

Responsibility of Land Deed Officials: Implications of Legal Convergence on the Harmonization and Integration of Collateral Law and Telematics Law

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ABSTRACT

Digitalization in the national legal system, especially related to mortgage rights, has experienced significant dynamics through Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 5 of 2020. One of the impacts of this land digitization is the change in the process of registering mortgage rights from a manual system to an electronic system. Although it is done virtually, electronic mortgage registration still involves real legal actions with clear legal consequences. The Land Deed Official (PPAT) also plays a direct role in the implementation of electronic mortgage rights in accordance with these regulations. This research aims to examine the impact of convergence between the Mortgage Law and the Telecommunications Law in the establishment of a digital-based mortgage registration system, known as the Electronic Mortgage System. It also explores the roles and obligations of PPAT in this context. The method used is prescriptive with a normative juridical approach. The results show that the change in the mortgage registration system from a manual system to a digital system is influenced by the convergence of telematics legislation and property security law. The incompatibility between the Mortgage Rights Law, the Electronic Information and Transaction Law, and PPAT regulations has an impact on the status and legal obligations of PPATs, making the principle of justice difficult to realize. This research provides important implications regarding the need for regulatory adjustments to create legal harmony in the mortgage digitalization system.

Keywords: Legal convergence, Land Deed Officials' Position and Responsibilities, Guarantee Law of Mortgage Rights, Telematics Law.

INTRODUCTION

Global digitization is both sustainable and inevitable. Information technology is used and exploited so dynamically that it permeates nearly every human activity on the planet (Mondejar et al. 2021). According to George Pattison, one feature of contemporary technology is its particular approach to expressing nature (Pattison-Williams et al. 2018). This means that nature is exploited as a resource for technological advancement while also being opened up, altered, stored, distributed, and redistributed—all within a "frame," or the constraints imposed by utility demands. Because technology and framing are not intrinsically bad, it is necessary to keep a distance from them when challenging the essence of technology. This is because the entirety of technology and framing is incorrect, and it permeates every aspect of existence. In this sense,

Heidegger challenges people to rise to the status of true beings in the face of technological advancement.

Even though they are virtual, cyber activities fall under the same legal categories as actual legal actions and deeds (Farshid et al. 2018). Electronic transactions are the most common use in cyber operations, making online transactions the most pressing problem at the moment (Bendovschi 2015). Since the introduction of electronic transactions, this has actually become a legal issue in addition to the security concern with the information system itself. Information technology progress does not fully benefit society when stringent and sophisticated security measures are not in place. Since digital technology makes it simple for information to be misused, information system security is a crucial concern.

Law Number 11 of 2008 concerning Information and Electronic Transactions, which has been amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Information and Electronic Transactions, is one example of how the government has attempted to regulate the use of technology in the utilization of information and electronic transactions. The government is attempting to expedite the advantages and functions of law within the confines of legal certainty by enacting the Electronic Information and Transactions Law (Melcarne et al. 2021). The legal basis for digital-based services, such as land rights registration, is provided by this legislation (da Silva Neto et al. 2021).

The Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation No. 5 of 2020 concerning Integrated Electronic Mortgage Services is the result of the convergence of the Telecommunication Law through the Electronic Information and Transactions Law with the Law on Mortgage Rights based on Law No. 4 of 1996 on Mortgages in the field of Land Affairs (Fuseini et al. 2015). The Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation No. 5 of 2020 has emerged thanks to the convergence of Telecommunication Law and Mortgage Rights Law, which also serves as its legal underpinning.

The Law on Security Rights and the Information and Electronic Transaction Law are convergent, which means that the Security Rights registration system—which was formerly based on a traditional system but is currently digital and is called the Electronic Security Rights Registration System—will undergo modifications (Sullivan 2019). The ramifications of this legal convergence not only modify the Security Rights registration system but also have an impact on the Land Deed Official's (PPAT) legal obligations and responsibilities when it comes to electronically encumbering Security Rights (Rodrigues 2020).

In order to produce a Deed of Mortgage and encumber a Mortgage Right, the Land Deed Official (PPAT) is required to adhere to the rules governing Mortgage Rights (Aiello 2022). The Law on Mortgage Rights, Number 4 of 1996, and the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation, Number 5 of 2020, must both be followed by the PPAT. Nonetheless, there is a significant lack of cohesion and disintegration between these two regulations, which have distinct hierarchies, especially with regard to the PPAT's tasks and obligations (De Maio et al. 2021). While electronic registration

of mortgage rights is already required by the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 5 of 2020, which acts as the implementing regulation of the Mortgage Rights Law, conventional mortgage rights registration under Law Number 4 of 1996 on Mortgage Rights has not been amended to include electronic registration.

One of the legal justifications for the two Mortgage Rights regulations' discord and disintegration is the aforementioned (Yang et al. 2020). In order to describe the various other provisions that have not yet been harmonized and integrated between these two regulations of different levels, normative studies on the harmonization and substantial integration between Law Number 4 of 1996 concerning Mortgage Rights and the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation Number 5 of 2020 must be conducted (Kush et al. 2020).

In relation to the authorities and responsibilities mandated by legislation in the imposition of Mortgage Rights, the enactment of Law Number 4 of 1996 concerning Mortgage Rights and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 have implications for the position and responsibilities of PPAT (Dagher et al. 2016). Therefore, it is necessary to conduct a study on the implications of legal convergence on the harmonization and integration of mortgage law and telematics law related to the position and responsibilities of the Land Deed Official.

Based on the above background, the purpose of this study is to analyze the implications of legal convergence between the Mortgage Law and the Telecommunications Law, as well as how the harmonization between these two regulations affects the implementation of electronic mortgages. This research also aims to explore the legal implications of this convergence on the roles and responsibilities of the Land Deed Official (PPAT) in carrying out its obligations in accordance with applicable regulations. In addition, this research is expected to provide benefits in the form of clear recommendations for policy makers regarding efforts to harmonize regulations in the field of mortgage rights. By clarifying the disharmony between Law Number 4 of 1996 on Mortgage Rights and Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 5 of 2020, this research is expected to contribute to the preparation of more coherent and synchronous regulations in the future, so as to create legal certainty for the parties involved, including the PPAT and the community.

RESEARCH METHOD

The research methodology is a kind of normative legal research (Benzmüller et al. 2020). Primary, secondary, and tertiary legal materials are the sources of secondary data used to create the data source. The purpose of this prescriptive analytical research is to examine the goals of the law, justice values, the legitimacy of the law, legal concepts, and legal norms (Sivarajah et al. 2017). A statutory approach is the methodological strategy applied in this study (Statute Approach).

RESULT AND DISCUSSION

Electronic Mortgage Rights in the Perspective of the Convergence of Guarantee Law and Telecommunication Law

In order to unify land law, Article 51 of Law Number 5 of 1960 respecting the Principles of Agrarian Law was manifested as the National Guarantee Law, or Hak Tanggungan. The lengthy 36-year wait was finally over when Law Number 4 of 1996 on Mortgage Rights was passed.

Since the enactment of the Electronic Mortgage Rights regulation by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation number 5 of 2020, which has essentially been in force since 2021, the government has changed the Mortgage Rights to Electronic Mortgage Rights as a result of developments that have required humans to adapt to the globalization of electronic transactions and in the interest of effectiveness and efficiency in serving the community.

One of the factual ramifications of the convergence of land guarantee law with telematics law is the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020. This has led to the digitization of land management, resulting in a change in the concept of the registration of Mortgage Rights from a conventional system to a digital or electronic system. The Electronic Mortgage Rights System is a registration service for Mortgage Rights that utilizes electronic devices through an application service launched by the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency, in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 concerning Integrated Electronic Mortgage Rights Services. The electronic Mortgage Rights service is known as the Electronic Mortgage Rights System (Sistem HT-el).

According to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020, the Electronic Mortgage Rights System (HT-el System) is an integrated electronic system that facilitates a number of processes for the service of mortgage rights with the goal of maintaining land registration data. This Electronic Mortgage System offers a number of services, such as mortgage registration, mortgage transfer, creditor name changes, and mortgage cancellation (Roya).

The Minister of Agrarian Affairs and Spatial Planning's and the National Land Agency Regulation Number 5 of 2020's discord and disintegration with the Mortgage Law Number 4 of 1996

The 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 are still not entirely consistent and integrated. In the meantime, the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency number 5 of 2020 established the Regulation using the Mortgage Law number 4 of 1996 as the legal foundation.

The Mortgage Law No. 4 of 1996 does not recognize the electronic mortgage system in any way, nor does it acknowledge the use of electronic documents in mortgage services as

mentioned in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 5 of 2020. This is one of the reasons for the disharmony and disintegration of land regulation at different levels. The Mortgage Law number 4 of 1996 still governs the manual process of imposing mortgages and stipulates that the Deed of Granting Mortgage, which is filed directly to the Land Office, must be full in order to receive physical paper deeds. As a result, it is legally verifiable that the two legal regulations are not in harmony or synchronization, even though they ought to be.

The position, responsibilities, and duties of the Land Deed Official are affected by the significant distinctions between the Law on Mortgage Number 4 of 1996 concerning mortgages and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 regarding the registration of electronic mortgages. The Land Deed Official drafts the first and second copies of the mortgage deed and sends them to the Land Office, together with all necessary papers for the registration of the mortgage rights, in accordance with Law on Mortgage Rights number 4 of 1996. The initial copy of the mortgage deed is then kept by the land deed official as a minute along with all of the supporting paperwork at the land deed official's office. This is further highlighted in Government Regulation Number 37 of 1998, Article 21, Paragraph 3 regarding the Regulations for Land Deed Officials, which was modified by Government Regulation Number 24 of 2016, which states that the Land Deed Official's deed is made in two copies, with the second sheet being submitted to the Land Office along with the supporting documents, and the first sheet being kept as a minute at the Office of the Land Deed Official.

According to the Minister of Agrarian Affairs and Spatial Planning's Regulation Number 5 of 2020, the original Deed of Granting Mortgage is retained at the Land Deed Official's office, and the Deed of Granting Mortgage and its supporting documentation are electronically submitted to the Land Office. According to Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation number 5 of 2020, it can be stated that the Land Deed Official's duties and responsibilities are expanding. In the meantime, Government Regulation Number 24 of 2016 has modified the terms of Article 21 paragraph (3) of Government Regulation Number 37 of 1998 on the Regulations for the Position of Land Deed Officials, remained unchanged with regard to the Land Deed Official's duty to retain the first copy of the mortgage deed and to turn in the second copy to the Land Office.

The legal facts pertaining to the delivery and registration of Mortgage Rights, therefore, demonstrate variations in the obligations and liabilities of the Land Deed Official with respect to the registration procedure and the filing of the Deed of Granting Mortgage Rights to the Land Office, together with its requisite documentation. Prior to the release of Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation number 5 of 2020, the Land Deed Official was tasked with delivering the Deed of Granting Mortgage Rights and the necessary paperwork, as well as registering the Mortgage Rights. The Land Deed Official is now required to electronically submit the Deed of Granting Mortgage that they have created and the supporting documents in accordance with the deadline stated in article 10

of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation number 5 of 2020, following the issuance of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation number 5 of 2020. Next, as users of the Electronic Mortgage Rights service, the Ministry of Agrarian Affairs and Spatial Planning/Land Agency furnish the Creditor/Bank with their separate banking accounts via which they register their mortgage rights electronically.

CONCLUSION

The Law Number 4 of 1996 concerning Mortgage Rights and the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 5 of 2020 are in conflict and misaligned with each other due to the lack of regulation in the Mortgage Rights Law regarding the duties and responsibilities of the Land Deed Official. This creates a legal gap, as several provisions governing the obligations and responsibilities of Land Deed Officials, which are clearly defined in the Minister's regulation, are not addressed in the Mortgage Rights Law. The inconsistency in these regulations leads to confusion and a lack of legal certainty. To address this issue and provide clear legal certainty for all parties involved—debtors, creditors, and Land Deed Officials—the Mortgage Rights Law should be revised to align with the demands of digital globalization. It must be reorganized to match the Ministerial Regulation, ensuring consistency in regulating the duties and responsibilities of Land Deed Officials. Harmonizing and integrating these two legal frameworks by amending the conflicting sections will enhance legal clarity and coherence.

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