

THE ROLE AND FUNCTION OF NOTARIES/PPAT IN THE REGISTRATION OF ENCUMBRANCES

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Abstract: *With the enactment of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) Number 5 of 2020, mortgage services that were previously conducted manually have now transitioned to electronic mortgage services (HT-el) at every land office in Indonesia. Prior to the implementation of electronic mortgage services, the duty of the Land Deed Official (PPAT) was to submit the Deed of Granting of Matgage (Akta Pemberian Hak Tanggungan/APHT) along with the mortgage registration list to the Land Office. However, under Regulation of the Minister of ATR/BPN Number 5 of 2020, the PPAT's duty is limited to submitting the APHT through the electronic mortgage system. This study aims to examine the submission of the APHT by PPAT in the implementation of electronic mortgage services and the responsibility of PPAT in the event of errors in electronic mortgage certificates. This research employs a normative juridical research method. The results show that PPAT submits the APHT through the HT-el system by uploading the APHT along with other required supporting documents. Furthermore, if errors occur in the electronic mortgage certificate, such errors are not the responsibility of the PPAT but rather the responsibility of the creditor. There, creditors are expected to exercise greater accuracy when inputting data into the HT-el system to prevent errors in electronic mortgage certificates.*

Keywords: *Notary; Liability; Law' Investment; Legal Protection*

Introduction

Land is a natural resource that produces goods and services and plays a very important role in human livelihood and life, even determining the civilization of nation. Civilization will remain sustainable as long as the nation uses land and other natural resources wisely. (Siti Nurhayati, 2022)

Land rights in Indonesia play a central role in the lives of the people and the development of the national economy. Land ownership is not only a place to live, but also a guarantee and source of capital in various economic transactions, especially in the form of bank loans. (Ilham Fathul Maarif, 2024)

Developments in the land sector, particularly in terms of mortgage rights, have led to a significant improvement in the quality of services provided to the public. With advances in technology and growing public demands, the need for faster, easier, and more affordable services has become increasingly urgent. In order to improve mortgage rights services in line with technological developments and adapt to public needs, making mortgage rights services easier and more affordable. Based on this, on June 21, 2019, the Minister of Agrarian Affairs and Spatial Planning/National Land Agency issued Regulation of the Minister of Agrarian Affairs and Spatial/Head of the National Land Agency of the Republic of Indonesia Number 0 of 2019

concerning Electronically Integrated Mortgage Services. However, this ministerial regulation was deemed to not fully address all aspects of collateral right, such as those outlined in Law No. 4 of 1996 on Collateral Rights. Therefore, this regulation was revoked and replaced with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic Indonesia Number 5 of 2020 concerning integrated Electronic Collateral Rights Services. In this case, mortgage services must be able to adapt to these dynamic in order to provide better access for stakeholders, such as landowners, financial institution, and the general public. (Rachmayanti and Ngadino, 2022)

The land registration system serves as fundamental mechanism in providing legal certainty regarding land rights, which play a central role in supporting economic and social stability. Through this system, the status and ownership of land become clearer and more legitimate, thereby reducing the risk of disputes that may arise from invalid claims. For the community, this legal certainty allows land to function not only as a passive asset but also a valid collateral in credit transactions, thereby increasing access to capital for productive purpose. For financial institutions, this system provides certainty regarding the value of the collateral they hold, reducing the risk in lending. An effective land registration system serves as the foundation for creating legal certainty regarding land rights, which in turn facilitates the existence of collateral rights as a very important instrument of collateral in the financial and financing system. These collateral right are primary tool in credit agreements, especially when land is used as the main collateral asset.

Legal protection is the primary from of protection because it is based on the idea the law is means of comprehensively accommodating interests and rights. In addition, the law has officially recognized coercive power within the state, co it can be enforced permanently. The protection provided by the law is also related to the existence of rights and obligations, in this case those possessed by humans as legal subjects in their interactions with other humans and their environment. As legal subjects, humans have the right and obligation to perform certain legal actions. (Fikry et al. 2025)

Method

Research methods are a process of collecting and analyzing data systematically to achieve specific objectives. Data collection and analysis are carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively. The research method used used is normative legal research, which is legal research conducted by examining reference materials or secondary data.(Ramadhani, 2024). This research is normative legal research, which is a method with an approach of reviewing the legal principles and legal systematics contained in the applicable laws and regulations, so that this normative research can focus on the inventory of positive law. This study also is an approach that examines all laws and regulations that are related to the issue being discussed. (Marzuki, 2011).

Result and Discusion

1. The Role and Function of Notaries/PPAT

The duties and authorities of a notary are closely related to agreements, deeds, and decisions that give rise to rights and obligations between parties, namely to provide guarantees or evidence of such deeds, agreements, and decisions so that the parties involved have legal certainty. The position of Notary is established or required by law with the aim of assisting and serving the community who need authentic written evidence regarding circumstances, events, or legal acts. (Supriadi, 2006)

A notary is a public official who has the authority to draw up authentic deeds, documents that have full probative force before the law. Authentic deeds drawn up by notaries often form a strong legal basis for various transactions, whether in the property sector, business, or other civil matters. The main duty of notary is not only to ensure the legality of documents, but also to maintain a balance of interests between the parties involved in the transaction. In addition, notaries have a responsibility to ensure that the right of third parties, who may not be directly involved in the transaction but are affected by it, are protected and not harmed. (Habib Adjie & Sri Agustini, 2022)

Notaries have an obligation to ensure that every deed they draw up is an authentic deed, which is an official document with strong legal force. These authentic deeds form an important legal basis for various transactions, including land sales, credit agreements, and many other civil matters. The notary's obligation to maintain the accuracy of the deed's contents and the validity of its drafting procedures is a form of legal responsibility that is not only directed at the parties involved in the deed, but also at third parties who may be harmed by the contents or execution of the deed.

According to Abdulkadir Muhammad, notaries must act carefully in carrying out their duties and must not take actions that could cause harm to third parties. This includes the notary's obligation to verify the accuracy and validity of the data and documents submitted by the parties, and to ensure that no information is concealed that could have a negative impact on third parties. (Hendra et al. 2025)

Article 2 paragraph (1) of Government Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 states that: "The PPAT has the main task of carrying out part of the Land Registration activities by creating deeds as evidence that certain legal actions regarding land rights or Ownership Right to a unit of a multi-unit residential building have been carried out, which will form the basis for the registration of changes to Land Registration data resulting from those legal actions:.

Land Deeds Officials (PPAT) play a central role in Indonesia's land law system because they act as public officials authorized to draw up authentic deeds concerning the transfer of land rights, such as sale and purchase, grants, exchanges, release of rights, granting of encumbrances, and granting of power of attorney to encumber rights. The PPAT itself acts as liaison between the community and the National Land Agency (BPN) in the legalization of land rights transfers, because the deeds drawn up by the PPAT have full evidentiary force in court and form the legal basis for the land rights naming process at the land office as stipulated in Article 1868 of the Civil Code (KUH Perdata). Their strong legal position and professional responsibility mean that PPATs are not merely administrators of land affairs, but also play a strategic role in ensuring legal certainty and protection for every transfer of land rights, while also realizing orderly national land administration that can prevent land conflicts. (Nugroho, Susilowardani, and Putri 2025)

The transfer of land right through sale and purchase is a common form of civil law in land practice in Indonesia. Based on Article 1457 of the Civil Code, sale and purchase is an agreement in which one party commits to handing over an item, and the other party commits to paying the agreed price. However, in the context of agrarian law, the sale and purchase of land cannot be carried out solely through an agreement between the parties, but must be recorded in an authentic deed drawn up by a Land Deed Official (PPAT), as stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration.

The deed of sale and purchase prepared by the PPAT qualifies as an authentic deed as stipulated in Article 1868 of the Civil Code. This means that the deed has full probative force

and serves as the primary evidence in the process of transferring land rights, including as the legal basis for the transfer of title at the Land Registry Office.

Thus, PPAT plays a very strategic and crucial role not only as an administrative executor, but also as a guardian of legal certainty and legal protection for the parties involved in land sale and purchase transactions.⁹ the process of transferring land rights through sale and purchase is carried out in several stages, including: a. Certificate inspection.

This stage is carried out to ensure the validity of the land owner and the legality of the certificate submitted. The PPAT is tasked with verifying that the land is not in dispute, blocked, or subject to encumbrances. This examination reflects the principle of prudence as well as a form of preventive legal protection for buyers acting in good faith.

b. Preparation of the Deed of Sale and Purchase (AJB)

The AJB can only be drawn up after the parties have completed documents such as ID card, family cards, proof of land and building tax (PBB) payment, and land certificates. The PPAT will validate the physical and juridical data through the electronic system at the National Land Agency (BPN). After all requirements, including tax obligations (BPHTB and PPH), have been fulfilled, the AJB is drawn up and signed by the parties and the PPAT. c. Registration of transfer of rights.

The PPAT must submit the AJB along with supporting documents to the Land Office no later than seven days after the deed is signed. This registration provides legal legitimacy for the transfer of rights and guarantees legal protection for third parties. This is in line with the Indonesian land registration system, which adopts a negative system with positive aspects.

d. Tax and fee payments.

The taxation process is an administrative prerequisite. Income tax is borne by the seller, while BPHTB is the responsibility of the buyer. These taxes must be paid before registration and serve as proof that the transaction has met the fiscal requirements in accordance with Law Number 20 of 2000 and Government Regulation Number 34 of 2016. e. Submission of new certificates After the transfer of ownership process is complete, new certificates in the buyer's name are issued by the Land Office. These certificates serve as valid and legally binding proof of ownership, as well as providing legal protection for the new rights holders.

The success of the transfer of land rights through sale and purchase is highly dependent on the professionalism and thoroughness of the PPAT in ensuring that all formal and material aspects have been fulfilled in accordance with the laws and regulations. Failure to carry out this responsibility can not only invalidate the transaction, but also potentially lead to legal disputes in the future. Therefore, the role of PPAT cannot be reduced to that of an administrative official, but rather as the front line in realizing the principles of legal certainty, legal protection, and orderly national land administration.

2. Registration of Mortgage Rights by PPAT

A mortgage is a real property security instrument that focuses on land and plays an important role in Indonesia's financial system and credit agreements. Based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, mortgage rights give creditors preferential rights, namely the right to priority over land assets as collateral if the debtor fails to fulfill their payment obligations. This right is legally attached to the mortgage land through a formal binding process and registration with the National Land Agency (BPN). This registration not only guarantees the legal status of the mortgage but also gives creditors a strong legal position to execute the land as collateral in the event of defaults, while still complying with applicable laws. (Firman Nur Rokhmad, 2025)

Article 1 paragraph 1 of Law Number 4 of 1996 concerning Land Rights and Objects Related to Land (UUHT) defines: "A mortgage is a security right imposed on land rights as

referred to in the UUPA, with or without other object that form an integral part of the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors”. A lien is a type of limited property right that only gives the holder the authority to obtain repayment of their debt in priority over other creditors. This description explains that liens are not focused on land alone, but also on other objects that are related to or form a single entity with the land.

The Grantor of Mortgage is an individual or legal entity that has the authority to perform legal acts on the object of the Mortgage in question, whereby the authority to perform legal acts on the object of the Mortgage must reside with the Grantor of the Mortgage at the time the Mortgage is registered. (Deasy Susilawati, 2024)

Based on the above description, there are several key elements contained therein, namely: a. A mortgage is a security right for the repayment of debt.

- b. The object of a lien is the right to land in accordance with the Basic Agrarian Law (UUPA).
- c. A lien can be imposed not only on land (land rights) but also on other objects that form an integral part the land.
- d. The secured debt must be a specific debt; it gives priority to certain creditors over other creditors.(Rahmat Ramadhani, 2024).

Normatively, the authority of PPAT to check or examine land certificates is stated in: Article 54 paragraph (1) of Perkaban No.1 of 2026 states that “Before making a deed regarding legal actions such as sale and purchase, exchange, grants, inclusion in a company, division of joint rights, granting Building Use Rights/Right of Use over Freehold Land, granting Mortgage Rights and granting power attorney to impose Mortgage Rights, the PPAT is required to examine the conformity/validity of the certificate and other record at the local Land Office by explaining the purpose and objective”. Articles 97 of Permen ATR/BPN No.3 of 1997 concerning the Implementation of PP No.24 of 1997 concerning Land Registration states that “Before executing a deed concerning the transfer of encumbrance of rights to land or Ownership Rights to Apartment Units, the PPAT must first conduct an examination at the Land Office regarding the conformity of the certificate of land rights or Ownership Right to Apartment Unit concerned with the lists available at the local Land Office by showing the original certificate” and “The examination of the certificate as referred to in paragraph (1) shall be carried out for every deed made by the PPAT, provided that for the preparation of deeds of transfer or encumbrance of rights to parts of the parent land in the context of marketing the result of developments, it is sufficient to carry out.(Aufima, 2020)

Recognizing the importance of efficiency and transparency in land registration, the Indonesian government has adopt digital technology to improve the land administration system. Through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), the government has begun to introduce an electronic land registration system, which also includes the registration of encumbrance. It is hoped that with this system, the process of registering mortgage rights can be faster, easier, and more transparent. In addition, this electronic system is expected to reduce corruption and illegal fees that often arise in administrative process at the land office. (Sahetapy, 2023)

The registration of mortgage rights is carried out electronically with reference to Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 5 of 2020 concerning Integrated Electronic Mortgage Rights Services (hereinafter referred to as Permen HT-el). In terms of application, this new policy certainly has advantages and disadvantages:

- a. Creditors submit HT-el service requests through the HT-el system provided by the ministry. In the case of HT-el service requests in the form of registration of encumbrances or transfer of encumbrances, the required documents are submitted by the PPAT.
- b. The PPAT submits the deed and documents required through an electronic partner system integrated with the HT-el system. The submission of documents is accompanied by a statement of responsibility for the validity and accuracy of the Electronic Document submitted. All documents required must be stored by the PPAT (Article 10 paragraph (1) and (2) of the HT-el Regulation).
- c. HT-el service requests that have been received by the HT-el system are given proof of registration issued by the system. HT-el services are subject to fees in accordance with the provisions of the regulations concerning Non-Tax State Revenue (PNBP) applicable to the ministry (Article 11 paragraphs (1) and (2) of the HT-el Ministerial Regulation).
- d. Application are processed after the application data and fees are confirmed by the HT-el system. In the event that payment of fees is not confirmed by the HT-el system, the Creditor may confirm directly with the land office or complaint service (Article 12 paragraph (1) and (2) of the HT-el Regulation).
- e. Before the HT-el service result are issued, the head of the land office or designated official must check the conformity check of the required documents and the draft HT-el certificate. The conformity check of the required documents and the draft HT-el certificate is carried out through the HT-el system. In the event that the check result in incomplete or nonconforming documents, the creditors and/or PPAT will be notified to immediately complete the files. The required documents must be complete no later than 5 (five) days after the service request is received by the HT-el system. (5) if the deadline expires and the creditor and/or PPAT does not complete the file, the request shall be declared void. If the required documents are in order, the head of the land office or the designated official shall approve the upload of the required documents and the draft HT-el certificate (Article 13 paragraphs (1) to (6) of the HT-el Regulation Number).
- f. In the event that the head of the land office or designated official does not conduct an inspection by the 7th (seventh) day and the HT-el Service results are published by the HTel System, it shall be deemed to have given approval and/or ratification. The head of the land office or designated official is administratively responsible for the results of the HTel service (Article 14 paragraphs (1) and (2) of Permen HT-el Number 5 of 2020).
- g. The result of HT-el services are in the form of electronic documents issued by the HT-el system, including: HT-el certificates; records of encumbrances in the land rights or apartment ownerhisp rights register; and record of encumbrances on land rights or apartment ownership rights certificates. The recording of encumbrances in the land rights or apartement ownership rights register is carried out in the electronic land register by the head of the land office or an authorized official. The recording of encumbrances on land rights certificates or apartment ownership rights certificates that are pledged as collateral. The record in question becomes an integral part of the land rights certificates or apartment ownership rights certificate. The results of the HT-el services are delivered to the creditor through the HT-el system and/or through electronic domicile (Article 15 paragraph (1) to (5) of the HT-el Regulation).
- h. HT-el service results are certificated with an electronic signature by the head of the land office or authorized official to maintain the integrity and authenticity of the electronic document. Electronic signatures are carried out in accordance with the provisions of laws and regulation. The issuance of HT-el certificates is carried out on the 7th (seventh) day

after HT-el services application is confirmed by the HT-el system (Article 16 paragraph (1) to (3) of the HT-el Regulation).

- i. In the event of an error in filling out the HT-el service application that is discovered after the HT-el service result has been issued, the HT-el certificate holder may request a correction. The request for corrections to the HT-el certificate are laws and regulations regarding PNB applicable to the ministry (Article 19 paragraphs (1) to (3) of the HT-el Ministerial Regulation).
- j. The implementation of HT-el services is the responsibility of the head of the land office. The material accuracy of the documents that form the basis of HT-el services is not the responsibility of the land office. In the event that a document is declared to be false and is used as the basis for issuing an HT-el certificate, the land office employee cannot be held legally liable. Documents that are declared to be false are entirely the responsibility of the sender of the document, both criminally and civilly (Article 20 paragraph (1) to (3) of the HT-el Regulation).

In addition to notaries and PPATs, bank also play role in the registration of encumbrance. The provisions included in Article 1 paragraph 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 to 1992 concerning Banking state that “Banks are business entities that collect funds from the public in order to improve the standart of living of the people”. This means that in their daily activities, banks generally always strive to collect as much money as possible form the public in the form of deposits and then manage these funds to be channel back to the public in the form of credit or loans. (Parinduri, 2022)

Banks act as agents of trust for the government and community development. In order for lending activities to remain healthy, it is important that this process is accompanied by guarantees to provide security in lending and ensure repayment. In addition, protection must also be provided to lenders and borrowers as well as other related parties through guarantee institutions, which can provide legal certainty for all parties involved in lending activities.

Conclusion

In the Indonesian legal system, land charges play a crucial role in providing legal certainty and protection for creditors and debtors in financing transaction. Land charges, as an instrument of collateral regulated in Law No.4 of 1996 concerning Land Charges, provide preferential rights for creditors to execute collateral if the debtor fails to fulfil their obligations. The process of registering mortgage rights with the National Land Agency (BPN) is an important step that not only recognizes the legal status of mortgage rights but also provides legitimacy and certainty for all parties involved. Notaries play a very important role in the registration of mortgage rights on land. As authorized public officials, notaries are responsible for drafting the Deed of Mortgage Grant (APHT), which is a formal legal document that forms the basis for the registration of mortgage rights. The duties of a notary include verifying the validity of documents, checking the identities of debtors and creditors, and ensuring that the land subject to the mortgage has been legally registered and is not currently in dispute. Though this process, notaries contribute to creating legal certainty that can reduce the risk of future disputes and increase public confidence in the existing legal system. The presence of notaries in the mortgage registration system also help maintain the integrity of the legal process. Notaries must ensure that all information submitted by the parties is accurate and complete, and clearly explain the rights and obligations of each party. This is important to prevent potential conflict that may arise due to misunderstandings or ambiguities in the agreement. The registration encumbrance, in which the PPAT acts to register the approved encumbrance.

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