

ELECTRONIC REGISTRATION OF SECOND RANK MORTGAGE RIGHTS ON COLLATERAL OBJECTS WITH ADMINISTRATIVE VILLAGE CHANGES

Lisna Mariatun^{1*}, Hadin Muhjad²

Master of Notary, University of Lambung Mangkurat, Banjarmasin, Indonesia^{1,2}
lisnamariatun9@gmail.com

Abstract

The purpose of this research is to analyze the registration of Second-Ranking Electronic Mortgage (Hak Tanggungan) over collateral objects that have undergone an administrative change in their urban village (kelurahan) designation, with a case study in Selat Subdistrict, Kapuas Regency. The type of research used is normative legal research, which involves inventorying and analyzing statutory regulations. The nature of the research is prescriptive-analytical, aimed at finding legal solutions to existing issues from the perspective of the researcher. The first research finding reveals that the registration of a second-ranking electronic mortgage over a collateral object that has experienced a change in administrative location (from Selat Tengah to Selat Barat) cannot be carried out if the first-ranking mortgage has already been registered. This is because an administrative update to the collateral object's location must first be conducted. In the Computerized Land Activities System (KKP), a collateral object already encumbered by a first-ranking mortgage is registered as an active mortgage record until that activity is concluded through a mortgage release (roya). Therefore, to update the location from Selat Tengah to Selat Barat, the existing mortgage record must be closed first. The second finding shows that, as an effort to maintain their position as the holder of the first-ranking mortgage, the creditor may based on the Mortgage Law (UUHT) ssue a Power of Attorney to Grant Mortgage (SKMHT) in accordance with Article 15 of the UUHT, followed by the release of the first-ranking mortgage based on Article 18 paragraph (1) letter b, which allows the mortgage to be released by the mortgage holder. Afterward, the administrative location update of the collateral object from Selat Tengah to Selat Barat can be processed. Once the data has been validated, the creditor can then execute a new Deed of Granting Mortgage (APHT) to re-register the first-ranking mortgage based on the SKMHT.

Keywords : Mortgage, Electronic, Administrative location update

INTRODUCTION

Pancasila, as Indonesia's state foundation, embodies five fundamental principles that guide every aspect of national and state life. These five principles form an ideological framework that promotes the creation of just, equitable, and sustainable national development, encompassing physical, social, and economic aspects. Economic development is a vital element in efforts to improve people's welfare and create a balanced and harmonious social order.

Increasing national economic activity requires substantial financial support. Both the government and the community, as economic actors, need a significant amount of funds. In this context, financial institutions, especially banks, play an important role as intermediaries between capital owners and those in need of financing. Therefore, the banking sector directly influences the success of national development (Harun, 2010).

As a financial institution, a bank's primary function is to collect and distribute funds in the form of deposits and loans. In providing loans, banks face various risks, such as default risk, market instability, and legal risk due to juridical weaknesses. Therefore, the principle of prudence in loan disbursement is crucial. One way this is applied is through a creditworthiness analysis approach based on the 5C principles (Character, Capacity, Capital, Condition, and Collateral).

To mitigate default risk, banks generally require collateral for loan provision, either personal guarantee or material guarantee. One reliable form of material guarantee in financing practice is Mortgage Rights (Hak Tanggungan) over land. This institution has been regulated in Article 51 of the Basic Agrarian Law (UUPA) as a replacement for Hypotheek and Credietverband, and is more specifically regulated in Law No. 4 of 1996 concerning Mortgage Rights (UUHT), which provides legal force and certainty for creditors.

Mortgage Rights have two main subjects: the giver and the recipient of the right. Typically, the debtor acts as the giver, although in some cases, it can also be a third party. Land rights that can be used as objects of Mortgage Rights include Freehold Title, Right to Cultivate, Right to Build, and Right of Use over state land that has been registered and can be transferred. The process of its formation involves a Deed of Granting Mortgage Rights (APHT) followed by registration at the Land Office (Fuady, 1996).

Along with the development of public service digitalization, land service systems are shifting towards an electronic system. Through Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Regulation No. 5 of 2020, the HT-el System was introduced. This is an integrated electronic system for Mortgage Rights registration services. This system is part of an effort towards administrative efficiency and e-office-based services, replacing the previous manual system.

In practice, a single land object can be encumbered with more than one Mortgage Right. If this occurs, the rank of each right is determined by its registration date. In the manual system, administrative changes such as regional expansion were not a significant obstacle, as data updates could be done manually. However, the HT-el system does not automatically accommodate administrative updates, which can create administrative barriers (Usman, 2009).

One real case occurred in Selat District, Kapuas Regency. A creditor from Bank BRX received a request for an additional loan ceiling from a debtor whose land was already encumbered with a First Rank Mortgage Right. When attempting to register a Second Rank Mortgage Right, it was found that the system could not proceed due to a discrepancy in the administrative location of the land, which had changed due to village expansion.

These administrative location changes caused the data in the system to become invalid. Data updates can only be performed through the KKP System application. However, because the land object is still tied to active activities in the HT-el system, data updates cannot be processed unless the previous Mortgage Right activity is closed through Roya, even though the

guaranteed credit facility has not been repaid. This illustrates a lack of synchronization between the HT-el and KKP systems in handling such administrative cases (Adjie, 2000).

Technical obstacles in the integration of the HT-el system with KKP hinder the realization of additional credit requested by the debtor. This problem highlights the importance of improving electronic service systems in the land sector to be more adaptive to administrative dynamics in the field. Therefore, this research will delve further into the procedures for Electronic Registration of Second Rank Mortgage Rights on Collateral Objects that Undergo Administrative Territorial Changes, with a case study focus in Selat District, Kapuas Regency.

The process of updating data regarding the location of collateral objects through the KKP system cannot be done directly. This is because the collateral object is still recorded in an ongoing activity in the HT-el system, specifically related to Mortgage Rights registration. Currently, the KKP system does not have the capability to facilitate the simultaneous execution of land activities between the general KKP system and HT-el-based services.

Furthermore, it is explained that because the Mortgage Right activity on the collateral object is still active and recorded in the KKP system, as long as the debt guaranteed by that Mortgage Right has not been repaid, the object remains recorded as part of the Mortgage Right process in the system. The KKP system also does not yet provide features that allow administrative updates of the collateral object's location to be performed simultaneously with other activities, such as Mortgage Rights.

If an administrative data update regarding the location of the collateral object is still desired, the only way is to first close the Mortgage Right activity through the Roya process. However, this step is certainly not simple and requires serious consideration from Bank BRX, given that the credit facility guaranteed by the land is still ongoing and has not been repaid.

As long as the administrative data update on the location of the collateral object is not carried out, the status of the object's data in the system is considered invalid. Consequently, the checking process for the purpose of creating an APHT for the registration of a Second Rank Mortgage Right cannot be continued. This undoubtedly becomes a significant obstacle in the realization of additional credit facilities for the debtor.

Based on these conditions, the author believes that a deeper investigation is necessary into the mechanism of Electronic Registration of Second Rank Mortgage Rights on Collateral Objects that Undergo Administrative Village Territorial Changes, with a case study focus in Selat District, Kapuas Regency.

RESEARCH METHODS

This research uses a normative legal method, also known as library legal research. Its purpose is to identify relevant legal rules, legal principles, and doctrines to address the research's focal problems. Normative research emphasizes literature studies of written legal sources as the basis for forming new legal arguments or conceptual updates. Additionally, this research is prescriptive, aiming to provide concrete steps as solutions to the legal issues examined, specifically regarding the implementation of Electronic Second Rank Mortgage Rights registration on collateral objects that have undergone administrative changes.

The researcher uses two main approaches in the study: the statute approach and the case study approach. The statute approach is used to examine the hierarchical structure, principles, and interconnections between regulations that form the basis for mortgage rights registration. This approach views law as a closed, complete, and logical normative system. Meanwhile, the case study is conducted to specifically explore actual events in Selat District, Kapuas Regency, which is the focus of the research, namely the failure of the second rank mortgage rights registration process due to inconsistent collateral object data resulting from administrative territorial changes.

Three types of legal materials are used in this research. First, primary legal materials, which are binding laws and regulations, including the 1945 Constitution, Civil Code, UUPA 1960, Mortgage Rights Law 1996, and other implementing regulations such as Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Regulation No. 5 of 2020. Second, secondary legal materials that support the analysis of primary materials, such as legal textbooks, scholarly journals, and articles from reputable sources. Third, tertiary legal materials serve as supplements to explain legal terms or concepts, such as legal dictionaries and general dictionaries.

Legal materials are collected through library research using documentation methods and a card system for recording. The data is classified according to its type and then analyzed qualitatively. Information obtained from one source is developed through the snowballing method to obtain additional relevant references. The analysis process is carried out by examining the interconnections between laws and regulations through the statute approach, with the aim of answering legal issues and formulating norm-based solutions. This research is oriented towards the accuracy of legal arguments and their relevance to the practice of electronic mortgage rights registration in the field.

RESULT AND DISCUSSION

A. Electronic Second Rank Mortgage Rights Registration On Collateral Objects With Administrative Village Lo-Cation Changes And Their First Rank Mortgage Rights

1. Mortgage Rights Registration Based on Law Number 4 of 1996 Concerning Mortgage Rights

In the banking world, providing credit facilities to debtors is a primary activity, but it also carries risks, especially default risk. To anticipate this, banks usually require collateral as protection against potential default. One common form of collateral given is land, as an object of immovable collateral that has high and stable economic value. With such collateral, the bank has a legal basis to demand repayment of the loan if the debtor defaults.

Before the enactment of the Mortgage Rights Law (UUHT), the land collateral system was known through the institutions of hypotheek and credietverband. However, since the enactment of Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA) and subsequently followed by Law Number 4 of 1996 concerning Mortgage Rights, land collateral has been systematically arranged in a separate regulation. With the presence of the UUHT, a comprehensive regulation regarding material collateral over land was born, covering land rights and objects that form a single unit with the land.

Mortgage Rights are an accessory guarantee, meaning they follow the existence of the principal agreement, which is a credit agreement or debt-receivable agreement. In its implementation, credit agreements can be made in the form of authentic deeds or underhand deeds, depending on the need for proof and legal provisions. According to Munir Fuady, written contracts are made to provide legal certainty, ease of proof, and feasibility in complex agreements (Fuady, 2001).

According to Article 1 paragraph 1 of the UUHT, Mortgage Rights are a security right over land that grants a priority position to the creditor in the repayment of a certain debt. Important elements in Mortgage Rights include: a security right for a certain debt, the object being a land right (with or without other objects that are an integral part), and a preferential position for the creditor. Thus, Mortgage Rights provide maximum legal protection for creditors in the event of default by the debtor.

In Mortgage Rights, two main parties are known: the giver and the holder of the Mortgage Rights. The giver can be an individual or a legal entity that has authority over the land, while the holder is the creditor. As for the objects of Mortgage Rights, they

include Land Rights such as Freehold Titles (SHM), Right to Cultivate (HGU), Right to Build (HGB), and Right of Use over state land that can be transferred and must be registered. Right of Use can also be used as collateral provided it meets the applicable administrative and legal requirements (Sjahdeini, 1999).

For a Mortgage Right to be legally valid and enforceable, its formation must meet two important stages: the creation of a Deed of Granting Mortgage Rights (APHT) through a Land Deed Official (PPAT), and the registration of the APHT at the Land Office. In preparing the APHT, there are a number of explicit provisions regulated in Article 11 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT), where the deed must contain several key pieces of information, such as the complete identity of the giver and recipient of the right, their domicile, specific designation of the guaranteed debt, the value of the mortgage, and a description of the encumbered land object. If one of the parties is domiciled outside the territory of Indonesia, a chosen domicile within the country must be stated. If not stated, the PPAT office where the deed was made is considered the valid domicile.

In addition to including these mandatory elements, the APHT can also contain additional clauses in the form of special promises from the debtor that limit their authority over the collateral object during the loan period. For example, restrictions on changing the physical form, selling, leasing, or releasing the Mortgage Right from the object without the written consent of the creditor. The purpose of this provision is to provide strong legal assurance for the Mortgage Rights holder to be able to execute the collateral object if the debtor fails to fulfill their obligations.

After the APHT is completed, the next stage is the registration process at the Land Office. According to Article 13 of the UUHT, the PPAT is obliged to submit the APHT along with other supporting documents no later than seven working days after the signing of the deed. Registration is done by recording the Mortgage Rights data into the land book of the Land Office, and copying it into the land title certificate. The legal effective date of the Mortgage Right is determined based on the seventh day after all registration documents are received completely, or if it falls on a holiday, then it is calculated on the next working day.

As a complement, based on the provisions of Article 114 of BPN Head Regulation No. 3 of 1997 and Perkaban No. 5 of 1996, the PPAT must submit various documents required for registration. These documents include: a PPAT cover letter, an application letter from the Mortgage Rights holder, photocopies of the identity of the giver and holder of the right, the original land title certificate, the second sheet of the APHT, a copy of the APHT that has been initialed for ratification, and proof of payment of registration fees. With the fulfillment of these administrative requirements, the Land Office will issue a Mortgage Rights certificate that includes the phrase "For Justice Based on the One Godhead," which affirms the executorial nature of the guarantee, meaning it can be executed without requiring a court decision in the event of debtor default.

For a Mortgage Right to be valid and provide legal standing for the creditor, two important stages must be carried out: the creation of a Deed of Granting Mortgage Rights (APHT) by the PPAT, and its registration at the Land Office. The PPAT as a public official has the authority to make authentic deeds related to legal actions on land. In the process of granting Mortgage Rights, if the owner of the object cannot be present, they can appoint a proxy through a Power of Attorney to Grant Mortgage Rights (SKMHT) which must be made in the form of an authentic deed.

The content of the APHT must include essential elements such as the identity of the parties, domicile, details of the guaranteed debt, the value of the mortgage, and a description of the collateral object. In addition, the APHT can contain additional clauses

such as limitations on the debtor's rights over the collateral object, for example, a prohibition on selling, leasing, or changing the form of the object without the creditor's consent. This aims to provide control for the Mortgage Rights holder so as not to be disadvantaged before the debt is repaid.

After the APHT is made, the process continues with registration at the Land Office where the collateral object is located. Based on Article 13 of the UUHT, the PPAT is obliged to send the APHT and supporting documents no later than 7 (seven) working days after the signing of the deed. This registration results in a Mortgage Rights land book and recording on the land title certificate. The effective date of the Mortgage Right is the date of the land book, which is set seven days after all documents are received completely (UU, 1996).

For the manual registration process, the PPAT must attach complete documents such as the application letter, identity of the parties, original land certificate, original and copy of APHT, and proof of payment of fees. After this process is complete, the Land Office will issue a Mortgage Rights certificate containing the phrase "For Justice Based on the One Godhead." This phrase indicates that the certificate has executorial force, so the creditor can execute the collateral object through public auction without having to go through a court process. The creditor does not physically control the land, but has the right to sell the object and take the proceeds as repayment of the debtor's debt (Salim HS, 2017).

2. Electronic Integrated Mortgage Rights Registration Based on Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation Number 5 of 2020 Concerning Electronically Integrated Mortgage Rights Services

Before the enactment of the electronic system, Mortgage Rights registration was carried out manually at the Land Office based on the provisions of the UUHT and its implementing regulations, such as Perkaban No. 5 of 1996 jo. Perkaban No. 3 of 1997. However, to realize more transparent, faster, and efficient public services, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) established a digitalization policy for land services, including Mortgage Rights registration. This was motivated by the development of information technology, public demands, and the need for bureaucratic reform. Therefore, Minister of ATR/BPN Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services (abbreviated as Perkaban 5/2020) was issued, replacing Perkaban 9/2019, and strengthened with Technical Guidelines for HT-el No. 2 of 2020.

Electronic Mortgage Rights Services (HT-el) in Perkaban 5/2020 cover several important aspects, namely: (1) management of the HT-el system as an integrated information technology system; (2) its service mechanism; (3) regulations on service cancellation/rejection; and (4) technical preparation procedures. According to Article 3 of Perkaban 5/2020, the HT-el system is developed by the technical data and information unit within the Ministry of ATR/BPN, and is operated by three parties: the Ministry as the organizer, the Land Office as the implementer, and the creditor or PPAT as the system user.

The electronic services facilitated through the HT-el system include: registration of new Mortgage Rights, transfer, creditor name change, deletion of Mortgage Rights, and data correction. In principle, the initial stages do not change from the manual system, meaning it still starts from a principal agreement such as a credit agreement or debt-receivable agreement. However, the main difference lies in the land certificate validation process, which is now carried out through the Land Computerization Activity System (KKP). If the certificate data is not yet valid, a physical and juridical verification must first

be carried out by land officials.

The HT-el registration process begins with the PPAT submitting the Deed of Granting Mortgage Rights (APHT) electronically through the PPAT Partner Application. The data that must be entered includes: deed number and date, identity of the holder and object of the Mortgage Rights, and the value of the mortgage. In addition, the PPAT must also upload supporting documents such as NPWP, witness KTP, PBB SPPT, land certificate, SKMHT if any, and a document validity statement form. Once the documents are ready, the PPAT scans and uploads a signed and stamped cover letter as proof of document submission.

Next, the creditor accesses the HT-el System to continue the registration process. The creditor searches for the APHT that has been reported by the PPAT by entering the deed data and the PPAT's name. Then the creditor uploads additional documents (if any) and verifies the consistency of the data uploaded by the PPAT. After ensuring the correctness of the documents, the creditor confirms the registration application. The system then issues a Deposit Order (SPS) as proof of the obligation to pay Non-Tax State Revenue. After the SPS is paid and confirmed, the system will process and display a preview of the HT-el Certificate.

Based on Article 13 paragraph (1) of Perkaban 5/2020, before the HT-el certificate is issued, the Head of the Land Office or an appointed official must check the completeness of the documents and the conformity of the draft certificate's content. If there are no blocking, seizure, or dispute records on the Mortgage Rights object within seven working days, the certificate is issued in the form of an Electronic Document with an Electronic Signature. This certificate is then sent to the creditor's supervisor's email and can be printed independently. According to Article 15 of Perkaban 5/2020, the final results of HT-el services consist of: (1) the HT-el Certificate, (2) HT records in the electronic land book by the Head of the Land Office, and (3) HT records on the physical certificate by the creditor.

Normatively, the HT-el system does not change the substantial requirements for the creation of Mortgage Rights as regulated in the UUHT, namely that it must be based on a credit agreement and stated in an APHT. However, the digital transformation regulated through Perkaban 5/2020 brings fundamental changes in technical procedures, namely from a manual, physical process to an integrated online system. This digitalization aims to accelerate services, minimize direct contact, and increase the efficiency of land law administration in Indonesia.

3. Registration of Second and Subsequent Rank Mortgage Rights

In the system of material collateral, a parcel of land as a collateral object can be subjected to more than one Mortgage Right. This is in line with Article 5 paragraph (1) of the UUHT, which states that one Mortgage Right object can guarantee more than one debt, thus allowing for First, Second, Third, and subsequent Rank Mortgage Rights. These ranks are determined according to the date of registration at the Land Office as explained in Article 5 paragraphs (2) and (3) of the UUHT, and if the registration is done on the same day, then the rank refers to the date the Deed of Granting Mortgage Rights (APHT) was made.

Procedurally, the encumbrance of Second and subsequent Rank Mortgage Rights is carried out with the same mechanism as the first rank. This process consists of two main stages: the creation of an APHT by the PPAT after a debt-receivable agreement, and the registration of the APHT at the Land Office. Thus, the rules and stages applicable to the encumbrance of First Rank Mortgage Rights also apply to subsequent rank Mortgage Rights.

Before creating an APHT, the PPAT is obliged to conduct an examination or

verification of the land certificate data against the land book at the Land Office. This process is known as certificate checking, as regulated in Article 97 of Perkaban No. 3 of 1997. The purpose of this check is to ensure the validity of the physical and juridical data of the land that is the collateral object. Once the certificate is declared valid, the APHT can then be made to continue the Mortgage Rights registration process.

Problems arise when the collateral object undergoes administrative territorial changes, such as a change in village name. If this change occurs after the object has been encumbered with a First Rank Mortgage Right and is to be encumbered again for a Second Rank, then obstacles will arise, especially in the electronic registration system. In the manual system, this change could be resolved by manually updating the data in the land book. However, in the electronic system, this cannot be done automatically because the entire process must go through the Land Computerization Activity System (KKP).

Unfortunately, neither the UUHT, Perkaban No. 5 of 1996, nor Perkaban No. 5 of 2020 and its technical guidelines (Juknis No. 2 of 2020), provide a technical mechanism for digitally updating administrative changes. In the KKP system, if the collateral object is still recorded as part of the Mortgage Rights activity, administrative data updates cannot be done until the Mortgage Right is first deleted. This means that to update the data, a roya process (deletion/release) of the existing Mortgage Rights must be performed beforehand.

According to Article 18 paragraph (1) of the UUHT, the deletion (roya) of Mortgage Rights can be done under four conditions: (a) the debt is fully paid; (b) the Mortgage Right is released by the creditor; (c) clearance based on a court decision; and (d) the expiration of the land right. In the context of the case in Selat District, Kapuas Regency, administrative data updates cannot be carried out because the system records the object as still having an active Mortgage Right burden. The only way for the data to be updated is for the Mortgage Right to be voluntarily released by the creditor even if the principal debt has not been repaid, as permitted by letter b of Article 18 paragraph (1) of the UUHT.

By voluntarily performing roya by the Mortgage Rights holder, the collateral object is no longer recorded as an active burden in the KKP system. After that, administrative data updates such as village changes can be carried out. Validated data allows the certificate to be checked in the electronic system, and subsequently, the PPAT can create a new APHT for re-registration of Mortgage Rights, either as a new First Rank or directly as a Second Rank. This step becomes a solution to administrative obstacles in the implementation of electronic Mortgage Rights registration due to unaccommodated territorial data changes by the digital system.

B. Creditor's Efforts To Maintain Their Position As First Rank Mortgage Rights Holder Based On The Mortgage Rights Law, Over Collateral Objects That Undergo Data Updates Due To Administrative Village/Sub-District Location Changes

1. Creditor's Position as First Rank Mortgage Rights Holder

In every credit agreement or engagement that creates a debt-receivable relationship, the creditor naturally expects assurance that the principal loan and its interest will be paid by the debtor. To guarantee this repayment, creditors generally require an additional agreement in the form of material collateral to be submitted by the debtor. This collateral can be movable or immovable property. One common form of collateral used is land collateral, which is then implemented through a legal institution called Mortgage Rights.

Mortgage Rights, as regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles and further elaborated in Law Number 4 of 1996 concerning Mortgage Rights, are security rights encumbering land rights, with or without other objects that form a single unit with the land. The primary function of Mortgage Rights is to guarantee the repayment of a certain debt and to provide a preferential position to the creditor holding the right

compared to other creditors. However, this position is not automatically born; it must go through formal procedures as regulated in laws and regulations.

One of the formal requirements is the creation of a Deed of Granting Mortgage Rights (APHT) before a PPAT as proof that the collateral has been agreed upon by the debtor. However, merely creating an APHT is not enough. For the Mortgage Right to have perfect legal force, the deed must also be registered at the Land Office where the land object is located. This registration is mandatory according to the provisions in the UUHT and Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Regulation Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services. After going through this process, the creditor is legally recognized as the holder of the Mortgage Rights and obtains priority rights over the collateral object compared to other creditors.

The position as a Mortgage Rights holder grants executorial rights to the creditor if the debtor fails to fulfill their obligations. This is affirmed through Article 6 of the UUHT, which states that if a debtor defaults (breaches promises), the first rank Mortgage Rights holder can sell the collateral object through public auction under their own authority and is entitled to receive repayment from the proceeds of the sale. This right is a clear manifestation of the special position granted to the creditor holding Mortgage Rights compared to ordinary creditors or holders of other guarantees.

The explanation of Article 6 of the UUHT also asserts that the right to sell directly without repeated consent from the debtor is a result of the initial agreement between the giver and recipient of the Mortgage Rights. Thus, when the debtor fails to fulfill their obligations, the creditor can immediately carry out an auction of the collateral object to obtain repayment of their debt first before other creditors. The remaining proceeds from the auction remain the right of the Mortgage Rights giver.

2. Creditor's Efforts to Maintain Their Position as First Rank Mortgage Rights Holder Over Collateral Objects That Undergo Data Updates Due to Administrative Village/Sub-district Location Changes

In the process of granting Mortgage Rights, as stipulated in Article 10 of the UUHT, an APHT can only be prepared by a Land Deed Official (PPAT) with the direct presence of the party entitled to the collateral object, namely the Giver of the Mortgage Rights. It is important to distinguish that not all debtors are landowners, but every landowner who pledges their land is a Giver of the Mortgage Rights. If there is a reason the Giver of the Mortgage Rights cannot attend directly, a power of attorney for the creation of the APHT can be granted through a Power of Attorney to Grant Mortgage Rights (SKMHT), which will be used by the creditor for the purpose of encumbering the Mortgage Rights.

Article 15 of the UUHT stipulates that an SKMHT must be made in the form of a notarial deed or PPAT deed and can only be used to secure Mortgage Rights. Such power of attorney must not contain a substitution power and must include data on the object, debt value, and identities of the creditor and debtor. In addition, an SKMHT also has a time limit: one month for already registered land rights and three months for unregistered land, as stated in Article 15 paragraphs (3) and (4). If the SKMHT is not followed up with an APHT within the specified time limit, it becomes null and void by law. This provision is exempted for certain credits as elaborated in Perkaban Number 22 of 2017.

Although normative provisions state that an SKMHT is only used if the Giver of the Mortgage Rights cannot attend, its use is more flexible in banking practice. This is because the loan realization process needs to be carried out immediately, even if there are technical obstacles such as the incomplete validation of collateral object data at the Land Office. Some Land Offices even stipulate that an SKMHT can only be used if the giver is outside

the area of the collateral object or the certificate is still in the process of title transfer, including in the context of administrative data updates such as changes in village area on the collateral object.

Updating the location data of the collateral object from one village to another (for example, from Selat Tengah to Selat Barat) is not only needed for new credit facilities but also impacts certificates that have been used as collateral in previous loans. In practice in Selat District, Kapuas Regency, it was found that checking the certificate, as a requirement for creating an APHT, was hampered because the data had not been updated. This is despite Article 97 of Perkaban Number 3 of 1997, which obliges the PPAT to check the certificate against the land book before creating an APHT as a guarantee for debt repayment.

If an APHT is made without going through a valid certificate checking process, then the guarantee in its creation can be considered null and void by law because it has not met the valid requirements for an agreement as stipulated in Article 1320 of the Civil Code. One of the main requirements in this relationship is a "lawful cause." If the certificate has not been updated, the collateral object does not conform to the land system, so it cannot be a legally valid guarantee. Consequently, the creditor does not have legal certainty as a preferred guarantee holder.

The issue of administrative location updates becomes a serious obstacle in the registration of Second Rank Mortgage Rights because the KKP (Land Computerization Activity) system does not allow two parallel activities: Mortgage Rights registration and administrative data updates. This means that to be able to change the village location in the collateral object data, the creditor must first delete the First Rank Mortgage Rights through the roya process. This is very risky for the creditor, because during the deletion, their position as a preferred creditor is lost, and the object only becomes a general guarantee as regulated in Article 1131 of the Civil Code.

To maintain the rank as a first rank Mortgage Rights holder, strategic steps that can be taken by the creditor are: first, create an SKMHT based on Article 15 of the UUHT; second, perform roya on the First Rank Mortgage Rights based on Article 18 paragraph (1) letter b of the UUHT, which is due to the release of the Mortgage Rights by its holder; third, carry out administrative data updates of the collateral object; and fourth, after the data is valid, recreate an APHT based on the previously prepared SKMHT. In this way, the creditor can still maintain their position as the holder of priority security rights over the updated collateral object.

CONCLUSIONS

In the process of credit transfer, particularly in subsidized housing, a notary holds the authority to draft authentic deeds for any legal actions, agreements, or declarations required by law or requested by the parties involved. The notary's role serves a preventive function by minimizing potential legal disputes among the original debtor, the new debtor, and the bank.

Electronic registration of a second-rank mortgage right on a collateral object where the administrative village location has changed cannot be carried out if there's already a first-rank mortgage right registered. This is because the administrative location of the collateral object must first be updated from its original "Selat Tengah" to "Selat Barat." In the Land Computerized Activity System (KKP) application, a collateral object encumbered with a first-rank mortgage right is registered as an active mortgage activity until that activity is concluded with a mortgage release (Roya). Consequently, if an administrative location update for the collateral object is to be performed (from Selat Tengah to Selat Barat), the currently registered mortgage activity in the KKP system must first be closed.

To maintain its position as a first-rank mortgage right holder, based on the Mortgage Rights Law (UUHT), for a collateral object undergoing an administrative village location data

update, the creditor will proceed as follows: First, the creditor will create a Power of Attorney to Grant Mortgage Rights (SKMHT) based on Article 15 of the UUHT. This will be followed by the deletion of the first-rank mortgage right, based on Article 18 paragraph (1) letter b of the UUHT, which refers to the "release of the Mortgage Right by the Mortgage Right Holder." Subsequently, the administrative location of the collateral object will be updated from "Selat Tengah Village" to "Selat Barat Village." Once the data is valid after this administrative location update, the creditor will then create a new Deed of Granting Mortgage Rights (APHT) to re-encumber the first-rank mortgage right, utilizing the SKMHT that was prepared for this purpose beforehand.

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