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Responsibilities Of Notaries/PPAT In Credit Agreements and Deeds of Granting Mortgage Rights (Apht) When the Debtor Is in Default

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Abstract. *In today's industrial era, credit is an integral part of everyday life. For both the wealthy and the less fortunate, credit is a solution to meet basic needs such as clothing, food, and shelter. One of the important credit principles is Collateral. In credit activities that occur in society, it can be seen that generally it is often required to submit credit collateral. Credit collateral will have several functions and one of them is to secure credit repayment if the Debtor defaults. Credit collateral has an important role in securing the return of bank funds. Land is one of the immovable objects that is often used as collateral for credit repayment. Collateral on land is often used to obtain credit facilities because land has a high economic value and always increases over time. Land rights as collateral in the agreement between the Creditor and the Debtor can be bound by using Mortgage Rights. The role and function of notaries/PPATs are important in assisting the government and other parties in need to provide certainty, order and legal protection in making authentic deeds and registering mortgages until the certificate is issued by the Land Agency.*

Keywords: *Agreement; Credit; Mortgage.*

1. Introduction

One of the government's programs in implementing equality in the economic sector is providing credit to the community so that they can channel financial capital in the form of capital (General Explanation of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998). It is hoped that the community, in this case business actors, can obtain business capital, which we often hear about through credit, either through government or private banks.[1]

Considering the importance of credit funds in the development process, it is appropriate that the credit provider and recipient as well as other related parties receive protection through a strong guarantee rights institution and can also provide legal certainty for all interested parties. The provision of credit to the

[1]Source: https://id.m.wikipedia.org/wiki/bank, Accessed April 19, 2021, at 14.59 WIB.

public through banking is certainly carried out with a credit agreement between the credit provider and the recipient so that a legal relationship occurs between the two, the credit agreement is usually made by the credit provider, namely the bank, while the debtor only studies it and understands it. However, this credit agreement should really need special attention from both parties because the credit agreement has a very important function in the provision, management and implementation because of the agreement between the two parties that we can call the debtor and creditor, because if the debtor signs the credit agreement which is considered binding on both parties and applies as a law for both.[2]

Seeing the position of the agreement in providing credit which is very important, the need for an authentic deed in every credit agreement is something that cannot be done by both parties, because this is because the authentic deed functions as evidence that certain legal acts have been carried out, for example regarding land rights, because the authentic deed is a means of evidence and to prove that a legal act has been carried out so that if something happens that is contrary to the law regarding the agreement contained in the deed, it will receive strong legal protection.[3]

After executing a credit agreement with land and building objects as collateral, it is usually immediately followed by the execution of the Deed of Encumbrance of Mortgage Rights (hereinafter referred to as "APHT") in accordance with Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

This mortgage is of a nature *accessories* or a supporting agreement, meaning that the debt guarantee agreement for the mortgage right does not stand alone because it is preceded by a principal agreement, namely a debt agreement. If the principal agreement is cancelled or cancelled, then the principal agreement automatically *accessories* becomes deleted as well. Then the authorized public official to make a deed of transfer of land rights as the author has described above, the form of which is determined as evidence of the carrying out of certain legal acts regarding land located in their respective work areas, as referred to above is the Land Deed Making Official (hereinafter referred to as "PPAT") in accordance with the applicable laws and regulations in his position as mentioned, then his deeds are referred to as authentic deeds[4]. The imposition of mortgage rights is carried out through two stages of activity, namely:

[2]Sutan Remy Sjahdeini, Mortgage Rights, Principles, Basic Provisions and Problems Faced by Banking (A Study of the Mortgage Law), (Bandung: Alumni, 1999), p. 26.
[3]USU-Medan Faculty of Law Business Law Study Institute, Preparation for the Implementation of Mortgage Rights in the Banking Environment, Bandung: Citra Aditya Bhakti, 1996, p. 5.
[4]J. Satrio, Law of Guarantee, Property Guarantee Rights, Mortgage Rights, Book 1, Bandung: Citra Aditya Bakti, 2002, pp. 92-93.

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a. The stage of granting Mortgage Rights, by making a Deed of Granting Mortgage Rights, which is preceded by a debt agreement before a Notary which becomes the basis for granting Mortgage Rights;

b. The registration stage by the Land Office, which is the time when the mortgage is born.[5]

In accordance with the regulation of the Head of the National Land Agency Number 1 of 2006 concerning the provisions of the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of Land Deed Making Officials ("KBPN Regulation No. 1 of 1996") on May 16, 1996, the above regulations can be a clear reference for PPAT in making deeds, especially in the scope of land, so as to avoid mistakes that can harm the interests of the parties. The burden of land rights which is the authority of PPAT, one of which is the making of a Deed of Granting Mortgage Rights (APHT) which will also be discussed in the case study in this writing. The importance of making a Deed of Granting Mortgage Rights (APHT) is as a basis for creditor guarantees, namely by imposing mortgage rights on the collateral object, this certainly protects the interests of the parties in this case the debtor and creditor and as legal certainty for the parties, as the right *preferred.* usually it contains several promises such as a promise of rent, a promise not to change the form and arrangement of the mortgage object, a promise of management, a promise to save, a promise of authority to sell, a promise not to clean, a promise not to relinquish rights, a promise of compensation, a promise of insurance, a promise to vacate, a promise to hold the land title certificate, a promise of ownership.[6]

Based on the description of the promises above, it can be concluded that the Deed of Granting of Mortgage Rights (APHT) seems to provide the broadest possible guarantee to the creditor/creditor to carry out all actions or actions if the debtor breaches the promise/*default,* Thus, if we look at Article 14 paragraph 3 of Law No. 4 of 1996 concerning Mortgage Rights, it states that:

"The mortgage certificate as referred to in paragraph 2 has the same executive power as a court decision which has permanent force and is valid as a substitute. *Gross* mortgage deed as long as it concerns land rights"

On the other hand, if we look at Article 28 H paragraph 4 of the 1945 Constitution, there are several promises that are actually very contradictory, this is where the role of the Notary in making a Credit Agreement must be able to explain as clearly

[5]Sudargo Gautama, Commentary on the New Mortgage Law of 1996 No. 4, Bandung: Citra Aditya Bakti, 1996, pp. 33-34.

[6]J. Satrio, Law of Guarantee, Property Guarantee Rights, Mortgage Rights, Book 2, Bandung: Citra Aditya Bakti, 1998, pp. 5-134.

as possible to the debtor before signing the Deed of Granting of Mortgage Rights (APHT).[7]

Notaries in carrying out their duties as Public Officials as regulated in Law Number 30 of 2004 concerning the Position of Notaries and Law Number 2 of 2012 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries which are specifically related to the making of Deeds are regulated in the provisions of Article 4 paragraph (2) and Article 16 paragraph (1) letter f of Law Number 2 of 2014 concerning the obligation of Notaries to maintain confidentiality of the deeds they make is to protect the interests of all parties related to the deeds they make. This is stated in the Explanation of Article 16 paragraph (1) letter f of Law Number 2 of 2012 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries as follows: “The obligation to keep confidential everything related to deeds and other documents are to protect the interests of all parties related to the deed. shout.”

Notaries must also be able to work together (helping and complementing each other) with the bank to issue a notarial deed that is required in a credit agreement that will be carried out by the bank or called the creditor.[8]In this case, there is an example of a case in Decision Number 1/Pdt.GS/2023/PN Ban which was motivated by a credit agreement through a debt statement letter dated July 28, 2020, when the debtor was deemed to have defaulted or failed to fulfill the obligation to pay credit installments to the BRI Bantaeng Branch Bank, with this decision, the guarantee was executed.

Based on the description above, the author intends to compile a writing regarding authentic deeds made by Notaries and Deeds of Granting Mortgage Rights made by Land Deed Making Officials (PPAT) by taking the title "RESPONSIBILITIES OF NOTARIES/PPAT IN CREDIT AGREEMENTS AND DEEDS OF GRANTING MORTGAGE RIGHTS (APHT) WHEN THE DEBTOR IS IN DEFAULT".

2. Research Methods

The method used in this research is a sociological juridical approach. The sociological juridical approach is an approach that looks at legal realities in society.[9] The research specifications used are descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories, then collected through data that is collected, processed, and arranged according to existing theories to obtain problem solving in accordance with applicable

[7]Sudargo Gautama, Commentary on the New Mortgage Law of 1996 No. 4, Bandung: Citra Aditya Bakti, 1996, pp. 33-34.
[8]J. Satrio, Law of Guarantee, Property Guarantee Rights, Mortgage Rights, Book 1 Bandung: Citra Aditya Bakti, 2002, p. 21.
[9]Soejorno Soekanto. (1998). Introduction to Legal Research. Jakarta: UI Press. P. 51.

provisions.[10]And this research uses primary data and secondary data as legal materials.

3. Results and Discussion

3.1. TResponsibilities of Notaries/PPAT in Credit Agreements and the Preparation of Deeds of Granting Mortgage Rights (APHT) When the Debtor Defaults

The results of the research related to the Responsibilities of Notaries/PPAT in Credit Agreements and the Making of Deeds of Granting Mortgage Rights when the Debtor is in Default at the Notary/PPAT Office of Demak Regency, the researcher analyzed that Based on Article 1 Number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary:

"A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws."

BeBased on Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary: Notaries are authorized to make authentic deeds regarding all actions, agreements, and determinations required by statutory regulations and/or desired by the interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copies and extracts of the deed, all of which are as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law. In this case, in accordance with the authority as referred to in paragraph (1), the Notary is also authorized: To validate signatures and determine the certainty of the date of private letters by registering them in a special book; To make copies of the original private letters in the form of copies containing descriptions as written and described in the relevant letter; To validate the suitability of photocopies with the original letter; To provide legal counseling in connection with the making of deeds; To make deeds related to land; To make auction minutes deeds. Apart from the authority as referred to in paragraph (1) and paragraph (2), a Notary has other authority as regulated in statutory regulations.

According to the Notary/PPATDr. Al Halim, SH, M.Kn., MH and Notary/PPAT Ida Widiyanti, SH., S.Pi. have almost the same opinion, namely that Notary/PPATmust carry out his duties in accordance with applicable laws and regulations and is prohibited from deviating from applicable regulations.[11]In this case, Notary/PPATDr. Al Halim, SH, M.Kn., MHin Semarang has carried out duties in accordance with the authority regulated in Article 15 of Law Number 2 of 2014

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[10]Sri Sumawarni, A Series of Legal Research Methods, UPT UNDIP Press, Semarang, 2012, p.6.
[11]Interview with Notary/PPAT ASKANAH, SH., M.Kn, on September 23, 2021 and ABDUL ZAEN, SH., M.Kn on September 24, 2021

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concerning Amendments to Law Number 30 of 2014 concerning the Position of Notary.

In the credit agreement deed, the contents referred to in it are of course an agreement made between the bank as the creditor and the credit recipient as the debtor, the matters that will be included in this credit agreement are certainly matters that concern the interests of the parties only, according to the agreement and the main issues desired and agreed upon by the parties. This credit agreement also needs to receive special attention, because the credit agreement has a very important function, in the provision, management and administration of the credit itself.

A credit agreement serves as the principal agreement. This means that it determines whether or not other subsequent agreements, such as a collateral agreement, are void. The Credit Agreement also serves as evidence regarding the limits of rights and obligations between creditors and debtors, and functions as a tool for credit monitoring. Next BeBased on Article 1 Number 1 of Government Regulation of the Republic of Indonesia Number 24 of 2016 Amendment to Government Regulation Number 371998 AboutRegulationsn PositionLand Deed Making Officer"OfficialLand Deed Maker, hereinafter referred to asPPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.

BeBased on Article 2 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials: "PPAT is primarily responsible for carrying out some land registration activities by making deeds as evidence of certain legal acts regarding land rights or Ownership Rights for Apartment Units which will be used as the basis for registering changes to land registration data resulting from the legal act. Legal acts as referred to in paragraph (2) are as follows; Sale and purchase; Exchange; Grant; Inclusion into the company (inbreng); Distribution of joint rights; Granting of Building Use Rights/Use Rights on Land Ownership Rights; Granting of Mortgage Rights, Granting of Power of Attorney to encumber Mortgage Rights. Seeas a Land Deed Official (PPAT), Notary/PPATDr. Al Halim, SH, M.Kn., MHin Semaranghas also made and ratified the Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) for the Credit Agreement deed between the Debtor and the Creditor for the credit that will be burdened with mortgage rights. The Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) can be used by the Creditor as evidence in making the Deed of Granting Mortgage Rights (APHT) by the Land Deed Making Officer (PPAT) without the presence of the Debtor to appear where necessary to provide information and show and submit the requested letters, make/request to be made and sign the Deed of Granting Rights and other necessary letters, choose the domicile, give a statement that the object of the Mortgage Right truly belongs to the Principal, is not involved in a dispute, is free from encumbrances and from any burdens, registers the Mortgage Right, provides and agrees to the terms or regulations and promises agreed to by the Debtor as the Principal in the Deed of Granting Mortgage Rights.

In this case, the Land Deed Making Officer (PPAT) registers the mortgage rights for the Deed of Granting of Mortgage Rights (APHT) at the Land Office in the Semarang City area, namely the Semarang City National Land Agency Office, thus fulfilling the Publicity Principle according to Article 13 of Law No. 4 of 1996 concerning Mortgage Rights. Mortgage Rights registration is carried out a maximum of 7 days after the creation of the Deed of Granting of Mortgage Rights (APHT). In the credit agreement deed and the Deed of Granting of Mortgage Rights, according to Notary/PPAT Ida Widiyanti SH, S.Pi, the responsibility of the Notary/PPAT is limited to fulfilling the composition of the deed as determined in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, and the contents do not conflict with the values of truth, propriety and law, namely:[12]

1) That what is stated by the notary in the credit agreement deed is true and can be accounted for.

2) That it is true that the credit agreement deed was signed on that day (date, month and year) and at the time stated in the credit agreement deed.

3) That it is true that the parties/companies appeared before a notary.

4) That it is true that the person who signed the credit agreement deed is the person whose name is listed in the composition.

5) That the contents of the credit agreement are truly desired by the parties.

Notaries/PPAT cannot be held responsible if there is a default by either party, whether from the bank as creditor or the loan recipient as debtor, there is only responsibility in their position, namely as far as the credit agreement deed and the Deed of Granting of Mortgage Rights made before a Notary/PPAT.

3.2 The Position of the Credit Agreement Deed and the Deed of Granting of Mortgage Rights in the Event of Debtor Default

An agreement is an event where someone promises to bind themselves to another person, the agreement contains promises that have previously been agreed or agreed upon by the parties involved, namely in the form of rights and obligations attached to the parties who made it in written or oral form. The most important thing is the validity of an agreement, if the agreement is declared valid then the agreement can be implemented by both parties, but if an agreement is said to be

[12]Interview with Notary/PPAT ABDUL ZAEN, SH., M.Kn on September 24 2021

invalid then the agreement is declared null and void by law. An agreement is said to be valid if it meets the conditions referred to in Article 1320 of the Civil Code, which states that:

1. Agreement between both parties.
2. Ability to make agreements.
3. Something specific.
4. Halal reasons

According to Notary/PPAT Ida Widiyanti SH, S.Pn., a credit agreement is an agreement that precedes a debt agreement (replacement loan agreement).[13]This credit agreement is a principal agreement and is consensual in nature (*pactade contrahendoobligatoir*) accompanied by an agreement between the lender and the borrower regarding the legal relationship between the two.[14]Without a credit agreement signed by the bank and the debtor, there is no credit agreement. According to Notary/PPAT Dr. Al Halim, SH, M.Kn., MH, a credit agreement is a legal bond or relationship between the debtor (debtor) and the creditor (lender) whose contents regulate the rights and obligations of both parties, here the debtor is the party submitting the credit agreement in this case is the customer, while the creditor in this credit agreement is the bank, namely the party that receives the credit application from the party submitting the credit (debtor).[15]

The existence of a collateral binding in a credit agreement has the function of giving the bank the right and power to obtain repayment with the collateral if the customer defaults, namely being unable to repay the debt at the time specified in the agreement. Apart from that, it also ensures that customers play a role and/or participate in the financed transactions so that the possibility of customers leaving their business to the detriment of themselves or their company can be prevented, or at least the possibility of doing so can be minimized.

The function of binding collateral also encourages customers to fulfill credit agreements, especially regarding repayment (settlement) in accordance with the agreed conditions so that customers do not lose the assets that have been pledged to the bank.

The Credit Guarantee Binding Agreement in the collateral in a credit agreement in the form of land as the object of the Mortgage Right is commonly known as the Deed of Mortgage Right (APHT) which is an additional agreement (accessoir) of the main agreement. The nature of this additional agreement of the Deed of Mortgage Right (APHT) is that it follows the main agreement (in this case, it follows the credit agreement). The consequence is that if the main agreement of the credit

[13]*Ibid*
[14]Mariam Darus Badrulzaman, Bank Credit Agreement, PT Citra Aditya Bakti, Bandung, 1991, p. 23
[15]Interview with Notary/PPAT ASKANAH, SH., M.Kn on September 23, 2021

agreement is canceled, the additional agreement of the Deed of Mortgage Right (APHT) will also be canceled. The Deed of Granting of Mortgage Rights (APHT) regulates the terms and conditions regarding the granting of Mortgage Rights from the debtor to the creditor in connection with the debt secured by the Mortgage Right. This granting of rights is intended to give the creditor in question (preferred creditor) a priority position over other creditors (concurrent creditors).

In Article 1 paragraph 1 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, namely:[16]

"Mortgage Rights on Land and Objects Related to Land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, including or not including other objects that are an integral part of the land, for the repayment of certain debts, which give a priority position to certain creditors over other creditors."

So, the Granting of Mortgage Rights is as a guarantee of debtor's debt repayment to the creditor in connection with the relevant credit agreement so that if the debtor defaults, it is worth worrying, that the debtor's business is not doing well so that his attention to his property, including collateral given by him to the creditor, so that the bank has first sought a solution by means of deliberation, then if deliberation to reach a consensus cannot be resolved, the settlement of debts by using Article 6 of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, namely which reads:[17]

"If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object at his own discretion through a public auction and to take payment of his receivables from the proceeds of the sale."

Therefore, with this article, both deeds, namely the Credit Agreement deed drawn up by a Notary and the Deed of Granting of Mortgage Rights (APHT) drawn up by a Land Deed Making Official (PPAT), remain binding on the parties, and these deeds can be used as evidence for creditors to sell collateral through an execution auction in collaboration with the State Assets and Auction Services Office (KPKNL). The proceeds from the auction are then used to pay off the debtor's debt.

4. Conclusion

Based on the data obtained and the research results that have been studied, the following conclusions can be drawn: In a Credit Agreement with Collateral in the Form of Mortgage. Responsibilities of Notaries/PPAT in Credit Agreements with Mortgage Guarantee. In this case, Notaries in Semarang play a role in making and validating authentic deeds in Credit agreements and have carried out their roles

[16]Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.
[17]*Ibid*

and duties as Notaries. The Land Deed Official (PPAT) in Semarang is authorized to prepare and validate a Deed of Power of Attorney to Assign Mortgage Rights (SKMHT) as evidence in the preparation of a Deed of Assignment of Mortgage Rights (APHT) that cannot be attended by the Debtor. The Debtor authorizes the Creditor to represent him in the preparation of the Deed of Assignment of Mortgage Rights (APHT). Meanwhile, the Land Deed Making Officer (PPAT) in Semarang is also tasked with granting Mortgage Rights by making and validating the Deed of Granting Mortgage Rights as evidence that the Credit Agreement has been bound by the Mortgage Rights. After the Deed of Granting Mortgage Rights is completed, it is continued with the registration of the Mortgage Rights at the National Land Office by the Land Deed Making Officer (PPAT). Within a maximum of 7 days, the Land Deed Making Officer (PPAT) registers the APHT at the National Land Agency office of Demak Regency to issue a Mortgage Rights Certificate. In this case, the Land Deed Making Officer has fulfilled the Principle of Publicity according to Article 13 of Law No. 4 of 1996 concerning Mortgage Rights. The certificate contains the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". Furthermore, the Certificate issued by the National Land Agency which has been burdened with Mortgage Rights is submitted to the Creditor as the Mortgage Rights Holder. Thus, the Credit Agreement with Mortgage Guarantee at the Notary/PPAT Office in Semarang is in accordance with the Justice Perspective that in making an agreement it should be done in writing and there is a guarantee/collateral as a guarantor of credit repayment. The credit agreement that has been agreed between the Debtor and the Creditor must be stated in written form. In this case, the Credit agreement must be stated in written form with an Authentic Deed/Notarial Deed. To guarantee the repayment of the credit, this Credit agreement is implemented by submitting a guarantee. The object of the agreement is an immovable object, namely land rights. Land rights can be bound by using a Mortgage Right. The Credit Agreement is made in writing and has been agreed between the Debtor and the Creditor. Next is the making of a Deed of Power of Attorney to Encumber Mortgage Rights (SKMHT) which is legalized by a Notary/PPAT in accordance with Article 15 of Law No. 4 of 1996 concerning Mortgage Rights. The subject of the agreement is the Debtor as the Mortgage Grantor and the Creditor as the Mortgage Holder. The Deed of Power of Attorney to Encumber Mortgage Rights (SKMHT) is a power of attorney made by the Debtor to give power to the Creditor in making a Deed of Granting Mortgage Rights (APHT) before the Land Deed Making Officer (PPAT). This is because the Debtor cannot be present with the Creditor to meet the Land Deed Making Officer (PPAT) to make the Deed of Granting Mortgage Rights (APHT). The Power of Attorney to Encumber Mortgage Rights (SKMHT) states that the Creditor represents the Debtor to provide information and sign the Deed of Granting Mortgage Rights (APHT). The creditor comes to the Land Deed Making Officer (PPAT) by attaching the Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) following the making of the Deed of Granting Mortgage Rights (APHT) which has been signed by the Debtor as proof that the Credit Agreement has been bound by the Mortgage Rights. The Deed of Mortgage Rights Charge (APHT) contains the rules or promises that have been agreed upon between the Debtor and the Creditor which have been agreed upon in the Credit Agreement and do not conflict with statutory regulations. In this case, the PPAT in Semarang has fulfilled the Specialist principle in accordance with Article 11 paragraph (1) of Law No. 4 of 1996 concerning Mortgage Rights.

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