

## Responsibilities of Notaris/PPAT in Credit Agreements & Deed on Granting of Liability Rights (APHT) When the Debtor is in Default

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**Abstract.** *This research aims to know that in the current era of industrialization, credit is something that is not far from everyday life. For the community, both wealthy and underprivileged, credit is a solution to meet the needs of people's lives such as: clothing, food, housing. One of the important credit principles is collateral. In credit activities that occur in the community, it can be noted that generally it is often required to provide credit guarantees. Credit guarantees will have several functions and one of them is securing credit repayment if the debtor is in default. Credit guarantees have an important role in securing bank refunds. The method used in this research was a sociological juridical approach. A sociological juridical approach was an approach by looking at a legal reality in society. Land is one of the immovable objects that are widely used as collateral for loan repayment. Mortgage rights over land are often used to obtain credit facilities because land has a high economic value and always increases from time to time. Land rights as collateral in agreements between creditors with the Debtor can be bound by using Mortgage Rights. The result show that the role and function of a notary/PPAT is important in assisting the government and other parties in need to provide certainty, order and legal protection in making authentic deeds and registration of Mortgage Rights until a certificate is issued by the Land Agency.*

**Keywords:** Agreement; Credit; Deed; Granting; Mortgage.

## 1. Introduction

One of the government's programs in implementing equity in the economic sector, one of which is the provision of credit<sup>1</sup> to the public so that they can channel financial capital in the form of capital (General Explanation of Act No. 7 of 1992 concerning Banking as Amended by Act No. 10 of 1998). It is hoped that the community, in this case business actors, can get business capital which we often hear about by providing credit either through government or private banks.<sup>2</sup>

Given the importance of these 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 and can also provide legal certainty for all interested parties. Giving credit to the public through banking is of course carried out with a credit agreement between the giver and the credit recipient so that there is a legal relationship between the two, the credit agreement is usually made by the creditor, namely the bank, while the debtor only learns and understands it. However, this credit agreement should really need special attention from both parties because the credit agreement has a very important function in granting.<sup>3</sup>

Seeing the position of the agreement in providing credit which is very important, the need for an authentic deed in every credit agreement is something that cannot be done for both parties, because this is because the authentic deed serves as evidence that certain legal actions have been carried out, such as regarding land rights, because An authentic deed is evidence and to prove that a legal act has been carried out so that if something goes against the law regarding the agreement contained in the deed, it gets strong legal protection.

After implementing a credit agreement with collateral for land and building objects, it is usually immediately followed by the implementation of the making of the Deed of Imposition of Mortgage Rights (hereinafter referred to as "APHT") in accordance with Act No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land.

This Mortgage is *accessories* or a follow-up agreement, meaning that the debt guarantee agreement on the mortgage does not stand alone because it was previously preceded by the main agreement, namely the debt agreement. Then the public officials who are authorized to make a deed of transfer of land rights as described above, the form of which is determined as evidence of certain legal actions regarding land located within their respective working areas, as referred to above is the Land Deed Making Official (hereinafter referred to as "PPAT") in accordance with the laws and regulations in force in the position as referred to,

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<sup>1</sup> Ngadenan, Eksekusi Hak Tanggungan Sebagai Konsekuensi Jaminan Kredit Untuk Perlindungan Hukum Bagi Kepentingan Kreditur Di Mungkid, *Jurnal Law Reform*, Vol 5 No. 1 April 2010

<sup>2</sup><https://id.m.wikipedia.org/wiki/bank>, accessed on April 19, 2021, at 14.59 WIB.

<sup>3</sup> Ibid.

then the deeds are referred to as authentic deeds.<sup>4</sup> The assignment of Mortgage Rights is carried out through two stages of activities, namely:

- The stage of granting Mortgage, by making a Deed of Granting Mortgage, which is preceded by a debt agreement before a Notary which is the basis for granting Mortgage;
- The registration stage by the Land Office, which is the birth of the encumbered Mortgage Rights.<sup>5</sup>

In accordance with the regulation of the Head of the National Land Agency Number 1 of 2006 regarding the provisions for the implementation of Government Regulation Number 37 of 1998 concerning the Regulation of Land Deed Maker Officials ("KBPN Regulation No. 1 Th.1996") on May 16, 1996 the above rules can be used as a reference which is clear for PPAT in making deeds, especially in the land area so as to avoid mistakes that can harm the interests of the parties. The imposition of land rights which is the authority of PPAT, one of which is making the Deed of Granting Mortgage (APHT) which will also be discussed in the case study in this writing. The importance of making the Deed of Granting Mortgage (APHT) is as a basis for creditor guarantees, namely by imposing mortgages on the object of guarantee, *preference* usually it contains several promises such as a lease promise, a promise not to change the shape and arrangement of the mortgage object, a management promise, a promise to save, a promise of authority to sell, a promise not to be cleared, a promise not to give up rights, a promise of compensation, , promise of insurance, promise of emptying the promise of holding land title certificates, promise of ownership.<sup>6</sup>

Based on some of the descriptions of the promise above, it can be concluded that the Deed of Granting Mortgage (APHT) seems to provide the widest possible guarantee to the creditor / creditor to carry out all actions or actions if the debtor breaks his promise /*default*. Thus, if it is reviewed in Article 14 paragraph 3 of Act No. 4 of 1996 concerning Mortgage Rights it is stated that:

"The mortgage certificate as referred to in paragraph 2 has the same executorial power as a court decision which has permanent power and is valid as a substitute *grosse* mortgage deed as long as it concerns land rights<sup>7</sup>"

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<sup>4</sup>J. Satrio, 2002, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, p. 92-93.

<sup>5</sup>Raisa, Analisis Yuridis Terhadap Penerapan Pasal 35 Undang-Undang Jabatan Notaris Berkaitan Penyerahan Protokol Notaris Yang Telah Meninggal Dunia di Kota Medan, Thesis of Faculty of Law, Universitas Sumatera Utara

<sup>6</sup>J.Satrio, Op.cit. p.134.

<sup>7</sup> Yunita Budi Chrissanni dan Amin Purnawan, Peranan PPAT dalam Pemungutan Bea Perolehan Hak Tanah dan Bangunan (BPHTB) On Line Atas Transaksi Jual Beli Tanah dan Bangunan di Kota Magelang. *Jurnal Akta*, 4 (3) 2017, p. 3

On the other hand, if we look at Article 28 H paragraph 4 of the 1945 Constitution, there are several promises that are very contradictory in fact, this is where the role of a Notary in making a Credit Agreement must be able to explain clearly to the debtor before signing the Deed of Granting Mortgage (APHT).<sup>8</sup>

Therefore, the role of the Notary is very necessary to provide understanding, information and understanding as well as protection to both parties before carrying out the credit agreement so that in the future it can minimize disputes between the two parties<sup>9</sup>.

Notaries in carrying out their duties as General Officials are regulated in Act No. 30 of 2004 concerning Notary Positions<sup>10</sup> and Act No. 2 of 2012 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions which are specifically related to the making of Deeds are regulated in provisions Article 4 paragraph (2) and Article 16 paragraph (1) letter f of Act No. 2 of 2014 concerning the obligation of a Notary to maintain the confidentiality of the deed he made is to protect the interests of all parties related to the deed he made. This is stated in the Elucidation of Article 16 paragraph (1) letter f of Act No. 2 of 2012 concerning Amendments to Act No. 30 of 2004 concerning the Position<sup>11</sup> of Notary as follows: "The obligation to keep everything related to deed and other documents are to protect the interests of all parties related to the debut."

Notaries must also be able to work together (help each other and complete it) with the bank to issue a notarial deed required in a credit agreement that will be carried out by the bank or called a creditor.<sup>12</sup>

## 2. Research Methods

The method used in this research was a sociological juridical approach. A sociological juridical approach was an approach by looking at a legal reality in society.<sup>13</sup> The specification of the research used was descriptive analysis, which

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<sup>8</sup>Eko Puji Hartono, Akhmad Khisni, "The Role of PPAT in Making the Deed of Transfer of Rights to Land and/or Buildings Formerly of Customary Ownership Related to the Payment of Duty on the Acquisition of Rights to Land and/or Buildings", *Jurnal Akta* VOL. 5, No. 1, March 2018

<sup>9</sup> Karina Prasetyo Putri, Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Purna Bakti Terhadap Akta Yang Pernah Dibuat (Analisis Pasal 65 dan Pasal 66 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris), *Jurnal Fakultas Hukum*, Universitas Brawijaya

<sup>10</sup> Anang Ade Irawan, Pertanggungjawaban Ahli Waris Notaris sebagai Pejabat Umum atas Akta Notaris yang Menimbulkan Kerugian Para Pihak, *Jurnal Lentera Hukum*, Volume 5 Issue 2 2018

<sup>11</sup> Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). Code of Ethics and Position of Notary in Indonesia. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>12</sup>J. Satrio. Op.cit. p. 21.

<sup>13</sup>Soejorno Soekanto. 1998. *Pengantar Penelitian Hukum*. Jakarta: UI Press. p. 51.

was 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 then collected through data collected, processed, and compiled in existing theories to obtain data. Trouble shooting in accordance with applicable regulations.<sup>14</sup> And this research uses primary data and secondary data.

### 3. Results and Discussion

#### 3.1. The Responsibilities of the Notary/PPAT in the Credit Agreement and Making the Deed of Granting Mortgage (APHT) When the Debtor is in Default

The results of the research related to the responsibilities of the Notary/PPAT in the Credit Agreement and the Making of the Deed of Granting Mortgage when the Debtor Defaults at the Notary/PPAT Office of Demak Regency, the researchers analyzed that based on Article 1 Number 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 Year 2004 Regarding Notary Position:

*"Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws.*

Based on Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary: Notaries are authorized to make authentic deeds regarding all acts, agreements, and stipulations required by legislation and/or desired by concerned to be stated in the authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law. In this case, in accordance with the authority as referred to in paragraph (1), the Notary is also authorized to: Authorize signatures and determine the certainty of the date of the letter under the hand by registering it in a special book; Make a copy of the original underhand letter in the form of a copy containing the description as written and described in the letter concerned; Validating the compatibility of the photocopy with the original letter; Provide legal counseling in connection with the making of the Deed; Make a deed related to land; Make a Minutes of Auction Deed. In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other powers as regulated in the laws and regulations.

According to Notary/PPAT ASKANAH, SH., M.Kn and Notary/PPAT ABDUL ZAEN, SH., M.Kn almost have the same opinion, namely Notary/PPAT must carry out their duties in accordance with the applicable laws and regulations and are

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<sup>14</sup>Sri Sumawarni, 2012, *Sebuah Seri Metode Penelitian Hukum*, UPT UNDIP Press, Semarang. p.6.

prohibited from deviating from the applicable regulations.<sup>15</sup> In this case, Notary/PPAT ASKANAH, SH., M.Kn was ordered to have carried out his duties in accordance with the authority stipulated in Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2014 concerning the Position of a Notary, that on 06-07-2021 (sixth of July two thousand and twenty one) Notary /PPATASKANAH, SH., M.Kn ordered to have drawn up and ratified the Deed of Credit Agreement Number: 03 between the parties, namely the debtor and the creditor for a credit of IDR 250,000,000, - (two hundred and fifty million rupiah).

In the credit agreement deed, the contents referred to in it are of course an agreement made between the bank as the creditor and the credit recipient as the debtor, the things that will be included in this credit agreement are definitely matters relating to the interests of the parties, according to the agreement and the principal problems that are desired and agreed upon by the parties<sup>16</sup>.

This Credit Agreement also needs special attention, because the credit agreement has a very important function, in granting, managing and administering the credit itself. The credit agreement serves as the principal agreement. That is, a credit agreement is something that determines whether or not other agreements that follow it are cancelled, such as a guarantee binding agreement. Credit Agreements also serve as evidence regarding the boundaries of rights and obligations between creditors and debtors, as well as serve as a tool for monitoring credit<sup>17</sup>.

Based on Article 1 Number 1 Government Regulation of the Republic of Indonesia Number 24 of 2016 Amendment to Government Regulation Number 37 of 1998 About Position Land Deed Making Officer hereinafter referred to as PPAT is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units.

Based on Article 2 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official for Making Land Deeds: "The PPAT has

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<sup>15</sup>Interview with Notary/PPAT ASKANAH, SH., M.Kn, on 23 September 2021 and ABDUL ZAEN, SH., M.Kn on 24 September 2021

<sup>16</sup> Harnita, dkk. "Tanggung Jawab PPAT dalam Penetapan Nilai Transaksi Jual Beli Tanah dan Bangunan di Kota Banda Aceh", *Udayana Master Law Journal*, Vol. 8 No. 3 September 2019, p. 354-370.

<sup>17</sup> Eko Puji Hartono, Akhmad Khisni, "The Role of PPAT in Making the Deed of Transfer of Rights to Land and/or Buildings Formerly of Customary Ownership Related to the Payment of Duty on the Acquisition of Rights to Land and/or Buildings", *Jurnal Akta* VOL. 5, No. 1, March 2018



the main task of carrying out some land registration activities by making a deed as evidence that certain legal actions have been carried out regarding land rights or Ownership Rights to Flats which will be used as the basis for registration of changes to land registration data resulting from the legal action. The legal actions as referred to in paragraph (2) are as follows; Buy and sell; Exchange; Grant; Income into the company (*inbrenng*); Share rights together; Granting of Building Use Rights/Use Rights on Owned Land; Granting Mortgage; Granting Power of Attorney imposes Mortgage.

Seas Land Maker Official (PPAT), Notary/PPATASKANAH, SH., M.Kndi Demak has also drawn up and ratified the Deed of Power of Attorney for Imposing Mortgage (SKMHT) Number: 698/2021 on the Deed of Credit Agreement Number: 03 between the Debtor and Creditor on the credit to be encumbered with a mortgage amounting to IDR250,000,000,- (two hundred and fifty million rupiah). The Deed of Power of Attorney to impose Mortgage (SKMHT) can be used by the Creditor as evidence in making the Deed of Granting Mortgage (APHT) by the Land Deed Making Official (PPAT) without the presence of the Debtor to appear where necessary, provide information as well as show and submit the required documents. requested, make/ask to be made and sign the Deed of Granting Rights and other necessary documents, choose the domicile, give a statement that the object of the Mortgage really belongs to the Authorizer, is not involved in a dispute, free from confiscation and from any burdens, registering the Mortgage, giving and agreeing to the terms or rules as well as promises approved by the Debtor as the Authorizer in the Deed of Granting the Mortgage.

On Tuesday, 14-07-2021 (the seventeenth of July two thousand and twenty-one) has been made and ratified by the PPAT in Demak in this case, the Land Deed Authorization Officer (PPAT) in Demak, has carried out the task of making the Deed of Granting Mortgage Rights (APHT) on the Credit Agreement Number: 03 and fulfills the Specialist Principle by enclosing the Deed of Power of Attorney to impose Mortgage Rights (SKMHT) Number: 698/2021 on credit between the Debtor and the Creditor. The Deed of Granting Mortgage (APHT) which has been agreed between the parties and has been ratified by the Land Deed Making Officer (PPAT) for further Mortgage Registration.

In this case, the Land Deed Making Officer (PPAT) registers Mortgage Rights on the Deed of Granting Mortgage Rights (APHT) at the Land Office in the Demak Regency area, namely the Demak Regency National Land Agency Office. 4 of 1996 concerning Mortgage Rights. Mortgage registration is carried out a maximum of 7 days after making the Mortgage Granting Deed (APHT). On 15-07-2021 (the fifteenth of July two thousand twenty-one) by the Land Deed Making Officer (PPAT) in Demak, he has registered the Mortgage Rights on the

Deed of Granting Mortgage Number :961/2021 at the National Land Office of Demak Regency with Mortgage Number: 04014 /2021.

In this case, as proof that there has been encumbrance of Mortgage Rights on a plot of land with a certificate of property rights in the name of the DEBTOR which has been registered at the National Land Office, the Demak Regency National Land Office will be held on 21-07-2021 (the twenty-first of July two thousand and twenty-one) issued a Mortgage Certificate Number: 04014/2021 on the Deed of Granting Mortgage (APHT) Number: 961/2021 on a credit of IDR 250,000,000,- (two hundred and fifty million rupiah) for the credit in the Credit Agreement Number: 03 between the Debtor and the Creditor. After that, the Original Mortgage Certificate is submitted to the Creditor as the Mortgage Holder.

According to the notary/PPAT ABDUL ZAEN, SH, M.Kn, the responsibilities of the Notary/PPAT are limited and limited to the fulfillment of the composition of the deed as stipulated in Act No. 2 of 2014 concerning Amendments to the Law Act No. 30 of 2004 concerning the Position of a Notary, and the contents do not conflict with the values of truth, propriety and law, namely:<sup>18</sup>

- That what is stated by a notary in the credit agreement deed is true and can be accounted for.
- That it is true that the credit agreement deed was signed on that day (date, month and year) and at the time stated in the credit agreement deed.
- That it is true that the comparator / parties face a notary.
- That it is true that the person who signs the credit agreement deed is the person whose name is listed in the competition.
- That the contents of the credit agreement deed are really desired by the parties.

Notaries/PPATs cannot be held accountable in the event of a default, by either party from the bank as the creditor or the loan recipient as the debtor, there is only responsibility in office as long as the credit agreement deed and the Deed of Granting Mortgage are made before Notary/PPAT.

### **3.2. Position of the Deed of Credit Agreement and the Deed of Granting Mortgage in the Condition of the Debtor in Default**

An agreement is an event where a person promises to bind himself to another person, the agreement contains promises that have been previously agreed or agreed upon by the parties involved, namely in the form of rights and obligations

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<sup>18</sup>Interview with Notary/PPAT ABDUL ZAEN, SH., M.Kn on September 24, 2021



attached to the parties who make it in written or oral form. The most important thing is the validity of an agreement, if the agreement is declared valid then the agreement can be implemented by both parties, but if an agreement is said to be invalid then the agreement is declared null and void. An agreement is said to be valid if it fulfills the conditions referred to in Article 1320 of the Civil Code, which states that:

- Agreement between the two parties.
- The ability to make agreements.
- Something certain.
- Halal reasons

According to Notary/PPAT ABDUL ZAEN, SH, M.Kn. A credit agreement is an agreement that precedes a debt-receivable agreement (a loan-replacement agreement).<sup>19</sup> This credit agreement is a basic agreement and is consensual in nature (*pactade contrahendo obligatoir*) accompanied by an agreement between the giver and the borrower regarding the legal relationship between the two.<sup>20</sup> Without a credit agreement signed by the bank and the debtor, there is no credit agreement. According to Notary/PPAT ASKANAH, SH., M.Kn. regarding the rights and obligations of both parties, here the debtor is the party who submits the credit agreement in this case is the customer, while the creditor in this credit agreement is the bank, namely the party who receives the credit application from the party who submits the credit (debtor).<sup>21</sup>

The existence of binding guarantees in the credit agreement has the function of giving the bank the right and power to get repayment with the collateral items if the customer is in default, namely unable to repay the debt at the time specified in the agreement.

In addition, to ensure that customers play a role and or participate in financed transactions so that the possibility of customers leaving their business at the expense of themselves or their company can be prevented, or at a minimum the possibility of doing so can be minimized.

The guarantee binding function also encourages customers to fulfill credit agreements, especially regarding repayment in accordance with agreed terms so that customers do not lose assets that have been guaranteed to the bank.

Credit Guarantee Binding Agreement in the collateral in the credit agreement in the form of land as the object of Mortgage, commonly known as the Mortgage

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<sup>19</sup>*Ibid*

<sup>20</sup>Mariam Darus Badruzaman, 1991, *Perjanjian Kredit Bank*, PT Citra Aditya Bakti, Bandung, p.23

<sup>21</sup>Interview with Notary/PPAT ASKANAH, SH., M.Kn on 23 September 2021

Deed (APHT) is an additional agreement (accessoir) of the main agreement. The nature of the additional agreement on the Deed of Granting Mortgage (APHT) is to follow the main agreement (in this case, following the credit agreement), the consequence is that if the main agreement of the credit agreement is canceled then the additional agreement of the Deed of Granting of Collateral (APHT) will also follow cancelled.

In this Deed of Granting Mortgage (APHT) it stipulates the terms and conditions regarding the granting of Mortgage from the debtor to the creditor in connection with the debt which is guaranteed by the Mortgage. The granting of this right is intended to give priority to the creditor concerned (preferred creditor) over other creditors (concurrent creditors).

In Article 1 paragraph 1 of Act No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land, namely:<sup>22</sup>

Mortgage on Land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not along with other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors".

Thus, the granting of Mortgage Rights is a guarantee for the repayment of the debtor's debt to the creditor in connection with the credit agreement in question so that if the debtor defaults, it is appropriate to worry that the debtor's business is not doing well so that his care for his property, including the collateral given by him to the creditor that way, the bank has first looked for a solution by way of deliberation, then if deliberation to reach consensus cannot be resolved then the settlement of debts and receivables using Article 6 of Act No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land is the one that reads:<sup>23</sup>

*"If the debtor defaults, the holder of the first Mortgage has the right to sell the object of the Mortgage on his own power through a public auction and take repayment of his receivables from the proceeds of the sale."*

So with this article, the two deeds, namely the Deed of Credit Agreement made by a Notary and the Deed of Granting Mortgage (APHT) made by the Land Deed Making Officer (PPAT) remain binding on the parties, and the deed can be used as evidence for creditors to sell collateral through auction in collaboration with

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<sup>22</sup>Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

<sup>23</sup>*Ibid*

the Office of the State Property and Auction Service (KPKNL). Then the auction proceeds are used to pay off debtors' debts.

#### 4. Conclusion

Responsibilities of a Notary/PPAT in a Credit Agreement with Mortgage Guaranteed. In this case, the Notary in Demak has the role of making and ratifying an authentic deed in the Credit agreement and has carried out his role and duties as a Notary. The Land Deed Making Official (PPAT) in Demak is authorized to make and ratify the Deed of Power of Attorney to Imposing Mortgage (SKMHT) as evidence in the Making of the Deed of Mortgage Encumbrance (APHT) which cannot be attended by the debtor.

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