

## Electronic Mortgage Rights as a Form of Legal Modernization: A Review from the Maqāṣid al-Sharī'ah Perspective

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**Abstract.** The rapid development of digital technology has brought fundamental changes to the Indonesian legal system, including the mechanisms for registering and implementing mortgage rights. This modernization is realized through the implementation of Electronic Mortgage Rights (HT-el) as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020, as a follow-up to Law Number 4 of 1996 concerning Mortgage Rights. The main objective of implementing this system is to increase efficiency, transparency, and legal certainty in land services. However, behind this progress, important questions arise regarding how this legal modernization can remain aligned with moral values, justice, and the welfare of the people from the perspective of maqāṣid al-sharī'ah. This study uses a normative juridical method with a statutory, analytical, and conceptual approach. The results show that the digitalization of mortgage rights through HT-el is not only a technical innovation, but also a form of legal adaptation to current developments that is oriented towards the welfare (maslahah). The principles of hifz al-mal (protection of property) and hifz al-'adl (upholding justice) are reflected in the guarantee of data security, service efficiency, and protection of the rights of the parties. Thus, the implementation of HT-el can be seen as a manifestation of legal modernization that prioritizes not only administrative effectiveness but also the values of substantive justice and social welfare, as emphasized in the maqāṣid al-sharī'ah.

**Keywords:** Electronic Mortgage, Legal Modernization, Maqasid al-Shariah

### 1. Introduction

The rapid development of digital technology has resulted in fundamental changes in the Indonesian legal system, particularly in the registration and implementation of mortgage rights. This process has now evolved to keep pace with current developments, namely the modernization of the implementation of electronic mortgage rights (HT-el) as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 as the implementing agency of Law Number 4 of 1996 concerning Mortgage Rights. This digitalization process aims to realize mortgage rights services that are more efficient, transparent, and have high legal certainty, while also responding to the growing demands of society in today's digital era (Merah et al., 2025).

In its implementation, the HT-el system can be managed by Land Deed Officials (PPAT) and financial services institutions (Banks) in electronically integrated mortgage services. One of the reasons underlying the HT-el is to improve the mortgage service system which is considered ineffective because it requires a long time and is quite complicated, such as if the application file is lost, the application process must be repeated, therefore strategic steps are needed from the Ministry of ATR/BPN.

Furthermore, the implementation of e-HT demonstrates that the government is providing services tailored to the development of digital technology in the land sector. With an integrated, information technology-based system, e-HT is expected to reduce the risk of administrative errors. Digitizing mortgage rights is not merely a technical innovation, but a strategic step in realizing a more modern, responsive, and certainty-oriented land law system in Indonesia (Rachmayanti, 2022).

Article 1 number 6 of the Regulation of the Minister of ATR/BPN Number 5 of 2020 regulates the Integrated Mortgage Rights Service electronically. It is a series of mortgage rights service processes in the context of maintaining land registration data organized through an integrated electronic system. This definition emphasizes that the digitalization of mortgage rights does not only focus on procedural convenience aspects, but also on improving the quality and governance of national land to be more transparent, efficient, and accountable in supporting legal certainty for all interested parties (Roestamy et al., 2025).

Viewed from the perspective of Maqasid al-Shariah, legal modernization through HT-el can also be seen as a legal adaptation to increasingly modern developments, while remaining oriented toward the common good (maslahah). The principles of hifz al-mal, or protection of property, and hifz al-'adl, or upholding justice, are reflected in the guarantee of data security, service efficiency, and protection of the rights of the parties (Baskoro, 2024). Ethics-oriented supervision and the application of maqasid al-shariah principles are needed at every stage of implementation so that the modernization process remains based on moral values and social justice.

Based on these rights, the implementation of HT-el is not only interpreted as a technological innovation, but also as an effort to provide substantial justice and public benefit within the framework of the national legal system. This aligns with the values of maqasid al-shariah, which emphasize protection, justice, and the creation of social welfare (Bashori et al., 2024).

In the study entitled *The Influence of the Implementation of the Land Mortgage Digitalization Policy on the Quality of Public Services for Land Affairs in Bengkulu City, Bengkulu Province* (Akwan et al., 2025) This study discusses how HT-el, as an instrument of legal modernization, can realize substantive justice and social welfare, as well as how ethical oversight and the application of the maqasid al-shariah principle are implemented in HT-el service practices. Meanwhile, the study, entitled "Effectiveness of Electronically Integrated Mortgage Rights Services at the Klaten Regency Land Office," discusses how HT-el can be implemented in the practice of HT-el services (Sagari et al., 2022) discusses the imbalance between service modernization and protection for weak stakeholders, such as small debtors, PPAT users who lack digital literacy, and the implications of Islamic legal values in the context of the electronic property guarantee system.

This study provides a new perspective by integrating the analysis of maqasid al-shariah in assessing the implementation of Electronic Mortgage Rights as a form of legal modernization in Indonesia. The novelty of this study is that HT-el is not merely a technology-based administrative innovation, but also a legal instrument that can reflect the principles of hifdz al-mal and hifz al-'adl. Therefore, this study broadens the understanding of land law modernization by placing the benefit (maslahah) and substantive justice at the core of digital transformation in the national legal system.

## **2. Method**

This research uses a normative juridical research method to find legal rules, legal principles, and legal doctrines that will be used to answer the legal issues faced (Peter Mahmud Marzuki, 2017). The approaches used are statutory, analytical, and conceptual approaches. Where in the statutory approach will examine the UUHT and Permen ATR/BPN Number 5 of 2020 and other related regulations, the analytical approach is to analyze the norms and legal implications of the implementation of HT-el, then examine the legal concepts of material guarantees and maqasid al-shariah. The legal materials used are primary and secondary legal materials, where primary legal materials use relevant laws and regulations. Secondary legal materials use books, articles, and journals. Qualitative data analysis by interpreting and reviewing the legal materials that have been collected.

## **3. Results and Discussion**

### **3.1. Digital Transformation and Modernization of the Legal System through Electronic Mortgage Rights (HT-el)**

The implementation of legal modernization in e-HT in Indonesia is a response to demands for efficiency, transparency, and legal certainty in land services. Based on Ministerial Regulation No. 5 of 2020, this system presents significant changes in the registration and management of mortgage rights, which were previously carried out manually and have now shifted to a digital platform. This change allows for faster service, minimizes the potential for loss of physical documents, and improves the accuracy and reliability of land data overall (Isabella et al., 2024).

Beyond technological innovation, HT-el also reflects a paradigm shift in land administration, oriented toward the principles of good governance. This digitalization not only simplifies administrative processes but also strengthens accountability and transparency at every stage of mortgage services. With an integrated system, the verification, validation, and document issuance processes can be conducted more efficiently and clearly, thereby reducing the potential for irregularities and administrative errors.

The implementation of HT-el has proven to accelerate the mortgage certificate issuance process, which previously took months to complete, and can now be completed in seven business days. In addition to expediting service, this system also simplifies coordination between Land Deed Officials (PPAT), banks, and the National Land Agency, and enhances data security through the implementation of an integrated digital system (Rachmayanti, 2022).

Based on the maqasid al-shariah (the principles of Islamic law), the implementation of digitalization in the HT-el system is an effort to provide benefits and safeguard the rights of the community. The value of hifz al-mal, or protection of assets, is reflected in

a more secure data security system and protection of ownership rights, while the principle of *hifz al-'adl*, or upholding justice, is evident in a more transparent, efficient, and accountable service mechanism (Diyah et al., 2021). Therefore, the implementation of HT-el can be seen as a strategic step in synergizing technological progress with the spiritual values of Islamic law, so that legal modernization is not only oriented towards efficiency, but also towards a balance between practical benefits and legal morality.

In the context of Islamic law, every reform or modernization of the legal system should ideally not only be oriented towards technical aspects, but must also be based on *maqāṣid al-sharī'ah* values which place justice and benefit as the main goal (Arief, 2024). This principle emphasizes that law cannot be separated from moral and social values that protect human interests as a whole. Therefore, the implementation of HT-el as a form of digitizing land law must be viewed not only as an administrative innovation, but also as part of the moral responsibility to maintain justice, honesty, and public trust. In this regard, the *maqāṣid al-sharī'ah* serves as an ethical framework that ensures that technological progress remains aligned with the humanitarian values that underlie Islamic law.

Furthermore, the application of *maqāṣid al-sharī'ah* values in the HT-el system reflects how Islamic law is able to adapt to changing times without losing its normative essence. Islam does not reject technological progress, as long as such progress brings benefits and does not cause harm. The concept of *maslahah mursalah* in Islamic law provides legitimacy for modern legal innovations such as HT-el, as long as their purpose is to protect the interests of society, increase efficiency, and prevent injustice. Thus, the integration of *maqāṣid al-sharī'ah* principles in the digitalization of mortgage rights shows that legal modernization does not mean abandoning religious values, but rather strengthening the function of law as a means of achieving the overall benefit of humanity.

The implementation of HT-el aligns with the spirit of legal *ijtihad* in Islam, namely a rational and contextual effort to address the challenges of the times. In Islamic law, *ijtihad* is necessary when social and technological conditions develop, so that the law can provide relevant solutions without abandoning *sharia* principles. The digitalization of mortgage rights can be categorized as a form of institutional *ijtihad* where policymakers strive to adapt legal instruments to the needs of modern society that demands speed, security, and transparency. Therefore, HT-el is a reflection of the dynamic law that is alive and always moving according to the interests of the times.

The idea of modernizing property security law through HT-EL can be seen as a manifestation of Islamic legal reform, or renewal of Islamic legal thought, that positions technology as a means to uphold justice and efficiency in transactions. Digitalization is not merely a form of legal secularization, but an instrument for strengthening Islamic values in positive legal practice, particularly the values of *Amanah* (honesty), *'adl* (justice), and *mas'uliyah* (responsibility). These values demonstrate that Islamic legal principles can integrate harmoniously with modern legal policies, forming a land law ecosystem that is not only technologically sophisticated but also civilized and morally just.

Regulations regarding electronic mortgages (HT-el) in Indonesia essentially represent a concrete form of modernization of property security law in line with the development of digital technology. The basic concept of mortgages as stipulated in Law

Number 4 of 1996 concerning Mortgage Rights (UUHT) remains intact, particularly regarding the principles of publicity and specialization, even though its implementation has now been transformed into a digital format. Although the UUHT does not explicitly regulate electronic mechanisms, its fundamental principles remain a reference in the implementation of the e-HT system. Regulation of the Minister of ATR/BPN Number 5 of 2020 serves as an operational basis to accommodate the need for digitalization, from the application process and verification to the issuance of mortgage certificates in electronic form stored in the national land system. Through this regulation, the government confirms that electronic documents issued by the land system have the same legal force as physical certificates.

On the other hand, the existence of HT-el cannot be separated from the general legal framework regarding the validity of electronic documents in the Indonesian legal system, as stipulated in the Electronic Information and Transactions Law (UU ITE) and its amendments. Electronic documents, electronic signatures, and electronic evidence are recognized as valid evidence, thus electronic mortgage certificates gain strong legal legitimacy in the evidentiary system. Furthermore, the Law on the Development and Strengthening of the Financial Sector (UU PPSK) strengthens the direction of state policy in encouraging the digitalization of financial services and material guarantees integrated with the banking system and financial institutions. Thus, HT-el stands not only as an administrative innovation, but also as part of the digitalization ecosystem of the national legal system and financial sector.

However, despite the regulations addressing technical and legal aspects, the implementation of e-HT still faces operational challenges. Some Land Deed Officials (PPAT) and small business owners experience digital literacy challenges, while in some regions the network infrastructure is not yet optimally supportive. This situation demonstrates that digitalization requires not only a strong legal basis, but also the readiness of technological systems and increased human resource capacity. In this regard, oversight mechanisms, system maintenance, and ensuring the protection of electronic data are crucial aspects that must be continuously strengthened to prevent potential disputes in the future. Thus, the existence of the e-HT regulatory framework not only reflects changes in land law governance but also indicates the need for harmonization between law, technology, and the readiness of legal actors to achieve legal certainty and substantive justice in the use of digital-based land services.

### **3.2. The Values of Maqāsid Al-Sharī'ah Can Be An Ethical and Philosophical Basis For Its Implementation**

The values of maqāsid al-sharī'ah play an important role as an ethical and philosophical foundation in the application of law, especially in efforts to modernize law in Indonesia. In essence, maqāsid al-sharī'ah views Islamic law not merely as a set of formal rules, but as a system that aims to bring benefits, uphold justice, and protect basic human rights as a whole (Hari Sutra Disemadi, 2024). Therefore, every legal policy and regulation, including in the form of digitalization and legal innovation, should be designed and implemented with an orientation towards achieving these fundamental goals, namely the realization of welfare, justice, and protection for all levels of society.

Therefore, every legal policy and regulation, including in the form of digitalization and legal innovation, should be designed and implemented with an orientation towards achieving these fundamental goals, namely the realization of welfare, justice, and protection for all levels of society (Azwar & Jamaluddin, 2024). This principle requires

policy makers to always pay attention to the social, economic and moral consequences of every regulation they implement.

Maqāṣid al-sharī'ah serves as an ethical foundation that emphasizes the importance of justice (al-'adl) as a fundamental principle in the implementation of law. Justice here is not merely interpreted formally through the application of equal rules to all, but also substantively, namely ensuring that the law is able to protect vulnerable groups, prevent discriminatory practices, and guarantee the fulfillment of the basic rights of every individual (Hari Sutra Disemadi, 2024). In other words, maqāṣid al-sharī'ah acts as a philosophical basis for measuring the extent to which a legal policy is able to reflect and realize a sense of justice in society.

The principles of Islamic law are flexible and adaptable to changing times. This law is required to respond to various social changes, technological advances, and globalization without abandoning its fundamental values – a characteristic that is at the heart of the maqāṣid al-sharī'ah (Arief, 2024). This adaptive nature enables the law to remain contextual and applicable in various situations, while maintaining the essence and fundamental principles that underlie it.

Values that emphasize the importance of protecting reason (hifz al-'aql) and lineage (hifz al-nasl) are reflected in policies that focus on improving education, strengthening legal literacy, and protecting families and future generations, all of which are in line with the principles of maqāṣid al-sharī'ah (Azwar & Jamaluddin, 2024). An ideal regulation should be able to create conditions that support intellectual growth while strengthening social life in society.

Thus, legal reforms undertaken amidst the dynamics of modern society should not focus solely on technical aspects or efficiency, but should also remain grounded in moral values, justice, and the welfare of the people, which are the primary objectives of every legal rule. This approach ensures that legal innovation remains aligned with spiritual and humanitarian values, so that the law does not lose its direction and meaning as a means to achieve shared prosperity. This principle serves as the primary philosophical foundation in the process of legal modernization based on the maqāṣid al-sharī'ah (Fakhrudin, Sudirman Hasan, Dwi, 2024).

The application of the principles of maqāṣid al-sharī'ah in the national legal system not only enriches the ethical and philosophical dimensions of Indonesian law, but also strengthens the legitimacy of law in the eyes of a society with a religious character and diverse cultural backgrounds. The integration of these values demonstrates that national law is able to adapt to the spiritual values that exist in society without losing its inclusive and universal nature. Moreover, the values contained in maqāṣid al-sharī'ah, such as justice, welfare, and protection of human rights, have a deep harmony with the basic principles of Pancasila and the 1945 Constitution. Thus, the application of maqāṣid al-sharī'ah can function as a bridge connecting the national legal system and religious values, thereby creating harmony between positive legal norms and social morality that exist in Indonesian society.

The principles of maqāṣid al-sharī'ah essentially encourage legal reform and innovation that are oriented not only toward certainty and efficiency, but also toward social welfare and sustainability in a broader sense. This concept positions law as an instrument for creating a balance between material progress and moral values. In the context of the modern economy, for example, maqāṣid al-sharī'ah serves as an ethical

basis that guides policies so that they are not merely oriented toward growth, but also pay attention to the fair distribution of resources, protection of vulnerable groups, and equitable distribution of social welfare. These values demand that economic development be implemented with the principles of social responsibility and environmental sustainability, so that its benefits can be felt by the current generation without sacrificing the rights of future generations. Thus, maqāṣid al-sharī'ah presents a legal paradigm that emphasizes the balance between spiritual, moral, and practical aspects in realizing a just and sustainable legal system.

The application of the maqāṣid al-sharī'ah in the legal system cannot stop at the conceptual level, but must also be accompanied by ongoing evaluation and monitoring mechanisms. This is crucial to ensure that every policy, regulation, and legal practice remains within its primary objective, namely realizing the welfare and justice for all levels of society. Without a continuous evaluation process, legal implementation has the potential to deviate from the basic values it seeks to achieve, such as protecting individual rights, equitable social justice, and balancing the interests of the state and its citizens. Therefore, supervision from the perspective of the maqāṣid al-sharī'ah is not only administrative but also moral and philosophical, ensuring that the law truly serves as a means to provide benefits, prevent harm (mafsadah), and uphold human values in its entirety (Akwan et al., 2025). This is crucial to ensure that the legal modernization process is not only limited to technical or administrative aspects, but also contains moral and social dimensions that reflect the values of justice and human responsibility.

Overall, maqāṣid al-sharī'ah provides a strong ethical and philosophical foundation for the administration of law in the midst of rapid modernization and technological development. The principles contained therein not only function as moral guidelines, but also as direction for legal policy so that they always side with the benefit of humanity. By making maqāṣid al-sharī'ah the main reference, the legal system can develop more dynamically and responsively to social change, without losing the substance of justice and human values. This approach ensures that every legal reform remains based on the noble goal of protecting basic rights, realizing social balance, and maintaining the sustainability of the values of justice in the life of society, nation and state.

#### **4. Conclusion**

Legal modernization through the implementation of Electronic Mortgage Rights (HT-el) is a concrete step in adapting Indonesia's land law system to the development of digital technology. The implementation of this system not only brings changes in terms of efficiency and ease of service, but also reflects a transformation towards more transparent, expeditious, and accountable legal governance. The digitization of mortgage rights has minimized the potential for administrative errors and strengthened public trust in land institutions. However, the success of HT-el cannot be measured solely in technical terms – legal modernization must also remain grounded in the moral, social, and justice values that underpin legal life in Indonesia. From the perspective of maqāṣid al-sharī'ah, the implementation of HT-el demonstrates a legal effort to realize the public interest (maslahah) and protect the interests of society through the principles of hifz al-mal (protection of property) and hifz al-'adl (upholding justice). The digitization of mortgage rights guarantees data security, accelerates services, and ensures legal certainty for all parties involved. Furthermore, the principles of maqāṣid al-sharī'ah also emphasize the importance of continuous monitoring and evaluation to

ensure that the legal modernization process does not lose its moral direction and humanitarian values. Overall, the integration of maqāsid al-sharī'ah values in the implementation of HT-el is proof that technological progress and legal spirituality can go hand in hand. This approach shows that law not only functions as an administrative tool, but also as a means of realizing substantive justice, social benefits, and a balance between technological progress and human values in the Indonesian national legal system.

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