

PPAT'S Responsibilities in Preparing a Deed of Mortgage Rights That is Cancelled By a Court Decision (Study Decision No. 136/Pdt.G/2019 PN Ckr)

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Abstract. *Land Deed Officials, as public officials, are authorized to issue authentic deeds related to legal acts on land, including APHTs, which are crucial for granting mortgages to secure loans. However, courts often revoke APHTs, as in decision 136/Pdt.G/2019/PN Ckr, due to negligence on the part of Land Deed Officials (PPATs) in examining land documents or status, leading to legal uncertainty and losses for creditors. Therefore, a review of the authority and responsibilities of PPATs in issuing APHTs that have been revoked by the court is necessary to strengthen legal certainty and protection for the parties. This research uses a normative (doctrinal) legal method that focuses on the study of written or secondary legal materials. The approaches employed include a statutory approach to analyze applicable legal provisions, a conceptual approach to understand legal doctrine and principles, and a case approach to examine court decisions regarding the annulment of APHTs to examine the judge's considerations and their legal implications. The research results show that the Land Deed Making Officer (PPAT) is a public official authorized to make authentic deeds, including the Deed of Granting Mortgage Rights (APHT), to ensure legal certainty for creditors and debtors. In making APHT, PPAT is obliged to check the validity of the certificate, ensure the identity of the parties, the value of the mortgage, and the object of the mortgage right according to legal requirements, maintain independence and professionalism, make a valid authentic deed, and register the deed on time with the land office. By working carefully and meticulously, PPAT prevents legal defects, disputes, and the risk of administrative, civil, and criminal liability.*

Keywords: Court Decisions; Mortgage Rights; PPAT.

1. Introduction

Agreements have two forms, namely private agreements and authentic agreements. In Article 1874 of the Civil Code, private agreements are defined as "deeds signed privately, letters, lists, household documents, and other writings made without the intermediary of a public official. This means that a public official is a position given to someone who is authorized by law to carry out certain tasks related to the public interest, such as a notary who is authorized to make authentic deeds.

An authentic agreement or authentic deed according to Article 1868 of the Civil Code is a deed made in a form determined by law by or before an authorized public official. A notary is one of the institutions authorized to make authentic deeds in general, while for legal acts related to land rights, a special official is required, namely the Land Deed Making Officer (PPAT). Notaries and PPATs have different legal bases and authorities. Notaries are regulated in Article 1 number 1 of the UUJN, while PPATs are regulated in Article 1 paragraph 1 of PP No. 37 of 1998, which has special authority to make deeds regarding legal acts related to land rights or apartment units.

As a public official authorized by the state, the Land Deed Official (PPAT) is responsible for drafting authentic deeds related to land rights in accordance with statutory regulations. The authority of the PPAT is regulated in Government Regulation No. 24 of 2016 as an amendment to Government Regulation No. 37 of 1998. In carrying out the creation of deeds, the PPAT is also required to comply with the provisions of the BPN District Regulation No. 8 of 2012, which regulates land registration procedures. Land registration aims to provide legal certainty for rights holders through the issuance of land books and land certificates as valid evidence.

In financing practices, people often use mortgage mechanisms to obtain credit, as they are considered to provide legal protection and certainty. Land title holders are usually required to sign a Certificate of Mortgage (SKMHT) or a Certificate of Land Ownership (APHT), which is then registered at the land office. The SKMHT authorizes another party, typically a bank, to encumber the mortgage, while the APHT is a deed containing the grant of the mortgage, which must comply with the provisions of the UUHT.¹The preparation of SKMHT and APHT must be carried out by a Notary or PPAT, with the assurance that the grantor of the rights has authority over the object being charged.

Problems arise when a Land Deed (APHT) issued by a Land Deed Official (PPAT) is later revoked by a court decision. This revocation creates legal uncertainty and

¹Remy Shahdeini, 1999, *Mortgage Rights Principles, Basic Provisions and problems faced by banks, a study of mortgage rights law*, Bandung, Alumni, p. 1.

can be detrimental to all parties, especially creditors who lose collateral. Revocation often occurs due to negligence on the part of the PPAT, such as failing to verify the authenticity of documents, land status, or the legality of the parties. Case No. 136/Pdt.G/2019/PN Ckr provides an example of an APHT issued by a Land Deed Official (PPAT) being revoked, resulting in losses for Bank BTN as the creditor.²This situation raises questions regarding the PPAT's responsibilities and the legal consequences of a cancelled deed.

Considering the importance of the PPAT's role as a public official and the function of the deeds they produce as authentic evidence, legal certainty is needed regarding the limits of the PPAT's authority and responsibilities, particularly in the preparation of APHT (Land Title Deed). The cancellation of an APHT by the court not only impacts the validity of the deed but also causes economic losses for the parties involved. Therefore, research related to the PPAT's responsibilities in preparing APHTs that are cancelled by court decisions is important to strengthen the legality of PPAT deeds and provide legal protection for the parties.

2. Research Methods

The type of research used in this study is normative legal research, namely a research method that focuses on the study of written legal materials or secondary data as the main source in analyzing legal issues.³This approach is often referred to as doctrinal research, because it views law as a set of norms contained in statutory regulations (law in books) and as rules that direct human behavior in accordance with applicable provisions.⁴

The research method used in this study is a normative (doctrinal) juridical approach, namely an approach that relies on library materials, document studies, and the opinions of relevant experts. This study applies a statutory approach by using provisions in legislation as the primary basis for analysis, as well as a conceptual approach that aims to explore views and doctrines in legal science to form an understanding of legal concepts and principles related to the research issue.⁵In addition, this research also uses a case approach to examine relevant court decisions, particularly those related to the cancellation of APHT, thus enabling the author to understand the basis for the judge's considerations and the legal actions taken in the decision-making process.⁶

²Trubus Wahyudi, 2024, *Islamic Law in the National Legal System: Theory of Application, Development and Implementation in Indonesia*, SANLAR: Sultan Agung Notary Law Review, Volume 6, No. 2, SINTA 5.

³Soerjono Soekanto and Sri Mamuji, 2013, *Normative Legal Research: A Brief Review*, Jakarta, Raja Grafindo Persada, p. 13.

⁴Amiruddin and H Zainal Asikin, 2006, *Introduction to Legal Research Methods*, Jakarta, Raja Grafindo Persada, p. 118.

⁵Peter Mahmud Marzuki, 2005, *Legal Research*, Jakarta, Kencana Prenada Media Group, p.93.

⁶*Ibid.*, p. 135.

3. Results and Discussion

3.1. PPAT's responsibility for the cancellation of the Deed of Encumbrance of Mortgage Rights that he/she has made.

A Land Deed Official (PPAT) is a public official authorized to create authentic deeds in the land sector, such as sales, exchanges, gifts, division of joint assets, and granting mortgages. A PPAT deed serves as evidence of a legal act and serves as the basis for registering the transfer or encumbrance of land rights.⁷

If the legal act that underlies the making of the deed is cancelled or annulled, then the PPAT deed also no longer has evidentiary force, however, if the act can only be cancelled, then the legal consequences that have occurred previously are still considered valid. The PPAT deed as an authentic deed has perfect evidentiary force and must fulfill the provisions of Article 1868 of the Civil Code as well as the valid conditions of the agreement in Article 1320 of the Civil Code.⁸ Therefore, PPATs are required to work carefully, precisely and comply with all job regulations, because errors or negligence can cause losses and cause the deed to be legally invalid.

According to Hans Kelsen's theory, liability can be individual, collective, fault-based, or absolute. In the context of civil law, a person can only be held accountable if they meet the elements of fault as defined in Article 1365 of the Civil Code, namely, the existence of an act, fault, loss, and a causal relationship.

The principle of responsibility can be divided into several categories, namely:⁹

a. The principle of responsibility based on the element of fault

The principle of liability based on the element of fault applies in both criminal and civil law and is applied when an action contains an element of fault. According to Article 1365 of the Civil Code, these elements include the act, fault, loss, and the causal relationship between the fault and the loss. Therefore, a person can only be held liable if all four elements are met.

b. The principle of presumption of responsibility

This principle states that a person is considered responsible for his actions until he can prove his innocence, so that the burden of proof lies with the party suspected of being responsible.¹⁰

⁷Boedi Harsono, 2003, *Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Laws, Contents, and Implementation*, Jakarta, Djambatan Publisher, p. 486.

⁸Habib Adjie, 2009, *Indonesian Notary Law (Thematic Interpretation of Law Number 30 of 2004 Concerning the Position of Notary*, 2nd Edition, Bandung, Refika Aditama, p. 73.

⁹Shidarta, 2000, *Indonesian Consumer Protection Law*, Jakarta, PT. Grasindo, p. 59.

¹⁰*Ibid*, p. 61.

c. The principle of absolute liability

The principle of absolute liability is related to absolute responsibility. With absolute liability, the perpetrator remains responsible even without any element of fault, whereas with absolute liability, responsibility is imposed without exception on everyone involved.

d. The principle of responsibility with limits

In civil law, this principle depends on the agreement of the parties, so that the limits of liability are determined based on a mutually agreed agreement.

A PPAT's liability can take the form of administrative, civil, or criminal liability. Administrative sanctions are regulated in ATR/BPN Ministerial Regulation No. 2 of 2018, including written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal, depending on the severity and quantity of the violation.¹¹

a. Administrative responsibility is a sanction for PPATs who violate the provisions of their position, which can result in dismissal.

b. Civil liability arises when the PPAT intentionally or negligently makes a deed that is legally flawed because it does not meet formal and material requirements.

c. Criminal liability is imposed on PPAT if they intentionally commit an unlawful act, such as making a false deed.

In drafting a Deed of Grant of Mortgage Rights (APHT), the Land Deed Official (PPAT) plays a crucial role because the deed has direct legal consequences for both the debtor and creditor. The PPAT is required to ensure the validity of the parties' identities, the status of the land, the suitability of the property data, and the fulfillment of formal and material requirements.

An APHT can be revoked if there are errors in data entry, identity falsification, lack of consent from related parties, or if the land is in dispute. The cancellation of an APHT by the court can be evidence of negligence on the part of the PPAT. Therefore, PPATs are fully responsible for every deed they create and are required to carry out their duties professionally, honestly, and diligently to ensure legal certainty for the public.

3.2. Factors that Influence Land Deed Officials in Making Deeds of Encumbrance of Mortgage Rights.

PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts related to land rights and Ownership Rights for Apartment Units

¹¹Dimas Dwi Hastomo Putra and Idah Harlina, 2023, Responsibility of PPAT for Deeds Cancelled by the Court, Imanot: Journal of Law Students & Kenonatriatan, Vol. 3, No. 1.

as regulated in PP No. 24 of 2016. The deeds made by PPAT are authentic deeds in accordance with Article 1868 of the Civil Code. In the context of Mortgage Rights according to Article 1 of Law No. 4 of 1996, Mortgage Rights are collateral rights over land for the repayment of certain debts which give priority to creditors.¹²

The granting of a Mortgage Right is outlined in an APHT (Land Title Deed), a Land Deed Official (PPAT) deed that serves as the basis for registering the Mortgage Right at the Land Office. Once the APHT is registered, the Mortgage Right becomes legally binding, and the creditor has the right to execute the collateral if the debtor defaults. The PPAT's role begins with the preparation of the APHT and ends with the documents being sent to the Land Office, no later than seven days after signing.¹³

To qualify as a Mortgage Right, land must meet the requirements of being appraised in money, registered in the general register, transferable, and designated by law. In preparing an APHT (Mortgage Title Deed), the Land Deed Official (PPAT) is required to collect legal data regarding the parties, the land object, and the credit agreement. The PPAT must ensure the authenticity and completeness of documents such as land certificates, proof of debts, the identities of the parties, and the consent of the spouse. The status of the object must also be clear, free from disputes, not subject to confiscation, and not previously pledged as collateral except as a secondary security.

The conditions for objects that can be encumbered with Mortgage Rights are as follows:¹⁴

- a. Can be valued in money
- b. Including rights registered in general registration
- c. Has transferable properties
- d. Requires appointment by law

Land Deed Officials (PPAT) must comply with all statutory provisions, including the Mortgage Rights Law, the Basic Agrarian Law, the Land Registration Law, Government Regulation 24/1997, and the PPAT Position Regulations. Deeds drawn up outside the PPAT's jurisdiction are invalid. The professionalism, accuracy, and integrity of the PPAT determine the validity of the deed. The PPAT

¹²Deasy Susilawati, Nadia Maulisa, July 2024, The Role of PPAT in the Encumbrance of Mortgage Rights on Uncertified Land in Banking Practice, *Binamulia Huku*, Vol. 13, No. 1, Depok.

¹³Indonesia, Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (LN. No. 42 of 1996, Supplement to LN No. 3632).

¹⁴Purwahid Patrik and Kashadi, 2008, *Guarantee Law*, Revised Edition with UUHT, Semarang, Faculty of Law, Diponegoro University, Semarang, p. 56.

must reject the APHT if there are indications of document forgery, debt manipulation, or unclear land ownership. Legal risks such as lawsuits for cancellation, abuse of power, and discrepancies in the contents of the deed must be anticipated through thorough verification.

In general, mortgage rights have the following main elements:¹⁵

- a. Giving authority to certain creditors over other creditors.
- b. It is a guarantee for debt repayment.
- c. Collateralized debt is a specific debt.
- d. The object is the right to suitable land.
- e. Can be given from the land or other goods on the land as one with the land that is pledged.

The APHT is also influenced by technical factors such as the lengthy certificate check process at the Land Office, discrepancies between certificate data and land books, the need for re-measurement, and manual bureaucracy that cause delays in issuing Mortgage Rights. Furthermore, typographical errors in deeds often occur, requiring the Land Deed Official (PPAT) to conduct a *renvoi* or correction with the correct procedure, namely by having it legalized and signed by the parties, witnesses, and the PPAT. Factors influencing the Land Deed Official in making APHT:

- a. Completeness and validity of documents.

A PPAT can only issue an APHT if the documents are complete and valid, including the land certificate, proof of the loan agreement, the identities of the parties involved, and a letter of consent from the spouse (if applicable). Without complete documents and a valid loan agreement, the APHT cannot be issued.

- b. Legal Certainty for Mortgage Objects.

Land used as collateral must have clear legal status, be free from disputes, and not be subject to encumbrances or other collateral (unless approved as a secondary mortgage). The Land Deed Official (PPAT) must ensure the land has valid ownership rights, HGB (Hak Pakai), or right of use (Hak Pakai), and verify the authenticity of the certificate to avoid invalidating the APHT (Land Title Deed) or criminal charges.

- c. Compliance with Statutory Regulations.

¹⁵Pradesti Elva Rachmayanti and Ngadino, 2022, The Role and Responsibilities of Land Deed Officials (PPAT) in Issuing Electronic Mortgage Certificates, *Notarius*, Vol. 15, No. 1.

Land Deed Officials (PPAT) are required to comply with laws and regulations, such as the 1996 Mortgage Rights Law, the 1960 Basic Agrarian Law, the 1997 Land Registration Law, the PPAT Official Regulations, and the National Land Agency (BPN) regulations. This compliance ensures the legal validity of the deed; failure to comply can invalidate the deed. PPATs are only authorized to issue APHTs within their jurisdiction.

d. The Ability and Professionalism of Land Deed Making Officials (PPAT).

The PPAT must be competent in land and contract law, thorough, and independent; a lack of professionalism can lead to formal or material errors in the deed.

e. Ethics and Integrity Factors.

The PPAT is obliged to reject the APHT if there are indications of forgery, debt engineering, or the land does not belong to the debtor to maintain the validity of the deed.

f. Legal Risk Factors

The PPAT must consider legal risks, including lawsuits for cancellation of the APHT, abuse of the debtor's power, and discrepancies between the credit agreement and the APHT.

Overall, PPAT must work carefully, professionally, and comply with the rules to ensure that the APHT is valid, accurate, and has legal force, while also avoiding the risk of administrative, civil, and criminal liability.

3.3. The Ideal Concept of Land Deed Making Officials regarding the Deed of Encumbrance of Mortgage Rights.

The Deed of Mortgage (APHT) is a crucial instrument in the Indonesian land law system, providing legal certainty for creditors regarding debtors' debts. The APHT is prepared by the Land Deed Official (PPAT) as an authentic deed and serves as the basis for registering the Mortgage at the Land Office. The APHT is only prepared after the credit agreement is valid and contains the promises as stipulated in Article 11 of Law No. 4 of 1996.¹⁶

Philipus M. Hadjon stated that every action in government must be based on legitimate and accountable authority. He explained that authority is derived from three main sources: attributional authority, delegational authority, and mandate authority. Attributional authority is usually limited by the division of state power

¹⁶Addien Iftitah, 2014, The Authority of Land Deed Officials (PPAT) in Making Land Sale and Purchase Deeds and Their Legal Consequences, *Lex Privatum*, Vol. 2, No. 3, pp. 49-55, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/6158>

as stipulated in the constitution, while delegational and mandate authority derive from the delegation or transfer of authority from a higher authority to a lower authority.¹⁷

The APHT contains the terms and conditions regarding the encumbrance of mortgage rights between the debtor and creditor, along with the value of the mortgage and the object used as collateral in paying off the mortgage value.¹⁸ A mortgage is a title to a plot of land that grants the creditor the authority to take legal action regarding the land being used as collateral. This title is not granted through physical occupation of the land, but rather through the sale of the plot, with the proceeds being used as repayment for the collateral.¹⁹

The APHT is valid after the credit agreement (main agreement) is signed and has permanent legal force. An APHT is a supplementary agreement made after the main agreement is valid. In practice, deviations often occur due to a lack of understanding of the procedures, content, and role of the PPAT. The APHT must contain promises as stipulated in Article 11 of Law No. 4 of 1996. The APHT must contain the promises stipulated in Article 11 of Law No. 40 of 1996, namely:

- a. A promise that limits the mortgagee from renting or changing the lease of the mortgage object without the written consent of the mortgage holder.
- b. A promise that limits the authority of the mortgagee to change the form or arrangement of the mortgage object with prior written approval from the mortgagee.
- c. A promise that gives authority to the holder of the mortgage right to manage the mortgage right object based on the determination of the head of the District Court whose jurisdiction covers the location of the mortgage right object if the debtor truly breaches the promise;
- d. A promise that gives the mortgage holder the authority to save the object if necessary for execution or prevent the loss of the mortgage due to a violation of the law.
- e. The promise that the first mortgage holder has the right to sell the mortgage object under his own power if the debtor breaks his promise;

¹⁷Philipus M Hadjon, R. Sri Soemantri Marto Soewgnjo, et al., 2008, *Introduction to Law. Indonesian State Administration*, Yogyakarta, Gadjah Mada University Press, p. 78.

¹⁸Ahmad Matori Azzam Lubis, 2019, *Application of the Principle of Prudence in the Preparation of Deeds of Granting Mortgage Rights*, Yogyakarta, Thesis, Islamic University of Indonesia, pp. 51-51.

¹⁹Riky Rustam, 2017, *Guarantee Law*, Yogyakarta, Islamic University of Indonesia, p. 47.

- f. A promise given by the first mortgage holder that the mortgage object will not be cleared of the mortgage;
- g. a promise that the mortgagee will not relinquish his rights to the mortgage object without prior written consent from the mortgagee;
- h. A promise that the mortgage holder has the right to receive all or part of the compensation if the mortgage object is released or revoked for public interest.
- i. A promise that the mortgage holder has the right to receive all or part of the insurance money to settle his debt if the object is insured.
- j. The promise that the mortgagee will vacate the mortgage object at the time of execution of the mortgage; and
- k. The promise referred to in Article 14 paragraph (4) of Law Number 4 of 1996.

The process of imposing mortgage rights is regulated in Law Number 4 of 1996, which is carried out through 2 stages of activity, namely:

a. Stage of granting Mortgage Rights

The granting of mortgage rights begins with a promise to provide mortgage rights as collateral for the repayment of a particular debt, which is stated in and forms an integral part of the relevant debt agreement or other agreement that gives rise to the debt. The granting of mortgage rights is carried out by making an APHT by the PPAT in accordance with applicable laws and regulations.

b. Mortgage Rights Registration Stage

The granting of mortgage rights must be registered at the local land office. The procedures for registering mortgage rights are regulated in Article 13 of Law Number 4 of 1996.

For this reason, it is necessary to formulate an ideal concept about how it should be.

The Land Deed Making Officer (PPAT) acts and plays a role in the process of making APHT, in order to guarantee legal protection, document validity, and orderly land administration. the ideal concept of a Land Deed Official (PPAT) in the APHT is to act meticulously, carefully, and professionally to ensure the deed is valid and does not cause legal problems later. This includes meeting specific requirements and timely publication and registration, to provide legal certainty for creditors and debtors. Some of the ideal concepts that must be implemented by a Land Deed Official (PPAT) in the APHT are as follows:

- a. In carrying out certificate checks, the Land Deed Making Officer (PPAT) must check the land before making an APHT to ensure the validity of the mortgage object.
- b. To ensure compliance with special requirements, the APHT must contain clear and complete information in accordance with the special requirements in the Mortgage Rights Law, such as the identity of the parties, the value of the mortgage, and a description of the object of the mortgage rights.
- c. Maintaining independence and professionalism, the Land Deed Making Officer (PPAT) is a public official who must maintain independence and may not hold prohibited concurrent positions to avoid conflicts of interest.
- d. Making an authentic deed, the Land Deed Making Officer (PPAT) is tasked with making an authentic deed which is the legal basis for a transaction, so that the deed made must be valid and in accordance with applicable provisions.
- e. To register on time, the Land Deed Making Officer (PPAT) is required to submit the APHT and supporting documents to the local land office no later than 7 days after the deed is signed so that the mortgage rights are born and provide legal certainty.
- f. Prevent legal problems, acting carefully can prevent legal problems that may arise in the future related to debt repayment and collateral seizure.

4. Conclusion

Based on the discussion above, the following conclusions and suggestions can be made: a. Land Deed Officials (PPAT) play a crucial role in land law by creating authentic deeds that serve as the basis for the transfer or assignment of land rights. These deeds are legally valid and serve as evidence, so PPATs are required to work in accordance with regulations, accurately, and professionally. Negligence can render the deed legally invalid and result in administrative, civil, or criminal sanctions. Therefore, PPATs must be honest, careful, and professional to ensure legal certainty and protect all parties involved. b. Land Deed Officials (PPAT) play a crucial role in drafting the Deed of Granting Mortgage Rights (APHT) as collateral for debt between creditors and debtors. This deed is valid once registered at the Land Office and serves as the basis for legal protection for both parties. PPATs are required to ensure complete documents, clear land status, and compliance with regulations to ensure the deed is not legally void. The professionalism and thoroughness of PPATs are crucial to the validity and legal certainty of any mortgage agreement. c. An APHT (Land Title Deed) is an authentic deed that provides legal certainty for creditors regarding debtors' debts and serves as the basis for registering mortgage rights at the Land Office. Land Deed Officials (PPAT) ensure the validity of the deed by examining the certificate, fulfilling formal and material requirements, and exercising prudence

and professionalism. By implementing and registering in accordance with Law No. 4 of 1996, APHT ensures clarity of land status, protects related parties, and supports orderly land law.

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