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Implementation of the Responsibilities of Land Deed Making Officials for Electronic Charging of Mortgage Rights in the Dynamics of Information Technology Legal Convergence

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Abstract

This research aims to examine the implementation of the responsibilities of Land Deed Officials in electronically imposing mortgage rights in the dynamics of information technology legal convergence. The problem raised in this research is how to implement the responsibilities of Land Deed Officials in electronically imposing mortgage rights in the dynamics of information technology legal convergence. The research method used in this research is a type of Normative Legal research which refers to Law number 19 of 2016 concerning Amendments to Law number 11 of 2008 concerning Information and Electronic Transactions, Law number 24 of 2016 concerning Regulations for Officials Making Land Deeds and ATR/KBPN Ministerial Regulation number 5 of 2020 concerning electronically integrated Mortgage Rights registration services. Based on the results of the discussion, it can be concluded that Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 has significant implications for the obligations and responsibilities of Land Deed Officials in the imposition of electronically integrated Mortgage Rights. The obligations and responsibilities of the Land Deed Making Official are considered not to fulfill the principles of justice because they impose a responsibility beyond the authority of the Land Deed Making Official. Therefore, it is recommended that the convergence of information technology law needs to be reviewed to adapt it to Government Regulation Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials. Then the legal norms relating to the provisions of electronic Mortgage Rights must fulfill the principles of benefit, certainty and justice for Land Deed Officials.

Keywords: *Responsibility, Officials Making Land Deeds, Information Technology Legal Convergence*

1. Introduction

The era of globalization in all segments of world civilization, especially in the field of digitalization, is developing very rapidly and even immediately precedes the legal system of a country, including Indonesia (Kotijah, 2021). Worldwide information technology that releases national borders (Borderless) has become a necessity for world society. Everyone inevitably has to follow the digitalization trend in their life activities, both in the context of their personal lives and in their relationships with other people in global society (Yulisfan, 2021). So it can be

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said that digital globalization is a necessity. The phenomenon of digital convergence causes an information technology revolution which is marked by the transformation of conventional systems into digital systems (Ginting et al., 2022). Changes in technology, information and communication as a result of the digitalization trend have influenced the birth of various new legal regimes that are instantaneous and make things easier for people as technology users (Hasibuan et al., 2022). One of the impacts of the rapid development of technology is that people now tend to use paperless letters such as electronic mail (e-mail) and electronic documents.

This technological development certainly has an impact on Land Deed Making Officials (PPAT) whose duties and authority are always related to making authentic deeds in the land sector and the required documents. The Land Deed Making Official is one of the General Officials in Indonesia who has the authority to make authentic deeds in the land sector whose position and authority are based on Government Regulation number 37 of 1998 concerning Position Regulations for Land Deed Making Officials and Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds (Republic of Indonesia, 2016).

One of the Government regulations in the field of digitalization is the issuance of a new legal regime, namely Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Permen ATR/KBPN) number 5 of 2020, concerning Electronic Integrated Mortgage Services (Republic of Indonesia, 2020). The basic consideration for the birth of this Ministerial Regulation is to implement electronically integrated mortgage services to improve mortgage services that meet the principles of openness, timeliness, speed, convenience and affordability for public services, as well as to adapt to developments in law, technology and community needs (Nadif, 2021).

This regulation is an implementation of the impact of digital globalization in the development of Indonesian legal dynamics relating to the authority of Land Deed Making Officials. As stated in article 5 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020, that the Land Deed Making Official is one of the Electronic Mortgage Rights users who is authorized to have an account that is integrated into the Ministry's partner system. Agrarian and Spatial Planning/National Land Agency directly to carry out Mortgage Rights registration activities electronically (Harsono, 2007).

The duties and authority of the Land Deed Making Officer in the process of assigning Mortgage Rights are to make a Deed of Granting Mortgage Rights (APHT) and upload the required documents which are defined as electronic documents in the electronically integrated Mortgage Rights registration (Parlindungan, 1996). In the process of imposing Mortgage Rights, this electronic document is used when registering Mortgage Rights via the Electronic Mortgage Rights (HT-el) system which is carried out by the Land Deed Making Official. Registration of Mortgage Rights via electronic media based on Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency number 5 of 2020 experiences a conflict norm with Law number 4 of 1996 concerning Mortgage Rights. (Wiguna, 2020). This conflict norm arises because in Law number 4 years 1996, registration of Mortgage Rights is not carried out via electronic media but rather by sending a Deed of Granting Mortgage Rights and documents complete with the necessary requirements to be submitted to the Land Office through its officers or sent via registered post.

Even though in Law number 4 of 1996 concerning Mortgage Rights there is no electronic registration of Mortgage Rights, with the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency number 5 of 2020, the activity of registering Mortgage Rights is carried out electronically and the Deed Making Official Land is obliged to participate in supporting digital-based land service activities by carrying out electronic mortgage registration. This is stated in article 10 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency number 5 of 2020, 4 which confirms that the Land Deed Making Official is responsible for submitting the Deed of Granting Mortgage Rights along with the required complete documents by uploading them via the Making Official's account. Land Deed to the Ministry of Agrarian and Spatial Planning/National Land Agency Working Partner system.

In relation to the submission of the Deed of Granting Mortgage Rights and the required documents uploaded through the Ministry of Agrarian and Spatial Planning/National Land Agency's Working Partner system, it must be accompanied by a "Statement Letter" regarding the responsibility of the Land Deed Making Official regarding the validity and correctness of the electronic document data. uploaded. The obligation to make and upload a Statement Letter along with the Deed of Granting Mortgage Rights and the required documents electronically places undue legal burdens and responsibilities and does not fulfill a sense of justice for Land Deed Officials. Based on the legal facts above, it can be said that the convergence of technology and information law has brought Land Deed Making Officials into a cycle of inappropriate responsibility and does not fulfill the principles of justice for land Deed Making Officials. Therefore, it is interesting to study the implementation of the responsibilities of Land Deed Officials in the electronic imposition of Mortgage Rights in the dynamics of information technology legal convergence (Adrian, 2006, Archisman et al., 2019). Based on the background described previously, the problem that will be discussed in the research can be formulated as follows: how is the implementation of the responsibilities of Land Deed Officials in electronically imposing Mortgage Rights in the dynamics of information technology legal convergence?

2. Literature Review

Land Deed Drafting Officials (PPAT) as providers of professional services in the field of land law will never be separated from digital globalization (Assery, 2015). Since the issuance of ATR/KBPN Ministerial Regulation number 5 of 2020, it has been required that PPAT register Mortgage Rights electronically and use electronic documents as a condition for registering Mortgage Rights in the process of encumbering Mortgage Rights.

Apart from that, article 20 paragraph (4) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency number 5 of 2020, strengthens the burden on Land Deed Making Officials where Land Deed Making Officials are civilly and criminally responsible if it turns out that the uploaded documents are in fact false. On the other hand, based on article 20 paragraphs (1) and (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 6, the Land Office employees are exempt from taking responsibility for the material truth of the results of electronic mortgage services.

3. Methods

The system approach method in this research focuses on legal research and at the same time a writing method that is based on and relies on things that are normative in nature and sourced

from various related laws and regulations (Somardi. 2007 & Salim et al., 2013) and is supported by various literature sources, journals (text books).as well as adding various kinds of literature sources originating from websites/internet with a starting point and focus on the type of normative legal writing or what is called doctrinal which is supported by empirical legal writing or what is called non-doctrinal (Lubis et al., 2023 and Mansar & Lubis, 2023).

4. Result and Discussion

4.1. Implications of Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 on the Responsibilities of Officials Making Land Deeds

The role and involvement of Land Deed Officials is directly in the series of encumbrance of Mortgage Rights, starting from the making of the Deed of Granting Mortgage Rights and being part of the registration of Mortgage Rights electronically until an electronic Mortgage Rights Certificate is finally issued, which actually creates a legal responsibility for the Land Deed Official. The responsibility of the Land Deed Official in electronically registering Mortgage Rights starts from checking the files, the electronic Mortgage Rights registration process until the issuance of the electronic Mortgage Rights Certificate. In relation to Law Number 4 of 1996 concerning Mortgage Rights and Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials, then as a public official, the Land Deed Making Official must carry out his position and obligations based on the laws and regulations that regulate it. .

Legal obligations are closely related to legal responsibilities. (Asshiddiqie & Safa'at, 2006)

The issuance of ATR/KBPN Ministerial Regulation number 5 of 2020, gave birth to a different concept from Law Number 4 of 1996, especially in the aspect of obligations and responsibilities of Land Deed Making Officials. Based on the Minister of ATR/KBPN Regulation number 5 of 2020, the obligations and responsibilities of Land Deed Making Officials in imposing electronic Mortgage Rights can be seen from two segments, namely:

- 1) Responsibility for the deed made by the Land Deed Official, in this case the Deed of Granting Mortgage Rights; And
- 2) Responsibility for the required documents uploaded by the Land Deed Official during the electronic Mortgage Rights registration.

If, in carrying out his/her position, the Land Deed Making Officer violates or does not fulfill his/her obligations, the Land Deed Making Official may be subject to legal liability. The imposition of legal responsibility on the Land Deed Making Official is a juridical consequence if the Land Deed Making Official violates his obligations. As previously explained, one of the complete required documents uploaded by the Land Deed Making Officer via the work partner's account electronically is the "Accountability Statement of Validity and Veracity of Documents". In the Statement Letter, the second editorial paragraph includes a phrase which states that the documents and data uploaded to the electronic system are correct and in accordance with the physical documents, and the Land Deed Making Official is responsible in accordance with his duties and position as sender of the documents (Republic of Indonesia, 2020).

The obligation to make and sign the "Statement Letter" in question has given rise to the consequences of legal responsibility imposed on the Land Deed Making Official in carrying out his position which he should not have to bear. This statement makes the Land Deed

Official responsible for the formal and material correctness of the documents submitted to the electronic mortgage system.

This provision is also strengthened by article 20 paragraph (4) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 which states that in the case of an electronic document, which is used as the basis for issuing an electronic Mortgage Rights Certificate, is declared fake, then the sender of the document, in this case, the Land Deed Official as the sender of the documents in the registration and/or Mortgage Rights service is responsible both criminally and civilly (Republic of Indonesia, 2020).

This means that if the documents uploaded by the Land Deed Making Officer turn out to be fake then the Land Deed Making Official can be held responsible both under civil law and criminal law. In other words, the Statement Letter has brought the Land Deed Official into the realm of criminal law. Meanwhile, on the other hand, article 20 paragraphs (2) and (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 has exempted the Land Office and its employees from legal liability, both civil and criminal (Republic of Indonesia (2020) .Provisions of article 20 paragraphs (2) and (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 are deemed not to fulfill the principles of justice for Land Deed Making Officials because they impose a legal responsibility on Land Deed Making Officials that exceeds what they should bear. Juridically, the material truth of a document, especially a document that was not made before the Land Deed Making Official, should not be placed on the shoulders of the Land Deed Making Official. For example, the acquisition of rights to a Certificate originates from false reasons, then the certificate is used as collateral for a debt for the encumbrance of the Mortgage Rights as stated in the Deed of Granting Mortgage Rights made by the Land Deed Official and the Deed of Power of Attorney to Encumber the Mortgage Rights made by the Notary , will of course result in defects in these legal acts. Can the Land Deed Official be held accountable formally and materially in this case?

Apart from that, if the documents that are used as complete requirements for the submission of Electronic Mortgage Rights made by authorized agency officials are falsified, then photocopies of these documents are legalized by a Notary who is usually also held by the same Land Deed Official, whether a Notary or an Official. The maker of the Land Deed can also be held responsible for documents that were not drawn up in his presence. It would be unfair if the Land Deed Official or Notary was held responsible for a legal act that was not carried out in his presence and was completely unknown to him. Chairul Huda in Lukman Hakim's book entitled Principles of Criminal Law develops the principle "There is no crime without fault" into the principle "There is no criminal responsibility without fault".

The issue of whether the 'person' who committed the act can then be held responsible is another matter. Even though a criminal act has been committed, the author is not guilty, therefore he cannot be held responsible (Hakim, 2020). Based on the principle of No Crime without Fault or No Criminal Liability without Fault or in other terms it is called Geen Straf Zonder Schuld, or No Punishment Without Fault, or Actus non facit reum nisi mens sist rea, the Land Deed Official should not be held criminally liable if it turns out that the documents uploaded to the system of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency are in conflict with applicable legal provisions. The legal reason (Legal Reasoning) is because the documents he uploaded were not produced or executed before the Land Deed Official..

a. Legal Consequences of the Convergence of Technology, Information and Communication on Officials Making Land Deeds

Currently, the facts show that convergence in the fields of information, media and communication technology will continue to grow unstoppably along with the development of information, media and communication technology (Shulha et al., 2022). So it can be assumed that activities or actions carried out through the media of information technology systems or cyber space (Cyberspace) are real legal actions which ultimately require the existence of legal norms that regulate these legal actions. Laws related to information technology are known as Cyber Law.

Juridically, for cyberspace, it is no longer appropriate to categorize things with conventional legal standards and qualifications to be used as objects and actions, because if this method is used there will be too many difficulties and things that will escape the law. Cyber activities are virtual activities that have a very real impact even though the evidence is limited electronic. Thus, the perpetrator subject must also be qualified as a person who has actually carried out legal acts (Information System of the Directorate General of Legislative Regulations, 2023).

Quoting the views expressed Hartono (1991) delivered in her inauguration speech for the position of permanent professor in Legal Studies at the Faculty of Law, Padjadjaran University, Bandung, 1991, the presence of information technology is the result of the convergence of telecommunications, media and computers so that a medium known as the internet emerged. This gave birth to a new legal regime called cyber law, which is a dynamic of convergence that gives birth to new law.

This electronic technology-based service activity is one of the implications of the birth of Law number 11 of 2008 concerning Electronic Information and Transactions as amended by Law number 19 of 2016 concerning Amendments to Law number 11 of 2008 concerning Electronic Information and Transactions. The Information and Electronic Transactions Law is one of the juridical foundations of Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 concerning Electronic Integrated Mortgage Services.

The birth of regulations on electronic mortgage rights which were issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency basically aims to build an electronic integrated mortgage service system. Implementation of an Integrated Electronic Mortgage Services System is used to process Mortgage Rights services in the context of maintaining land registration data through an electronic system that can be accessed by the public (Nasya & Purnomowati, 2023). This system is expected to help improve the performance and quality of services of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency to the community, especially in Mortgage Rights services. (National Land Agency, 2020). electronic. Thus, the perpetrator subject must also be qualified as a person who has actually carried out legal acts (Information System of the Directorate General of Legislative Regulations, 2023).

1. Quoting the views expressed by Prof. Sunaryati,¹³ delivered in her inauguration speech for the position of permanent professor in Legal Studies at the Faculty of Law, Padjadjaran University, Bandung, 1991, the presence of information technology is the result of the convergence of telecommunications, media and computers so that a medium known as the internet emerged. This gave birth to a new legal regime called cyber law, which is a dynamic of convergence that gives birth to new law.

2. This electronic technology-based service activity is one of the implications of the birth of Law number 11 of 2008 concerning Electronic Information and Transactions as amended by Law number 19 of 2016 concerning Amendments to Law number 11 of 2008 concerning Electronic Information and Transactions. The Information and Electronic Transactions Law is one of the juridical foundations of Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 concerning Electronic Integrated Mortgage Services.
3. Even though in its implementation there are still many obstacles faced by Land Deed Officials, the Electronic Mortgage Rights ordered by the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Regulation number 5 of 2020 must still be implemented. As stated by Pieter Latumeten in an online Land Seminar on 09 September 2021, land services on an electronic basis are obligated to be followed by the professionalism of every Land Deed Making Official, both understanding the technology and land law and other related laws, in realizing orderly land transactions (Simarsoit, 2023).
4. The juridical consequences of the provisions of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 will of course have implications for the authority and responsibility of Land Deed Making Officials in making and registering legal acts in the land sector. The initial step has begun with electronic registration of mortgage rights. The concept of Mortgage Rights registration underwent technical changes with the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency number 5 of 2020.
5. There are several legal implications for the implementation of Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 regarding the obligations and responsibilities of Land Deed Drafting Officials as specified in article 10 paragraphs (1), (2), (3) and (4)16 which is identified as follows: "The Land Deed Drafting Officer (PPAT) is responsible for submitting the Deed of Granting Mortgage Rights (APHT) and the completeness of the required documents via the work partner's electronic system which is integrated with the Rights system". Electronic Dependents (HT-el). Mortgage registration must be done electronically. (vide article 10 paragraph Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020).
6. Submission of the required documents must be accompanied by a "Letter of Statement" made and signed by the Land Deed Official (PPAT) containing the responsibility for the validity and correctness of the Electronic Document data submitted in the electronic Mortgage Rights registration.
7. The Land Deed Official is required to keep the first and second sheets of the Deed of Granting Mortgage Rights along with all the required documents for Electronic Mortgage Registration.
8. Be formally and materially responsible for deeds and required documents uploaded to the Ministry of Agrarian and Spatial Planning/National Land Agency's partner system so that they can be held civilly and criminally accountable.

If a comparison is made between the Mortgage Rights Law number 4 of 1996 and the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020, there are differences in the extent of obligations and responsibilities of Land Deed Officials according to these two regulations at different levels. The differences between the two regulations regarding the duties and responsibilities of Land Deed Making Officials can be identified as described in the following table, namely:

Table 1: Comparison of PPAT Obligations and Responsibilities According to Minister of ATR/KBPN Regulation No. 5 of 2020 Compared To the Law No. 4 Of 1996 Concerning Mortgage Rights.

No	ATR/KBPN Ministerial Regulation No. 5 of 2020	Mortgage Rights Law no. 4 of 1996
1	The Land Deed Making Officer is responsible for making and submitting the Deed of Granting Mortgage Rights along with the required documents electronically via the ATR/BPN Work Partner account. The Land Deed Official does not responsible for registering Mortgage Rights	The Land Deed Making Officer is responsible for making the Deed of Granting Mortgage Rights and submitting and registering the Deed of Granting Rights Dependents and complete required documents to the ATR / BPN Office manually
2	The Land Deed Making Official is responsible for and guarantees the truth and validity of the Deed of Granting Mortgage Rights and the required documents which are uploaded via the ATR/BPN Work Partner account. proven by a "Letter of Statement" made and signed by the Land Deed Official (Purnamasari, 2014).	There is no provision that requires the Land Deed Official to make and sign a "Statement Letter" to guarantee and be responsible for the required documents submitted to the ATR/BPN Office manually.
3	The Land Deed Making Official is responsible for keeping the first and second sheets of the Deed of Granting Mortgage Rights along with the required documents, at the PPAT Office. ¹⁸	The Land Deed Making Official is only responsible for keeping the first sheet of APHT including the required documents, while the second sheet of APHT includes the mandatory requirements documents.submitted to the ATR/BPN Office.

5. Conclusion and Suggestion

5.1. Conclusion

Based on the results of the discussion and description above, the following conclusions can be drawn:

- a. Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 has significant implications for the obligations and responsibilities of Land Deed Drafting Officials in the imposition of electronically integrated Mortgage Rights. The obligations and responsibilities of the Land Deed Making Official are considered not to fulfill the principles of justice because they impose a responsibility beyond the authority of the Land Deed Making Official.
- b. The convergence of information technology law has brought Land Deed Making Officials into the circle of technology, information and communication which affects their obligations and responsibilities as makers of Deeds of Granting Mortgage Rights and senders of deeds and electronic documents uploaded via the Ministry of ATR/BPN's partner system.

5.2. Suggestion

- a. Regulations of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 resulting from the convergence of information technology law need to be reviewed to be adapted to Government Regulation Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials.
- b. The legal norms relating to the provisions of electronic Mortgage Rights must fulfill the principles of benefit, certainty and justice for Land Deed Officials.

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