

# IMPLEMENTATION OF THE DEED OF GRANTING DEPENDENT RIGHTS TO ELECTRONIC DEPENDENT RIGHTS CERTIFICATES (HT-EL) FOR LEGAL CERTAINTY

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## Abstract

The Deed of Grant of Dependent Rights is the basis for the birth of an electronic dependent rights certificate (HT-el certificate) must obtain legal certainty. Currently, the rules require that the Deed of Grant of Dependent Rights be electronic (as if it negates face-to-face, but the implementation until now of the Land Deed Making Officer ("PPAT") still uses the original Deed of Grant of Dependent Rights with principle face-to-face because the essence of "being present before the PPAT". The electronic Deed of Grant of Dependent Rights referred to in the regulations, seems to be still vague in its implementation. This raises public concerns and doubts about the Deed of Granting Dependent Rights seems to have not met the legal certainty of the electronic dependent rights certificate (HT-el certificate). The purpose of this study is to determine the implementation of the deed of granting dependent rights to electronic dependent rights certificates for legal certainty. This type of research uses normative juridical research with a statutory approach. The nature of descriptive research using primary, secondary, and tertiary data. Data Analysis in this study was analyzed qualitatively. The Deed of Grant of Dependent Rights is an authentic PPAT Deed and as one of the main sources in the maintenance of land registration data that produces an Electronic Dependent Rights Certificate (HT-el). APHT as a basis for rights that are used as an absolute condition for the birth of the HT-el certificate, has not changed, meaning that the APHT used is the one prepared and made by PPAT based on the format of Perkaban 8/2012 which requires the parties to be present and sign before the PPAT (there is face-to-face), will be contrary to the ITE Law (which negates face-to-face).

**Keywords:** Deed of Grant of Dependent Rights, HT-el Certificate, Land Registration

## 1. Introduction

In Indonesia, the structure of the lives of its people, including its economy, especially still in the agrarian style, earth, water and space, as a gift of God Almighty has a very important function to build a just and prosperous society as we aspire to, namely the One True God, Humanity, Nationality, Peoplehood and Social Justice and in particular must be an implementation of the provisions in article 33 of the Constitution of the Republic of Indonesia the year was 1945.

Government Regulation number 24 of 1997 concerning Land Registration is an implementing regulation against article 19 paragraph (1) of the Basic Agrarian Law in order to demand land ownership related to use and ownership, therefore registration of land rights is held.

Boedi Harsono describes that land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form

of maps and lists, regarding land plots and units of flats, including the provision of certificates as proof of their rights for land plots that already have rights and Property Rights to Flats Units and certain rights that burden it.

“Article 19 Law Number 5 of 1960 state that, to guarantee legal certainty of land ownership, the government conducts the land registration that covers all the regions of the Republic of Indonesia. The implementation of land registration is regulated in Government Regulation Number 24 of 1997 concerning Land Registration”.

Affirmation in explanation 19 paragraph (1) of Law of the Republic of Indonesia number 5 of 1960 concerning the Basic Regulation of Agrarian Principles ("UUPA") says, that:

“To ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations.”

The maintenance referred to here is the maintenance of land registration data. To realize legal certainty over land, land registration appears for the purpose of legal certainty (legal cadastre). The target is the already registered plots of land.

Land as one of the natural resources that has economic value and has high social value and security defense, that can be managed and cultivated by the owner so as to provide benefits to the owner. Therefore, land is a primary need that must be met by humans for their survival, whether used as a place to live or as a medium in obtaining funding facilities.

In development, the need for land is getting bigger due to increasing development, so it is necessary to play the role of BPN as a state tool in management, and the use and resolution of land problems so that to be utilized according to its maximum potential, land must be managed in a planned and coordinated manner.

The fulfillment of human needs and desires is sometimes hindered by certain causes that position man to lack the injection of funds in order to achieve what he aspires to. For this reason, funding institutions are present in the community to help provide funds for people in need by providing an object that can be guaranteed to the funding institution so that it is protected from losses in the future if the debtor wanprestasi.

For people who are trying to increase their needs, they really need funding from banks as a source of funds, including in the form of credit, in order to be able to be sufficient to support the improvement of their business.

The Bank as one of the most strategic financial institutions in its role in society, aims to collect funds from the public in the form of savings, deposits, or others and redistribute them in the form of lending to the community.

Collateral which is generally a treasury guarantee as a condition of providing credit by the bank as a creditor / collateral holder so that if the debtor defaults, the creditor can apply for execution of the guarantee, a public auction is carried out then the creditor gets reimbursement from the proceeds of the sale of the treasury guarantee.

In the development of law in Indonesia, a guarantee institution has been born that can be used by the community as stipulated in Law Number 4 of 1996 concerning Dependent Rights to Land along with Objects Related to Land called the Dependent Rights Law ("UUHT"). The provisions regarding Dependent Rights refer to the UUHT as well as relevant implementing regulations.

Technological progress in Indonesia is so fast. One of the results of the development of science and technology is cyber technology known as the internet. Information technology security is part of industry 4.0 challenges.

In Indonesia, Industry 4.0 has brought many changes in human life which have fundamentally changed the way people move and have a very large and very fast influence in the technology industry, this contribution has entered the joints of land law.

The government through the Ministry of Agrarian and Spatial Planning / National Land Agency of the Republic of Indonesia ("Ministry of ATR / BPN") has sought to respond to the challenges of industry 4.0, by issuing laws relating to Electronic Information and Transactions and various other policies for other land information services and electronic spatial planning including electronic certificates. However, the opportunity to answer the challenges of industry 4.0 must be fast and precise so as not to contribute to the increase in land problems, especially electronic certificate services.

Enactment of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions is expected to be the basis for the implementation of electronic systems in Indonesia and is expected to become a legal umbrella for electronic certificates in general.

For the sake of improving public services, it seems that the Ministry of ATR / BPN as an institution entrusted by the government for agrarian affairs always strives to improve the quality of its services. One of the efforts is to change the pattern of service to the community, from manual services to computerized or electronic-based services.

The government's efforts to simplify the process have been simplified by issuing a Regulation of the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency Number 9 of 2019 concerning Electronically Integrated Dependent Rights Services ("Permen ATR 9/2019") which aims to improve dependent rights services that meet the principles of openness, convenience and affordability so that dependent rights service procedures can be integrated electronically so that it becomes more effective and efficient. However, Permen ATR 9/2019 has not yet regulated thoroughly regarding dependent rights as stipulated in Law Number 4 of 1996 concerning Dependent Rights to Land and Objects Related to Land (UUHT), so this regulation is refined by the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency number 5 of 2020 concerning Electronically Integrated Dependent Rights Services ("Permen ATR 5/2020").

Based on researchers' studies, around 2019 electronic dependent rights (HT-el) to electronic dependent rights (HT-el) issued by the Ministry of Agrarian and Spatial Planning / National Land Agency have been implemented.

The Deed of Grant of Dependent Rights is the basis for the birth of an electronic dependent rights certificate (HT-el certificate) must obtain legal certainty. Currently, the rules require that the Deed of Grant of Dependent Rights be electronic (as if it negates face-to-face, but the implementation until now of the Land Deed Making Officer ("PPAT") still uses the original Deed of Grant of Dependent Rights with principle on face-to-face because the essence of "being present before the PPAT".

The electronic Deed of Grant of Dependent Rights referred to in the regulations, seems to be still vague in its implementation. This raises public concerns and doubts about the Deed of Granting Dependent Rights seems to have not met the legal certainty of the electronic dependent rights certificate (HT-el certificate).

This indicates that the tendency to solve land problems will still be the main issue in order to realize one of the legal goals from the point of view of positive legal science which focuses on legal certainty, can also provide time certainty and cost certainty to the community.

Based on the things described above, the object of research is: How is the implementation of the deed of granting dependent rights to electronic dependent rights certificates for legal certainty?

## **2. Theories used**

### **A. Legal Systems Theory**

Lawrence Meir Friedman in the theory of the Legal System he stated that the effectiveness and success of law enforcement depends on three elements of the legal system, namely legal structure, legal substance and legal culture. The legal structure concerns institutions, the substance of the law includes the statutory apparatus and the legal culture is a living law adopted in a society.

Legal structure is a framework of permanent forms of the legal system that keeps the process within its boundaries consisting of existing legal institutions. A structure is a pattern that shows how a law is carried out according to its formal provisions. This structure shows how the rule-makers and institutions and the rule of law are executed.

This research formulates the legal structure in Indonesia within the corridors of land law, namely the Ministry of Agrarian and Spatial Planning ("ATR") which is a Non-Ministerial Government Institution in Indonesia and has duties including to organize affairs in the agrarian/land and spatial planning fields in government in accordance with the provisions of laws and regulations. The ATR Ministry is subordinate to and accountable to the President.

The legal basis of the Ministry of ATR is regulated in the Presidential Regulation of the Republic of Indonesia number 47 of 2020 concerning the Ministry of Agrarian and Spatial

Planning. In carrying out its duties, the Ministry of ATR focuses on the formulation of various policies that focus on matters of a coordinating nature.

The National Land Agency ("BPN") is a Non-Ministerial Government Agency that is subordinate to and responsible to the President and led by the Head. BPN used to be known by the mention of the Agrarian Office.

The legal basis of BPN is regulated in the Presidential Regulation of the Republic of Indonesia number 48 of 2020 concerning the National Land Agency. In carrying out its duties, BPN focuses on various operational matters.

In addition, the Land Deed Making Officer ("PPAT") is part of the legal structure. Legal substance in Friedman's view suggests substance is the rules, norms, and patterns of real human behavior that reside in the legal system. So the substance of the law concerns the prevailing laws and regulations that have binding force and become guidelines that determine whether or not the law can be implemented. Substance means products produced by people who are in a legal system that includes new decisions or rules that they compile.

Laws and regulations consisting of the 1945 Constitution, UUPA, UUHT and ITE Law along with implementing regulations, namely Government Regulation number 24/1997 concerning Land Registration, to Permen ATR/Ka BPN 5/2020, Permen ATR 1/2021, Regulation of the Head of BPN 8/2012, and other regulations are the substance of the law that is in force until now so that it can have binding force should be a guideline for the Implementation of the Deed of Granting Dependent Rights to the Certificate of Rights Electronic Dependents (HT-el) for Legal Certainty.

Legal culture, Friedman formulated that legal culture is the overall attitude and value in society that determines how the law should apply in society. This legal culture can have both positive and negative impacts on behavior related to the law.

No matter how good the quality of structuring the legal structure to carry out the established legal rules and the substance of the law created without the support of legal culture by the people involved in the system and society, the implementation of the legal system will not be effective.

The development of technological sophistication demands for dependent rights certificates as part of land registration data maintenance activities has led to a shift in legal culture that previously used physical certificates (manual certificates), currently already uses online certificates (electronic certificates).

The legal culture in HT-el certificates lies in changing the pattern of people's attitudes that are carried out repeatedly to form habits towards the use of dependent rights certificates that previously used paper-based certificates, now use certificates based on computers or systems (paperless). This kind of legal culture also occurs in electronic systems.

The implementation of the Deed of Grant of Dependent Rights has become a legal culture, because the Deed of Grant of Dependent Rights is the basis for the birth of the Electronic Dependent Rights certificate.

Departing from Friedman's theory, it means that the legal structure, legal substance, and legal culture are one unit as a legal system that can be optimally implemented in the Implementation of the Deed of Granting Dependent Rights to Electronic Dependent Rights Certificates (HT-el) for Legal Certainty.

## **B. Theory of Legal Certainty**

Legal certainty normatively is when a rule is made and promulgated definitively because it regulates definitively and logically. Clear in the sense that it does not cause doubt (multi-interpretation) and is logical in the sense that it becomes a system of norms with other norms so that it does not clash.

Legal certainty is a situation where human behavior, whether individuals, groups, or organizations, is bound and is within the corridors that have been outlined by the rule of law. Thus legal certainty refers to the clear, fixed and consistent enforcement of the law where its implementation cannot be influenced by circumstances of a subjective nature.

When studied more deeply, legal certainty is the ultimate goal of 19 paragraphs (1) of the UUPA which is addressed to the Government to regulate and organize land registration in all regions of the Republic of Indonesia, so that it can be said that good government has legal regulations regarding legal certainty in a country is a benchmark for legal certainty. Thus, legal certainty in land registration is certainty about rights, this includes the implementation of land registration in order to realize legal certainty.

In this theory, Utrecht stated that legal certainty contains two meanings, namely firstly the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government authority because with general rules, individuals can know what the state can impose or do on individuals. Based on Utrecht's theory of legal certainty, it can be interpreted that legal certainty can be obtained as long as each debtor, PPAT, creditor, and Land Office knows and carries out their obligations as stated in the Deed of Grant of Dependent Rights in accordance with applicable regulations.

This legal certainty comes from Juridical-Dogmatic teachings that are based on the school of thought positivism in the legal world that tends to see law as something autonomous, independent, because for adherents of this school, the purpose of law is nothing other than to guarantee the realization of legal certainty. Legal certainty makes people aware of the clarity of rights and obligations according to the law.

The HT-el certificate is part of the maintenance of land registration data based on an electronic system, however, in its implementation it is always based on the Deed of Grant of Dependent Rights. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights.

Moving from Sudikno's view, the debtor as the party who controls the object of dependent rights is physically entitled to legal certainty as long as the land has been registered, both the Deed of Grant of Dependent Rights and supporting documents in accordance with the



provisions of the regulations that apply until the time of obtaining the HT-el certificate, and are definitely implemented.

Sudikno's views corroborate Utrecht's view of the theory of legal certainty.

### **3. Research Methods**

The method used in this study is a normative juridical approach method, that is, by researching reading sources relevant to this journal.

To obtain valid data related to the problems raised and those that will be carried out in collecting various data to solve problems in research, researchers need a research method that includes:

#### **The type of research**

This type of research uses normative juridical research supported by empirical legal research, because this research is not only from a statutory perspective but looks at the law in its implementation or application, therefore this research requires primary data.

Normative research is understood as research to test a norm or applicable provisions, it can also be said to be research carried out by examining library materials or secondary data. As a normative research, this research is carried out based on sources of legal materials, because this research refers to the study of legal norms, regulations, and other literature studies.

#### **Research Approach**

This research approach uses a statutory approach that is relevant to land registration, especially HT-electronic certificates.

#### **Nature of Research**

This research is descriptive, which is the method used to describe and explain the incident with the problem under study.

#### **Research Sources**

The use of this necessary research source consists of:

- a. Primary data, which is data obtained directly from the main source that is realized in the form of views of thoughts, events or legal relationships. Primary data in this study was obtained by conducting interviews with resource persons who had scientific competence in the field under study.
- b. Secondary data, which is data obtained from library materials which includes three types of legal materials.
  1. Primary legal materials, namely: legally binding legal materials, including: the Constitution of the Republic of Indonesia of 1945, the Basic Agrarian Law No. 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA), Law Number 4 of 1996 concerning Dependent Rights to Land and Objects Related to Land (UUHT),

Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), Law of the Republic of Indonesia number 19 of 2016 concerning Amendments to Law number 11 of 2008 concerning Electronic Information and Transactions, and other regulations relevant to the topic of this research journal.

2. Secondary legal materials, namely materials that provide explanations of primary legal materials, namely literature studies of reference books, and papers that have relevance, law journal, expert opinion, scientific works, legal articles, online media and websites, in connection with Agrarian Law relevant to research.
3. Tertiary legal materials, namely legal materials that provide instructions or explain primary legal materials and secondary legal materials, which includes: dictionary, as long as it has relevance to the object of the problem to be studied. In addition, the Big Indonesian Dictionary, Website and Online Media can also be a source of tertiary legal material.

#### **Data Analysis**

The data from this study was analyzed qualitatively, meaning that the literature data and interview results were analyzed in depth in the form of descriptions and explanations. The analysis used without using numbers or statistical formulations, meaning that it is presented in the form of a description. The analysis will be presented descriptively.

#### **4. Discussion**

##### **A. Implementation of the Deed of Grant of Dependent Rights to the Electronic Dependent Rights Certificate (HT-el) for Legal Certainty**

In the General Explanation of the UUHT, it is emphasized that Dependent Rights are the only guarantee institution for land, and thus complete the unification of the Indonesian National Land Law, which is one of the main objectives of the UUPA.

A Dependent Right is a right of guarantee imposed on the right to land along with other objects that are integral to the land for the repayment of certain debts, which gives a position of precedence to a particular creditor over another creditor.

UUHT regulates the granting of dependent rights must be carried out by making a Deed of Grant of Dependent Rights ("APHT") by PPAT. This means that the process of encumbrance of dependent rights must be started and carried out with the creation of APHT, this is because APHT will be used as the basis for registering changes in land registration data.

Pasal 10 ayat (2) UUHT which states that the granting of dependent rights is carried out by making a Deed of Grant of Dependent Rights by PPAT in accordance with applicable laws and regulations.

PPAT has a strategic role in carrying out its authority and duty to create APHT as mandated by Article 11 of the UUHT. Furthermore, after the PPAT concerned makes the APHT, the



dependent rights must be registered with the local land office as mandated by Article 13 paragraph (1) of the UUHT.

The role of the PPAT then turned to the Land Office to follow up to the stage of registering dependent rights. In this regard, the registration of dependent rights must be carried out by the local Land Office by making a dependent rights land book and recording it in the land rights book that is the object of dependent rights and copying the record on the certificate of title to the land concerned. However, PPAT in carrying out its duties and functions is not only for matters related to APHT, but also to assist the Head of the Land Office in carrying out activities related to changes in land registration data.

The General Explanation of PP 24/97 on Land Registration states that PPAT deeds are one of the main sources in the context of maintaining land registration data. The intended PPAT Deed is the Deed of Grant of Dependent Rights ("APHT").

The function of PPAT is stated by the enactment of PP 24/97 concerning Land Registration, namely as a general official who is authorized to make deeds of encumbrance of land rights, and other deeds regulated by applicable laws and regulations.

Thus, because the HT-el certificate is based on the data of land plot objects that have been certified and have been registered with the local land office, the HT-el certificate is the result of the implementation rather than the maintenance of land registration data. This is supported in article 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia number 1 of 2021 concerning electronic certificates regulating the implementation of land registration can be carried out electronically, including the maintenance of land registration data.

Based on the results of the interview, Udin Narsudin questioned the making of the PPAT deed which has been referring to the Minister of Atr/Head of BPN 16 of 2021 concerning the Third Amendment to PMNA/Head of BPN 3 of 1997 concerning Provisions for the Implementation of PP 24/97 concerning Land Registration, which regulates the form of PPAT deeds must be with the original PPAT deeds, while currently the deeds made must be in the form of electronic documents with electronic HT certificates. Why inconsistent? Should the original PPAT deed be set aside? Udin criticized article 5 of the ITE Law, which according to him is unclear so that it does not necessarily guarantee legal certainty.

Article 1 number 1 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officers states that Land Deed Making Officers are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or Property Rights to Flats Units. Until now, Perkaban 1/2006 has not been revoked.

Further explanation is elaborated in the Weighing section in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian State/Head of the National Land

Agency Number 3 of 1997 concerning Provisions for the Implementation of PP 24/97 concerning Land Registration ("Perkaban 8/2012") which states that to improve land services, starting from 2013 the preparation and manufacture of APHT blanks is carried out by the PPAT concerned. This means that after 2013 the applicable APHT is an APHT that is prepared and carried out by each PPAT concerned based on the predetermined deed format.

PPAT has the authority in a series of land registration data maintenance activities including the implementation of making APHT, then the APHT blanks are made by the PPAT concerned and according to the format that has been determined according to Perkaban 8/2012.

As it is well known that Perkaban 8/2012 is still valid today, the format of this APHT in its implementation is still implemented by the PPAT concerned, and is still valid today.

The encumbrance of dependent rights or what is known as the granting of dependent rights is carried out by making a Deed of Grant of Dependent Rights ("APHT") by PPAT as stipulated in the applicable laws and regulations. In granting dependent rights before PPAT, it must be attended by the debtor (grantor of dependent rights) and creditor (beneficiary of dependent rights) and witnessed by two witnesses who are usually employees of the PPAT office concerned.

If it is related to the duties of PPAT which in its implementation, it has become the duty of PPAT in preparing, making and carrying out the APHT signing process which must be attended by the parties related to legal actions in the APHT, where the parties must come to the PPAT office to sign the APHT, then it is not in accordance with what is required that a valid PPAT deed must be in the form of an electronic document (article 5 of the ITE Law). If what this article means is electronic APHT, it is also not explained its meaning in this article.

Article 114 of the Regulation of the Minister of Agrarian affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian State/Head of the National Land Agency number 3 of 1997 concerning Provisions for the Implementation of Government Regulation number 24 of 1997 concerning Land Registration states that the PPAT that makes APHT must submit to the Land Office no later than 7 (seven) working days after signing the deed.

## 5. Conclusions

The Deed of Grant of Dependent Rights is an authentic PPAT Deed and as one of the main sources in the maintenance of land registration data that produces an Electronic Dependent Rights Certificate (HT-el). APHT as a basis for rights that are used as an absolute condition for the birth of the HT-el certificate, has not changed, meaning that the APHT used is the one prepared and made by PPAT based on the format of Perkaban 8/2012 which requires the parties to be present and sign before the PPAT (there is face-to-face), will be contrary to the ITE Law (which negates face-to-face). The validity of APHT which requires the presence of parties and signing before the authorized PPAT, then uploaded to the official website of the Ministry of ATR / BPN so that it becomes an electronic document, or the electronic creation of APHT as

the basis for the birth of the HT-el certificate, is not regulated in laws and regulations, or government regulations relevant to electronic Dependent Rights (HT-el), so that there is a legal vacuum, which can reduce legal certainty, then the Utrecht theory and the Sudikno theory cannot be applied.

For the sake of legal certainty of the HT-el certificate, the formulation of the validity of APHT which requires the presence of the parties and signing before the PPAT and then uploaded to the system or the official website of the Ministry of Agrarian affairs and Spatial Planning so that it becomes an electronic document or the electronic creation of APHT as a basis for the right to birth of the HT-el certificate should need to obtain arrangements or discussions in laws and regulations (ITE Law, or UUHT), or government regulations relevant to electronic Dependent Rights certificates (HT-el).

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