

Juridical Theoretical Study Of Granting And Abolition Services Of Encumbrance Rights That Eletronically Integrated.pdf

by

Submission date: 02-Aug-2023 04:15AM (UTC-0500)

Submission ID: 2140355501

File name: Juridical Theoretical Study Of Granting And Abolition Services Of Encumbrance Rights That Eletronically Integrated.pdf (348.7K)

Word count: 7015

Character count: 36233

JURIDICAL THEORETICAL STUDY OF GRANTING AND ABOLITION SERVICES OF MORTGAGE THAT ELETRONICALLY INTEGRATED

Arba

Univesitas Mataram
Email : arba@unram.ac.id

Sudiarto

Univesitas Mataram
Email : sudiarto@unram.ac.id

Rizki yuniansari

Univesitas Mataram

ABSTRACT

This study aims to examine and analyze the existence of an obligation that every granting and abolition of Mortgage (roya') must be registered, to examine and analyze the synchronization of legal arrangements for the implementation of registration of granting and abolition of Mortgages according to UUHT with the Ministry of Agrarian Affairs regulation & ATR Number 9 of 2019, As well as to study and analyze the legal consequences if the granting and abolition of Mortgages is not registered electronically. This type of research is normative legal research, with the approach method being a statutory approach, conceptual approach, and analytical approach. The results of the research are: 1) that each grant and abolition (roya) of the Mortgage must be registered, in accordance with the provisions that the granting and abolition of the Mortgage must be registered as an absolute requirement and as a fulfillment of the publicity principle in the Law of Mortgage. 2) In the Minister of Agrarian Affairs regulation ATR BPN Number 19 of 2019 there are parts that are not in sync with the Law of Mortgage, electronic documents that are not known in the UUHT and Roya can also be implemented without an agreement that these conditions are not in accordance with the provisions in the UUHT. 3) Legal Consequences If the granting of Mortgage is not registered, then in the provisions of the Mortgage, the Mortgage is never born/never existed. If the Encumbrance warranty is never born, then the creditor is not located as a priority creditor (separatist creditor) to get the debtor's debt to be repaid. Likewise, in the abolition of Mortgage (roya), if it is not registered, the Mortgage is considered to have never been erased, so that the warranty remains in the control of the creditor, and the loan agreement or principal agreement has not been paid off and ended. While for the Abolition Process (Roya) of Mortgage as Maintenance of Land Registration Data, if the Mortgage certificate has been crossed out, then the land title certificate which is used as warranty for the Encumbrance will be returned to the debtor, while the Mortgage certificate is withdrawn by the Land Office and declared no valid again, as well as the land books of Mortgage is declared no longer valid.

Keywords: Mortgage; Registration; Electronic

INTRODUCTION

Mortgage are a form of collateral for immovable property rights in the form of land and buildings to be used as warranty for debtor's debts to various financial institutions. If the debtor wants to borrow large amounts of money from financial institutions, firstly, the debtor will be

asked for guarantees since the institution itself alarmed about the debtor potential to fall into liquidation so they are not be able to pay their own debts. By this reason, this material warranty which is made in the form of mortgage becomes the guarantee, and if the debtor is unable to meet the payment, the creditor has the right to confiscate the collateral and then it is sold under the hand or auctioned through the General Auction Office.

In this regard, Law Number 5 of 1960 Concerning Basic Regulations on Agrarian Principles or hereinafter called as UUPA, lays down the basic regulation of mortgage within several articles, which are regulated in Article 25, Article 33, Article 39, and Article 51. Article 25 stipulates that property rights can be used as collateral for debt with encumbrances of mortgage. Article 33 expresses that the cultivation rights can be used as collateral for debts with encumbrances of mortgage. Article 39 states that the right to use a building can be used as collateral for a debt with encumbrances with a mortgage. Following the previous articles, Article 51 declares that mortgage that can be imposed on property rights, cultivation rights and building use rights in Article 23, Article 33 and Article 39 are regulated by law. Based on these provisions, the government established Law Number 4 of 1996 Concerning Mortgage on Land and Objects thereon.¹

The term mortgage in the Indonesian Dictionary is concerned as follows: defined as goods that are used as collateral. While the collateral itself means dependents on loans received.² Meanwhile, in the provisions of Article 1 Section (1) of Law Number 4 of 1996, it is stated that mortgage is the security rights imposed on land rights as referred UUPA, as follows or not, along with 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." This provision is further explained in the General Explanation number 4 of the UUHT which states that: "A mortgage is a security right on land for the settlement of certain debts, which gives priority to certain creditors over other creditors. In the sense that if the debtor is in default, the creditor holding the Mortgage has the right to sell through a public auction the land that is used as collateral according to the provisions of the relevant regulation, with prior rights over other creditors. The priority position, of course, does not reduce the preference for state receivables according to the applicable legal provisions."³

Any granting of credit guarantees with land rights as collateral, must be registered. The obligation to register Mortgage is found in Article 13 and Article 14 of the Mortgage Law. Article 13 determine that the granting of Mortgage shall be registered at the National Land Office no later than 7 (seven) working days after the signing of the Certificate of Granting of Mortgage. PPAT is obliged to send the Certificate of Granting Mortgage concerned and other required documents to the National Land Office.

The registration of Mortgage Rights is carried out by the Land Office by making the Mortgage Land Book and transcribe it in the Land Rights Book of the object of Mortgage Rights and copying the transcribe on the Land Title Certificate concerned. Thus, the registration of Mortgage Rights cannot be abandoned/ignored, because one of the principles of Mortgage is the principle of "publicity", which implemented is realized in the form of "registration" at the Land Office.

¹ Arba, H.M. dan Diman Ade Mulada, *Hukum Hak Tanggungan, Hak Tanggungan Atas Tanah dan Benda-benda Di atasnya*, Jakarta, Sinar Grafika, Cet. I, Tahun 2020, hlm. 3.

² Fuad Hasan, *Kamus Besar Bahasa Indonesia Jilid II*, (Jakarta: Balai Pustaka,1991), hlm. 899

³ Arba H.M., *Hukum Agraria Indonesia*, Jakarta, Sinar Grafika, Cet. 4, Thn 2017, hlm. 207.

Furthermore, Article 14 states that: As evidence of the existence of Mortgage Rights, the Land Office issues a Mortgage certificate in accordance with the applicable laws and regulations. In the Certificate of Mortgage, contains instructions with the words “FOR JUSTICE BASED ON THE ALMIGHTY GOD”. This instructions shows that the Certificate of Mortgage as intended has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for the grosse acte Hypotheek as far as land rights are concerned. Unless agreed otherwise, the certificate of land title that has been affixed with a note on the imposition of Mortgage Rights as referred to in Article 13 section (3) is returned to the holder of the land rights in concern. The Mortgage Certificate is submitted to the Mortgage Holder.

The registration of Mortgage Rights according to UUHT Articles 13 and 14 is carried out in accordance with the provisions of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 5 of 1996 concerning the Registration of Mortgage Rights, carried out after the Deed of Granting Mortgage is made by PPAT no later than 7 days after the PPAT has signed the deed. The registration of Mortgage Rights according to the above regulation is carried out manually at the Land Registration Office, because the certificates of rights guaranteed by the Land Office are made by making Mortgage Land books and transcribe them in the Land Rights Books which are the object of the Mortgage Rights and copying the transcribe on the certificate of title to the land concerned.

However, based on the Regulation of the Minister of Agrarian Affairs and ATR/Head of the National Land Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services, in Article 1 points 6, 7, 8, it is explained as follows: point 6 determines: Electronically Integrated Mortgage Services that hereinafter referred to as HT-el System is a series of mortgage service processes in the context of maintaining land registration data which is carried out through an integrated electronic system. Point 7, Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information. Point 8, Electronic Document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sounds, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them. So that there are several descriptions as a form of problems related to Why every grant and abolition of Mortgage Rights (roya’) must be registered, How to synchronize the legal arrangements for the implementation of registration of granting and abolition of Mortgage according to UUHT with Agrarian Regulations & ATR Number 9 of 2019, and What are the legal consequences if granting and deleting Mortgage not registered electronically integrated.

RESEARCH METHOD

This research is a normative legal research, which are legal research that seeks to examine and analyze normatively theoretically about the implementation of the registration of the granting of mortgages in an electronically integrated system using a statutory approach, a conceptual approach, and an analytical approach. The method of collecting legal materials is done by document study using legal interpretation methods (authentic, grammatical). Analysis of legal materials is carried out using a systematic and authentic method of interpretation.

DISCUSSION

1. Every grant and abolition of mortgage (roya) must be registered

After the debt agreement, which is the main agreement have attained approval between the giver and the recipient of the Mortgage, the next stage is related to the granting of the Mortgage, and the emergence of the Mortgage is only possible if it has been previously agreed upon in the loan agreement (credit agreement) which is the basis for granting the debt (credit) which is guaranteed by the Mortgage that will be given the Mortgage to the creditor, due to the nature of the Mortgage is an *accessoir* to a certain receivable, which is based on a debt agreement or other agreement, the birth and existence of which is determined by the existence of a receivable whose repayment is guaranteed, this is in accordance with the provisions of Article 10 UUHT. In Article 10 section (1) UUHT it is stated that:

“The granting of Mortgage is preceded by a promise to provide Mortgage as collateral for the settlement of certain debts, which are set forth in and are an inseparable part of the debt agreement concerned or other agreements that give rise to the debt”

In practice, granting of Mortgage Rights is a process of imposing mortgage rights after the main agreement in the form of a debt agreement that uses collateral in the form of land. The existence of the Mortgage is determined through the fulfillment of the procedure for encumbrance which includes two stages of activity, namely:

- 1) Stage of Granting Mortgage
- 2) Mortgage Registration Stage

In order to impose mortgage rights on a land/object that becomes collateral, it must be preceded by a debt agreement between the debtor and creditor. The loan agreement can be made with a notarial deed or only with an underhand deed (without a notarial deed), then a Deed of Granting Mortgage (APHT) is made by the Land Deed Official (PPAT) in accordance with the applicable laws and regulations. After that, the Deed of Granting Mortgage is signed by the land owner as the mortgagee, the mortgage holder, namely the bank, two witnesses, and the PPAT himself.

The Deed of Granting Mortgage is then registered at the Land Office whose territory includes the area where the land encumbered by the Mortgage is located. In addition to the Deed of Granting Mortgage, for registration purposes, a certificate of title to the land concerned must also be attached. Article 13 section (2) of Law no. 4 of 1996 has provided a stipulation that PPAT is obliged to send the Deed of Granting Mortgage concerned and other necessary documents to the Land Office no later than seven working days after signing the Deed of Granting Mortgage. The registration of mortgage is carried out by the Land Office by making a mortgage book and recording it in the land book of land rights which is the object of the mortgage and copying the notes on the certificate of land rights in accordance with the provisions of Article 13 section 3 of the Mortgage Law.

In Article 14 section (1) of the Mortgage Law it is explained that as evidence of the existence of a mortgage, the Land Office issues a mortgage certificate. This means that the mortgage certificate is proof of the existence of a mortgage. Therefore, the mortgage certificate can prove something that already existed at the time of its manufacture or in other words, the main benchmark is the date of registration or recording in the mortgage land book. If agreed otherwise, the certificate of land title that has been affixed with a note on the imposition of the mortgage is returned to the holder of the land title in question and the certificate of mortgage

is handed over to the holder of the mortgage. To protect the interests of creditors, the mortgage certificate may remain in the hands of the creditor. This is made possible by Article 14 section (4) of the Mortgage Law which states that unless agreed otherwise, the land title certificate which has been affixed with a note on the encumbrance of the mortgage is returned to the holder of the land right in question.

In accordance with the provisions of Article 13 of the Mortgage Law which contains the principle of publicity which implies that it is obligatory for every grant of Mortgage as outlined in the APHT to be registered at the Land Office. In other words, registration of the granting of Mortgage is an absolute requirement for the birth of the Mortgage and binding the Mortgage to a third party, (separatist creditor) to get the debtor's debt repaid. The principle of publicity is the principle that the registration is open to be known by the public, meaning that at any time when it is needed by those with an interest, it can always be seen without hindrance. So with the registration, the granting of Mortgage Rights will be recorded in the general register of the Land Office which is specifically provided for that.⁴ The aim is to provide certainty to third parties who are bound by the imposition of Mortgage on an object of Mortgage. That by recording in a general register it can be seen that the land has been encumbered with Mortgage and the creditor as the holder of the Mortgage Rights, the total value of the mortgage, its rank and information regarding the encumbrance of the Mortgage. With the registration of the Mortgage, it can be known who the creditor holder is, which receivables and how much is guaranteed and which objects are used as collateral, can easily be known by the interested parties. The granting of mortgage rights must be registered with the relevant Land Office, by being recorded in the Mortgage Land Book. The existence of Mortgage Rights is then recorded in the land title book which are used as collateral and then copied to the certificate of land title. Meanwhile, the date of the Mortgage Land book is the date of birth of the Mortgage concerned, which is determined with certainty, namely the seventh day after the complete receipt of the documents required for registration and if the seventh day falls on a holiday, the relevant land book shall be dated as working day. next (Article 13 section (4) UUHT).

Roya or the recording of the cancellation of the Mortgage is regulated in Article 22 section (4) of the UUHT which states that the application for deletion as referred to in section (1) is submitted by an interested party by attaching a certificate of Mortgage which has been given a note by the creditor that the Mortgage is canceled due to a receivable Guaranteed settlement with the Mortgage has been paid off, or a written statement from the creditor that the Mortgage has been erased because the debt guaranteed for settlement with the Mortgage has been paid off or because the creditor has released the Mortgage concerned. The recording of the abolition of the Mortgage is carried out by the Head of the Land Office by crossing out the note of the existence of the Mortgage in the land book and certificate of the object that is used as collateral, within seven working days from the receipt of Roya's application from the interested party. One Mortgage can be encumbered on more than one object.⁵ The object that is encumbered may consist of more than one parcel of land title, or there is one parcel of land that is encumbered with a Mortgage Right, then it is separated into two or more new units, or one apartment building which is encumbered with a Mortgage, then undergoes separation into several housing units. stacking, or a housing development project which includes many parcels

⁴ Made Oka Cahyadi Wiguna, *Jurnal, Surat Kuasa Membebaskan Hak Tanggungan dan Pengaruhnya Terhadap, Pemenuhan Asas Publisitas Dalam Proses Pemberian Hak Tanggungan*, Jurnal Legalisasi Indonesia, Vol. 14 No. 04 - Desember 2017 : 439 - 446

⁵ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, 2005, hal. 426

of land along with the house buildings on it are used as collateral for credit with one Mortgage encumbered. The roya provisions have been included in the Mortgage Law which states that:

“In the land book of the Mortgage concerned, a note is affixed regarding the abolition of the right, while the certificate is removed. A similar recording, which is called deletion or better known as “roya”, is also carried out on the land book and certificate of land title which were originally used as collateral. the land that has been affixed with the note, is handed back to the right holder”

The existence of Roya cannot be separated from the Mortgage, this is because the Mortgage is a material right, which is a right that can be demanded by the holder from a third party who controls or owns the object of the Mortgage if the object of the Mortgage is transferred by the original Mortgage Provider.⁶ Roya Mortgage is regulated in Article 22 of Law Number 4 of 1996 concerning Mortgage on Land and Objects related to Land. Deletion of notes or Mortgage Roya is carried out for the sake of administrative order and has no legal effect on the Mortgage concerned which has been delete. The Mortgage Certificate is declared invalid by the Land Office. If the certificate for any reason is not returned to the Land Office, it is recorded in the Hak Tanggungan land book. When the mortgage has been removed and removed from its recording in the land book, the land rights that are the object of the mortgage, the third party will never know that the mortgage has been deleted, so it is no longer binding on third parties.⁷

From the provisions of Article 18 section (1) of the UUHT, it can be seen that Mortgage Rights can be intentionally abolished and can also be abolished by law. Mortgage rights can be abolished due to the release of Mortgage Rights by the Mortgage holder or due to the cleaning of Mortgage Rights based on the ranking determination by the Head of the District Court. While the Mortgage can be abolished by law, because of the abolition of the debt guaranteed by the Mortgage and because of the abolition of the land rights burdened with the Mortgage.

1. Synchronization of Legal Arrangements for Registration of Granting and Abolition of Mortgage Rights according to the Mortgage Law with the Regulation of the Minister of Agrarian Affairs and ATR Number 9 of 2019

Since the issuance of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Defense Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services, the term Electronic Mortgage System (HT-el System) has been known. The HT-el system, as referred to in Article 1 point 6 of the Minister of Agrarian Affairs 9/2019, is:

“a series of mortgage service processes in the context of maintaining land registration data organized through an integrated electronic system.”

The Electronic Mortgage Service, which is based on the Agrarian Ministerial Regulation ATR BPN Number 5 of 2019, aims to fulfill the principles of openness, timeliness, speed, convenience and affordability. In addition, to improve effective and efficient mortgage services by adjusting the development of law and information technology. The object of Mortgage that can be processed is the object of the Mortgage as regulated in the laws and regulations. The output of this Electronic Mortgage Service is an Electronic Mortgage Certificate for users, namely Creditors (can be banking institutions/financial institutions, or individuals) as recipients of Electronic Mortgage Rights.

⁶ Ibid, hal. 148

⁷ Rachmadi Usman, *Hukum Jaminan Keperdataan*, Jakarta: Sinar Grafika, 2008, hal. 508

The Electronic Mortgage Service is known as the Electronic Land Book in the form of a collection of all editions of the Electronic certificate. The edition of the Electronic certificate is a registration history, for example the first edition is the registration of Mortgage Rights, the second edition is the cessie and so on. Each issue a new certificate comes out and the old certificate is turned off electronically. There is also what is called Electronic Warkah (in the form of all Electronic documents uploaded by PPAT and Banks/Creditors are automatically stored as Warkah at the end of the Electronic HT service process). The authentic deed (APHT) is kept by PPAT as an inseparable part of the digital document. For the record of Imposition of Mortgage that is printed by the creditor, it is attached to the Certificate of Land title which is the object of the guarantee.

The service process for Mortgage Rights which has been determined through the Minister of Agrarian Regulation Number 9 of 2019 in the context of maintaining land registration data which has been carried out using manual or non-electronic systems and using physical documents has now changed to using electronic documents. One example of the 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 Official (PPAT).

Prior to the Agrarian Regulation, Land Deed Officials (PPAT) would register Mortgage manually by coming directly to the Land office and submitting the Mortgage Registration Deed (APHT) and land documents needed in the land registration process. Other Warkah (documents) in question include documents of evidence relating to HT objects and the identities of the parties concerned, including certificates of land title and/or certificates regarding HT objects. now the provision no longer uses physical documents, but in the form of electronic documents and is carried out through an electronic system.

The Minister of Agrarian Affairs and ATR BPN Number 9 of 2019 show that there is a discrepancy with the Mortgage Law, even though the existence of the Mortgage Law is the basis for the formation of the Ministerial Regulation. It is said to be inappropriate or out of sync because the Mortgage Law does not recognize the electronic HT system at all and does not recognize the use of electronic documents in HT services.

Apart from being out of sync regarding electronic documents, based on the Formation of Legislation (UUP3) that the Minister of Agrarian Affairs and Spatial Planning of the BPN No.9 of 2019 contradicts Law No. 12 of 2011 concerning the Formation of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislations (UUP3). According to UUP3, forming laws and regulations (including ministerial regulations) must be carried out based on the principle of conformity between types, hierarchies (orders), and content material.⁸ Hierarchy (order) according to UUP3 is the ranking of each type of legislation based on the principle that lower laws and regulations (ministerial regulations) must not conflict with higher laws and regulations (laws) and are in line with it is based on the provisions of UUUP3 the legal force of laws and regulations in accordance with their hierarchy.

⁸ <https://www.mistar.id/opini/ht-elektronik-tidak-berkekuatan-hukum>, diakses pada tanggal 01 Oktober 2021

Hierarchically, the UUHT position is above or higher than PMA/Ka.BPN 9/2019, therefore according to UUUP3, PMA/Ka.BPN 9/2019 should not conflict with UUHT, but in fact this is not the case. PMA/Ka. This BPN 9/2019 seems to be in conflict with UUHT3, because PMA/Ka.BPN 9/2019 regulates content that is completely unknown or not regulated in UUHT. In addition, UUHT also absolutely does not order the formation of PMA/Ka.BPN 9 /2019 regarding electronic HT, therefore from the point of view of UUP3, electronic HT regulated in PMA/Ka.BPN 9/2019 is not recognized for its existence and has no binding legal force.

There is one article that contradicts the UUHT. In the Ministry of Agrarian Regulation and ATR Number 9 of 2019 there is a provision which states that Roya can also be implemented without prior agreement in the Deed of Granting Mortgage. Article 124 section (2) states that the registration of the deletion of the Mortgage on some objects of the Mortgage can also be carried out even though it does not meet the provisions of section (1) based on the release of the Mortgage on some of the objects of the Mortgage by the holder of the Mortgage which is stated in an authentic deed or a statement by clearly stating the part of the object of the Mortgage that is freed from the Mortgage. The Regulation of the Minister of Agrarian Affairs was made according to the demands of the community in practice, especially to accommodate the needs of the development of the credit world. So that the implementation of Roya which was not agreed in advance in the APHT can be carried out.

The granting of Mortgage Rights is carried out in front of the Land Deed Making Officer with the issuance of APHT. In the APHT made by the Mortgage provider in front of the PPAT, there are some that do not contain an agreement for the existence of Roya on the Mortgage object, due to the partial repayment of the Mortgage giver's debt to the Mortgage holder. The Minister of Agrarian Affairs/Head of the National Land Officer realizes that in practice it is difficult to fulfill the provisions of Article 2 section (2), therefore in one of the provisions of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration, in Article 124 section (2), it is regulated, namely: Registration of the deletion of Mortgage on some objects of Mortgage can also be carried out even though it does not meet the provisions of section (1) based on the release of Mortgage on some objects of Mortgage by the Rights holder The mortgage is set forth in an authentic deed or an underhand statement by clearly stating the part of the object of the Mortgage that is freed from the burden of the Mortgage.

2. Legal Consequences If the Granting and Abolition of Mortgage Rights are not registered

As we know, the purpose of the existence of a guarantee institution is to provide protection, especially to creditors if the debtor defaults. To provide protection to creditors, it is not enough just to make a Deed of Granting Mortgage Rights (APHT), but it must also be followed by registration with the Land Office regarding the existence of these Mortgage Rights, because Mortgage Rights are just born and which will make the creditor's position a preferred creditor rather than a creditor. other creditors, namely when the land book of the Mortgage is made, then after the signing of the APHT by the parties, the PPAT who made the deed must send the file to the Land Office in order to register the burden of the Mortgage.

The registration is intended as a fulfillment of the principle of publicity, namely notification to the public that the object of land rights has been used as collateral for the repayment of debts, in other words, the fulfillment of this principle of publicity is to participate in binding third parties, this was also disclosed by Habib Adjie, "with the promises in the APHT, which

are then followed by the registration of Mortgage Rights at the Land Office, then the principle of publicity is fulfilled, thus the promises have a binding position on third parties.⁹ The third party is not bound by the agreements and promises made by the creditor and the giver of the object of guarantee, the agreement only binds the parties who make the agreement. J. Satrio said that “The purpose of the principle of publicity in land registration is that by paying a certain amount of money, people can view the land book and from the land book it is possible to know the characteristics of the land in question, both regarding the subject and object of the rights.”¹⁰

Registration of mortgage rights is an absolute requirement for the birth of mortgage rights and gives creditors the position of being preferred creditors, namely those creditors who have the right to take repayments first than other creditors and the preferred creditors in their claims are privileged over the claims of other creditors. If the mortgage rights are not born, then the creditor's position is only as a concurrent creditor, namely creditors who do not have the right to prepayment of other creditors and the receivables of concurrent creditors are not guaranteed by material rights. With such a position, the concurrent creditor cannot execute the collateral if the debtor defaults or breaks the promise. What can be done by concurrent creditors if the debtor defaults or fails is to go through a non-litigation and litigation process by filing a lawsuit to the court, placing a confiscation of collateral on a collateral item and having to obtain a judge's decision that has permanent legal force, whose ruling states that the debtor the breach or breach of promise and the collateral can be executed through the auction process. Conditions like this in the banking world will be detrimental to creditors. For this reason, with the birth of the Mortgage Law, it can provide protection for creditors as preferred creditors where preferred creditors can carry out direct executions of debtors in default or breach of contract which is an effort to speed up a long legal process and is considered more time efficient, while the Dismissal Process (Roya) for the abolition of Mortgage as Maintenance of Land Registration Data refers to the Regulation of the Head of the National Land Officer of the Republic of Indonesia Number 1 of 2010 concerning Service Standards and Land Regulations. The implementation of Roya Mortgage includes the maintenance of land registration data. The standard of service for the abolition of Mortgage at the Land Office is 5 working days. The abolition of the Mortgage must be followed by the deletion of the Mortgage from the Land Book of the land rights encumbered with the Mortgage. has been repaid by the Debtor or has been abolished by law, thus the Mortgage can be crossed out for registration of the deletion at the relevant Land Office. After being in Roya, the certificate of land title is returned to the debtor, while the certificate of mortgage is withdrawn by the Land Office and declared no longer valid, as well as the land book of mortgage is declared no longer valid.

CONCLUSION

a. That every grant and deletion (roya) of the mortgage must be registered, in accordance with the provisions that the granting and abolition of the mortgage must be registered as an absolute requirement and as a fulfillment of the publicity principle in the Mortgage Law. The principle of publicity is the principle that the registration is open to be known by the public, meaning that at any time when it is needed by those with an interest, it can always be seen without hindrance. So with the registration, the granting of Mortgage Rights will be recorded in the general register of the Land Office which is specifically provided for that. The aim is to

⁹ Habib Adjie, *Hak Tanggungan Sebagai Lembaga Jaminan Atas Tanah*, Mandar Maju, Bandung, 2000, hal.16

¹⁰ J. Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan* : Buku I, Citra Aditya Bakti, Bandung, 1997, hlm. 44.

provide certainty to third parties who are bound by the imposition of Mortgage on an object of Mortgage. That by recording in a general register it can be seen that the parcel of land has been encumbered with Mortgage Rights and the creditor as the holder of the Mortgage Rights, the total value of the mortgage, its rank and information regarding the encumbrance of the Mortgage.

b. In the Agrarian Ministerial Regulation ATR BPN Number 19 of 2019 there are parts that are not in sync with the related Mortgage Law, electronic documents that are not known in the UUHT and Roya can also be carried out without an agreement that these conditions are not in accordance with the provisions in the UUHT.

c. Legal Consequences If the Granting of Mortgage is not registered then in the provisions of the Mortgage Right, then the Mortgage is never born/never existed. If the mortgage guarantee is never born, then the creditor is not located as a priority creditor (separatist creditor) to get the debtor's debt to be repaid. Likewise, in the abolition (roya) of mortgage, if it is not registered, the mortgage is considered to have never been erased, so that the guarantee remains in the control of the creditor, and the loan agreement or principal agreement has not been paid off and ended. While for the Deletion Process (Roya) for the abolition of Mortgage as Maintenance of Land Registration Data, if the mortgage certificate has been crossed out, the certificate of land title used as collateral for the mortgage will be returned to the debtor, while the certificate of mortgage is withdrawn by the Land Office and declared no valid again, as well as the land book Mortgage is declared no longer valid.

SUGGESTION

a. The process of granting Mortgage Rights and the abolition of Mortgage (roya) as an absolute condition that cannot be avoided, especially in the process of the birth of Mortgage, so it is important for each party involved, especially Land Deed Officials (PPAT), there is no delay in the registration process even though it has no significant impact. This delay is significant as a result of the delay, but it can cause legal certainty that the process of imposing mortgage rights does not run smoothly, and for BPN, the work unit of the mortgage registration process is the land office to be ready from a technical point of view because this electronic process often experiences disturbances or errors which also have an impact on delays. registration, so that the manual process can still run if the electronic-based system is experiencing problems.

b. As a new system that still has weaknesses in order to create legal certainty regarding the granting of Mortgage guarantees for interested parties, it must be revised according to the principles of the world of credit and the principles of the law of guarantees so that the mechanism for registering Mortgages by electronic means does not hinder credit activities so that interested parties can maximize mortgage services electronically. In order for manual Mortgage registration services it is still possible to convey with improvements in terms of technological systems and regulations.

Bibliography

Books:

Adrian Sutedi, *Tinjauan Hukum Pertanahan*, Jakarta (Pradnya-Pranata), 2009.

Arba, H.M., *Hukum Agraria Indonesia, akarta, Sinar Grafika, Cet. IV, Th. 2017.*

Arba, H.M. dan Diman Ade Mulada *Hukum Hak Tanggungan, Hak Tanggungan Atas Tanah dan Benda-Benda Di Atasnya*, Jakarta, Sinar Grafika, Cet. I, 2020.

- Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaan*. Jakarta Djambatan, 1999),
- Habib Adjie, *Hak Tanggungan Sebagai Lembaga Jaminan Atas Tanah*, Mandar Maju, Bandung, 2000
- Hans Kelsen, *General Theory of Law and State*, Translated by Anders Wedberg, Harvard University Printing Office Cambridge, Massachusetts, USA, 2009
- J. Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan* : Buku I, Citra AdityaBakti, Bandung, 1997
- Jimly Asshiddiqie, dan M. Ali Safa'at, *Theory Hans Kelsen Tentang Hukum*, Cet I, Sekretariat Jendral & Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006,
- Kartini Muljadi dan Gunawan Widjaja, *Hak Tanggungan*, (Jakarta: Kencana, 2005),
- Lili Rasyidi, *Filsafat Hukum*, Sinar Grafika, Jakarta, 2010
- Muhammad Erwin, *Filsafat Hukum, Refleksi Kritis Terhadap Hukum*, Rajawali Perss, Jakarta, 2011.
- Philipus M. Hadjon, *Perlindungan Bagi Rakyat di Indonesia*, PT.Bina Ilmu, Surabaya, 1987
- Rachmadi Usman, *Hukum Jaminan Keperdataan*, Jakarta: Sinar Grafika, 2008
- S.Nasution, *Penelitian Kualitatif-Naturalistik*, Bandung, Tarsito, 1986.
- Satjipto Rahardjo, *Ilmu Hukum*, Bandung, PT. Citra Aditiya Bandung, 2000
- Sutan Remy Sjahdeini, Sutan Remy Sjahdeini, *Hak Tanggungan (Asas-asas, ketentuan-ketentuan pokok, dan masalah-masalah yang dihadapi oleh perbankan)*, Bandung: Alumni, 1999.
- Sudikno Mertokusumo, *Teori Hukum*, Yogyakarta: Universitas Atma Jaya, Cetakan ke 1, Tahun 2011.
- Soerjono Soekanto, *Pengantar Penelitian Hukum, Universitas Indonesia*, Pres. Jakarta. 1984
- Theo Huijbers, *Filsafat Hukum*, Cetakan ke 15 (Yogyakarta: Kanisius, 2010.
- Pustaka Bahasa, *Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia*, Edisi ketiga, Balai Pustaka, Jakarta, 2003.

Journal:

Made Oka Cahyadi Wiguna, Jurnal, *Surat Kuasa Membebaskan Hak Tanggungan dan Pengaruhnya Terhadap, Pemenuhan Asas Publisitas Dalam Proses Pemberian Hak Tanggungan*, Jurnal Legalisasi Indonesia, Vol. 14 No. 04 - Desember 2017 : 439 - 446

Internet

<https://www.mistar.id/opini/ht-elektronik-tidak-berkekuatan-hukum>, diakses pada tanggal 01 Oktober 2021

<https://www.rumah123.com/panduan-properti/tips-properti-72153-panduan-lengkap-cara-mengurus-surat-roya-di-bpn-dan-online-id.html>, diakses pada tanggal 27 September 2021

<http://rezafhunas.blogspot.com/2014/12/proses-pembebanan-hak-tanggunganhak.html>, diakses pada tanggal 27 September 2021.

Regulations:

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 5 Tahun 1960, tentang Peraturan Dasar Pokok-pokok Agraria.

Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-benda Yang Berada Di Atasnya.

Peraturan Pemerintah Nomor 10 Tahun 1961 tentang Pendaftaran Tanah dan diganti dengan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

Peraturan Menteri Agraria/Kepala BPN Nomor 5 Tahun 1996 tentang Pendaftaran Hak Tanggungan

Peraturan Menteri Agraria dan ATR/Kepala Badan Pertanahan Nasional Nomor 9 Tahun 2019 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik.

Juridical Theoretical Study Of Granting And Abolition Services Of Encumbrance Rights That Eletronically Integrated.pdf

ORIGINALITY REPORT

14%

SIMILARITY INDEX

14%

INTERNET SOURCES

3%

PUBLICATIONS

3%

STUDENT PAPERS

PRIMARY SOURCES

1

media.neliti.com

Internet Source

13%

2

Submitted to Universitas Brawijaya

Student Paper

1%

Exclude quotes On

Exclude bibliography On

Exclude matches < 10 words

Juridical Theoretical Study Of Granting And Abolition Services Of Encumbrance Rights That Eletronicly Integrated.pdf

GRADEMARK REPORT

FINAL GRADE

/0

GENERAL COMMENTS

Instructor

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10

PAGE 11

PAGE 12
