

## Responsibility of Land Deed Official (PPAT) Towards Power of Attorney to Granted Mortgage Rights (SKMHT) in Fulfilling The Granting of Mortgage Rights to Bank Perekonomian Rakyat Badan Credit Kecamatan Jepara Perseroda

Listiana Nur Azizah <sup>1)</sup> & Aryani Witasari <sup>2)</sup>

<sup>1)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [listiananurazizah9@gmail.com](mailto:listiananurazizah9@gmail.com)

<sup>2)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [aryani@unissula.ac.id](mailto:aryani@unissula.ac.id)

**Abstract.** *This study is entitled "Responsibility of Land Deed Officials (Ppat) to the Power of Attorney to Charge Mortgage Rights (Skmht) in Fulfilling the Granting of Mortgage Rights at the People's Economic Bank, Jepara District Credit Agency, Perseroda" The objectives to be achieved are to obtain answers to the problems that have been described in the formulation of the problem. The research method uses a sociological legal approach, data sources are obtained from several stages, namely through field research and library research. Data analysis in a systematic manner includes data reduction, data presentation and drawing conclusions. concluded that PPAT has a very important role in making a Power of Attorney to Charge Mortgage Rights (SKMHT) because PPAT is responsible for ensuring that all legal aspects related to mortgage rights are carried out in accordance with applicable provisions. PPAT must ensure that the land to be used as the object of mortgage rights is not in dispute and is not bound by other problems. The obstacles faced by PPAT like this slow down or hinder the process of granting mortgage rights. These obstacles can be given a way or solution through mediation or negotiation between the party who has the obligation and the party who has the mortgage rights. This aims to reach a mutual agreement on the method of payment or other settlement. the cause of the delay or difficulty in fulfilling obligations, the best solution can be found. Transparent negotiations can often result in a fair agreement for both parties.*

**Keywords:** *Imposing Mortgage Rights; Officials Making Land Deeds; Responsibilities*

## 1. Introduction

The objectives of the Republic of Indonesia have been stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), paragraph four, namely to protect all Indonesian people and all of Indonesia's territory, advance general welfare, educate the nation's life and participate in implementing world order based on eternal peace and social justice.

Land is a source of human life and has a very important meaning for every individual in society, because apart from having a close relationship with the existence of human individuals in the environment and their survival, it also has economic value that can be reserved as a source of support for human life in the future.

Land in human life has a very important role because of its permanent nature. Law No. 5 of 1960 concerning Basic Agrarian Principles determines the types of land rights that can be owned by legal subjects. Among them are: Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, Lease Rights, Land Opening Rights, Forest Product Collection Rights, and Rights that are not included in the rights mentioned above which will be determined by Law and temporary rights as stated in Article 3 of the Basic Agrarian Law.

Increasing national development that focuses on the economic sector, capital facilities are the main supporting facilities. Which will usually be followed by an increase in human consumption power. In supporting the fulfillment of capital needs, one alternative that can be used is through banks.

Banking institutions have a very important role in accordance with their main function as collectors of funds from the community in the form of savings, places to store money/invest for the community and also function as distributors of community funds, namely banks provide loans (credit) to people who apply for credit.<sup>1</sup>

Credit provision seen from the linguistic perspective means trust, in the sense that if a person or business entity gets credit from a bank, then the person or legal entity gets trust from the bank. Trust is basically a very important and primary element in social life and business.<sup>2</sup>

According to Article 1 number 11 of Law Number 10 of 1998 concerning Banking, credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the Bank and another party which

---

<sup>1</sup>Kasmir, 2004, *Basics of Banking*, (Jakarta: PT Raja Grafindo Persada), p. 1.

<sup>2</sup>Andreas Albertus Andi Prajitno, 2010, *Fiduciary Law*, (Malang: Selaras, 2010), page 4.

requires the borrower to repay the debt after a certain period of time with the provision of interest.<sup>3</sup>

In the case of providing credit, there is a requirement for collateral by the debtor, the implementation of which is carried out at the time of binding the collateral, namely at the time of the credit agreement, which will be used by the Bank to guarantee the repayment of the debtor's debt if at some point the debtor breaks his promise/defaults.

This is an assessment element carried out by the Bank before providing credit facilities to parties who need them. The Bank accepts collateral in the form of rights to land, houses/buildings, deposits, gold, vehicles, trade receivables, factory machines, raw materials, stock of merchandise, shares and many more. Therefore, the process of providing credit requires the bank's confidence in the debtor's ability and capability to pay his debts and pay attention to the principles of healthy bank credit, namely by paying attention to the 5 C principles, namely Character (Personality), Capacity (Ability), Capital (Capital), Condition of Economy (Economic Condition), and Collateral (Collateral). From the definition above, it can be concluded that the elements of credit are:

1. Trust,
2. Grace period
3. Degree of Risk
4. Credit Object (achievement)

Specifically regarding collateral in the form of land, after going through a fairly long journey since the enactment of Law Number 5 concerning Basic Agrarian Law in 1960, a law was also born as mandated in Article 51 of the Basic Agrarian Law, namely Law Number 4 of 1996 concerning Mortgage Rights on land and objects related to land (hereinafter referred to as the Mortgage Rights Law).

One of the objectives of enacting the Mortgage Rights Law is to implement the strict order of Article 51 of the Basic Agrarian Law so as to eliminate various interpretations of the guarantee institution, and at the same time implement the unification developed by the Basic Agrarian Law, namely the Mortgage Rights institution as a debt guarantee institution with land as collateral.<sup>4</sup>To answer this legal problem, this thesis was compiled with the title "Responsibility of Land Deed Officials (PPAT) Regarding the Power of Attorney to Charge Mortgage Rights (SKMHT) in Fulfilling the Granting of Mortgage Rights to Bank Perekonomian Rakyat Badan Credit Kecamatan Jepara Perseroda".

---

<sup>3</sup>Usman, Rachmadi, 1999, *Articles on Mortgage Rights on Land*, (Jakarta: Djambatan), page 22.

<sup>4</sup>AP. Parlindungan, *Commentary on the Mortgage Rights Law and the History of its Enactment*, (Bandung: Mandar Maju, 1996), page 31.

## 2. Research Methods

This study uses an empirical Juridical approach or also called Sociological Juridical. Sociological Juridical Research is a study that attempts to see real law. The Sociological Juridical Approach uses Primary data, namely data directly obtained from the field. Research using primary data is carried out with legal effectiveness, namely including community understanding, community knowledge in the application of law. Analysis of research data serves to connect various research results both based on field data and library data. Data that has been collected and processed will be discussed using a qualitative normative method, namely a discussion carried out by interpreting and discussing data that has been obtained and processed, based on legal norms, legal doctrines and existing legal theories. The discussion in the initial stage is carried out by conducting an inventory of laws and regulations related to the problems that are the object of study. While for the second stage, a discussion will be carried out in the form of a discussion, between various secondary data and related primary data, with various laws and regulations so that in the final stage the inconcreto law is found.

## 3. Results and Discussion

### 3.1. Responsibilities of PPAT in Making a Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) in Fulfilling the Granting of Mortgage Rights to Bank Perekonomian Rakyat Badan Credit Kecamatan Jepara Perseroda

Law has a very important function in the life of society that clearly determines the rights and obligations of a person as a legal subject, so written evidence is needed that is authentic regarding the circumstances, events or legal acts. Written evidence in the form of an authentic deed as the most accurate evidence and has a high value in proof has an important role in every legal relationship in community life, in various business relationships, activities in the fields of banking, land, social activities and so on.<sup>5</sup>

The existence of a legal act carried out by a person with written evidence set forth in an authentic deed is authentic evidence containing formal truth about the existence of a certain legal act carried out by a person. Certain legal acts set forth in the authentic deed clearly determine the rights and obligations of the person carrying out the legal act, guaranteeing legal certainty and proof of the legal act.

Collateral has benefits for creditors and debtors. The benefit for creditors is that with the collateral, it will create security for closed trade transactions and provide legal certainty for creditors, while the benefit for debtors is that with the

---

<sup>5</sup> Suyitno LS, 2007, Land Deed Making Officer, Paper presented at the 4th Congress of the Association of Land Deed Making Officers (IPPAT) and Up Grading Refreshing Course, Surabaya), p. 35

collateral, they can obtain credit facilities from financial institutions or financing institutions, so that they do not cause worry in developing their business.<sup>6</sup>

The collateral that is widely used is land collateral. This is based on the consideration that the object of land collateral is the safest and has a relatively high economic value. Based on the Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as UUHT), objects that can be burdened with Mortgage Rights are rights to land and objects related to land.

The Mortgage Agreement is basically a subsidiary agreement or attached to the main agreement, if the main agreement between the debtor and creditor is not problematic, however in the APHT that has been made PPAT it is problematic, when one of the parties is in default, and in the main agreement there is no problem, while the problem is in the agreement in the APHT that has been made. In principle, making an APHT is not something that is not very important when there is a person or parties holding mortgage rights who are in default, because even if the APHT made is wrong but the credit agreement has been paid off, the PPAT is free from the problem and immediately the agreement becomes invalid.

PPAT's accountability is an individual's accountability where the PPAT is responsible for the formal and material truth of the deed he/she made. PPAT's accountability is an individual's accountability where the PPAT is responsible for the formal and material truth of the deed he/she made.

### **3.2. Obstacles Faced by PPAT in Making a Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) in Fulfilling the Granting of Mortgage Rights Rights to Bank Perekonomian Rakyat Badan Credit Kecamatan Jepara Perseroda, and How to Solve Them**

In the implementation of the creation of the Deed of Granting of Mortgage Rights (APHT) which is carried out by PPAT there are definitely obstacles that can hinder the process of implementing the making of the deed. APHT itself. There are several factors that can hinder the implementation of the creation of The APHT itself, both factors from the parties, the Land Office or from the PPAT.

The obstacles that creditors usually experience are related to collecting the required documents. many with a relatively short time period while the documents required many. The obstacles often experienced by PPAT are checking Land Rights Certificates in The Land Office is said to take too long (30 days), this is due to the large number of checks land title certificate for APHT application, apart from that there is still data in the title certificate Deal with land that does not match the land book at the Land Office and must be measured again or replace

---

<sup>6</sup> Zaeni Asyhadie and Rahma Kusumawati, 2018, *Collateral in Indonesia: A Study Based on National Law and Sharia Economic Principles*, PT Rajagrafindo Persada, Depok, p. 40.

the form, in the case of a certificate, a plotting of the area must be carried out to determine the land point. The process for obtaining Mortgage Rights is quite long.<sup>7</sup>

Based on the description above, the obstacles that occur can be categorized as follows:

1. Internal Constraints

a. Debtor's Financial Problems

Debtors who are unable to pay their debts, or have financial problems, are often the main obstacle in fulfilling obligations to mortgage rights. This inability can be caused by financial crises, business losses, or changes in economic conditions.

b. Lack of Understanding of Legal Process

Debtors or parties involved in mortgage agreements often do not fully understand the applicable legal process. This can lead to non-compliance with obligations, or missteps in handling problems that arise.

c. Disorderly Administration

Poor administrative processes or incomplete documents can complicate the implementation of mortgage rights. For example, problematic or unregistered land certificates can hinder the settlement process.

2. External Constraints

a. Changes in Government Regulations or Policies

Changing government policies or inconsistent regulations can be obstacles in the implementation of mortgage rights. For example, new regulations governing the land or property involved in the mortgage rights can slow down or complicate the settlement process.

b. Other Legal Issues

Disputes related to mortgage rights often involve third parties or claims from other creditors that have the potential to interfere with the priority of the mortgage rights. For example, if there is a dispute regarding ownership or claims to the object used as collateral, this can hinder the process of fulfilling the mortgage rights.

c. Economic and Social Situation

Poor economic conditions, such as recession or high inflation, can affect the debtor's purchasing power and ability to meet obligations. In addition, social

---

<sup>7</sup>Interview with Notary PPAT Jepara on January 2, 2025

problems such as natural disasters or political crises can also disrupt the process of fulfilling mortgage rights.

These constraints require attention from the parties involved to find a fair and mutually beneficial solution, either through negotiation, payment rescheduling, or, in some cases, legal settlement.

Fulfillment of mortgage rights often faces obstacles both from internal and external sides (external factors that influence). Here are some solutions to overcome these obstacles:

#### 1. Internal Constraints

##### a. Poor Risk Management

Implement more effective risk management. Conduct regular risk analysis and ensure proper risk mitigation to prevent default or failure to fulfill obligations.

##### b. Lack of understanding of legal processes and regulations

Training and development of knowledge related to the law of guarantees and obligations in collateral agreements. Increasing understanding of these legal aspects can help manage collateral rights more efficiently.

##### c. Financial Imbalance or Asset Limitations

Restructuring or renegotiating debt with creditors, transferring assets, or increasing the company's liquidity to meet payment obligations. Careful financial management can also help avoid this problem.

#### 2. External Constraints

the processing period for old certificates by going through several stages takes a long time so that legal certainty is lacking. There is a risk that the debtor will default before the certificate is made, so that execution cannot be carried out. The Ppat solution for this obstacle is to wait for the certification process to complete.

One of the most frequently used solutions is through mediation or negotiation between the obligated party and the party with the collateral. This aims to reach a mutual agreement on the method of payment or other settlement. For example, an extension of the payment period, reduction of obligations, or debt restructuring can be achieved. The first step that needs to be taken is to open a good line of communication between the obligated party and the party with the collateral. By discussing with each other, whether it is related to the cause of the delay or difficulty in fulfilling obligations, the best solution can be found. Transparent negotiations can often result in a fair agreement for both parties.

the above factors are obstacles or A common mistake that occurs is a writing error when making a deed, here In the case of errors in writing deeds, this often occurs in the implementation of making deeds. carried out by a Notary/PPAT. Therefore, the PPAT must carry out a renvoi or correction for address and correct the writing errors.

Regarding the passing of the deadline for registering APHT by PPAT, the PPAT can be sued by the parties and will be subject to sanctions because it is considered detrimental to the parties especially for the creditors. The obstacles that have been mentioned and explained by the author above are obstacles that usually occur in the implementation of the making of a Deed. Granting of Mortgage Rights (APHT). With these constraints, it can also hindering the implementation of the APHT creation process carried out by the Making Officer Land Deed (PPAT).

Obstacles in making SKMHT especially by the Notary / PPAT who made The SKMHT is not legally valid found. This is due to the settings regarding SKMHT has been clearly regulated in UUHT, but the constraints found in administrative management namely in the process of using SKMHT to become APHT and the amount of costs required in certifying SKMHT objects not registered yet.

Further according to his statement that in practice, the land that not yet certified / registered, after SKMHT signed then the process is often the obstacle is certification. This is because of the process takes a long time (usually more from 3 months) and also quite a large cost.

#### **4. Conclusion**

PPAT's responsibilities when viewed subjectively towards the APHT that he made, the form of compensation from the PPAT can be individual even can be as an official, interpreted as an official because PPAT is still active in carrying out his/her position, while the objective responsibility related to The APHT made by the PPAT, returns to the fact that the PPAT is only responsible for the truth formal in making APHT, PPAT can be held accountable if there is elements of the error committed in this case Content, things or clauses that must be included in the APHT, namely in Article 11 paragraph (1) UUHT. Obstacles faced by PPAT in making a Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) regarding the imposition of Mortgage Rights are as follows: Internal constraints that are usually experienced by creditors are related to the collection of documents that many with a relatively short time period while the documents required many. External constraints that are often experienced by PPAT are checking Land Rights Certificates in The Land Office is said to take too long (30 days), this is due to the large number of checks land title certificate for APHT application, apart from that there is still data in the title certificate Deal with land that does not match the land book at the Land Office and must be measured again or replace the form, in the case of a certificate, a plotting of the area must be carried out to determine the land point The process for obtaining Mortgage Rights is quite long.



## 5. References

- A. P. Parlindungan, 2018, Pendaftaran Tanah di Indonesia (Bandung: Penerbit Mandar Maju)
- Andreas Albertus Andi Prajitno, 1996, Hukum Fidusia, (Malang: Selaras,), AP. Parlindungan, Komentor Undang-Undang Hak Tanggungan dan Sejarah Berlakunya, (Bandung: Mandar Maju)
- IG.Kartasapoetra,dkk, 1991, Hukum Tanah : Jaminan UUPA Bagi Keberhasilan Pendayagunaan Tanah, (Jakarta : Rhineka Cipta)
- Ismail, 2018, Manajemen Perbankan: Dari Teori Menuju Aplikasi, Kencana, Yogyakarta
- Kasmir, 2004, Dasar-Dasar Perbankan, (Jakarta: PT Raja Grafindo Persada)
- Zaeni Asyhadie dan Rahma Kusumawati, 2018, Jaminan di Indonesia: Kajian Berdasarkan Hukum Nasional dan Prinsip Ekonomi Syariah, PT Rajagrafindo Persada, Depok.
- Zainuddin, 2021, Metode Penelitian Hukum, Jakarta, Sinar Grafika
- Suyitno LS, 2007, Pejabat Pembuat Akta Tanah, Makalah disampaikan pada Kongres IV Ikatan Pejabat Pembuat Akta Tanah (IPPAT) dan Up Grading Refreshing Course, Surabaya, 30-31 Agustus-1 September)
- Usman, Rachmadi, 1999, Pasal-Pasal Tentang Hak Tanggungan Atas Tanah, (Jakarta: Djambatan)