

# LEGAL ALERT

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## Introduction to the Electronically Integrated Land Mortgage Services

On 21 June 2019, the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia (*Kementerian Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia* or “MoA”) enacted MoA Regulation No. 9 of 2019 on the Electronically Integrated Land Mortgage (*Hak Tanggungan*) Services (“MoA Reg 9/2019”). The aim of the enactment of MoA Reg 9/2019 is to simplify the manual registration procedure as regulated under Law No. 4 of 1996 concerning Land Mortgage (*Undang-Undang Hak Tanggungan* or “UUHT”) as well as to enhance the land mortgage services and ensure the principles of transparency, timeliness, efficiency, accessibility and affordability.

The regulation introduced a new integrated electronic system for the land mortgage (*hak tanggungan*) registration services (“e-HT System”) as an alternative registration procedure for land mortgage. Rather than relying on the older mechanism which requires the registration and documents to be submitted manually, this e-HT System will manage and store all registration information through an integrated electronic system.

Provisions under MoA Reg 9/2019 encompasses (i) the implementation of e-HT System; (ii) the mechanism of e-HT System services; (iii) suspension of the services; and (iv) data validation.

### Land mortgage under Indonesian Law

A land mortgage (*hak tanggungan*) is a type of security under Indonesian law created over immovable property such as lands, buildings or other fixtures on land. It must be made in a prescribed statutory form of a land mortgage deed and, once executed, to perfect the security created by a land mortgage, the mortgagee (or creditor) must register the land mortgage deed with the National Land Office where the land is located. A Land Mortgage Certificate (*Sertifikat Hak Tanggungan*) will be issued to the mortgagee as the evidence of perfection.

### e-HT System

The e-HT System is operated by the National Land Office and can only be accessed by registered users. To be registered as a user, Article 7 of MoA Reg 9/2019 sets out following requirements to be fulfilled by the applicants:

- have an electronic domicile, i.e. an email address that has been verified;
- obtain a Certificate of Registration (*Surat Keterangan Terdaftar*) from the Financial Services Authority (*Otoritas Jasa Keuangan*, “OJK”);
- complete the statement of fulfillment of requirement and criteria as well as approval as registered user; and
- comply with other requirements determined by the MoA.

A registered user may be an individual or a legal entity listed in OJK that acts as a creditor. Other than the registered users, Land Deed officers will also have access to the e-HT System for purposes of registration of land mortgage.

Services offered in the e-HT System include:

- registration of land mortgage;
- transfer of land mortgage;
- change of creditor's name; and
- release of land mortgage (*roya hak tanggungan*).

### Registration of security rights

The procedure of the registration of land mortgage is stipulated under Article 12 to 14 of MoA Reg 9/2019. The Deed of Grant of Security Rights (*Akta Pemberian Hak Tanggungan*) as one of the requirements shall be submitted by the Land Deed Official (*Pejabat Pembuat Akta Tanah/PPAT*) in the form of an electronic document. After the said registration has been conducted, the local Land Office (*Kantor Perwakilan Tanah*) will record such mortgage in the land book (*buku tanah*) and the creditor shall print the mortgage recordation and affixed it to the Land Mortgage Certificate (*Sertifikat Hak Tanggungan*). The mortgage recordation shall form an integral and inseparable part of the Land Mortgage Certificate.

### Issues

There are several potential issues that may arise in relation to the implementation of the e-HT System. First, the 'registered user' must be listed in OJK. This means that only banks and financial institutions, i.e. local banks and foreign banks that have branch offices in Indonesia, can meet this requirement. Individuals and/or foreign banks or financial institutions would not be able to access the e-HT System if they are not registered with OJK and have not obtained licenses from OJK.

Second, in a case where a security agent has been appointed by a creditor or a syndication of creditors to manage the debtor's secured assets, such security agent would not satisfy the definition of a 'Creditor' under the MoA Reg 9/2019 and as a result, they would not be able to access to the e-HT system.

Another issue that is still being debated in this regulation is stated in Article 9 (5) of MoA Reg 9/2019. Article 9(5) sets out a requirement for Land Title Certificates that will be registered under land mortgage must be under the name of the debtor. This requirement may be read as a limitation for third party security providers and, thus, a land mortgage can only be granted by the debtor. This provision contradicts with the provision under the UUHT, which allows the land mortgage to be granted by other third parties.

### Current practice

To date, we understand that the e-HT System has been implemented throughout Indonesia. However, for certain cases where the e-HT System cannot be implemented, for example when the three issues mentioned above arises, in practice the registration of land mortgage is still submitted and carried out manually at each relevant National Land Office where the lands are located.

Given this e-HT System is a form of transformation from the conventional mechanism to the new mechanism, to date the MoA is still in the process of socialising it to the public specifically for prospective registered users. The fulfillment and readiness of supporting data is still being developed and examined closely for the implementation of the electronically integrated system.

If you have any questions or require any additional information, please contact [Leoni Silitonga](#) and [Sandro Mieda Panjaitan](#) of Roosdiono & Partners (a member of ZICO Law).

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