

## THE NOTARY IN AUTHORITY'S MAKING OF HYPOTHEEK

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### **Abstract**

*Pursuant to Article 15 paragraph (2) letter (f) of Act No. 2 of 2014 concerning Notary, the Notary as Public Official obtain Attribution of powers in a deed relating to land, including the deed of the Power of Attorney Imposing Mortgage. This study aims to know and understand the authority of the deed Notary Power of Attorney Imposing Mortgage. The method used socio-juridical, which inductively began an analysis of the legislation governing the Notary office and encumbrance on land and objects relating to the ground. Research shows that the authorities in deed Notary Power of Attorney Imposing Mortgage is based on Article 15 (1) of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to dust and Article 15 (2) f of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 on Notary. That in practice the National Land Agency of the Republic of Indonesia only receive the Power of Attorney Imposing Mortgage in the form of deed Land Deed Officer.*

**Keywords:** *Notary's Authority; Manufacture Deed; The Power of Attorney Imposing Mortgage.*

### **A. INTRODUCTION**

Notary Deed essentially contains formal correctness notified in accordance with what the parties to the Notary. Notary is obliged to enter into a deed of what is truly understood in accordance with the will of the parties and read out to the parties about the contents of the deed. Statements or statements of the parties by a Notary forth in the notarial deed.<sup>1</sup> In addition, a notary must also play an active role to make an assessment of the contents of the certificate requested the parties to him and should not hesitate to reject if

the interests of the parties who request does not comply with eligibility or contrary to the laws and regulations that rolling. In the notary office must be free from the influence of anyone, including the executive power.

Notary deed as authentic deeds have perfect proof strength<sup>2</sup>, In this case there are three (3) no probative value, the strength of evidence outwardly (uitwendige bewijskracht), the power of formal proof (formale bewijskracht), the strength of evidence material (materiele bewijskracht).<sup>3</sup> What is stated in notarial deed must be

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1 Habib Adjie, 2008, *Civil and Administrative Sanctions Against As a Notary Public Offices*, PT.Refika Aditama, Bandung, p.45.

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2 M. Ali Boediarto 2005, *Compilation of Supreme Court of Civil Law Procedure*, Swa Justitia, Jakarta, p.150.

3 Habib Adjie, op.cit., p.72.

accepted unless other interested parties can prove otherwise before the trial. Talking about the Notary and authority in making a deed relating the land to activities of banks, not off to do the Deed Official Land (PPAT), such as the Credit Agreement Notary while Guarantees particular on Credit Agreement made by the Deed Official Land (PPAT), Thus the regulations relating to the Notary and the Land Deed Official should not be contradictory and should be mutually supportive.

Pursuant to Article 15 paragraph (2) letter (f) of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary, the Notary as Public Official obtain Attribution of powers in a deed relating to land, including the deed of the Power of Attorney Imposing Mortgage (SKMHT). Then, if the reference to Article 15 paragraph (1) of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land, which states that the Power of Attorney Imposing Mortgage (SKMHT) shall be made by notarial deed or deed Deed Official Land (PPAT), this means an option, whether the deed of the Power of Attorney Imposing Mortgage (SKMHT) will be made by the Notary or the Land Deed official (PPAT), is not a must to be made by either one alone.

However, the Indonesian National Land Agency (BPN RI) issued Regulation of the National Land Agency of the Republic of Indonesia (Perkaban) No. 8 In 2012, stating that the preparation and making of the deed of power of attorney Imposing Mortgage (SKMHT) carried out by the Land Deed

Official (PPAT) with forms and procedures for filling made according to the annex of this regulation. In the attachment is simply attached Power of Attorney form Imposing Mortgage (SKMHT) in Land Document Form Deed Official (PPAT), Regulation of the National Land Agency of the Republic of Indonesia (Perkaban) No. 8 Year 2012 does not attach a Power of Attorney form Imposing Mortgage (SKMHT) in the form of Deed. thus, if the Power of Attorney Imposing Mortgage (SKMHT) shall be notarized then registration is not accepted by the local Land Office. But there is also the Land Office which received the Power of Attorney Imposing Mortgage (SKMHT) created by Notary, but with forms and procedures for filling the appropriate attachment Regulation of the National Land Agency of the Republic of Indonesia (Perkaban) No. 8 in 2012.

Power of Attorney Imposing Mortgage (SKMHT) is a power of attorney granted to the lenders of mortgage provider as the recipient of the security rights to impose security rights object security rights.

Article 15 (1) of Act No. 4 Of 1996 on Mortgage of Land and Their Bodies Relating to Land says that the Power of Attorney Imposing Mortgage (SKMHT) made by mandatory notarial deed or deed Land Deed Official (PPAT) and meet the following requirements:

1. No load power to perform legal acts other than the charge mortgage;
2. No load power of substitution;
3. State clearly the object of mortgage, the amount of the

debt, the creditor's name and identity, as well as the name and identity of the debtor if the debtor is not assigning dependents.

Article 15 (1) of Act No. 4 Of 1996 on Mortgage of Land and Their Bodies Relating to Land says that the Power of Attorney Imposing Mortgage (SKMHT) shall be made by notarial deed or deed of PPAT. Imposing a Power of Attorney deed Mortgage (SKMHT) in the form of deed Land Deed Official (PPAT) ruled further in the Minister of Agriculture of the No. 3, 1997.

The deed of the Power of Attorney Imposing Mortgage in the form of notarial deed is not set explicitly as a deed of Power of Attorney Imposing Mortgage (SKMHT) in the form of deed Land Deed Official (PPAT). Thus, if the Power of Attorney Imposing Mortgage made in the form of notarial deed and shall comply with the provisions of Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary, provided that the contents of the Power of Attorney Imposing Mortgage (SKMHT) are eligible and to its substance specified provisions of Article 15 paragraph (1) of Act No. 4 Of 1996 on Mortgage of Land and Their Bodies Relating to Land.

Related to the aspect of authority, a notary clearly has the authority to make such deed. Notary authority to make a Power of Attorney Imposing Mortgage (SKMHT) are set out in article 15 paragraph (1) of Act No. 4 of 1996 on Mortgage of Land and

Their Bodies Relating to Land in conjunction with Article 15 paragraph (2) letter (f) of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 on Notary. Power of Attorney Imposing Mortgage (SKMHT) made Notary guided only by forms and procedures for filling are made based on attachment Regulation of the Land Board of the Republic of Indonesia (Perkaban) No. 8 In 2012, only to have the strength of evidence as the deed under the hand if it is signed by the parties, because basically Deed Power of Attorney Imposing Mortgage (SKMHT) Notary shall be subject to the ordinances and deed in accordance with Act No. 2 of 2014 on the Amendment of Act 30 of 2004 on Notary. Based on the description of the background mentioned above, the authority how in the manufacture Notary Deed Power of Attorney Imposing Mortgage (SKMHT)?

## **B. RESEARCH METHODS**

The approach used in this study is a sociological juridical approach, which inductively began an analysis of the legislation governing the Notary office and encumbrance on land and objects relating to the ground. This study will generate data descriptive data in the form of written or spoken of the research object holistic (whole)<sup>4</sup> in the depiction of the problem issues that became the object of research without

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4 Umar Ma'ruf, Dony Wijaya, *Review of the Status and Function of the Notary Law For Public Officials In Creating an authentic deed (Study in Bergas-Semarang District)*, Journal of Law Reform, Volume II 3 September to December 2015 p.301

any intention to provide generally applicable conclusions regarding the authority of Notary

## **C. RESULTS AND DISCUSSION**

### **1. Notary Deed authority in making Power of Attorney Imposing Mortgage**

Notary as Public officials have the duty and authority to run his post. According to article 15 paragraph (1) and (2) of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary when linked with article 1 paragraph 1 of Act No. 2 2014 *junto* to Law 30 of 2004 concerning Notary it is known authority and responsibility of the Notary as a public official, as follows:

- a. Notary authorized to make the deed authenticity of all deeds, agreements, and determination required by legislation and / or desired by the stakeholders to be stated in the Deed authentic, guaranteeing the creation date of the Deed, save deed, giving grosse, copy and quote Deed all of it along the Deed of making it not also be assigned or excluded to other officials or any other person specified by law.
- b. In addition to the Authority referred to in paragraph (1), notary authorities also:
  - 1) certify the signatures and set a firm date in the letter under the hand by enrolling in special books;

- 2) letters posted under the hand by enrolling in special books;
- 3) make copies of the original letters under the hands of the copy that contains a description as written and illustrated in the letter in question;
- 4) approve their compatibility with a photocopy of the original letter;
- 5) provide legal counseling in connection with the deed;
- 6) make Deed relating to land; or
- 7) make treatise deed auction.

In addition to the authority referred to in paragraph (1) and (2), a notary has other powers stipulated in the legislation.

In Articles 16 and 16 Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary, regulates the obligations of Notaries in running the office, while those obligations are as follows:

- a. In running position, the Notary shall:
  - 1) acting trustworthy, honest, thorough, independent, impartial, and safeguard the interests of those involved in legal actions;
  - 2) make Deed in the form of Minuta Deed and save them as part of a Notary Protocol;
  - 3) attach a letter and documents and

- fingerprints on Minuta Deed;
- 4) Grosse issued Deed, copy of Deed or Deed Excerpt by Minuta Deed;
  - 5) provide services in accordance with the provisions of this Act, unless there is a reason to reject it;
  - 6) keep secret everything about the deed he made and all information obtained in order to manufacture in accordance with the deed of oath / pledge of office, unless the law otherwise provides;
  - 7) stapling deed he made in one (1) month to book that contains no more than 50 (fifty) Acts, and if the number of deed can not be contained in one book, The deed can be bound to more than one book, and record the number of Minuta Deed , month, and year of manufacture on the cover of each book;
  - 8) make a list of the Deed of protest against not being paid or non-receipt of securities;
  - 9) make a list relating to the Deed will chronologically manufacture deed every month;
  - 10) send a list of deed referred to in the letter i or register zero with respect to the will to probate register at the ministry center that held government affairs in the field of law within 5 (five) days in the first week of the following month;
  - 11) noted in his Repertorium delivery date will list at end of each month;
  - 12) have a seal or stamp which contains the symbol of the Republic of Indonesia and the space encircling written the name, position, and the position in question;
  - 13) read deed before in the presence of at least two (2) witnesses, or four (4) witnesses specifically for the manufacture Deed testament under the hand, and signed on the spot by Client, witnesses and Notary; and Notary candidates receive internships.
- b. The obligation to save Minuta Deed referred to in paragraph (1) letter b shall not apply in the case of the Notary Deed issued in originali.
  - c. Deed in originali referred to in paragraph (2) shall include:
    - 1) Deed payment of rent, interest and pensions;
    - 2) Deed offers cash payments;

- 3) Deed of protest against the non-payment or non-receipt of securities;
  - 4) Deed of power;
  - 5) Deed of ownership certificate; and
  - 6) Other Acts in accordance with the provisions of the legislation.
- d. Deed in originali referred to in paragraph (2) can be made more than 1 (one) copy, signed on the timing, form and content of the same, with the provisions of any deed of the words "APPLY AS ONE AND ONE APPLY TO ALL" ,
  - e. Deed in originali containing power that has not been filled in the name of the authorized person can only be made within 1 (one) copy.
  - f. The shape and size of the seal or stamp referred to in paragraph (1) letter l determined by regulation.
  - g. Reading of the deed referred to in paragraph (1) letter m not mandatory, if Client requires that the Deed does not read because Client have read yourself, know, and understand its contents, provided that it is stated in the cover Deed and on every page Minuta Deed initialed by Client, witnesses and Notary.
  - h. The provisions referred to in paragraph (7) excluded the reading head Deed, comparison, principal explanation Deed briefly and clearly, as well as cover the Deed.
- i. If one of the conditions referred to in paragraph (1) letter m and (7) are not met, the deed in question only has the strength of evidence as the deed under the hand.
  - j. The provisions referred to in paragraph (9) shall not apply to the manufacture of Deeds will.
  - k. Notary who violates the provisions referred to in paragraph (1) letter a to letter l may be subject to the following sanctions: a written warning;
    - 1) layoffs;
    - 2) honorable discharge; or
    - 3) dishonorable discharge.
  - l. Besides sanctioned as referred to in paragraph (11), violation of the provisions of Article 16 paragraph (1) letter j may be the reason for the injured party to demand reimbursement of losses, damages, and interest to the Notary.
  - m. Notary who violates the provisions referred to in paragraph (1) letter n can be subject to sanctions in the form of a written warning. "

In between Article 16 and Article 17, 1 (one) article, namely Article 16A to read as follows:  
Article 16 A

- a. Notary candidate who is doing an internship shall implement the provisions referred to in Article 16 paragraph (1) letter a.
- b. In addition to the obligations referred to in paragraph (1), candidates are also required to disclose all information obtained in order to manufacture the Deed.
  - 8) be a Substitute Notary;
  - 9) or do other work that is contrary to the norms of religion, morals or decency that may affect the honor and dignity of the office of Notary Public.

- b. Notary who violates the provisions referred to in paragraph (1) may be subject to sanctions in the form of:
  - 1) written warning;
  - 2) layoffs;
  - 3) honorable discharge; or
  - 4) dishonorable discharge.

Article 17 Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary, also set the restrictions for Notaries in running the office, while the restrictions are as follows:

- a. Notaries are prohibited:
  - 1) running positions outside the office;
  - 2) leaving the office area of more than seven (7) consecutive working days without a valid reason;
  - 3) doubling as a public servant;
  - 4) concurrent positions as state officials;
  - 5) concurrent positions as an advocate;
  - 6) concurrent positions as leaders or employees of state-owned enterprises, region-owned enterprises or private entities;
  - 7) doubled as the Land Deed Official and / or Class II Auction officials outside the seat of the Notary;

Pursuant to Article 15 paragraph (1) of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land, Power of Attorney Imposing Mortgage shall be made by notarial deed or deed of PPAT and meet the following requirements:

- a. No load power to perform legal acts other than the charge encumbrance.
- b. No load power of substitution.
- c. State clearly the object of mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not assigning dependents.

Referring to Article 15 paragraph (1) of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to the Land of the above, which states that the Power

of Attorney Imposing Mortgage (SKMHT) shall be made by notarial deed or deed Deed Official Land (PPAT), this means that the an option, if the deed of the Power of Attorney Imposing Mortgage (SKMHT) will be made by the Notary or the Land Deed official (PPAT), is not a must to be made by either one alone.

Then, based on Article 15 (2) f of Act No. 2 2014 *junto* to Law 30 of 2004 concerning Notary mentioned that a Notary is authorized one to make a deed relating to land. There are three (3) interpretation of the passage above, namely:

- a. Notary has taken over all authority PPAT be authorized notary or have extended the authority of notary
- b. Land sector also be authorized Notary Public.
- c. No takeover of PPAT authority or notary, as well PPAT or notary has authority on its own.<sup>5</sup>

According to Habib Adjie, the authority of the land sector is not the preserve of the Notaries in Indonesia since its birth, because the Land Deed Official (PPAT) was authorized in the land sector. PPAT own rules on Government Regulation No. 24 Year 2016 on Amendment of Government Regulation No. 37 1998 About the Position Rules Land Deed Official

(PPAT). The provisions of Article 15 paragraph (2) f of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary, Notary does not add to the authority in the land sector, nor takeover of the authority of the Land Deed Official (PPAT). Notary that having authority in the land sector, as long as no authority existing in the Land Deed Official (PPAT), therefore there is no dispute of authority between the Notary and PPAT. Each has its own authority conform to the applicable law.

Regarding the view Habib Adjie that the Notary has the authority in the land sector, as long as no authority existing in Deed Official Land (PPAT), according to the author relation to a deed of Power of Attorney Imposing Mortgage (SKMHT), a notary is authorized in the deed of Power of Attorney Imposing Mortgage (SKMHT) due to Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to the Land gave him authority. It can be seen in the provisions of Article 15 paragraph (1) of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land.

The decree clearly states that the Power of Attorney Imposing Mortgage (SKMHT) shall be made by notarial deed or deed Land Deed Official (PPAT). Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land empowered not only to the Land Deed Official (PPAT) but also in the manufacture

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5 Habib Adjie, *Op.cit.*, p.84



of the Notary Deed Power of Attorney Imposing Mortgage (SKMHT).

Power of Attorney Imposing Mortgage (SKMHT) is included into the type certificate authentic deed. Understanding the Power of Attorney Imposing Mortgage (SKMHT) is not specifically defined in the Act No. 4 Of 1996 on Mortgage of Land and Their Bodies Relating to Land, but by Djaja S. Meliala construed that the Power of Attorney Imposing Mortgage is an agreement with a person's name to give power to others to impose security rights.<sup>6</sup>

Then if we see based on the type, and the hierarchy of legal force of legislation in Indonesia, as in the enacted Law 12 of 2011 on the Establishment Regulation Legislation. Article 7 (1)

And hieraky that type of legislation consists of:

- a. Constitution of the Republic of Indonesia Of 1945;
- b. People's Consultative Assembly Decree;
- c. Law / Government Regulation in Lieu of Law;
- d. Government regulations;
- e. Presidential decree
- f. Provincial Regulation; and
- g. Regulation of the Regency /

Article 7 (2)

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6 Djaja S. Meliala, 1997, *Principal according to the Book of the Law of Civil Law*, Tarsito, Bandung, p.117

The legal force of legislation in accordance with the hierarchy as referred to in paragraph (1). Can be interpreted that:

- a. Legislation that higher used as a legal basis underlying regulations / legislation is lower;
- b. Legislations lower sourced legislation to higher law;
- c. The substance of the legislation is lower, not contravene legislation denganperaturan higher;
- d. Legislation should only be repealed, replaced or amended legislation denganperaturan higher or equivalent;
- e. Legislation similar if the same material, legislation enacted latest; and
- f. Legislation that specifically take precedence over the legislation more generally.

Then it can be understood that the position of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land and Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary is a hierarchy of rules that are much higher than regulations governing PPAT.

Related to aspects of the authority, if we examine the validity of the Notaries in making Deed Power of Attorney Imposing Mortgage (SKMHT), Notary clearly has the authority to make such deed. Notary authority to make a

Power of Attorney Imposing Mortgage (SKMHT) are set out in article 15 paragraph (1) of Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land in conjunction with Article 15 paragraph (2) letter (f) of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 on Notary.

#### **D. CONCLUSION**

Notaries that has the authority under the Power of Attorney Imposing deed Mortgage (SKMHT) based on Article 15 (1) of Act No. 4 Of 1996 on Mortgage of Land and Their Bodies Relating to The Land articles 15 paragraph (2) f of Act No. 2 of 2014 on the Amendment of Act 30 of 2004 on Notary. In practice, the regulations governing the Land Deed Official (PPAT) other positions contrary to regulation-making authority related to the Deed Power of Attorney Imposing Mortgage (SKMHT) are hierarchically higher in the Act No. 2 of 2014 on the Amendment of Act 30 of 2004 on Notary. In Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 About Notary Article 15 (2) f of itself clear that Notaries are authorized in the land sector. In

addition contrary to Act No. 2 of 2014 on the Amendment of Act 30 of 2004 concerning Notary, regulations Land Deed Official (PPAT) is also not fully implement, the mandate contained in the Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land, namely article 15 paragraph (1) that the Deed Power of Attorney Imposing Mortgage shall be made by notarial deed or deed Land Deed Official (PPAT). 30 of 2004 About Notary, regulations Land Deed Official (PPAT) is also not fully implement, the mandate contained in the Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land, namely article 15 paragraph (1) that the Deed Power of Attorney Imposing Mortgage shall be made by notarial deed or deed Land Deed Official (PPAT). 30 of 2004 About Notary, regulations Land Deed Official (PPAT) is also not fully implement, the mandate contained in the Act No. 4 of 1996 on Mortgage of Land and Their Bodies Relating to Land, namely article 15 paragraph (1) that the Deed Power of Attorney Imposing Mortgage shall be made by notarial deed or deed Land Deed Official (PPAT).

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