

The PPAT Responsibilities in Issuing APHT for Default Debtors at BKK Mayong Jepara

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Abstract. *This research aims to identify and analyze the legal roles and responsibilities of the PPAT in issuing APHT for debtors who default on BKK Branch. Mayong Jepara. This research approach uses Juridical Sociology, which is research through a statutory approach and examines laws that have problems in practice. The analytical knife in this paper uses the theory of legal certainty and the theory of responsibility. The results of this study indicate that the role of the Land Deed Making Officer (PPAT) in the process of imposing Mortgage Deeds at BKK Branch. Mayong Jepara, namely the Mortgage Granting Stage, Registration Process and Mortgage Issuance. PPAT's responsibilities are limited to making, registering, and issuing APHT. In the event of default, PPAT is only a bridge between debtors and creditors to find and solve problems. PPAT's legal responsibilities include criminal responsibility, civil responsibility, and administrative responsibility. However, in the event of a default committed by the debtor at Bank BKK Mayora Jepara Branch, it is no longer the responsibility of the PPAT. PPAT is only responsible for what he makes and does. Regarding products from PPAT that are used by clients to apply for credit which later defaults, PPAT no longer has legal responsibility*

Keywords: Credit; Default; Responsibility.

1. Introduction

In the current era of industrialization, credit is not far from everyday life, the implementation of which is preceded by an agreement. Credit agreement (credit/loan agreement) is one of the agreements entered into between the bank and its customers. Credit agreements can actually be equated with loan agreements. The difference can be seen from the term credit agreement which is generally used by financial institutions as creditors, while loan agreements are

generally used by the public and are not related to banks.¹

According to Zaeni Asyhadie and Rahma Kusumawati, guarantees have benefits for creditors and debtors. The benefit for creditors is that having collateral will create security for closed trade transactions and provide legal certainty for creditors, while the benefit for debtors is that having collateral can obtain credit facilities from financial institutions or financing institutions, so as not to cause worry in developing his efforts.²

If the credit is paid off, the mortgage right is deleted because it is an *accessoir*. However, the reverse does not apply, which means if there is a mistake in the guarantee agreement as an *accessoir* agreement in the form of a lack of accuracy in calculating land rights which causes the guarantee to be erased so that the loan is unsecured. The Mortgage Agreement was born at the time it was recorded in the land books at the Land Office. 7 According to Article 1 paragraph 5 of the Mortgage Law, "The Mortgage Granting Deed is a PPAT deed which contains gift Mortgage rights to certain creditors as collateral for debt settlement. This is also regulated in Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds (PPAT) which require PPATs to be careful in making deed and PPAT's responsibilities in making the deed.

The collateral that is widely used is land collateral. This is based on the consideration that land collateral objects are the safest and have relatively high economic value. Mortgage guarantees in the form of land are considered the safest and most effective because it is easy to identify the mortgage object, clear and certain execution. In addition, the debt is secured by rights dependent must be paid in advance of other bills with money from the land auction which is the object of the mortgage.³

Notary in this case is a Notary as PPAT as a public official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units. While the PPAT deed is a deed made by the PPAT as evidence that certain legal actions have been carried out regarding land rights or ownership rights to flats. The PPAT deed is a tool to prove that a legal act has been carried out. Therefore, if the deed law if it is canceled or cancelled, then the PPAT

¹Alvara Sabrina Asya, et al, "Implementation of Credit Agreements with Guaranteed Land and Buildings Bound by Apht at Pt Bank Sinarmas BSD", *Diponegoro Law Journal*, Vol. 10 No. 2, 2021, p.288

²Zaeni Asyhadie and Rahma Kusumawati, 2018, *Guarantee Law in Indonesia: A Study Based on National Law and Sharia Economic Principles*, PT Rajagrafindo Persada, Depok, p. 40.

³Salim HS, 2017, *Development of Collateral Law in Indonesia*, Raja Grafindo Persada, Jakarta, p. 23.

deed in question will no longer function as proof of the legal action.⁴

Invite-Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as the Mortgage Law), provides a formulation of the definition of mortgage rights as can be seen in Article 1 Paragraph (1) as follows:

"The mortgage right is the guarantee right that is burdened on the right to the land as referred to in Act No. 5 of 1960 concerning the Basic Agrarian Regulations, along with other objects which form an entity with the land for the settlement of certain debts, which give the position of given priority to certain creditors over other creditors.

2. Research Methods

This research approach uses Juridical Sociology, which is research through a statutory approach and examines laws that have problems in practice. The focus of the author's study is related to legal issues that develop in society, examines the application of law in society, examines the opinions of relevant legal experts and analysis of cases in documents to clarify research results, then reviews practical and legal aspects. The specification of this research is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations. Data sources and data collection methods use primary data obtained by interviewing informants who are considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic. The data that has been obtained is analyzed qualitatively which is described in a quality manner in the form of sentences that are coherent, orderly, logical, and do not overlap so as to facilitate understanding of the results of the analysis.

3. Results and Discussion

3.1.The Role of the Land Deed Making Officer (PPAT) in Issuing the Deed of Granting Mortgage Rights at BKK Branc. Mayong Jepara

One of the main tasks of the PPAT is to issue a Mortgage Deed (APHT). APHT, which in English is called granting deed mortgage, while in Dutch it is called het verlenen van akte mortgage, is a deed to hand over land rights to serve as collateral for the

⁴Wisnu Seno Kartiko, "The Role of Notary PPAT in the Credit Agreement with Guaranteed Mortgage at BPR BKK Tirtomoyo, Wonogiri Regency", Thesis, Sebelas Maret University, Surakarta, 2010, p.6

bank.⁵ The Deed of Granting Mortgage Rights (APHT) regulates the terms and conditions regarding the granting of Mortgage Rights from debtors to creditors in connection with debts guaranteed by Mortgage Rights.

The granting of this right is intended to give priority to the creditor in question (preferential creditor) over other creditors (concurrent creditor) as emphasized in Article UUHT. Thus, the granting of a Mortgage Right as collateral for repayment of the debtor's debt to the creditor in connection with the loan or credit agreement in question.

As a public official who (*openbar Ambtenaar*) who has the authority to make authentic deeds also has responsibilities related to his work in making these deeds. The scope of responsibility of the Notary/PPAT includes the material truth of the deed he has made.⁶ Authentic deeds that have been made by or before a Notary or PPAT can be used as evidence in a legal dispute which is used as evidence to recall events that have occurred so that they can be used for evidentiary purposes.⁷

The PPAT carrying out the making of the APHT is carried out through two stages, namely the stage of granting Mortgage by making the APHT by the PPAT which is preceded by a loan agreement and the registration stage is carried out at the Land Office. Making APHT by PPAT as a basis for guarantees for creditors, namely by imposing Mortgage Rights on collateral objects to protect the interests of the parties as preference rights holders. In practice, the PPAT first receives documents from the bank.⁸

The role of the PPAT in carrying out the Mortgage Imposition process is carried out through 2 (two) stages of activity, namely:

1. Mortgage Granting Stage

The granting of mortgage rights is regulated in Article 10 of Act No. 4 of 1996, namely:

⁵Salim HS, 2016, *Techniques for Making Deeds for Land Deed Officials (PPAT)*, Jakarta, PT. RajaGrafindo Persada, p.312

⁶Liliana Tedjosaputro, 2018, *Justice and Society Application of Notary Professional Law in Life*, Butterfly Mamoli Press, Semarang, p.23.

⁷Kunni Afifah, 2017, "Responsibility and Legal Protection for Notaries Civilly Against the Deeds He Made", *Lex Renaissance*, Number 1 Vol.2, p.151

⁸Results of interview with Mr. H. Nurul Amri, Lc., SH, M.Kn Notary & PPAT, on December 20, 2022

a. The granting of Mortgage Rights is carried out by making a Deed of Granting Mortgage Rights, namely:

1) Preceded by the existence of a promise to provide a Mortgage as a guarantee for repayment of certain debts, which is stated in and is an integral part of the relevant credit agreement (Article 10 paragraph (1));

2) The granting of Mortgage Rights is carried out by drawing up a Deed of Granting Mortgage Rights (APHT), by the Land Deed Deed Official (PPAT) (Article 10 paragraph (2));

3) The Deed of Granting Mortgage Rights (APHT) serves as evidence regarding the Granting of Mortgage Rights which is domiciled as the second agreement document that completes the debt agreement document (principal agreement).⁹

b. Matters that must be included in the Mortgage Granting Deed in accordance with Article 11 paragraph (1) of the Mortgage Law:

1) Name and identity of giver and holder of Mortgage Right;

2) The domicile of the parties;

3) Clear indication of debt or guaranteed debts;

4) Dependent value;

5) A clear description of the object of Mortgage.

Inclusion of elements or contents that must be in the Mortgage Deed:

1) Is cumulative in nature, so it must be completely stated in order to fulfill the speciality element of the Mortgage Right;

2) If you fail to include one of the contents in the deed, the Deed of Granting Mortgage is null and void by law.¹⁰

c. Promises that can be included in the Mortgage Granting Deed (APHT)

⁹M. Yahya Harahap, 2009, Scope of Execution Issues in the Civil Sector. Second Edition. Sinar Graphics, Jakarta, pp. 189-190

¹⁰Ibid, p.90

In Article 11 paragraph (2) of the Mortgage Law, there are a number of clauses that can be included in the Deed of Granting Mortgage Rights (APHT), namely:

- 1) Promises that limit the authority of the Mortgage Giver to:
 - a) Renting Mortgage objects;
 - b) Changing the shape or arrangement of the Mortgage object;
 - c) Does not relinquish his rights over the object of Mortgage without prior written approval from the Mortgage holder.
- 2) A promise that authorizes the Mortgage Beneficiary to:¹¹
 - a) Manage the object of Mortgage based on the decision of the District Court;
 - b) Rescuing the Mortgage object in the context of execution (preventing the right to the Mortgage object from being deleted or canceled);
 - c) The first mortgage holder has the right to sell on his own power (eigenmachtige verkoop);
 - d) The promise of the Mortgage Giver will empty the Mortgage object at the time of execution of the Mortgage;
 - e) The Mortgage Holder will receive all or part of the compensation if the Mortgage giver relinquishes his rights to the Mortgage object or his rights are revoked in the public interest;
 - f) The Mortgage Holder will get all or part of the insurance money if the Mortgage object is insured.

2. Process of Registration and Issuance of Mortgage Right

a. Mortgage Registration Process

The process of registration of the Mortgage is regulated in the provisions of Article 13 of the Mortgage Law, which at this registration stage is the time when the Mortgage is born and the process is as follows:

¹¹Ibid, p.90

1) The granting of Mortgage Rights must be registered at the Land Office. According to the Elucidation of Article 13 paragraph (1), that:

(1) Registration of Mortgage Granting is an imperative requirement to comply with the principle of publicity Mortgage;

(2) Registration of Mortgage Granting is an absolute requirement for the birth and binding of Mortgage Rights to third parties.

2) Not later than 7 (seven) days after the signing of the Mortgage Deed as referred to in Article 10 paragraph (2), the PPAT is required to send the related Mortgage Deed and other documents required to the Land Office.

According to the Elucidation of Article 13 paragraph (2), it is explained that there is an obligation of the PPAT as the maker of the Deed of Granting the Mortgage Right of APHT), namely:

(1) Obligation to send APHT and other documents (including proof relating to the Mortgage object and the identities of the parties as well as certificates of land rights);

(2) Delivery no later than 7 (seven) working days after signing the Mortgage Granting Deed (APHT);

(3) How to send the Deed of Granting Mortgage Rights (APHT) through a PPAT officer or registered post;

(4) A PPAT who fails to fulfill its obligations will be given administrative sanctions in the form of an oral or written warning, temporary dismissal, or dismissal from office

Registration of the Mortgage as referred to in paragraph (1) is carried out by the Land Office by making a Mortgage land book and recording it in the land title book which is the object of the Mortgage Right and copying the record on the relevant land title certificate.

b. Mortgage Issuance Process

The process of issuing Mortgage Certificates is regulated in Article 14 of Act No. 4 of 1996, namely:

1) As proof of the existence of Mortgage, the Land Office issues a Mortgage certificate in accordance with the applicable laws and regulations.

2) The Mortgage Certificate as referred to in paragraph (1) contains irah-irah with the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD".

3) The Mortgage Certificate as referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for grosse acte mortgage insofar as it concerns land rights.

4) Unless otherwise agreed, a certificate of land rights that has been affixed with a note of the encumbrance of Mortgage Rights.

5) The Mortgage Certificate is handed over to the Mortgage Right holder. According to the Elucidation of Article 14 that:

a) The Land Office is obliged to issue a Mortgage certificate that has the irah-irah "FOR THE ONE ALMIGHTY GOD'S JUSTICE".

b) The Mortgage Certificate functions as proof of the Mortgage Right and becomes the basis of the executive power.

The PPAT in carrying out its position already has legal certainty as regulated in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds. So that in carrying out the duties, functions and authorities in his position refer to the laws and regulations. This is in line with the theory of legal certainty according to Gustav Radbruch which put forward 4 (four) fundamental things related to the meaning of legal certainty

3.2. PPAT Legal Responsibilities Issuance of Deeds Granting Mortgage Rights for Debtors who default on BKK Branc. Mayong Jepara

In general, legal responsibility can be divided into three forms, namely:

1. PPAT criminal law responsibility

Criminal liability for the PPAT can be requested if the three conditions mentioned above are collectively affected, meaning that on the one hand the PPAT fulfills the element of having committed a violation of the Criminal Code and on the other hand the PPAT has also violated the regulations. Meanwhile, to determine a PPAT's criminal liability, the PPAT's actions must have fulfilled the following 3 (three) conditions:

a. There are PPAT actions that can be punished for violating the elements in making an authentic deed which is expressly formulated by law;

b. The PPAT's actions were against the law, and the actions were committed by mistake (whether intentionally or negligently);

c. Errors or omissions in criminal acts include elements that are contrary to law and there must be acts against criminal law

2. PPAT civil law liability

Civil legal liability can be in the form of legal liability based on default and acts against the law (*onrechtmatige daad*). Civil law liability based on default can only be enforced by first having an agreement that gives birth to rights and obligations. The agreement begins with the agreement of the parties. Based on Article 1313 of the Civil Code (which will hereinafter be referred to as the Civil Code) the definition of consent is an act by which one or more people bind themselves to one or more other people. In the legal relationship of the parties based on the engagement, the party who is charged with an obligation,

3. PPAT administrative legal responsibility

PPAT is a public official authorized to make authentic deeds. As a public official, the PPAT is authorized by law to make authentic deeds regarding all legal actions as stipulated in Article 2 Perkaban Number 1 of 2006, provisions required by laws and regulations from or desired by interested parties to be stated in the deed authentic. Procedural/administrative errors in making an authentic deed will affect the value of the strength of the authentic deed. The PPAT is not only responsible administratively if in the process of making an authentic deed it violates regulatory provisions.

If the authentic deed (APHT) in making it is legally flawed solely due to an error from the PPAT and then the deed is declared by the court to be inauthentic, or invalid, or becomes null and void or is degraded into an underhanded deed, then the PPAT concerned must be responsible to the client, the form of responsibility to the client can be in the form of providing compensation as long as the client concerned is proven to have suffered a loss due to an error made by the PPAT.¹²

Based on the description above regarding the PPAT's legal responsibility for defaults committed by the debtor, the PPAT is only responsible for what he makes and does. Regarding products from PPAT that are used by clients to apply for loans which are later in default, PPAT is no longer responsible.

¹²Habib Adjie, 2011, *Aspects of Notary Liability in Making Deeds*, Print One CV. Mandar Maju, Bandung, p. 17-18.

PPAT's responsibilities are limited to making, registering, and issuing APHT. In the event of a default, the PPAT is only a bridge between the debtor and the creditor to find and solve problems. Referring to the theory of responsibility put forward by Hans Kelsen regarding responsibility consisting of:¹³

1. Individual responsibility, that is, an individual is responsible for his own violations;

This shows that there is a default by the debtor which is the responsibility of the individual or the debtor himself.

2. Collective accountability means that an individual is responsible for an offense committed by another person;

This shows the joint responsibility, but in the case of default by the debtor with Bank BKK it has nothing to do with the PPAT except regarding the contents of the deed drawn up by the PPAT.

3. Liability by mistake means that an individual is responsible for a violation committed intentionally and foreseeable with the aim of causing harm;

This shows that there is a default by the debtor which is the responsibility of the individual or the debtor himself.

4. Absolute liability means that an individual is responsible for a violation he committed unintentionally and unexpectedly.

This shows that there is a default by the debtor which is the responsibility of the individual or the debtor himself.

4. Conclusion

The role of the Land Deed Making Officer (PPAT) in the process of imposing Mortgage Deeds at BKK Branc. Mayong Jepara, namely the Mortgage Granting Stage, Registration Process and Mortgage Issuance. The role of the Land Deed Making Officer (PPAT) in issuing the Mortgage Deed at BKK Branc. Mayong Jepara as proof of the existence of Mortgage, the Land Office issues a Mortgage certificate in accordance with the applicable laws and regulations. The Mortgage Certificate contains irah-irah with the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". The Mortgage Certificate as referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal

¹³Hans Kelsen, Pure Nuance & Nusa Media's Legal Theory, Bandung, 2006, p. 140

force and is valid as a substitute for grosse acte mortgage insofar as it concerns land rights. Unless otherwise agreed, a certificate of land rights that has been affixed with a note of the encumbrance of Mortgage Rights. The Mortgage Certificate is handed over to the Mortgage Right holder. PPAT's legal responsibilities include criminal responsibility, civil responsibility, and administrative responsibility. However, in the event of a default committed by the debtor at Bank BKK Mayora Jepara Branch, it is no longer the responsibility of the PPAT. PPAT is only responsible for what he makes and does. Regarding products from PPAT that are used by clients to apply for loans which are later in default, PPAT no longer has legal responsibilities. PPAT's legal responsibilities include criminal responsibility, civil responsibility, and administrative responsibility. However, in the event of a default committed by the debtor at Bank BKK Mayora Jepara Branch, it is no longer the responsibility of the PPAT. PPAT is only responsible for what he makes and does. Regarding products from PPAT that are used by clients to apply for loans which are later in default, PPAT no longer has legal responsibilities. PPAT's legal responsibilities include criminal responsibility, civil responsibility, and administrative responsibility. However, in the event of a default committed by the debtor at Bank BKK Mayora Jepara Branch, it is no longer the responsibility of the PPAT. PPAT is only responsible for what he makes and does. Regarding products from PPAT that are used by clients to apply for loans which are later in default, PPAT no longer has legal responsibilities.

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