

Conference Paper

Transformation of Mortgage Rights Registration by Electronic System

Listyowati Sumanto*, Irene Eka Sihombing, Endang Pandamdari, Irene Mariane, Elsi Kartikasari

Universitas Trisakti, Jakarta, Indonesia

ORCID

Listyowati Sumanto: <https://orcid.org/0000-0002-4300-0436>

Abstract.

On entering the digital era, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency introduced electronic land services, including electronic mortgage rights. To facilitate investment needs by applying for bank loans and to improve mortgage rights services in meeting the principles of transparency, timeliness, speed, convenience, effectiveness, and efficiency. This research aims to describe and analyze the arrangement of electronic mortgage rights system services, and the advantages and disadvantages faced by the organizers and users of the electronic mortgage rights system services. The type of research used is descriptive normative legal research. Secondary data were analyzed qualitatively. For the conclusion deductive logic was used. The research results showed that the types of services in the electronic mortgage rights system include registration of mortgage rights, transfer of mortgage rights, change of creditor name, and cancellation of liability electronically integrated mortgage rights service mechanisms. The land deed officials, creditors, and the land office experienced problems while registering mortgage rights in the electronic system. There are advantages and disadvantages to an electronic mortgage rights system. There are unclear settings. It is proposed that the rules regarding electronic mortgage rights must be revised regarding the improvement period for electronic mortgage rights applications. The provisions of Article 10 paragraph (3) of the Mortgage Rights Law cannot be implemented because the Electronic Mortgage Rights are based on land data that has been legalized and registered with the local land office. The provisions of Article 10 paragraph (3) of the Mortgage Rights Law must accommodate.

Keywords: mortgage rights, registration, electronic system, advantages, disadvantages

Corresponding Author:
Listyowati Sumanto; email:
listyowati@trisakti.ac.id

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1. INTRODUCTION

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has launched digital or electronic mortgage rights services in the digital era. This Electronic Mortgage Right is the first electronic service established for the benefit and convenience of the investing public by applying for loans to financial institutions, especially banks. It is hoped that these electronic services can simplify and speed up services compared to conventional services.

 OPEN ACCESS

Law Number 4 of 1996 concerning Mortgage Rights on Land and Other Objects Related to the Land was formed to meet the community's needs [1],[2]. The Government of Indonesia provides an Integrated Electronic Mortgage Rights Registration Service based on the Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 9 of 2019, and the Minister of Agrarian and Spatial Planning/National Land Agencies Regulation Number 5 of 2020 concerning Electronic Mortgage Rights Services because we need a guarantee rights institution that can provide legal certainty for interested parties over loans with guaranteed land rights in realizing a prosperous society [3]. In addition, mortgage rights provide preference rights to the holder [4]. If the debtor defaults, the mortgagee is more prioritized than other creditors in executing collateral. In addition, the mortgage rights still burden the mortgage object wherever it is. The mortgagee (the creditor) still has the right to auction the collateral object even though the mortgage rights have been transferred to another part [5]

Public services provided to the public affect the level of public trust [6]. One of the efforts of government agencies to create good governance is to modernize public services through e-Government [7]. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency also uses e-Government in its electronic public services. It uses technology for electronic mortgage rights users, land deed officials, creditors (banks), and individuals.

Electronic mortgage rights services have started since the enactment of the Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997, and the Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 9 of 2019 concerning Electronically Integrated Mortgage Rights Services.

This research is important to complement previous research that examines the electronic registration of mortgage rights. I Wayan Jody Bagus Wiguna, discuss registering mortgage rights electronically and review it from the point of view of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land [8]. Nurul Nadira concluded that this electronic integrated mortgage rights service could directly impact the growth of public trust in the administration of the Land Agency National, which is fast, accurate, more transparent, and free from corruption. [9]. Nadia Amanda reviews the legal consequences and responsibilities of the Land Deed Officials regarding the electronic storage of the Mortgage Rights Deed [10].

While this study aims to go further because it describes and analyzes the problems in electronic mortgage rights services, especially the implementation of the electronically integrated mortgage rights services mechanism, as well as the advantages and disadvantages faced by creditors and land deed officials in the electronic mortgage rights service system. Based on the background description, it is necessary to research the transformation of registration of mortgage rights with an electronic system.

2. METHODOLOGY/MATERIALS

The research method used to analyze these legal issues is a normative legal research type and is descriptive with a statutory and conceptual approach [11]. The statute approach is based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Regulation of the Head of the National Land Agency Number 9 of 2019, and Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 5 of 2020 concerning Electronic Mortgage Rights Services. The conceptual approach is based on theories and doctrines related to mortgage rights over land and objects related to land. Secondary data was obtained through literature studies, including tracing laws and regulations, books, and journals related to the issues discussed [12]. This study employs qualitative data analysis to analyze the secondary data that has been gathered, which is presented descriptively by outlining the policy surrounding the mechanism for putting electronic integration of mortgage rights services into practice and then evaluating the benefits and drawbacks experienced by creditors and land deed officials in the rights service system in Indonesia. Deductive reasoning was used to derive conclusions based on general issues that must be addressed explicitly.

3. RESULTS AND DISCUSSIONS

3.1. Electronically Integrated Mortgage Rights Services Mechanism

Before the enactment of Law Number 5 of 1960 concerning Basic Agrarian Law, Indonesia had two different land laws, consisting of Western Land Law regulated in the Civil Code and Customary Land Law, which originates from customary law [13]. Western Land Law holds western land rights and collateral rights over western lands called mortgages (Articles 1162-1232 of the Civil Code). Customary land law governs customary land rights.

Specifically for guaranteeing customary land rights, *Credietverband* rights were made by the Dutch East Indies colonial government through Staatsblad 1908 Number 542.

After Law Number 5 of 1960 came into effect on September 24, 1960, Boedi Harsono stated that there had been a fundamental change in Agrarian Law in Indonesia, especially law in the land sector regarding the structure of legal instruments, the underlying conception, and contents [14]. Law Number 5 of 1960 has two substances: revoking or declaring the regulations and decisions made by the Dutch East Indies Government null and void and building a National Agrarian Law based on *Pancasila* and the 1945 Indonesian Constitution [15]. This means there is a unification of Land Law. So the collateral rights over the old land (mortgage rights and *credietverband*) are no longer valid and replaced with mortgage rights according to Law Number 5 of 1960 concerning Basic Agrarian Law.

Since April 9, 1996, mortgage rights have been regulated separately by Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land [16]. Mortgage rights are an implementation of the mandate in Articles 51 and 57 of the Basic Agrarian Law to accommodate and simultaneously secure credit activities to meet the need for the availability of funds to support development activities [17].

The Indonesian government then simplified the process of granting mortgage rights by issuing the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Regulation Number 9 of 2019 concerning Electronically Integrated Mortgage Rights Services based on two reasons. First, mortgage rights are a service with a multiplier effect, meaning that people who own land can borrow money from the bank with collateral for their land certificates. The money obtained can be used as investment capital or to create jobs. Second, the number of applications for mortgage rights is the highest type of application in the Land Office, almost reaching 40% of the total applications [18]. This means that since the issuance of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 9 of 2019, there has been a transformation of the registration of mortgage rights which was initially done manually, now electronically.

On July 8, 2020, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 9 of 2019 was revoked and declared invalid by issuing the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services. In that regulation, it is stated that this regulation is intended to implement electronically integrated mortgage rights services to improve mortgage services that meet the principles of transparency, timeliness, speed, convenience, and affordability

for public services, as well as to adapt to developments in law, technology and societal needs [19]. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 1 of 2021 concerning Electronic Certificates was issued as an implementing regulation.

The components for the implementation of electronic mortgage rights services consist of administrators, namely the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, executors namely the Land Office; users of the mortgage rights electronic system, including creditors, Land Deeds Officials, and other parties appointed by the Ministry of Agrarian Affairs and Spatial Planning. The Partner Application for Land Deed Officials at mitra.atrbpn.go.id registers Land Deed Officials who can utilize the electronic mortgage rights system and have vetted the data and been verified by the Land Office. Suppose during the inspection there are inappropriate Land Deed Official data. In that case, the Land Office deletes the Land Deed Official data from the partners' database and reports it to the Directorate General of Agrarian Legal Relations.

Creditors who can use the electronic mortgage rights system are creditors registered in the Financial Services Partners application at mitra.atrbpn.go.id and have validated their data and verified by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The Ministry has the authority to act against all violations committed by Registered Users.

Types of electronic mortgage rights services that can be submitted through the electronic mortgage rights system include a. Registration of mortgage rights; b. Transfer of mortgage rights (Cession, subrogation, inheritance, or other causes); c. Change of creditor's name; d. Abolition of mortgage rights; e. Data repair. Mortgage rights objects that can be processed with electronic mortgage rights services are mortgage rights objects.

Article 13, paragraph (1) of Law Number 4 of 1996 explicitly obliges you to register with the Land Office, so you have to come to the Land Office. Article 3 paragraph (2) of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 5 of 2020 is carried out electronically through the electronic mortgage rights system.

The following rules apply to the electronic integrated mortgage rights service mechanism: The National Land Agency and the Ministry of Agrarian Affairs and Spatial Planning offers an electronic mortgage application process for creditors. Suppose the application for electronic mortgage rights services is in the form of registration of mortgage rights or transfer of mortgage rights. In that case, the complete document with the requirements must be submitted by the Land Deed Official. If the application for electronic mortgage

services is in the form of changing the creditor's name, deleting the mortgage, or correcting data, the creditor submits the required documents.

The Land Deed Official submits the Deed of Granting Mortgage Rights and complete documents with the requirements through the partner's electronic system integrated with the Mortgage electronic system. A statement regarding responsibility for the validity and correctness of electronic document data accompanies the submission of documents. The Land Deed Official must keep all required documents.

Applications for electronic mortgage rights services that the electronic mortgage rights system has received shall be provided with proof of application registration issued by the system. Electronic mortgage rights services are subject to fees by the legislation regarding Non-Tax State Revenue that applies to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The Creditor makes the registration and payment, prints the mortgage rights certificate, and attaches the printout of the mortgage note to the land title certificate. Applications are processed after the electronic mortgage rights system confirms the application data and fees. The creditor can confirm directly with the Land Office or Complaint Service if the electronic mortgage rights system does not accept fee payments. The Head of the Land Office or the appointed official must check the suitability of the document requirements and the concept of the electronic mortgage rights certificate before the results of the electronic mortgage rights service are issued.

If the inspection results show that the documents are incomplete or inappropriate, the Creditor and the Land Deed Official will be notified to immediately complete the file no later than 5 (five) days after the electronic mortgage rights system receives the service request. If the 5 (five) day period ends and the Creditor and PPAT do not complete the files, the application is declared canceled. If the required documents have been fulfilled, the Head of the Land Office approves the upload of documents and the concept of the Mortgage Rights Certificate electronically. If the Head of the Land Office does not inspect within 7 (seven) days, then it is deemed to have given approval and ratification.

The electronic mortgage rights service results are in electronic documents, including a. Electronic Mortgage Certificate; b. records of Mortgage Rights in the land book of land rights or Ownership Rights of Flats Units; and c. records of Mortgage Rights on Land Title Certificates or Ownership Rights on Flats Units.

Article 13 of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 5 of 2020 states that the Land Office carries out the Registration of mortgage rights by making a mortgage rights land book and recording

it in the land book of land rights that are the object of mortgage rights and copying the records on the certificate of land title. The mortgage rights land book date is the seventh day after receiving the documents required for registration. If the seventh day is a holiday, the land book is dated the following day. The mortgage rights were born on the issuance date of the mortgage rights land book.

The Head of Land Office or another authorized official registering mortgage rights in the land book of land rights or ownership rights in apartment complexes in the computerized land book. Creditors on land title certificates or assured ownership rights on flat units record mortgage rights on the corresponding certificates of land rights or ownership rights. These records become integral to land rights certificates or ownership rights to flat units.

The results of electronic mortgage rights services are submitted to creditors through the electronic mortgage rights system and electronic domiciles. To protect the integrity and authenticity of electronic documents, the outcomes of electronic mortgage rights services are legalised by an electronic signature by the Head of the Land Office or another authorised authority. Regulatory provisions are implementing electronic signatures in the form of barcodes. The electronic Mortgage Rights Certificate issuance is carried out on the 7th (seventh) day after the electronic mortgage rights system confirms the electronic mortgage rights service application. Mortgage rights are rights granted on a *Jura in re aliena* basis. Right in *re aliena* means a right over the property of someone else. They must comply with the principles of recording and publicity by registering with the Land Office to create mortgage rights. The form of electronic mortgage rights certificates and electronic mortgage encumbrance records are made in the format stipulated in the Ministerial Regulation.

The Land Deed Official shall make the Mortgage Rights Granting Deed. Article 40 Government Regulation Number 24 of 1997 concerning Land Registration stipulates that the Land Deed Official must submit the deed it created along with the relevant letters to the Land Office to be registered no later than 7 (seven) days from the signing date of the deed. In addition, the Land Deed Official must submit a written notification regarding the submission of the deed to the parties concerned.

The elucidation of Article 40 states that the Land Deed Official as the executor of land registration must immediately submit the deed he made to the Land Office so that the Head of the Land Office can carry out the registration process. The Land Deed Official obligation is limited to submitting the Mortgage Rights Granting Deed and the letters to the Land Office. Activity registration after that and acceptance of the certificate become the affairs of interested parties.

Article 16, paragraph (4) of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 5 of 2020 states that the form of an electronic mortgage rights certificate and electronic mortgage rights encumbrance records are made by the format specified in this Ministerial Regulation. Is the copy of the Mortgage Rights Granting Deed no longer an integral part of the mortgage rights certificate? What if there is an execution of mortgage rights? The promises from the mortgage grantor are listed in the mortgage rights granting deed. In contrast, the copy of the mortgage rights grant deed does not become an integral part of the mortgage certificate, so it does not have the power of execution to auction the mortgage object if the debtor defaults.

Suppose there is an error in filling out the data in the application for the electronic mortgage rights service, which is known after the results of the electronic mortgage rights service are published. The electronic mortgage rights certificate holder can submit a correction in that case. An application for the electronic mortgage rights certificate repair is offered through the electronic mortgage rights system no more than 30 (thirty) days from the date the electronic mortgage rights certificate is issued. Repair of electronic mortgage rights certificates is subject to certificate replacement costs by the provisions of regulations regarding Non-Tax State Revenue that apply to the Ministry of Agrarian and Spatial Planning/National Land Agency.

The Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 5 of 2020 stipulates that an error in entering data can be corrected within 30 (thirty) days from the date the mortgage certificate was issued. Then, what if more than 30 (thirty) days have passed? Can the certificate not be repaired, or can it be repaired using another method? If it cannot be corrected, it can lose the parties. For example, an error in entering the amount of the mortgage rights can cause losses to the creditor. The Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 2020 does not explain this.

The implementation of electronic mortgage rights services is the responsibility of the Head of the Land Office. The material correctness of the documents which form the basis of the results of the electronic mortgage rights services is not the responsibility of the Land Office. Suppose a record declared fake is used to issue an electronic mortgage rights certificate. In that case, the Land Office employee cannot be held legally responsible. Documents declared fake are entirely the responsibility of the document's sender, both criminal and civil.

In several regulations related to the implementation of the electronic system, it is still known that there is an electronic land book and proof of title in Indonesia in the form

of a certificate (certificate in the form of an electronic document). Article 163A the Head of the National Land Agency Regulation Number 7 of 2019 concerning the Second Amendment to the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration states that the Land Book is stored electronically in the form of a database in the electronic system and can be printed using the Land Book Entry List as referred to in Article 163 paragraph (1). Further, in Article 178A paragraph (2), Certificates in the form of electronic documents are extracted from the land book database in the electronic system. This implies that Indonesia still adheres to the Registration of Titles System. The recording in the land book is carried out to fulfill the principle of publicity so that other parties can find out that there is a mortgage right over the land rights.

Bank activities for electronic mortgage rights services include a. uploading the mortgage grant deed to the Ministry of Agrarian Affairs and Spatial Planning; b. paying the registration fee; c. receiving an electronic mortgage rights certificate automatically sent on the seventh day; d. receiving a product certificate, a pdf file with a digital signature, and e. printing a mortgage grant certificate. At the same time, the activities of Land Deed Official make application files electronically (without coming to the Land Office).

3.2. Advantages and Disadvantages of Electronically Integrated Mortgage Rights Services

The advantages of Electronic Mortgage Rights include (1) Banks that have mortgage rights services electronically can register mortgage rights on time on the seventh day. (2) Registration of mortgage rights electronically can be more efficient and economical because there is no need to come to the Land Office. (3) Direct registration through the electronic mortgage rights system because the document requirements and completeness are scanned and uploaded to the system. (4) Registration can be done anytime, even on holidays. (5) Electronic mortgage rights certificates are issued within seven days. (6) Electronic mortgage certificates are sent via e-mail. (7) The note on the deed is sent via e-mail, and the creditor attaches it himself. (8) Elimination of mortgage rights (Roya) and over-credit can be done quickly; (9) Reporting and monitoring the amount and value of mortgage rights can be done in all branches of the Bank concerned [20].

Disadvantages in the service of mortgage rights faced by Land Deed Officials and creditors consist of (1) Sufficient time is needed to examine the deed before making the Mortgage Rights Grant Deed because the land rights certificate has not been ratified.

Therefore, new Non-Tax State Revenue can be paid the next day after validation. (2) Server errors often occur when the Land Deed Official uploads the Mortgage Rights Granting Deed and other documents. Even though the Land Deed Official only has seven days to register in the system immediately. (3) The creditor has not registered or ratified in the electronic mortgage rights service system. (4) Server error if the application is used simultaneously during working hours throughout Indonesia, resulting in an error ranking mortgage rights and having to pay back Non-Tax State Revenue. (5) Incompatible physical and digital data cause slowing down the registration process. (6) An error occurs when entering data on the owner of land rights in the Making Deeds of Approval menu because the debtor differs from the owner of land rights. (7) Certificate checking only appears when the certificate has been registered in the electronic database at the Land Office. Conversely, certificates under 2012 do not appear on the portal, requiring a manual check for Land Affairs [21]. (8) Article 10, paragraph (3) of Law Number 4 of 1996 concerning Mortgage states that the object of Mortgage is in the form of Land Rights originating from the transfer of old rights that have fulfilled the requirements for registration, but the registration has not been carried out. The grant of Mortgage was conducted simultaneously with the application for registration of land rights concerned. With the enactment of the Electronic Mortgage rights, the provisions of Article 10 paragraph (3) of the Mortgage Rights Law cannot be implemented because the Electronic Mortgage rights are based on land data certified and registered at the local Land Office. This will be a problem for users; At least it can be seen that the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 5 of 2020, which regulates Electronic Mortgage Rights Services, has not accommodated the provisions of Article 10 paragraph (3) Mortgage Rights Law.

4. CONCLUSION AND RECOMMENDATION

The provisions on mortgage rights, initially regulated by Law Number 4 of 1996 concerning Mortgage Rights on Land and Other Objects Related to the Land, which aim to protect creditors against defaulting debtors, have transformed. However, along with the development of the digitalization era and technological advances, the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services has been stipulated.

The electronically integrated mortgage services mechanism begins with creditors who apply for electronic mortgage services. The Land Deed Official submits the deed

granting mortgage rights and completes documents according to the requirements through the partner's electronic system. The application is processed after the electronic mortgage rights system confirms the application data and costs. The Head of the Land Office or the appointed official checks the suitability of the document requirements and the concept of an electronic mortgage rights certificate. The results of electronic mortgage rights services consist of electronic mortgage certificates, recording mortgage rights in the land book of land rights or ownership rights to flat units, and registration of mortgages rights on certificates of land rights or ownership rights to flat units in an electronic land book legalized with an electronic signature by the Head of the Land Office or an authorized official. Electronic mortgage rights certificates are issued on the 7th (seventh) day after the electronic mortgage rights electronic system confirms the application for electronic mortgage rights services.

Even though there are various advantages of managing electronic mortgages, the regulation on electronic mortgage rights must be revised because of the drawbacks. Therefore, it is proposed that the electronic mortgage law be amended because it is not regulated if it exceeds the 30-day data input correction time limit. Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 5 of 2020 stipulates that data input errors can be corrected within 30 (thirty) days from the issuance date of the mortgage certificate. Then, what if it has passed 30 (thirty) days? Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 2020 does not explain this.

Further, Article 10, paragraph (3) of the Mortgage Rights Law states that if the object of the Mortgage Rights is in the form of land rights originating from the conversion of old rights that have fulfilled the requirements for registration, but the registration has not been carried out, the granting of Mortgage rights is carried out simultaneously with the application for registration of land rights that are concerned. The provisions of Article 10 paragraph (3) of the Mortgage Rights Law cannot be implemented because the Electronic Mortgage is based on land data that has been legalized and registered with the local Land Office. This will be a problem for users. Therefore the provisions of Article 10 paragraph (3) of the Mortgage Rights Law must accommodate.

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