

Validity of the Deed of the Official Writing the Land Deed in the Event of Legal Problems in Credit Agreements with Credit Rights as Security

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Abstract. *An authentic deed contains the concept of truth regarding the deed in proving that the parties have understood and explained what is written in the deed, including explaining that the deed is true. Authentic deeds can also be said to have perfect evidentiary power because they have three types of evidentiary power, namely physical, formal and material. The role of a notary is not only administrative, but also preventive, namely preventing potential disputes in the future through the creation of deeds that are clear, complete and in accordance with the provisions of the law. In addition, there are factors causing default related to the role of the notary, where default in a credit agreement with collateral can be caused by various factors, both internal to the notary and external factors. This study uses a normative juridical approach with a case study approach and analysis of applicable laws and regulations, particularly the Land Deed Official Law and its implementation. The data obtained uses literature studies obtained from secondary data on legal literature, court decisions, and documents related to the preparation of this scientific work, and the analysis in this study is perspective. The results of the study show that the validity of PPAT deeds depends on the simultaneous fulfillment of formal and material requirements. Failure to fulfill either of these requirements will result in the deed being invalid.*

Keywords: *Agreement; Kredit; Mortgage; Official.*

1. Introduction

The rule of law guarantees certainty, order, and legal protection for all citizens as mandated in the Preamble and Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law places the law as the highest commander in realizing justice and social welfare. In Shidarta's view, the principle of *ubi societas ibi ius* contains the meaning that where there is society, there is law; law is born and grows with society to

regulate social relations and provide protection for the legal interests of the parties.¹ Therefore, law functions not only as a means of social control, but also as a means of social engineering to create order and justice in community life.²

Modern economic developments and social dynamics require society to enter into various forms of agreements as the basis for legal relationships. Every agreement, whether written or unwritten, creates rights and obligations for the parties, requiring legal certainty. In this context, an authentic deed is a crucial instrument that provides complete evidentiary power and guarantees the formal validity of a legal relationship. Notaries and Land Deed Officials (PPAT) play a strategic role in the creation of these authentic deeds, as they provide legal certainty for the legal actions undertaken by the parties.³ According to the provisions of Article 1 number 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (UUJN), a notary is a public official who is authorized to make authentic deeds and has other authorities regulated in statutory regulations.⁴

One form of legal action that requires an authentic deed is a credit agreement with a mortgage guarantee. In practice, this agreement requires the preparation of a Deed of Grant of Mortgage Rights (APHT) by the PPAT as a constitutive requirement for the birth of the mortgage right as regulated in Law No. 4 of 1996 concerning Mortgage Rights (UUHT). According to Mariam Darus Badruzaman, the mortgage deed must fulfill the principles of specialization and publicity in order to have valid executorial power; if these requirements are ignored, the mortgage right can be null and void by law and eliminate the creditor's security rights.⁵ In line with this, the results of Dewi Nurul Musjtari's research in the *Notarius Journal* stated that most mortgage disputes were caused by the PPAT's carelessness in explaining the legal aspects and risks of the agreement to the parties, which resulted in formal defects in the deed.⁶

Legal issues in mortgage-backed credit agreements can stem from two main factors. First, internal factors within the Land Deed Official (PPAT), such as negligence in data verification and inaccuracy in drafting agreement clauses, can lead to multiple interpretations or legal weaknesses in the deed. Second,

¹Shidarta. (2006). *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Berpikir*, Bandung: Refika Aditama, p. 12

²Satjipto Rahardjo. (2000). *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 53

³Habib Adjie. (2008). *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris*, Bandung: Refika Aditama, p. 27

⁴Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning Notary Positions, Article 1 number 1

⁵Mariam Darus Badruzaman. (1996). *Hukum Jaminan dan Hak Tanggungan*, Bandung: Alumni, 1996, p. 77

⁶Dewi Nurul Musjtari. (2020). "Tanggung Jawab Notaris terhadap Cacat Akta Hak Tanggungan," *Jurnal Notarius*, Vol. 7 No. 2, p. 112-113

external factors, such as the debtor's economic condition, bad faith between the parties, or disputes over the collateral, can impact the validity of the mortgage.⁷As a result, if the deed made by the PPAT does not fulfill the formal and material requirements as stipulated in Article 11 of the UUHT, then the deed loses its constitutive legal force and cannot be used as a basis for execution.⁸

In the context of legal protection, Land Deed Officials (PPAT) are responsible for ensuring that every deed they create complies with legal provisions and provides preventative legal protection for all parties. However, PPATs are also vulnerable to lawsuits, both civil and criminal, if administrative or procedural errors occur that cause harm to other parties. Therefore, stricter regulations are needed regarding the limits of PPAT's responsibilities and legal protection mechanisms, as stipulated in the Regulation of the Minister of ATR/BPN No. 2 of 2018 concerning the Development and Supervision of Land Deed Officials.⁹

Based on the description above, this research is entitled "The Validity of PPAT Deeds in the Occurrence of Legal Problems in Credit Agreements with Mortgage Guarantees". This research aims to analyze the validity of PPAT deeds in relation to the emergence of legal problems in credit agreements with mortgage guarantees, as well as to examine the form of legal protection for PPATs in carrying out their official authority.

2. Research methods

This research is part of an effort to develop legal science, aiming to reveal the truth systematically, methodologically, and consistently. Through the research process, legal materials are analyzed and constructed to understand the application of legal norms in practice and to assess the extent to which legal provisions are effective in creating legal certainty and protection.¹⁰Therefore, this research is oriented towards studying applicable legal norms and their application in concrete cases. The type of research used is normative legal research, namely research that positions law as a system of norms consisting of principles, rules, and doctrines contained in statutory regulations, court decisions, and legal literature.¹¹A normative approach was chosen because the focus of this research is to examine the validity of PPAT deeds in credit agreements with mortgage guarantees, which are in principle directly related

⁷Gunawan Widjaja. (2013). *Perikatan yang Lahir dari Perjanjian*, Jakarta: RajaGrafindo Persada, p. 145

⁸Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Article 11

⁹Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 2 of 2018 concerning the Development and Supervision of PPAT, Articles 10-12

¹⁰Soerjono Soekanto & Sri Mamudji. (2001). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: RajaGrafindo Persada, p. 13

¹¹Peter Mahmud Marzuki. (2017). *Penelitian Hukum*, Jakarta: Kencana, p. 35

to positive legal provisions. Normative legal research is conducted descriptively and analytically, namely by systematically describing and analyzing legal phenomena related to the responsibilities of notaries and PPATs regarding the agreements they make.¹²

To support the legal analysis, this study uses two main approaches: a statutory approach and a conceptual approach. The statutory approach is used to examine various relevant legal provisions, including the Notary Law, the Mortgage Law, and regulations related to Land Deed Officials (PPAT).¹³ Meanwhile, a conceptual approach is used to understand the legal principles underlying the notary's responsibility in making authentic deeds, through a study of the opinions of legal experts and developing doctrines.¹⁴ By combining these two approaches, it is hoped that this research can provide a comprehensive and applicable analysis.

The data sources used in this study are entirely secondary, encompassing primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of laws and regulations, such as the 1945 Constitution, the Civil Code, Law No. 4 of 1996 concerning Mortgage Rights, and Government Regulation No. 24 of 2016 concerning the Position of Land Deed Officials (PPAT).¹⁵ Secondary legal materials consist of scientific literature, legal textbooks, and academic journals that discuss the responsibilities of notaries and PPAT, while tertiary legal materials include legal dictionaries and encyclopedias that are used to strengthen conceptual understanding.¹⁶

The method of collecting legal materials is carried out through library research and document studies, namely by inventorying and reviewing various relevant laws and regulations, legal documents, books and research results.¹⁷ All legal materials obtained were classified, selected, and interpreted to produce a legal construct that aligned with the research objectives. The analysis of the legal materials was conducted using qualitative methods, namely by analyzing the data descriptively and analytically without using statistical calculations, but instead emphasizing legal reasoning.¹⁸ Through this method, it is hoped that the research can provide a complete picture regarding the validity of PPAT deeds

¹²Johnny Ibrahim. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia, p. 57

¹³Peter Mahmud Marzuki, *Op.cit.*, p. 93

¹⁴Mukti Fajar ND & Yulianto Achmad. (2010). *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta: Pustaka Pelajar, p. 180

¹⁵Republic of Indonesia, Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land; Government Regulation no. 24 of 2016 concerning the Position of PPAT

¹⁶Soerjono Soekanto. (1986). *Pengantar Penelitian Hukum*, Jakarta: UI Press, p. 52

¹⁷Bambang Sunggono. (2002). *Metodologi Penelitian Hukum*, Jakarta: RajaGrafindo Persada, p. 42

¹⁸Marzuki, *Op.cit.*, p. 95

and the form of legal protection against problems arising in credit agreements with collateral rights.

3. Results and Discussion

3.1. Validity of PPAT Deeds in the Event of Legal Problems in Credit Agreements with Mortgage Guarantees

In banking practice, a mortgage loan agreement is the primary instrument used to guarantee repayment of a debt by a debtor to a creditor. A mortgage provides material security over the land and any objects attached to it, which have the properties of *accessoir*, *droit de suite*, and *droit de préférence*, thus providing legal certainty and protection for the creditor.¹⁹ With this characteristic, the creditor holding the collateral right obtains a special position to be given priority in paying off receivables from the proceeds from the sale of the collateral object compared to other creditors.²⁰

The execution of the mortgage object can be carried out through parate execution, as regulated in Article 6 of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT), which gives the first mortgage holder the right to sell the collateral object himself through a public auction without having to file a lawsuit in court.²¹

In order for the mortgage to be valid and have legal force, the process of its formation must be through a Deed of Granting of Mortgage Rights (APHT) made by a Land Deed Making Officer (PPAT) as regulated in Article 10 of the UUHT, and must then be registered with the Land Office (BPN) in accordance with Article 13 of the UUHT.²² Without the authentic deed, the mortgage does not arise legally and does not have the executive power as referred to in Article 14 paragraph (2) of the UUHT.²³ However, in practice, legal issues often arise due to PPAT deeds not meeting formal or material requirements, such as being drawn up outside the PPAT's jurisdiction, not being present at all, or having the collateral object be invalid. These conditions can render the deed legally invalid and lead to the cancellation of mortgage rights and disputes between the debtor, creditor, and PPAT.²⁴

¹⁹Subekti. (1991). *Jaminan-Jaminan untuk Pemberian Kredit Menurut Hukum Indonesia*, Bandung: Citra Aditya Bakti, p. 21

²⁰Salim HS. (2004). *Perkembangan Hukum Jaminan di Indonesia*, Jakarta: RajaGrafindo Persada, p. 75

²¹Republic of Indonesia, Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Article 6

²²*Ibid.*, Article 10 and Article 13

²³*Ibid.*, Article 14 paragraph (2)

²⁴Hermansyah. (2011). *Hukum Perbankan Nasional Indonesia*, Jakarta: Kencana, p. 189

a. PPAT Deed and Its Function in Mortgage Rights

According to Government Regulation no. 24 of 1997 concerning Land Registration, a PPAT deed is an authentic deed made by a Land Deed Official as proof that certain legal acts have been carried out regarding land rights.²⁵ This deed has absolute evidentiary force before the law and is a crucial instrument in ensuring legal certainty and protection for every land transaction. In banking practice, one form of PPAT deed that holds strategic importance is the Deed of Grant of Mortgage Rights (APHT).²⁶ Through APHT, the legal relationship between creditors and debtors in a credit agreement obtains legal material guarantees, which then become the basis for the birth of mortgage rights after being registered at the Land Office.²⁷

Without a valid APHT, the mortgage cannot be considered to have been legally formed, even though there has been an agreement between the parties in the credit agreement.²⁸ This is because the APHT is constitutive, not merely administrative, meaning that the existence of the deed determines whether or not a mortgage right is created.²⁹ Thus, the PPAT deed functions as a legal document that guarantees legal certainty in the relationship between credit agreements with collateral rights, while also providing legal protection for the interests of creditors.³⁰

b. Validity of PPAT Deed

The validity of a PPAT deed depends on the fulfillment of formal and material requirements as stipulated in statutory regulations. Both requirements must be met simultaneously for the deed to have legal force and be used as the basis for establishing a valid mortgage.³¹

Formal requirements relate to the procedures and procedures for drafting a deed. A Land Deed Official (PPAT) must act within their legal jurisdiction, ensure that the parties are present or legally represented, and ensure that the

²⁵ Republic of Indonesia, Government Regulation No. 24 of 1997 concerning Land Registration, Article 37

²⁶ Salim HS. (2004). *Perkembangan Hukum Jaminan di Indonesia*, Jakarta: RajaGrafindo Persada, p. 112

²⁷ *Ibid.*, p. 115

²⁸ Boedi Harsono. (2008). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria*, Jakarta: Djambatan, p. 456

²⁹ Subekti. (2002). *Hukum Perjanjian*, Jakarta: Intermasa, p. 45

³⁰ Mariam Darus Badruzaman. (2001). *Hukum Perikatan dalam KUHPerdata Buku Ketiga*, Bandung: Citra Aditya Baktip. 98

³¹ Supriadi. (2016). *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*, Jakarta: Sinar Grafika, p. 145

form, content, and language of the deed comply with statutory provisions.³²The signing of the deed must also be done directly before the PPAT, not through a third party without power of attorney.³³The legal basis for this provision is stated in PP No. 24 of 1997 concerning Land Registration, Regulation of the Head of BPN No. 1 of 2006, and the PPAT Code of Ethics.³⁴

If the formal requirements are not met, for example the deed is made outside the area of authority or without the presence of one of the parties, then the deed can be considered formally flawed and has the potential to be cancelled by the court.³⁵Meanwhile, material requirements relate to the legal substance of the deed. Based on Article 1320 of the Civil Code (KUHPerdata), an agreement must fulfill four elements for a valid contract: agreement between the parties, legal capacity, a clear object, and a lawful cause.³⁶In the context of APHT, material requirements include the existence of a principal agreement (usually a credit agreement), legal ownership of land rights, clarity of the collateral object, and the legal capacity of the parties.³⁷Failure to fulfill one of these elements can result in the deed being declared null and void by law, so that the mortgage rights based on it do not have binding legal force.³⁸

c. Legal Issues in Credit Agreements with Mortgage Guarantee

In practice, the implementation of credit agreements with collateral in the form of mortgage rights often gives rise to various legal problems that impact the validity and executorial power of the mortgage rights themselves.³⁹One of the problems that often occurs is a defective PPAT deed, either because it was made by the PPAT outside his work area, was not attended by the parties in person, or because the object of the guarantee has an unclear legal status.⁴⁰This kind of violation can cause the deed to be considered invalid and the mortgage rights to be null and void by law.⁴¹In addition, problems with mortgage registration also often arise, for example delays or administrative errors in the registration process at the Land Office.⁴²This causes the mortgage

³² Republic of Indonesia, Regulation of the Head of the National Land Agency No. 1 of 2006 concerning Provisions for the Implementation of the Regulations on the Position of PPAT, Articles 3-6

³³ PPAT Code of Ethics, Articles 2 and 5

³⁴ *Ibid*

³⁵ Hermansyah. (2011). *Hukum Perbankan Nasional Indonesia*, Jakarta: Kencana, p. 189

³⁶ Republic of Indonesia, Civil Code, Article 1320

³⁷ Mariam Darus Badruzaman. (1994). *Hukum Jaminan dan Hak Tanggungan*, Bandung: Citra Aditya Bakti, p. 63

³⁸ Subekti. (2008). *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, p. 69

³⁹ Dewi Nurul Musjtari. (2022). Analisis Tanggung Jawab Notaris dalam Pembuatan Akta Hak Tanggungan", *Jurnal Notarius*, Vol. 12 No. 1, 45

⁴⁰ *Ibid.*, p. 46

⁴¹ *Ibid.*, p. 47

⁴² Republic of Indonesia, Law No. 4 of 1996 concerning Mortgage Rights, Article 13

rights not to be legally created, thus weakening the legal position of the creditor in executing the guarantee if the debtor defaults.⁴³

Other issues relate to the legal capacity of the parties, such as the debtor being legally incompetent or acting without the spouse's permission on joint property, which can cause the agreement and deed to lose its validity.⁴⁴In the event of default and execution of collateral rights, disputes often arise regarding the procedures for carrying out the execution and claims of rights from third parties over the collateral object.⁴⁵In addition, disputes regarding collateral objects such as overlapping ownership, land status that is still in dispute, or differences in data in certificates, are often the main causes of the legal invalidity of mortgage agreements.⁴⁶

d. Legal Consequences of an Invalid PPAT Deed

The invalidity of a PPAT deed in the context of a Deed of Granting Mortgage Rights has significant legal consequences for all parties involved.⁴⁷Firstly, if the PPAT deed is invalid, then the mortgage is not legally formed, so it cannot be registered at the Land Office and loses its nature as a material guarantee.⁴⁸As a result, creditors lose their priority rights (*droit de préférence*) over the payment of their receivables.⁴⁹Second, an invalid deed also results in the loss of the creditor's execution rights, because the legal basis for implementing parate execution as regulated in Article 6 of the Mortgage Rights Law (UUHT) is no longer valid.⁵⁰Creditors are forced to resort to civil lawsuits, which are more time-consuming and expensive. Third, the invalidity of a deed often gives rise to legal disputes between the parties, either in the form of a breach of contract lawsuit or a tort (Article 1365 of the Civil Code).⁵¹

In some cases, if an element of intent or forgery is found in the making of a deed, the problem can develop into a criminal matter, particularly regarding document forgery (Article 263 of the Criminal Code).⁵²Fourth, an invalid deed also results in financial losses for both parties. The creditor loses legal collateral, while the debtor faces legal uncertainty over the collateralized land.⁵³Finally, PPATs who make invalid deeds can be held accountable

⁴³ *Ibid*

⁴⁴ R. Subekti. (2002). *Hukum Perjanjian*, Jakarta: Intermasa, p. 51

⁴⁵ Hermansyah, *Op.cit.*, p. 192

⁴⁶ Boedi Harsono, *Op.cit.*, p. 463

⁴⁷ Salim HS, *Op.cit.*, p. 128

⁴⁸ *Ibid*

⁴⁹ *Ibid*

⁵⁰ Republic of Indonesia, Law No. 4 of 1996 concerning Mortgage Rights, Article 6

⁵¹ Republic of Indonesia, Civil Code, Article 1365

⁵² Republic of Indonesia, Criminal Code (KUHP), Article 263

⁵³ Hermansyah, *Op.cit.*, p. 196

administratively, civilly, or criminally, including having their official permits revoked.⁵⁴

Thus, the validity of the PPAT deed is a fundamental aspect in guaranteeing the validity and legal force of mortgage rights.⁵⁵Careful fulfillment of formal and material requirements and PPAT compliance with statutory regulations are the main keys to maintaining legal certainty, creditor protection, and the stability of the legal system of property guarantees in Indonesia.⁵⁶

3.2. Legal Protection When Legal Problems Occur in Credit Agreements with Mortgage Guarantees

Legal protection is an effort to provide guarantees and a sense of security to legal subjects so that their rights are not violated by others. According to Satjipto Raharjo, legal protection is a form of safeguarding human rights from harm caused by the actions of others so that individuals can enjoy their rights as stipulated by law.⁵⁷This idea is in line with Fitzgerald's view that law aims to unite and balance the various interests of society through legal regulation and protection.⁵⁸In the context of a credit agreement with collateral in the form of a mortgage, legal protection is not only provided to creditors and debtors, but also to the Land Deed Making Officer (PPAT) as a public official authorized to make authentic deeds, including the Deed of Granting of Mortgage Rights (APHT).⁵⁹However, in practice, PPATs often face legal challenges due to a lack of adequate protection compared to notaries, even though both have similar roles as authentic deed preparers. Therefore, it is crucial for PPATs to receive balanced legal protection to carry out their duties professionally and independently.

Land Deed Officials (PPAT) have a significant responsibility for the validity of every deed they create, from the drafting process to the signing. Mistakes in the deed, whether formal or material, can have serious consequences, including the cancellation of mortgage rights and the emergence of legal disputes. The principle of prudence, as stipulated in the Regulation of the Minister of ATR/BPN No. 24 of 2016 and Article 3 letter f of the PPAT Code of

⁵⁴ Supriadi, *Op.cit.*, p. 153

⁵⁵ Mariam Darus Badruzaman, *Op.cit.*, p. 68

⁵⁶ Salim HS, *Op.cit.*, p. 131

⁵⁷ Satjipto Rahardjo. (2000). *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 54

⁵⁸ Fitzgerald. (2004). dalam Lili Rasjidi & Ira Rasjidi, *Dasar-Dasar Filsafat dan Teori Hukum*, Bandung: Citra Aditya Bakti, p. 63

⁵⁹ Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT), Article 10

Ethics, is an important basis for PPATs in carrying out their duties with integrity and high precision.⁶⁰

1) Common Obstacles

In implementing a mortgage-backed credit agreement, obstacles can be divided into legal and non-legal obstacles. Legal obstacles typically relate to legal and regulatory aspects, such as invalid PPAT deeds, disputes over ownership of the collateral, and violations of mortgage registration procedures.⁶¹ A deed that is formally or materially flawed can render the mortgage void, thereby depriving the creditor of its executive power. Furthermore, non-legal obstacles arise, such as delays in administrative processing at the land office, lack of coordination between relevant agencies, and a lack of understanding of legal procedures among the parties.⁶² Social factors and resistance from the community surrounding the collateral can also hinder the execution process. These obstacles prolong the resolution of bad debts and reduce legal certainty for the parties.

2) Solutions to Legal Problems

To address these issues, both legal and non-legal solutions are needed. Legal solutions include improving legal education for creditors and debtors, improving regulations and document standardization, strengthening coordination between legal institutions, utilizing electronic systems for mortgage registration (such as SATH), and providing fair legal protection for all parties.⁶³ Meanwhile, non-legal solutions can be implemented through improved communication between creditors, debtors, and law enforcement officials, social mediation in conflict resolution, and legal outreach to the surrounding community. Financial institutions can also implement Corporate Social Responsibility (CSR) programs to reduce social resistance to collateral enforcement.⁶⁴

3) Forms of Legal Protection for PPAT

Legal protection for PPAT is divided into preventive and repressive.

a. Preventive Legal Protection

⁶⁰ Regulation of the Minister of ATR/BPN No. 24 of 2016 concerning Amendments to Regulation of the Head of BPN No. 1 of 2006 concerning Implementing Provisions of PP No. 37 of 1998 concerning the Position of PPAT; PPAT Code of Ethics, Article 3 letter f

⁶¹ Supriadi. (2010). *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*, Jakarta: Sinar Grafika, p. 132

⁶² *Ibid.*, p. 135

⁶³ Kementerian ATR/BPN. (2020). *Pedoman Pelaksanaan Hak Tanggungan Elektronik (SATH)*.

⁶⁴ Munir Fuady. (2018). *Hukum Perjanjian dalam Dunia Bisnis*, Bandung: Citra Aditya Bakti, p. 217

This protection aims to prevent legal issues by emphasizing the application of the principle of prudence by PPATs. This principle is implemented through steps such as reading the contents of the deed to the parties, presenting two authorized witnesses, checking the land certificate, and ensuring the validity of the parties' identity documents.⁶⁵ By applying the principle of prudence, PPAT can carry out their duties safely, carefully, and in accordance with statutory regulations, thereby avoiding potential legal sanctions.

b. Repressive Legal Protection

Repressive protection is provided after a dispute or alleged violation occurs. Based on ATR/BPN Regulation No. 2 of 2018 concerning the Development and Supervision of Land Deed Officials (PPAT), Land Deed Officials have the right to defend themselves if they are deemed to have committed a violation of their position.⁶⁶ Land Deed Officials (PPATs) can provide clarification or defense against baseless accusations, especially if they have performed their duties in accordance with legal procedures and professional ethics. This mechanism ensures fairness and provides the PPAT with the opportunity to defend themselves in a transparent and proportionate legal process.

4. Conclusion

A mortgage loan agreement is a crucial instrument for ensuring legal certainty and protection for creditors. A mortgage is only valid and has executorial power after it is created through a Deed of Granting Mortgage Rights (APHT) by a Land Deed Official (PPAT) and registered with the National Land Agency (BPN). An APHT is constitutive in nature, meaning that without it, the mortgage cannot be legally created. The validity of an APHT is determined by fulfilling formal requirements (such as the PPAT's authority and the presence of the parties) and material requirements (such as the validity of the object and legal capacity). If these requirements are not met, the deed is legally invalid, cannot be registered, and the mortgage loses its executorial power. This situation has the potential to give rise to legal disputes, harm creditors, and create legal liability for the PPAT. Therefore, the professionalism and prudence of the PPAT are key to maintaining the validity of the APHT and the stability of the national financing system. Legal protection serves to provide certainty, justice, and benefit in the implementation of credit agreements secured by mortgage rights. Land Deed Officials (PPAT) play a central role in ensuring the validity of deeds and the completeness of legal procedures. Although PPAT's responsibilities are similar to those of a notary, their legal protection is still limited. Therefore, preventive protection needs to be implemented by

⁶⁵ Head of BPN Regulation No. 1 of 2006 concerning Implementation Provisions of PP No. 37 of 1998 concerning the Position of PPAT, Article 22

⁶⁶ ATR/BPN Ministerial Regulation No. 2 of 2018 concerning the Development and Supervision of Officials Making Land Deeds, Articles 10-12

strengthening document verification, the identity of the parties, and the validity of land certificates before the APHT is issued. In the event of a dispute or accusation of violation, repressive protection can be pursued through self-defense mechanisms as stipulated in Regulation of the Minister of ATR/BPN No. 2 of 2018. Obstacles to the implementation of mortgage rights, both legal (defective deeds, object disputes, procedural errors) and non-legal (slow administration, lack of legal understanding) need to be addressed through education, regulatory revisions, digitization of the land system, and legal outreach. Thus, legal certainty and public trust in the banking and land systems can be further assured.

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