

Precautionary Principle in Electronic Integrated Custody Services by Land Deed Making Officials

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ABSTRACT

The purpose of this study is to analyze: 1) What is the Position of PPAT in Electronic Liability Rights? 2) What is the Precautionary Principle for the Implementation of Electronic Integrated Dependent Rights Services by PPAT? The research method used is empirical juridical with a statutory approach, concept approach, and case studies.

The results showed that: 1) PPAT has duties and authorities in the process of registering Dependent Rights. The task of PPAT in registering dependent rights is to make APHT as evidence of the imposition of Dependent Rights on a piece of collateral land for credit loans which then becomes the basis for changes in land data caused by these legal acts. In addition, PPAT must provide a copy of APHT to interested parties in the imposition of dependent rights. 2) PPAT in carrying out its position must act carefully (apply the precautionary principle) and pay attention to every procedure in imposing the Right to Dependent. Acting carefully means scrutinizing all documents and reading the contents of the deed to the witnesses and witnesses. The precautionary principle must be applied so that the PPAT is always in the right procedure and thus the level of public trust in the PPAT is increasing as well.

Keywords: Principle, Prudence, Service, Liability, Integrated, Electronic, Land Deed Making Officer

INTRODUCTION

Background

The Right of Dependents is regulated in Law No. 4 of 1996 concerning the Right of Dependents on Land and Objects Related to Land (Law on Rights of Dependents). Article 1 of the Law on Dependent Rights explains:

"The Right of Liability over land and objects related to land, hereinafter referred to as the Right of Dependence, is a security right imposed on the right to land as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, along with or not along with other objects that are an integral part of the land, for the repayment of certain debts, which give priority to certain creditors over creditors another."¹

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (hereinafter referred to as the Ministry of ATR / BPN) is a government institution that plays a role in providing public services in the land sector which is required to provide maximum services and provide convenience for both the community and users. Maximum service obtained by the community and service users is the purpose of realizing good governance and to be able to create good governance, one of the efforts made is to carry out modernization of the service system. The better the quality of public services felt by the community, the higher the level of public trust in the government.

In APHT, in order to have legal force, it is necessary to register with the Land Office. Registration of dependent rights, initially carried out manually, where the applicant, namely PPAT sends APHT and other warrants to the Land Office no later than 7 days after signing the deed, as stipulated in Article 13 paragraph (2) of the Law.²

Electronic land services began in 2017 with the issuance of ATR/BPN Ministerial Regulation No. 5 of 2017 concerning Electronic Land Information Services (HT-el).

¹ Eva Agus Triani, Electronic Liability Service by the National Land Agency for Land Deed Making Officials in the Field of Land Rights Registration, Notary Deed | Vol. 1 No. 1, June (2022), 13.

² Jefri Guntoro, et al, Juridical Review of Registration of Dependent Rights in Electronic Integrated Dependent Rights Services, benngkoelen Justice, Vol. 10 No.2 November 2020, 215.

The services provided include nine types of land information services that are carried out electronically. Then the Regulation of the Minister of ATR / Ka BPN No. 3 of 2019 concerning the Application of Electronic Signatures, which is useful in the process of issuing electronic certificates. Furthermore, with the Regulation of the Minister of ATR / Ka BPN No. 9 of 2019 concerning Electronic Integrated Dependent Rights Services, which was promulgated on June 21, 2019 as the basis for HT-el services. However, on April 6, 2020 the regulation was revoked and replaced by BPN ATR/Ka Regulation No. 5 of 2020 concerning Electronic Integrated Dependent Rights Services, in Article 1 number 7 it is stated that "*Electronic Integrated Dependent Rights Services, hereinafter referred to as HT-el Services, are a series of dependent rights service processes in the context of maintaining land registration data which is held through an integrated electronic system*".³

Based on the Minister of ATR / BPN Number 5 of 2020 concerning Electronic Integrated Dependent Rights Services, Perka Number 9 of 2019 is declared invalid. Consideration letter a of Regulation of ATR / BPN Number 5 of 2020 states that this regulation is intended to implement electronically integrated dependent rights services in order to improve dependent rights services that meet the principles of openness, timeliness, speed, convenience and affordability for public services, as well as to adjust to legal developments, technology and community needs. Electronic Right of Liability concerns the Registration relationship of PPAT and/or creditors at the local Land Office. The relationship between the PPAT, creditor and debtor in the procedure for making the deed is physically unchanged. This can be seen from Article 10 of the Minister of ATR/BPN RI Number 5 of 2020 concerning Electronic Integrated Dependent Rights Services.⁴

Problem Statement

1. What is the Position of PPAT in Electronic Liability?

³ Agata Tri Putri Margaret & Sapardiyono, Implementation of Electronic Integrated Dependent Services, Widya Bhumi, Vol. 1, No. 2, October 2021, 137.

⁴ Pandam Nurwulan, Implementation of Electronic Liability Services for Creditors and Land Deed Making Officials, IUS QUIA IUSTUM Law Journal no. 1 VOL. 28 JANUARY 2021: 183 – 202, 186.

2. What is the Precautionary Principle for the Implementation of Electronic Integrated Dependent Rights Services by PPAT?

Theoretical Framework

1. Theory of Legal Certainty

Certainty is defined as the condition, provision, determination of something certain. The working of the law is realized when the law is fair and carried out definitely. Legal certainty, according to Rato, is a question mark that can be answered through normative, not sociology. Normatively, legal certainty occurs when regulations are formed and promulgated and implemented with certainty because they regulate clearly and logically.

According to Soerjono Soekanto: legal certainty requires the creation of general regulations or generally accepted methods, in order to create a safe and peaceful atmosphere in society.⁵ Thus, it can be concluded that legal certainty can be realized by law through legal rules that are then obeyed by the community. These legal rules exist, not necessarily for the purpose of realizing justice or expediency, but solely for certainty.

Research Methodology

The legal research method is a systematic way of conducting research.⁶ In this case, it is very important to know and determine the type of research as one of the components in the research method. Because the provisions in a research method will greatly affect the process and results of a legal research. The research method that will be used in this writing is an empirical juridical research method, which means in the use of this legal research method to see the law in a real sense or can be said to see how a law works in society.⁷ According to Soetandyo W, empirical juridical research is a research in the form of empirical studies to find theories about the process of occurrence and about the process of legal work in society.⁸

⁵ Soerjono Soekanto, *Some Legal Problems in the Framework of Development in Indonesia (a sociological review)*, fourth printing, Jakarta: University of Indonesia, 1999, p. 55.

⁶ Abdulkadir Muhammad, *Law and Legal Research*, PT Citra AdityaBakti, Bandung, 2004, p 57

⁷ Jonaedi Efendi, *Normative and Empirical Legal Research Methods*, Preradamedia Group, Jakarta, 2016, p 150

⁸ Bambang Sunggono, *Research Methods and Legal Writing*, Rajawali Pers, Jakarta, 2012, p 112

RESEARCH RESULTS

PPAT Position in Electronic Liability Rights

PPAT has duties and authorities in the process of registering Dependent Rights. The task of PPAT in registering dependent rights is to make APHT as evidence of the imposition of Dependent Rights on a piece of collateral land for credit loans which then becomes the basis for changes in land data caused by these legal acts.⁹ In addition, PPAT must provide a copy of APHT to interested parties in the imposition of dependent rights.

The authority of PPAT is to carry out the registration process of Dependent Rights independently regulated in Article 13 of Law No. 4 of 1996. Before carrying out the registration process for Dependent Rights, PPAT must check the certificate first. Article 13 of Law No. 4 of 1996 explains that PPAT as the power of attorney of the debtor must send APHT to the local Land Office within a period of no later than 7 (seven) days accompanied by other warrants needed in the process of registering Rights of Dependents. Technical rules relating to the registration of Dependent Rights are regulated in Article 40 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as "PP No. 24 of 1997") which explains no later than 7 (seven) working days after signing the relevant deed, the PPAT must submit the deed along with other necessary warrants to the Land Office for registration. As proof that a piece of land has been encumbered with Right of Dependent, the local Land Office will issue a Certificate of Right to Dependent.¹⁰

Regulation of the Minister of ATR / Head of BPN RI Number 2 of 2018 concerning the Development and Supervision of Land Deed Making Officials, separates the prevailing customs, namely the act of applying for registration and submission of APHT carried out by PPAT so far. Submission is an obligation of PPAT with sanctions threatened if negligent. Meanwhile, the application for registration services acts as a

⁹ Esterina Kaligis, "The Function of PPAT and BPN in the Issuance of Certificates of Dependents," *Lex Privatum* 3, no. 2 (2015): 94–100,

¹⁰ Fasatama Prakasa, Mada Apriani Zuhir, and Herman Adriansyah, "Cancellation of Certificate of Property Rights Encumbered with Dependent Rights (Supreme Court Decision No. 1138 K/Pdt/2012)," *Recital Review* 2, no. 1 (2020): 39–53

power of attorney acting on behalf of the recipient of the Dependent Rights or creditors. The Right to Cover Service-the PPAT registration e-service that carries out the registration process, is only an alternative and not mandatory.

If after the enactment of the e-Dependent Rights then the manual Right of Liability service is not organized or eliminated by the Land Office. Therefore, it means that the Land Office rejecting the registration of the Right of Liability outside the e-Right of Liability is contrary to the Regulation of the Right of Dependent-el and the Law on Rights of Dependents/UUHT. For the development of the business world, the acquisition of working capital or business capital from banks or creditors is very necessary, as well as banks or creditors need business entities to channel public funds obtained by banks or creditors in the form of credit. To guarantee the payment of credit issued by banks or creditors to debtors, collateral or borght is usually required. Both in the form of movable property and immovable property in the form of land include borghtoh or borghteling guarantees if required Article 1820 to Article 1850 of the Civil Code. There is no explicit provision regarding borgtocht stating that borgtocht is a bearer.

Regarding this underwriting is regulated in the meaning of borgtocht, where it is said that underwriting is an agreement whereby a third party for the benefit of the creditor, binds himself to fulfill the debtor's engagement, if the debtor does not fulfill his bond. This is where the regulation of credit provisions and guarantees is needed so that in this good lending and borrowing business traffic, it can maintain trust with legal guarantees to the parties.

The importance of using online systems, is a pushing idea that is very urgent and necessary to overcome bureaucratic bottlenecks. Using technology that can overcome corruption and corruption and/or other irregularities. The presence of this new method system can overcome the complicated bureaucracy of operating standards, especially land registration. The advantages that will be obtained in registering land through online, although not a few disadvantages are in it. One of the advantages obtained in this online method is that it can save time, of course hope and effectiveness and efficiency can really be achieved without two works or back and forth files. We should realize together the shortcomings of the online system are prone to errors in inputting data, and errors in entering the intended system.

If we trace, we look back at it that there is a delegation of authority to the Land Office as a whole in terms of the registration process, whether the procedure for fulfilling physical and electronic document data without exception electronic sign and electronic fingerprint is carried out by the applicant to the land office or there is an elaboration between the PPAT and the land office in the process of transferring rights and registration. In the rules, because it is not clearly regulated who the parties must process regarding the transfer and registration of the Dependent Rights themselves, an explanation is needed by the ATR / BPN ministry so as not to cause wrong interpretations. As for electronic signs in terms of registration of Dependent Rights, electronic signs are evidence signs used by related legal subjects and if a problem occurs later it will be used as evidence, not necessarily applicable in the procedural mechanism of registration because the authenticity of an electronic signature is considered still not well applied due to various factors, one of which is hackers and crackers.¹¹

Based on the Minister of ATR / BPN Number 5 of 2020 concerning Electronic Integrated Dependent Rights Services, Perka Number 9 of 2019 is declared invalid. Consideration letter a of Regulation of ATR / BPN Number 5 of 2020 states that this regulation is intended to implement electronically integrated dependent rights services in order to improve dependent rights services that meet the principles of openness, timeliness, speed, convenience and affordability for public services, as well as to adjust to legal developments, technology and community needs. Electronic Right of Liability concerns the Registration relationship of PPAT and/or creditors at the local Land Office. The relationship between the PPAT, creditor and debtor in the procedure for making the deed is physically unchanged. This can be seen from Article 10 of the Minister of ATR/BPN RI Number 5 of 2020 concerning Electronic Integrated Dependent Rights Services as follows:

1. PPAT submits deeds and documents for completeness of requirements as referred to in article 9 paragraph (2) *through the partner's electronic system integrated with the HT-el System.*

¹¹ Frans Meyer Simatupang, Electronic Registration Mechanism and Its Legal Consequences, Recital Review, Vol. 4 No. 1 of 2022, 79

2. *The submission of documents is completed with a statement letter regarding the accountability, validity and correctness of the submitted electronic document data.*
3. *All documents completing the requirements as referred to in paragraph (1) must be kept by PPAT. (4) The format of the Statement Letter as referred to in paragraph (2) is listed in annex I which is an integral part of this Ministerial Regulation.¹²*

Precautionary Principle for the Implementation of Electronic Integrated Dependent Rights Services by PPAT

The government through the Minister of ATR / Head of BPN issued "Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 9 of 2019 (PMATR / KBPN No. 9 of 2019) concerning Electronic Integrated Dependent Rights Services which came into effect on June 21, 2019". "PMATR/KBPN No. 9 of 2019," this is a step forward for the Ministry of Agrarian and Spatial Planning of the National Land Agency in making it easier for people to get Right to Cover (HT) land guarantee services. People who will pledge land as well as related parties in HT guarantees do not need to come and queue to get HT services at the Land Office, but simply via the internet to register HT to obtain a Certificate of Rights of Dependents with executory power.¹³

Over time, the registration process can be done electronically or online. Registration of Dependent Rights is based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronic Integrated Dependent Rights Services (hereinafter referred to as "Agrarian Regulation No. 5 of 2020"). The process of registering dependents electronically can be submitted by creditors and PPAT. Based on Article 10 of the Agrarian Regulation No. 5 of 2020, the electronic registration process begins with PPAT uploading APHT and other required documents through the partner's electronic

¹² Pandam Nurwulan, Implementation of Electronic Dependent Rights Services for Creditors and Land Deed Making Officials, IUS QUIA IUSTUM Law Journal no. 1 VOL. 28 JANUARY 2021, 186.

¹³ IGA Gangga Santi Dewi & Mira Novana, Land Guarantee Policy Through Right of Liability in Indonesia, Law, Development & Justice Review 3 (1), 2020, 59.

system included in the HT-el system and attaching also a statement letter of validity and correctness of the document. Article 11 of the Agrarian Regulation No. 5 of 2020 explains that after uploading documents, the HT-el system will provide proof and fees to be paid. After all requirements have been uploaded and paid, in accordance with Article 13 of the Agrarian Regulation No. 5 of 2020, the Head of the Land Office will check the suitability of the documents. Article 15 of the Agrarian Regulation No. 5 of 2020 explains that the results of the application for electronic registration of rights of dependents are HT-el certificates, records of Rights of Dependents in the land book and records of Rights of Dependents in land rights certificates.¹⁴

Basically, the entire implementation of HT-el Services, starting from the application registration process to the issuance of HT-el certificates, is entirely carried out through an online system, thus eliminating the process of direct interaction between the Badung Regency Land Office as the implementer of HT-el Services and Creditors and PPAT as HT-el Service Users. In an HT-el system, there is a systematic division of duties and authorities between Creditors and PPAT.¹⁵

PPAT is a general official who is authorized to make authentic deeds regarding certain legal acts related to land rights or Ownership Rights of Flats. Authentic deeds relating to these legal acts are the deed of transfer and encumbrance of land rights and property rights of apartment units and the deed of granting power to impose dependent rights. PPAT is a general official, so it can be concluded that PPAT is a person appointed by an authorized agency with the task of serving the general public in certain fields or activities.¹⁶ PPAT has a role in imposing the Right to Dependent, which is a bridge between debtors and creditors so that both get the same legal certainty in guaranteeing the Right to Dependent.¹⁷

In an HT-el service system, the main task of PPAT is to make a Deed of Granting Rights of Dependents (APHT). Before making APHT, PPAT is required to check certificates both online and manually according to the readiness of each Land Office

¹⁴ Riky Rustam, *Guarantee Law* (Yogyakarta: UII Press, 2017), p. 47.

¹⁵ Anton Sofian Adiyatma et al, *Authority of Land Deed Making Officials and Land Offices in the Implementation of Electronic Registration of Dependent Rights*, NOTARIUS, Volume 14 Number 1 (2021)

¹⁶ Boedi Harsono, *Indonesian Agrarian Law: History of the Formation of Basic Agrarian Law, Its Content and Implementation* (Jakarta: Trisakti University, 2016), p. 483.

¹⁷ Muhammad Khoidin, *Law of Guarantees (Rights of Guarantee, Rights of Dependents and Execution of Rights of Dependents)* (Surabaya: Laksbang Yustisia, 2017), p. 36

data. PPAT registers APHT with the Land Office through an online system by logging in to the Mitra Kerja Application (<https://mitra.atrbpn.go.id>). In the Partner Application, PPAT uploads several required documents into the system until the issuance of a Deed Cover Letter (SPA), as for the documents uploaded include:

1. Scan of Deed of Granting Rights (APHT)
2. Scan of Debtor's ID Card
3. Scan of ID cards of witnesses
4. Scan of KTP Approval
5. ScanKartuKeluarga
6. Scan of Land Rights Certificate (SHAT)
7. Scan Credit Agreement
8. Scan of Land and Building Tax (PBB)
9. Scan of PPAT Statement Letter.¹⁸

The deed of PPAT is an authentic deed and as an authentic deed there are strict requirements in terms of the manufacturing procedure, form and formalities that must be carried out, so that the deed has the right to be called an authentic deed.¹⁹ One of the main tasks of PPAT is to create, sign and issue copies of APHT. APHT contains terms and conditions regarding the imposition of Dependent Rights between debtors and creditors along with the value of dependents and objects used as collateral in repayment of the value of dependents.²⁰ Right of Liability is the control of a piece of land rights that contains the authority of creditors to carry out legal actions related to the land that is the object of guarantee. Tenure is carried out not physically occupying the land but control is carried out by selling a piece of land and the proceeds of the sale become a form of repayment of the collateral made.²¹

In practice, PPAT in carrying out its position must act carefully (applying the precautionary principle) and pay attention to every procedure in imposing Dependent Rights. Acting carefully means scrutinizing all documents and reading the contents of

¹⁸ I Made Dwi Gunarta et al, Creditors' Perceptions and PPAT on the Quality of Electronically Integrated Dependent Rights Services, *Journal of Tunas Agraria* Vol. 3 No.3, 82.

¹⁹ Addien Iftitah, "The Authority of Land Deed Making Officials (PPAT) in Making Land Sale and Purchase Deeds and Their Legal Consequences," *Lex Privatum* 2, no. 3 (2014): 49–55,

²⁰ Ahmad Matori Azzam Lubis, "Application of the Precautionary Principle in Making Deed of Granting Rights of Dependents" Thesis (Universitas Islam Indonesia, 2019), pp. 51-52.

²¹ Riky Rustam, *Guarantee Law* (Yogyakarta: UII Press, 2017), p. 47

the deed to the witnesses and witnesses. The precautionary principle must be applied so that the PPAT is always in the right procedure and thus the level of public trust in the PPAT is increasing as well. The application of precautionary principles that must be considered by PPAT in the process of making APHT includes:

- a. Perform the certificate checking process independently or electronically. The certificate checking process is carried out to ensure that the collateral object for the loan is not in a state of dispute, is not being pledged or blocked.
- b. Ensuring the position of the facers. The position of the parties is evidenced by the identity of the parties and other documents deemed necessary in making APHT.
- c. Match all received documents. Documents are matched for the purpose of obtaining the same information as documents provided from creditors, including matching collateral objects for loans contained in the Credit Agreement. Making APHT must certainly be in accordance with the documents received from the parties to avoid legal problems in the future.²²

HT-el services at the Land Office involve several parties such as PPAT and Creditors in the Land Office. The implementation of HT-el services can be done if the parties already have a registration account used in the HT-el registration process. Therefore, the implementation of HT-el begins with verifying and validating user accounts for creditors and PPAT. Account registration for PPAT first registers on the PPAT partner application which is then verified. PPAT account verification is carried out by the Land Office in accordance with the PPAT working area, while the accounts of individual creditors and legal entity creditors are verified by the Ministry of ATR / BPN. Individual creditors to be able to access the HT-el system in HT-el registration must be registered as service users on the TTouch Tanahku Application and have been verified, and the HT-el registration process by individual creditors is carried out through the TTouch Tanahku Application. Creditors in the form of Legal Entities must be registered on the Financial Services Partner Application and included in the OJK

²² Katrine Novia & Pieter Everhardus Latumeten, The Precautionary Principle of Land Deed Making Officials in Registration of Dependent Rights, *Binamulia Hukum* Volume 12, Number 1, July 2023 (99-108)

member, in addition to having also validated data and have been verified by the Ministry of ATR / BPN.²³

The implementation of HT-el registration at the Land Office begins with checking the certificate electronically by the PPAT, the aim is to avoid making legally incorrect PPAT documents and to harmonize the data on the Land Rights certificate with the land book. If the checking process has been carried out and there are no problems, then PPAT makes a Deed of Installation of Dependent Rights (APHT), for the HT-el registration process, the APHT that has been made is reported by PPAT through the PPAT Partner Application begins with making a deed code as a deed identifier and entering deed data, then PPAT uploads APHT along with other complete documents.

PPAT then downloads a deed cover letter containing the name of the PPAT, deed number along with the deed code. The letter of introduction to the deed that has been downloaded is then signed and stamped and then scanned and uploaded again as proof of the original submission of APHT and other documents. Furthermore, the Creditor submits an application for HT-el registration based on the APHT that has been reported by PPAT from the HT-el system by entering the data listed in the deed cover letter and uploading other documents. The next stage is for the Creditor to check the suitability of the document data that has been uploaded by PPAT. If it is appropriate and there are no problems, the Creditor confirms the application for HT-el registration on the HT-el system and then a Deposit Order (SPS) will be issued by the HT-el system. The next stage, PPAT will make payments in accordance with the nominal amount stated on the SPS through the bank with a maximum period of 3 (three) days after the SPS is issued.

HT-el service verification officers at the Land Office check the suitability of documents that have been uploaded by PPAT and Creditors. If there are incorrect or incomplete documents, the verification officer will suspend the file and then send the file back to the PPAT or Creditor in accordance with the error of the uploaded document and provide a record of the document error. The time owned by PPAT or Creditor to correct document errors is for 5 days, for files that have been corrected,

²³ | Wayan Jody Bagus Wiguna, Juridical Review Regarding Electronic Registration of Dependent Rights, *Acta Comitas*, Vol.05 No. 01 April 2020, pp. 79-88

then PPAT or Creditors send the file back to the Land Office through the HT-el system. If after 5 days no improvement is made, then the file will close automatically and if you want to continue the process you must re-register. Re-registration of HT-el applications can be done if the HT-el application has been closed on day 7.

If there are no more errors and the suspended file has been corrected, proceed with the issuance of the HT-el certificate in the form of an electronic document that has been affixed with an electronic signature by the authorized official, then the HT-el Certificate is sent by the officer via the Creditor's email, and then the Creditor prints the HT-el certificate and HT-el note using a sticker and then affixed to the HAT certificate which is the object of HT-el. HT-el notes on the land book are printed using stickers and affixed to the land book by Land Office officers.²⁴

CONCLUSION

The results showed that;

- a. PPAT has duties and authorities in the process of registering Dependent Rights. The task of PPAT in registering dependent rights is to make APHT as evidence of the imposition of Dependent Rights on a piece of collateral land for credit loans which then becomes the basis for changes in land data caused by these legal acts. In addition, PPAT must provide a copy of APHT to interested parties in the imposition of dependent rights.
- b. PPAT in carrying out its position must act carefully (applying the precautionary principle) and pay attention to every procedure in imposing Dependent Rights. Acting carefully means scrutinizing all documents and reading the contents of the deed to the witnesses and witnesses. The precautionary principle must be applied so that the PPAT is always in the right procedure and thus the level of public trust in the PPAT is increasing as well.

²⁴ Zidna Aufima, The Role of PPAT as an Electronic Integrated Dependent Service User, JJR 22(2) December 2020, 259-270

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