

## The Strength of Deed of Consent Roya as Substitute for Lost Certificate of Mortgage Rights in Demak District

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**Abstract.** *The purpose of the research is to find out and analyze the implementation of making a Consent Roya deed as a substitute for a lost mortgage certificate and to analyze and examine the legal position and strength of the Consent Roya deed as a substitute for a lost mortgage certificate in the process of roya mortgage rights. The approach used in this research is Juridical Sociological, the juridical sociological approach technique is used to analyze and provide answers about legal issues in accordance with the intended target. The results of this study are the registration process and the completeness of the files related to the roya application using the roya consents deed is the same as the general roya service. The roya license deed or roya consents of mortgage rights have the same content and purpose, only different mentions based on the habits of each notary. The loss of the mortgage rights certificate results in the royalties not being able to be carried out. Land certificates that are still charged with mortgage rights cannot be resold or other legal actions if they have not been completed. Therefore, to replace the lost SHT, the BPN office requires to attach a Roya Consent Deed in the form of a notarial authentic deed. The roya permit deed made by a notary, its position is only as a substitute for the lost mortgage certificate in the roya process not for execution, so its position cannot be equated with a mortgage certificate that has executive power because it is not regulated in law or strict rules. The Roya license deed is a requirement to implement orderly land administration. In this case, it means that the position of the roya permit deed of mortgage rights made by a notary is a custom in notarial practice.*

**Keywords:** Certificate; Deed; Mortgage; Roya.

## 1. Introduction

The Indonesian State is a State based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). This statement is expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "Indonesia is a State of Law". The purpose of a state of law is a state that upholds the rule of law to uphold truth and justice and no power is unaccountable. As a state of law, the Indonesian government has an important duty to provide and guarantee legal certainty for every citizen.<sup>1</sup>

Credit agreement is an agreement that is commonly carried out in the field of banking law.<sup>2</sup>In a credit agreement, there are two parties involved, namely the bank as the creditor and the customer as the debtor. Credit agreements that are usually carried out by banking institutions can be made under the hand or notarially (deed made before a notary). The credit agreement is the main agreement that must be implemented when both parties, namely the creditor and the debtor, have agreed to provide and use credit facilities. In a credit agreement, there is usually a material guarantee to guarantee the repayment of the debtor's debt. The material security must be made in a security agreement that has property rights and is assessor (additional). One of the collateral with property rights is Mortgage Rights.

With the enactment of the Mortgage Rights Law on April 9, 1996, all provisions regarding Book II of the Civil Code that were enacted based on Article 57 of the UUPA were declared invalid. This ushered the Indonesian nation into the era of national Mortgage Rights.

Mortgage rights as a collateral institution will be registered by the bank through the Land Deed Official (PPAT) to the National Land Agency by first issuing a Deed of Granting Mortgage Rights (PPAT) on the land that becomes the guarantee by a Notary. If the agreement to encumber the mortgage has been made, the next step is to register the mortgage at the Land Agency as regulated in Government Regulation Number 24 of 1997 concerning Land Registration.<sup>3</sup>

If the mortgage right is erased, the Land Office makes a *roya* (erasure) of the record of the mortgage right in the land title book and certificate. The Mortgage Rights Certificate is declared invalid by the Land Office. If the certificate for some

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<sup>1</sup>Alfian Christian, Normative Conflicts Related to the Right to Refuse in the Position of Notary Reviewed from the Notary Law and the Notary Code of Ethics, *Nal Education and Development*, Vol. 8, No. 1, 2020, p. 89-98

<sup>2</sup>Marsheila Audrey Nuralisha, Legal Review of Legal Responsibility in Banking Credit Agreements If the Debtor Defaults, *Journal of Islamic Law and Social Institutions*, Vol 5 No 1, 2023, p. 277-290

<sup>3</sup>CST Kansil and Christine ST Kansil. 1997, *Principles of Law on Mortgage Rights on Land Law No. 4 of 1996*. Jakarta: Pustaka Sinar Harapan. P. 32.

reason is not returned to the Land Office, it is recorded in the Land Book of Mortgage Rights.<sup>4</sup>

The process of making a deed of consents for the roya of mortgage rights, the debtor faces the notary so that the role of the Notary is very necessary in the process of roya of this mortgage, because the debtor needs legal certainty and authentic evidence of his actions.<sup>5</sup>Therefore, this Royal Consent deed juridically requires the assistance of a Notary in his capacity as a public official who has the authority to make authentic deeds. Related to the above, in the case of this research study is when the debtor will carry out the roya process against the mortgage as written in the certificate, while the Mortgage Rights certificate held by the creditor in this case turns out to be lost. For the process of scratching the certificate, a special deed made by a notary is needed to help the parties involved to realize their wishes. The deed is a royal consent deed.

In practice, there are times when the mortgage certificate is lost before it is lost due to negligence from the mortgage holder (creditor), theft, scattered, or damaged due to force majeure. The loss of the mortgage certificate is not only when it is in the hands of the mortgage holder (creditor) before the debtor's debt is paid off, but it can also occur when it is in the hands of the debtor after the debt is paid off, but has not had time to be successful.<sup>6</sup>

The purpose of this study is to determine and analyze the implementation of making a Consent Roya deed as a substitute for a lost mortgage certificate. As well as to analyze and examine the position and legal force of the Consent Roya deed as a substitute for the lost mortgage certificate in the process of Roya mortgage rights.

## **2. Research Methods**

The method of approach used in this research is research with a sociological juridical method. The juridical sociological approach technique is used to analyze and provide answers about legal issues in accordance with the intended target. The research specification used is descriptive analysis research, because it only describes the object of the problem which then analyzes and finally draws conclusions from the research results. It is said to be descriptive because this research is expected to obtain a clear, detailed, and systematic picture, while it is

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<sup>4</sup>*Ibidp.* 38

<sup>5</sup>Putu Silkyamara Nandha Rossana, Dewa Gede Pradnya Yustiawan, Legal Power of the Deed of Consent Roya Made by a Notary as a Requirement for the Deletion of Mortgage Rights, *Acta Comitatus Journal of Notary Law*, Vol 6 No 1, April 2021, P. 117-127

<sup>6</sup>Graciela Georgina Afriani, The Position of the Deed of Permit for Mortgage Rights as a Replacement for a Lost Mortgage Certificate in the Granting of Bank Credit, *Lex Privatum Vol. VI*, No. 9, Nov 2018, p. 158-169

said to be analytical because the material obtained from library research will be analyzed to solve problems in accordance with applicable legal provisions.

### **3. Result and Discussion**

#### **3.1. Implementation of Consent Roya Deed Making as a Replacement for Lost Mortgage Certificate**

The roya consents deed is identical to the deed of statement and power of attorney for roya which contains a statement from the creditor containing information that the certificate of mortgage rights has been lost. The statement contains that the debtor's debt has been paid in full, and the creditor agrees and has been given authorization to carry out the elimination of the mortgage right.<sup>7</sup>

Consent deeds from a normative point of view, are not specifically regulated in any laws or regulations.<sup>8</sup>Roya's consent deed, which is a Notary deed, has a position as a substitute for a certificate of mortgage rights that has been lost, and functions as a condition of roya registration or removal of mortgage rights. Roya concession deed in a land registration practice, has a position as a condition of land rights registration that replaces the lost certificate of mortgage rights. Based on the UUJN and the Notary Code of Ethics, the Notary in preparing a deed of roya consents, is responsible in civil law and administrative law if the deed of roya consents made by the Notary contains elements of a violation of law. Therefore, the deed will lose its authenticity so that it turns into a deed under the hand in accordance with the contents of the provisions in Article 41 of UUJN.<sup>9</sup>

Based on an interview with Shukron Niam SH, M.Kn. who is a PPAT in Demak Regency, stated that:

“The role of a notary in making a roya consent word as a substitute for a lost mortgage certificate, the pledged certificate cannot be processed roya / debt elimination at the land office so that a roya consent deed is needed made by a notary, even though APHT is a PPAT deed which is the basis for making a mortgage certificate, but the royal consent deed remains the authority of the notary. As long as it is not assigned to another public official, a notary is authorized to make authentic and is his authority.”

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<sup>7</sup>David Setiawan, et al., “Legal Position of Deed of Statement and Power of Attorney for Roya (Roya Consent) in Auction Process”, *Lambung Mangkurat Law, Journal* Vol 3 Issue 2, September 2018, p. 270-271.

<sup>8</sup>Rudi Indrajaya and Ika Ikmassari, 2016, *Deed of Mortgage Permit as a Replacement for a Lost Mortgage Certificate*, Visimedia, Jakarta, p. 3.

<sup>9</sup>Arindi Ayudia Darmayanti, 2016, *Binding Power of Deed of Consent Made by Notary*, Master Thesis in Notary, Udayana University, Denpasar, p. 3.

"If this certificate is lost, the roya process cannot be carried out, to complete these requirements, a notary can help by making a certificate of loss in the form of a notarial deed commonly called a deed of roya consents. This deed is made at the will of the confronter, to be used as one of the requirements for crossing out the mortgage rights by the National Land Agency."<sup>10</sup>

In practice, the Roya concession deed is made with a notarial deed. Although the APHT, which is the "basis" for the creation of the mortgage certificate, is a PPAT deed, the deed of konsen roya is still the authority of a notary, not a PPAT. Some people may feel that if the mortgage certificate is lost, it should be the PPAT who previously made the APHT that is authorized to make a deed of consent roya, because he is the one who has made the APHT, not a notary.

Elimination of mortgage rights requires a royalty on mortgage rights. Roya Mortgage Rights are regulated in Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights for Land and Objects Related to Land, Article 22. Roya is the deletion of mortgage rights in the land rights book and certificate. Roya is carried out if the debt guaranteed in the main agreement has been paid off.

Stages and Processes of Mortgage Registration. Mortgage rights are determined through the fulfillment of the procedures for encumbrance, which includes two stages of activity, namely the stage of granting mortgage rights and the stage of registering mortgage rights. The first stage in the process of registering a mortgage right is the existence of a credit agreement, then registration at the land office no later than 7 (seven) working days after signing the Deed of Granting Mortgage Rights (APHT). The granting of a new mortgage right binds the debtor and creditor legally if a Deed of Granting Mortgage Rights (APHT) has been made before an authorized Notary or Land Deed Official (PPAT). This is in accordance with the provisions contained in Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights Article 10 paragraph (2), namely "The granting of Mortgage Rights is carried out by making a Deed of Granting Mortgage Rights (APHT) by a Land Deed Official (PPAT) in accordance with applicable laws and regulations.

The process of registering mortgage rights can be seen in the following figure:

Figure 1. Non-Electronic Mortgage Registration Process (In Indonesia)

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<sup>10</sup>Interview with Shukron Niam SH, M.Kn. Who is a PPAT in Demak Regency on December 18, 2023

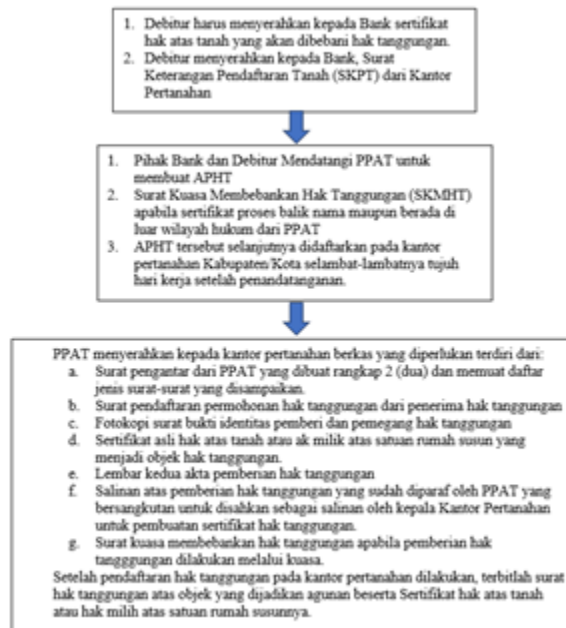
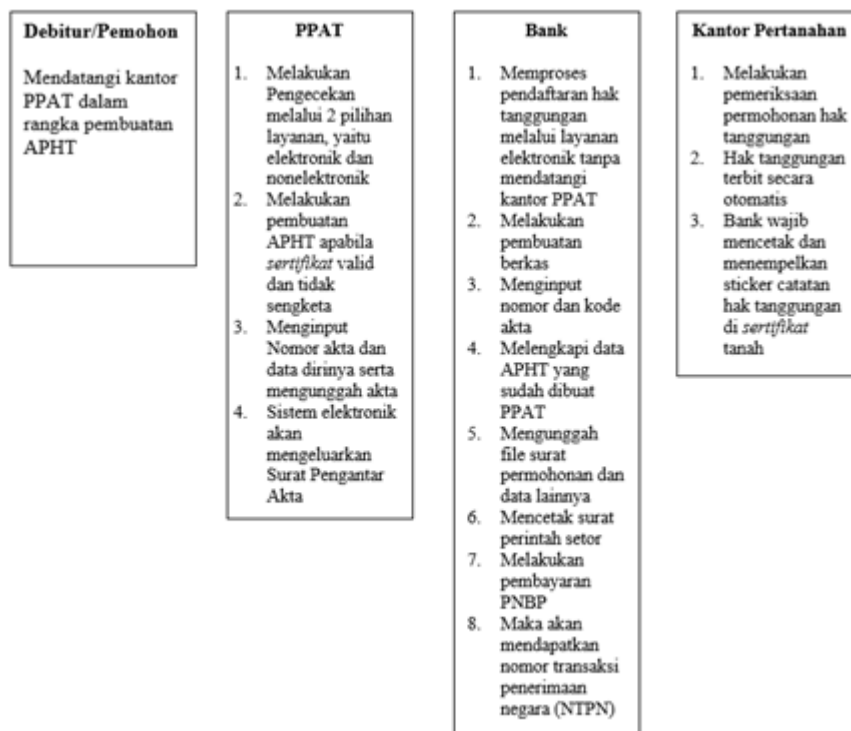


Figure 2. Electronic Mortgage Registration Process (In Indonesia)



Process and Stages of Roya Mortgage Rights. Article 122 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) No. 3 of 1997 concerning Provisions for the Implementation of Government

Regulation No. 24 of 1997 concerning Land Registration, With the letter of payment from the creditor and the Roya application letter, the Mortgagee submits it to the Land Office accompanied by the Mortgage Certificate and the certificate of land rights concerned. Subsequently, within 7 (seven) working days from the receipt of the application for deletion of the Mortgage Rights, the Land Office crosses out the record of the Mortgage Rights in the land title book and the land title certificate concerned, with the inclusion of a note.

The registration process and the completeness of the documents related to the roya application using the roya consents deed are the same as the roya service in general, as specified in the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN Number 3 of 1997 and Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN Number 1 of 2010, namely by attaching KTP/KK, Certificate of Rights (Ownership/Building Use/Business Use) which is the object of the mortgage, certificate of mortgage rights to be roya or roya consents deed if the mortgage rights certificate is lost, and introduction to roya from the bank or creditor holding the mortgage rights.

The roya deed of consents basically contains a statement that when the authorities are notified of the disappearance of the document. In addition, it stipulates that the creditor gives permission to extinguish the mortgage. To sign a royal concession before a notary, it is necessary to prepare various letters, including:

1. Notification letter of lost deed of mortgage document at the police station;
2. Lost documents or bank transfer and letter from the mortgage holder;
3. Bank payment letter;
4. Letter of approval for Roya from the bank.

Issuing a deed of royal consent, the loss of the lien is not a problem for the lienor to attempt to cross out the lien. The debtor will provide the land office with a roya letter from the creditor, accompanied by a roya approval letter and a certificate of the goods concerned. In addition, the land agency will delete the mortgage right in the land agency's book.

The deed of permission of roya or konsen roya of mortgage rights has the same content and purpose, only different mentions based on the habits of each notary. Deed of Consent of Mortgage for some people is something that is rarely found because it concerns the lost certificate of mortgage rights, while the certificate of mortgage rights is a guarantee for credit loans and not all people understand mortgage rights. Article 122 (1) letter a of Regulation of the Minister

of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning the provisions for the implementation of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration of the Minister of Agrarian Affairs / Head of the National Land Agency, namely "a statement from the creditor that the debt secured by the mortgage has been erased or has been paid in full, which is stated in an authentic deed or in a statement under the hand, " .

The habit that often occurs in the community is when the debtor pays off his debt to the creditor, by obtaining a royal certificate. The debtor does not immediately register the roya at the BPN Office to carry out the removal of the mortgage, which causes the roya letter and the certificate of mortgage given by the bank to be lost. This was due to the debtor's lack of understanding of the importance of the roya letter and the mortgage certificate and the debtor's negligence in storing them.

The result is definitely a loss to the debtor because it seems that the debtor still has a debt at the bank where he borrowed money with collateral registered as a mortgage right, even though in fact the debt has been paid in full, it is just that the administration has not yet been carried out. The loss of the mortgage title certificate means that the foreclosure cannot be carried out. Land certificates that are still charged with mortgage rights cannot be resold or other legal actions if they have not been completed. Therefore, to replace the lost SHT, the BPN office requires to attach a Roya Consent Deed in the form of a notarial authentic deed. Although in practice this roya consent deed is recognized, when viewed from the perspective of legal norms, this roya consent deed has no regulations or laws that specifically regulate it. Therefore, this legal problem is very worthy of study, 1) What is the legal basis for making a deed of consents roya and 2) How is the legal force of the roya consents deed made by a notary. This research aims to examine the legal basis for the making of a deed of konsen roya and the legal force of the deed of consen roya as the basis for the removal of the Mortgage Rights at the BPN.

Notarial deeds can be said to have fulfilled the elements of an authentic deed if the form is in accordance with the provisions of Article 38 of the UUJN-P, which consists of a deed prefix, deed body and deed cover. It is the provisions of laws and regulations that determine the existence of an authentic deed as evidence for certain legal acts such as the royal deed of consents. The creation of a royal consent deed in the form of an authentic deed to prove a legal action is used as the basis for the revocation of mortgage rights as a substitute for the lost SHT. The deletion of mortgage rights is principally for administrative purposes.



### **3.2. The Position and Legal Power of the Roya Consent Deed as a Replacement for the Lost Mortgage Certificate in the Roya Mortgage Process**

The Roya Konsen Deed itself is a deed of partij, where the grantor and the holder of the Mortgage Rights want a deed stating that the debtor's debt to the holder of the Mortgage Rights has been paid in full but the relevant Mortgage Rights Certificate has been lost, with the aim that the Mortgage Rights can still be removed from the relevant parcel. Given that the Roya Consent Deed is a partij deed, it must be signed by the parties, namely the grantor and the holder of the Mortgage Rights. Even if one of them is unable to affix his signature for some reason, a statement to that effect must be included in the relevant Roya Konsen Deed.<sup>11</sup>

According to the author, the provisions of the law with the kingdom prove the existence of a legal certainty that a sign of the end of the debt and credit agreement between the creditor and the debtor concerned. So this can be known by the public that the land charged was free from debt agreements and has returned to its original state. In addition, roya is carried out for the sake of administrative order and has no legal effect on the mortgaged rights that have been removed. If the land title certificate is not roya or deleted, the land title certificate is still in the name of the holder of the mortgage, in this case the creditor (Bank). Because it is still in the name of the creditor (the Bank), the owner of the land title certificate cannot take legal action before the land title certificate is erased.

Regarding the legal basis for a notary to make a Roya Consent Deed, Article 15 paragraph (1) of the UUN states that notaries are authorized to make authentic deeds regarding all actions, agreements, and provisions required by laws and regulations and/or desired by those concerned, to be declared as authentic deeds, as long as the making is not assigned or excluded to officials designated by law. Referring to this provision, if desired by the interested party, the Notary is legally authorized to make a Roya Consent Deed as a substitute for the lost Mortgage Rights Certificate. The Roya Consent Deed which is the basis for the Land Office to issue the Mortgage Certificate is the authority of the Notary, not the authority of the PPAT. Since there is no legislation that stipulates PPAT's duty to make a Roya Consent Deed, PPAT is not authorized to make it. Conversely, because it is a deed desired by the parties and not assigned to another official, a Deed of Consent Roya can be made by a notary public.

To fulfill the principle of legality, the provision is regulated in Article 22 paragraph (2) of Law Number 4 of 1996 concerning the Striking of Mortgage

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<sup>11</sup>Rudi Indradjaya and Ika Ikmassari, 2015, Position of Deed of Permit for Mortgage Rights, Visimedia, Jakarta, p. 14

Rights so that the Mortgage Rights Certificate is replaced with a Roya Consent as specified in the Head of the National Land Agency Regulation Number 1 of 2010 concerning Service Standards and Land Regulations Article 6 concerning Service Requirements. By fulfilling the application file, the applicant's request can be fulfilled for further processing.

If it is related to the theory of legal certainty, it can be seen that the regulations regarding Mortgage Rights Certificates are regulated, whereas for the Roya Consensus Deed there are no clear regulations. This is what causes the need for provisions regarding the Roya Consen Deed, which so far has only been a customary law (living law) in order to create legal certainty considering that law is a system or order as a complete unit consisting of parts or elements that are closely related to each other. other. Because the Mortgage Rights Certificate and Roya Consen Deed are closely related in making the Roya Consen Deed, provisions are needed to link the two with related rules and regulations in order to achieve the goal of unity with each element as a whole. Like a mosaic image that can be cut into small pieces and then put back together so that it looks complete, likewise if the rules are linked it will create the integrity of the rules and not just become a customary norm.

Credit guarantees approved and accepted by the bank have several functions and one of them is to secure credit repayment if the borrower breaks their promise. In general, lenders require debt collateral before lending money to borrowers.

BLikewise in terms of paying off credit and eliminating mortgage rights. The deletion of Mortgage Rights is regulated in Article 18 of Law Number 4 of 1996. One of the deletions of Mortgage Rights is due to clean-up, which is carried out based on a ranking determination by the Chairman of the District Court which occurs because the request is made by the buyer of the land rights in question. The provisions of Article 19 of Law Number 4 of 1996 are to provide legal protection to buyers of Mortgage Rights objects so that the objects purchased are free from the Mortgage Rights which originally burdened them because if no clean-up is carried out, the Mortgage Rights in question will still burden the Mortgage Rights object they purchased.<sup>12</sup>

The Royal Consent Deed as an authentic deed has a formal function (formality causa) and can also function as evidence (probationis causa). Authentic deeds have three evidentiary powers, namely external evidentiary powers, formal evidentiary powers, and material evidentiary powers:

a. The Power of Outward Proof

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<sup>12</sup>Sahnan. 2016, Indonesian Agrarian Law. Setara Press. Malang, p. 129.

The strength of external evidence is the ability of a deed itself to be proven to be an authentic deed. Based on Article 1875 of the Civil Code, the power of external evidence does not exist in private deeds. A private deed is only valid for the person to whom the deed is used and the party mentioned in the deed declares the authenticity of his or her signature. An authentic deed will prove its validity. This means that a deed that meets the requirements and has the form of an authentic deed, then the deed is valid and considered to be the original (*acta publica probant seseipsa*) until there is proof to the contrary. The issue of the strength of the external proof of an authentic deed is only regarding the authenticity of the signature of the authorized official on the deed. According to Article 138 Rib/164 RDS (Article 148 of the Civil Code), contrary to evidence submitted by the opposing party is only permitted by using letters, witnesses and experts. The external evidentiary power of an authentic deed is proof that it is nothing less (complete), applies to everyone, and is not limited to the parties. The strength of external evidence as evidence is a feature of authentic deeds (deeds of officials and deeds of the parties).

b. Formal Probative Power

An authentic deed that has the power of formal proof means guaranteeing the truth and certainty of the date of the deed, the correctness of the signature contained in the deed, the identity of the people present (*comparaten*) and also the place where the deed was made. Without prejudice to evidence to the contrary, the formal proof of an authentic deed is complete proof, where the power of proof of the official's deed and the deed of the parties is the same, meaning that the official's statement is contained in both groups of deeds and the statements of the parties in the deed have formal evidentiary power and apply to each person.

c. Strength of Material Proof

The strength of the material proof of an authentic deed is a certainty that the parties not only appear and explain to the Notary but also prove that they have also done what is stated in the deed material. The evidentiary power of a notarial deed according to Articles 1870, 1871, and Article 1875 of the Civil Code provides complete and binding proof of the truth contained in the deed for the parties concerned, heirs and recipients of rights with the exception of when what is stated in the deed is just a statement or not. has a direct relationship with the deed.

The legal force of a *partijacta* before the law has perfect force, this is due to the special feature of an authentic deed which lies in its evidentiary strength. An authentic deed provides the parties and their heirs or people who have rights from them with perfect evidence. An authentic deed has such evidentiary power

that it is considered inherent in the deed itself, where the authentic deed is binding evidence because what is written in the deed must be considered true and trusted by the judge. An authentic deed also has perfect evidentiary power because it does not require the addition of other evidence, in other words an authentic deed has physical, formal and material evidentiary power. A notarial deed as an authentic deed has physical, formal and material evidentiary power. If the notarial deed is prepared according to applicable provisions, then the deed will bind the parties as an authentic deed and this includes the court which must accept the notarial deed as perfect evidence.<sup>13</sup>

#### **4. Conclusion**

The registration process and completeness of documents related to a Roya application using a Roya concession deed are the same as the general Roya service. A deed of roya permit or roya mortgage deed has the same content and purpose, only the pronouncement differs based on the habits of each notary. The loss of the mortgage certificate means that the celebration cannot be held. Even land certificates that are still subject to mortgage rights cannot be subject to a resale or repurchase process or other legal actions if they have not been transferred. Therefore, to replace the lost SHT, the BPN office requires a Roya Consent Deed to be attached in the form of an authentic notarial deed. A roya permit deed made by a notary only serves as a replacement for a mortgage certificate lost in the roya process, not for execution, so its position cannot be equated with a mortgage rights certificate which has executive power because it is not regulated in law or strict rules. The Roya permit deed is a requirement to carry out orderly land administration. In this case, it means that the position of the mortgage deed made by a notary is a custom in notarial practice.

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<sup>13</sup>Primistha Elsyanita Devi, Notary's Responsibilities and Legal Power in Making a Deed of Consent, *Officium Notarium*, Vol. 1, No. 2, 2021, p. 335-343

<sup>1</sup>David Setiawan, et al., "Legal Position of Deed of Statement and Power of Attorney for Royo (Roya Consent) in the Auction Process", *Lambung Mangkurat Law, Journal* Vol 3 Issue 2, September 2018,

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