

## **AUTHENTIC NOTARIAL DEED ISSUE OF ATTORNEY POWER APPLICATION TO CHARGE ON MORTGAGE RIGHTS**

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### **Abstract**

*In progress, if a debtor himself is unable to register Deed of Granting Mortgage Rights application, then he may choose a representative. As a consequence of debtor's absence, deed of giving mortgage rights must be made into Attorney power to Charge for Mortgage Rights deed. This research is a sociological juridical research. the research results obtained In its development Article 96 PMNA/Perkaban No. 3 of 1997 as amended by Perkaban No. 8 of 2012 requires that deed be made in accordance with forms prepared by BPN or the Land Agency. This is clearly at odds with the provisions related to deeds of Article 15 paragraph (1) of Act No. 2 of 2014 which mentions that Notaries are authorized to make authentic deeds, not writing letters or filling in forms such as SKMHT form drafted by BPN. Therefore, it is clear that the current SKMHT has contradicted the provisions of Article 15 paragraph (1) of Act No. 2 of 2014.*

**Keywords:** *Authentic Notarial Deed, Attorney Power, Mortgage Rights.*

### **A. INTRODUCTION**

Notaries issue the deed of Attorney Power to Charge for Mortgage Rights (*Surat Kuasa Membebaskan Hak Tanggungan (SKMHT)*) based on form prepared by the National Land Agency (BPN) for BPN only accept and process submission based on format it provided. This is contrary to the provisions of Article 15 paragraph (1) of Act No. 4 of 1996 which explicitly states that SKMHT is made by a Notary, in which there is no requirement for BPN to declare validity of the deed. Then by filling in SKMHT form provided by BPN, Notary does not make authentic deed, but rather issue a letter that cannot be notarized as authentic deed, In its development, notaries often make Attorney power Delegating Mortgage Rights using a form prepared by the National Land Agency, this is because if the Attorney power Delegating Mortgage Rights making does not use the form and format provided, the existing Attorney power Delegating Mortgage Rights will not be accepted by the National Land Agency.<sup>1</sup>

Notaries use a attorney power to impose mortgage rights made by the National Land Agency, if they do not use the form and format provided, the attorney power to impose mortgage rights will not be accepted by the National Land Agency. Whereas Article 15 paragraph (1) of Act No. 4 of

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<sup>1</sup> Arpangi and Satria Ardi Yana, Existence Of Notary Authorization Due To Making Authorized Loading Rights Reviewed from Law Number 2 Of 2014 About Notary Position, Jurnal Akta, Volume 7 Issue 1, March 2020, page.45-52

1996 explicitly states, if the attorney power to impose mortgage rights is "made" by a notary. By simply filling in the form of attorney power to impose mortgage rights provided by the National Land Agency, it means that the notary does not make an authentic deed, but rather makes a letter. This is not in line with the notary's authority to make authentic deeds and other powers as regulated in Article 15 paragraph (1) and paragraph (2) of Act No. 30 of 2004 as amended by Act No. 2 of 2014. In accordance with that provision, the Notary does not fill out a deed as is filling a Attorney power to impose Mortgage Rights.<sup>2</sup>

Indonesia, the birth of a land guarantee institution, namely Mortgage Rights, is mandated in Article 51 of Act No. 5 of 1960 concerning Basic Agrarian Principles. Within 36 years, the law in question was born. The birth of Act No. 4 of 1996 is intended to replace the provisions regarding *Credietverband* and Mortgages on land, this is a fundamental change in the Guarantee Law, especially the law on property security, regarding land and this is also confirmed in Article 29 of the mortgage rights Act No.4 of 1996 that: With the enactment of this Law, the provisions regarding *Credietverband* as mentioned in *Staatsblad* 1908-452 jo *Staatsblad* 1909-686 and *Staatsblad* 1909-584 as amended by *Staatsblad* 1937-190 jo. *Staatsblad* 1937-191 and the provisions regarding Hypotheek as stated in book II of the Indonesian Civil Code as long as the imposition of Mortgage Rights on land rights and objects related to land are declared null and void. This mortgage rights law aims to provide a foundation for the enactment of a strong Mortgage institution, including regarding the position of the Attorney power to Impose Mortgage Rights.<sup>3</sup>

Attorney power to Impose Mortgage is deemed valid if it is made with a notary deed or deed of the Land Deed Making Official, other than that according to Article 15 paragraph (1) of the Mortgage Rights Law, the Attorney power to impose Mortgage Rights must meet several requirements, namely:

1. The attorney power may not contain other legal actions other than the power to impose mortgage rights.
2. Does not contain substitution power.
3. Clearly state the object of the Mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the provider of the Mortgage.<sup>4</sup>

Basically, SKMHT form issued by BPN is confirmed in the provisions of form filling guidelines as regulated in Article 96 paragraph (1) PMNA/Perkaban No.3 of 1997 as amended by Perkaban No.8 of 2012.

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2 Sukarman, Problems in Making Power of Attorney Burden Mortgage Rights, *Jurnal Akta*, Volume 8 No. 1, March 2021, page.34-43

3 Rifki Yusuf, Maryanto, Peran Notaris Dalam Penggunaan Akta SKMHT Yang Tidak Diikuti APHT Terhadap Debitor Wanprestasi Terkait Pemberian Fasilitas Kredit Pemilikan Rumah Subsidi (Studi Kasus di Bank Tabungan Negara Pekalongan), *Jurnal Akta*, Vol 5 No 1 March 2018, page.275-287

4 Sutan Remy Sjahdeini, 1996, *Hak Tanggungan : Asas-Asas, Ketentuan-Ketentuan Pokok dan Masalah-Masalah Yang Dihadapi Oleh Perbankan*, Airlangga University Press, Surabaya, page. 77.

Meanwhile, hierarchically, based on national legal regulations, Perkebunan No.8 of 2012 is under Act No. 2 of 2014 on Notary Office.

The provisions of the imposition of the Mortgage must be carried out by the Giver of the Mortgage, and if the Giver of the Mortgage is unable to appear before the Official of the Land Deed Maker, the implementer must appoint another party as his proxy by making a Attorney power to impose the Mortgage Rights.<sup>5</sup>

In addition, this is also inconsistent with notary's authority to issue authentic deeds as regulated in Article 15 paragraph (1) and paragraph (2) of Act No. 30 of 2004 as amended by Act No. 2 of 2014. In accordance with these provisions, it is clear that notaries are not allowed to fill out SKMHT form which is then positioned equal to an authentic deed.

Based on explanation above, it is clear that the matter regarding SKMHT draft is not in accordance with Act No. 30 of 2004 as amended by Act No. 2 of 2014, which has resulted in legal uncertainty in the formulation of SKMHT within the law of Mortgage Rights. Syafruddin Kalo stated that, "Legal certainty can be seen from two different angles, namely certainty of law itself and certainty due to the law." Syafruddin Kalo added that:<sup>6</sup>

Certainty in law means that each legal norm must be formulated in disambiguated sentences, but with single interpretation. Thus, it will effectively lead to law-abiding or non-compliance behavior. In practice, various legal events occur, as when one is to be faced with substance of legal norms, sometimes misinterpretation arise which consequently lead to uncertainty.

Furthermore, Satjipto Rahardjo as quoted by Syafruddin Kalo said that:<sup>7</sup> One of aspects in legal life is certainty, that is, law intends to create certainty on relationships among the people in society. One that is closely related to legal certainty is the origin of law. Certainty regarding the origin or source of law has become important matter as it increasingly become an formal institution.

Badai Husain Hasibuan and Rahmi Purnama Melati agree that:<sup>8</sup> In practice, it turns out that there are people must strive hard for justice, especially the have not who must struggle for legal certainty. This is because of relatively long the judicial process in Indonesia. Besides, the costs are quite expensive, regardless one of the objectives of establishing a court is to obtain legal certainty.

Based on opinions of legal experts above, it is evident that the process of making SKMHT has resulted in legal dualism and even worse, legal disharmony. Hence, it is necessary to deeply discuss "The Relevance of Legal Certainty Value on the Issue of Authentic Notarial Deed in Applying

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5 Dian Cahyo Wibowo, Gunarto, Pelaksanaan Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Di Kota Pekalongan, *Jurnal Akta*, Vol. 4 No. 2 June 2017, page.251-258

6 Melki Suhery Simamora, Mahmutarom HR, Umar Ma'ruf, Disorientation of Justice Values In The Management Policy Of Building Rights (HGB) On Management Rights (HPL) Land, *International Journal of Business, Economics and Law*, Vol. 22, Issue 1 (August) 2020, page.44-49

7 Satjipto Rahardjo, 2012, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, page 4 and16.

8 Melki Suhery Simamora, Mahmutarom HR, Umar Ma'ruf, *Op.Cit*, page.44-49

Attorney power to Charge for Mortgage Rights Reviewed from the Perspective of Act No. 2 of 2014 on Notary Office.”

This writing aims to analyze and describe the position of authentic notarial deed in applying Attorney power to Charge for Mortgage Rights from the perspective of Act No. 2 of 2014 on Notary Office.

## **B. RESEARCH METHODS**

This study applies sociological juridical approach. Rather than perceiving legal issue as normative legal matter, this study examines sociological and philosophical aspects of law. Given the development of sociological thinking about law, it has opened new opportunities for legal researchers to research law by not only seeing law dogmatically and exclusively from the touch of other scientific disciplines, but opening opportunities to carry out legal research in a multidisciplinary manner, thus allowing to see law in empirical realm which is none other than in the middle of society, a place where the law is considered as a dynamic social phenomenon and interacts with other social phenomena such as economy, politics and others.<sup>9</sup>

## **C. RESEARCH AND DISCUSSION**

### **1. Attorney Power Implementation to Charge Mortgage Rights**

Notary as a public official who is authorized to make authentic deeds, as provided for in the explanation of Act No. 30 of 2004 Jo No. 2 of 2014 concerning the Position of Notary, in Article 1 point 1. “Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in this Law or based on other laws. Notary as a public official who is authorized to make Authentic Deed can be held responsible for his actions in connection with his work in making the Deed. The notary's scope of responsibility includes the material correctness of the Deed he makes, namely:<sup>10</sup>

- a. The responsibility of a notary in a civil manner regarding the material correctness of the Deed he has made.
- b. The responsibility of the Notary Criminally regarding the material truth in the Deed he makes.
- c. The responsibility of the Notary based on the Notary Position Regulation regarding the correctness of the material in the Deed he makes.
- d. The responsibility of the Notary in carrying out his /her duties based on the Notary's code of ethics.<sup>11</sup>

Mortgage rights are regulated in Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights to Land and Objects

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9 Depri Liber Sonata, Metode penelitian hukum normative dan empiris: karakteristik khas dari metode meneliti hukum, *Fiat Justisia Jurnal Ilmu Hukum*, Volume 8 No.1 January-March 2014, page.15-35

10 Nico, 2003, *Tanggung Jawab Notaris selaku Pejabat Umum*, Center for Documentation and Studies of Business Law, Yogyakarta, page.5

11 Herlien Budiono, 2013, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Citra Aditia Bakti, Bandung, page.23

Related to Land, or commonly referred to as the Mortgage Rights Law. According to the Indonesian dictionary, dependents are defined as goods that are used as collateral.<sup>12</sup>

Attorney power to Charge Mortgage Rights is generally used in credit agreements. The process of using a Attorney power to Charge Mortgage Rights in a credit agreement is generally the same as an agreement that gives rise to other accounts payable using a Attorney power to Charge Mortgage as collateral for debt repayment. According to Munir Fuady As it is known that according to any legal system in the world, an agreement of the will is one of the conditions for the validity of a contract, as for example stipulated in Article 1320 of the Civil Code.<sup>13</sup>

Attorney power to Charge for Mortgage Rights (SKMHT) is a legal document that gives one legal subject (person/legal entity) the power to act for another legal subject (person/legal entity) to carry out certain matter. This special authority is granted to carry out a charge of Mortgage Rights in the form of Deed of Granting Mortgage Rights (*Akta Pemberian Hak Tanggungan* (APHT)). Once APHT is issued, the Mortgage holder (creditor), whose identity named in the APHT, be given authority over the deed to register it at the National Land Agency (BPN). At the Land Office, the registration process for Mortgage Rights is only based on APHT by attaching SKMHT as the basis for APHT.

As for issuing SKMHT, apart from a notary, the responsibility to assist is also assigned to the Land Deed Making Officials (PPAT) located in sub-district areas, in order to facilitate parties in need. This is confirmed in Article 15 paragraph (1) of Act No. 4 of 1996 which states that, "Attorney power to Charge for Mortgage Rights must be made with a Notary deed or PPAT deed .....". Based on this provision, notary has the authority to issue SKMHT with notary deed. It means SKMHT made by notary must be made in the form of a deed. Yet in practice, by the notary, SKMHT deed applicant is asked to fill in the form provided by BPN. As for the form of the SKMHT, it is strictly regulated in Article 96 paragraph (1) Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 on Provisions for Implementing Government Regulation No.24 of 1997 on Land Registration, hereinafter referred to as PMNA/Perkaban No.3 of 1997 as amended by Regulation of the Head of the National Land Agency No.8 of 2012, hereinafter referred to as Perkaban No.8 of 2012. Based on this article, SKMHT form used related to granting Mortgage Right and the filling procedure must be made based on and in accordance with the attachments regulated in PMNA/Perkaban No.3 of 1997 as amended by Perkaban No.8 of 2012. It is even affirmed in Article 96 paragraph (3) PMNA/Perkaban No.3 of 1997 as amended by Perkaban No.8 of 2012.

12 Oting Supartini, Anis Mashdurohatun, Akibat Hukum Akta Perjanjian Kredit yang Dibuat Notaris Dengan Jaminan Hak Tanggungan Adanya Kepastian Hukum Dan Keadilan Para Pihak, *Jurnal Pembaharuan Hukum*, Volume III No. 2 Mei - Agustus 2016, page.200-215

13 Munir Fuady, 2001, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, Citra Aditya Bakti, Bandung, page.8

Then based on Article 38 of Notary Position Law (UUJN), SKMHT made with a notary deed based on Article 96 paragraph (1) Perkaban No.8 of 2012 (Perkaban) does not meet the requirements of notarial deed. Thus, in issuing SKMHT, a notary shall not only refer to Article 96 paragraph (1) Perkaban alone, but must also fulfill all the provisions contained in Article 38 UUJN No.30 of 2004 jo. Act No. 2 of 2014 on UUJN. If a notary continues to carry out the provisions of Article 96 paragraph (1) Perkaban in issuing SKMHT and ignores Article 38 UUJN, then he is acted outside the provisions of issuing authentic deed. In other words, SKMHT made with a notary deed which only based on Article 96 paragraph (1) Perkaban does not meet the criteria of authentic notarial deed, and thus through court procedure the parties named in the SKMHT can void the deed.

This can be seen from a case occurred in Pematang Rejang Regency. Deden Deni, the Head of Legal Relations for the Pematang Rejang Regency of the National Land Agency said that registration fee for Mortgage Rights based on Attorney power to Charge for Mortgage Rights are as follows:<sup>14</sup>

- a. IDR 50.000,00 for mortgage rights with value up to IDR 250.000.000,00;
- b. IDR 200.000,00 for mortgage rights with a value of IDR 1.000.000.000,00;
- c. IDR 2.500.000,00 for mortgage rights with a value of IDR 10.000.000.000,00;
- d. IDR 25.000.000,00 for mortgage rights with a value of IDR 1.000.000.000.000,00;
- e. IDR 50.000.000,00 for mortgage rights with a value of more than IDR 1.000.000.000.000,00.

According to Deden, SKMHT application is processed after applicant himself fill in the form that had already been prepared at BPN office. It is clear that disharmony has occurred between Article 38 UUJN and Article 96 paragraph (1) Perkaban No.8 of 2012. Based on the provisions of Article 1868 of the Civil Code, authentic deeds are made before or by appointed public official.

The provision of "made" by PPAT is interpreted as the whole process, from beginning to the end. Not in the context of filling in form (blank) by PPAT which previously took place before the issuance of Perkaban No.8 of 2012 for the responsibilities of PPAT to be fulfilled. If there is missing procedure, and it can be proven, then the deed may be declared underhand by court. In such condition, the decision rests with the judge in proving the value of deed. The things that must be included in the SKMHT are as follows:<sup>15</sup>

- a. Name and identity of the holder and giver of Mortgage Rights.

14 Deden Deni, *Pembuatan SKMHT Di Pematang Rejang*, Interview with the Head of Legal Relations for the Pematang Rejang Regency of the National Land Agency.

15 Asuan, Surat Kuasa Membebaskan Hak Tanggungan Dalam Perjanjian Kredit, *Solusi*, Volume 19 Nomor 1, January 2021, page.50-66

- b. The domicile of the holder and the giver of the Mortgage, and if one of them is domiciled abroad, for him it must be stated a preferred domicile in Indonesia, and in the case of the preferred domicile, the place for the Land Deed Making Official (PPAT) where the SKMHT is made is considered the chosen domicile. not mentioning the preferred domicile does not constitute a problem in making the SKMHT on the PPAT's residency.
- c. Clear designation of debt or debts that are guaranteed to be repaid with Mortgage Rights and including the name and identity of the debtor concerned.
- d. Dependent value.
- e. A clear description of the object of the Mortgage, which includes details regarding the certificate of land rights in question or for land that has not been registered, at least contains a description of the ownership, location, boundaries, and size of the land.

Meanwhile, based on Article 1888 of the Civil Code regarding the provisions of authentic deeds, SKMHT made with notarial deed based on Article 96 paragraph (1) of the Perkaban does not meet the requirements of authenticity. It mentions that a deed shall be issued based on the form determined by law, and made by an authorized official (Notary who should be subject to Article 38 UUJN, but subject to Article 96 paragraph (1) Perkaban). Only if the debtor understands this, he can slow down the process of charging the Mortgage as the loan or credit has been received. As a result of this legal disharmony, the law related to SKMHT does not have legal certainty.<sup>16</sup>

The issue of uncertainty results in the neglect of existing legal justice. Legally flawed policies and/or rules are inappropriate as law. Law enforcement which is leaning toward legal certainty value or regulation aspect will shift the value of justice and expediency. This is because the most important aspect in legal certainty is for the regulation itself to be in accordance with what is formulated. Likewise, when the usefulness value is put forward, then the benefit/usefulness value will go beyond legal certainty or justice value because the most important thing for usefulness value is whether law is beneficial/useful to society. This also applies when the only thing to be emphasized is justice value, then legal certainty and benefit value will be left out. This implies, in enforcing the law, there must be a balance among the three values.

Regarding justice, there are various perspectives. Justice based on equality represents the principle of "law binds all people". Thus, justice system is perceived as tool to achieve equality in form of numerical and proportional equality. Numerical equality also means equality before the law, while proportional equality is to ensure one what is due. Meanwhile distributive justice, also called proportional justice, grants the rights of people based on his service. In this case, fairness is based on equality,

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16 Muhammad Subhan, Bruce Anzward, Roziqin, Kepastian Hukum Surat Kuasa Membebaskan Hak Tanggungan Akibat Keterlambatan Menerbitkan Akta Pemberian Hak Tanggungan, *Jurnal De Facto*, Vol. 7 No. 1 July 2020, page.23-37

but in accordance with each portion (proportional). Corrective justice rests on correcting mistakes. For example when someone by his mistake causes harm to another, then he must compensate the injured to restore his condition as the result of mistakes made.

## **2. Problems in Attorney Power Issue to Charge for Mortgage Right (SKMHT)**

Obstacles to the making of a Attorney power to Charge Dependent Rights, especially by a Notary who made the Attorney power to Charge Dependent Rights legally, were not found. This is because the regulations on the Attorney power Charging Rights of Dependents have been clearly regulated in the Law of Dependents, but the obstacles are found in the administrative management that is in the process of using the Attorney power to Charge Dependents as a Letter of Dependency and the amount of costs required in certification the object of the Attorney power Charging Unregistered Liabilities.<sup>17</sup>

In practice, in addition to the above reasons, there are various other reasons regarding the deed of Attorney power Charging Dependents is made as a basis for binding the rights of dependents, the Attorney power Charging of Dependents is usually made as a bridge for making a deed of granting rights of dependents. Where at the time of the main agreement (credit agreement), the making of the deed of granting of liability rights has not been made. The reasons that have not been able to make this deed of granting rights, among others, the certificate will still be renamed, will still be done roya and other things that make the deed of granting rights of dependents can not be made. Therefore, the Attorney power Act to Charge Dependents 'Rights was made as a bridge for the making of the Dependents' Rights Act which will be made later.<sup>18</sup>

In applying for SKMHT, there are several problems which resulted in SKMHT not having legal force (null). They are:

### **a. Regulatory Law Problem**

It has been explained above that there is discrepancy between Article 38 of Notary Position Law (UUJN) and Article 96 paragraph (1) Regulation of the Head of the National Land Agency (Perkaban) No. 8 of 2012. Article 38 of UUJN states that:

- 1) Components of Deed are:
  - a) The Heading;
  - b) The Body of Deed; and
  - c) The Closing.
- 2) Heading of the Deed consists of:
  - a) The title;

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17 I Putu Deny Wiryanta, I Ketut Mertha, I Made Puryatma, Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Dalam Perjanjian Kredit Perbankan Di Kota Denpasar, *Acta Comitas*, Vol 2 2016, page.243-252

18 Yudo Paripurno, 1996, *Pengaturan dan pelaksanaan Surat Kuasa memasang Hipotik (SKMH) dalam kaitannya dengan UU Hak Tanggungan*, Makalah UI Depok, Jakarta, page. 6



- b) deed number;
  - c) hour, day, date, month and year; and
  - d) full name and domicile of the Notary.
- 3) Body of the Deed consists of:
- a) full name, place and date of birth,
  - b) provisions of the Deed which constitute the will and desire of the interested parties; and
  - c) full name, place and date of birth, as well as occupation, position and place of residence of each witness.
- 4) Closing of the Deed consist of:
- a) description on the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
  - b) description on the signing and place of signing or translation of the Deed, if any;
  - c) full name, place and date of birth, occupation, position and place of residence of each witness to the Deed;
  - d) description on the absence of changes that have occurred during the making of the Deed or a description of any possible changes in the form of addition, deletion or replacement as well as the number of changes thereof.
- 5) The Deed of Substitute Notary and Temporary Officer of Notary, apart from containing the provisions as referred to in paragraph (2), paragraph (3) and paragraph (4), also contains the number and date of the appointment, as well as appointing official.

Meanwhile, according to Article 96 paragraph (1) Perkaban No.8 of 2012, types of deed used in applying Attorney power to Charge for Mortgage Right consist of:

- a) Contract of sale
- b) Exchange Deed
- c) Grant Deed/Testamentary Estate
- d) Form of Shareholder's Deed
- e) Deed of Shared Ownership
- f) Deed of Granting Mortgage Rights
- g) Deed of Granting Right of Building/Right of Using Freehold Land
- h) Attorney power to Charge Mortgage Rights

Meanwhile, the existing SKMHT format is not in accordance with the script as regulated in the provisions of Article 38 UUJN, instead it is in the form prepared by BPN office. This leads to legal uncertainty of Attorney power to Charge Mortgage Rights. It may cause legal injustice due to the loss of human rights as regulated in Article 28D of the 1945 Constitution. It also violates the Fifth Principle of Pancasila.

b. Problem related to Weakness of SKMHT as Deeds

1) SKMHT Subject Issues

There are problems regarding SKMHT as follows:

- a) Article 15 paragraph (1) of UUHT concerning the stipulation of time limits on the use of SKMHT to guarantee certain Mortgage repayments, requires that SKMHT to be used only for mortgage right charging and be separated from other deeds. Thus, the right to impose mortgage can no longer be combined with credit agreement, but must be made separately.
- b) The validity period of SKMHT may cause:
  1. Attorney power to Charge for Mortgage Right is null and void due to long certification process that exceeds the time limit stipulated by Article 15 UUHT;
  2. Endanger the interests of bank because of the short term determination. Thus, it is possible that the credit has become bad even though the new credit has only been given for three months, for example. Payment failure may not caused by bank's weak feasibility analysis on the business be given credit, but due to economic fluctuation or regulatory changes that have occurred either outside or inside the country.
- c) The obligation to attach Warranty of Liability Rights and Attorney power to Charge for Mortgage Right with notarial deed after registration, will definitely require additional costs which burden the debtor.

The weaknesses of issuing Attorney power to Charge for Mortgage Right as explained above have consequently resulted in legal uncertainty.

In the case of a Attorney power to Charge Dependents made by a notary, then, in addition to the substantive requirements in the Law of Dependents, a Attorney power to Charge Dependents must be made by following the form of a deed based on the Notary Law. Even if the Attorney power to Charge Dependents is made by a Notary, but if the form does not meet the provisions of the Law of the Notary Office, then the Attorney power to Charge Dependents only has the power of proof as a deed under hand. Thus, it is not in accordance with the provisions of the Law of Dependents which implicitly requires a Attorney power to Charge Dependent Rights to be made with an authentic deed. If the Attorney power to Charge Dependents is still used as the basis in the making of the Deed of Assignment of Dependents, then in fact the Deed of Assignment of Dependents also has no legal force so that the publicity of the imposition of Dependents cannot be met.<sup>19</sup>

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19 Made Oka Cahyadi Wiguna, Surat Kuasa Membebaskan Hak Tanggungan Dan Pengaruhnya Terhadap Pemenuhan Asas Publisitas Dalam Proses Pemberian Hak Tanggungan, *Jurnal Legislasi Indonesia*, Vol. 14 No. 04 December 2017, page.439-446

#### **D. CONCLUSION**

In its development Article 96 PMNA/Perkaban No.3 of 1997 as amended by Perkaban No.8 of 2012 requires that deed be made in accordance with forms prepared by BPN or the Land Agency. This is clearly at odds with the provisions related to deeds of Article 15 paragraph (1) of Act No. 2 of 2014 which mentions that Notaries are authorized to make authentic deeds, not writing letters or filling in forms such as SKMHT form drafted by BPN. Therefore, it is clear that the current SKMHT has contradicted the provisions of Article 15 paragraph (1) of Act No. 2 of 2014; The root cause of problems in issuing SKMHT lies in the statutory factor, namely disharmony between Article 38 of Notary Position Law (UUJN) and Article 96 paragraph (1) Regulation of the Head of the National Land Agency (Perkaban) No. 8 of 2012. Besides, SKMHT also has two weaknesses. They are validity period of SKMHT and additional costs in applying SKMHT which belongs to notary deeds

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