

THE REGISTRATION OF THE DEED OF GRANT OF DEPENDENT RIGHTS ELECTRONICALLY WITHOUT THE GRANTING OF POWER OF ATTORNEY TO PPAT BY CREDITORS IS LINKED TO THE PRINCIPLE OF LEGAL CERTAINTY

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ABSTRACT

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services (Permen HT-el) regulates the electronic registration of Mortgage Rights, where the application for registration must be made by the creditor without being authorized by the Land Deed Official (PPAT) as in the conventional Mortgage Rights system. Electronic registration of Mortgage Rights will create legal certainty for the holder of the Mortgage Rights in the form of an Electronic Mortgage Rights Certificate. In practice, there are still creditors who have not or do not register electronic Mortgage Rights at all, causing legal certainty not to be guaranteed because the Mortgage Rights are not born. This study aims to determine and analyze the legal certainty of electronic registration of mortgage rights, where the application for registration is the obligation of the creditor. The research method used is normative juridical, namely research on principles, norms and legal rules. The research specification uses descriptive analytical method, namely by providing an explanation of the facts contained in the research object comprehensively, systematically, accurately and factually and then correlating it with relevant legal theories. The results show that without an application for electronic registration of Mortgage Rights by the creditor, the Mortgage Rights are considered to have never existed. The banking party as the creditor must increase human resources who are ready and there must be additional human resources from the Bank as a creditor specifically to register electronic Mortgage Rights.

Keywords: APHT, Electronic Mortgage Rights, Legal Certainty.

A. Introduction

Land is an important aspect of human life, so the question of land often causes conflict. As stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. So, until now the government has made various efforts to solve the land problem. One of the government's efforts is to regulate the transfer of land rights which must be stated in an authentic deed, in this case the authority is the Land Deed Making Officer (PPAT). PPAT is a public

official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or property rights to apartment units. In carrying out its duties, PPAT is given limited authority in making deeds. As stated in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials (hereinafter referred to as PPAT Position Regulation PPAT), that the deeds that can be made by PPAT are only about buying and selling, exchanging, grants, income into the company (inbreng), division of joint rights, granting building use rights/land use rights to property rights, granting the right of dependency, and the granting of power of attorney imposes the right of dependent.

Along with the development of human needs, land is not only used as an investment but can also be used as an object of collateral because the economic value of land is high and continues to grow. A guarantee is something given to a creditor to create confidence that the debtor will fulfill an obligation that can be assessed with money arising from an engagement.¹ The imposition of land rights with dependent rights is regulated in Law Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land (UUHT). Article 1 Number 1 of the UUHT states that, Dependent Rights are security rights charged to land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, together with or not along with other objects that are one unit with the land, for the repayment of certain debts, which give a preferred position to certain creditors over other creditors. The object of dependent rights contained in Article 4 paragraph (1) of the Law is the right to land that can be burdened with dependent rights, namely Property Rights, Business Use, and Right to Use State Land. In the provisions of Article 8 and Article 9 of the Constitution, it is stated that the subject of the Dependent Rights is an individual or legal entity that has the authority to carry out legal acts against the object of the Dependent Rights. The Holder of Dependent Rights is an individual or legal entity that is domiciled as a receivable party. It can be known that the subject of the Dependent Rights is the giver and holder of the right of dependency, namely the parties who have interests related to the debt and receivables agreement that is guaranteed to be repaid. As mentioned in point 8 of the explanation of the UUHT, Dependent Rights is an accessory agreement to the principal agreement. This means that the Dependent Rights exist because of the main agreement. The principal agreement is a credit agreement or it can be in the form of other agreements, for example, debt and receivables agreements that give rise to guaranteed debts with the Dependent Rights.

The Encumbrance of Dependent Rights is carried out through 2 (two) processes, the process of granting dependent rights is preceded by a credit agreement or a debt and receivables agreement, which is the principal agreement between the creditor and the debtor. Then based on Article 10 paragraph (2) of the Constitution, the right of dependency must be proven by a certificate through the registration of the Deed of Grant of Dependent Rights (APHT) carried out at the Land Office. APHT is a deed containing the granting of dependency rights to certain creditors as collateral for the repayment of their receivables made before PPAT. The registration of the right of dependency in the land book at the land office was carried out in order to fulfill the principle of publicity, because at the time of the signing of the APHT, the right of dependents was still unborn and the newborn, namely the promise to provide the right of dependent. The principle of publicity is a principle that applies to objects that have immovable nature to be given material rights to them, namely it is mandatory to announce the

¹ Salim HS, *Development of Guarantee Law in Indonesia*, Jakarta: PT. Raja Grafindo Persada, 2004, p. 22.

ownership status to the community related to the real control of the property encumbered by the Dependent Rights, which occurs when objects such as land are made through the registration outlined in the land book. With technological advancements, the government has provided electronically integrated Dependent Rights registration services based on the Regulation of the Minister of Agrarian and Spatial Planning / National Land Agency Number 5 of 2020 concerning Electronic Dependent Rights Services (hereinafter referred to as the HT-el Ministerial Regulation).

Electronic Registration of Dependent Rights (hereinafter referred to as HT-el) involves 3 (three) parties who have different roles, namely creditors, PPAT, and the Land Office. Creditors, PPAT, and Land Offices are 2 (two) of the 3 (three) components of the implementation of electronic dependent rights services as referred to in Article 5 of the Ministerial Regulation of ATR/KBPN 5/2020. Creditors and PPAT are among the user components, namely as a utilization of the electronic dependency rights system. Meanwhile, the Land Office is an implementing component, whose duties are related to the results of electronic dependent rights services. HT-el registration will not occur without an application for registration of Dependent Rights submitted by the bank as a creditor, with the non-registration of the Dependent Rights concerned, the PNB (Non-Tax State Revenue) billing letter will not be issued, with the non-payment of PNB, the electronic Certificate of Dependent Rights (hereinafter referred to as the HT-el Certificate) will not be issued. As stipulated in Article 9 of the HT-el Ministerial Regulation, creditors apply for HT-el services through the HT-el System provided by the Ministry of Agrarian and Spatial Planning / National Land Agency of the Republic of Indonesia. Although it has been regulated regarding HT-el registration in the HT-el Ministerial Regulation, in practice in the field there are still many banks that do not apply for the registration of Dependent Rights due to busyness and various other reasons, this hinders the registration of Dependent Rights which makes the issuance of Dependent Rights certificates.

Since the enactment of the current HT-el Ministerial Regulation, many PPATs have been harmed by the non-issuance of HT-el Certificates, this is because the bank as a creditor seems to blame PPAT for not registering the Dependent Rights, even though the fault lies with the bank as a creditor who does not follow up on the APHT and the documents that have been made by PPAT by submitting an application for registration of Electronic Dependent Rights to the HT-el system that has been provided by the Ministry ATR/BPN. The problem is how the registration of the deed of grant of dependent rights electronically without the granting of power of attorney to PPAT by creditors is related to the principle of legal certainty.

B. Research Methods

The research method used is a normative juridical approach method which is interpreted as legal research by examining literature materials or secondary data. All data that has been collected will be analyzed and searched for relevance through qualitative normative analysis methods, because this research is based on the provisions of laws and regulations as applicable laws, and qualitatively because it is analyzed based on information in the field.

C. Results and discussion

1. Registration of Deed of Grant of Dependent Rights Electronically Without Authorization to PPAT by Creditors Linked to the Principle of Legal Certainty



The function of banks as financial institutions is very vital, for example in terms of creating money, circulating money, providing money to support business activities, a place to secure money, a place to make investments and other financial services.² Article 3 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking with the latest amendment to Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (Banking Law) states that the main function of Indonesian banking is as a collector and distributor of public funds, it can be explained that banks function as financial intermediaries which means that banks bridge the needs of two different customers through their duties as collecting funds from people who have excess funds (surplus unit), then after collecting, the bank immediately distributes the funds to people who are in need of funds (deficit unit). The main function of banks as financial intermediaries is based on basic business activities and distributing public funds. As an intermediation institution, banks are intermediaries between parties who have funds and those who need funds. One form that is commonly done by banking institutions is to provide credit to customers.

The definition of credit according to O.P. Simorangkir is, credit is the provision of achievements (for example, money, goods) with reciprocity of achievements (counter achievements) will occur at the time of money achievement, so credit transactions involve money as a credit tool that is discussed. Credit functions cooperatively between creditors and creditors or between creditors and debtors. They attract profits and bear each other's risks. In short, credit in a broad sense is based on the components of trust, risk and future economic exchanges.³ Meanwhile, the definition of credit agreement has not been listed in the Banking Law, in the Banking Law there is only the definition of credit as described above. There are several opinions that provide the definition of a credit agreement. According to Gatot Supramono, a credit agreement is a loan and replacement agreement, but it is also a special agreement, because it contains specificities where the creditor is a bank and the object of the agreement is in the form of money (generally regulated by the Civil Code and specifically regulated by the Banking Law).⁴

Business entities generally expressly require the borrower to hand over an item (object) as the object of the borrower's debt collateral. Debt collateral offered (submitted) by the borrower will generally be assessed by the business entity before being accepted as an object of collateral for the loan it provides.⁵ Generally, the Bank as a creditor in entering into a credit agreement to the public as a debtor requires a guarantee to ensure the repayment of the debt. A credit agreement is usually followed by a guarantee agreement, this means that a credit agreement is a principal agreement while a guarantee agreement is an additional agreement (*accessoir*). This means that the existence and expiration of the guarantee agreement depends on the credit agreement as the principal agreement. A commonly used collateral in a bank credit agreement is the right to land.

² Kasmir, *Basics of Banking*, Jakarta: Rajawali Pers, 2011, p. 2.

³ Johannes Ibrahim, *Thoroughly Exploring Commercial and Consumptive Credit in Bank Credit Agreements (Legal and Economic Perspective)* (Bandung: Mandar Maju, 2004), p. 10.

⁴ Priyo Handoko, *Measuring Land Guarantees as Credit Security* (Jember: Centre for Society Studies, 2006), p. 106.

⁵ Gregoryo Terok, "The Function of Guarantees in the Provision of Credit," *Lex Privatum*, Vol. I, No. 5, November 2013, p. 5.

The form of collateral that is commonly used by banking institutions in credit agreements is Dependent Rights. The right of dependency can be pledged on the land given to the debtor to the creditor for the guarantee of his debt, the guarantee of the right of dependency is evidenced by the deed of encumbrance of dependent rights (APHT). Land rights designated by the Law as land rights that can be used as debt collateral by being burdened with dependents are property rights, business use rights, and building use rights. In addition to these rights, the right to use state land that was previously in the UUPA was not the object of dependent rights.⁶

The imposition of dependent rights based on the HT Law is carried out through two stages, namely, the first stage of granting Dependent Rights with the creation of a credit agreement as a principal agreement, then an accessory agreement or Dependent Rights Grant Agreement is made. The Agreement on the Granting of Dependent Rights is evidenced by the making of the APHT before PPAT, this is based on the provisions of Article 10 of the HT Law which stipulates that the granting of Dependent Rights is preceded by a promise to provide Dependent Rights as collateral for the repayment of certain debts carried out by making a Deed of Grant of Dependent Rights by PPAT in accordance with applicable laws and regulations. Article 11 paragraph (1) of the HT Law states the things that must be included in the APHT, namely:

- a. name and identity of the holder and grantor of the Dependent Right;
- b. domicile of the parties as referred to in letter a, and if any of them is domiciled outside Indonesia, for him must also be listed as an optional domicile in Indonesia, and in the event that the optional domicile is not listed, the PPAT office where the Deed of Grant of Dependent Rights is made is considered as the chosen domicile;
- c. Clear designation of debts or secured debts
- d. the value of dependents;
- e. clear description of the object of the Dependent Right.

The second stage is the Registration of Dependent Rights as stipulated in Article 13 paragraph of the HT Law that the registration of Dependent Rights must be registered at the land office to meet the principle of publicity of the Dependent Right, registration is carried out by the Land Office by making the Dependent Rights land books and recording them in the land rights books that are the object of the Dependent Rights and copying the records on the certificate of the right to the land concerned. The registration of the right of dependency has only given birth to the right of dependency, with the registration of the right of dependency concerned to the land office, the principle of publicity of the right of dependency is fulfilled. With the birth of the Right of Dependency, the privilege (*droit de preference*) of the holder of the Dependent Rights was also born.

Since the enactment of the Regulation of the Minister of Agrarian and Spatial Planning / National Land Agency Number 5 of 2020 concerning Electronic Dependent Rights Services (Permen HT-el), the registration process for Dependent Rights has undergone changes that were originally carried out with a manual system switching to an electronic system. Article 1 number 7 of the

⁶ St. Nurjanah, "The Existence of Dependent Rights as a Guarantee Institution for Land Rights (Philosophical Review)," *Jurisprudentie*, Volume 5, Number 1, June 2018, p. 199.

Ministerial Regulation of HT-el states that the definition of HT-el services is a series of processes for servicing dependent rights in the context of maintaining land registration data which is held through an integrated electronic system. The types of HT-el services that can be submitted through the HT-el system are regulated in Article 6 paragraph (1), including:

- a. registration of Dependent Rights;
- b. transfer of Dependent Rights;
- c. change of creditor name;
- d. elimination of Dependent Rights; and
- e. Data Correction

The HT-el registration procedure is regulated in Articles 9 to 13 of the HT-el Ministerial Regulation, that the Creditor submits an application for HT-el registration through the HT-el System in the form of an electronic document. PPAT submits deeds and documents of completeness of requirements, the submission of these documents is complemented by a Statement Letter regarding accountability for the validity and correctness of the submitted Electronic Document data. Then applications for HT-el registration services that have been received by the HT-el System are given proof of application registration issued by the system, HT-el registration services are charged in accordance with the provisions of laws and regulations regarding Non-Tax State Revenue that apply to the Ministry of ATR/BPN. Furthermore, the application is processed after the application data and PNPB fee are confirmed by the HT-el System. Before the results of the HT-el Service are issued, the Head of the Land Office or the designated official must check the suitability of the requirements and concepts of the HT-el Certificate carried out through the HT-el System. The HT-el service mechanism is regulated in Article 9 of the HT-el Ministerial Regulation, namely:

1. Creditors apply for HT-el Services through the HT-el System provided by the Ministry of ATR/BPN.
2. In the event that the application for HT-el Services as intended in paragraph (1) is in the form of registration of Dependent Rights or the transfer of Dependent Rights, the completeness of the requirements documents shall be submitted by PPAT.
3. In the event of an application for HT-el Services as intended in paragraph (1) in the form of a change in the name of the Creditor, the elimination of the Dependent Rights, or the correction of data, the completeness of the requirements documents shall be submitted by the Creditor.
4. The requirements for the HT-el Service application are in accordance with the provisions of laws and regulations and submitted in the form of an Electronic Document.

Furthermore, Article 10 of the Ministerial Regulation of HT-el stipulates that PPAT submits deeds and completeness documents through the electronic system of partners that is integrated with the HT-el system, the submission of these documents is complemented by a Statement Letter regarding the accountability of the validity and correctness of Electronic Documents submitted by PPAT.

The registration process for Electronic Dependent Rights (HT-el) is carried out as follows: ⁷

⁷ Interview with Bapak Hafizh Prasetya Muslim, Sarjana Hukum, Magister Kenotariatan, Staff Bisnis Legal Kredit Bank Jabar Pusat Bandung, August 28, 2024.

- (a) PPAT will fill out and upload documents on htel.atrbpn.go.id website, this is as stipulated in Article 10 of the Ministerial Regulation HT-el, these documents include:
1. Credit Agreement that has been signed by the parties;
 2. The Act of Granting Dependent Rights that has been handled by the parties;
 3. Identity Card of the Collateral owner if an individual. If the Collateral is a joint property, a spouse's Identity Card is required;
 4. Deed of Establishment, Deed of Amendment of the Last Articles of Association and Deed of Change of Management if the owner of the Collateral belongs to the company;
 5. Identity Card of the authorized management in accordance with the articles of association to represent the company if the owner of the land/building is a company;
 6. Land certificate to be charged with Dependent Rights;
 7. Witness Identity Card listed on the Deed of Grant of Dependent Rights;
 8. Photocopy of Land and Building Tax for the last year;
 9. Deed Introduction Letter (SPA) obtained after PPAT Uploads the Deed of Grant of Dependent Rights in the Electronic Dependent Rights System (HTEL);
 10. Statement of Accountability for the Validity and Correctness of Electronic Document Data contained in Attachment 12 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Dependent Rights Services.
- (b) After PPAT uploads the document, the bank will enter the htel.atrbpn.go.id page to upload the required documents, this is as stipulated in Article 9 paragraph (1) of the HT-el Ministerial Regulation.
- (c) Furthermore, the bank will get a Deposit Order (SPS) which contains an order for the payment of the registration fee for the Deed of Grant of Dependent Rights with a period of no later than 7 days from the time the SPS is issued.
- (d) After the registration fee for the Deed of Grant of Dependent Rights is paid, then the local Land Office will check the completeness and requirements of the documents. If it turns out that the documents do not meet the completeness and requirements, the Land Office will provide an email notification to the bank and provide time for the Bank and/or PPAT to complete the requirements no later than 5 days after the submission of the documents to be checked by BPN.
- (e) After the requirements and complete documents and documents have been checked by the local BPN, the Bank will get a sheet of granting the right of dependency in the form of a Certificate of Dependent Rights and a Sticker of Dependent Rights which is then attached to the land and/or building certificate yang dibebankan Hak Tanggungan.

Before the results of the electronic Dependent Rights service are issued, the head of the Land Office or the designated official must check that the requirements and concepts of the electronic Certificate of Dependent Rights are appropriate. If there are documents that are incomplete or not in accordance with the information that has been provided to the creditor or the Land Deed Making Officer (PPAT), then the party is asked to complete it within a maximum of 5 (five) days from the time the service application is received through the electronic Dependent Rights system. If the

deadline expires and the documents are incomplete, then the application is considered void.⁸ The results of electronic dependent rights services are the same as conventional dependent rights, namely the certificate of right of dependency and the land book, as well as the record on the land right certificate and the land book. The difference is that the results are published automatically using an electronic system, so it is also in the form of an electronic document. Another result of electronic dependent rights services is the record of dependent rights, which do not need to be typed or written like conventional dependent rights. This record was printed by 2 (two) parties, namely creditors and the Land Office. The creditor prints the record of the right of dependency on sticker paper and attaches it to the land right certificate with the provisions as stipulated in the Ministerial Regulation of ATR/KBPN 2/2020. Meanwhile, the Land Office prints a record of the right of dependency and pastes it in the land book of land rights to the land.⁹

One of the purposes of the promulgation of the Basic Agrarian Law (UUPA) is to provide legal certainty for all people regarding their land rights, this is as mentioned in the General Explanation of the UUPA which states that the purpose of the UUPA is:

- a. Laying the foundations for the drafting of national agrarian laws, which will be a tool to bring prosperity, happiness and justice to the State and the people, especially the peasants, in the framework of a just and prosperous society.
- b. Lay the foundations for unity and moderation in the land law.
- c. Lay the foundations to provide legal certainty on land rights for the people as a whole.

Legal certainty as one of the objectives of land registration can be seen in Article 3 of Government Regulation Number 24 of 1997, namely:

- a. To provide legal certainty and protection to the holder of rights to a plot of land, flats and other registered rights so that they can easily prove themselves as the holder of the rights concerned;
- b. To provide information to interested parties including the Government so that they can easily obtain the data needed to carry out legal acts regarding land plots and units of flats that have been registered;
- c. For the implementation of an orderly implementation of land administration.

The transfer of ownership rights to land is one of the provisions of the UUPA. Article 26 of the UUPA stipulates that every act in question of transferring ownership rights to land is regulated by government regulations. In this regard, Article 19 juncto Article 37 paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration which states that the transfer of land rights through sale and purchase, exchange, grants, problems within the company and other legal acts of transfer of rights, except that the transfer of rights through auction can only be deified if it is proven by a deed made by the authorized Land Deed Making Officer (PPAT) in accordance with the provisions of laws and regulations that pretend. The only guarantee institution for land has the

⁸ Khalisa Nabila Winanti and Noor Saptanti, "Legal Protection of Creditors in the Implementation of Electronic Registration of Dependent Rights," *Democracy: Journal of Legal, Social and Political Science*, Vol. 1, No. 2, April 2024, p. 209.

⁹ I Made Manusesu Yasyasi Wimatsaritwa, "The Effectiveness of the Implementation of the Registration of the Encumbrance of Dependent Rights on Land Rights Before and After the Use of the Digital System (Study in the West Lombok Regency Area)," *Jurnal Cahaya Mandalika*, Vol. 4, No. 3, 2023, p. 1779.

ability to provide strong legal certainty and protect both the guarantor and the guarantor is the Dependent Right. The HT-el registration procedure is regulated in Articles 9 to 13 of the HT-el Ministerial Regulation, that the Creditor submits an application for HT-el registration through the HT-el System in the form of an electronic document. PPAT submits deeds and documents of completeness of requirements, the submission of these documents is complemented by a Statement Letter regarding accountability for the validity and correctness of the submitted Electronic Document data. Then applications for HT-el registration services that have been received by the HT-el System are given proof of application registration issued by the system, HT-el registration services are charged in accordance with the provisions of laws and regulations regarding Non-Tax State Revenue that apply to the Ministry of ATR/BPN. Furthermore, the application is processed after the application data and PNPB fee are confirmed by the HT-el System. Before the results of the HT-el Service are issued, the Head of the Land Office or the designated official must check the suitability of the requirements and concepts of the HT-el Certificate carried out through the HT-el System.

The Bank as a creditor is obliged to register HT-el because without the application for HT-el registration services made by the Bank in the HT-el System, the Dependent Rights concerned will not be born. According to the Bandung City Land Office, the Bank as a creditor will receive an e-mail of the PNPB Deposit Order after applying for electronic Dependent Rights registration services and creating an Online Dependent Rights file to the Electronic Dependent Rights System that has been provided by the Ministry of ATR/BPN. The bank will not receive an email of the PNPB Deposit Order, with the non-payment of the SPS PNPB the electronic certificate of dependency rights in question will not be issued. This means that the Dependent Rights will not exist.¹⁰

The position of PPAT and the Bank as creditors in the HT-el System have the same position, namely as partners, but the obligation to register HT-el is on the Bank, as stipulated in Article 9 paragraph (1) of the HT-el Ministerial Regulation that, creditors submit an application for HT-el Services through the HT-el System. So after the enactment of the Ministerial Regulation on HT-el Bank, as a creditor cannot authorize PPAT to apply for HT-el registration. The HT-el Ministerial Regulation has regulated the electronic registration process for Dependent Rights, so in practice the parties involved should register in accordance with the HT-el Ministerial Regulation. Creating legal certainty is the main purpose of the registration of dependent rights, after the enactment of the Ministerial Regulation HT-el the legal certainty of the Tangungan Rights is evidenced by the issuance of the HT-el Certificate, the HT-el Certificate has the same legal certainty as the conventional Certificate of Dependent Rights which is recognized as valid evidence in court as stipulated in Article 5 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), that electronic documents and/or their printed results are valid legal evidence. This means that HT-el Certificates can provide legal certainty to their holders. However, problems that occur in practice in the field often occur where the Bank as a creditor does not or is late in registering HT-el to the System that has been provided by the Ministry of ATR/BPN which results in the non-issuance of HT-

¹⁰ Interview with the Staff of the Determination of Rights and Registration Section of the Bandung City Land Office, August 30, 2024.

el certificates. This will certainly have an effect in the event of bad credit by the debtor, the object of the Dependent Rights that should have been registered and can be executed is hampered by the implementation of it due to the lack of legal certainty for the dependent rights.

Credit agreements made in authentic deeds have impeccable evidentiary power. but in the process of imposing the right of dependency, the credit agreement in the form of an authentic deed is not enough to provide protection to creditors, because for the credit agreement as the principal agreement, it is necessary to make APHT as an accessory agreement that is always bound to the principal agreement. The APHT made before the PPAT has also not provided perfect legal protection to creditors if the APHT has not been registered with the Land Office. The granting of dependent rights must be registered with the Land Office, as stipulated in Article 13 paragraph (1) of the UUHT. This is a form of application of the principle of publicity in Indonesian agrarian law which is an absolute requirement for the birth of dependent rights. The registration of APHT is also a sign of the start of the second stage of the imposition of dependent rights, namely the registration of the dependent rights. Article 15 paragraph (1) of the HT-el Ministerial Regulation also states that one of the results of HT-el Services is the issuance of HT-el Certificates. The non-registration of HT-el by the Bank as a creditor causes the publicity principle of the Right of Dependency not being fulfilled, so that there is no legal certainty for the Right of Dependency due to the non-issuance of the HT-el Certificate. The non-issuance of the HT-el Certificate causes the Bank as a creditor to lose its right to be prioritized in the repayment of its receivables among other creditors from the proceeds of the sale of the debtor's property (*droit de preference*).

The non-registration of the Right of Dependency is very detrimental to the creditor because as stipulated in Article 6 of the UUHT states that, if the debtor breaks a promise or defaults, the holder of the first Right of Dependency has the right to sell the object of the Right of Dependency on his own power through a public auction and take the repayment of his receivables from the proceeds of the sale, as described in Article 6 of the UUHT can be carried out if the Right of Dependency has been which in this case becomes the obligation of the creditor to register to the HT-el System. Legal protection for creditors through the HT-el Certificate is the same as the conventional Certificate of Dependent Rights. This is because both have the same power, namely the executory power as stipulated in Article 14 paragraph (3) of the UUHT which states that the Certificate of Dependent's Rights has the same executory power as a court decision that has obtained permanent legal force. Executory power in the right of dependency becomes protection when the debtor defaults, which is the basis for the execution of creditors over the right of dependency through a public auction. The executory power of the Certificate of Dependents is found in the title "FOR THE SAKE OF JUSTICE BASED ON THE ONE GOD" as mentioned in the General Explanation number 9 of the UUHT.

Banks as creditors who do not apply for HT-el registration to the HT-el System are only in the position of concurrent creditors who have individual rights, individual rights are rights arising from general guarantees or guarantees born from the law as stipulated in Article 1131 of the Civil Code. Based on Article 1131 of the Civil Code, as a general guarantee holder, the Bank as a creditor can submit an application for execution to the court through an ordinary lawsuit in the event of bad credit. Legal remedies that can be taken by creditors based on Article 1131 of the Civil Code through bail confiscation demands do not provide legal certainty for creditors, because the process of examining the main lawsuit until obtaining a verdict still takes a long time. In addition, if the court

decision does not grant the creditor's lawsuit, then the confiscation of the collateral that has been requested by the creditor as collateral for the repayment of the receivables is lost.

2. Readiness of Banks as Creditors in Electronic Registration of Deed of Grant of Dependents Without Authorization to PPAT

Since the enactment of the Ministerial Regulation on HT-el, the registration of Dependent Rights conventionally is no longer valid. To be able to use this Electronic Dependent Rights system, users must be registered first, registered users must be qualified as users of the HT-el System with rights and obligations regulated by the Ministry of ATR/BPN. Registered Users have the right to use the HT-el System with all its supporting features and must comply with the terms and conditions stipulated in the HT-el System. To use the HT-el system, users must be registered with the following conditions:¹¹

1. Service users consist of individuals/legal entities as creditors and State Civil Apparatus of the Ministry of ATR/BPN who are tasked with serving Dependent Rights/Dependent Rights;
2. For individuals/legal entities as referred to above, they must be registered users of the Dependent Rights System, by meeting the following requirements:
 - a. have an electronic domicile;
 - b. SK registered with the Financial Services Authority/OJK;
 - c. Statement of fulfillment of requirements and criteria as well as approval of the terms as a Registered User; and other conditions determined by the Ministry of ATR/BPN.
3. The Ministry of ATR/BPN verifies the registration and has the right to reject the registration.

Article 7 of the HT-el Regulation regulates the provisions for the use of the HT-el system, as follows:

1. Creditors can be in the form of individuals/legal entities as regulated in laws and regulations.
2. PPAT or other parties as determined by the Ministry of ATR/BPN.

It is stipulated in Article 22 of the HT-el Ministerial Regulation that registered users are prohibited:

- a. Forging identities;
- b. Providing usernames and/or passwords to other parties that cause open access to information;
- c. Forge documents and/or provide incorrect information that causes errors in HT-el Server results;
- d. Other acts, as determined by the HT-el System operator.

Regulated in Technical Instruction Number 2/Juknis400.HR.02/IV/2020 concerning Electronically Integrated Dependent Rights Services, creditors who are legal entities can stand alone or have branches as operational offices that serve credit. The Bank as a creditor of a legal entity must be registered and verified in the Financial Services Work System with the following procedures:

- a. Creditors of legal entities that have branches register a central admin account, branch office admin account, Supervisor/Supervisor account and operator account.

¹¹ Frans Meyer Simatupang, "The Mechanism for the Registration of Electronic Dependent Rights and Its Legal Consequences," *Recital Review*, Vol. 4, No. 1, 2022, p. 71.

- b. Independent Legal Entity Creditors register central admin accounts, Supervisor/Supervisor accounts and operator accounts.

Since the enactment of the HT-el Ministerial Regulation, creditors have processed HT-el registration through electronic services without visiting the Land Office. The application for HT-el registration becomes the obligation of the creditor; if the creditor does not register HT-el, the consequence is that the Dependent Rights will not be born, so that the guarantees charged on land rights do not get the privileges granted by the HT Law. Article 9 of the HT-el Regulation stipulates that, Creditors as registered users submit an application for HT-el Services through the HT-el System provided by the Ministry of ATR/BPN and for the completeness of the requirements submitted by PPAT, the requirements for the HT-el Service application in accordance with the provisions of laws and regulations are submitted in the form of an Electronic Document.

Proof that PPAT has submitted APHT and other required documents in the HT-el System is the issuance of SPA in the HT-el System, SPA has 2 (two) purposes, namely:¹²

1. As proof that APHT has been submitted by PPAT to the System.
2. To be followed up by the creditor; register the Right of Dependency.

Based on an interview with the staff of Bank Y Kredit Legal Business Bandung City, the Bank as a creditor can apply for electronic Dependent Rights registration after PPAT uploads documents on the htel.atrbpn.go.id website, these documents include:

- a. Credit Agreement that has been signed by the parties;
- b. Deed of Grant of Dependent Rights that has been handled by the parties;
- c. Identity Card of the Collateral owner if an individual. If the Collateral is a joint property, a spouse's Identity Card is required;
- d. Deed of Establishment, Deed of Amendment of the Last Articles of Association and Deed of Change of Management if the owner of the Collateral belongs to the company;
- e. Identity Card of the authorized management in accordance with the articles of association to represent the company if the owner of the land/building is the company;
- f. Land certificate to be charged with Dependent Rights;
- g. Witness Identity Card listed on the Deed of Grant of Dependent Rights;
- h. Photocopy of the last year's Land and Building Tax;
- i. Statement of Accountability for the Validity and Correctness of Electronic Document Data contained in Attachment 12 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Dependent Rights Services.

Based on an interview with a Notary/PPAT X in Cirebon Regency, the period of time required for the registration process of Dependent Rights depends on the completeness of the documents submitted in the HT-el system. Ideally, the period of the registration process for dependent rights with complete document conditions takes about 1-2 days after uploading to be checked by the local Land Office. If there is a discrepancy in the document, the bank and/or PPAT is given time to revise the document with a maximum period of 5 days from the entry of the document in the HT-el system.

¹² Interview with the Staff of the Rights Determination and Registration Section of the National Land Agency of the City of Bandung, August 30, 2024.

In practice, the Bank as a creditor also experiences obstacles that are often faced in the HT-el registration process, which are as follows:

1. *The website* htel.atrbpn.go.id experience *server downs* such as OTP Code Notifications do not enter the bank user's email so they cannot *log in* or other problems with SPS not entering to pay the registration fee for the Dependent Rights. Bank bjb will coordinate with the local BPN or through the BPN *call center* number to overcome this.
2. There are several policy differences at each local Land Office related to the documents uploaded to the Dependent Rights System. For example, the Cilegon City BPN requires the *uploading* of a Statement of Accountability for the Validity and Correctness of Electronic Document Data, but for the South Tangerang City Land Office, it does not require these documents. Bank bjb will follow the policy at each local Land Office.

Another obstacle that often occurs in HT-el registration is the human resource (HR) factor from the Bank as a creditor who has too many main tasks and functions that must be performed, with the enactment of the HT-el Ministerial Regulation, adding a new task, namely applying for HT-el registration services, is often delayed, so that the issuance of HT-el Certificates is hampered. Unlike the conventional Dependent Rights where PPAT can be authorized by the Creditor to register the Dependent Right, PPAT will immediately register the relevant Dependent Rights to the land office after the parties sign the APHT. The implementation of the HT-el registration process as stipulated in the Ministerial Regulation of HT-el requires an aspect of readiness from the Bank as a creditor. The electronic registration process of the Right of Dependency is very important for the holder of the Right of Dependency because the registration process will guarantee legal certainty for the grantor and recipient of the Right of Dependency. One of the important things in the HT-el registration process is the readiness of the Bank as a creditor because both in submitting registration applications, paying PNBPN, and receiving proceeds are carried out through the HT-el System.

As the authorized party in carrying out the registration process for HT-el services in the HT-el System as stipulated in article 7 of the Ministerial Regulation of HT-el, banking institutions are required to be registered and verified as creditors of legal entities in the Work System as described in Technical Instruction Number 2/Juknis400.HR.02/IV/2020 concerning Electronically Integrated Dependent Rights Services. Article 22 letter b of the HT-el Ministerial Regulation states that registered users are prohibited from providing usernames and/or passwords to other parties which causes open access to information. This means that the Creditor is prohibited from providing a Bank account to PPAT to operationalize the registration process as a party representing the creditor, and vice versa PPAT is prohibited from providing a PPAT account to any party to access the registration process. The sanction of violating the Dependent Rights holder is regulated in Article 23 paragraph (1) in the form of temporary or permanent closure of access rights, cancellation of HT-el Certificates and/or reporting to law enforcement officials.

Based on the research that has been conducted, the delay in HT-el registration caused by human resources (HR) of banking institutions shows the unpreparedness of banks as creditors in carrying out the HT-el registration process, because there are additional tasks related to HT-el registration without additional personnel. The readiness of creditors in the HT-el registration process is very important, considering that the results of the HT-el registration process provide

legal certainty guarantees to creditors as recipients of Dependent Rights by registering Dependent Rights to the HT-el System. Without the registration of HT-el by the creditor, the HT-el Certificate will not be issued, which means that the Dependent Rights in question are not born, the non-birth of this Dependent Rights means that there is no Legal Certainty for the creditors of the Dependent Rights holder. The delay in HT-el registration caused by the bank as a creditor shows that the bank in carrying out its functions and business activities does not apply the principle of prudence as stipulated in Article 2 and Article 29 paragraph (2) of the Banking Law by not applying for HT-el registration to the HT-el System, so that if the debtor is injured in promises or bad credit occurs, the Bank cannot execute the object of the Right of Dependency because the Right of Dependency is not issued.

The enactment of the HT-el Regulation makes creditors no longer able to authorize PPAT in HT-el Registration as stipulated in Article 22 letter b of the HT-el Regulation, the bank as a creditor must increase human resources who are ready to register HT-el, and there must be additional human resources from the Bank as a creditor who are specifically to carry out HT-el registration because currently the human resources in charge of registering HT-el are very important in the HT-el registration process which will facilitate the execution process in the event of bad credit made by the debtor, so that there are no more Dependent Rights that are late registered or not registered at all in the electronic system.

D. Conclusion of Recommendations

After describing the research entitled "Electronic Registration of Deed of Grant of Dependent Rights Without Granting Power of Attorney to PPAT by Creditors Associated with the Principle of Legal Certainty", it is necessary to formulate several conclusions drawn based on the research. The conclusion is that the implementation of electronic registration of the deed of grant of dependents (APHT) carried out by creditors in practice is often hampered where the Bank as a creditor is often late or does not register HT-el into the System that has been provided by the Ministry of ATR/BPN which results in the non-issuance of HT-el certificates. The non-registration of HT-el by the Bank as a creditor is caused by the human resource factor of the Bank as a creditor who is not or is not ready to register HT-el because there is an addition of main duties and functions without additional personnel to register HT-el, causing the Dependent Rights concerned to not be born or not valid due to the non-issuance of the HT-el Certificate, so that there is no legal certainty for the Dependent Rights to be able to execute the object of the Dependent Rights in the event of bad credit made by the debtor.

The recommendations that the researcher needs to convey as a conclusion in this study, namely that the Land Office or PPAT should socialize HT-el registration as stipulated in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Dependent Rights Services, so that the results of the Dependent Rights service can guarantee legal certainty for creditors to execute the object of the Dependent Rights. In addition, banking institutions as creditors should prepare additional human resources to register HT-el.

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