

The Electronic Integrated Credit Agreement & Liability Registration Process

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Abstract. *The implementation of the imposition of Mortgage Rights in a credit agreement aims to provide legal certainty and protection for all parties in utilizing land and objects related to land as credit guarantees in accordance with applicable legal regulations. In the current digital era, the Mortgage registration system has changed from conventional to electronic which is applied simultaneously without going through a transition period and adequate socialization, causing obstacles in the process. This study used a sociological juridical approach. The sociology of law approach was an approach that is used to look at legal aspects in social interactions in society, and served as a support to identify and clarify findings of non-legal materials for research purposes or legal writing. The juridical factor is based on the Regulation of the Minister of ATR/BPN Number 5 of 2020 concerning Electronically Integrated Mortgage Rights. The research problems were analyzed and solved by the Theory of the Work of Law, Agreement Theory, Theory of Islamic Justice. Based on the results of research and discussion: 1) Process of credit agreement with mortgage at a bank in the city of Tegal; 2) Electronic Integrated Mortgage registration process; 3) Constraints and solutions in Electronically Integrated Mortgage registration. The conclusion of this legal writing is that in the process of credit agreement with mortgage and the electronically integrated mortgage registration process in the city of Tegal, it is in accordance with the Minister of ATR/BPN Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Services, but there are several obstacles in One of the reasons for the HT-el registration process was the lack of socialization carried out by the organizers.*

Keywords: Agreement; Credit; Electronic; Integrated; Mortgage; Registration.

1. Introduction

Economic developments that are getting bigger have an impact on increasing needs for the community, this causes the need for public funds to be higher. Not all people have excess funds, because basically there are several groups of people who do not yet have a good and stable economy. On the basis of a high level of need, many people borrow money from banks¹.

The position of the bank as a financial institution whose operational activities are within the scope of business to collect funds from the public and manage these funds by reinvesting them into the Bank. In connection with the practice of granting credit with guaranteed land rights, a guarantee rights 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. Act No. 4 of 1996 concerning Mortgage 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.²

This credit agreement has a certain period of time, within the last time limit of course the debtor as the borrower of money must return the loan to the creditor along with the interest. In the return process, of course, there are concerns from the creditor about the possibility that the debtor will not return the borrowed funds in accordance with the existing credit agreement. To reduce worries and gain trust, before the credit agreement occurs, of course, the creditor must apply the precautionary principle. The precautionary principle is important for banks before lending money to debtors, because this principle is to know³:

- The character of the debtor whether he has a good character in doing business and has a responsibility in repaying the loan or not;
- The ability to pay the debtor financially to repay the loan;
- Debtor's capital to determine the ability of the debtor to bear the financing burden;
- Collateral must be worth more than the debtor's loan, which if there is a problem this guarantee can be used to pay off the debtor's debt;

¹ Aga Wigana, Political Directions For Land Law On Land Property Rights For The People, *The 5th International Conference and Call for Paper* Faculty of Law 2019, Sultan Agung Islamic University Ambe J. Njoh, Liora Bigon, Erick O. Ananga, Richard A. Ayuk-Etang, Institutional, economic and socio-cultural factors accounting for gender-based inequalities in land title procurement in Cameroon, *Journal of Public Transportation*, p. 116-125, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

² Eugenia Liliawati Muljono, (2003), *Tinjauan Yuridis Undang-undang Nomor 4 tahun 1996 tentang Hak Tanggungan dalam Kaitannya dengan Pemberian Kredit oleh Perbankan*, Jakarta : Harvarindo.p. 1.

³ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

- Economic conditions to know whether the debtor's business has good future prospects or not.

From the precautionary principle described above, it can be seen that collateral is an important element in a credit agreement in order to give confidence to creditors, where after the other 4 elements have been fulfilled, it is necessary to have a guarantee from the debtor that he can repay the loan. This guarantee itself functions so that creditors can immediately get their debts repaid if the debtor defaults by going through an auction for the guarantee⁴. The granting of this guarantee must be in accordance with a guarantee loading agreement, as an additional agreement due to the existence of the main agreement. This guarantee loading agreement is in the form of a mortgage guarantee.

The agreement for the assignment of mortgage rights is stated in the form of a Deed of Granting Mortgage (hereinafter referred to as APHT) by the Land Deed Making Officer (hereinafter referred to as PPAT) as the authorized official in forming APHT as stipulated in Article 1 point 4 of the Mortgage Law. In order for the APHT to have legal force, it is necessary to register at the Land Office.

Mortgage registration was initially carried out manually, where the applicant, namely PPAT, sent the APHT and other documents to the Land Office no later than 7 days after signing the deed, as regulated in Article 13 paragraph (2) of the Mortgage Law. Along with the development of mortgage registration technology, the registration is carried out electronically after the enactment of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronic Integrated Mortgage Services.

In the process of electronically integrated mortgage service according to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 which was carried out in Tegal City, there were obstacles that arose.

2. Research Methods

The approach method used in the preparation of this thesis is a sociological juridical approach⁵. The sociological juridical approach is an approach by looking at a legal reality in society. The sociology of law approach is an approach that is used to look at legal aspects in social interactions in society, and serves as a support to identify and clarify findings of non-legal materials for research purposes or legal writing.⁶ The juridical factor is based on the Regulation of the Minister of ATR/BPN Number 5 of 2020 concerning Electronically Integrated

⁴ E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

⁵ Soerjono Soekanto, (1984), *Pengantar Penelitian Hukum*, UI Press, Jakarta

⁶Zainudin Ali, (2014), *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, p. 105.

Mortgage Rights. The specification of the research used is descriptive analytical, namely doing a description of the research results with data as complete and detailed as possible. The intended description is for primary data and also secondary data related to the credit agreement process and the Electronic Integrated Mortgage Registration in the city of Tegal. Furthermore, an analysis of the research results is carried out using the relevant laws and theories⁷.

3. Result and Discussion

3.1. The Process of Implementing a Credit Agreement That Will Be Charged With Mortgage In Tegal City

- Credit Application Stage

The credit application is made before the credit contract is made and the prospective debtor will get a decision from the authorized official on the credit approval decision, then the credit administration section submits the credit approval decision to the debtor colon in writing with a Credit Granting Acknowledgment Letter (SPPK) by including the following provisions: following :

- Amount of credit approved;
- Interest and fees ;
- Time period ;
- Guarantee and binding;
- Insurance ;
- Requirements by the candidate that must be met before the signing of the credit agreement or before the credit is disbursed;

Furthermore, prospective debtors are required to submit documents or goods as collateral to the Bank. Documents or collateral items are bound by the legal department and checked for correctness/authenticity and completeness, this is intended to prevent possibilities that can cause losses in the future. The inspection can also be carried out through the services of parties who are genuine in their respective fields or authorized parties. For guarantees, the following must be checked⁸:

- Legal status / collateral ownership ;
- The name listed on the certificate;
- Is there husband / wife's consent;

⁷ Nadia Imanda, (2020), "Lahirnya Hak Tanggungan Menurut Peraturan Pemerintah Agraria Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik", *Jurnal Hukum Kenotariatan, Notaire*, Vol. 3 No. 1.

⁸ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

- Certificate due date ;
- Whether the guarantee is free of disputes and or the burden of mortgage rights;
- IMB, if the amount is more than 5 million;
- Whether the PBB has been repaid;
- Check the authenticity of the certificate at the local BPN office;

After the administrative process above is complete, then proceed with making a credit agreement. The credit contract can be made in the form of an authentic contract through a notary.

For underhand credit contracts, there are several forms of credit contract forms that are used, the shape is adjusted to the credit given, namely:

- Approval to Open Credit (PMK)

This PMK is used for non-conflicting credit facilities, namely loans which when due must be paid in full, but nevertheless the interest is paid every month.

- Credit Agreement (PK)

This PK is used for installment credit facilities, namely loans whose principal and interest payments are carried out in monthly installments.

- Binding of Collateral Object with Mortgage Rights.

After the signing of the credit agreement which is the main agreement, the next stage will be binding on the collateral for the object submitted, which is an accesoir of the main agreement mentioned above.

- Credit Agreement Stage

In the process of making a credit agreement with mortgage in the Banking, the maker or implementation is through a notary who has been appointed by the Bank. For this reason, in accordance with the applicable laws and regulations, the notary appointed to make a credit agreement in the banking sector will issue 2 (two) documents, namely the Deed of Credit Agreement and SKMHT⁹.

In the Deed of Granting Mortgage (APHT) made by a notary, promises can be stated. According to article 11 paragraph (2) UUHT the promises in the Deed of Granting Mortgage (APHT):

- A promise that limits the authority of the mortgagee to lease the mortgaged object and/or determine or change the term of the lease

⁹ Ibid.

and/or receive the rent in advance, except with prior written approval from the mortgage holder.

- A promise that authorizes the mortgagee to change the form or arrangement of the mortgaged object, except with prior written approval from the mortgage holder.
- A promise that gives authority to the mortgage holder to manage the mortgage object based on the determination of the Head of the District Court whose jurisdiction includes the location of the mortgage object if the debtor is seriously in breach of promise.
- A promise that gives authority to the mortgage holder to save the object of the mortgage, if it is necessary for the execution or to prevent the cancellation or cancellation of the right that is the object of the mortgage due to non-fulfillment or violation of the provisions of the law, as well as the authority to apply for an extension period of time and/or renew the land rights which are the object of the mortgage.
- The promise that the holder of the first mortgage has the right to sell on his own power the mortgage if the debtor is in breach of contract.
- The promise given by the first mortgage holder that the object of the mortgage will not be cleared of the mortgage.
- The promise that the mortgagee will not relinquish his rights to the object of the mortgage without the prior written consent of the mortgage holder.
- The promise that the mortgage holder will receive all or part of the compensation received by the mortgage provider for the settlement of his receivables if the mortgage object is released by the mortgage provider or its rights are revoked for the public interest.
- The promise that the mortgage holder will obtain all or part of the insurance debt received by the mortgage provider for the settlement of his receivables, if the object of the mortgage is insured.
- The promise that the mortgagee will vacate the mortgage object at the time of execution of the mortgage.
- Promise that the certificate of land that has been affixed with a note of encumbrance of mortgage rights is submitted to and to be kept by the mortgage holder.

It can be concluded that in the credit agreement process carried out by the creditor, it is in accordance with the agreement theory, which in the process of the creditor's agreement with the debtor is obtained a law that is formed as a result of someone who promises someone else to do something. In this case, both parties have agreed to enter into an agreement without coercion or a decision that is only one party.

3.2. Electronically Integrated Mortgage Registration Process in Tegal City

Mortgage registration procedures in the electronic system must still be recorded in the land book. This is done by the creditor by printing the Mortgage Certificate and attaching it to the Land Rights Certificate.¹⁰ Users of the HT el system service consist of individuals or legal entities (as creditors), PPAT, and ASN of the Ministry of Agrarian Affairs/BPN.

PPAT is required to use the application provided by the Ministry of ATR/BPN by becoming a partner at BPN, registering and creating an account online through the partner portal in the browser with the address <https://mitra.atrbpn.go.id/datappat/login/>. It should be noted in the registration of Mortgage with this electronic system if the PPAT does not update the data then this will result in the PPAT being unable to access and register services on the land service application electronically. So that PPAT cannot become a user in the Electronic Mortgage Rights service and cannot carry out the next HT-el registration process¹¹.

Prior to the ATR Regulation Number 5 of 2020, PPAT checked certificates with two options, namely electronically or online and/or non-electronically by visiting the local land office, but since 8 July 2020 conventional services were simultaneously stopped so everything had to be done electronically. . After that, PPAT submits APHT online on the PPAT partner application page with the land office after the date the APHT is made, this must be done by PPAT as ordered by his position. The second sheet of the PPAT deed and other documents is uploaded through the partner application and becomes an electronic document and also submits a copy of the deed and land certificate to the bank.

In the event that the creditor registers to become a registered user, the creditor must upload several documents that have been provided on the portal. The document consists of a cover letter, application letter, creditor's deed of establishment if in this case it is a legal entity, a letter of appointment for the admin in charge of managing HT el services if the creditor is a legal entity, a copy of the admin ID card appointed by the creditor who is a legal entity in the event that the creditor is a legal entity. tasked with managing HT el services, operator appointment letters, and creditor NPWP.

After registering, the creditor prints a registration form signed by the bank leadership and prints a central administrator data form initialed by the bank

¹⁰Nadia Imanda, (2020), "The Birth of Mortgage According to Agrarian Government Regulation Regarding Electronically Integrated Mortgage Services", Journal of Notary Law, Notaire, Vol. 3 No. 1, p. 158.

¹¹ Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

leadership, then both forms are sent via registered mail expedition to the ATR/BPN ministry of data center for validation. If the process is complete, the creditor becomes a registered user and is able to implement the HT el system.

The Head of the Land Office is required to validate all textual data and digital data in the KKP. The results of data validation are electronic documents that have the same legal force as printed documents. Employees who have been appointed as verifiers at the Land Office sign the HT el certificate electronically. If everything has been completed, the certificate is automatically received by the creditor on the 7th day. If there is data correction, then repair the HT el certificate no later than 30 days from the date the mortgage certificate is issued¹².

The creditor is obliged to print the HT el certificate product provided by the land office, then embed the printed HT el record issued by the EL HT system in the certificate of ownership of the land charged with the mortgage¹³.

Types of mortgage services in terms of the implementation of HT el that can be submitted through the electronic mortgage system include:

- Mortgage registration
- Transfer of mortgage
- Creditor name change
- Elimination of mortgage (roya)
- Data repair

The Electronic Mortgage Service, which is based on Permen ATR/BPN Office Number 5 of 2020, aims to fulfill the principles of openness, timeliness, speed, convenience and affordability. In addition, to improve effective and efficient mortgage services by adjusting the development of law and information technology. The object of Mortgage that can be processed is the object of the Mortgage as regulated in the laws and regulations. The output of this Electronic Mortgage Service is an Electronic Mortgage Certificate for users, namely Creditors as recipients of Electronic Mortgage Rights.

The Electronic Mortgage Service is known as the Electronic Land Book which contains a collection of all editions of the Electronic certificate. The edition of the Electronic certificate is a history of registration, for example in the first edition is the registration of Mortgage, then in the second edition is cessie and so on. Each issue a new certificate comes out and the old certificate is turned off electronically. There is the term Electronic *Warkah* which means all Electronic documents uploaded by PPAT and Banks/Creditors are automatically stored as *Warkah* at the end of the Electronic HT service process.

The following is the flow of the Electronic Mortgage Service:

¹² Op.cit

¹³ Ibid.

- PPAT uploads the deed to the system
- PPAT submits a copy of the deed and land certificate to the Bank
- Banks make application files electronically (without the need to come to BPN)
- Pay the registration fee
- Received an Electronic HT certificate on the seventh day
- HT certificate product in the form of a PDF file with a digital signature
- The creditor prints and attaches the registration record to the certificate of Land Rights which is the object of the guarantee.

In the Electronic Integrated Mortgage Registration Process, it is in accordance with the Legal Working Theory where the ATR/BPN Agrarian Minister/Ministry of Agrarian Affairs has made Ministerial Regulation Number 5 of 2020 concerning the Implementation of Electronic Integrated Mortgage Registration which will serve as a guideline for users and as a basis for settlement if there are any a problem that arose in the HT-el Registration process. Therefore, the law in reality functions as a factor in integrating society, so the law must be able to resolve conflicts in an orderly manner.

3.3. Constraints and Solutions Faced in the Electronically Integrated Mortgage Registration Process in the City of Tegall

Various obstacles in the implementation of Electronic Mortgage services based on Ministerial Regulation of ATR/KBPN RI No. 5 of 2020 which has been carried out simultaneously nationally since July 8, 2020, is a challenge for Electronic Mortgage Users, especially PPAT and Creditors including:

- Only registered, validated and verified creditors can use the ATR BPN partner application, in fact there are still many banking institutions that have not submitted an application for Electronic HT Service Registration so that as a user you do not have an account that must be registered.
- Validation of certificates and the time period for checking certificates of land rights that want to be encumbered with mortgage rights at the Land Office often take a long time and exceed the time period in the SOP for various reasons.
- When there is a change in the Creditor's Name, Royalty and the Revision of Mortgage submitted by the Creditor, the Land Office is slow in responding, so the repair time is over and it is detrimental to the user.
- Often the occurrence of server downtime at work-intensive times.
- In the subject of debtors who are different from the holders of land rights that are guaranteed, PPAT is often wrong in inputting data on the holders of land rights on the menu for making the Deed of Approval.
- Mortgage file which is closed due to rejection and is not immediately repaired by HT Users, both PPAT and Creditors.

- Limited human resources on the part of creditors to carry out the task of filling out documents in the HT el system so that creditors delegate these tasks to PPAT and provide access to accounts from creditors.
- Giving access to a confidential account by creditors to PPAT is a very risky thing considering that in that account there is a lot of important data from customers and there is a roya facility, it is feared that if there are irresponsible persons, this can be misused.
- The lack of understanding of HR from the creditor regarding the confidentiality of the HT el account and the risks that will occur if outside parties from the creditor know the access to the account.
- The lack of effectiveness of the socialization carried out by BPN regarding HT el so that important information is not conveyed properly in the implementation of this HT el registration.
- If PPAT wants to make APHT with land rights guaranteed but has not yet been certified, this will hinder the HT registration process.

The Ministry of ATR/KBPN regarding the problem with the Electronic Integrated Mortgage Registration service has made its Technical Instructions on April 29, 2020, but the facts and problems that arise in the implementation of Electronic HT services based on the Ministerial Regulation of ATR/KBPN No. 5 of 2020 is still there and even many as described above.

The above technical instructions are intended as a guide for the Land Office and Users of the Electronic Mortgage Service with the aim of standardizing, guiding and providing more detailed instructions in the Electronic Mortgage Service. The Scope of this Technical Instruction includes:

- Object of Mortgage;
- Preparation;
- Implementation by PPAT and Creditors;
- Implementation by the Land Office;
- Manual Mortgage Advanced Service;
- Solving Land Rights Encumbered by Electronic Mortgage Rights.

4. Conclusion

The mechanism for granting Mortgage Electronically for Creditors and PPATs always begins with the making of a Deed of Granting Mortgage (APHT) before the PPAT between the Mortgage Provider, namely the Debtor and the Creditor/Banking. The APHT has met the qualifications as an Authentic Deed both in terms of Procedure, Substance and Authority of the PPAT that inaugurated it. The APHT is then registered by PPAT at the local Land Office Electronically within 7 days after the APHT is inaugurated which is the basis for the issuance of the Electronic Mortgage Certificate by the Land Office. The

Mortgage Certificate is requested and printed by the Mortgage Recipient Creditor by paying the predetermined PNPB. The HT certificate can be printed by the creditor after 7 days from the registration of the APHT by the PPAT. The Electronic Integrated Mortgage registration process in Tegal City as a whole has been running in accordance with the ATR/BPN Ministerial Regulation number 5 of 2020. The resolution of problems and obstacles faced by Electronic Mortgage Rights Users, especially PPAT and Creditors, refers to the Technical Instructions made by the Ministry of ATR/KBPN, 29 April 2020 because basically these problems and obstacles are mostly related to the server provided by the user. Users (PPAT and Creditors) must always confirm the IT problem to the Electronic HT service provider, namely the local Land Office, so that the Electronic Mortgage Service User, in this case the PPAT and Creditor, must be skilled and adequate in using all the tools needed to complete the granting of Mortgage. until the issuance of the Electronic Mortgage Certificate.

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