

## Juridical Review of the Position of Land Deed Drafting Officials (PPAT) in Implementing Deeds of Imposition of Mortgage Rights

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**Abstract.** *This research aims to determine and analyze the position of Land Deed Making Officials (PPAT) in implementing Deeds of Encumbrance of Mortgage Rights, as well as to find out various obstacles and ways to overcome obstacles in the implementation of Imposition of Mortgage Rights. This research uses a sociological juridical approach. Data sources were obtained from several stages, namely through field research (interviews) and library research. Data analysis in a systematic way includes data reduction, data presentation and drawing conclusions. Based on research, it is concluded that the position of the Land Deed Making Officer (PPAT) in implementing the Imposition of Mortgage Rights is to bridge the interests of the debtor with the interests of the creditor so that both parties get a sense of justice. , usefulness, and legal certainty in binding mortgage guarantees. The obstacle experienced by PPAT in implementing the imposition of mortgage rights is that there are still banks that allow them to impose mortgage rights on land that has not been certified. However, this method can cause many risks.*

**Keywords:** Land; Registrar; Imposition; Mortgage; Position; Rights.

### 1. Introduction

Economic development, as part of national development, is an effort to realize just and prosperous welfare of the people based on Pancasila and the 1945 Constitution. The only way to achieve this goal is national development which covers all aspects of life, both economic and political. , as well as socio-cultural actors, including government, society and legal entities, are needed in large numbers.

Basically, globalization is now increasingly developing and is really encouraging the role of economic development which is also growing rapidly. This can be seen from the existence of economic institutions that require legal certainty, especially for institutions that provide receivables such as banks and other financial institutions to be able to guarantee their rights that can be guaranteed in debt, both movable and immovable objects. In relation to Mortgage Rights, Mortgage Rights are collateral for an immovable object, the provisions regarding Mortgage Rights came into force on 19 April 1996 with the decision to issue Law Number 4 of 1996. The basis of this Law is regarding the Principal -Agrarian Principles (which are called "UUPA"), namely Law Number 5 of 1960.<sup>1</sup>

Considering the important role of credit funds in the development process, it is appropriate that credit givers and recipients as well as other related parties receive protection through a strong guarantee rights institution that can also provide legal certainty for all interested parties.

One of the strong collateral institutions that can be imposed on land rights which will be discussed in this paper is mortgage rights. Mortgage rights are security rights over land for the repayment of certain debts to other creditors. This means that if the debtor defaults, the creditor holding the mortgage right has the right to sell through a public auction the land used as collateral according to the provisions of the relevant laws and regulations, with the right to precede other creditors.<sup>2</sup>

According to Article 1 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects related to Land (hereinafter referred to as "UUHT"), Mortgage Rights over land and objects related to land are security rights which imposed on land rights as intended in Law Number 5 of 1960 concerning Agrarian Principles (hereinafter referred to as "UUPA"), whether or not the following other objects are an integral part of the land for the repayment of certain debts, which gives it a different position. giving priority to certain creditors over other creditors. The definition of Mortgage Rights above is not limited to focusing on land alone, but also on other objects that are related to or become a single unit in the UUPA, which adheres to the principle of horizontal separation,<sup>3</sup>

The function of a guarantee is to secure the capital given by the creditor to the debtor, because the debtor's rights must be protected, and this is the

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<sup>1</sup> Boedi, Harsono, 2000, Indonesian Agrarian Law, History of the Establishment of Basic Agrarian Laws, Content and Implementation, Djangkat, Jakarta.

<sup>2</sup> Sutedi, Adrian, 2006, Implications of mortgage rights for granting credit by banks and resolving problem loans. Cipta Jaya.

<sup>3</sup> Ibid, p. 3

importance of having a guarantee institution. Economic development is starting to grow rapidly, because many investors are investing capital and the growing community is starting to set up many small and medium businesses, therefore a lot of capital is needed to set up a business. For this reason, people obtain capital through credit activities.

The credit process of the capital provider requires a guarantee from the debtor, then the community gives their land as collateral for land rights to be charged with Mortgage Rights. The mortgage object must fulfill 4 conditions, namely:

1. Can be valued in money
2. Including rights listed in the general register
3. Has the property of being transferable.
4. Requires appointment by Law.

Article 4 paragraph (1) of the UUHT states that rights to land that can be encumbered. Mortgage Rights are Ownership Rights, Business Use Rights and Building Use Rights. The terms and conditions for the Mortgage Right object are that you must register and have a land title certificate, however, for land that has not been certified, a Mortgage Right can also be charged as long as the grant of the Mortgage Right is carried out simultaneously with the application for registration of the rights to the land in question.

The agreement between the parties in the process of encumbering Mortgage Rights requires PPAT, then PPAT plays the role of making APHT first in accordance with Article 1 paragraph (4) of Law Number 4 of 1996, namely, "The Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is given authority to make deeds of transfer of land rights, deeds of encumbrance of land rights, and deeds of authorization to impose mortgage rights according to applicable laws and regulations."

The importance of making APHT by PPAT as a basis for collateral for creditors is by imposing a Mortgage Right on the object of collateral. The process of imposing Mortgage Rights is carried out through the stage of granting Mortgage Rights by making a Deed of Granting Mortgage Rights by the Land Deed Making Officer, which is preceded by an agreement on guaranteed debts, then registered by the land office. PPAT itself is regulated in PP Number 37 of 1998.

Law Number 4 of 1996 concerning Mortgage Rights aims to provide a basis for the implementation of a strong Mortgage Rights institution, including regarding the position of the Power of Attorney to Charge Mortgage Rights (SKMHT).

Regarding the validity period of the SKMHT itself, the Mortgage Rights Law also regulates in article 15 paragraphs (3) and (4) which in essence for registered land rights must be followed by making an APHT no later than one month after it is granted and for land rights that have not been registered, it is mandatory to make an APHT no later than three months after it is granted, but in reality in the field the time provisions stipulated in the Mortgage Rights law are not sufficient.

## 2. Research Methods

The research approach used in this thesis is a sociological juridical research method. Sociological juridical research identify and conceptualize law as a real and functional social institution in a real life system.<sup>4</sup> The specifications of this research use 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 and relevant theories which are then collected through data that is collected, processed and arranged using existing theories to obtain solutions to problems in accordance with applicable regulations. Data sources come from primary data and secondary data. Data collection methods include interviews, document studies or library materials. The data analysis method used in analyzing the data is sociological juridical.

## 3. Results and Discussion

### 3.1. Juridical Review of the Position of Land Deed Drafting Officials (PPAT) in Implementing Deeds of Imposition of Mortgage Rights

With the enactment of Law Number 4 of 1996 concerning Mortgage Rights, what is desired by Article 51 of the UUPA is fulfilled, so that based on Article 29 UUHT states that with the enactment of the Mortgage Rights Law, the Mortgage provisions as intended in Book II of the Civil Code and the creditverband provisions in the 1908 Staatsblad -542 as amended by statute 1937-190 insofar as it concerns the imposition of mortgage rights on land rights and objects related to the land is declared no longer valid.<sup>5</sup>

The UUHT was born because of an order in Article 51 of the UUPA. Article 51 of the UUPA states: "Mortgage Rights which can be imposed on Property Rights, Business Use Rights and Building Use Rights in Article 25, Article 33 and Article 39 are regulated in law." The order of Article 51 of the UUPA was only realized after the formation of Law Number 4 of 1996. The establishment of the Mortgage

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<sup>4</sup>Soerjono Soekanto, 1981, Introduction to Legal Research, UI Press, Jakarta, p. 51.

<sup>5</sup>Purwahid Patrik and Kashadi, collateral law, Faculty of Law, Diponegoro University, Semarang, p. 52

Rights Law, namely:<sup>6</sup>that considering the developments that have occurred and will occur in the field of regulation and administration of land rights and to meet the needs of many people, apart from Ownership Rights, Business Use Rights and Building Use Rights which have been designated as objects of Mortgage Rights by the UUPA, Use Rights on certain land which must be registered and can be transferred and also needs to be burdened with mortgage rights. In connection with this matter, it is necessary to establish a law that regulates Mortgage Rights over land and objects related to land, as intended in the UUPA while at the same time realizing the unification of National Land Law.

Based on Article 1 point 4 of Government Regulation Number 37 of 1998, it is stated that the deed made by PPAT is proof that certain legal acts regarding Land Rights have been carried out.<sup>7</sup>A PPAT Deed is evidence of a deed consisting of a date and signature according to the events that form the basis of a right or obligation used in the proof. The deed made by the PPAT which is authorized to make deeds is an authentic deed.<sup>8</sup>In carrying out its duties, PPAT applies the precautionary principle to minimize the occurrence of lawsuits in the future.

In carrying out agrarian tasks as stated in the UUPA, as well as Government Regulation Number 24 of 1997 concerning Land Registration, the role of the Land Deed Making Officer is very important. Therefore, they are considered to have sufficient knowledge about the regulations for registering land rights and other implementing regulations relating to land registration.

Apart from that, Article 26 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations for Officials Making Land Deeds states that,

"The PPAT must make a register book for all the deeds it has made. Filled in every working day and closed at the end of every working day with the initials of the relevant PPAT. "PPAT sends a monthly report regarding the deed by taking it from the PPAT deed register book to be reported to the Head of the Land Office effective no later than the 10th of the following month."

PPAT can also make a deed granting power of attorney to impose Mortgage Rights and for the record, the Notary also has the right to make a deed granting power of attorney to impose Mortgage Rights using a form that has been

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<sup>6</sup>Salim. 2014 *Development of Guarantee Law in Indonesia*. Jakarta: Rajawali Press, p.100

<sup>7</sup> Made Anggara Giri, Implementation of Transfer of Ownership Rights to Land Due to Buying and Selling in the Presence of the Subdistrict Head as Temporary PPAT After the Implementation of Government Regulation Number 24 of 1997 in West Tulang Bawang Regency, Lampung Province. Journal. Atma Jaya University, Yogyakarta. Lampung, p. 8.

<sup>8</sup>Djoko Poernomo, 2006, Position and Function of the Subdistrict Head as an Official for Making Land Deeds. Journal, Airlangga University, Surabaya. p. 8.

standardized by the National Land Agency Office. However, it must be checked carefully that the name transfer tax and rights acquisition fees have been paid by the person concerned before the PPAT makes the PPAT deed.<sup>9</sup>

Mortgage rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights which have permanent and strong executorial power in terms of their execution, apart from easy execution, another reason for using mortgage rights is that there is a priority position for creditors who have mortgage rights. In Article 51 of Law Number 5 of 1960, the rights that can be burdened by mortgage rights are property rights, building use rights and business use rights.<sup>10</sup>

In Article 1 point (1) it is stated that Mortgage Rights are security rights imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, along with other objects which are integral to the land, for repayment of certain debts which gives priority position to other creditors.<sup>11</sup>

The position of PPAT in the process of imposing mortgage rights on creditors and debtors is to bridge the interests of the debtor and the interests of the creditor so that both parties get a sense of justice, benefit and legal certainty in tying up the mortgage guarantee. The role of PPAT also lies in its responsibilities. That is, responsibility for the deed that is made as well as protection for the parties involved in the deed. If in the future a dispute arises between the parties, then the authorized legal official will suffice with the deed without needing to recall the PPAT because it has been represented by the existence of the deed has been made by the PPAT. It means,

Based on the description above, the APHT made by PPAT in Grobogan Regency is in accordance with Law Number 4 of 1996, the provisions of Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Makers, which are regulations that recognize the existence of PPAT. Apart from that, in accordance with Government Regulation Number 24 of 1997 concerning Land Registration which replaces Government Regulation Number 10 of 1961, namely as a public official who has the authority to make deeds of transfer of land rights, assignment of land rights, and other deeds regulated by statutory regulations. - applicable laws and assist the head of the land office in carrying out land registration by making deeds which are used as the basis for registering changes to land registration data. So that the public gets legal certainty from the

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<sup>9</sup>Didik Ariyanto, 2006, Implementation of the Functions and Position of the Subdistrict Head as an Official Making Temporary Land Deeds in Grobogan Regency. Journal, Diponegoro University, Semarang, Pages, 29-30.

<sup>10</sup>Fadhilah Sundah, Jawade Hafidz, "Implementation of Executorial Power on Mortgage Rights". Vol. 4 No. June 2, 2017 p. 289. <https://jurnal.unissula.ac.id/index.php/akta/article/view/1799>. Retrieved on date 01/07/2023 at 23:04 WIB.

<sup>11</sup>Umar Ma'ruf. 2010, Legal Politics in the Land Sector, Diponegoro University, Semarang. p.102

making of the APHT and there is no doubt that the public has about the PPAT in Grobogan Regency. In accordance with Hans Kelsen's theory, law is a system of norms. Norms are statements that emphasize the "should" aspect by including several rules about what must be done. Norms are the product and fun of deliberative humans.<sup>12</sup>Laws containing general rules serve as guidelines for individuals to behave in society, both in their relationships with fellow individuals and in their relationships with society.

### **3.2. Obstacles experienced by PPAT in the process of imposing mortgage rights and their solutions**

The obstacle that is usually faced, especially at Notary and PPAT offices, in imposing mortgage rights in Grobogan Regency is that there are still banks that allow imposing mortgage rights on land that has not been certified. However, this method can cause many risks.<sup>13</sup>

Based on the problems with land that has not been certified, PPAT is experiencing obstacles, namely:

#### **1. External Barriers**

The certificate processing period is long, going through the following stages:

- a. Take land measurements
- b. Draw a field map
- c. Committee A
- d. Announcement 3 months
- e. The emergence of SK
- f. Certification

It takes a long time so there is less legal certainty, there is a risk that the debtor will default before the certificate is finished, so it cannot be executed. For this obstacle, PPAT's solution is to wait until the process of making the certificate is complete and provide a statement to creditors that the certificate is not yet ready.

#### **2. Internal Barriers**

The initial history of the land and its conditions cannot be ascertained, which can become a certificate after the certification process, this also causes a lack of legal

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<sup>12</sup> <https://jurnal.uns.ac.id/yustisia/article/download/28720/20092> Accessed on 01/07/2023 at 21:45 WIB

<sup>13</sup> Interview with Notary and PPAT in Grobogan Regency, on August 8 2023 at 13.00 WIB.

certainty. For example, at the time of the announcement it turned out that there was an objection from another party who also owned the land, so it could not be processed further. The solution to this obstacle is that PPAT will make a statement letter to creditors and debtors regarding whether land that has not been certified can be used as an object of mortgage rights.

The Mortgage Rights Law provides an opportunity for owners of uncertified land rights to guarantee their land rights with mortgage rights. Article 10 paragraph (2) of the Mortgage Rights Law states that if the object of the Mortgage Rights is land rights originating from the conversion of old rights which have met the requirements to be registered but the registration has not been carried out, the granting of the Mortgage Rights is carried out simultaneously with the application for registration of land rights concerned. Even though the legislation allows the imposition of mortgage rights on land that has not been certified, there are risks involved.

The practice of charging mortgage rights that have not been certified is preceded by the creation of an SKMHT by PPAT, then continued with the creation of an APHT. Using this method is actually not appropriate because the making of the SKMHT is not actually for the condition of the land which is the object of the Mortgage which has not been certified but is used in cases where the granting of the Mortgage Rights cannot be present in the granting of the Mortgage Rights. If the land title certificate is not yet ready, then an APHT cannot be made even though the SKMHT period has expired and a new SKMHT is made.

The SKMHT period is 3 months. This time period is used to complete the documents required to register land rights, which of course takes time to obtain. Allowing the imposition of land rights using uncertified certificates will require more time.

Based on the description above, the obstacles presented by the Notary and PPAT Officials in Grobogan Regency are guided by Article 10 paragraph (2) of the Mortgage Rights Law which states that if the object of the Mortgage Rights is land rights originating from the conversion of old rights that have met the requirements to be registered but the registration has not been carried out, the granting of Mortgage Rights is carried out simultaneously with the application for registration of rights to the land in question. These barriers include external barriers and internal barriers. So when there are obstacles that occur in the community and the community feels disadvantaged, the community must receive legal protection, in this case in the land registration process so that the community no longer feels disadvantaged. In accordance with the theory of Philipus M.

#### **4. Conclusion**

The position of the Land Deed Drafting Officer (PPAT) in the process of imposition of Mortgage Rights in Grobogan Regency is to bridge the interests of the debtor with the interests of the creditor so that both parties get a sense of justice, benefit and legal certainty in tying up the Mortgage Guarantee. The role of PPAT also lies in its responsibilities. That is, responsibility for the deed that is made as well as protection for the parties involved in the deed. If in the future a dispute arises between the parties, then the authorized legal official will suffice with the deed without needing to recall the PPAT because it has been represented by the existence of the deed has been made by the PPAT. It means,

## 5. References

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