

Implications Of Electronic Integrated Mortgage Rights Registration If The Guarantee Owner Dies

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Abstract.

Service public-based technology from the Mortgage Rights system electronic expected can give convenience for user system that, will but in its implementation Not yet walk in a way maximum. Problems arise if the owner guarantee dies during the mortgage in a way electronically registered. This Study's objective is to know the implications of Integrated Mortgage Rights registration in a way electronically if the owner guarantee dies. Study This is study law normative. Data used in the study This is secondary data. Collected data is then analyzed in a way descriptive qualitative with the use statute approach or approach legislation. Research results this if the owner guarantee died when the Mortgage Rights were registered in a way electronics, cause Number Identity Population owner guarantee in system Registration of Mortgage Rights No registered. This matter is causing mortgage rights not to be born. Because the creditor did not get guarantee certainty law when the Deed Granting Mortgage Rights was already signed through a power of attorney to impose mortgage rights because the APHT cannot registered to the Land Office.

Keywords: *Legal Protection; Mortgage Rights System Electronic and Creditors.*

I. INTRODUCTION

In the middle of progress increasing globalization worldwide, system-based services electronic are developed from system manual service. There is service public technology expected can increase transparency, accountability bureaucracy, and also participation from the public in following as well as in formulating and implementing state policy. That matter aims to ensure that the country can make it happen something good governance which is governance good government. Globalization does well as immediately only influences governance and government, but also influences the needs of society always increase. With factors increasing in society and the economy that have not fulfilled needs, the public is lending funds to banks. Borrowing these funds is called submitting application facility credit. Credit is very important because aims to increase the level of life public with methods to expedite trade, production, services, and even consumption (Dwiastuti. 2020). Society as the borrower (next called debtor) and the bank as the giver loan (next called creditor) is carried out through agreement credit. Agreement Credit is carried out by debtors and creditors as an agreement Basically, it happens based on the agreement principle of faith Good between debtors and creditors form connection law. Agreement Credit is made based on an agreement between the debtor and the creditor. Creditors give facility credit to debtors often a feeling of worry will happen default from debtors who are not capable return the funds borrowed from creditors.

So, creditors before giving credit, must apply principle prudence (prudential banking principal), which takes the form of The Five C's of Credit Analysis (Character, Capacity, Capital, Collateral, and Conditions). One of the 5C principles is Collateral or guarantee. Giving facility credit by banks, usually requested exists collateral or guarantees additional functions to ensure creditors can quickly repay the debt if the debtor defaults with through auction on object guarantee. Promise loading guarantee from the Mortgage guarantee, Debtor can deliver goods collateral (collateral) that can be obtained from object moves and immovable objects. Guarantee in form object move is said to object move because its moving and capable nature moved or in Constitution stated as an object moving, for example binding right to object move. Guarantee in form object does not move is based guarantee of its nature being immovable or cannot be moved around, in the form of right on the land. Giving a guarantee must be with an agreement loading

guarantee, as agreement addition (accessor) because there exists an agreement principal. Promise loading guarantee This form of mortgage guarantee.

Article 10 Law Number 4 of 1996 concerning Mortgage Rights for Land and Objects Related to Land (next called UUHT), mentioned that:

- (1). Granting Mortgage Rights preceded by a promise to provide mortgage rights as a guaranteed repayment of certain debts, which are stated in and constitute part not inseparable from related debt and receivable agreements or agreements with others who incur the debt.
- (2). Granting Mortgage Rights by making a Deed Granting Mortgage Rights by PPAT is appropriate with regulation current regulation.
- (3). Guarantee in form object does not move is based guarantee of its nature immovable or cannot be moved around, granting Mortgage Rights done simultaneously with application registration right on the land concerned.

Based on Article 10 UUHT mentioned above, then can conclude the process of imposition of Mortgage Rights held through two stages, namely:

- a. Stage granting mortgage rights, with APHT, was created by the PPAT which preceded it with a guaranteed debt-receivable agreement with mortgage rights. APHT is very important Because arranges terms and conditions for granting Mortgage Rights related to debt guarantee. APHT also loads terms specifically as stated in Article 11 paragraph (1) UUHT, namely name and identity holder and grantor of Mortgage Rights, domicile grantor and holder of Mortgage Rights, determination of guaranteed debt, value dependents, as well explanation about the object of Mortgage Rights.
- b. Stage registration of Mortgage Rights by the Land Office local that is APHT registration has been completed and signed by the parties (Kharisma & Kurniawan, 2022). PPAT must send APHT and other necessary documents to the Land Office. Then, the Land Office will book mortgage land, do a recording to book land right on land and make copy notes stated on the certificate right on land. Mortgage rights rise when noted in the book mortgage land. The Land Office publishes the mortgage rights certificate as results end at a time sign proof of the Mortgage Rights in question. This matter is arranged in Article 13 UUHT and Article 14 UUHT.

Official Maker Land Deed (PPAT) currently operates task-related service right dependents by Regulation Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 Concerning Provision Implementation Regulation Government Number 37 of 1998 Concerning Regulation Position Official Maker Land certificate. Before its implementation service rights dependent electronic PPAT's duties are: do to deliver Deed Imposition of Mortgage Rights (APHT) at once with Register Mortgage Rights at the Land Office. However moment 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 Services Integrated By Electronics, PPAT tasks only convey Deed Imposition of Mortgage Rights (APHT) is appropriate with period time certain through system Electronic Mortgage Rights. Whereas registration of Mortgage Rights is an obligation from the creditor to register through the system of Electronic Mortgage Rights. Implementation system the organized by BPN on an ongoing basis gradually, with an adapt integrated system and supporting data readiness. In service Mortgage rights electronics, Mortgage Rights users can submit service forms transfer of mortgage rights, registration of mortgage rights, deletion of mortgage rights, change the name of the creditors, and data improvements.

There is a Mortgage Rights electronic system expected can give convenience for user mortgage services, but in practice, there are problems that arise from the existing Mortgage Rights electronic way still there is a weakness is if the Registration of Mortgage Rights in a way electronic through a power of attorney to impose mortgage rights if owner guarantee dies, if owner guarantee died during mortgage electronic the registered, when PPAT carries out input Number Parent Population (next called NIK) owner guarantee, the NIK No detected, because owner guarantee died, because that is, mortgage rights cannot be held. Registration of mortgage rights that cannot be held caused no certainty law for creditors in matters of property refund creditors who have given to the debtor. Creditors No can execute an object owned by the debtor will

guarantee to the bank if the debtor cannot do property refund creditor. That matter was caused by outstanding mortgage rights as a born consequence of mortgage rights that cannot be implemented through the Mortgage Rights electronic system. Based on the background, this research takes formulation problem How implications of integrated Mortgage Rights registration in a way electronic through a power of attorney to impose mortgage rights if the owner guarantee was died.

II. METHODS

The Method used in study law This is the method juridical normative. Study This is done to describe a way qualitative protection law for creditors to his death owner guarantee before carrying out the registration process through Mortgage Rights electronic. This Research law uses 3 (three) types of material law, that is primary law, materials law secondary, and tertiary materials law. Primary legal materials used consist of regulation-relevant legislation. Legal materials are secondary uses from reference literature, articles, and works related to science. Legal materials tertiary used that is form material originating law from the Internet. In research law, this use technique data analysis viz technique analysis qualitative use material considered law relevant with the issues raised, then done analyze and present in nature writing descriptive.

III. RESULTS AND DISCUSSION

In agreement credit, creditors as Mortgage Rights holders own weak position based on the arrangement guarantee general in Article 1131 of the Civil Code, which reads as follows: "All material things owe well that's moving or not moving, well that's it There is or new ones will it's the later day, be dependents For all the engagement individual ". this article applies to all creditors, because meaningful that every treasure object debtor without exception is guaranteed to repay the debt to every creditor. Guarantee general implications for earnings balanced payment with amount receivables all existing creditors, including creditor separatist. Creditors separatist is creditor holder guarantee material like holder pledge, guarantee fiduciary, right dependents, mortgages and collateral material other. It is said " separatist " has the connotation of " separation " because the position creditors of course separated from creditors others, in his sense can sell themself and take Alone results sales, which is separate from treasure bankrupt generally (Fuady, Munir.2005). Therefore that's necessary to give protection law to creditor Mortgage Rights holders in a way special, ie accepting guarantee material from the object of Mortgage Rights. Protection law creditor Mortgage Rights holder first obtained with making agreement credit between creditor with debtor.

Agreement credit contains the rights and obligations of creditors and debtors in a way that leads back, to applying tie as Constitution for the parties. This matter is meaningful in that creditors can obtain protection through clauses in the agreement, one of them is a clause giving a guarantee debtor to creditor. Agreement credit can made in two forms, namely deed below hand and deed authentic each one has strong different evidence. First, the deed below hand is just a deed made by or in the presence of the parties. Second, the deed authentic according to Article 1867 of the Civil Code is a deed made by or in front of an official general authority and depth form determined by law. Based on the above explanation, agreement credit in the form deed is authentic No need for creditors to be concerned with facet strength proof Because their strength is perfect proof. In the process of assigning Mortgage Rights, agreement credit in the form deed authentic to the Not Yet Enough For gives protection to creditors. This matters because agreement credit as agreement principal usually be equipped with an agreement guarantee as an accessor agreement. Agreement accessories later will always be bound by the agreement basically, so stage what's next is necessary is the creation of APHT by PPAT. Before APHT is made, PPAT can also make SKMHT if required giving power from the Mortgage Rights holder to the creditor Because the mortgage rights provider is unable to sign the APHT. SKMHT must followed with the creation of APHT in a period of specified time.

The Period time for the creation of APHT, if the Mortgage Rights object has been registered is one month, meanwhile period SKMHT time according to Article 15 UUHT junction Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning Determination of the Time Limit for Using a Power of Attorney to Encumber Mortgage Rights For Ensure Repayment Credit Specifically, article 15 UUHT explains that Power To

Charging Mortgage Rights No can withdraw return or No can end for a reason anything except Because power the has held or Because has finished period time then explained in Paragraph (3) Power of Attorney to Encumber Mortgage Rights about right on existing land registered must follow with making Deed Granting Mortgage Rights no later than 1 (one) month after given. Power of Attorney Imposing Mortgage Rights about rights on land that has not been registered must followed with making a Deed Granting Mortgage Rights no later than 3 (three) months after given. Provision This No applies in terms of Power of Attorney Imposing Mortgage Rights given to ensure credit specified in regulation current regulation. In Article 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning Determination of the Time Limit for Using a Power of Attorney to Encumber Mortgage Rights For Ensure Repayment Credit Certain namely a power of attorney charge right dependents (" SKMHT ") for type credits below this applies until with the end agreement principal :

1. Credit/financing/loans provided to customers business micro and business small, deep scope understanding business productive owned by individuals and/ or business entities individual
2. Credit/ financing/loans intended For procurement housing, namely :
 - i. Ownership or repair of the main house, house simple or House arranged with wide land maximum 200 m² (two hundred square meters) and area building No more of 70 m² (seven twenty square meters); And
 - ii. Ownership or repair plot Ready wake up (KSB) with wide land 54 m² (fifty-four square meters) to 72 m² (seven twenty- two square meters) and credits are given For financing the building.
 - iii. Credit/financing/loans productive other with ceiling until with IDR 200,000,000.00 (two hundred million Rupiah).

In Article 3 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia, Number 22 of 2017 concerning the Determination of the Time Limit for Using a Power of Attorney to Encumber Mortgage Rights For Ensure Repayment Credit Certain explained that For credit with criteria below this, and certificate the land Still in management, then SKMHT applies until with 3 (three) months :

1. Credit/financing/loans For business micro/business small with ceiling credit Rp. 50,000,000,- (fifty million Rupiah) up to with Rp. 250,000,000.00 (two hundred and fifty million Rupiah);
2. Credit/financing/loans intended for the procurement of shop houses by micro/small businesses with a maximum area of 200 m² (two hundred square meters) with a credit/financing/loan ceiling not exceeding Rp. 250,000,000.00 (two hundred and fifty million Rupiah) which is guaranteed by land rights whose procurement is financed with credit/financing/loans.

Failure to fulfill these legal requirements will result in the relevant power of attorney being null and void, which means that the relevant power of attorney cannot be used as the basis for making a Deed of Creation of Mortgage Rights. APHT is mandatory registered by PPAT at the Land Office for a maximum of 7 (seven) days of work since APHT was signed, as arranged in Article 13 paragraph (2) UUHT. This matter is from application principle publicity in law Indonesian agrarian. APHT registration is also available to sign the commencement stage second imposition of mortgage rights, namely Registration of Mortgage Rights. Protection law's understanding that shelter and protection rights basic humans who are harmed by others who are given to society so they can enjoy all rights granted by law. Based on explanation the so can interpreted that one objective exists in law which is to give protection law. Legal efforts can done by whom just in matter to fulfil goals achieved. Protection law can attempted by those who just feel it disadvantaged to Act in demand from subject other laws. Protection law's objective For give protection or protection to created society in the form exists certainty law.

Protection law can share into 2, namely:

- a. Preventive Legal Protection is protection law preventive objective to prevent something violation. Form protection law preventive there is in the existing articles in Regulation Legislation. In protection law, the subject law owns the chance to submit an object or disclose his opinion before exists something decision from the government.

b. Repressive Legal Protection, Protection law repressive own objective to finish dispute that has been happening. Protection law in a way repressive can held through the execution of mortgage rights that can be executed directly by the creditor itself. If the debtor experiences default. This matter includes protection law because protection arises after the debtor defaults, so execution is done so that creditors get repayment on the receivables.

Execution of Mortgage Rights also provides protection law because it makes it easier for creditor Mortgage Rights holders from facet cost and time. This matters because creditor Mortgage Rights holders can execute without need to apply to court. Execution of Mortgage Rights actually can be done as arranged in Article 20 UUHT, namely as follows:

- (1). If debtor injury promise, then based on:
 - a. the right of the first Mortgage Rights holder to sell the Mortgage Rights object as intended in Article 6, or
 - b. title existing executorial in mortgage rights certificate as intended in Article 14 paragraph (2), the object of Mortgage Rights for sale through auction general according to the prescribed procedures in regulation legislation to repayment receivables Mortgage Rights holder with right first from creditors other.
- (2). By agreement grantor and holder of mortgage rights, the sales object of Mortgage Rights can implemented below hand If with thereby That will can obtain price highest profit for all parties.
- (3). Implementation sale as referred to in paragraph (2) only can done after past time one month since notified in a way written by the giver and/ or Mortgage Rights holder to interested parties and announced little by little in 2 (two) letters news circulating in the area concerned and/ or the mass media local, as well No There is the declaring party object.
- (4). Every promise to execute Mortgage Rights in a contradictory way with the provisions in paragraph (1), paragraph (2), and paragraph (3) is null and void by law.
- (5). Until moment announcement For auction issued, sales as referred to in paragraph (1) can avoided with guaranteed debt repayment with mortgage rights That along with costs execution that has been issued.

Based on the description of protection law to creditor holders of the above Mortgage Rights, two forms were found protection law that is protection law preventive and protective law repressive. First, protection law preventive obtained creditor with exists a series of mortgage rights imposition processes start from making agreement credit, APHT, up to registration of Mortgage Rights, and issuance of mortgage rights certificate electronic. Things that show protection law is preventive Because is effort prevention, which aims to avoid potency emergence disputes between creditors with debtors later in the day. Second, protection law repressive obtained creditors through the execution of mortgage rights that can be executed directly by the creditor Alone If the debtor experiences default. This matter includes protection law Because protection arises after the debtor defaults, execution is done so that creditors get repayment on the receivables. The implementation of mortgage rights in a way electronic although it has made a system used to increase transparency, accountability, effectiveness, and simplification of bureaucracy in service land especially in the field of Mortgage guarantee at the Land Office, apparently Still gives rise to the problem, that is if owner guarantee died when the Mortgage Rights were registered in a way electronic. Mortgage Rights Registration in a way electronic required Number Identity Population owner guarantee.

Resident Identity Card data will be entered into in Mortgage Rights system electronics, integrated with data recorded at the Directorate General of the Population and Registration Service Civil via your NIK every resident. In terms of This when the debtor dies, then the population data is already deleted from the population registration system by the Directorate General of Population and Civil Registration. As a result of the deletion of population data recorded at the Directorate General of Population and Civil Registration, this data cannot be reused in management. In terms of This including at the time Registration of Mortgage Rights on line. Mortgage Rights System will reject when inputting NIK due to Number Identity Population owner guarantee Already erased consequence from owner collateral that dies, so in system Registration of Mortgage Rights No registered. This matter is causing mortgage rights No born. If the mortgage right is not created then the implication is that the debtor's debt to the creditor continues but the creditor cannot execute it.

IV. CONCLUSION

Protection law creditor Mortgage Rights holder first obtained with making agreement credit between creditor with debtor. Agreement credit containing rights and obligations creditors and debtors in a way led back, to applying as Constitution for the parties. This matter means that creditors can obtain protection through clauses in the agreement, one of them is a clause, that gives guarantees debtor to the creditor. Agreement credit can made in 2 (two) forms, namely deed below hand and deed authentic each one has strong different evidence. First, the deed below hand is just a deed made by or in the presence of the parties. Second, the deed authentic according to Article 1867 of the Civil Code is a deed made by or in front of an official general authority and depth form determined by law. Based on the above explanation, agreement credit in the form deed is authentic No need for creditors to be concerned with facet strength proof Because their strength is perfect proof.

In implementation if the owner guarantee died when the Mortgage Rights were registered in a way electronically, causing the owner's VIN guarantee in the system Registration of Mortgage Rights was not registered. Protection law for creditors in the Registration of Mortgage Rights electronic is the same, that is through Certificate of Mortgage Ownership strength executorial because has acknowledged as tool proof valid law as arranged in Article 5 of the ITE Law. Protection law to creditors through a series of mortgage rights imposition processes that are from making agreement credit until publishing mortgage rights certificate electronically including protection prevention. Meanwhile, protection is repressively obtained by creditors through the execution of Mortgage Rights If the debtor experiences default. Then through clauses in the agreement, creditors obtain protection internally, meanwhile protection in a way the external seen from internal state efforts protect its citizens through arrangement legislation in every stage imposition of mortgage rights until its publication of the Mortgage Rights Certificate.

REFERENCES

- [1] Azizah N., Abdul H.B., Noor H.. 2022. *Pendaftaran Hak Tanggungan Secara Elektronik (Studi di Kantor PPAT Wilayah Banjarmasin Utara)*. **Notary Law Journal** Volume 1. Issue 2:84-99.
- [2] Dwiastuti, N. 2020. *Pengaruh Kredit Perbankan terhadap Pertumbuhan Ekonomi dan Hubungannya dengan Kesejahteraan Masyarakat Kabupaten/Kota di Provinsi Kalimantan Barat*. Prosiding Seminar Akademik Tahunan Ilmu Ekonomi dan Studi Pembangunan, 73-91.
- [3] Harahap, A. et, all, Macrozoobenthos diversity as anbioindicator of the water quality in the Sungai Kualuh Labuhanbatu Utara, AACL Bioflux, 2022, Vol 15, Issue 6.
- [4] Fuady, Munir. 2005. *Hukum Pailit dalam Teori dan Praktik*. Citra Aditya Bakti. Bandung. 99.
- [5] Muhaimin. 2020. *Metode Penelitian Hukum*. Mataram: Mataram University Press.
- [6] Muhammad, A. 2004. *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- [7] Pradesti Elva Rachmayanti, Ngadino.2022.*Peran Dan Tanggung Jawab PPAT Dalam Penerbitan Sertifikat Hak Tanggungan Elektronik*. NOTARIUS. Volume 15. Nomor 1.
- [8] Sugiyono. 2011. *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. Bandung: Alfabeta.
- [9] Waluyo, D. 2019, September. *Beri Layanan Terpadu, ATR/BPN Luncurkan Layanan Elektronik*. Diakses tanggal 7 Februari 2024 dari <https://infopublik.id/kategori/sorot-ekonomi-bisnis/406718/beri-layanan-terpadu-atr-bpn-luncurkan-layanan-elektron>
- [10] Harahap, A. P. Hrp, N.K.A.R. Dewi, Macrozoobenthos diversity as anbioindicator of the water quality in the River Kualuh Labuhanbatu Utara, **International Journal of Scientific & Technology Research**, 9(4), 2020, pp. 179-183.
- [11] Wiwoho, J. 2011. *Hukum Perbankan Indonesia*. Surakarta: UPT Penerbitan dan Percetakan UNS (UNS Press).
- [12] Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah.
- [13] Peraturan Menteri ATR/BPN Nomor 5 Tahun 2020 Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik.
- [14] Harahap, Arman ,2018, Macrozoobenthos diversity as bioindicator of water quality in the Bilah river, Rantauprapat, Medan. **J. Phys.:** Conf. Ser. 1116 052026.