

The Role of Notaries in Realizing The Effectiveness of Implementing Electronic Deed Registration in Tegal Regency

Desy Tri Rahmawati ¹⁾ & Nanang Sri Darmadi ²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: desytrirahmawati14@gmail.com

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: nanang@unissula.ac.id

Abstract. *This study aims to analyze and understand the implementation of the role of Notaries to find out and analyze the problems in the implementation of electronic deed registration in Tegal Regency and to find out and analyze the role of Notaries in realizing the effectiveness of the implementation of electronic deed registration in Tegal Regency. The type of research used in this study is a type of sociological or empirical legal research that includes legal identification and legal effectiveness, empirical legal research is legal research where data is obtained through primary legal data or data obtained directly in the community. The approach method used is a qualitative method. a type of sociological or empirical legal research that includes legal identification and legal effectiveness. This research was conducted with a field study, the author used the interview method. Based on the research conducted, it can be seen that the implementation of electronic HT deed registration in Tegal Regency has not been effective, this is indicated by the small number of HT Deeds registered electronically in Tegal Regency. The weaknesses that resulted in the creation of electronic HT deeds in Tegal Regency not yet running due to the fact that in 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 Mortgage Rights Services there is an issue of the authority of Notaries/PPAT which is only limited to making APHT, sociologically the weaknesses are in the form of issues of change time related to errors in old electronic HT registration data when making new electronic HT deeds, the existence of Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Head of the National Land Agency Number 9 of 2019 concerning Integrated Electronic Mortgage Rights Services regarding the provision of user names and passwords to other parties can potentially commit legal violations that can harm the HT owner, network maintenance that often makes electronic HT registration problematic or in other words the system*

often errors making it difficult for the party registering the Electronic HT deed, not all parties have internet facilities and computer devices, for example in remote areas in Indonesia.

Keywords: Deed; Electronic; Effectiveness; Notary.

1. Introduction

Indonesia was born as a country based on law, this view can be clearly found in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The concept of the Republic of Indonesia as a country based on law then has the consequence that the actions of every level of society are regulated by applicable law.¹

Economic life in its development cannot be separated from the important position of law, the importance of the legal position is because the law is able to protect the rights of every party in today's economic activities. Legal protection is needed in economic development activities can be seen in terms of property rights protection. Property rights to an object are expressly guaranteed in Article 28G paragraph (1) of the 1945 Republic of Indonesia Law. Meanwhile, regarding land ownership rights, the guarantee of legal protection can be seen in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles of the President of the Republic of Indonesia.

Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles of the President of the Republic of Indonesia reads:

1. The rights to land as intended in article 4 paragraph (1) are:
 - a. right of ownership;
 - b. Cultivation Rights;
 - c. building rights;
 - d. right of use;
 - e. leasehold rights;
 - f. land clearing rights;

¹ Legal binding in all actions of the community is basically a manifestation of the concept of excessive limitation of power in the current state system. This concept was born as a form of respect and protection for Human Rights and democracy in the life of the nation and state. See: Jeffry Alexander Ch. Likadja, 2015, "Interpreting "State Law (Law Throught State)" in the Frame, State of Law (Rechtstaat)", Hasasnuddin Law Review, Vol. 1, No. 1, p. 76.

- g. the right to collect forest products;
 - h. other rights which are not included in the rights mentioned above which will be determined by law as well as temporary rights as mentioned in article 53.
2. The rights to water and space as referred to in Article 4 paragraph (3) are:
- a. water use rights;
 - b. rights to maintain and capture fish;
 - c. space use rights.

The guarantee of property rights protection is realized through the creation of an authentic deed. The important position of an authentic deed is based on the function of the authentic deed. An authentic deed has 2 (two) important functions, namely a deed as a formal function which means that a legal act will be more complete if a deed is made. The function of evidence is a deed as a means of proof where the creation of the deed by the parties bound by an agreement is intended for proof in the future.²

The presence of the industrialization era 4.0 and the advancement of information and communication technology in its development has brought fundamental changes in the lives of people around the world, including in Indonesia.³ These changes have fundamentally changed the culture of society which was previously carried out in a traditional way through the use of non-digital-based facilities, now this has changed, all activities of people's lives have been carried out half in cyberspace. One proof of this can be seen in the bureaucracy of making deeds through the means of advances in information and communication technology. Authentic deeds which were previously made manually have now morphed into electronic deeds in which every stage of making until their validity has involved a lot of digital technology.

The progress that exists then creates new legal problems, namely the problem of the validity of an electronic authentic deed made by a Notary. The validity of a deed must first be read by a Notary in front of two witnesses and the parties or parties who wish to make an authentic deed. This is regulated in Article 28 of the Regulations on the Notary-Ambt in Indonesia (Ordinance of January 11, 1860). This provision was also later accommodated in Article 16 paragraph (1) letter m of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary.

The provisions above require the presence of a Notary as a general official

² Sudikno Mertokusumo, (1991), "Mengenal Hukum (Suatu Pengantar)", Yogyakarta Liberty,

³ Edi Setiadi, (2002), "Pengaruh Globalisasi Terhadap Subtansi Dan Penegakan Hukum", Syiar Hukum, Volume XVIII No. 4.

making the deed and the parties who wish to make an authentic deed. The making of an electronic authentic deed is often not physically attended by the parties who wish to make an authentic deed. The absence of the person appearing in the making of an authentic deed when referring to the two Articles above will clearly result in the authentic deed being questioned.

This becomes even more complicated because the matter of authentic deeds made by Notaries has not been regulated either in Law Number 19 of 2016 concerning Information and Electronic Transactions or in Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary.

Such a situation clearly results in the issue of uncertainty in all matters relating to electronic notarial deeds, both in terms of resolving legal issues regarding the deed if in the future the electronic notarial deed contains various problems and in terms of protecting the parties who guarantee the protection of their rights through the electronic notarial deed.

Another problem in electronic deed registration is the availability of facilities and infrastructure as well as Human Resources in every Notary and/or PPAT office and in the National Land Agency Offices spread across various regions in Indonesia. Director General of Postal and Informatics Services Ministry Communication and Informatics Ahmad M. Ramli said as many as 12,548 village in Indonesia has not been touched by an Internet signal until today.⁴ The obstacle to electronic deed registration in Tegal Regency is the obstacle in the form of an Informatics and telecommunications network system that very often experiences disruptions, then there are still many people in Tegal Regency who have not mastered the informatics and telecommunications system.⁵

Based on the various explanations available, it is clear that the issue of legal uncertainty and the lack of facilities and infrastructure make electronic deed registration should be reviewed. Based on the various explanations above, it is necessary to discuss in more depth regarding the "EFFECTIVENESS OF IMPLEMENTING ELECTRONIC DEED REGISTRATION IN TEGAL REGENCY".

2. Research Methods

The approach method used is a qualitative method, namely a method that focuses on general principles underlying the manifestation of symptom units that exist in human life, or the patterns analyzed are socio-cultural symptoms with the culture of the community concerned to obtain a picture of the prevailing

⁴ Tempo, "Communication and Information Call Lots Village Not yet Touched by the Internet", <https://bisnis.tempo.co/read/1352697/kominfo-buat-12-548-desa-belum-touched-internet-signal>, accessed on August 10, 2022, 12.00 WIB.

⁵ Interview with Notary/PPAT in Tegal Regency, Dea Ayu Pradipta, March 1, 2023.

patterns.⁶ The data sources used in this study were conducted through field studies, the author used the interview method. An interview is a verbal question and answer process where two or more people face each other physically, in the interview process there are two parties who occupy different positions, one party functions as a news seeker or is called an interviewer, while the other party functions as a giver. Data collection techniques in this study were carried out by means of Observation and Interviews. Data analysis used by The author in this study uses descriptive nature.

3. Results and Discussion

The Role of Notaries in Realizing the Effective Implementation of Electronic Deed Registration

Land plays an important role in human life, one of which is in terms of social development. Therefore, the government as the highest state organization makes a law regarding land, namely the UUPA. The intent and purpose of the government in enacting the UUPA is to provide certainty and legal protection regarding land rights for the Indonesian people as a whole.

PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or Rights to Apartment Units as stated in Article 1 paragraph (1) of Government Regulation Number 37 of 1998 concerning PPAT Position Regulations. The official is given the authority by the Government to carry out part of the land registration activities by making authentic deeds where the PPAT authentic deed is evidence of a legal act such as a sale and purchase. If the PPAT has made an authentic deed, the PPAT is obliged to immediately submit the deed to the Land Office for registration of the transfer of rights.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 1 of 2021 concerning Electronic Certificates, regulates Land Certificates which were originally in the form of paper (analog) and have now changed to Electronic Land Certificates. This regulation aims to realize the ease of public services in the land sector in order to create modernization to improve public service indicators, utilize developments in information and communication technology by implementing electronic-based land services.

The government's commitment to fulfilling the implementation of the Electronic Certificate or Electronic Deed is assisted by PPAT. Where PPAT has an important role in assisting the government to carry out as part of the government's duties. The role of PPAT in the Electronic Certificate Service is expected to be able to educate the public about legal acts on land that has been certified, can prevent identity forgery by using biometric recording technology assisted by the

⁶ Burhan Ashshofa, 1996, "Metode Penelitian Hukum", PT. Rineka Cipta, Jakarta, hal. 20-21.

government in terms of verifying the identity of the person. In addition, the role of PPAT includes but is not limited to the division of Rights, registration of deeds, transfer of rights and maintenance of data regarding land registration.

The purpose of the electronic service policy is to improve the competence of PPAT digitally through E-Learning PPSDM, verify the identity of individual face-to-face through KTP Reader and use electronic signatures registered with the Financial Services Authority (OJK). The Ministry of ATR/BPN continues to update the Partner Application, all PPAT must first become members of the Partner by registering a PPAT account, then verifying the PPAT account data, then the PPAT gets access rights to the Partner application. Changes in the PPAT work pattern can be seen from the service that usually has to visit the PPAT Office now registering services electronically, in addition, PPAT must make data that is not ready for electronic change into data that is ready for electronic.

Resolving Obstacles Faced by PPAT in Electronic Deed Services

As is known, users of this electronic mortgage service, in addition to ASN at the Ministry of ATR/BPN, are Creditors (banking or individuals) and Land Deed Making Officials (PPAT), whose existence is regulated in Government Regulation Number 37 of 1998 concerning PPAT Position Regulations. PPAT is referred to as an Official

General which person is appointed by an authorized agency with the task of serving the general public or certain activities who is given the authority to make certain land deeds, as regulated in laws and regulations. The deeds referred to are deeds of transfer and encumbrance of land rights and ownership rights to apartment units and deeds of granting power of attorney to encumber mortgage rights.

The implementation of granting of mortgage rights electronically for creditors and PPAT always begins with the making of a Deed of Granting of Mortgage Rights (APHT) before the PPAT between the grantor of mortgage rights and the creditor. The APHT has met the qualifications as an Authentic Deed both in terms of Procedure, Substance and the authority of the PPAT who formalized it. The APHT is then registered by the PPAT at the local Land Office electronically no later than 7 days after the APHT is formalized which becomes the basis for the issuance of an Electronic Mortgage Rights Certificate.

The resolution of problems and obstacles faced by users of Electronic Mortgage Rights, especially PPAT and Creditors, refers to the technical instructions made by the Ministry of ATR/BPN, because basically the problems and obstacles are mostly related to the IT system and server of the Electronic HT Service. Users must always confirm the IT problem to the Electronic HT service provider, namely the local Land Office, so that users of the Electronic Mortgage Rights Service, in this case PPAT and Creditors, must be skilled and adequate in using all

the devices needed to complete the granting of Mortgage Rights until the Electronic Mortgage Rights Certificate is issued.

Based on the results of interviews with PPAT, that if there is a problem with the Electronic HT service system and PPAT directly informs the Tegal Regency Land Office, but sometimes the Tegal Regency Land Office cannot answer the problem because the staff at the Tegal Regency Land Office do not understand the electronic mortgage service system. Due to the lack of personnel, the officers who were asked for information do not know the answer because it is not their field. Therefore, the Tegal Regency Land Office should have officers/verifiers not only to check the conformity of documents with identity, mortgage ranking and so on, but also to solve problems related to the implementation of mortgage rights and regarding networks and other things.

4. Conclusion

The implementation of electronic HT deed registration in Tegal Regency has not been running effectively, this is indicated by the small number of HT Deeds registered electronically in Tegal Regency. The weakness that resulted in the creation of electronic HT deeds in Tegal Regency has not been implemented due to the fact that in 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 Mortgage Rights Services, there is a problem with the authority of Notaries/PPATs which is only limited to making APHT, the unclear position of foreign nationals in making Electronic HT Deeds in 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 Mortgage Rights Services, sociologically the weakness is that there is no clear regulation of electronic signatures in 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 Integrated Mortgage Rights Services Electronically, there is a problem with the time of change related to errors in the old electronic HT registration data when making a new electronic HT deed, the existence of Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Head of the National Land Agency Number 9 of 2019 concerning Integrated Mortgage Rights Services Electronically regarding the provision of user names and passwords to other parties can potentially lead to violations of the law that can harm the HT owner who wants to register his Mortgage Rights electronically, the resolution of HT disputes is still traditional, for example evidence in civil courts that is still not based on advances in information and communication technology in its entirety, network maintenance that often causes problems with electronic HT registration or in other words, the system often errors, making it difficult for parties registering electronic HT deeds, not all parties have internet facilities and computer devices, for example in remote

areas in Indonesia.

5. References

Jurnal:

Asnawi. (2013), *"Efektivitas Penyelenggaraan Publik Pada Samsat Corner Wilayah Malang Kota"*, Skripsi S-1 Jurusan Ilmu Pemerintahan, FISIP, UMM Malang

Edi Setiadi, (2002), *"Pengaruh Globalisasi Terhadap Subtansi Dan Penegakan Hukum"*, Syiar Hukum, Volume XVIII No. 4.

Erie Hariyanto, (2009) *"Burgelijk Wetboek (Menelusuri Sejarah Hukum Pemberlakuannya di Indonesia)"*, Al-Ihkam, V ol. IV, No. 1,

Jeffry Alexander Ch. Likadja, (2015), *"Memaknai "Hukum Negara (Law Throught State)" Dalam Bingkai, Negara Hukum (Rechtstaat)"*, Hasasnuddin Law Review, Vol. 1, No. 1

Zidna Aufima, (2020), *"Peran PPAT Selaku Pengguna Layanan Hak Tanggungan Terintegrasi Secara Elektronik"*, Journal of Judicial Review, Journal of Judicial Review, 22,

Book:

Abdul Ghofur Anshori. (2010), *Hukum Perjanjian Islam Di Indonesia*, Yogyakarta Gajah Mada University Press

Abdul Kadir Muhammad, (1990), *"Hukum Perdata Indonesia"* Bandung PT. Citra Aditya Bakti,

Achmad Ali, (2008), *"Menguak Tabir Hukum"*, Bogor Ghalia Indonesia.

Achmad Ali, (2009), *"Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)"*, Jakarta Kencana,

A.P Perlindungan, (1999), *"Pendaftaran Tanah Di Indonesia"*, Mandar Maju, Bandung, hal.5

Burhan Ashshofa, (1996), *"Metode Penelitian Hukum"*, Jakarta PT. Rineka Cipta,

Cita Yustia Sefriani, (2013), *"Buku Pintar Bisnis Online dan Transaksi Elektronik"*, Jakarta Gramedia Pustaka,

Esmi Warassih, (2011), *"Pranata Hukum Sebuah Telaah Sosiologis"*, Semarang Badan Penerbit Universitas Diponegoro.

Eugenia Liliawati Mulyono, (2003), *Tinjauan Yuridis Undang-undang Nomor 4 tahun 1996 tentang Hak Tanggungan dalam Kaitannya dengan Pemberian Kredit oleh Perbankan*, Jakarta Harvarindo,press

Gunawan Widjaja dan Kartini Mulyadi, (2008), *"Hak Tanggunga"* Jakarta,,Kencana
Habib Adjie, (2006), *"Hukum Notaris Indonesia"*, Jakarta Erlangga

- Handri Raharjo, (2009), "Hukum Perjanjian di Indonesia", Yogyakarta Pustaka Yustisia,
- Hasannudin Rahman, (1995), "Aspek-aspek Pemberian Kredit Perbankan di Indonesia",
Bandung Citra Aditya Bakti.
- Herlien Budianto, (2010), "Ajaran Umum Hukum Perjanjian dan Penerapannya Di Bidang Kenotariatan", Bandung PT. Citra Aditya Bakti
- Indonesia Legal Center Publishing, (2008), "Himpunan Peraturan Perundang-Undangan Jabatan Notaris & PPAT", Jakarta Karya Gemilang.
- I Ketut Oka Setiawan, (2019), "Hukum Pendaftaran Tanah dan Hak Tanggungan", Sinar Grafika, Jakarta, hal. 114.
- Kartini Muljadi & Gunawan Widjaja, (2004), "Perikatan Yang Lahir dari Perjanjian",
Jakarta PT. Raja Grafindo Persada,
- M. Yahya Harahap, (1986), "Segi-Segi Hukum Perjanjian", Bandung Alumni,
- Marcus Priyo Gunarto, (2011), "Kriminalisasi dan Penalisasi dalam Rangka Fungsionalisasi Perda dan Retribusi", Semarang Program Doktor Ilmu Hukum Universitas Diponegoro,
- Mariam Darus Badruzaman et. al, (2001), "Kompilasi Hukum Perikatan", Bandung PT. Citra Aditya Bakti,
- Mariam Darus Badruzaman, (2005), "Kitab Undang-undang Hukum Perdata Buku III Tentang Hukum Perikatan Dengan Penjelasannya", Bandung ,Alumni.
- Mukti Fajar dan Yulianto Achmad, (2010), "Dualisme Penelitian Hukum: Normatif dan Empiris", Yogyakarta ,Pustaka Pelajar,
- Purwahid Patrik, 1994, "Dasar-dasar Hukum Perikatan (Perikatan Yang Lahir Dari Perjanjian dan dari Undang-Undang)", Bandung, CV. Mandar Maju.
- R. Subekti (1985), "Aneka Perjanjian", Bandung Alumni,
- R. Subekti, (1990), "Jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia",
Bandung ,PT. Citra Aditya Bakti,
- R. Wirjono Pradjodikoro, (2000), "Asas-asas Hukum Perjanjian", Bandung CV. Mandar Maju, ,
- R.Subekti dan R.Tjirosudibio, (1992), Kamus Hukum, Jakarta Pradnya Paramita,
- Riduan Khairandy, (2004), "Itikad Baik Dalam Kebebasan Berkontrak", Jakarta Universitas Indonesia Fakultas Hukum Pascasarjana
- Riduan Syahrani, (2009), "Rangkuman Intisari Ilmu Hukum", Bandung, Citra Aditya Bakti. Ronny Hanitjo Soemitro, (1998), "Metodologi Penelitian

- Hukum”, Ghalia, Jakarta, hal.34. Salim HS, (2003), *Hukum Kontrak Teorie Teknik Penyusunan Kontrak*, Jakarta Sinar Grafika
- Shidarta, (2006), *“Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir”*, Bandung
- ,PT. Revika Aditama,
- Soerjono Soekanto, (1985), *“Beberapa Aspek Sosial Yuridis Masyarakat”*, Bandung Alumni,
- Soerjono Soekanto, (2007), *“Faktor-Faktor yang Mempengaruhi Penegakan Hukum”*, Jakarta Penerbit PT. Raja Grafindi Persada
- Sondang P Siagian, (1986), *“Organisasi, Kepemimpinan dan Perilaku Administrasi”*, Jakarta Gunung Agung,
- Sri Endah Wahyuningsih, (2013), *“Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia”*, Semarang UNDIP
- Sudikno Mertokusumo,(1991),*“Mengenal Hukum (Suatu Pengantar)”*, Yogyakarta Liberty,
- Sudikno Mertokusumo, (1999,) *Mengenal Hukum Suatu Pengantar*, Yogyakarta Liberty,. Ulum Ihyaul MD, (2004) ,*“Akuntansi Sektor Publik”*, Malang UMM Press,
- Zaeni Asyhadie, (2018), *“Hukum Keperdataan (Dalam Perfektif Hukum Nasional, KUH Perdata (BW), Hukum Islam, Dan Hukum Adat)”*, Rajawali Pers, Depok, hal. 117.
- Zakiah, (2011),*“Hukum Perjanjian Teori dan Perkembangannya”* Yogyakarta Pustaka Felicha,

Article:

- Marcus Priyo Gunarto, (2011), *Kriminalisasi dan Penalisisasi dalam Rangka Fungsionalisasi Perda dan Retribusi*, Program Doktor Ilmu Hukum Universitas Diponegoro Semarang.

Interview:

- Interview with Ayu Suciati, SH, M.Kn as Notary & PPAT in Tegal Regency, June 1, 2024.
- Interview with Dea Ayu Pradipta, SH, M.Kn as Notary & PPAT in Tegal Regency, March 1, 2024.
- Interview with Dr. Taufan Fajar Riyanto, SH, M.Kn as Notary & PPAT as well as Academician of the Notary Program (S2) Faculty of Law, Unissula, on June 1, 2024.
- Interview with Setyo Hartono, Head of the Rights Determination and Registration Section of the Tegal Regency National Land Agency, Tegal, April 17, 2024.

Regulation:

The 1945 Constitution of the Republic of Indonesia.

Law on the Position of Deputy Notaries and Temporary Deputy Notaries, Law No.33 of 1954, LN No.101 of 2004. TLN No.700.

Civil Code.

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia

Indonesia Number 5 of 2020 Concerning Electronically Integrated Mortgage Rights Services

Al-Qur'an and Hadith:

Al-Qur'an and Translation, CV Toha Putra, Semarang