tanggungan Elektronik yang akan mulai dilaksanakan di Badan Pertanahan", *Fairness and Justice: Jurnal Ilmiah Hukum*, Universitas Muhammadiyah Jember, Vol. 17 Nomor II, November 2019
- Pandam Nurwulan, Implementasi Pelayanan Hak Tanggungan Elektronik Bagi Kreditor dan Pejabat Pembuat Akta Tanah, *JH Ous Qui Lustum*, Vol 28 issue 1, 1 Januari 2021
- Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 5 of 2020 on Electronic Mortgage Services, State Gazette of 2020 No. 349. *Peraturan Menteri Agraria dan Tata Ruang Nomor 5 Tahun 2020 tentang Pelayanan Hak Tanggungan secara Elektronik, Berita Negara Tahun 2020 Nomor 349.*