HARMONIZATION OF ONLINE MORTGAGE REGULATIONS AS A FORM OF LEGAL CERTAINTY

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ABSTRACT

Objective: The topic of this study is the obligations and role of a notary in the registration of electronic mortgages under the conditions of the 2019 Mortgage Law and the 2019 ATR/BPN Ministerial Regulation No. 9. Legal clarity in the procedures used to electronically register mortgages.

Theoretical Framework: The author employed Gustav Radbruch’s theory of legal certainty to analyse the issues with this study. Legal certainty can be attained through the application of penalties to legal subjects, including people and legal entities, which places more emphasis on the process of implementation than the results of it. When it comes to taking legal action when the contract’s execution is in default or even when it has been achieved, certainty offers clarity.

Method: This research is included in the category of normative legal research, which analyses laws and regulations in a coherent legal system. The comparative methodologies are used to compare laws and legal systems which contain the principles and governing norms that arise from a set of legal objectives.

Result and Conclusion: Land is important and can even be used as development capital within the framework for national development. The registrant must complete a process and satisfy requirements relating to the registration of mortgage rights before a mortgage certificate can be realized. In general, the owner must grant the mortgage himself. This enables the mortgage giver to appoint a substitute should he be unable to attend the PPAT in person. Land deed making official (PPAT) is one of the users of electronic mortgage services. Officials for drafting land deeds (PPAT) are required to be registered in the Work Partner Application since they are the institution entitled to undertake the process of registering Mortgage services online. Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 5 of 2020 on Electronically Integrated Mortgage Services provides legal certainty for mortgage givers, mortgage beneficiaries, and third parties. Using Ministerial Regulations as the legal basis for the implementation of electronic land registration is not entirely correct because, in many property dispute cases, the government loses because the regulatory criteria are too loose.
Research Implications: Implementation complies with the rules to register Mortgage Rights electronically in accordance with the provisions of Article 10 addressing the role of officials creating land deeds (PPAT) during the registration process. For the integrity and authenticity of electronic documents, the Mortgage certificate issued by the Electronic Mortgage system is given a signature using electronic devices used as verification and authentication tools. Of course legal certainty is guaranteed for all parties, both officials making land deeds (PPAT), and the Agrarian and Spatial Planning Office / Land Agency.

Originality/Value: The Law on Rights of Dependents and the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 conflict, making it impossible to apply electronic registration of dependent rights because the UUHT is still in effect and does not grant the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency delegate authority.

Keywords: regulation, mortgage, online, development, certainty.
casos de disputas de propriedade, o governo perde porque os critérios regulamentares são muito vagos.

Implicações da pesquisa: A implementação está em conformidade com as regras para registrar os Direitos Hipotecários eletronicamente de acordo com as disposições do artigo 10 abordando o papel dos funcionários que criam títulos de propriedade (PPAT) durante o processo de registro. Para a integridade e autenticidade de documentos eletrônicos, o certificado de hipoteca emitido pelo sistema de hipoteca eletrônica recebe uma assinatura usando dispositivos eletrônicos usados como ferramentas de verificação e autenticação. É claro que a segurança jurídica é garantida para todas as partes, tanto os funcionários que fazem escrituras de terras (PPAT), como o Escritório de Planejamento Agrário e Espacial / Agência da Terra.


Palavras-chave: regulamentação, hipoteca, online, desenvolvimento, segurança.

1 INTRODUCTION

Since it can be used as development capital, land is important to a country's development. However, the country's flexible land legislation will require continuing revision as new issues arise as a result of continued development (Hernoko, 2016). The rate of development is increasing, and so is the demand for land. The interest in the technologization of legal activity is predictably growing in the conditions of digitalization. The authors consider it important to note several works, namely, such aspects of the digitalization of law as the ratio of legal values and digital legal technologies (Lang, 2021), the impact of digitalization on the emergence of new types of legal relations (Sarpekov, 2020)

Land and structures are the most preferred collateral by the bank. The development of information and communication technologies has had a profound impact on human lives as well as the users and management of telecom and IT services (Sudiro, 2018) Additionally, the development of IT has accelerated the pace of significant societal change and eliminated geographic boundaries. Banks have a chance to be more creative with the services they provide to customers in the age of digital banking. If the banking sector doesn't react to the competition, the fast rise of financial technology (fintech), and the disruption of the digitalization era of adaptive banking with IT, it runs the risk of losing clients (Bahsan, 2014). In response, banking services are currently accessible in the palm of your hand, despite the fact that overall banking performance needs to be
enhanced.

The most recent development is that, at this time, cyber notary focuses on the minutes of the deed, grosses, copies of the deed, and excerpts of the deed as cyber notary products, which, as we all know, are gradually being implemented in notarization in Indonesia. (Supriyanto, 2021) Cyber notary does this by applying the principles of security and control to the notary world. Although it is not directly related to notary operations, a system for electronic-based mortgages was introduced some time ago. Although it is a part of cyber notary, it is hoped that it will be efficient, secure, and more analytical in line with current advancements. Following the integration of electronic mortgage services and rights following the issue of PMA and Spatial Planning/Head of BPN. (Santiago, 2017) The Mortgage Right-el is well-known. In order to preserve land registration data that is stored in the form of Mortgage Rights-el, it is implemented through a number of Mortgage Rights processes. There will be a record of changing the readiness of additional supporting data when the implementation is carried out in stages. adherence to the previous ATR/KBPN Regulations, including Regulation Number 3 of 2019 addressing the use of electronic systems and Regulation Number 7 of 2019 regarding modifications to certificates. (Purnamasari, 2021) It is important to consider the service's effectiveness. Let's start with the promptness and speed of the service. The goal is to reduce bureaucracy, so the studies are second and finally, the quality is more assured. mortgage rights that have been authorised and issued by the appropriate authority. The performance of the issuance will be more effective the faster the mortgage is provided. (Putri, 2014) The preparation of numerous technical issues is required from participating banks in order to assist the implementation of e-mortgage rights at BPN. Socializing Mortgage Rights at the corporate office and branch locations in Indonesian regional offices. In order for the issue of mortgage rights to be appropriately addressed and the business climate in Indonesia to operate well and smoothly, it is believed that there is a need for related
coordination amongst interested parties to discuss this topic further. (Paparang, 2022)

Thereby, humans should prevail over all things, including those best suitable for their domain, as in the case of property. Thus, humans must not be denied the legitimacy of private property since God has gifted them with the land to be enjoyed privately and not in confusion, that is: the desire of God was not to grant the land for the mistake of many owners, on the contrary, God granted the land to humans and allowed them to demark it as private properties for the common good of all to materialize (Guilherme et al., 2023). Through the use of information and communication technology, land registration systems all around the world have undergone a modernization process in recent decades. Significant gains in upgrading the land registration system were achieved by ensuring public access to online land registration and introducing the infrastructure for electronic registration operations. (Ikbal, 2015) Electronic-based land registration is a natural outcome of advances in information and communication technology, as demonstrated by cases in numerous countries. In Ontario, Canada, it is known as POLARIS (the Province of Ontario Land Registration Information System); in New Zealand, it is called Land Online; in England, it was originally known as e-conveyancing but eventually evolved into e-lodgements; and in Singapore, it is known as STARS e-Lodgment. In Malaysia and Australia, it is referred to as the Computerised Land System and the National Electronic Conveyancing System, respectively. (Yulia, 2017)

The land registration system, which was originally a paper-based procedure, has been converted to an electronic one as a result of technical advancements. In Indonesia, the use of ICT is gradually transforming previously analogue (manual) market transactions and public services into electronic-based services.

Examples include e-commerce (trade), e-government (government system), e-Court (judicial system), e-KTP (population), e-filling, e-SPT, e-Billing (taxation), OSS: Online Single Submission (business licencing services), and e-money (banking). Startup businesses, such Grab-Pay and Go-Pay, as well as Electronic Registration of Fiduciary Guarantees, have also used e-money. These services have been deployed in both the public and private sectors as a means of increasing efficiency, accountability, and transparency in the delivery of public services.

With the release of Ministerial Regulation ATR/Ka BPN Number 1 of 2021 concerning Electronic Certificates, these projects are carried out in stages, including with e-certificates. The community was agitated by the introduction of this Ministerial
Regulation because not long before, under the Comprehensive Systematic Land Registration (PTSL) initiative, the community had obtained millions of analogue land certificates and was now being asked to swap them for electronic certificates. It appears as though the government's policies are contradictory, poorly thought out, and haphazard. Because the land certificate provides evidence of the rights provided at the end stage, the land registration program should be prioritized or finished first for the entirety of Indonesia. Hence, modernization of land services, including the use of e-certificates, will be implemented following the registration of the lands.

According to performance report data from the Ministry of ATR/BPN registered land parcels, various policies and program to expedite land registration have been implemented by the land authorities, including the Land Administration Project (PAP), Land Management and Policy Development Project (LMPDP), the Adjudication programme, Larasita, and the National Agrarian Program (Prona) and PTSL. However, as of now, land in the Indonesian Territory has not yet been fully registered. According to several parties, electronic certificates are not now necessary because there are still a lot of land disputes that need to be resolved, and land registration in Indonesia should be given priority over other issues such certificates that have been forged or overlapped. As the certificate is the last step in the land registration process, the issue with the issuance of electronic certificates is not in the form or format of the certificate; rather, the main issue is with the electronic processing that occurs between the start of the land registration and the issuance of the certificate, with data security concerns to protect rights holders as well as issues pertaining to the validity of the electronic certificate during the court's verification procedure. Nonetheless, the Directorate General of Land Rights Determination and Registration of the Ministry of ATR/BPN expressed the benefits of using electronic certificates, indicating that:

The management of land records and records will be more secure for reasons of efficiency and transparency, and the volume of ancillary services will rise in direct proportion to the growth in the number of properties registered through PTSL. (Syamsir & Yetniwati, 2019) Modernization trends and demands for economic, social, and cultural ecosystems have been successfully implemented in various government agencies and the private sector to raise Indonesia's position for ease of doing business. These developments will raise the cost of property registration and up to 80% of the community's need to attend the land office. public opinion of how historically land services are administered;
natural catastrophes like landslides, earthquakes, and floods.

The issue in this paper is how the program for issuing electronic land title certificates is studied legally and what the process is for granting such certificates. Status of Notary in the registration of Mortgage Rights in accordance with the 2019 Ministerial Regulation ATR/BPN No. 9 and the Mortgage Law. Legal certainty in mortgage registration via an electronic mechanism is achieved by carefully reading regulations pertaining to legal matters, such as Law Number 11 of 2008 regarding Information and Electronic Transactions (ITE), Government Regulation Number 24 of 1997 regarding Land Registration, and Regulation of the Minister of ATR/Ka BPN. The problems in this research are 1) Notary's role in the registration of electronic mortgage rights in accordance with the 2019 ATR/BPN Ministerial Regulation No. 9 and the Mortgage Law; 2) The use of electronic-based systems to register mortgage rights with legal certainty.

2 THEORETICAL FRAMEWORK

The author employed Gustav Radbruch's theory of legal certainty to analyse the issues with this study. Legal certainty can be attained through the application of penalties to legal subjects, including people and legal entities, which places more emphasis on the process of implementation than the results of it. When it comes to taking legal action when the contract's execution is in default or even when it has been achieved, certainty offers clarity. Gustav Radbruch essentially argued the following concerning the fundamentals of legal certainty: (1) The law is positive if the positive law is the Law. (2) Fact or reality is the foundation of the law. (3) Clear facts must be presented in order to prevent erroneous interpretation. (4) The Positive Law cannot be modified easily (Sudiro, 2018).

When laws and regulations are created, legal certainty must be ensured. To do this, requirements related to the structure of the legal norm itself must be met. These requirements are first related to the clarity of concepts, clarity of hierarchy, and consistency of legal norms. Only then can legal certainty be ensured because these rules have legal aspects that can ensure it. Regarding the legal elements, one of the values of legal identity is legal certainty (Tumbalaka, 2020). According to Kelsen, law is a system of norms, and norms are words that place an emphasis on "should" or Das Sollen, along with a number of rules dictating what must be done. This legal certainty can be examined in regulations that are developed and published in a clear, unambiguous manner without
raising questions or inviting many interpretations. It can also be examined in a system of norms that works with other norms to prevent conflicts between them (Manik, 2020).

Institutions for registration that serve as a barometer for the emergence of property rights. The fact that land is registered in the UUPA demonstrates that the material nature is inherent to the UUPA and not a given nature. It continues by stating that because both the Law and mortgages recognise the nature of property rights, there is no issue if mortgage rights obtained after the Law's enactment constitute material rights (Kusmiarto et al., 2021). As a result, it may be said that the general characteristics of mortgages issued before the UUPA can serve as the general characteristics of mortgages issued after the UUPA. Because the Rights of Dependents were specifically designed to have the traits and properties of material rights, it can be claimed that the Right of Liability has a material rights-like nature. This can be understood when dependent rights and mortgages are contrasted (Lestari, 2017).

The UUPA follows the philosophy of registering all land rights in order to attain the goal of legal clarity. The municipal land office offers a land book that lists the registered lands as a result (Muslim et al., 2021). The implementation is done gradually because the project is so vast. In addition, land registration administration is performed so that the relevant land book can continuously track the development of the registered lands (Hernoko, 2016). It is believed that by looking at the land book, people will be able to learn about the history of the property in question. Any significant changes pertaining to the land in question will be noted in the land book. It should be noted as well that the UUPA's interpretation of land registration abides by the principles of publicity and specificity (Natania, 2020).

3 RESEARCH METHOD

This research is included in the category of normative legal research, which analyzes laws and regulations in a coherent legal system (Mukti & Yulianto, n.d.) To create a more comprehensive understanding of legal issues (Legal Issues), a different methodology will be used as normative-prescriptive legal research on the implementation of mortgage rights, including (Rakhmat et al., 2018): Statutory approach (Statute Method), which was carried out to analyze and examine rules and regulations in the field of mortgages and banking, followed by a philosophical approach. Then the conceptual approach is the next method to further understand the theories and legal concepts related
to mortgage rights. The four comparative methodologies are used to compare laws and legal systems which contain the principles and governing norms that arise from a set of legal objectives. The fifth is the Analytical Approach, namely Johnny Ibrahim's term for the process of analyzing ideas on legal principles, legal interpretations, etc.

4 RESULTS AND DISCUSSION

4.1 NOTARY'S ROLE IN THE REGISTRATION OF ELECTRONIC MORTGAGE RIGHTS IN ACCORDANCE WITH THE 2019 ATR/BPN MINISTERIAL REGULATION NO. 9 AND THE MORTGAGE LAW

In terms of service requests that take the form of registration of Mortgage Rights, Article 10 makes it clear that the PPAT has the ability to handle such requests. The PPAT submits the application criteria in the form of an electronic document known as an APHT. The Land Office is not responsible for the veracity of the documents that form the basis for the results of the e-Mortgage system service, in accordance with Article 20 Paragraph 2. This is the same as a notary, who is only responsible for the legal requirements of a valid deed and declines responsibility for the content of the deed. Notaries are only subject to punishment if it is established that they violated the law in a legal, civil, or administrative matter.

However, in practice, both in Conventional Banks and Rural Banks, it is not always the right holder/owner of the certificate who is the debtor of the imposition of Mortgage Right. Contrary to other provisions, in particular Article 9 Paragraph 5, which mandates that the Certificate of Land Rights over a Flat Unit must be in the debtor's name. This happens because the debtor may actually employ SKMHT that lacks substitute power with the right holder's or certificate holder's permission. In response to the upgrade of mortgage services, the government published Permanent ATR/BPN Number 5 of 2020, which is the Regulation of the Minister of Agricultural Affairs and Spatial Planning/National Land Agency Number 5 of 2020 concerning Electronic Integrated Mortgage Services.

The publication of Permen ATR/BPN Number 5 of 2020 has resulted in improvements such as the streamlining of the registration process for electronic mortgage services and the updating of laws governing such services. This is a part of the government's commitment to make it easier for consumers to choose mortgage land guarantee services that meet their needs, eliminating the need for them to conduct
business at their local land office. In Permen ATR/BPN No. 5 of 2020, the recording and registration of the Mortgage are handled online, doing away with the need to physically produce proof in person at the Land Office.

This Electronic Mortgage Right is linked to Cyber Notary upon renewal. Cyber notary is a concept that makes use of technological advancements to help notaries perform their everyday tasks, including digitising papers, electronically signing deeds, holding General Meetings of Shareholders (GMS) by teleconference, and other related tasks. The primary purpose of a Cyber Notary is to perform certification and authentication in the course of electronic transaction flow. The certification itself indicates that the notary has the power to serve as a Certification Authority (trusted third party), giving interested parties digital certificates. The authentication function, on the other hand, relates to legal requirements that must be met in the execution of electronic transactions. (Soekanto & Mamudji, 2013)

In order to implement HT-el, user accounts such as those of creditors and PPAT as partners of the Ministry of ATR/BPN must first be electronically verified and validated. From there, the registration process for HT-el and the issue of HT-el certificates follow. These procedures must all follow the guidelines outlined in Permen ATR/BPN Number 5 of 2020. (Nurjannah, 2018) The Land Office's proactive engagement in the deployment of HT-el services, particularly its involvement with creditors and PPAT, is crucial. In order to determine if the working area has been supported by the Land Office that has established the e-Mortgage system, as mentioned in Article 4, the PPAT must collaborate with the local Land Office. (Muslim, 2022) Another practice is that the PPAT must use the precautionary principle while reviewing the e-Mortgage certificate that the appearer supplied in order to abolish the Mortgage that was filed by the appearer through the PPAT.

The PPAT must be aware of the fundamental physical characteristics, signature, stamp, and impression of the original e-mortgage. The Head of the BPN Regional Office and the Head of the Land Office are responsible for guiding the PPAT in matters covered by Ministerial Regulation ATR/Head of BPN RI Number 2 of 2018 concerning Guidance and Supervision of Land Deed Making Officials. They include routine monitoring visits of the PPAT office. (Sari & Azizah, 2021)

Specific land deeds may be created by a public official known as a Land Deed Making Officer (PPAT) in compliance with the relevant laws and regulations.
Specifically, the deeds granting permission to impose mortgage rights, transferring and encumbering land rights, and granting ownership rights to apartments. An official with the authority to represent the general public in a specific field or activity is known as a general representative. The relevant land deeds are legitimate documents used in specific legal proceedings involving land rights or flat unit ownership rights. The Government Regulation of the Republic of Indonesia Number 37 of 1998, Section 1 of Article 1, and the Joint Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 4 of 1999, regarding Regulations for the Position of Officials Making Land Deeds, are both complied with by this declaration.

The mandatory registration of Mortgage Rights at the local land office satisfies the Publicity Principle. According to the Explanation of Article 11 Paragraph (1) UUHT, the APHT in question is void if the aforementioned clauses are not expressed in full. The Creditor will only have the status of a concurrent Creditor due to the Deed of Granting Mortgage Rights (APHT), which is not registered with the Land Office.

The time issue of checking certificates before creating deeds for granting mortgage rights, which is frequently hampered by the fact that the Certificate of Land Rights used as the object of granting mortgage rights has not been validated, is one of the issues faced by PPATs and Creditors in Electronic Mortgage Services. Thus that only the day following the completion of validation can the checking PNBP be paid. In the ATR/BPN Data and Information Center, invalid certificate data prevents the performance of service activities. For instance, Roya has been registered in the certificate, but it is noted in the application at ATR / BPN that they are still subject to Mortgage Rights. In other instances, the certificate was validated before checking, but the system detected that it had not been validated after checking the certificate, necessitating a re-verification and maybe several validations at the Land Office.

After the APHT is signed, issues will recur when the parties register via the electronic system. Moreover, server issues frequently occur when the PPAT uploads Deed documents. despite the fact that the PPAT must register in the system right away once the APHT is signed and only has 7 (seven) working days to do so.(Kusmiarto et al., 2021) When entering and uploading APHT and its supporting papers within a window of 7 (seven) days, disturbances to the data system or data server may cause a delay in both the PPAT's entry time and the creditor's registration of the mortgage. The application for Electronic Mortgage services is deemed cancelled (article 25 PMATR/BPN number 5
years 2020) if there are Force Major situations or other circumstances that prevent the Electronic Mortgage from being issued. (Wibawa, 2019) Disruptions to the Electronic Mortgage system are categorised as emergencies beyond human control. The application of PMATR/BPN number 5 of 2020 in its execution was not carried out in accordance with the readiness of associated parties, including the readiness of ATR/BPN as organisers, the readiness of regional Land Offices as executors, and the readiness of PPAT, Banking as users. This lack of readiness affects both the readiness of technological equipment and the readiness of human resource skills. (Mulijadi & Widjaja, 2016)

Another issue is that the PPAT must follow the precautionary principle while reviewing the HT-el certificate that the appearer filed in the event that the Mortgage that was submitted by the appearer through the PPAT is abolished. The overall physical shape, signatures, stamps, and impressions of the original HT-el are among the qualities and characteristics of the output/output of HT-el that the PPAT must be aware of. (Rudiansyah, 2020) This entails the role of the Head of the BPN Regional Office and the Head of the Land Office in providing guidance to the PPAT, as stated in Ministerial Regulation ATR/Head of BPN RI Number 2 of 2018 about Guidance and Supervision of Land Deed Making Officials. (Salim, 2017)

There is a difficulty with the PPAT's duties and powers because it used to submit and register the APHT, but now it only submits it. Because a rating error occurred when the Ht-el draught was released, it is necessary to offer a rating choice when submitting APHT in the application. An HT object might be burdened with more than one in order to ensure the payback of more than one obligation, hence this rating option is necessary. Second-rank mortgages may be imposed when issuing HT for various credits if the creditor is confident in the debtor's competence and the value of the collateral to be used as collateral. The second page of the APHT is either given to the creditor or is held by the PPAT, which the PPAT questions. APHT and other paperwork are delivered to the Land Office for the registration of traditional mortgages, however in HT-el, no more physical documents are delivered to the Land Office. Loss of warkah documentation is a result of electronic services at the Ministry of ATR/BPN (warkah is not submitted to the Land Office). (Guntoro, 2020)

The Land Office issued Technical Instructions Number: 2/Juknis-400.HR.02/IV/2020, which serves as a reference or a guideline for the Land Office in performing services related to HT-el, following the creation of the ATR/BPN Ministerial
Regulation Number 5 of 2020 for technical instructions for implementing HT-el registration. (Nadia, 2020) If there is a system issue that prevents the Mortgage service from being issued and causes the application for HT-el Services to be declared cancelled, the applicant can submit a new application and request a service fee refund. (Salim, 2016) System constraints on HT-el are listed in the Technical Instructions as a category of force majeure. However, in reality, the cancellation of the HT-el issuance due to limitations in the HT-el system resulted in losses for the PPAT and creditors because they had to repeat the HT-el process from scratch, which was a waste of time and service costs. Additionally, previously paid Non-Tax State Income (PNBP) is forfeited and must be repaid, even though there have been technical instructions regarding fee refunds, in reality the process is difficult. After the APHT is signed, issues will recur when the parties register electronically, the PPAT uploads the Deed documents, server failures frequently occur, and other situations. Despite the fact that the PPAT must register in the system right away once the APHT is signed and only has 7 (seven) working days to do so. Problems from creditors are frequently experienced as a result of their not being registered and validated in the Electronic Mortgage Service system.

It is possible that the terms and conditions for the registration of Mortgage Rights as required by the provisions of the legislation regarding Mortgage Rights will not be fulfilled due to restrictions on ATR/BPN data and information centre server interruptions, data input issues in the system, incomplete land data, and limited human resources who are skilled at operating the system. In order for the electronic Mortgage Right system to function, the electronic system can ask to update the APHT date and re-enter data. (Budiono, 2014) As a result of the APHT date adjustments necessary to satisfy the system's requirements for electronic mortgage registration, there is, of course, no legal certainty and no assurance of calendar certainty. As a result of parties whose position takes precedence over that of other creditors, creditors also experience insufficient legal protection.

The PPAT's task is now limited to completing APHT submission through the electronic system and providing assurances for the validity of the supporting documents contained in a Mortgage certificate in the case of registration after the passage of Permen ATR/BPN Number 5 of 2020, specifically during the manual registration of Mortgage Rights where the PPAT must come directly to the BPN office to represent the bank.
If the Land Office does not maintain or abolish manual mortgage services once the Mortgage-el is enacted. Hence, the Land Office that denies the registration of a mortgage outside of the mortgage right is in violation of the Mortgage Law and UUHT as well as the Regulation of the Mortgage Right. Obtaining working capital or business capital from banks or creditors is essential for the development of the business world, and banks or creditors may also require commercial entities to channel public monies they have gotten in the form of loans. A guarantee, also known as a borgh, is typically needed to guarantee credit payments made by a bank or creditor to the debtor. Both moveable and immovable property, including guarantees of borrowing or borrowing if Articles 1820 to 1850 of the Civil Code are necessary, can be in the form of land. The fact that borgtocht is a guarantee is not stated explicitly in any clause relating to the guarantee.

About this guarantee, it is governed by the definition of borgtocht, which states that a guarantee is an agreement in which a third party agrees to carry out the terms of the debtor's agreement for the benefit of the creditor in the event that the debtor does not do so. In order for the loan and borrowing industry to continue operating smoothly and to maintain trust between the parties, credit terms and guarantees need to be regulated. Article 1 Point 6 of this Agricultural Regulation outlines a set of processes for servicing mortgage rights in the context of maintaining land registration data that is held through an electronic system that is electronically integrated.

One benefit of using this online method is that it can save time. Of course, this also means that effectiveness and efficiency can be reached without repeating work or switching between files. We should all be aware of the drawbacks of online systems, specifically their susceptibility to data input errors and errors when entering the desired system. If we go back in time, it appears that the Land Office has been given complete responsibility over the registration process; are the procedures for fulfilling physical and electronic document data the same everywhere? The applicant collaborates with the PPAT during the rights transfer and registration process, or the applicant submits an electronic signature and electronic fingerprints to the land office.

Mortgage-el registration is put into action. As indicated; enters into force on the date of promulgation, PPAT and BPN need to be ready in implementation. There are several internal and external factors that contribute to readiness. The implementation of
e-mortgage registration is related to the variance in PPAT readiness from one to the next. Due to internal variables, including the PPAT office administration and management system, PPAT and BPN must be prepared to register e-mortgages using qualified technology and electronic procurement. In terms of the interaction between the PPAT's position and the Land Office, appearers, or other institutions, external considerations include PPAT's communication with BPN, appearers, and other connected organisations. (Primsa, 2020) There are still a lot of difficulties that need to be resolved, starting with the foundation of rights and the use of electronic document proof, including the ability of hackers to freely erase or distribute debtor data and the use of electronic signatures and fingerprints. Additionally, the arrangement of the mortgage rights clauses is in conflict with the clauses governed by the mortgage law and the UUHT, which have stronger clauses. Problems arise because there are no limitations on the individuals who can grant mortgage rights. In reality, it doesn't matter if the mortgagor is a debtor on his own property because the debtor is aware of the hazards. The land pledged as collateral will be sold at auction to cover the debt if he defaults. Since Dwang, Dwaling, Bedrog, and Misbruik van omstandigheden are types of defective wills, issues will arise if the land that the debtor guarantees is land that belongs to a third party. (Sawotong, 2014) This is because there may be an agreement between the third party as the land owner and the debtor in order to lend the land. (Abdullah, 2012)

The ATR/BPN ministry must clarify the rules because it is unclear which party must handle the transfer or registration of the mortgage itself. This will prevent incorrect interpretation. Regarding the electronic sign in the registration of mortgage rights, it is a proof used by the relevant legal subject and will be used as evidence if a later dispute arises. However, it cannot be used in the registration procedure because, even after the authenticity of an electronic signature is determined, it can still not be implemented correctly because of a number of factors, including hackers and crackers. (Manik, 2020)

Even though a falsified electronic signature can be detected directly, this does not merely serve as a notification that the signature is false; instead, it requires further investigation. This is one of the legal reasons why electronic signatures can still be faked and are still susceptible to being done so. (Wahid et al., 2019) Uploading the document to the application website offered by the electronic certificate certification centre is the most efficient approach for the general public to determine if the signature is fake or not.
The disadvantage of a digital signature is that it cannot be used to identify the signer and cannot be used to know about changes made to documents after the signature. Hence, electronic signatures that are linked to the identity data database are more secure. The working procedures for electronic signatures are described in the article by the national certification certificate centre using the following theory: (Musjtari, 2016)

1) The original document's hash value will be calculated. A hash is a mathematical function that converts data from a document into a fixed-size value. SHA256 is one such hashing algorithm. The document's data is then mapped and condensed into a 256 bit size. The hash function is used to check the consistency of the document; it may be said that the hash value is the document's biometric because it will change if even a single bit in the text is changed.

2) After obtaining the hash value from the original document, it was encrypted with the owner of the electronic certificate's private key, and the end result was referred to as an electronic signature.

3) The original document is then supplemented with the electronic signature.

Since a hash is used to verify the document's integrity and if just one bit changes, the hash value will be detected or the biometric will change, the lengthy process by which the parties attach an electronic signature to a document demonstrates layered security. If this signature is copied to be faked, it will be easily detected. It is important to do further research and include issues relating to legal signatures into new regulations that particularly address electronic signs in order to address the fact that the legal certainty of electronic signs does not suffice as a perfect legal evidential force. Having an online Mortgage Right system has the benefit of visibly simplifying the registration process. (Christy et al., 2020) The service application requirements mentioned in paragraph (1), however, are in line with the rules. (3) The applicant provides a Declaration regarding accountability for the validity and accuracy of the provided electronic document data in addition to the requirements mentioned in paragraph (2). (Article 19 paragraph 2). Whenever a mistake or act of neglect by the person registering occurs during the registration procedure, it will give rise to new issues.
4.2 THE USE OF ELECTRONIC-BASED SYSTEMS TO REGISTER MORTGAGE RIGHTS WITH LEGAL CERTAINTY

The system is absolute and can be modified at any moment, which obviously makes it difficult for registrants themselves to change the data because they must notify the authorities in advance that the data is erroneous and has already been entered into the system at the time of registration. (Zakiyyah, 2018) The procedure starts when the registrant contacts the appropriate IT in error. The party that registers, recipients of ministry data, general officials, and those with the authority to act in this subject will all be burdened by the existence of system maintenance or maintenance of website data, which is carried out periodically by the relevant IT Ministry. Because if it is not handled immediately, it will have a negative impact on the continuity of the circulation system for those in need.

Files accumulated, clogging the registration system and costing several parties money. The mechanism on the internet will also stop working as described above if it is down, although there are still manual options. Another issue is if data in the ministry that lists the applicant as the mortgagee is compromised or compromised by unreliable parties. Hence, we may picture what might happen if the data leak results in the subsequent release of information on parties who are in debt. ends in onrechtmatigedaad and the debtor's slander. (Terok, 2013)

Hackers also take advantage of vulnerabilities, which we assess using the fundamental criteria for applying for mortgage rights as mentioned in paragraph (1), which are deficient but do not lessen the intent. (3) In addition to the requirements mentioned in paragraph (2), the applicant must make a declaration regarding the validity and accuracy of the electronic document data submitted. If hackers have maliciously introduced a virus or entered the system or website of the e-Mortgage with the intent of causing damage or worse, loss, to the electronic document, we can predict the losses incurred by various parties. (Setiono, 2018)

Article 9 paragraph 3 states: Another matter regarding the applicant's requirements to make a statement regarding accountability for the legitimacy and correctness of the electronic document data submitted, in the event that the legal subject who carried out the registration is shown to be lying, acting in bad faith, or violating the principle of freedom of contract by falsifying electronic data, and ultimately the statement is revoked. (Maryam et al., 2020) So, it is obvious that disagreements between the
application parties will include the administering governmental entity. The latter will be discussed and supported by adequate information regarding:

1) Before the results of the Mortgage services are issued, the Head of the Land Office or the designated Official must review the concept of the Mortgage certificate and the totality of the application materials;

2) The results of the Mortgage services are administratively under the control of the Chief of the Land Office or the designated Officer mentioned in paragraph (1).

3) In the event that the Head of the Land Office or the designated Official does not conduct the inspection as described in paragraph (1), he is presumed to have provided his permission (Article 15 paragraphs 1 and 3). pertaining to the office's head reviewing the idea of certificates and paperwork.

It appears that the government is also required to improve by adopting actions that are both preventative and repressive in the case of the online-based mortgage system, which attempts to make it easier for the parties involved in their registration to avoid the usual bureaucratic route. The computerization of the land registration process has been spurred by developments in information and communication technology, including the introduction of computers and the internet. The benefit of implementing this technology is to boost productivity and efficiency because they now run their operations using paper-based solutions, which are highly expensive, are time-consuming, difficult to preserve, and retrievable; in rare situations, land records may not even be found. To ensure that the legal certainty of land rights is maintained and not diminished, an extensive and holistic study of electronic certificates that takes into account both their legal and technical aspects must be conducted by electronic land certificates, specifically Permen ATR/Ka BPN Number 1 Year 2021. (Mujiburohman, 2018) An electronic certificate is described as "a certificate issued using an electronic system in the form of an electronic document" under Article 1 Point 8 of the Ministerial Regulation. Hence, the outcomes of land registration actions are released as electronic records. Article 1, section 2, states the following as the definition of an electronic document:

"Electronic Documents" are defined as "any electronic information that is created, forwarded, sent, received, or stored in analogue, digital, electromagnetic, optical, or the like, and that can be seen, displayed, and/or heard through a computer or electronic system, including, but not limited to, writing, sound, pictures, maps, plans, photographs, or the like, letters, signs, numbers, access codes, symbols, or perforations that have meaning or meaning or that can be understood by people who are".
The reason the Ministerial Regulation's title is "electronic certificate" rather than "electronic land certificate" or "electronic land registration" is because "electronic certificate" is too general a term for the legal establishment of the public land service. According to Government Regulation Number 7 of 2019 concerning the Implementation and System of Electronic Transactions and the Law on Information and Electronic Transactions, respectively, "electronic certificates that contain electronic signatures and identities that show the status of the legal subjects of the parties in electronic transactions issued by electronic certification operators." have the same meaning. (Muslim et al., 2021)

An electronic method for land registration is not included in the Government Regulation. Because Article 147 of the Job Creation Law states that "Proof of land rights of ownership of flats, management rights, and mortgage rights, including deeds of transfer of land rights and other documents that relating to land, can be electronic," it was decided to use the term "electronic certificate" in the Ministerial Regulation. Then Article 175 Point 3 states: "(1) Officials and/or Government Agencies may make decisions in electronic form; (2) Decisions in electronic form must be made or submitted to decisions processed by an electronic system determined by the Central Government; (3) Decisions in electronic form have the same legal force as written decisions and are effective from the party concerned receiving such decisions; and (4) In the event that a decision is made in electronic form, 4) No regulations as of yet.

The Job Creation Law has provisions in Articles 147 and 175 Point 3 that deal with the legal acts taken by bodies and officials while making State Administrative Decisions. Nonetheless, the State Administrative Court Law mandates that rulings must be made in writing, specific, unique, and final in order to have legal repercussions for an individual or civil legal body. Electronic decisions are not mentioned in the statute. Printing screen grabs and presenting them as physical files allows one to apply for and exhibit judgements made in an electronic format in court. A copy of the land book and measurement record that has been assembled and provided to the legal owner as proof of title makes up the bulk of the land certificate. The end result of all land registration operations is a land certificate, hence there is no issue with the certificate's format, whether it is analog/physical paper, electronic, or virtual. (Pandam, 2021) The most crucial aspect is that all land registration procedures use electronic papers and the electronic system.
It is not quite correct to use Ministerial Regulations as the legal foundation for the implementation of electronic land registration because, in many legal situations involving property disputes, the government loses because the regulatory standards are too lax. The regulation must at the very least be in the form of a government regulation, or it must first be amended to align with the Land Registration Government Regulation before the technical requirements are governed by a Ministerial Regulation. Yet, because the Electronic Information and Transaction Law and the Job Creation Law solely govern electronic certificates, there is no issue when an electronic certificate refers to these laws as its legal sources. The Basic Agricultural Law and its Implementing Regulations, on the other hand, serve as the primary legal reference for land registration (Yubaidi, 2019).

In order to synchronise and harmonise laws governing electronic certificates, the Government Regulations on Land Registration must be updated. This includes: First, land registration activities that are being carried out for the first time (land has not yet been registered), such as "collection and processing of physical data, proof of rights and bookkeeping, issuance of certificates, presentation of physical data, juridical data, and storage of general registers and documents using an electromechanical device" In order to maintain land registration information (for registered land), any changes to the physical or legal information must be registered. (Natania, 2020) Changes in legal information, such as "Auction: Excerpts of minutes of auction, inheritance, deed of merger or consolidation of companies or cooperatives, court decisions or judge's decisions, blocks, confiscations, cases, changes in the name of the right holder, decision to extend the term of the right," are examples. Physical data changes such "the split, division, or merger of land parcels". The analogue certificates are removed to be combined with the land book and saved as warkah, after which these changes are implemented by substituting analogue certificates with e-certificates into electronic documents. Media transfer (scanned) is then carried out and stored in the Database.

Because of the legal source employed, the government is aware of the flaws in the Ministerial Regulation on electronic certificates. The origin or source of legal regulations is where specific standards or values are derived from or applied to. The most recent document, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, reveals flaws. The Government Regulation's Article 84 governs electronic land registration. In order to suit previously
issued Ministerial Regulations, it is possible to arrange land registration by combining and adding additional objects.

Ministerial Regulations fall within the category of law, and under the following 2 (two) conditions: "directed by higher Legislation or formed based on authority." Ministerial Regulations are acknowledged and have legal force. refers to the fundamental principles (considerations) of ministerial rules with regard to the Basic Agricultural Law, its implementing regulations, the Information and Electronic Transactions Law, and the Job Creation Law. So, it can be claimed that the e-certificate Candy was created on the basis of a higher regulatory order, demonstrating the fundamental authority of ministers as the President's assistants who have specific powers within the executive branch. Government concerns in the area of land and spatial planning are handled by the Ministry of ATR/BPN. As a result, it may be attributive, meaning that the authority that has been chosen or that abides by the rules outlined in the preamble and in the Ministerial Regulation of the electronic certificate.

The first step in efforts to enhance public services is the digitalization and modernization of the bureaucracy through IT adaptation. In other words, electronic government refers to an information system that uses the internet and other digital technologies to conduct business, provide public services, communicate, coordinate, and manage organisational operations. This system was developed by the ATR/BPN and grants the Ministry government authority over services provided between governments, businesses, and the general public.(1960, n.d.)

E-government is the use of information technology by the government to deliver services and information to the general public as well as handle other administrative tasks. In order to make the process of providing public services in question more efficient, effective, transparent, and responsible, innovation in its execution is required. accessibility to public services and simplicity of doing business.(Undang-Undang No. 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah, n.d.)

The Ministry will roll out Electronic Certificates gradually, starting on April 8, 2020, with the electronic delivery of Mortgage Services. In compliance with the rules of the laws and regulations controlling service standards and land agreements within the Ministry (Article 3 paragraph 1 Permen ATR/BPN Number 5 of 2020)(Peraturan Menteri Agraria Dan Tata Ruang/Badan Pertanahan Nasional Nomor 9 Tahun 2019 Tentang
Pelayanan Hak Tanggungan Terintegrisasi Secara Elektronik, 2019), mortgage services will be provided. A work unit with responsibilities in the area of staffing can request an electronic certificate by submitting an application to the Head of the Center for Land Data and Information, Spatial Planning, and Sustainable Food Agricultural Land as the Registration Authority. All executors are obligated to protect electronic system accounts against misuse by careless individuals.(Kaczorowska, 2019)

The government wants to issue Property Rights Certificates electronically using the experience capital gained from the use of this Electronic Mortgage Certificate. And in this instance, in accordance with the Minister of Agrarian Affairs'/Head of BPN's Regulation No. 1 of 2021 regarding Electronic Certificates, it is possible to issue Electronic Certificates specifically for citizens who have not yet registered their land, as well as citizens who already have paper (conventional) Certificates.(Nurasa & Mujiburohman, 2020)

The Electronic Information and Transaction Law and the Job Creation Law, which only govern electronic certificates, are the legal sources for electronic certificates and are thus not problematic.(Lestari, 2017) The Basic Agricultural Law and its Implementing Regulations, on the other hand, serve as the primary legal reference for land registration. refers to the fundamental principles (considerations) of ministerial rules with regard to the Basic Agricultural Law, its implementing regulations, the Information and Electronic Transactions Law, and the Job Creation Law. So, it can be claimed that the Permen e-certificate was created on the basis of a higher regulatory order, which demonstrates the fundamental authority of ministers as the President's aides who have specific powers within the executive branch.(Tumbalaka, 2020) Government concerns in the area of land and spatial planning are handled by the Ministry of ATR/BPN. In light of this, it can be said that the Ministry of ATR/BPN has attributional authority, i.e., the authority that has been established or abides by the preamble's provisions and takes note of its Ministerial Regulation of the electronic certificate.Kitab Undang - Undang Hukum Perdata, “Kitab Undang - Undang Hukum Perdata” (n.d.).

5 CONCLUSION

The conclusions of this study are as follows: According to Article 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 5 of 2020 concerning Electronic Integrated Mortgaging, the
Official for Making Land Deeds, herein abbreviated as PPAT, is a general official who is authorised to make deeds of transfer of rights over land, deeds of encumbrance of land rights, and deeds of authorization to impose mortgage rights in accordance with the provisions. According to the explanation in Article 7 Paragraph 2 of the 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, one category of users of electronic mortgage services is individuals who create land deeds (PPAT). As the party authorised to carry out the process of registering Mortgage services electronically, the Ministry of Agricultural Affairs and Spatial Planning/National Land Agency must register the application they use with the official for making land deeds (PPAT) as their partner. The electronic registration of mortgage rights 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 Electronic Integrated Mortgage Services provides legal certainty for the mortgage giver, mortgage recipient, and third parties. Implementation complies with the rules to register Mortgage Rights electronically in accordance with the provisions of Article 10 addressing the role of officials creating land deeds (PPAT) during the registration process. For the integrity and authenticity of electronic documents, the Mortgage certificate issued by the Electronic Mortgage system is given a signature using electronic devices used as verification and authentication tools. Of course legal certainty is guaranteed for all parties, both officials making land deeds (PPAT), and the Agrarian and Spatial Planning Office / Land Agency.
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