

The Role of a Notary in Making a Deed of Power of Attorney to Charge a Mortgage on Land Collateral that Has Not Been Certified at Bank Jateng Purwodadi

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Abstract. *The presence of notaries is increasingly important for Indonesian society today whose economy continues to develop. People use notary services to provide legal certainty in the field of obligations and agreements. SKMHT is an abbreviation of Power of Attorney to Charge Mortgage Rights. This power of attorney is given by the mortgagee to the creditor as the recipient of the mortgage right to charge the mortgage right on the object of the mortgage right. This SKMHT is a special power of attorney that gives special authority to the creditor to charge the mortgage right. This letter must be made with a notarial deed or PPAT deed. The purpose of this study is to determine and analyze the role of Notaries in making a Deed of Power of Attorney to Charge Mortgage Rights on uncertified land collateral at Bank Jateng Purwodadi Branch. To determine and analyze the obstacles faced by Notaries and solutions in making a Deed of Power of Attorney to Charge Mortgage Rights on uncertified land collateral at Bank Jateng Purwodadi Branch. This research employs an empirical legal approach, and its specifications employ a descriptive analytical method with a qualitative approach. The data sources and types used in this study are primary data obtained from field studies using interviews. Secondary data are obtained from literature studies related to the theory of legal certainty and authority. Based on the results of the research that the role of the Notary in making the deed of Power of Attorney to Charge Mortgage Rights (SKMHT) against uncertified land collateral at Bank Jateng Purwodadi Branch in practice the Notary makes the SKMHT in accordance with Article 15 UUHT to bind the guarantee for uncertified lands that will be used as collateral, and has fulfilled as stipulated in Article 38 UUJN regarding the beginning of the Deed, the body of the Deed, and the closing of the Deed. The obstacles faced by the Notary in making the SKMHT deed against uncertified land collateral at Bank Jateng Purwodadi Branch are a). Inhibiting factors from the Bank, namely incomplete documents, b). Inhibiting factors from the Debtor, namely the problem of the amount of fees. c). Bad Credit. The solutions to overcome*

these obstacles are: a). Giving 7 working days to complete the documents from the Bank or customer. b). Negotiating costs with the Notary, c). The Bank's caution in providing credit.

Keywords : Documents; Complete; Mortgage; Working.

1. Introduction

The presence of notaries is increasingly important for Indonesian society today, as the economy continues to grow. People rely on notary services to provide legal certainty in the field of contracts and agreements. The undeniable fact is that along with economic growth and the proliferation of banking institutions, even in remote areas, the need for notaries as officials who can issue authentic deeds cannot be ignored. This means that the role of notaries for the state is essential and necessary to assist the state in both private law and state administration, particularly regarding legal certainty in the field of contracts and agreements.

Legal certainty is the lifeblood of economics, particularly regarding owners and users of capital. The complexity of work, issues, and risks involved require legal certainty through the presence of authentic notarized deeds.

A deed is a signed document containing information about events that form the basis of an agreement. Article 1867 of the Civil Code states: "Written evidence is provided in authentic writing or in private writing." Based on the provisions above, there are two types of deeds, namely deeds authentic and private deeds. Deeds made by a notary have an important role in creating legal certainty in every legal relationship, because notarial deeds are authentic, and are the strongest evidence in every case related to the notarial deed. The strength of a notarial deed as evidence lies in the unique character of the person who made it, namely the notary as a public official who is specifically authorized to make deeds.

Since the birth of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, a mortgage right on an object that is used as collateral in the form of land, hereinafter referred to as Mortgage Rights (HT), is a security right that is imposed on land rights which is an integral part of the land for the repayment of certain debts, which gives a priority position to certain creditors over other creditors. This means that Mortgage Rights are a form of debt repayment guarantee.³ Since the enactment of the Mortgage Law, it has been very significant in creating the unification of National Land Law, especially in the field of land security rights.

The preparation of SKMHT is not only assigned to a notary, but also to a PPAT in order to facilitate the provision of services to parties who require it. This is emphasized in Article 15 paragraph (1) of Law No. 4/1996 which states, among other things, that a Power of Attorney to Encumber Mortgage Rights must be

made with a Notarial deed or a PPAT deed. Based on these provisions, a notary has the authority to issue a SKMHT with a deed. This means that the SKMHT issued by the notary must be in the form of a deed, but in practice, the notary completes a form provided by the National Land Agency (BPN).

Grobogan Regency is a regency in Central Java. Its residents are entrepreneurs who regularly interact with banks to meet their capital needs and use Power of Attorney to Encumber Mortgage Rights (SKMHT) to disburse loans. Similarly, Bank Jateng's Purwodadi branch provides services to meet the community's banking needs to support the Grobogan community's economy.

In carrying out their daily duties as notaries, it turns out that it is not enough to just master and understand the science of law (notary), which is a jungle of knowledge, but they still have to be careful and have to find out a lot about the experiences of notaries who have had (legal) problems as a result of carrying out their duties as notaries-PPAT.

Based on the description above, the author is interested in trying to examine the problems in this research proposal by giving the title *The Role of Notaries in Making Deeds of Power of Attorney to Encumber Mortgage Rights on Uncertified Land Collateral at Bank Jateng Purwodadi Branch*.

2. Research methods

The research approach method used in this thesis is an empirical juridical approach method, namely research that focuses on individual or societal behavior in relation to the law.⁶ Legal research is conducted by examining library materials, which constitute secondary data and is also called library research. Empirical research is conducted by fieldwork, which constitutes primary data. The research used a descriptive analytical method with a qualitative approach. This approach aligns with the primary objective of the research, which is to describe and analyze the role of notaries in issuing SKMHT deeds for uncertified land collateral at Bank Jateng, Purwodadi Branch. The author conducted a descriptive analytical study aimed at analyzing the facts to obtain a general picture of the existing problems, analyzing and researching legal facts to find out the role of the notary in making the SKMHT deed for land collateral that has not been certified at Bank Jateng Purwodadi Branch.

3. Results and Discussion

3.1. The role of a notary in making a power of attorney deed to encumber mortgage rights on uncertified land collateral at Bank Jateng, Purwodadi Branch.

The notary at Bank Jateng Purwodadi Branch issues a Power of Attorney to Assign Mortgage Rights (SKMHT) after the loan agreement has been signed. The SKMHT serves as a guarantee of debt repayment from the debtor to the creditor, the

financier.

A Notary Public issues a SKMHT after or at the same time as the credit agreement is signed by the creditor and debtor. The SKMHT represents the debtor's transfer of ownership to the creditor, which can then be upgraded to an APHT. Some reasons for using a SKMHT include the land being used as collateral for the loan/credit not being registered with the local Land Office.

After the SKMHT deed has been read by the notary, it is then signed. a deed that shows that the SKMHT made was indeed agreed upon by the parties. The inclusion of the date, day, month and year in the making of the SKMHT indicates that there is a time limit for the parties, especially creditors as capital providers or authorized recipients, to pay attention to the time period regarding the validity period of the SKMHT which can then be extended by making an APHT at the request of the parties.

The SKMHT installation stage is carried out before a Notary and is carried out after there is a credit agreement as the main agreement that makes agreements between the parties regarding borrowing money by installing a Mortgage Right. The provisions of UUHT Article 15 paragraph (1) letter c state that there is an obligation to include: 1). Name and identity of the holder and provider of the Mortgage Right 2). Domicile of the holder and provider of the Mortgage Right. 3). Clear designation of the debt or debts whose payment is guaranteed by the Mortgage Right and also includes the name and identity of the debtor concerned. 4). The value of the mortgage. 5). A clear description of the object of the Mortgage Right, namely including details regarding the certificate of title to the land in question or for land that has not been registered, at least containing a description of the ownership, location, boundaries and area of the land.

In practice, a Notary makes a Power of Attorney to Grant Mortgage Rights (SKMHT) in accordance with Article 15 (4) UUHT, to bind collateral for uncertified land that will be used as collateral/security. A notary in carrying out his/her position must be able to act professionally based on a noble personality by always implementing the law while upholding his/her Professional Code of Ethics, namely the Notary Code of Ethics. Based on Article 16 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, it states that in carrying out his/her position, a notary is expected to act honestly, carefully, independently, impartially, and protect the interests of the parties involved in legal actions.

As public officials, notaries must be able to keep up with legal developments so that in providing their services to the public, they can help address and meet evolving legal needs and provide legally justified solutions. Therefore, notaries, in carrying out their duties, must be able to:

must comply with and be bound by existing regulations, namely the Notary Law,

the Civil Code, the Notary Code of Ethics and other legal regulations.

3.2. Obstacles faced by Notaries and solutions in making a Deed of Power of Attorney to Encumber Mortgage Rights on uncertified land collateral at Bank Jateng Purwodadi Branch.

The SKMHT preparation process, which begins before the credit agreement, continues with the signing of the loan agreement, and ultimately, the actual implementation of the SKMHT, is not always smooth sailing. Notaries sometimes encounter obstacles and challenges. These obstacles can come from the bank, the debtor, or other parties.

1) Inhibiting factors from the Bank.

Incomplete documentation is a challenge in obtaining a Mortgage Certificate (SKMHT), which is then upgraded to an APHT, which is then submitted for registration with the Land Agency. Gathering supporting documents is time-consuming, as registering a Mortgage Right at the Land Office requires more than just the deed itself; other supporting documents are also required, especially during the COVID-19 pandemic.

2) Inhibiting factors from the Debtor's side.

The problem of the amount of costs is a hindering factor for debtors when upgrading SKMHT to APHT where the certification process for objects that are collateral for SKMHT that have not been registered and if the process of conversion, division, merging of certificates, inheritance, sale and purchase, grants is carried out, is a number of processes that must be passed first before the collateral on the land is burdened into a Mortgage Right to the Land Agency Office. If a debtor wants to apply for credit to a bank with collateral for immovable goods in the form of land in large quantities, then automatically a Mortgage Right must be installed and the debtor is subject to Non-Tax State Revenue abbreviated as PNBP which must be paid to the state.

c) Bad Debt

Credit congestion caused by changes in economic conditions, of course debtors are reluctant to provide a new SKMHT if the old SKMHT has expired, because if the debtor is naughty, he can avoid his responsibility to repay his debt or try to delay the time.

3.3. Making of a Deed of Power of Attorney to Encumber Mortgage Rights by a notary and its practice on uncertified land collateral at Bank Jateng Purwodadi Branch.

Power of Attorney to Encumber a Deed made before a Notary must comply with what has been determined in Article 38 UUJN. In Article 38 UUJN paragraph 1 letters a and b regarding the beginning or head of the deed, the body of the deed,

and the head of the deed only contain information or that states the domicile of the Notary and the names of the parties who come or appear before the Notary and in Article 38 paragraph (2) UUJN the head of the deed contains the title of the deed, deed number, time, day, date, month, year, and the full name and domicile of the Notary.

4. Conclusion

Based on the author's research on the role of the financing institution PT. BFI Finance Semarang branch in meeting the transportation needs of the community, the author concludes as follows: The role of a Notary in making a deed of Power of Attorney to Encumber Mortgage Rights (SKMHT) against uncertified land collateral at Bank Jateng, Purwodadi Branch, in practice, the Notary makes the SKMHT in accordance with Article 15 of the UUHT to bind collateral for uncertified lands that will be used as collateral, and has fulfilled as stipulated in Article 38 of the UUJN regarding the beginning of the Deed, the body of the Deed, and the closing of the Deed. In general, the implementation of making the SKMHT by a Notary at Bank Jateng, Purwodadi Branch is after the credit agreement. SKMHT is a form of guarantee for debt repayment from the debtor to the creditor as the financing provider. The obstacles faced by Notaries in making SKMHT deeds for uncertified land collateral at Bank Jateng Purwodadi Branch are a). Inhibiting factors from the Bank, namely incomplete documents, b). Inhibiting factors from the Debtor, namely the problem of the amount of fees. c). Bad Debts. The solutions to overcome these obstacles are: a). Giving 7 working days to complete the documents from the Bank or customer. b). Negotiating fees with the Notary, c). The Bank's caution in providing credit. The making of the SKMHT deed by a Notary and its practice for uncertified land collateral at Bank Jateng Purwodadi Branch is made by the Notary following the form and format of Article 38 UUJN, even though the Land Office has a format for making SKMHT, namely following Perkaban Number 8 of 2012.

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