ELECTRONIC REGISTRATION OF COLLATERAL TO IMPROVE INTEGRATE INDONESIAN LAND GUARANTEES

Arief Suryono1
Rizkianto Dimas Rakayudha Pamungkas2

ABSTRACT

Purpose: This research addresses legal issues related to the need for a transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land collateral and obstacles in the transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land law.

Methods: The transition of Collateral Rights registration from conventional to electronic must be responded to through several supporting facilities. This is to minimize transition failures that could affect the legal certainty of Collateral Rights registration.

Results and Conclusion: This research is socio-legal with the research location at the Kendal District Land Office by inventorying primary and secondary data to be processed using a descriptive analytical approach.

Research implications: The results of the research are the need for a transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land law due to the need for a means of digitizing land in Indonesia and a means of ensuring legal certainty of Collateral Rights.

Originality/value: Meanwhile, obstacles in the transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land law include imperfect instrument constraints and constraints on enthusiasm for policy targets.

Keywords: Collateral Rights, Electronic, Integrated, Transition.

REGISTRO ELETRÔNICO DE GARANTIA PARA MELHORAR A INTEGRAÇÃO DE GARANTIAS DE TERRAS DA INDONÉSIA

RESUMO

Objetivo: Esta investigação aborda questões jurídicas relacionadas com a necessidade de uma transição para o registo electrónico de Direitos de Garantia como um meio de aperfeiçoar as garantias fundiárias integradas da Indonésia e os obstáculos na transição para o registo electrónico de Direitos de Garantia como um meio de aperfeiçoar a legislação fundiária integrada da Indonésia.

Métodos: A transição do registo de Direitos de Garantia convencional para electrónico deve ser respondida através de vários recursos de apoio. Isto visa minimizar falhas de transição que possam afetar a segurança jurídica do registo de Direitos de Garantia.

Resultados e Conclusão: Esta pesquisa é sócio-jurídica e tem como local de pesquisa o Kendal District Land Office, inventariando dados primários e secundários a serem processados usando uma abordagem analítica descritiva.

1 Universitas Sebelas Maret, Surakarta, Central Java, Indonesia. E-mail: ariefsuryono@staff.uns.ac.id
Orcid: https://orcid.org/0000-0002-5971-2446
2 Universitas Sebelas Maret, Surakarta, Central Java, Indonesia. E-mail: rakadimasrp@gmail.com
Orcid: https://orcid.org/0009-0007-3628-6046

1 INTRODUCTION

Legal issues related to the transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land guarantees (Pujiyono et al., 2017). This is related to the problem of transition from conventional to electronic collateral registration. Friedman's classification requires that elements of substance, structure and culture must work well to achieve legal effectiveness. This is combined with Seidman and Chambliss's thoughts regarding the theory of the operation of law to evaluate the effectiveness of legal implementation (Seidman, 1972). Problems of substance, structure and culture can become legal problems that affect legal effectiveness and reduce legal certainty. One form of collateral is a guarantee of land rights or what is known as Collateral Rights. Collateral rights that have been registered aim to obtain legal certainty of land rights. The vital value and priority inherent in considering the importance and breadth of land which covers the surface of the earth and all the riches contained therein (Harsono, 2004). The function of land can be transformed into a house, a source of income, a place to do business, access to other land, security for loans, and other (Zevenbergen, 2002). This condition is also the responsibility of the state in guaranteeing one form of welfare of its people (Shedel, 1999).

Legal certainty of land rights or security of tenure is necessary especially for rights holders, especially in protecting their control and ownership, including when land rights are guaranteed in the form of collateral rights. In the implementation of the credit agreement, the bank as the creditor asks for collateral from the customer as the debtor. The goal is that there is certainty for creditors who are guaranteed by debtors to be able to repay the credit. Thus, debtors are expected to remain committed to paying off their credit because there is credit guarantee. If the debtor defaults, the creditor has certainty in maintaining credit risk management by executing the guarantee (Poesoko, 2007; Pujiyono, 2013). Land is property, wealth and/or immovable property, therefore land cannot physically be transferred from one person to another, but only the rights to the land are transferred. Land is permanent, meaning it cannot rise, fall, or be destroyed like other assets or property (Hanstad, 1998), relevation is the physical condition of the land can be recorded or recorded at any time. This point, it is necessary to guarantee security for the realization of land policies involving Collateral Rights to be studied from the aspect of benefits and causality. This is relevant when compared to socialist thinking which bridges the meaning that legal certainty and justice are the most important goals of the legal system in order to achieve equity (Chroust, 1993).

Changes as they occur, of course, always follow the direction of technological developments in order to achieve efficiency and accountability for land data. The main
objective, as can be understood in the Preamble to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronically Integrated Collateral Services, is to be able to implement an electronically integrated form of Collateral Services to be able to improve Collateral Rights services that meet the principle of openness (Pujiyono & Riyanta, 2020), the principle of timeliness, the principle of speed, the principle of convenience and the principle of affordability in the framework of public services, and is intended to adapt to developments in law, technology and community needs. Strengthening technology as an accessible agrarian or land database through easy access by both the government and the community is expected to minimize problems in the implementation of conventional land policies such as double certificates due to non-synchronization or incompatibility of physical data with juridical data. It is necessary to transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land collateral (Salazar et al., 2023).

Registration of Collateral Rights electronically which is expected to be able to perfect land guarantees so that they can be integrated refers to the implementation of the HT-el System which has also been implemented as a data base to facilitate the registration of Collateral Rights electronically along with ensuring compatibility of physical data with juridical land. Convenience for the majority of members of the public who do not have written evidence assisted by evidence through real physical mastery that has continuously been controlled for 20 years by the party that is in control, can be registered and issued a certificate (Riyadi & Atmoredjo, 2020). Ideally the electronic Collateral transition that is used is supported through optimal instruments, facilities and capabilities of the implementing resources.

The electronic Collateral Transition can be a means of perfecting integrated Indonesian land guarantees (Pujiyono et al, 2020). This research examines the urgency of the transition to electronic collateral registration as a means of improving Indonesia's integrated land security as well as the various obstacles during this transition period. Responsive law is used as a theoretical basis considering its suitability as a legal reference instrument during a period of change or transition. These changes must also be responded to through several adjustment efforts, especially to the implementing elements and objects of the land policy. The Land Office located in the Regency/City area, as the direct implementer of the Collateral Rights registration policy in contact with the community, must adapt to these various changes.

2 PROBLEMS

1. Why is there a need for a transition to electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land guarantees?

2. What are the obstacles to the transition of electronic registration of Collateral Rights as a means of perfecting integrated Indonesian land guarantees?

3 METHOD

This research is sociolegal by taking the research location at the Kendal District Land Office based on a variety of problems that meet Friedman's legal system classification. Sociolegal research is research that provides a systematic explanation of a rule governing certain legal categorizations, then analyzes the relationship between parts of the regulation to be integrated at the implementation stage so that improvements can be made to a better legal mechanism in the future. Miles and Huberman (2005) on sociolegal research used primary and secondary data were processed with an analytical descriptive approach (Pujiyono and Lidwina, 2021).
4 RESULTS

4.1 The Urgency of the Transition to Electronic Registration of Collateral Rights as a Means of Improving Integrated Indonesian Land Guarantee

4.1.1 The Transition of Electronic Collateral Registration to Become a Land Digitization Facility in Indonesia

Electronic collateral rights in the regions, especially during the transition period, refer to optimizing information technology and digitizing flows or mechanisms, which require policy synergy in the process. Improving electronic Collateral registration facilities is important and is positioned as a tool to support the implementation of this policy. Facilities are tools or tools that directly become the main support in the implementation of a policy both at the central government level and at the regional government level. The existence of an electronic Collateral Rights registration facility is also an essence in itself which is able to determine the success of the transition from the implementation of Collateral Rights registration which was previously conventional to adapting to the implementation dimensions of Collateral Rights registration which optimizes information technology and other digitalization media.

The development of digital technology has influenced the dynamics of people's lives, including government administration activities including the registration of collateral rights which is now done electronically. The development of digital technology requires the creation of fast, accurate and responsive policy implementation supported by technological developments. The idea of taking advantage of the development of information technology and optimizing digital facilities has led to the realization of e-government. On the one hand, e-government is expected to be able to utilize developments in information and digital technology in creating excellent policies that are professional, accountable, effective and efficient, in line with the spirit of bureaucratic reform. So far, a lot of criticism has been directed at the implementation of convoluted policies, especially in the field of public services (Hartomo, 2019). This is a criticism to improve the performance of the government, including the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency and its delegation structurally at the Land Office located in the Regency/City area.

Digitalization through the transition to registration of Collateral rights electronically is expected to facilitate the mechanism by improving better facilities when compared to conventional registration of Collateral Rights. This also serves as a corrective effort, because the government through the National Land Agency (BPN) and the Land Offices at the Regency/City, can find out the data base covering the condition of the land and the status of the land for which Collateral rights are registered. Apart from that, the data base which has been written in digital form by the applicant can be directly integrated and minimize errors or omissions in the Collateral Rights registration process. The goal to be achieved through digitalization in the transition from conventional collateral registration to electronic is that the implementation of public services can prioritize transparency and mutual control or supervision as much as possible. This condition. This condition corresponds to what is stated in the essence of democratic bureaucratic thought by (Istianto, 2011). The above includes providing space for the Government to be creative with information technology that supports electronic-based public service processes or digitalization of public services, including in the realm of land policy.

The development of technology and information in electronic collateral registration has become a driving force for the realization of good governance. The urgency of the need for digitalization can be studied from the welfare state element, using Weber and Hegel's bureaucratic theory as a projected direction towards professional, accountable, effective and
efficient e-government, including in land policy in Indonesia. Hegel & Nisbet, (1991) thoughts prove the connection as intended. One conclusion with a quote from (Shaw, 1992) regarding the Theory of Modern Bureaucracy. Several other thoughts also expressed the relationship between the concept of democracy and the improvement of bureaucracy (Avineri, 1972); (Jackson, 1986). Digitalization, in other words, has become an element of refinement and improvement of aspects of policy in the current era (Lounsbury & Carberry, 2005). Its existence and existence cannot be postponed but rather adjusted to the adaptability of each country and the development of its people.

4.1.2 Transition to Electronic Registration of Collateral Rights as a Means of Guaranteeing Legal Certainty of Collateral Rights

The implementation of land policy shows the connection between the problem of registering collateral rights and the position of collateral rights as an agreement. The position of the Collateral Agreement as an accessor agreement to a debt and receivable agreement, credit agreement or other agreement as well as the main agreement, gives rise to a debt and receivable legal relationship which is the main agreement or predecessor agreement. Collateral is thus an additional agreement that follows the main agreement. The transition that occurs, namely from conventional registration of Collateral Rights to electronic registration of Collateral Rights, can be a means of change that is able to guarantee legal certainty. More specific parameters of legal certainty in the land sector can be detailed from the thoughts of Otto (2009), who summarized the elements in forming legal certainty as follows: (i) there are clear and consistent legal rules; (ii) government agencies apply the rule of law consistently, obey and comply with it; (iii) communities adapt their behavior to the rule of law; (iv) judges who are independent, impartial and must apply the rules of law consistently and carefully when resolving legal disputes; and (v) the court's decision is concretely implemented (Sutedi, 2011).

These changes must be responded to through several adjustment efforts, especially to the implementing elements and objects of the land policy. The Land Office located in the Regency/City area, as the direct implementer of the Collateral Rights registration policy in contact with the community, must adapt to these various changes. One of them is the readiness of juridical facilities and implementation facilities so that the change from conventional Collateral Rights registration to electronic Collateral Rights registration can be carried out well and minimize various errors such as Collateral Rights Certificates that are procedurally flawed or errors that can reduce legal certainty regarding implementation or the Rights Certificate. Dependents. It is necessary to improve the electronic collateral registration mechanism which is able to guarantee legal certainty, one of which is through comprehensive socialization and assistance to demonstrate the principles of publicity regarding Electronic Collateral Rights Certificates and change the public's mindset so that they know the advantages of Electronic Collateral Rights Certificates and the Collateral Rights registration that is carried out electronically.

Improving the electronic Collateral Rights registration mechanism which is able to guarantee legal certainty was formulated after the previous discussion identified various legal problems in the implementation of electronic Collateral Rights registration which took the implementation sample at the Kendal Regency Land Office. The second discussion in this article presents improvements to the electronic Collateral registration mechanism that can guarantee legal certainty. The refinement of the mechanism is classified into three elements which represent legal substance elements, legal structure elements and legal culture elements in accordance with (Friedman & Lawrence, 1975) legal system theory. This is because the demand for the effectiveness of the legal system must be proven by the stability and good functioning of its constituent elements which include these three studies (Khozim, 2013).
Improving the electronic Collateral Rights registration mechanism which is able to guarantee legal certainty in this second discussion includes improving the mechanism through the formulation of technical instructions, improving empowerment, improving the quality and competence of policy implementers and improving socialization and assistance to applicants for electronic Collateral Rights Certificate registration.

The problem with the wrong Collateral certificate is one of the following types of cases. This means that, if it is elaborated, in the implementation and substantive realm its useful purpose will be reduced by BPN's error in issuing the collateral certificate. Therefore, it is necessary to carry out re-construction, especially in the realm of mechanisms and implementation factors related to supervision and control based on the principles of prudence and accuracy in issuing Collateral Rights certificates. This is also one of the hopes for the realization of publications that are able to guarantee legal certainty. Legal certainty must stand in line with other basic legal values such as justice and purposiveness on Leawoods (2000) theory. Legal certainty is something that must be held as a basic reference. On the other hand, justice and expediency must also be realized by the state to achieve legal objectives in addition to fulfilling legal certainty. Therefore, in order to fulfill legal certainty, in the practice of state administration, it is necessary to accommodate the values of justice and expediency so that they are in line with the basic values of law/legal ideals (McKerlie, 2001; Araujo, 1995).

Another factor that shows the urgency of the need for a breakthrough to realize legal certainty in the transition to electronic registration of Collateral Rights is that the registration of conventional Collateral Rights is at risk of confusion due to the lack of the principle of prudence, the principle of accountability, the principle of transparency and the principle of accuracy. Based on the various problems with conventional Collateral certificates, it shows that the registration mechanism is risky without being accompanied by thoroughness or caution so that it can cause potential conflicts related to land certificates in the future. The principle of accuracy and thoroughness are needed to guide the safe collateral registration process. Thus, registration of Collateral Rights must accommodate these principles (Suprayoga et al., 2023).

The main function of the legal principle is to realize as much value as possible in the principles of positive law and its application. However, it is impossible to fully realize this measure of value in a positive legal system. According to Rahmawati (2020), legal principles can function this way because they contain a measure of value. As an assessment rule, legal principles can embody the highest legal principles of a positive legal system. Such conditions cause legal principles to be positioned and function as the foundation of the legal system. Legal principles are too general in type to serve as direct guidelines for actions unlike legal rules, therefore legal principles must be concretized (Mertokusumo & Sudikno, 2003). Collateral registration needs to be carried out carefully and carefully so that the results can provide legal certainty. Meanwhile, the principles of accountability and transparency are used to ensure that the land registration mechanism operates in accordance with applicable legal norms. Some clarifications that show this proneness to error are several examples of cases that the author includes in this research, especially those that have implications for Collateral Rights certificates. Various cases in several locations in Indonesia have shown in essence that an electronic collateral rights registration model is immediately needed that is able to minimize these errors. The field case above has a tendency to have problems with the land registration process being inaccurate and requiring improvements to the data base so that data implementation can be effective and accountable.
5 DISCUSSION

5.1 Transition Obstacles to Electronic Registration of Collateral Rights as a Means of Improving Integrated Indonesian Land Guarantee

The obstacles to the transition to registering Collateral Rights electronically can be studied from empirical observations through a sample of its implementation at the Kendal Regency Land Office. This study can be described through the points below.

5.1.1 Constraints of imperfect instruments

Instrument constraints are a problem that almost exists in every government policy implementation. Policies in the form of regulations can fail as instruments if they are unrealistic, inconsistent and overlap with other policies or regulations. Therefore, technical and procedural regulations are needed from stakeholders at the central level, in this case the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency as a reference for implementation at the regional level which is carried out by the Land Office in the Regency/City area. This need guarantees the consistency and standardization of policy implementation and the quality of a policy from the center to the regions, including in anticipating and overcoming technical problems that have the potential to cause legal problems as referred.

Referring to Lon Fuller's theory, the eight principles of legality are also classified as touchstones of a rule. The eight principles of legality show the dimension of good regulation and become a parameter so that the regulations are consistent, realistic or mean that these regulations can be implemented, these regulations must also not have the potential to cause conflict of authority or not overlap in the future. Rules with the type of regulating technically and procedurally also have a function to minimize errors in policy implementation, especially at the regional level. On the other hand, regulations that are not supported by regulations that are technically and procedurally regulated can actually reduce the consistency of policy implementation which also has implications for reducing the effectiveness of the policy and not even achieving the expected goals of implementing the policy. Thus, the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency must issue regulations with a technical and procedural type to regulate as a practical reference for the implementation of policies for electronic registration of Collateral Rights in the regions, especially during the transitional period which refers to the optimization of informatics technology and the digitalization of flow or mechanism, which requires policy synergy in the process.

One of the instrument's problems apart from the absence of procedural technical rules that deserves attention is the absence of the NIK/identity input option in the guarantor or proxy column. This is related to legal protection for creditors if the principal has passed away where the Electronic Collateral Right registered with SKMHT which is absolute should not be terminated by the death of the attorney. However, the system does not provide input options other than the authorizing NIK, making the NIK data automatically unusable if the owner has passed away. Furthermore, system errors, the tendency to wait for maintenance from the center, the absence of technical instructions, causality creates legal problems such as Procedurally flawed or doubtful Electronic Collateral Certificates. These legal issues and the problems that arise from the causal factors are classified based on the parameters of legal effectiveness in the theory of the legal system which includes substance, structure and legal culture. This can also be relevant to the theory of the working of law including rules, implementing agencies and their implementation targets.

As a response to the problem of the instrument, a solution must be given to it, namely providing other columns as optional or alternative to fill in the NIK, not only from the
authorizing agent because the SKMHT does not expire with the death of the authorizing agent, so APHT can still be registered. The choice is that there is an alternative that is uploaded from the column, which can be filled in with the NIK of the authorized person. The increase in classified facilities includes registration facilities, information facilities, monitoring facilities and other supporting facilities must also accommodate alternative choices in the identity column. The alternative is in the form of providing an optional identity column that can be filled in by the attorney in anticipation of the person's death. This step is relevant considering that SKMHT is an absolute power that cannot be terminated even if the authorizing agent has passed away. The HT-el system should follow the normative aspects of Article 1813 to Article 1815 of the Civil Code.

Various problems that cause incomplete electronic Collateral registration instruments need to be studied immediately given their potential to become ongoing problems. In fact, electronic registration of collateral rights must also be interpreted in this way, namely as a means of providing maximum efficiency or benefit to the community. In the ideal concept of implementing electronic collateral registration with legal certainty as the idea of this article, it is expected to provide benefits to the community. The benefits will be felt on an ongoing basis, especially in the people as users of HT-el services.

5.1.2 Policy Target Enthusiasm Constraints

Public enthusiasm and policy targets are one of the elements that determine optimal or sub-optimal implementation of a policy. Enthusiasm from users of electronic Collateral Services, one of which is PPAT who is very enthusiastic about the existence of the Electronic Collateral System facility on a research sample at the Kendal District Land Office. However, this system has not been accompanied by the enthusiasm of the community as the applicant in electronic registration of collateral rights, so socialization and assistance should be sought as a form of encouragement to get a response from the community in the Kendal Regency area. The target of related policies besides the public as the applicant also includes the Notary from his notary function in the series of registration of Collateral rights. This condition makes sense if you understand the results of (Khairul et al., 2019) thoughts. (Sajadi et al., 2015) also concluded that the role of a notary is identical in the registration of collateral rights.

The implication is legal certainty of land rights or security of tenure is necessary especially for rights holders, especially in protecting their control and ownership, including when land rights are guaranteed in the form of mortgage rights. In the implementation of the credit agreement, the bank as the creditor asks for collateral from the customer as the debtor. The goal is that there is certainty for creditors who are guaranteed by debtors to be able to repay the credit. Legal certainty can also provide benefits to the community in the form of a means of achieving the fulfillment of the community's interests in a certificate of collateral rights to land that has legal certainty so that it can lead to legal benefits in the community. According to Jeremy Bentham, expediency is intended to make law a means of achieving the greatest happiness for mankind, "great happiness for the great number". The thinking of the Utilitarianism school is in accordance with the concept of expediency which emphasizes the function of law in accommodating or providing benefits to Indonesian society.

The problem of lack of enthusiasm for the target of the electronic collateral registration policy can be caused by a lack of socialization which is motivated by two factors, namely government factors and public awareness as users or users of the HT-el System service. Socialization factors that are not optimal cause delays in receiving information related to the policy transition. First, from the land stakeholder factor at the Kendal District Land Office which is proven to lack human resources and can influence the socialization process which is actually important and needed as a reference or guide for the community as users of the HT-el
System service, to participate in or submit applications for Electronic Collateral Registration. Second, from the community factor itself, there is a less enthusiastic attitude towards changes or transitions to electronic collateral registration. This factor can be institutionalized and run continuously so that cumulatively it can hinder and influence the implementation of electronic collateral registration in the Kendal Regency area.

The problem of enthusiasm is a separate homework for the Land Office, especially those with jurisdiction in the Regency/City area. Given the composition and sociological conditions of the people who have not quickly accepted change and require a process of socialization from the implementation and transition of land policies. This problem must be addressed immediately because land is an important element in human life and daily activities. Land is in the position of immovable property, wealth and/or property, therefore land cannot be physically transferred from one person to another, but only the right to the land is transferred (Putra & Suryono, 2020). Primarily, such a situation can be perfected and done one way is through registration of Collateral Rights which translates one of the functions of land as an object of collateral in an agreement.

Obstacles to enthusiasm for policy targets can actually be overcome by efforts to participate in those policy targets on a regular and systemic basis. This can be accommodated and carried out in a series of electronic Collateral transition policy implementations. The intended implication is to gradually increase enthusiasm for the main policy target, the community as applicants for Electronic Collateral Certificates to participate in contributing in the form of supervision or control from the community. This is also a response or reciprocity to community involvement because the community has not fully felt enthusiastic and felt involved in formulating land policies such as the transition to registering Collateral Rights as intended.

6 CONCLUSION

Transitional registration of Collateral Rights electronically as a means of perfecting integrated Indonesian land law is caused by the need for a means of digitizing land in Indonesia and a means of guaranteeing legal certainty for Collateral. Obstacles in the transition to registration of Collateral Rights electronically as a means of improving integrated Indonesian land law include imperfect instrument constraints and constraints on the enthusiasm of policy targets, especially the public as the main users of the HT-el System services.

REFERENCES


Pujiyono, (2013). *The Importance of Banking Mediation (As a Dispute Resolution Model)*. Pustaka Hanif, Surakarta.


