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Responsibility of Notary/PPAT for Deeds of Granting Mortgage Rights that Are Void Law Due to Formal Defects Case Study of Supreme Court Decision Number 3232 K/PDT/2017

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Abstract. *The Deed of Granting of Mortgage Rights (APHT) is an important instrument in the imposition of Mortgage Rights which gives a priority position to the creditor. The validity of the APHT is largely determined by the fulfillment of formal requirements in its preparation. Formal defects can cause the APHT to lose its authentic force or even be null and void by law, so that the Mortgage Rights are not created and the creditor can lose its preferential position. This study aims to analyze the responsibility of Notaries/PPATs towards APHTs that are null and void by law due to formal defects, obstacles in granting Mortgage Rights, and analyze the Supreme Court Decision Number 3232 K/Pdt/2017. The research method used is normative juridical with a statutory, conceptual, and case approach. Legal materials are obtained through literature studies and analyzed descriptively-qualitatively. The results of the study indicate that Notaries/PPATs can be held accountable civilly, administratively, and criminally if proven to have committed errors, negligence, or deliberate actions that cause formal defects in the APHT and cause losses. Obstacles in granting Mortgage Rights include incomplete documents, low legal understanding of the parties, time constraints, issues of authority and work area, land administration constraints, the HT-el system, weak supervision, and pressure in banking practices. Supreme Court Decision Number 3232 K/Pdt/2017 shows that legal defects in the basis for acquiring land rights can impact the Mortgage Rights imposed on it. Therefore, it is necessary to apply the principles of prudence, professionalism, supervision, and improve the competence of Notaries/PPAT.*

Keywords: *Defects; Law; Mortgage; Responsibility Void.*

1. Introduction

Sustainable national development requires legal certainty and protection in all societal activities, particularly in the economic sector. One legal instrument that

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plays a crucial role in providing certainty in debt-receivable relationships is the institution of collateral. In this case, a Mortgage is a collateral encumbered by land rights and related objects to guarantee the repayment of certain debts and provide priority to the creditor holding the Mortgage.[1]Regulations regarding Mortgage Rights are specifically contained in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

The implementation of the Mortgage Right assignment is inseparable from the role of the authorized official in drafting the deed. The Deed of Granting of Mortgage Right (APHT) is a crucial instrument in the Mortgage Right assignment process and must be prepared in accordance with statutory provisions.[2]As an authentic deed, an APHT must meet formal requirements, including the form of the deed, the identities of the parties, the presence of the parties, the signing procedure, and the authority of the official who prepared it. Fulfilling these requirements is crucial because it directly impacts the deed's validity and evidentiary value.

Problems arise when formal defects occur in the preparation of an APHT, causing the deed to lose its authenticity or even be declared null and void. Formal defects can occur due to errors in the identification of the parties, inconsistencies in the object of the Mortgage Right, violations of the authority of the deed-making official, errors in important clauses, or failure to meet the requirements for the presence and signing of the parties. If these defects are fundamental, the legal consequences can affect the validity of the APHT and the overall mechanism for encumbrance of the Mortgage Right. This condition demonstrates the importance of applying the principle of caution at every stage of deed preparation.

The cancellation of an APHT due to formal defects not only impacts the deed itself, but also the creditor's legal standing. If the mortgage is not legally established, the creditor may lose its preferred position and ultimately become only a concurrent creditor.[3]This situation can lead to financial losses because the object originally intended as collateral cannot be optimally used to repay the debt through the Mortgage Right (APHT) mechanism. Therefore, the validity of an APHT is closely related to legal certainty, creditor protection, and the effectiveness of the collateral institution.[4]

In carrying out their duties, Notaries/PPATs are responsible for ensuring that the deeds they create comply with legal requirements, both in terms of authority, form, and procedures. This responsibility becomes increasingly important because deeds created by authorized officials serve as evidence that provides legal

[1]Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.
[2]Urip Santoso, Agrarian Law: A Comprehensive Study (Jakarta: Kencana, 2017), p. 325.
[3]Boedi Harsono, Indonesian Agrarian Law: History of the Formation of UUPA, Contents and Implementation (Jakarta: Djambatan, 2008), p. 416.
[4]Sutan Remy Sjahdeini, Mortgage Rights: Principles, Basic Provisions and Problems Faced by Banking (Bandung: Alumni, 1999), p. 53.

certainty for the parties. If there is negligence in fulfilling formal requirements, resulting in the APHT being defective and causing losses, this issue can have implications for the Notary/PPAT's legal liability. This liability can include civil, administrative, and, in certain circumstances, criminal aspects if there is an element of intent or an act that fulfills the elements of a criminal act.

The issue of Notary/PPAT's responsibility for formally flawed APHTs is also related to the oversight mechanism for the implementation of the Notary/PPAT's office. In practice, disputes regarding the cancellation of APHTs can arise when errors or negligence are found in the deed-making process. This situation demonstrates the need to strengthen the principles of prudence, professionalism, and supervision of the implementation of Notary/PPAT's authority. In addition, Creditors and Debtors, as parties interested in APHTs, have the right to obtain legal certainty and protection so that the deed can provide legal benefits as intended.

Based on the above description, research on the responsibility of Notaries/PPATs towards Deeds of Granting Mortgage Rights that are legally void due to formal defects is important to be conducted. This research is directed at analyzing the limits and forms of legal responsibility of Notaries/PPATs, obstacles in the implementation of granting Mortgage Rights, and the legal consequences of APHTs that experience formal defects by reviewing Supreme Court Decision Number 3232 K/PDT/2017. This study is expected to contribute to the development of notarial science while providing an understanding of the importance of fulfilling formal requirements, applying the principle of prudence, and increasing the professionalism of Notaries/PPATs in providing certainty and legal protection to the parties.

2. Research Methods

1) Approach Method

a. Statute Approach**,**by reviewing the provisions of laws and regulations relating to the responsibilities of NOTARIES/PPATs, authentic deeds, Deeds of Granting Mortgage Rights (APHT), and Mortgage Rights, including the Civil Code, the Law on the Position of NOTARIES/PPATs, the Mortgage Rights Law, and related land regulations.

b. Conceptual Approach**,**by examining the concepts, theories and legal doctrines relating to authentic deeds, the authority and responsibilities of NOTARIES/PPATs, formal defects and nullity by law

c. Case Approach**,**by analyzing the Supreme Court Decision Number 3232 K/PDT/2017 as the main object of research as well as other court decisions relevant to the problem of the cancellation of APHT and the responsibility of NOTARIS/PPAT.

2) Research Specifications

The research specifications used are descriptive analytical, namely research that describes and analyzes legal provisions regarding the responsibility of NOTARIES/PPATs towards APHTs that are legally void due to formal defects, obstacles in granting Mortgage Rights, and legal consequences arising based on the provisions of laws and regulations and Supreme Court Decision Number 3232 K/PDT/2017.

This research is aimed at analyzing the relationship between normative provisions regarding the authority and obligations of NOTARIES/PPATs with the formal requirements of APHT and the legal consequences if these requirements are not met.

3) Data Collection Method

The data used in this research is secondary data obtained through library research, which consists of:

a. Primary legal materials,includes laws and regulations related to research, namely Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of NOTARY/PPAT, Law Number 4 of 1996 concerning Mortgage Rights, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services, the Civil Code, and Supreme Court Decision Number 3232 K/PDT/2017.

b. Secondary legal materials, in the form of books on notarial law, civil law, agrarian law, evidence law, legal journals, scientific articles, as well as expert opinions related to the responsibilities of NOTARIES/PPATs, authentic deeds, Mortgage Rights, and formal defects in deeds.

c. Tertiary legal materials,in the form of legal dictionaries, legal encyclopedias, the Big Indonesian Dictionary, and other sources used to provide explanations of primary and secondary legal materials.

The collection of legal materials was carried out through literature studies, document studies, electronic journals, court decision documents, and laws and regulations related to the research object.

4) Data Analysis Methods

The legal materials obtained were then analyzed using descriptive-qualitative methods. The analysis was conducted by inventorying and classifying the legal materials according to the research problem, then interpreting the relevant legal provisions.

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Legal interpretation is carried out through grammatical, systematic, historical and teleological interpretation, which is then linked to theory, doctrine, legal principles and Supreme Court Decision Number 3232 K/PDT/2017.

The results of the analysis are then used to compile legal arguments and draw prescriptive conclusions as an answer to the problem formulation regarding the responsibility of NOTARIES/PPATs towards APHTs that are legally void due to formal defects, obstacles in granting Mortgage Rights, and legal consequences based on Supreme Court Decision Number 3232 K/PDT/2017.

3. Results and Discussion

3.1. Responsibility of Notaries/PPAT for Deeds of Granting Mortgage Rights that are Void by Law Due to Formal Defects

The results of the study show that the responsibility of the Notary/PPAT in making the Deed of Granting Mortgage Rights (APHT) is not only related to making the deed administratively, but also includes the obligation to ensure that the legal requirements that determine the validity of the deed are met.[5]Notaries/PPAT as public officials are authorized based on statutory regulations to make authentic deeds, so that APHT must be made in accordance with the provisions of the Notary Law (UUJN), the Mortgage Law (UUHT), and civil law provisions.

The validity of an APHT is essentially determined by the fulfillment of the official's authority, the form of the deed, and the procedure for making the deed. Article 1868 of the Civil Code places the authority of public officials and the form specified by law as essential elements of an authentic deed.[6]In its implementation, the Notary/PPAT is also obliged to comply with provisions regarding the reading of the deed, the presence of witnesses, signing, the identities of the parties, and the form of the deed. Ignoring these requirements can cause the APHT to lose its authenticity and, in certain circumstances, render it legally void.[7]

Formal defects in an APHT can include discrepancies in the identities of the parties, the absence of a witness, the deed not being read out in the presence of the parties, signing that is not carried out according to procedure, or errors regarding the object of the Mortgage Right. These defects indicate a failure to comply with the formalities required by notarial law and the law of evidence. Therefore, the principle of prudence is an essential part of the performance of the Notary/PPAT's duties to ensure that every APHT drawn up truly meets legal requirements.

The legal consequences of a null and void APHT are significant for creditors. A null and void APHT cannot form the basis for the creation of a Mortgage Right, and therefore, the Mortgage Right is deemed never to have existed. Consequently, the

[5]Habib Adjie, Indonesian Notary Law (Bandung: Refika Aditama, 2018), p. 87.
[6]R. Subekti, Law of Evidence (Jakarta: Pradnya Paramita, 2015), p. 27.
[7]Civil Code, Article 1868.

creditor loses its preferred position as the holder of the collateral and becomes a concurrent creditor. This situation can result in losses because the land object, originally intended as collateral, no longer provides the protection intended in the UUHT.

Based on Hans Kelsen's theory of legal responsibility, legal responsibility arises when there is a relationship between the actions of the legal subject and the legal consequences that arise.[8]Therefore, the cancellation of an APHT does not automatically render the Notary/PPAT liable. Liability must be linked to any errors or negligence in carrying out the authority and duties of the position, as well as any losses that are causally related to the error.

This liability can take the form of civil, administrative, and criminal liability. Civil liability can arise if the negligence or error of a Notary/PPAT causes harm to another party. Administrative liability relates to violations of official obligations and professional regulations, while criminal liability can only be applied if the act fulfills the elements of a criminal offense, such as intent or forgery. Therefore, the liability of a Notary/PPAT must be based on the level of error and the resulting legal consequences, not solely on the fact that the deed is later declared problematic.

From a legal protection perspective, parties who are harmed due to the cancellation of the APHT receive preventive and repressive protection.[9]Preventive protection is implemented through the application of precautionary principles, identity and document verification, and compliance with all APHT (Deed of Property) preparation procedures. Meanwhile, repressive protection can be implemented through civil lawsuits, administrative complaints, and other legal processes if violations are found. Therefore, the responsibility of a Notary/PPAT serves as an instrument to ensure certainty, order, and legal protection for all parties.[10]

3.2. Obstacles for Notaries/PPAT in Granting Mortgage Rights

The research results show that the implementation of Mortgage Rights through APHT faces various obstacles. These obstacles include legal, administrative, technical, sociological, and technological aspects. These obstacles can affect the validity of APHT if not addressed through the application of the principles of prudence and professionalism.

The first obstacle is incomplete documents and data from the parties. In practice, documents such as land title certificates, the parties' identities, the consent of the husband and wife, and other supporting documents are sometimes incomplete.

[8]Hans Kelsen, General Theory of Law and State, translated by Raisul Muttaqien (Bandung: Nusa Media, 2011), p. 95.
[9]Philipus M. Hadjon, Legal Protection for the People in Indonesia (Surabaya: Bina Ilmu, 1987), p. 25.
[10]Soerjono Soekanto, Factors Influencing Law Enforcement (Jakarta: Rajawali Pers, 2014), p. 8.

This situation places notaries/PPATs in the position of having to choose between complying with the principle of prudence or facing demands for accelerated credit processing from banks and debtors. If the APHT is still prepared with incomplete or inaccurate documents, the risk of formal defects increases.

Another obstacle is the parties' inadequate understanding of the legal consequences of APHT. Lack of understanding of the importance of accurate identity, complete documents, and the presence of all parties can hinder the APHT process. Furthermore, administrative obstacles can arise during the certificate verification and mortgage registration process at the Land Office.[11]Technical obstacles are also related to time constraints, workload, and accuracy in verifying data.

The development of the Electronic Mortgage Rights (HT-el) system also presents its own challenges. Obstacles can include system disruptions, errors in document uploads, and digital data inconsistencies. Therefore, the transformation of electronic land services requires not only system readiness but also the competence of Notaries/PPATs in ensuring the consistency of physical documents and electronic data.

In addition to these factors, there is also pressure from banks to expedite the loan disbursement process. This pressure has the potential to impact the time available for notaries/PPATs to conduct thorough inspections and verifications. Notaries/PPATs are required to remain independent, honest, thorough, and impartial. Therefore, demands for expedited service cannot be used as an excuse to ignore the formal requirements of the APHT.

3.3. Analysis of Supreme Court Decision Number 3232 K/Pdt/2017

Supreme Court Decision Number 3232 K/Pdt/2017 shows that there is a relationship between the validity of the deed which is the basis for the transfer of land rights and the existence of the Mortgage Right which is then imposed on the object.[12]If the deed that is the basis of land rights is declared legally defective and does not have binding force, then the Mortgage Rights imposed based on these rights also face problems regarding their validity.

This case demonstrates that legal flaws in a series of land legal acts can have cascading legal consequences. Flaws in the initial legal act can impact subsequent deeds and ultimately the collateral imposed on the land. Therefore, the validity of an APHT cannot be viewed separately from the validity of the land rights that constitute the subject of the Mortgage Right.

In the context of PPAT accountability, the ruling provides an understanding that

[11]Regulation of the Minister of ATR/BPN Number 5 of 2020 concerning Electronically Integrated Mortgage Rights Services.
[12]Decision of the Supreme Court of the Republic of Indonesia Number 3232 K/Pdt/2017.

PPATs are obligated to ensure that the deeds they draw up meet legal requirements, both materially and formally. However, this responsibility does not mean that PPATs must guarantee the complete truth of all material information provided by the parties. PPATs remain responsible for audits within their scope of authority and are required to carry out their duties in accordance with legal provisions, with accuracy, prudence, and professionalism.

Thus, the research confirms that the cancellation of an APHT does not automatically result in a Notary/PPAT being held liable. Liability can only be imposed if it can be proven that there was an error or negligence in carrying out the authority of the office that resulted in a defective deed and caused losses to the interested parties. Conversely, if the Notary/PPAT has followed the procedures in accordance with legal provisions and there was no error in the performance of their duties, then liability cannot be imposed simply because the deed subsequently gave rise to certain legal consequences.

Overall, this study found that legal protection for Creditors and Debtors in the imposition of Mortgage Rights is highly dependent on the quality and validity of the APHT. Therefore, the principle of prudence, verification of documents and identity, compliance with procedures, independence, and improving the competence of Notaries/PPAT are the main steps to prevent formal defects and ensure that Mortgage Rights provide certainty and legal protection as appropriate. These findings are in line with the conclusion of the study that the responsibility of Notaries/PPAT can include civil, administrative, and criminal aspects according to the form of proven error.

4. Conclusion

Based on the results of the research and discussion, it can be concluded that the responsibility of the Notary/PPAT for the Deed of Granting of Mortgage Rights (APHT) which is null and void due to formal defects arises if there is proven error or negligence in the implementation of the authority and obligations of his position which causes the deed to not meet legal requirements and cause losses to the parties. Formal defects such as the absence of the parties, mistaken identity, failure to read or sign according to procedure, and exceeding authority can cause the APHT to lose its authenticity or even be null and void, so that the Mortgage Rights are considered never born and the Creditor can lose its preferential position. The responsibility of the Notary/PPAT can be in the form of civil, administrative, and criminal liability according to the level of proven error. The obstacles in granting Mortgage Rights include incomplete documents, data discrepancies, administrative and technical obstacles, low legal understanding of the parties, pressure to accelerate the credit process, and obstacles in the use of the Electronic Mortgage Rights (HT-el) system. Based on these conclusions, it is recommended that Notaries/PPATs always apply the principles of caution, accuracy, independence, and professionalism in every stage of APHT preparation, especially in verifying identity, examining documents, ensuring the presence of the parties, reading and signing the deed, and ensuring the data conforms to the Mortgage Right object. The government and related agencies, especially the Ministry of ATR/BPN, need to continue to improve the quality of the land administration system and e-HT and coordinate with the Land Office, banks, and Notaries/PPATs. In addition, supervision and guidance for Notaries/PPATs need to be improved, while the public needs to be more careful in providing information and submitting documents so that all data used in APHT preparation is complete, correct, and in accordance with the actual situation.

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