

## The PPAT Legal Protection against Letters of Validity and Correctness of Documents in Registration of Electronic Mortgage Rights

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**Abstract.** *This study aims to determine and analyze the legal protection for PPATs against Statements of Legality and Truthfulness of Documents in the registration of Electronic Mortgage Rights and to know and analyze the legal consequences for PPATs of making Statements of Legality and Truth of Documents in registration of Electronic Mortgage Rights. This research method uses a normative juridical approach, analytical descriptive research specifications, secondary data collection methods and qualitative data analysis research methods. Based on the research it was concluded that PPAT as a profession is a legal subject who needs to get legal protection in order to get a sense of security in carrying out his position to carry out the authority given by the state. Permen ATR/KBPN Number 5 of 2020 requires PPATs to attach a Statement of Validity and Document Validity, which is felt to be burdensome for PPATs in carrying out their profession because there is no legal protection that provides a sense of security for PPATs in relation to criminal and civil responsibilities imposed by the Statement of Legality and Document Authentication. The PPAT in carrying out its duties adheres to the principle of responsibility based on error (based on fault of liability), where a PPAT must be responsible for the deed as long as the mistake or violation that occurs is intentional by the PPAT. In the event that the PPAT does not know if the document provided turns out to be fake,*

*Keywords: Electronic; Mortgage; Statement.*

### 1. Introduction

In the current era of globalization, almost all human activities use digital technology tools. As a communication medium, almost all human interactions use this technology, which is known as Computer Mediated Communication

(CMC). CMC is a communication system through computer media or digital technology, such as the internet, email or web cam. This definition applies to individuals who interact through computer-based media.<sup>1</sup>Mortgage rights refer to collateral rights that are applied to land rights along with other objects related to land, both inside and outside the land, to guarantee the repayment of certain debts. According to Article 1 number 1 Act No. 4 of 1996 concerning Mortgage Rights (UUHT), Mortgage rights over land and objects related to it, included in the definition of Mortgage Rights, are security rights that are applied to land rights as described in the Law -Law No. 5 of 1960 concerning Basic Agrarian Regulations. This is done to place certain creditors in a priority position in terms of debt repayment compared to other creditors.

Lending is a common action taken by the community, including by entrepreneurs or prospective entrepreneurs who are constrained by minimal capital to develop their business. In granting loans, there is a legal relationship formed between the creditor and the debtor through a credit agreement. To confirm the validity of the credit agreement, it is necessary to have an agreement between the creditor and the debtor regarding important matters that must be carried out so that the object of the agreement is legal according to Article 1320 of the Civil Code. This requires that the agreement must be made by both parties, namely creditors and debtors.<sup>2</sup> In making a credit agreement, the creditor needs to ensure that he has collateral for the receivables lent by demanding the transfer of certain objects from the debtor to the creditor. This process is called granting guarantees.<sup>3</sup>

Collateral or collateral to pay off the debt is considered very valuable because it encourages the Debtor to try his best to recover the item if it is handed over to the Creditor.<sup>4</sup>In terms of guarantees, there are two types, namely general guarantees and special guarantees. Special guarantees are subdivided into individual guarantees and material guarantees. In material guarantees, there are several forms of binding guarantees such as pledges, fiduciaries, and mortgages.

Mortgage rights are security rights that are imposed on land rights as referred to in the UUPA, along with or without other objects that are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors, matters this is stated in the provisions of Article 1 Number 1 UUHT. The function of mortgage rights as a guarantee institution that is able to

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<sup>1</sup>Pawit M. Yusup and Priyo Subekti, *Theory and Practice of Information Retrieval*, Cet. 1, Ed.1, Kencana Prenada Media, Jakarta, 2010, p. 46.

<sup>2</sup>Catur Budi Dianawati and Amin Purnawan, 2017, *Mortgage Guarantees Auctioned Without Application for Auction Execution Process to the Head of the District Court*, *Journal of Deeds*, Vol 4 No 2, p. 125.

<sup>3</sup>Djuhaedah Hasan, 1996, *Institution of Material Guarantees for Land and Other Objects Attached to the Land in the Conception of Horizontal Separation*, PT. Citra Aditya Bakti, Bandung, p. 233

<sup>4</sup>Tami Rusli, 2008, *Mortgage as a Guarantee Institution for Property Rights over Land*, *Legal Institutions*, Vol 3 No 2, p. 77.

provide legal certainty for interested parties in providing the necessary funds for debt repayments, makes the position of mortgage rights very important.

As for land rights that can be charged with Mortgage according to Article 4 Paragraph (1) UUHT are property rights, usufructuary rights, building usufructuary rights. The granting of mortgage rights is preceded by a promise to provide mortgage rights as collateral for repayment of the debt as outlined in the principal agreement that gave rise to the debt. This confirms that the guarantee agreement is an *accessoir* agreement to the main agreement, namely the loan agreement. The nature of the *accessoir* means that the guarantee agreement is an additional agreement that depends on the main agreement.

Land Deed Making Officer (hereinafter referred to as PPAT) is a public official authorized to make deed of transfer of rights over land and other deeds in the context of encumbrance of land rights, the form of which is determined as proof of the execution of certain legal actions regarding land located within their respective working areas. <sup>5</sup>The guarantee agreement must be made before the PPAT which is then stated in a Deed of Granting Mortgage Rights which will be registered at the land office.

The Minister of Agrarian and Spatial Planning/Head of the National Land Agency has issued Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2019 concerning Electronic Mortgage Services which is a transitional period from conventional registration of Mortgage rights to electronic Mortgage rights. At the time the regulation was issued, the registration of mortgage rights had not been fully integrated electronically, whereas conventional services were still permitted. However, on July 8 2020 the conventional mortgage registration process was officially abolished and mortgage services were fully carried out electronically through the electronic mortgage system.

The transition from conventional Mortgage Rights to Electronic Mortgage Rights has an impact that affects the role of the PPAT. Prior to the issuance of the ATR/KBPN Regulation, all registration processes for Mortgage Rights were the responsibility of the PPAT and the National Land Agency. However, with the enactment of the Electronic Mortgage Right, the registration of the Mortgage right involves creditors, both individuals and legal entities. Apart from that, Article 10 Paragraph (2) of Permen ATR/KBPN Number 5 of 2020 also stipulates another form of adjustment, namely that the PPAT is required to attach a Statement containing responsibility for the validity and correctness of the submitted electronic document data. This accountability statement format is an integral part of the ATR/KBPN Regulation. This is considered burdensome for the

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<sup>5</sup>Ngadino, 2019, General Provisions for Making and Filling in PPAT Deeds, UPT Publishing University PGRI Semarang Press, Semarang, p. 92.

PPAT because they are fully responsible for the legality and correctness of the contents of the document formally and materially. If problems occur in the future, the PPAT must be prepared to accept legal impacts, both civil and criminal, in accordance with statutory provisions. In addition, the PPAT is also required to sign the letter on stamp duty according to the format set out in the letter.

PPAT has the principle of responsibility in carrying out its duties, which is based on errors or violations that have occurred. The PPAT will be responsible for the deed if the mistake or violation is intentional by the PPAT itself. However, if errors or violations occur from other parties such as creditors or debtors, the PPAT does not have the authority to conduct in-depth research on the documents provided or shown by that party. Instead, the application for electronic mortgage rights must be accompanied by a statement confirming the validity and correctness of the electronic document data. Without clear boundaries regarding the PPAT's responsibilities for these documents.

## **2. Research Methods**

This research method uses a normative juridical approach, descriptive analytical research specifications, secondary data collection methods and qualitative data analysis research methods.

## **3. Result and Discussion**

PPAT is a public official who has the authority to make authentic deeds related to certain legal actions related to land rights in the field of transfer registration and assignment of rights. PPAT plays an important role in the process of transferring and assigning land rights, because it has the duty to assist the head of the land office in carrying out some of the land registration activities. The PPAT makes a deed which serves as evidence and basis for the registration of changes and registration of land that occurs due to legal actions such as buying and selling, exchange, grants, entry into the company (inbrenng), sharing of joint rights, granting of building use rights or usufructuary rights over private land ownership, granting of mortgage rights, and granting of power of attorney to impose mortgage rights.

According to CST Kansil, legal protection includes various legal remedies provided by law enforcement officials to provide a sense of security, both mentally and physically, from disturbances or threats originating from any

party.<sup>6</sup> Meanwhile, according to Philipus M. Hadjon, legal protection is an action to protect or provide assistance to legal subjects by using legal instruments.<sup>7</sup>

One of the duties of the PPAT as a general official in imposing mortgage rights is to make APHT which is then submitted to the local land office to be registered. However, since the enactment of Permen ATR/KBPN Number 5 of 2020 concerning Electronic Integrated Mortgage Services, PPATs no longer need to come to the land office to submit APHT and other certificates. The PPAT only needs to submit the deed and documents that complete the requirements in scan form which are then uploaded in the ht-el system, in accordance with Article 102 of the ATR/KBPN Regulation Number 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 2019. 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, which reads:

a) The PPAT deed is made in 2 (two) original sheets, one sheet is kept at the PPAT Office and one sheet is submitted to the Head of the Land Office for registration purposes, while the parties concerned are given a copy.

b) The PPAT submitted to the Head of the Land Office as referred to in paragraph (1) may be in the form of an Electronic Document.

c) Submission of the deed as referred to in paragraph (2) is carried out through the Electronic System.

d) In the event that the PPAT deed is submitted in the form of an Electronic Document, the original of the second sheet is kept at the PPAT Office as Warkah.

It is emphasized in the Technical Instructions Number 2/Juknis400.HR.02/IV/2020 concerning Electronic Integrated Mortgage Services that the original first and second sheets of APHT are stored in the PPAT office.

Permen ATR/KBPN Number 5 of 2020 also requires PPATs to attach a Statement of Validity and Correctness of Documents, which is felt to be burdensome for PPATs in carrying out their profession because there is no legal protection that provides a sense of security for PPATs in relation to criminal and civil responsibilities imposed by the statement. Legitimacy and Truth of Documents.

The absence of legal protection was also conveyed by Sri Ishana, in making a statement on the validity and correctness of documents, making PPATs must be

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<sup>6</sup>CST Kansil, 1989, Introduction to Indonesian Law and Legal Studies, Balai Pustaka, Jakarta, p. 102.

<sup>7</sup>Philipus M Hadjon, 2011, Introduction to Indonesian Administrative Law, Gajah Mada University Press, Yogyakarta, p. 10.

able to protect ourselves to carry out the precautionary principle in carrying out our positions as PPATs.<sup>8</sup>

In this regard, referring to Permen ATR/KBPN Number 2 of 2018 concerning Guidance and Supervision of Officials for Making Land Deeds, there is legal protection in the form of legal assistance for PPATs who are caught in a crime. However, there are no implementing regulations for Permen ATR/KBPN Number 2 of 2018, so the implementation is not perfect. Meanwhile, special protection related to civil and criminal protection for making a statement on the validity and correctness of documents is not facilitated by Permen ATR/KBPN 2 of 2018, this has resulted in normative legal protection not being given

Moch Irfan as part of the Cirebon City Land Office added that, in the ATR/KBPN Regulation Number 5 of 2020 it does not explicitly state PPAT protection. The BPN is only the issuer of the electronic certificate and the PPAT must be careful because the land office imposes the responsibility for a statement on the validity and correctness of the document to the PPAT. In making the APHT and SKMHT deed, the PPAT must see all the data shown by the parties and must check its authenticity.<sup>9</sup>

Sri Ishana further explained that PPAT can use the precautionary principle. When PPAT receives documents from Creditors and Debtors, PPAT can ask about the authenticity of these documents and if they are indeed falsified by Creditors and Debtors, PPAT must reject them.<sup>10</sup>The precautionary principle means to exercise caution both for oneself and for others by paying attention to the consequences of every action taken, both now and in the future.<sup>11</sup>

Based on the results of interviews with Sri Ishana, it is known that there is no precedent for the implementation of alternative personal protection for this PPAT position.<sup>12</sup>

In addition to the precautionary principle, the PPAT in carrying out its duties also needs to adhere to the principle of responsibility based on fault (based on fault of liability), where a PPAT must be responsible for the deed as long as the mistakes or violations that occur are intentional by the PPAT. So it's another case if the PPAT already knows if the document was falsified by the applicant but the PPAT still makes a deed. In this situation, if the PPAT provides false information and causes conflict or land disputes, then he will receive sanctions in the form of

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<sup>8</sup>Personal interview with Sri Ishana, on 15 February 2023 at 13.00 WIB

<sup>9</sup>Personal interview with Moch Irfan on 20 February 2023 at 15.30 WIB

<sup>10</sup>Personal Interview with Sri Ishana on 15 February 2023 at 13.00 WIB

<sup>11</sup>Adam Smith, 1976, *The Theory Of Moral Sentiments* Indianapolis (Oxford: Oxford University Press, p. 153

<sup>12</sup>Personal interview with Sri Ishana on 15 February 2023 at 13.00 WIB

dishonorable dismissal in accordance with ATR Ministerial Regulations /KBPN Number 2 of 2018. However, if the PPAT is not aware that the document provided is fake, then he will not be penalized because he does not have the authority to further check the document.

#### 4. Conclusion

PPAT as a profession is a legal subject who needs to get legal protection in order to get a sense of security in carrying out his position to carry out the authority granted by the state. Permen ATR/KBPN Number 5 of 2020 requires PPATs to attach a Statement of Validity and Document Validity, which is felt to be burdensome for PPATs in carrying out their profession because there is no legal protection that provides a sense of security for PPATs in relation to criminal and civil responsibilities imposed by the Statement of Legality and the correctness of the documents there are no implementing regulations for Permen ATR/KBPN Number 2 of 2018 so that the implementation is not perfect. Whereas, Special protection related to civil and criminal protection for making Statements of Legality and Truth of Documents is not facilitated by Permen ATR/KBPN 2 of 2018, this results in normative legal protection not being given. Because there is no normative explanation, the PPAT needs to protect itself by applying the precautionary principle by making its own statement to guarantee the authenticity of the documents provided which are then signed by the parties concerned and attached to the minutes of the deed. The PPAT in carrying out its duties adheres to the principle of responsibility based on error (based on fault of liability), where a PPAT must be responsible for the deed as long as the mistake or violation that occurs is intentional by the PPAT.

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**Interview:**

Personal Interview with Sri Ishana as PPAT in Cirebon City

Personal Interview with Moch Irfan as the BPN of the City of Cirebon