

# Juridical Implications of Subject Limitation of Liability Rights in Electronic Services.pdf

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## Juridical Implications of Subject Limitation of Liability Rights in Electronic Services

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### Abstract

This study aims to identify the legal construction and legal implications of the limitations of the legal subject of the mortgage provider in the electronic mortgage service system, as well as the legal protection of the legal subject of the mortgage provider in the electronic mortgage service system. The theory used is the theory of legal certainty, the theory of legal norms hierarchy and the theory of legal protection. The limitation of the subject of the mortgage provider in electronic mortgage services results in a conflict of legal norms which in the Mortgage Law does not limit the subject of the mortgage provider, and results in no longer validity of third parties as providers of mortgage rights who are not debtors. Then the legal protection is not much different from the previous process of imposing mortgage rights, the difference is in technical matters regarding documents that are now being carried out using electronic documents which are also electronic evidence.

**Keywords:** *Juridical Implications; Liability Rights; Electronic Services*

### A. Introduction

The Indonesian government as a driving force for development functions to assist the people to carry out their own development. In this case community empowerment movement is taking sides, preparing and protecting (empowerment).<sup>1</sup> One of the considerations considering in the Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights for Land and Land-Related Objects (hereinafter abbreviated as UUHT) states that:

"With the increasing increase in national development which focuses on the economic sector, a sufficiently large provision of funds is needed, thus requiring a strong guarantee rights institution capable of providing legal certainty for interested parties, which can encourage increased

<sup>1</sup> Bappenas, *Pokok-Pokok Penyelenggaraan Pembangunan Nasional*, Jakarta: Badan Perencanaan Pembangunan Nasional, tanpa tahun, hal. 1

community participation in development to realize society. which is prosperous, just, and prosperous based on Pancasila and the 1945 Constitution".

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With the enactment of the Mortgage Rights Law, the provisions regarding Hypotheek stipulated in the Civil Code and Credietverband which were previously used to bind land rights as collateral, henceforth can no longer be used by the community to bind land rights as collateral for a debt.<sup>2</sup> The definition of Mortgage is explained in Article 1 of Law Number 4 of 1996 concerning Mortgage Rights to Land and Other Objects related to Land (UUHT) that security rights are collateral rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, as well as other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.<sup>3</sup>

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Giving guarantees in the lending and borrowing agreement between the debtor and creditor in relation to fixed objects in the form of land is carried out by the installation of Mortgage Rights, hereinafter referred to as Mortgage Rights. In the era of accelerated electronic technology, the Minister of Agrarian Affairs and Spatial Planning / Head of BPN issued Regulation of the Minister of Agrarian Affairs and Spatial Planning for the Head of the National Land Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services which came into effect since it was promulgated on 21 June 2019 (Permen ATR / KBPN 9/2019).

This provision was issued because it considers the improvement of services, timeliness, speed, convenience and affordability in the framework of public services, as well as to adjust legal developments, technology and community needs, it is necessary to take advantage of information technology so that procedures for insurance services can be integrated electronically so that it becomes more effective and efficient. The provisions regarding Mortgage Rights have previously been regulated in Law number 4 of 1996 concerning Mortgage Rights for Land and other objects related to land, hereinafter referred to as UUHT.

Registration of Mortgage Rights according to UUHT and Permen ATR / BPN Number 9 of 2019. Article 13 paragraph (1) UUHT states that "Granting of Mortgage Rights must be registered at the Land Office." However, the UUHT does not regulate who is the applicant in the registration of the Mortgage. In Government Regulation Number 24 of 1997 concerning Land Registration, those who can request land registration are land owners or rights recipients. Likewise, in the case of mortgage rights, the applicant for registration is the recipient of the mortgage, namely creditors.

4 So far, registration has been done manually by submitting physical evidence through the counter at the land office, with the Land Deed Making Official, hereinafter referred to as PPAT, first registering the registration online on the official portal of the Ministry of ATR / BPN. Application for registration and submission of APHT shall be carried out simultaneously by PPAT or an authorized person. Article 3 paragraph (2) Permen ATR / BPN Number 9 of 2019 which regulates that "Mortgage Services as referred to in paragraph (1) can be carried out electronically through the HT-el System." Phrases can contain meaning that there are options in getting mortgage services, namely manually as before, or through the Electronic Mortgage System.

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As regulated in Article 27 of Ministerial Regulation ATR / BPN Number 9 of 2019 concerning Electronically Integrated Mortgage Services, that "Ministerial Regulation comes into force on the date of promulgation. So that everyone knows, it is ordered that this Ministerial Regulation be promulgated in the State Gazette of the Republic of Indonesia, "then the PPAT should be prepared for

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<sup>2</sup> M. Bahsan, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2007, hal. 2

<sup>3</sup> Sahnun, *Hukum Agraria Indonesia*, Setara Press, Malang, 2016, hal. 123

implementation. The readiness referred to above certainly includes several factors, both internal and external factors. Internal factors arise from within the administration and management system of the PPAT office itself, while external factors relate to the relationship between the PPAT position and the Land Office, parties and other institutions.

In Article 7 paragraph (1) Permen ATR / BPN Number 9 Year 2019, it is stated that:

- 1 (1) Users of HT-el System services, including:
  - a. an individual / legal entity as a creditor as regulated in laws and regulations concerning Mortgage Rights; and
  - b. The Ministry's State Civil Apparatus in charge of serving Mortgage Rights.

Regulation Number 9 of 2019 also regulates special matters, including in Article 7, namely users of Electronic Mortgage Rights are creditors, Article 9 paragraph (5) states that "Requirements in the form of a Certificate of Land Rights or Ownership of Apartment Units must be in the name of debtor". Based on these provisions, the Giver of the Mortgage must be the debtor himself. Thus, if the mortgage provider is not a debtor, then he cannot use the Electronic Mortgage service, which means registration of Mortgage Rights is done manually / physically. The provisions of Article 9 paragraph (5) are not prohibited from granting Mortgage Rights by other parties (guarantee owners) who are not debtors, this provision seems easy but there is no regulation on how there is another party or a third party as a guarantor. Because in the business world a trust system develops between the parties. The regulation also separates the prevailing customs, namely the act of applying for APHT registration from the submission of APHT by PPAT. The submission of the APHT is an obligation of the PPAT under the threat of sanctions if negligent. Meanwhile, the application for the Mortgage registration service acts as a proxy acting on behalf of the Mortgage recipient or creditors.

Based on the description above, there is a conflict of norms in terms of service registration of Mortgage Rights outside the Electronic Mortgage system is eliminated, which Electronic Mortgage only registers Mortgage Rights from the debtor's Mortgage Giver himself (Article 9 paragraph (5), it can be interpreted as Article 9 paragraph (5) Regulation Number 9 of 2019 as a form of prohibition for Mortgage Rights that do not belong to the debtor and it is against the UUPA and UUHT. In the UUPA and UUHT there are no restrictions on the subject of the Giver of the Insurance Right. It could be that the debtor has a guarantor or the debtor can also be the giver Direct Mortgage Rights Whereas in Permen 9/2019 only debtors who act as direct mortgage givers are allowed as subjects of Mortgage Rights in the Electronic HT system.

## B. Materials and Methods

This type of research is normative legal research, namely literature research that examines document studies using secondary data such as statutory regulations, legal theory, and expert opinion. The approach methods used are: statutory approach (Statute Approach) and conceptual approach (Conceptual Approach).<sup>4</sup> The types and sources of legal materials used are primary legal materials, namely laws and regulations related to the focus of research, namely Law Number 4 of 1996 concerning Mortgage Rights and Regulation of the Minister of Agrarian and Spatial Planning / Head of National Land Agency Number 9 of 2019 About Integrated Mortgage Services Electronically. Secondary legal materials, Secondary legal materials, are materials that provide an explanation of primary legal materials, such as research results, text books, scientific journals, newspapers, pamphlets, leaflets, brochures, and internet

23 news. Tertiary legal materials, namely legal materials that provide guidance and explanation of primary and secondary legal materials, such as legal dictionaries, encyclopedias and others.<sup>5</sup> The technique of collecting legal materials in this study was carried out through documentary studies.<sup>6</sup> All legal materials collected and obtained secondary data were analyzed using prescriptive analysis with deductive thinking logic.<sup>7</sup> After the legal materials are processed, then it is followed by the analysis of legal materials using qualitative analysis.<sup>8</sup>

### C. Discussion

#### 1. Legal Constructions on Subjects of Mortgage Giver through an Electronic Mortgage Service System

The Mortgage Rights Law was passed and promulgated in Jakarta on April 9, 1996 (Article 31 UUHT). This law is a realization of the Draft Law (RUU) on Land Rights and Land-related Objects. In the Government's Explanation of the Bill, which was delivered by the State Minister for Agrarian Affairs / Head of the National Land Agency on September 15, 1996, several things were stated as the background for the proposed bill, namely as directed in the State Policy Guidelines (GBHN), national development is a joint effort between the community and the government. In the framework of implementing national development, especially in the economic sector, the actors include all elements of economic life, both government and private, legal entities and individuals, financing is an absolutely necessary means. In the next development stage, the role of the community in financing development will be even greater.

25 Security rights are security rights over land that are imposed on land rights, together with or without other objects that are an integral part of the land, for the settlement of certain debts which give priority to certain creditors to other creditors ( Article 1 number 1 UUHT). Land mortgage is a *lex specialis* and the National Security Law is a *lex generale*. There are several main elements of Mortgage Rights contained in this definition. The main elements, namely:<sup>9</sup>

- 7 1) Mortgage Rights are collateral rights over land for debt repayment;
- 2) Objects of mortgage rights are land rights in accordance with UUPA;
- 3) Mortgage rights can be imposed on the land (land rights) only and can also be imposed with other objects which are an integral part of the land;
- 4) The guaranteed debt must be a certain debt;
- 5) Give a certain creditor a position of priority over other creditors.

To realize the potential for development financing and ensure that it is disbursed so that it becomes a real source of financing, credit funds are an absolutely necessary tool and for this it is necessary to set up a credit guarantee institution capable of providing legal certainty and protection for both credit providers and credit recipients. The use of land rights as collateral is commonly practiced in providing credit for various purposes including for financing purposes because land is considered the safest to be used as collateral. Due to this fact, it is necessary to immediately apply provisions regarding a strong land guarantee institution which has the following characteristics:

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<sup>5</sup> Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2017, hal. 157-158

<sup>6</sup> M H. S & Erlies Septiana Nurbani, *Op.Cit.*, hal. 19

<sup>7</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia, UI-Press, Jakarta, 200, hal. 10.

<sup>8</sup> Mukti Fajar dan Yulianto Achmad, *Op.Cit.*, hal. 182

<sup>9</sup> Remy Sjahdeini, *Hak Tanggungan Asas-Asas, Ketentuan-Ketentuan Pokok, dan Masalah yang dihadapi oleh Perbankan*, Alumni, Bandung 1999., hlm. 11.

- 1) Giving precedence to the holder<sup>4</sup>
- 2) Always follow the object that is guaranteed in the hand of whoever the object is;
- 3) Fulfill the principles of specialty and publicity so that it can bind third parties and provide legal certainty guarantees to the parties concerned;
- 4) Easy and sure execution of the execution.

#### a. Legal Basis of Mortgage Rights

The laws that govern Mortgage Rights are:

- 1) Basic Agrarian Law: Articles 25, 33, 39 and 51 regarding HM, HGU and HGB as HT objects<sup>53</sup> and further HT regulation orders by law;
- 2) Law no. 4 of 1996 (UUHT) concerning Mortgage Rights to Land and Objects Related to Land;
- 3) Government Regulation no. 24 of 1997 concerning Land Registration
- 4) Regulation of the State Minister for Agrarian Affairs / Head of BPN No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration;
- 5) Regulation of the State Minister for Agrarian Affairs / Head of BPN No. 4 of 1996 concerning Determination of Time Limits on the Use of Power of Attorney to Impose Mortgage Rights to<sup>28</sup> ensure Repayment of Certain Loans; and
- 6) Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 9 of 2019 concerning Electronically Integrated Mortgage Services.

#### b. Electronic Mortgage Rights

<sup>35</sup> The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency<sup>4</sup> builds Integrated Electronic Mortgage Services System. This system is used to process mortgage services in the context of maintaining land registration data through an electronic system that can be accessed by the public. With this system is expected to help improve the performance and quality of land services, especially in mortgage services.<sup>10</sup>

In<sup>1</sup> Article 1 paragraph (6) Permen ATR / BPN No. 9/2019 Integrated Electronic Mortgage Services, hereinafter referred to as HT-el System, is a series of mortgage service processes in the context<sup>16</sup> of maintaining land registration data which is carried out through an integrated electronic system. An electronic system is a series of electronic devices and procedures whose function is to prepare, collect, process, analyze, store, display, announce, transmit and / or disseminate electronic information.

#### c. Objects and Subjects of Electronic Mortgage

##### 1) Object of Electronic Mortgage

Objects of Mortgage Rights in HT-el Services are Land Rights / Ownersh<sup>4</sup> Rights to Apartment Units which according to their nature can be encumbered with Mortgage Rights in accordance with the provisions of laws and regulations. The assignm<sup>4</sup>nt of rights as referred to in number 1, includes buildings, plants, and works of art. already exists or will exist which is an integral part of the land, and which is the property of the owner of the land rights whose imposition is expressly stated in the Deed of Granting Mortgage Rights (APHT) concerned.

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<sup>10</sup> Direktorat Jenderal Hubungan Hukum Keagrariaan, *Petunjuk Teknis Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik*, Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, Jakarta 2020. Hal. 6

8 If the buildings, plants, and works of work as referred to in number 2 are not owned by the holder of land rights, the imposition of Mortgage Rights on these objects can only be done by signing and on the Deed of Granting Mortgage Rights (APHT) concerned by the owner or given power to do so by him with an authentic deed. Article 4 Paragraph (1) of the UUHT regulates that: "The right to land that can be encumbered with a security right is the right of ownership, right to cultivate and right to build". 8 Furthermore, in the Elucidation of Article 4 Paragraph (1) of the Law on Mortgage, what is meant by Property Rights, Business Use Rights and Building Use Rights are rights over land as referred to in the UUPA. The right to build includes the right to build on state land, on land with management rights, and on land with ownership rights. As stated in the General Explanation of the UUHT, two absolute elements of land rights that can be used as objects of dependence are:<sup>11</sup>

- a) 1 Such rights in accordance with the applicable provisions must be registered in a public register, in this case the Land Office. This element relates to the preferred position given to creditors holding mortgage rights against other creditors. For this reason, there must be a record of the security rights in the land book and the land title certificate that is borne by him, so that everyone can find out about it (publicity principle), and
- b) 2 According to its nature, this right must be transferable, so that if necessary it can be realized immediately to pay the debt which is guaranteed to be repaid.

8 Article 4 Paragraph (2) of the UUHT states that in addition to land rights as referred to in Article 4 Paragraph (1) of the UUHT, State Land Use Rights which according to the applicable provisions must be registered and according to their transferable nature can also be encumbered with security rights, including in this case also applies to the imposition of guarantee rights over Flats and Ownership Rights to Apartment Units, as regulated in Article 27 of the Mortgage Rights Law.

## 2) Electronic Mortgage Subject

1 The subject of Electronic Mortgage is the Giver of the Mortgage, the Giver of the Mortgage 5 according to the provisions of Article 8 of the UUHT, it is stated that the Giver of the Mortgage is a person or legal entity that has the authority to take legal actions against the object of the dependent rights concerned. Based on Article 8, the Mortgage Giver here is the debtor or debtor. However, it is possible for other legal subjects to guarantee repayment of debtors' debts on condition that the Giver of the Mortgage has the authority to take legal actions against the object of the Mortgage.

7 Meanwhile, according to the provisions of Article 9 of the UUHT, it is stated that the holder of the Mortgage Right is an individual or a legal entity, which is the party in the debt. As the debtor here can be in the form of a financial institution in the form of a bank, non-bank financial institution, other legal entity or individual. Dependent rights as a guarantee institution for land rights do not contain the authority to physically control and use 24 land as collateral, the land remains in mastery of the mortgage provider. Except in the circumstances referred to in Article 11 paragraph (2) letter c of the UUHT. Thus 7 the HT giver does not have to be a person in debt or a debtor, but can be another legal subject who has the authority to take legal actions against the object of his mortgage.

### d. Electronic Mortgage Registration Mechanism

With the issuance of Permen ATR / BPN No. 9 of 2019, the Mortgage registration mechanism has developed towards technology with an electronic basis, so in Article 7 it explains the provisions of Mortgage registration as follows:

<sup>11</sup> Nurwahid Patrik dan Kashadi, *Hukum Jaminan*, Semarang: Fakultas Hukum Universitas Diponegoro Semarang, 2008, hal.56-57

- 4) 1) Users of HT-e system services consist of individuals / legal entities as creditors and the Ministry's State Civil Apparatus in charge of serving Mortgage Rights;
- 2) Individuals / legal entities as referred to previously must become registered users of the HT-el System, by fulfilling the following requirements:
  - a) Having electronic domicile;
  - b) Certificate of Registration with the Financial Services Authority;
  - c) Statement of compliance with the requirements and criteria as well as approval of the provisions as Registered User; and
  - d) Other requirements determined by the Ministry.
- 3) The Ministry verifies the registration and has the right to refuse the said registration.

After becoming a registered user, the registered user performs the Mortgage registration mechanism as follows:

- 1) Registered users apply for Mortgage services electronically through the HT-el System;
- 2) In addition to the required documents for registration application in the form of electronic documents, the applicant also makes a statement letter regarding the accountability for the validity and correctness of the submitted electronic document data. Specifically, the requirements in the form of a certificate of land rights or ownership rights to a flat unit must be in the name of the debtor.
- 3) Service requests received by HT-e System will receive proof of application registration issued by the system, containing at least the application registration file number, application registration date, applicant name, and service fee payment code.
- 4) This Mortgage Service is subject to fees in accordance with the provisions of laws and regulations regarding Non-Tax State Revenue that apply to the Ministry. After obtaining proof of application registration, the applicant will pay the fee through the perception bank no later than three days after the application registration date.
- 5) After the data on the application and registration fee for the application is confirmed in the electronic system, the HT-e System will process the recording of the Mortgage Rights in the land book. The head of the Land Office shall record the land book. Meanwhile, creditors can record the Mortgage Rights in the Certificate of Land Rights or Owners of Apartment Units by printing the notes issued by the HT-el System and attaching them to the Certificate of Land Rights or Ownership of Flats.
- 6) After all stages are completed, the results of the Mortgage service are issued in the form of a Certificate of Mortgage and a Note of Mortgage in the land book and a Certificate of Land Rights or Ownership of a Flat. This document is published on the seventh day after the application is confirmed. In order to maintain the integrity and authenticity of electronic documents, a Certificate of Mortgage issued by the HT-e System is given an electronic signature.
- 7) Before the results of the mortgage service are issued, the Head of the Land Office or the appointed official must check the concept of HT-el certificate and the documents for the application. The Head of the Land Office or a designated official is responsible administratively for the results of Mortgage services. In the event that the Head of the Land Office or a designated official does not conduct an inspection, the Head of the Land Office or appointed official is deemed to have given approval.
- 8) While the material accuracy of the documents on which the results of HT-el system services are based is not the responsibility of the Land Office.

As explained above, that in the HT-el system registration mechanism, Mortgage Rights must still be recorded in the land book, but what is the difference between the UUHT and the Permen ATR / BPN



No. 9 of 2019 is that creditors can record Mortgage Rights in the Certificate of Land Rights or Ownership of Flat Unit itself by printing the notes issued by the HT-el System and attaching them to the Certificate of Land Rights or Ownership of Flats.

#### e. Legal Construction of Subject Restriction of Mortgage Giver through Electronic Mortgage Service System

In the hierarchy of statutory regulations as referred to in Article 7 of Law Number 12 Year 2011 concerning the Formation of Legislation (hereinafter referred to as Law P3) states:

- 1) Types and hierarchy of Laws and Regulations consist of:
  - a) The 1945 Constitution of the Republic of Indonesia;
  - b) Decree of the People's Consultative Assembly;
  - c) Laws / Government Regulations in Lieu of Laws;
  - d) Government Regulations;
  - e) Presidential Regulation;
  - f) Provincial Regulations; and
  - g) District / City Regional Regulations.

Then there are two conditions so that the regulations referred to in Article 8 paragraph (1) of the P3 Law have binding force as statutory regulations, namely:

- 1) ordered by a higher statutory regulation; or
- 2) formed based on authority.

In doctrine, only two kinds of statutory regulations are known based on the authority of their formation, namely statutory regulations established on the basis of:

- 1) attribution of the formation of laws and regulations; and
- 2) delegation of the formation of statutory regulations

A. Hamid S. Attamimi, emphasized that the attribution of statutory authority means the creation of (new) authority by the constitution / government or by the legislators (wetgever) given to a state organ, both existing and newly formed for that. Meanwhile, delegation in the field of legislation is the transfer / handover of authority to form regulations from the original authority holder who gives delegations to those receiving delegates (delegataries) with the responsibility for exercising that authority on the delegates themselves, while the responsibilities of the delegates are very limited.

Ministerial regulations that are formed on the basis of orders from these laws are categorized as statutory regulations on the basis of delegated legislation. Thus, in general the statutory regulations of delegation are statutory regulations that are formed on the basis of orders of higher legislative regulations.

The existence and power of binding of statutory regulations as stipulated in Article 8 paragraph (1) of the P3 Law, including Ministerial Regulations, Article 8 paragraph (2) of the P3 Law does not only regulate the existence of laws and regulations on the basis of delegation (regulations ordered by statutory

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<sup>12</sup> A. Hamid S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara : Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I - Pelita VI*, Disertasi, Fakultas Pasca Sarjana UI, Jakarta, 1990, hal. 352

<sup>13</sup> *Ibid*, hal. 377

regulations - higher invitations). Article 8 paragraph (2) of the P3 Law also emphasizes the existence of laws and regulations "which are formed on the basis of authority".

The term "authority" in this provision, of course, is not the authority to form regulations but authority in other domains. For example, the Minister exercises authority over certain government affairs which is the power of the President. This means that if the Minister forms a Ministerial Regulation without an "order from a higher level statutory regulation", the Ministerial Regulation is still categorized as statutory regulation. Whereas in doctrine there is no known type of statutory regulation.

This needs to be studied further from the perspective of statutory theory, especially in relation to statutory regulations as hierarchical legal norms where the lower legal norms seek validity at higher legal norms as stated by Hans Kelsen as the chain of validity.<sup>14</sup> In the previous law (Law Number 10 of 2004), there were no known laws and regulations that were formed on the basis of authority, including in the case of ministerial regulations. The Ministerial Regulation which was formed without any delegation from higher legislative regulations before the P3 Law was enacted, is known theoretically as a policy regulation (*beleidregels*), namely a decision of a state administrative official that is regulating and is indirectly binding in general, but not a regulation. legislation.<sup>15</sup>

Because they are not laws and regulations, policy regulations cannot be tested by the Supreme Court which has the authority to examine statutory regulations under laws against laws. With the provisions of Article 8 paragraph (2) of the P3 Law, there is no longer a difference between Ministerial Regulations which are statutory regulations and Ministerial Regulations which are Policy Rules.

The position of the Ministerial Regulation that was established before the P3 Law came into effect, remains in effect as long as it is not revoked or canceled. However, there are two types of positions of Ministerial Regulations that were established prior to the enactment of the P3 Law. First: Ministerial Regulations which are formed on the basis of orders of higher statutory regulations, qualify as statutory regulations. Second, a Ministerial Regulation that is formed not on the basis of an order of a higher level statutory regulation (on the basis of authority) qualifies as a Policy Rule. This is because the P3 Law took effect from the date of promulgation (*vide* Article 104 of Law No. 12/2011 2011), so that there was a Ministerial Regulation that was formed before the date of promulgation of Law No. 12/2011 is still subject to the provisions of the old law (Law No.10 / 2004). Consequently, only the first category Ministerial Regulation above can be used as the object of examination by the Supreme Court.

Furthermore, the position of the Ministerial Regulation which was formed after the enactment of the P3 Law, whether it was formed on the basis of a higher level statutory order or that which was formed on the basis of the authority in certain areas of government affairs that existed with the minister, qualify as statutory regulations. Thus, the Ministerial Regulation has legal force that is publicly binding and can be used as an object of examination at the Supreme Court, if it is deemed contrary to law.

The delegation of making implementing regulations has several benefits, namely avoiding one of the branches of power (executive or legislative) from dominating the power so as not to create the principle of checks and balances of power. If the implementing regulations are dominated by the legislature, in the sense that the implementing regulations are made by the legislature, it can practically hinder the implementation of a law by the executive considering that the legislature does not know the detailed implementation practices and local arrangements.

<sup>14</sup> Jimly Asshiddiqie & M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, Konpress, Jakarta, 2006, hal. 157

<sup>15</sup> Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara*, Alumni, Bandung, 1997, hal. 169

Conversely, if the implementing regulations are made in full by the executive, there will be potential for legislative power to be taken over by the executive. In addition, it prevents the executive from running the government uncontrollably. The existence of a delegation of authority from the legislative to the executive will prevent the executive from improvising improvisation in administering the government.

According to Permen ATR / BPN No. 9/2019, integrated electronic HT services or also known as Electronic HT Systems (HT-el System), is a series of HT service processes in the context of maintaining land registration data which is organized through an integrated electronic system. The electronic system according to Permen ATR / BPN No. 9/2019 is a series of electronic devices and procedures that serve to prepare, collect, process, analyze, store, display, announce, transmit and / or disseminate electronic information.<sup>16</sup>

Meanwhile electronic documents according to Permen ATR / BPN No. 9/2019 is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and / or heard through a computer or electronic system, including but not limited to writings, sounds, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations which have meaning or meaning or can be understood by those who are able to understand them.<sup>17</sup>

Furthermore, according to Permen ATR / BPN No. 9/2019 these types of electronic HT services include HT registration, HT switching, creditor name change and HT deletion. With the issuance of Permen ATR / BPN No. 9/2019, the HT service process in the context of maintaining land registration data, which has been carried out using a manual system (non-electronic) and using physical documents, is changed or turned into an electronic system and by using electronic documents.<sup>18</sup>

One example of a transition or change from a manual system to an electronic system and the transition or change from physical documents to electronic documents in the HT service process is the HT registration process carried out by the Land Deed Making Official (PPAT). Prior to the ATR / BPN Regulation No. 9/2019 was published, PPAT as a general official authorized by the UUHT to make a HT Grant Certificate (APHT) to register HT manually by submitting the APHT and other necessary documents to the Land Office physically.

Other documents referred to include documents of evidence relating to the HT object and the identity of the parties concerned, including certificates of land rights and / or certificates regarding HT objects. After Permen ATR / BPN No. 9/2019 was published, so the submission of APHT and other documents by PPAT to the Land Office is no longer done manually using physical documents, but in the form of electronic documents and is carried out through an electronic system.<sup>19</sup>

Permen ATR / BPN No. 9/2019 is out of sync and is not in harmony with the UUHT, even though the UUHT is used as the legal basis for the formation of Permen ATR / BPN No. 9/2019. It is said to be out of sync and out of harmony because the UUHT does not recognize the electronic HT system at all and does not recognize the use of electronic documents in HT services, what is known in the UUHT is the manual HT system and uses physical documents.

Apart from being out of sync and out of harmony with the UUHT, the formation of Permen ATR / BPN No. 9/2019 also contradicts Law Number 12 of 2011 concerning the Formation of Legislations as

<sup>16</sup> Henry Sinaga, <https://www.mistar.id/opini/ht-elektronik-tidak-berkekuatan-hukum/>, tanggal 7 Juni 2020

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>10</sup> amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UUP3).

<sup>19</sup> According to UUP3, in forming statutory regulations (including ministerial regulations) it must be carried out based on the principle of compatibility between types, hierarchy (order of order), and content of material. What is meant by hierarchy (sort order) according to UUP3 is the separation of each type of statutory regulation based on the principle that lower statutory regulations (ministerial regulations) may not conflict with higher statutory regulations (laws). and accordingly based on the provisions of UUP3, the legal force of the statutory regulations is in accordance with the hierarchy.

The hierarchy (order) of laws and regulations in Indonesia according to UUP3 <sup>2</sup> is as follows:

- 1) *The 1945 Constitution of the Republic of Indonesia;*
- 2) *Decree of the People's Consultative Assembly;*
- 3) *Laws / Government Regulations in Lieu of Laws;*
- 4) *Government Regulations;*
- 5) *Presidential Regulation;*
- 6) *Provincial Regulations;*
- 7) *Regency / City Regional Regulations.*

<sup>18</sup> Even though ministerial regulation <sup>17</sup> is not listed in the hierarchy above, according to the UUP3 regulations stipulated by ministers are also recognized for their existence and have binding legal force, as long as they are ordered by higher legislative regulations. However, if a ministerial regulation contains norms that are contrary to regulations that are hierarchically higher than the law, then it is necessary to question its legal legitimacy to be implemented in accordance with the purpose for which it was passed.

Likewise with the Permen ATR / BPN No. 9/2019, Article 9 paragraph (5) states that "Requirements in the form of Certificate of Land Rights or Ownership of Flats must be in the name of the debtor." If examined further, the article contradicts the UUHT, in which the UUHT does not limit the existence of legal subjects or providers of mortgage rights other than the debtor itself. UUHT allows the debtor not to be the owner of the guarantee, but allows a third party, in this case the guarantor, who gives power to the debtor.

Thus it can be concluded that the legal construction based on Hans Kelsen's theory which states that law is tiered and layered to form a hierarchy, hence the existence of Permen ATR / BPN No. 9 of 2019 especially in Article 9 paragraph (5) does not have legal legitimacy, and cannot be implemented on the grounds that the article contradicts the UUHT which hierarchically has a higher legal position and strength, so that if the ATR / BPN No. 9 of 2019 has not been canceled or at least the conflict has been revised, so these rules cannot be implemented and obeyed.

## **2. Legal Implications of Subjects of Mortgage Giver through the Electronic Mortgage Service System**

As a result of the existence of restrictions on the subject of the mortgage provider through the electronic mortgage service system, it can be described into several interrelated matters, namely:

### **a. Conflict of Legal Norms**

In the hierarchy of the UUHT, its position is above or higher than Permen ATR / BPN No. 9/2019, therefore according to UUP3, Permen ATR / BPN No. 9/2019 must not conflict with the UUHT, but the fact is not. Permen ATR / BPN No. 9/2019 appears to be contradicting the UUP3, because the

ATR / BPN Regulation No. 9/2019 regulates the content material that is completely unknown or not regulated in the UUHT.

Permen ATR / BPN No. 9/2019, when viewed from the Mortgage Rights Law there is a conflict. In accordance with the hierarchy of laws and regulations the Mortgage Rights Law has a higher hierarchy than Permen ATR / BPN No. 9/2019, where the Mortgage Law as Law is included in the hierarchy in Article 7 paragraph (1) letter c of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Laws and Regulation hereinafter referred to as Law Number 12/2011 while the ATR / BPN No. 9/2019 is only limited to ministerial regulations which are not included in the hierarchy but their existence is recognized and has legal force as long as a higher regulation is formed or based on the authority regulated in Article 8 paragraph (1) and (2) Law Number 12/2011. In this review, a theory of authority is used in which the authority comes from the usual attribution authority through the distribution of state power based on law, delegation authority which is the authority of the delegation of attribution authority, and mandate.<sup>20</sup>

The UUHT is a rule formed based on attributive authority given by the 1945 Constitution of the Republic of Indonesia. It is different from Permen ATR / BPN No. 9/2019 which was formed by the minister of agrarian which basically in the formation of ministerial regulations must be based on the authority of delegation or delegation of authority. Permen ATR / BPN No. 9/2019 was formed with attributive authority that should not have been possessed by the minister because although basically this rule was formed to facilitate the service of insurance rights for the community, it is still within the authority of the minister to determine the rules must be based on the authority of the delegation, this is in accordance with Article 8 paragraph (2) of the Law Number 12/2011 which determines "the recognition of the existence of ministerial regulations and having legal force as long as it is ordered by a higher level of legislation or is based on authority". Thus the UUHT did not order the formation of Permen ATR / BPN No. 9/2019 concerning electronic HT, therefore from the point of view of UUP3, electronic HT as regulated in Permen ATR / BPN No. 9/2019 is not recognized and has no binding legal force.

Based on the foregoing, the existence of Permen ATR / BPN No. 9/2019, there are no laws and regulations above it that clearly delegates it. The provisions of Article 9 paragraph (5) of the Ministerial Regulation which regulates that APHT which can be registered in the HT-el system with the subject of the HT-Giver must be the debtor itself, potentially contradicting a higher regulation, namely UUHT. Because the Permen said according to the P3 Law can be categorized as statutory regulation, a judicial review can be carried out at the Supreme Court so that it can be revised or even become a reason for its revocation.

More specifically if it is related to a third party legal subject who has a norm conflict with the UUHT as in Article 9 paragraph (5) Permen ATR / BPN No. 9/2019 stated that "Requirements in the form of a Certificate of Land Rights or Ownership of a Flat Unit must be in the name of the debtor." The word "must" in the article as in the Big Indonesian Dictionary has two interpretations, which means "proper" and "obligatory" (not allowed).<sup>21</sup>

If examined further, the article contradicts the UUHT, in which the UUHT does not limit the existence of legal subjects or providers of mortgage rights other than the debtor itself. UUHT allows the debtor not to be the owner of the guarantee, but allows a third party, in this case the guarantor, who gives power to the debtor.

<sup>20</sup> Sari, I. G. A. D., Wairocana, I. G. N., & Resen, M. G. S. K., *Kewenangan Notaris Dan PPAT Dalam Proses Pemberian Hak Guna Bangunan Atas Tanah Hak Milik*. Acta Comitatus: Jurnal Hukum Kenotariatan, 2018, hal. 4

<sup>21</sup> Kamus Besar Bahasa Indonesia, <https://kbbi.web.id/harus>, diakses, tanggal 26 September 2020

Thus it can be concluded that the legal construction based on Hans Kelsen's theory which states that law is tiered and layered to form a hierarchy, hence the existence of Permen ATR / BPN No. 9 of 2019 especially in Article 9 paragraph (5) does not have legal legitimacy, and cannot be implemented on the grounds that the article contradicts the UUHT which hierarchically has a higher legal position and strength, so that if the ATR / BPN No. 9 of 2019 has not been canceled or at least the conflict has been revised, so these rules cannot be implemented and obeyed.

#### **b. There are no third parties as guarantor rights who are not debtors**

The subject and object of the Mortgage which provides broad limitations regarding the guaranteed land ownership explains that it is possible that the subject of the Mortgage is a third party and the object of the Mortgage is land which is under the ownership of a third party. As a tangible form of the object of the Mortgage Rights, namely the existence of a land certificate, in which the land certificate includes the name of the owner as well as detailed data about the land. Based on Article 1 point 20 of Government Regulation Number 24 of 1994, the definition of a certificate is "proof of rights", as referred to in Article 19 paragraph (2) letter C in the UUPA which states that land registration is with the issuance of certificates of proof of rights, which acts as a strong means of proof, so the certificates of proof of rights here are land certificates.

Land that is guaranteed as a Mortgage to get a credit facility will get a Certificate of Mortgage (SHT) in the process of imposition of Mortgage Rights (SHT) which is proof of the existence of a Mortgage issued by the Land Office which contains the words "FOR JUSTICE BASED ON SUPREME GOD ONE". The existence of these irahs shows that the SHT has permanent legal force, and acts as a substitute for the gross acte hypoteek as long as it concerns land rights. Thus, to carry out the execution of the Mortgage which is encumbered on land is carried out without having to go through a lawsuit process if the Debtor fails to promise.

The provisions of the UUHT do not explicitly explain the formulation of the parties directly involved with the Mortgage Rights, in Article 1 paragraph (2), (3), (4) and (6) the UUHT does not mention about the third party that gives the Mortgage Rights. But actually in Article 4 paragraph (4) UUHT alludes to the problem of the involvement of third parties in providing guarantees of land rights, in Article 4 paragraph (4) which reads:

"Mortgage rights can also be imposed on the land rights along with buildings, plants and existing or future works that are an integral part of the land, and which are the property of the land rights holder whose imposition is expressly stated in the Deed of Granting Rights The dependents concerned. "

The sound of the Article is made clear in the elucidation of Article 4 paragraph (5), that: As a consequence of the provisions as referred to in paragraph (4), the imposition of Insurance Rights on buildings, plants, and works that are an integral part of the land whose owner is other than the right holder Land must be carried out simultaneously with the granting of Mortgage Rights on the land concerned and stated in a Deed of Granting Mortgage Rights, which is signed jointly by the owner and the holder of the land right or their attorney, both as parties who grant the Mortgage.

So the article states that there is a possibility that the land that is guaranteed by the Mortgage may be in the form of land belonging to a third party, which is seen in the sentence "land rights with buildings, plants and existing or future works of work whose owner is other than the right holder. soil." To be able to exercise this right in the imposition of the Mortgage, the owner or its proxies must be included in the

signing on the certificate of giving the Mortgage that the goods / objects are also tied up in the imposition of the Mortgage Rights.<sup>22</sup>

Another clue that can explain the involvement of a third party in guaranteeing land rights is the explanation of Article 3 paragraph (2) of the UUHT Mortgage which states "in relation to the debtor and the mortgage provider if not the debtor himself who gives him." So from the sound of the explanation it can be concluded that land rights may not belong to the debtor himself but can be given by a third party. In the Elucidation of Article 3 paragraph 2 also regulates the relationship with the debtor himself and the mortgage provider if not the debtor himself who gives him, they appoint one of the creditors who will act on their behalf. For example, regarding who will face PPAT in granting the promised Mortgage Rights and who will receive and save the SHT concerned.<sup>23</sup>

Then when viewed from the general principle of civil law, namely where there is no legal prohibition, it does not conflict with karma and public interest, and in the UUHT there is no provision that states a prohibition on the involvement of third parties in guaranteeing land rights, the debtor in terms of providing guarantees to obtain free credit facility to use collateral for third party land. The debtor's actions using land rights belonging to third parties in imposing the Mortgage Rights on the land to the creditor if with the knowledge and permission of the land owner, the debtor's actions do not contradict the applicable provisions, because based on Article 7 of the UUHT, Mortgage Rights still follow the object. in whomever's hand the object is. So, the land owned by a third party that is guaranteed will remain in the control of the third party, even though the land is used as collateral for the Mortgage by the Debtor.

The author's analysis is based on the explanation above which describes the absence of prohibitions on the use of collateral objects belonging to third parties who are not debtors, then when compared with Article 9 paragraph (5) Permen ATR / BPN No. 9/2019 regarding the obligation of the collateral object to be on behalf of the debtor, this is a form of prohibition even though it does not explicitly state the word "prohibited". Then in the UUHT regarding a third party who is a guarantor whose object of guarantee is on behalf of a third party it is also possible to become a legal subject in conventional mortgage registration.

In conventional or manual mortgage imposition, if there is a collateral object on behalf of a third party who is not a debtor, which means that the debtor is using another person's collateral object, then to carry out the process of granting mortgage rights according to the UUHT procedure a Power of Attorney to Impose Mortgage using a notarial deed of which the parties, namely, the prospective debtor and a third party who is the owner of the collateral object. This is in accordance with the procedure for registering dependent rights in the UUHT.

There is a difference to the legal subject in Article 9 paragraph (5) Permen ATR / BPN No. 9/2019 it becomes necessary to question the reasons for limiting the role of third parties as providers of mortgage rights who are not debtors in order to provide legal certainty and so that policymakers face up in consistency according to the principle of legal hierarchy so that there are no conflicts in norms and implementation, and most importantly can provide legal certainty for the community, especially those involved in and involved in the legal system of guarantees, especially mortgage rights.

### 3. Legal Protection for Debtors of Mortgage Giver through the Electronic Mortgage Service System

Legal protection is a constitutional right for every legal subject who enters into an agreement, especially legal protection for debtors in a syndicated loan agreement. This is intended so that every person or legal entity who commits legal actions is always protected by their rights and so that everyone is aware of the limits of rights and obligations in an agreement so that things that violate laws and regulations, morals and public order which may harm either party.

In practice, there are often many legal problems in imposing mortgage rights which result in the process of imposing Mortgage Rights to be invalid and legally flawed, resulting in APHT being null and void which is detrimental to the mortgage provider, mortgage holder and third parties.

Therefore, there is a need for legal certainty that provides legal protection for guarantor rights, holders of mortgage rights and third parties so that the process of making APHT becomes legal and has no legal flaws. The law is not only concerned with the interests of creditors. Protection is also provided to debtors and providers of mortgage rights. Even to third parties whose interests can be affected by the method of settlement of creditors and debtors' debts, in the event the debtor is in default. These third parties, especially other creditors and parties who buy the object of mortgage rights.

In granting mortgage rights, the Debtor as a legal subject is given preventive protection by the UUHT as stated in the clauses contained in the APHT agreement. The legal protection provided by the UUHT for the giver of the mortgage (debtor) is:

#### a. Promises prohibited in APHT

The purpose of this provision is that the creditors in the APHT are not allowed to agree that if the debtor is in default, the collateral object automatically (without going through a public auction) belongs to the creditor. The prohibition of placing such promises is intended to protect the debtor, so that he is in a weak position in dealing with creditors because he is in dire need of debt and is forced to accept promises with conditions that are heavy and detrimental to him, especially if the object value of the security rights exceeds the amount of the guaranteed debt.

In addition, in the Deed of Granting Mortgage Rights, promises that are optional and do not have adherents to the validity of the Deed of Granting Mortgage Rights. With the inclusion of these promises in the Deed of Granting of Mortgage Rights which are registered at the Land Office, these promises also have binding force on third parties. The promises referred to in Article 11 paragraph (2) of the UUHT, namely:<sup>24</sup>

- 1) A promise that limits the authority of the guarantor of the Mortgage to lease the object of the Mortgage and / or determine or change the lease term and / or receive the rental fee in advance except with the prior written consent of the Mortgage holder.
- 2) A promise that limits the authority of the guarantor of the Mortgage Rights to change the form or structure of the object of the Mortgage except with the prior written consent of the Mortgage holder.
- 3) The promise that gives authority to the holder of the Mortgage Rights to manage the object of the Mortgage based on the decision of the Head of the District Court whose jurisdiction includes the location of the object of the Mortgage if the debtor actually breaks the promise

<sup>24</sup> J.Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan*, P.T Citra Aditya Bhakti, Bandung 2007, hal. 67-68



- 4) A promise that gives authority to the holder of the Mortgage to save the object of the Mortgage, if it is necessary for the implementation of execution or the right to prevent the abolition or cancellation of the rights which are the object of the Mortgage due to not being fulfilled or violating the provisions of the law.
- 5) The promise that the first Mortgage holder has the right to sell on his own power the object of the Mortgage if the debtor fails to promise.
- 6) The promise given by the first Mortgage holder that the object of the Mortgage will not be cleared from the Mortgage.
- 7) The promise that the guarantor of the Mortgage will not give up his rights over the object of the Mortgage without prior written approval from the holder of the Mortgage.
- 8) The promise that the holder of the Mortgage will get all or part of the compensation received by the guarantor of the Mortgage for payment of his receivables if the object of the Mortgage is for its debt expansion if the object of the Mortgage Rights is relinquished by the insurer or the right is revoked for the public interest.
- 9) A promise that the holder of the Mortgage will receive all or part of the insurance money received by the insurer for the settlement of his debt, if the object of the insurance right is insured.
- 10) The promise that the mortgage provider will vacate the object of the Mortgage Rights at the time of execution of the Mortgage.
- 11) The promise that the land title certificate which has been affixed with a record of inclusion of the Mortgage will remain in the hands of the creditor until all debtor obligations are fulfilled accordingly.

#### b. Removal / Roya Mortgage Rights

After the mortgage is written off, the mortgage record or roya is written off. The write-off of the security rights record or roya is carried out for the sake of administrative order and has no legal effect on the related security rights that have been deleted.<sup>25</sup>

Abolition of Mortgage Rights is based on the provisions of Article 18 UUHT, namely:<sup>26</sup>

- 1) Insurance rights are written off due to the following matters: a. The cancellation of debts guaranteed by Mortgage Rights. b. Release of Mortgage Rights by holders of Mortgage Rights. c. clearance of Mortgage Rights based on the ranking by the Chairman of the District Court. d. the abolition of land rights that are encumbered with Mortgage Rights.
- 2) The termination of the Mortgage because it is released by the holder is done by giving a written statement regarding the release of the Mortgage Rights by the holder of the Mortgage to the Giver of the Mortgage.
- 3) The abolition of the Mortgage due to the clearance of the Mortgage based on the ranking by the Head of the District Court occurs because of the request of the buyer of the land which is encumbered with the Mortgage Rights so that the land rights he bought are cleared of the burden of the Mortgage as regulated in Article 19.
- 4) Abolition of Mortgage Rights because the abolition of rights to land which is encumbered with Mortgage Rights does not cause the guaranteed debt to be written off.

The abolition of the Mortgage has administrative consequences, namely eliminating the burden of the mortgage on the land book and the certificate of land which is the object of the mortgage by the local Land Office based on a written statement regarding the release of the Mortgage from the holder of

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<sup>25</sup> Rachmadi Usman, *Pasal-Pasal Tentang Hak Tanggungan Atas Tanah*, Djambatan, Jakarta 1999, hal. 158-160

<sup>26</sup> Waskito dan Hadi Arnowo, *Pertanahan, Agraria, dan Tata Ruang*, Kencana, Jakarta, 2017, hal. 212-213

the Mortgage to the insurer in connection with the payment of his debt debtor who gives Mortgage Rights. Land books and mortgage certificates are withdrawn and declared invalid by the Land Office.<sup>27</sup>

Roya Mortgage Rights are regulated in Article 22 of the Mortgage Rights Law. Roya is the write-off of Mortgage Rights in the land title book and the certificate. Roya is carried out when the debt guaranteed in the principal agreement has been paid off. After the debtor's debt or loan has been paid off. Then the mortgage is removed by meroya at the Regency / City Land Office.<sup>37</sup> The certificate of mortgage is required at the time the certificate is <sup>24</sup>ued or written off and includes a certificate of land title <sup>24</sup>d a certificate of roya from the creditor that the debtor's debt has been paid off and returns the collateral in the form of a certificate of land rights and a certificate of mortgage.<sup>28</sup>

There is a certainty arrangement for write-off (perayaan) mortgage rights regulated in Article 22 UUHT if one day the debtor can pay off his debt. Then the UUHT gives the right to the mortgage provider (debtor) to apply for a withdrawal (roya) by the debtor by attaching a Certificate of Mortgage Rights which has been noted by the creditor that the mortgage is written off because the debt has been paid off. If the creditor is not willing to give the statement, the way out that can be taken by the debtor is by submitting a withdrawal order request to the Chairman of the District Court. The removal of the Mortgage Rights or commonly known as roya, is an administrative action that needs to be taken so that data on land is always in accordance with existing facts.

The Mortgage is abolished not because there is a roya, but precisely because the Mortgage Rights have been abolished, it is necessary to follow it up with management, namely deleting the mortgage burden record on the Land Book and the land title certificate. By deleting the Mortgage Rights record by the Land Office in connection with the termination of the Mortgage, the third party concerned will know that the Mortgage Rights have been deleted, so that the debtor or mortgage provider can easily transfer or burden the land back.

### c. Principle of Specialty

What is meant by the principle of specialty is in the APHT which must be clearly stated regarding the names and identities of the parties, the domicile of the parties, a clear designation of the guaranteed debts, the value of the insurance and a clear description of the object of the Security Rights (Article 11 Paragraph (1) of the UUHT. ) which states that:

"This provision stipulates the contents which are mandatory for the validity of the Deed of Assurance of Mortgage. The complete absence of the matters mentioned in the Deed of Assurance of Mortgage results in the deed in question null and void. subject, object or guaranteed debt. "

The principle of specialization is to guarantee the certainty of the amount of debt, the certainty of the value of the insurance and the certainty of the object that is used as collateral. The certainty regarding the amount of this debt will be related to the value of the dependents. The sum of the dependents is essentially an agreement regarding the amount of the ceiling or limit of the amount of debt that is guaranteed by the Mortgage. The debt could be less or greater than the agreed coverage value. If the actual debt is larger, then what is guaranteed specifically with a limited Mortgage is the amount of the coverage stated in the APHT. For the remaining debt, the repayment of the debt is guaranteed with a

<sup>27</sup> Irwansyah Lubis dkk., *Profesi Notaris Dan Pejabat Pembuat Akta Tanah*, Mitra Wacana Media, Sinar Grafika, Jakarta, 2018, hal. 15.

<sup>28</sup> Rudi Indrajaya dan Ika Ikmassari, *Akta Izin Roya Hak Tanggungan sebagai pengganti sertifikat Hak Tanggungan yang Hilang*, Visimedia, Jakarta, 2016, hal. 3

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general guarantee according to Article 1131 of the Civil Code which means that it does not give priority position (Droit de Preference) to creditors who hold the Mortgage.

The legal protection provided by the UUHT for third parties is the principle of publicity contained in the mortgage right, which is based on Article 13 of the UUHT giving mandatory mortgage registration at the land office. Therefore, the method of recording / registration which is open to the public is intended so that third parties can be aware of the imposition of security rights over land. We recommend that a third party check first with the land office before carrying out transactions related to land rights to avoid various cases of fraud over land rights. In simple terms, Mortgage Rights do not only involve creditors and debtors, but also involve PPAT and the Land Office, as well as other related parties. In order to provide legal protection for all parties, correct procedures are needed so that APHT becomes valid and has no legal defects.

Based on the above explanation regarding legal protection in mortgage rights, it can be concluded that legal protection for debtors in electronic mortgage services is actually not much different from legal protection for debtors in conventional or manual mortgage rights. Substantially, in the registration process, there is no difference in terms of the conditions that must be met. However, technically, in terms of the registration mechanism that uses an electronic system or online system, there is a striking difference from the side of the evidence that the electronic system uses an electronic document that replaces the applicable documents in the previous registration of mortgage.

Legal protection for legal subjects of mortgage rights, in this case the debtor, after limiting the role of third parties in the repressive imposition of mortgage rights if there is default is also not much different from legal protection for debtors in conventional mortgage services. Remain in the clause on the APHT that has been agreed upon, it will refer to the agreement if there are cases that arise in the future, the parties will proceed through legal channels in the district court where the cases of the parties concerned occur.

### Conclusion

Based on the explanation above, the following conclusions can be drawn:

1. Legal construction on the existence of Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 9 of 2019 concerning an Electronic Integrated Mortgage Service System based on the legal hierarchy system in Indonesia is under law, namely Law Number 4 of 1996 concerning Mortgage right. However, in the Mortgage Rights Law there is no delegation that can initiate the issuance of the Ministerial Regulation on Electronic Mortgage Rights. This means that the issuance of the Regulation of the Minister of Electronic Mortgage Rights can be said to be baseless so that in terms of legal legitimacy it does not have binding power to be obeyed and obeyed.
2. The legal implications for the limitations of legal subjects in the electronic mortgage services system are divided into two related legal consequences. The first; There is a conflict of legal norms between the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 9 of 2019 concerning the Integrated Electronic Mortgage Service System with Law Number 4 of 1996 concerning Mortgages regarding the necessity to use the object of guarantee must be in the name of the debtor himself. The word "in" the Big Indonesian Dictionary means "proper" or "obligatory". So that the writer interprets the word "must" to mean obliging which indirectly prohibits the existence of an object of guarantee other than on behalf of the debtor himself. Then the second one; By requiring or obliging the object of collateral in the

name of the debtor itself results in the absence of a third party as a guarantor other than the debtor. Even though the UUHT does not limit or prohibit the existence of collateral objects on behalf of third parties, thus it can be concluded that in the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 9 of 2019 concerning the Electronically Integrated Mortgage Service System, the removal of third parties as owner of the collateral object other than the debtor.

3. Legal protection for legal subjects in the implementation of the electronic mortgage service system is not much different from the previous conventional mortgage service. Legal protection for debtors is stated in the clauses in the Deed of Granting Mortgage, which are promises that are prohibited in the agreement protecting the rights of the debtor and the application of the principle of specialty in their implementation. After a credit is repaid, a write-off is also made which results in the elimination of the mortgage which provides protection for the debtor so that the debtor's rights on the object of collateral he has can return in full.

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