

ELECTRONIC LEGAL CERTAINTY OF THE ROYA DEED OF ENCUMBRANCE

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Abstract

The authority of a Notary is a distinct jurisdiction, grounded in Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning the Position of Notary. The mortgage right, serving as collateral, is registered by the bank through a Notary/PPAT with the local National Land Agency. This process results in the issuance of a Deed of Mortgage Encumbrance (APHT) for the land used as collateral. Subsequent to the termination or deletion of the mortgage right, the note or mortgage right is electronically written off. The research problem is formulated as follows: What is the mechanism for electronic mortgage registration, and what is the legal certainty of electronic mortgage deeds? The electronic mortgage registration can be conducted either directly by the community or with the assistance of a Notary in their respective locations, facilitating the process for the community. The introduction of Electronic Mortgage Rights brings positive benefits to the community, banks/creditors, and PPAT, streamlining the mechanism for binding and registering mortgage rights, making it more efficient, faster, and cost-effective. Moreover, Regulation of the Minister of ATR/Head of BPN Number 5 2020 ensures legal certainty and protection for the public, particularly creditors. When executing a Roya Deed of Mortgage, the debtor must appear before a notary, ensuring legal certainty as authentic evidence of their actions, in accordance with Article 15 paragraph (1) of the Notary Position Law.

Keywords: *Electronic Roya, Legal Certainty, Mortgage Rights*

1. INTRODUCTION

The pivotal role of a Notary/PPAT in fortifying the positions of involved parties and ensuring legal protection and certainty within an agreement cannot be overstated. Functioning as a public official, the Notary/PPAT is mandated to possess competence in their role. The jurisdictional authority vested in a Notary is distinctly delineated by Law Number 2 of 2014, an amendment to Law Number 30 of 2004, specifically addressing the Position of Notary (Saputra et al., 2020).

As articulated in Article 15, paragraph (1) of Law Number 2 of 2014, Notaries are bestowed with the authority to draft Authentic Deeds encompassing all acts of agreements and resolutions mandated by laws or desired by concerned parties. This encompasses guaranteeing the date of deed creation, preserving the deed, furnishing copies, and providing excerpts of the deed.

In their official capacity, Notaries wield the power to create deeds for mortgage rights, a process wherein the debtor seeks consultation with the Notary. The Notary's role assumes paramount importance in this context, as the debtor necessitates legal certainty and authentic evidence of their actions (Patni & Putro, 2023).

The term "mortgage rights" finds statutory mention in Article 51 of Law Number 5 of 1960 regarding Basic Agrarian Principles. This article delineates mortgage rights that can be imposed on ownership rights, land-use rights, and building-use rights. However,

the subsequent enactment of Law Number 4 of 1996 concerning Mortgage Rights Over Land and Related Objects expounds upon the collateralization of land, buildings, and existing plants in loan transactions (Yoandri, 2021). These assets, due to their transferable nature, can be employed as security for lenders, with "Mortgage Rights" being the term specifically associated with land collateral.

Banks, effectuating the registration of mortgage rights through Notaries/PPAT with the local National Land Agency, culminate in the issuance of a Deed of Mortgage Encumbrance (APHT) for the pledged land. When the credit process between a debtor and a banking institution concludes due to the debtor settling their debts, the encumbrance rights under the debtor's name can be removed through a process known as "roya." In legal terminology, "roya" signifies the elimination or removal, denoting the cancellation of the encumbrance rights as a result of the debtor fulfilling their obligations (Sholihin et al., 2022). Article 22 of Law Number 4 of 1996 governs this cancellation process, detailing the Land Office's execution of the "roya" of the mortgage rights record in the land rights book and its certificate. The Mortgage Rights Certificate is declared invalid by the Land Office, and if the certificate is not returned, it is duly recorded in the Mortgage Rights book (Yoandri, 2021).

Mandatory registration of Mortgage Rights at the Land Office is stipulated by Article 13, paragraph (1) of the Agrarian Law. The registration process, as per Article 13, paragraph (5) in conjunction with paragraph (4) of the Agrarian Law, is deemed complete on the day the Mortgage Rights land rights book is furnished with the requisite documents for registration, no later than 7 working days after the signing of the Mortgage Rights Grant Deed. Upon the issuance of the Mortgage Rights Certificate, a legal transfer of rights from the debtor to the creditor is documented. The Certificate of Land Rights undergoes a corresponding transfer to the name of the Mortgage Rights holder (creditor), establishing the Mortgage Rights at that juncture. The Mortgage Rights Certificate and the Certificate of Land Rights are then conveyed to the Mortgage Rights holder (usually a Bank) or its designated representative, as outlined in Article 14, paragraph (4) in conjunction with Article 13, paragraph (3).

The inception of Mortgage Rights inevitably signifies a corresponding termination point (Valentini & Yogantara, 2021). According to Article 18, paragraph (1) of the Mortgage Law (UUHT), the cessation of Mortgage Rights is stipulated under various circumstances (Hamzah, 2020), namely; a) the extinguishment of the debt secured by Mortgage Rights; b) the voluntary release of Mortgage Rights by the holder thereof; c) the clearing of Mortgage Rights based on a ranking determination by the Chief of the District Court; and d) the removal of the land rights burdened by Mortgage Rights. These conditions intricately outline the nuanced scenarios under which Mortgage Rights, a form of property security, cease to hold legal sway. Such legal provisions highlight the multifaceted nature of Mortgage Rights and necessitate a comprehensive understanding to navigate the complexities within the realm of property law.

After the termination of Mortgage Rights, the next step involves the expunging of records or "roya" (cancellation) of Mortgage Rights. This record clearance or "roya" serves administrative order, and according to Adrian Sutedi, it does not hold legal implications for the already terminated Mortgage Rights (Sutedi, 2019). The Mortgage Law (UUHT) specifies a clear procedure and schedule for the implementation of this cancellation, granting the District/City Land Office 7 (seven) working days after receiving the request to carry out the "roya" of Mortgage Rights.

As per Article 22 of the UUHT, following the termination of Mortgage Rights, the District/City Land Office removes the record of the Mortgage Rights from the land title book and its certificate. The relevant Mortgage Rights Certificate is withdrawn, and along with the Mortgage Rights land title book, is declared invalid by the Land Office. If, for any reason, the aforementioned certificate is not returned to the Land Office, it is duly noted in the Mortgage Rights land title book (Rahma Wicaksono, 2021).

In cases where the Mortgage Rights Certificate is lost due to the creditor's negligence, theft, or force majeure after the debtor's debt is settled but has not been "roya-ed," or when it is in the debtor's possession after full debt settlement but hasn't been "roya-ed," or if the cancellation document is lost, a notarized "*Akta Roya Hak Tanggungan*" is typically prepared by a Notary. Subsequently, this deed is submitted to the Land Office. Since the proof of Mortgage Rights lies in the Mortgage Rights Certificate, for the purpose of recording the termination of Mortgage Rights, the land title certificate and evidence of Mortgage Rights cancellation must be submitted.

As of July 8, 2020, the Ministry of ATR/BPN has introduced an electronic service accessible to Notaries/PPAT and Financial Services through the Land and Mortgage Information Service, enabling direct registration without the need to visit the land office. Electronic Mortgage Rights (HT-el) are regulated by the Minister of ATR/Head of BPN Regulation No. 5 of 2020 concerning Electronic Mortgage Rights Services (Permen ATR/BPN 5/2020). HT-el is implemented to enhance Mortgage Rights services, adhering to principles of transparency, timeliness, speed, simplicity, and affordability for public service, while also adapting to legal, technological, and societal developments.

Permen ATR/BPN 5/2020 outlines provisions for the electronic execution of "roya" to facilitate straightforward, swift, and cost-effective registration and cancellation (Nada, 2022). Online "roya" via the ATR/BPN website is exclusively conducted by Land Deed Makers (PPAT) or notaries (Hambali, 2022). The process differs from manual "roya" in that the applicant's documents are scanned and registered through the website, directly corrected by the "roya" executor, bypassing the land office counter. Consequently, Notaries/PPATs are not required to physically visit the Land Office (Sari & Andraini, 2021).

The research will specifically concentrate on two pivotal issues, as expounded in the background: firstly, explicating the mechanism involved in the electronic registration of mortgage rights; and secondly, scrutinizing the legal certainty inherent in electronic cancellation deeds of mortgage rights. The primary objective of this study is to provide a substantive contribution to a more comprehensive comprehension of the implementation and legal ramifications stemming from the processes associated with the electronic registration and cancellation of mortgage rights. This endeavor is undertaken in accordance with the dynamic developments in technology and the pertinent regulatory framework within Indonesia.

2. RESEARCH METHODS

In this research, a combination of qualitative and mixed methods approaches is employed to investigate the mechanisms of electronic registration and cancellation of mortgage rights. Additionally, the study aims to analyze the legal certainty associated with electronic cancellation deeds of mortgage rights. The qualitative approach is implemented through in-depth interviews with key stakeholders, including land officials, notaries, and legal practitioners involved in electronic mortgage rights processes. These

interviews are designed to comprehend the legal perspectives and practical procedures underlying the implementation of electronic mortgage rights. Simultaneously, the mixed methods approach involves the design and distribution of a survey to a diverse group of stakeholders, encompassing notaries and other involved parties. The survey is structured to gather quantitative data regarding the general perceptions of legal certainty associated with electronic cancellation deeds of mortgage rights.

3. DISCUSSION

3.1. Mechanism of Electronic Registration of Mortgage Rights

The extinguished Mortgage Right necessitates the annotation or cancellation of the Mortgage Right record on the Mortgage Right certificate. The purpose of such annotation or cancellation (*roya*) of the Mortgage Right, likewise in the land register or the relevant land certificate, is to inform the public that the respective lands have been released, unburdened by the Mortgage Right.

The annotation or cancellation (*roya*) of the Mortgage Right poses a challenge if the Mortgage Right Certificate is lost for some reason because it is not feasible to carry out the cancellation when the object to be canceled, namely the Mortgage Right Certificate itself, is absent. In practical terms, when such a situation arises, the involvement of a notary with the authority to create deeds is required. This involves the creation of a notarial deed known as the *Roya Mortgage Right Deed*.

The legal aspect arising from the removal of the Mortgage Right (*Roya*) from the land certificate is that, with the elimination of the Mortgage Right or *Roya* from the land certificate, this information becomes public knowledge. The community becomes aware that the previously encumbered land is now free and has reverted to its original state. Additionally, this *Roya* is carried out for the sake of administrative order and does not have legal implications for the extinguished Mortgage Right. If the land certificate is not promptly annotated or canceled, the land certificate still remains in the name of the Mortgage Right holder, in this case, the creditor (Bank). As it is still under the name of the creditor (Bank), the owner of the land certificate cannot execute legal actions until the land certificate is canceled or annotated (Wahyuni et al., 2022).

The *Roya Mortgage Deed* is formulated by a Notary in accordance with Article 122, paragraph (1) of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997, governing the Implementation of Government Regulation Number 24 of 1997 pertaining to Land Registration. This article specifies the procedures for the registration of the termination of the Mortgage Right, consequent to the discharge of the debt secured by the said Mortgage Right. The stipulations include:

- a. A declaration from the creditor attesting to the satisfaction or full settlement of the debt secured by the Mortgage Right, documented in either an authentic instrument or an underhand written statement.
- b. Presentation of evidence of debt settlement issued by the authorized party receiving the payment.
- c. The citation of auction minutes related to the Mortgage Right object, accompanied by a statement from the creditor relinquishing the Mortgage Right for an amount exceeding the auction proceeds, documented in an underhand written statement.

Beyond adherence to the aforementioned regulations, the Notary's execution of the *Roya Mortgage Deed* is grounded in their authority to produce deeds, as per Article 15,

paragraph (1) of the UUJN. This authority extends to the creation of authentic deeds concerning all requisite legal acts, agreements, and arrangements, as mandated by legislation or as desired by concerned parties. The notary ensures the accurate dating of the deed, preservation thereof, issuance of engrossments, copies, and excerpts, subject to the condition that such responsibilities are not delegated to another official or individual as designated by law.

The act of rescinding or "*roya*" of the Mortgage Right, whether performed by the Land Office or enacted through the Roya Mortgage Deed drafted by the notary, shares a fundamental purpose. It serves to elucidate the complete settlement of a loan or credit by the debtor, resulting in the automatic extinguishment of the associated mortgage right. Consequently, the Mortgage Right is expunged. The notarial creation of the Roya Mortgage Deed is necessitated by the loss of the mortgage right certificate (Hamzah, 2020).

Diverging from the process applicable to Land Certificates, where loss or damage permits the issuance of a substitute certificate, no such provision exists for Mortgage Right certificates. This omission is predicated on the potential detriment to both parties—creditor and debtor—stemming from the loss of the Mortgage Right certificate. Specifically, the debtor may face adversity in the event of default, hindering the creditor's ability to petition for the auction of the Mortgage Right object, as the certificate cannot be appended to the auction application submitted to the State Receivables and Auction Office (KP2LN). Conversely, the creditor encounters challenges in effecting the cancellation of the Mortgage Right at the Land Office (Alfitra, 2021). In instances of genuine loss, the replacement mechanism entails the execution of the Roya Mortgage Deed by the notary, a prerequisite for effecting the cancellation of the extinguished mortgage right.

The Roya deed serves as a prerequisite for maintaining systematic land administration. Its role underscores the customary practice within the notarial profession. Functioning as a notarial deed, the Roya deed assumes the position of a surrogate for the lost Mortgage Right certificate, facilitating the prerequisites for the registration of the release or cancellation of the mortgage right. In practical terms within the domain of land registration, the status of the Roya deed pertaining to the mortgage right, as crafted by the notary, aligns with that of the lost Roya certificate, serving as a requisite for the registration of land ownership rights. Importantly, the Roya Mortgage Deed, crafted by the notary, assumes the role of a surrogate exclusively for the lost Mortgage Right certificate in the cancellation process—not for execution. Consequently, its status is not equated with the Mortgage Right Certificate, which possesses executive authority, as it lacks specific regulation within prevailing laws or established norms.

The evolution of services related to Mortgage Rights prompted the government to enact Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 5 of 2020 concerning Integrated Electronic Mortgage Rights Services, abbreviated as Permen ATR/BPN Number 5 of 2020. The issuance of this regulation signifies a transformation characterized by the simplification of the electronic registration process for Mortgage Rights. The updated regulatory framework is a strategic governmental effort aimed at facilitating individuals seeking land Mortgage Rights assurances for business endeavors, eliminating the need for physical visits to local Land Offices. Permen ATR/BPN No. 5 of 2020 mandates the electronic registration of Mortgage Rights, obviating the requirement for physical evidence submission at Land Office counters.

The advent of Electronic Mortgage Rights aligns with the concept of Cyber Notary, wherein technological advancements are harnessed to enhance the daily functions of notaries. This encompasses digital document processes, electronic execution of deeds, teleconferencing for General Shareholders Meetings (RUPS), and analogous activities. The primary role of Cyber Notary is to provide certification and authentication within the realm of electronic transactions. Certification entails endowing notaries with the authority to act as Certification Authorities, thereby issuing digital certificates to relevant parties. Authentication, on the other hand, pertains to legal compliance in executing electronic transactions (Jauhari, 2021).

The execution of Electronic Mortgage Rights (HT-el) commences with the verification and validation of user accounts, including creditors and *Pejabat Pembuat Akta Tanah* or Land Deed Officials (PPAT), designated as collaborators by the Ministry of Agrarian and Spatial Planning/National Land Agency. Subsequently, the HT-el registration process ensues, culminating in the issuance of the HT-el certificate. All procedural aspects adhere to the requisites outlined in Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 5 of 2020, executed in an electronic format.

Articulated in Article 5, paragraph (1) of Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 5 of 2020, the organizational framework for Electronic Mortgage Rights (HT-el) services encompasses the Ministry in an administrative role, the Land Office as the implementing authority, and Creditors, PPAT, or other entities designated by the Ministry, functioning as users. Conversely, users of the Electronic Mortgage Rights System include creditors and PPAT or other entities stipulated by the Ministry. Notably, creditors, as specified in paragraph (1) subclause a, may manifest as either individuals or legal entities in accordance with prevailing legislation.

The mechanism for online Roya, accessible through the Ministry of Agrarian and Spatial Planning/National Land Agency website, is confined to execution by Land Deed Officials (PPAT) or notaries (Hambali, 2022). The procedural steps for undertaking online Roya entail:

- a. Accessing the website htel.atrbpn.go.id via smartphone or PC.
- b. Logging in and inputting the username and password in the designated fields.
- c. Navigating to the 'Service' menu and selecting 'Roya.' Choosing the regional office, followed by the selection of the Land Office, concludes with the 'Create New File' button.
- d. Upon success, a menu displaying completeness information emerges. Entry of the Mortgage Right number, year, and code is required in the provided columns. Subsequent steps involve clicking 'Search Mortgage Right' and 'Upload.'
- e. A preview of the Mortgage Right certificate materializes. If accurate, the 'Upload' button is pressed.
- f. Completion of the preceding steps leads to the display of the type and number of rights earmarked for cancellation. Initiating the 'Add Roya Certificate' function, selecting the certificate, and subsequently clicking 'Upload' follows. Verification of certificate information, rights holder details, and last record particulars precedes the 'Save' action.
- g. Progressing to the document upload menu, stakeholders upload the Roya certificate from the creditor, the application form, and the Roya certificate

number. This phase concludes with the 'Upload' command. Confirmation of file accuracy prompts the 'Continue' click, unveiling the payment order menu.

- h. Execution of the payment for the invoice denotes the conclusion of the process, with the submitted Roya certificate application undergoing processing by the relevant authorities at BPN.

3.2. Legal Certainty of The Electronic Deed of Encumbrance

In the procedural undertaking of formulating the Roya Mortgage Deed, the debtor engages the services of a notary, underscoring the indispensable role played by the notarial function in this process. Within this framework, the debtor seeks both legal certainty and the establishment of authentic evidentiary instruments for their actions. Consequently, the Roya Mortgage Deed, from a juridical perspective, necessitates the intervention of a notary, functioning in their official capacity as a public officer endowed with the authority to draft authentic deeds.

In the interest of securing legal certainty, as delineated in Article 18, subsections (1) and (2), in conjunction with Article 22 of the Mortgage Right Law, pertinent to debtors who have fulfilled their financial obligations, the Mortgage Right imprinted on the land certificate and associated land registers must undergo annulment or cancellation. Subsequent to the debtor's discharge of liabilities, the creditor initiates the production of a Roya request letter directed to the Land Office. This communication explicitly asserts that the debt, which was collateralized by the pertinent Mortgage Right, has been duly settled, resulting in the extinguishment of the Mortgage Right. On this basis, the eradication of encumbrance records within the land title utilized as collateral is formally petitioned at the Land Office (Yuslim et al., 2023).

The provisioning of Mortgage Right services is codified within Law Number 4 of 1996, yet it lacks the requisite implementing regulations or nuanced technical directives. Recognizing this lacuna, the Ministry of Agrarian and Spatial Planning/National Land Agency has promulgated policy frameworks to govern the implementation of Mortgage Rights. This strategic initiative aims to elevate the qualitative standards of services while effecting a seamless transition towards digital transformation through the integration of electronic service provisions. The operationalization of Electronic Mortgage Rights is codified within Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2019. However, this policy has since been rescinded and supplanted by Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 5 of 2020. Concomitant with this regulatory transition, Technical Guidelines Number 2/Juknis-400.HR.02/IV/2020 were issued. The ensuing discourse provides a comparative analysis grounded in regulatory frameworks between conventional Mortgage Right services and their electronic counterparts.

Table 1. Comparison of Conventional HT Services and Electronic HT Services

No.	Aspects compared	Conventional HT Service	Electronic HT Service
1	Office staff and applicant interaction	Direct physical interaction	Interaction through the system
2	Service time	4 days, during office hours	Unlimited even on holidays
3	File completeness	Physical files in the form of photocopies and originals	Scanned digital data
4	Time required	7 days or more	7 days exactly
5	Submission of results	Physically handed over at the HT certificate delivery counter	Digital certificate sent to applicant's email
6	HT charging process	A note is made directly on the physical land title certificate.	Physical land title certificate Notes are provided separately from the certificate and sent via email, printed and framed with the land title certificate separately
7	<i>Warkah</i> (physical copy)	The physical copy is stored in the physical copy storage room.	Digitally stored on the system

In essence, the comparison above highlights that the legal regulation of land rights assurance, coupled with the integrated service of Electronic Mortgage Rights, represents a highly efficient innovation in terms of time and brings positive benefits to the community, banking/creditors, and land deed officials (PPAT), despite existing implementation challenges. The benefits derived from Electronic Mortgage Rights services include efficient, fast, and easy mechanisms for encumbrance and registration processes, more certain costs, and quicker and guaranteed legal protection for creditors.

The differences between conventional registration of Mortgage Rights and the Electronic Mortgage System (HT-el) are noteworthy. First, the registration process, previously handled by land deed officials (PPAT), is now undertaken by creditors. Second, all documents are submitted to the Land Office in digital form (uploads) without physical paperwork. Third, there is no longer a face-to-face interaction in the registration of mortgage rights. Fourth, the mortgage rights certificate can be directly printed along with its records. Fifth, the signature on the mortgage rights certificate is electronically generated by the HT-el system. However, the *Roya* process at the Land Office does not yet utilize the HT-el system. The manual *Roya* process takes a maximum of three days to complete. If a *Roya* application takes more than three days, it is due to data validation being conducted beforehand.

4. CONCLUSION

The research concludes that the mechanism of implementing electronic mortgage can be carried out directly by the community or with the assistance of a Notary in their respective regions, providing ease in the implementation of electronic mortgages for the public. The electronic implementation of Mortgage Rights brings positive benefits by expediting and simplifying the mechanism of encumbrance and registration of mortgage rights, ensuring cost certainty, and protecting the legal rights of the community, especially creditors. The process of creating a Deed of Mortgage Rights still requires the role of a Notary as a public official to provide legal certainty and as an authentic instrument in accordance with applicable laws.

The researcher recommends two key actions. Firstly, during the implementation of the electronic royalty mechanism, continuous public awareness campaigns are advised. Secondly, it is recommended that the Land Office simplifies the royalty process for debtors who have settled their debts by providing clear and concise information about the procedures and associated costs, facilitating debtors in obtaining the necessary royalty deed.

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