

A Juridical Review of the Role of Land Deed Officials (PPAT) in the Implementation of the Deed of Mortgage Rights

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Abstract

This research aims to analyze the juridical review of the role of Land Deed Officials (PPAT) in the implementation of the deed of mortgage rights. The study seeks to determine the position of Land Deed Officials (PPAT) in the execution of mortgage deeds and to identify the challenges encountered as well as the methods to overcome these obstacles in the process of mortgage rights imposition. The research adopts a socio-legal approach, utilizing data from both field research (interviews) and literature studies. Data analysis is conducted systematically, including data reduction, data presentation, and drawing conclusions. The findings conclude that the role of Land Deed Officials (PPAT) in the imposition of mortgage rights is to mediate between the interests of the debtor and the creditor, ensuring that both parties achieve a sense of justice, benefit, and legal certainty in securing mortgage rights. One of the challenges faced by PPAT in the implementation of mortgage rights is that some banks still allow the imposition of mortgage rights on unregistered land, a practice that carries significant risks.

Keywords: Juridical Review, Role of Land, Deed Officials

A. Introduction

In credit transactions, a guarantee or collateral is essential, and it cannot simply rely on the debtor's social standing or reputation. According to legal provisions, various forms of collateral agreements exist, necessitating a thorough understanding of the different types and the manner in which they are secured. These include mortgage rights, fiduciary, pledge, and others. Collateral law is closely linked with property law and banking law. In the banking sector, this connection is reflected in the role of banks as financial intermediaries that collect and distribute public funds, with one of their functions being the provision of credit. Among the securities used in banking credit, mortgage rights serve as a primary guarantee. This guarantee typically involves land rights and other objects associated with the land, which are used as collateral for debt repayment.

According to Article 1, Paragraph 1 of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (referred to as the "Mortgage Law"), mortgage rights on land and objects related to land constitute a security right imposed on land rights as specified in Law No. 5 of 1960 on Basic Agrarian Principles (referred to as the "Agrarian Law"). These rights, whether or not accompanied by other objects, are integrated with the land and serve to secure specific debts, granting priority status to certain creditors over others. The concept of mortgage rights extends beyond land alone, encompassing other objects related to or forming a unity with the land under the Agrarian Law, which adheres to the principle of horizontal separation—

distinguishing between land and the buildings upon it.

The purpose of guarantees is to protect the creditor's capital, as the debtor's rights must be safeguarded, underscoring the importance of collateral institutions. The rapid economic development, driven by an influx of investors and the growth of small and medium enterprises, necessitates substantial capital for business establishment. Consequently, people seek credit financing as a means to obtain capital.

Article 4, Paragraph (1) of the Mortgage Law stipulates that the types of land rights that can be encumbered with mortgage rights include Ownership Rights, Business Use Rights, and Building Use Rights. While the objects of mortgage rights are required to be registered and possess land certificates, unregistered land can also be subject to mortgage rights, provided that the imposition of the mortgage rights is accompanied by the simultaneous application for land rights registration.

The agreement between parties in the process of imposing mortgage rights necessitates the involvement of a PPAT, who is responsible for drafting the Deed of Mortgage Rights Granting (APHT) in accordance with Article 1, Paragraph (4) of Law No. 4 of 1996, which states, "Land Deed Officials, hereinafter referred to as PPAT, are public officials authorized to make deeds of land rights transfer, deeds of land rights imposition, and deeds of authorization to impose mortgage rights in accordance with applicable laws and regulations."

The importance of drafting the APHT by a PPAT lies in providing a legal basis for the creditor to secure the mortgage rights on the collateral object. The process of mortgage rights imposition is carried out through the granting of mortgage rights, which is formalized by the PPAT in the Deed of Mortgage Rights Granting, following the secured debt agreement and subsequent registration by the land office. The PPAT itself is regulated by Government Regulation No. 37 of 1998.

Law No. 4 of 1996 on Mortgage Rights aims to provide a strong legal foundation for the functioning of the mortgage rights institution, including the position of the Power of Attorney to Impose Mortgage Rights (SKMHT). Regarding the validity period of the SKMHT, the Mortgage Law also stipulates in Article 15, Paragraphs (3) and (4) that for registered land rights, the APHT must be executed within one month after the SKMHT is granted, and for unregistered land rights, the APHT must be executed within three months after the SKMHT is granted. However, in practice, the timeframes stipulated in the Mortgage Law are often insufficient.

B. Conceptual Framework

1. Legal Review

According to the legal dictionary, the term "juridical" is derived from the word "juridisch," which means "according to law" or "from a legal perspective." Juridical refers to anything that is in accordance with the law or established by legal statutes. It encompasses all matters recognized by the government as having legal significance. This rule is standardized and binding on everyone within the jurisdiction where the law applies, so anyone who violates it may be subject to legal penalties. Juridical refers to a norm considered lawful or legally valid, encompassing regulations, customs, ethics, and morals that form the basis for legal assessment.

2. Position

"Position" refers to status. In the Indonesian Dictionary, "position" is often differentiated between the meaning of "status" and "social status." "Position" refers to an individual's place or role within a social group, while "social status" denotes a person's place in social interactions, including their rights and obligations. Both terms essentially have the same meaning and are represented by the term "status." Abstractly, "position" signifies a person's role within a specific context. It can also refer to a person's job position, particularly in relation to power, where the power held by an individual can influence their status or position in a given environment.

3. Land Deed Official (PPAT)

The definition of a Land Deed Official (PPAT) is outlined in several legislative regulations. According to Article 1, paragraph 4 of Law No. 4 of 1996 concerning Land Mortgage Rights and Objects Related to Land (UUHT), a Land Deed Official, hereinafter referred to as PPAT, is a public official authorized to create deeds related to the transfer of land rights, the imposition of mortgage rights, and the granting of powers to impose mortgage rights in accordance with applicable laws and regulations.

4. Imposition of Mortgage Rights

Mortgage rights are governed by Law No. 4 of 1996 on Mortgage Rights, which provides strong and permanent executorial power for its enforcement. In addition to the ease of execution, another reason for using mortgage rights is the preferential position it grants to creditors holding these rights. According to Article 51 of Law No. 5 of 1960, the rights that can be encumbered with mortgage rights include ownership rights, building use rights, and cultivation rights.

C. Research Methods

1. Type of Research

The type of research employed is descriptive analysis. This approach aims to provide a comprehensive overview of the issues at hand by utilizing applicable laws and relevant theories. Data are collected, processed, and organized systematically according to existing theories to arrive at solutions that align with the established regulations.

2. Types and Sources of Data

This research utilizes both primary and secondary data, as described below:

- a. Primary data are obtained directly from first-hand sources related to the issue being studied. These data are gathered through direct observation or fieldwork with the research subjects. In this study, primary data were collected through interviews with several Land Deed Officials (PPAT) in Tangerang Regency.
- b. Secondary data are collected indirectly from the subject, using various other sources, either oral or written. The secondary data in this study are derived from written materials, which include:

Primary legal materials include binding legislation, such as:

- a. The Indonesian Civil Code.
- b. Law of the Republic of Indonesia No. 10 of 1998, amending Law No. 7 of 1992 on Banking.
- c. Law of the Republic of Indonesia No. 5 of 1960 concerning Basic Agrarian Principles.
- d. Government Regulation No. 18 of 2021, amending Government Regulation No. 40 of 1996 on Business Use Rights, Building Use Rights, and Land Use Rights.
- e. Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.
- f. Government Regulation No. 18 of 2021, amending Government Regulation No. 24 of 1997 on Land Registration.
- g. Government Regulation No. 24 of 2016, amending Government Regulation No. 37 of 1998 on the Position Regulations of Land Deed Officials.

Secondary legal materials consist of literature books, journals, scientific papers, articles, and documents related to the research subject that can assist the researcher in obtaining relevant information.

Tertiary legal materials include supplementary materials such as dictionaries, internet sources, and other resources outside the legal field that can be used to complement the research data.

3. Data Collection Methods

The data collection methods used in this research include document study (library research) and interviews. The purpose of the interviews is to gather information about human life and their opinions. Generally, there are two types of interview techniques: guided (structured) interviews and free (unstructured) interviews, known as in-depth interviews. Interviews are conducted by establishing direct communication with parties who can provide the necessary data, both verbally and in writing. The document study involves collecting and inventorying legal materials relevant to the research problem and then clarifying the collected legal materials.

4. Data Analysis Method

This research employs a qualitative data analysis method. Data collected throughout the research process are systematically organized and analyzed to clarify the issues discussed, particularly the sociological juridical review of the legal study of land deed officials in the registration of mortgage rights.

D. Results and Discussion

1. A. Juridical Review of the Role of Land Deed Officials (PPAT) in the Execution of Mortgage Right Deeds

The enactment of Law No. 4 of 1996 concerning Mortgage Rights fulfills the requirements stipulated in Article 51 of the Basic Agrarian Law (UUPA). Article 29 of the Mortgage Rights Law (UUHT) states that with the enactment of this law, the provisions regarding Hypotheek as mentioned in Book II of the Civil Code (KUHP) and the credietverband provisions in Staatsblad 1908-542, as amended by Staatsblad 1937-190, are no longer applicable concerning the encumbrance of mortgage rights on land and objects related to land.

The creation of the UUHT was mandated by Article 51 of the UUPA. Article 51 of the UUPA specifies: "Mortgage Rights that can be imposed on Ownership Rights, Business Use Rights, and Building Use Rights as mentioned in Articles 25, 33, and 39, shall be regulated by law." This directive from Article 51 of the UUPA was realized with the formation of Law No. 4 of 1996. The establishment of the Mortgage Rights Law was necessitated by the developments in land rights regulation and administration, as well as to meet the needs of the broader society. In addition to Ownership Rights, Business Use Rights, and Building Use Rights, which were designated as objects of Mortgage Rights by the UUPA, certain land Use Rights that are registrable and transferable also needed to be encumbered with Mortgage Rights. Therefore, it was necessary to create legislation governing Mortgage Rights on land and related objects, as envisioned in the UUPA, while also advancing the unification of National Land Law.

Article 1, paragraph 1 of the UUHT defines Mortgage Rights as a security right imposed on land rights as referred to in Law No. 5 of 1960 concerning the Basic Agrarian Law, including other objects that are an integral part of the land, to secure the repayment of a specific debt, providing a preferential position to the creditor over other creditors.

A Mortgage Right agreement is not an independent agreement but follows the primary agreement, known as the principal agreement. The principal agreement in a Mortgage Right is a debt agreement that creates the debt being secured, referred to as an accessory agreement, as explained in the UUHT.

The procedure for encumbering Mortgage Rights consists of two stages:

- a. The Granting of mortgage rights this stage is carried out before a Land Deed Official

- (PPAT) and is preceded by a debt agreement that is being secured.
- b. Registration this stage is conducted at the land office of tangerang regency.

The Government Regulation No. 37 of 1998 concerning the Position Regulations of Land Deed Officials is the only regulation governing the creation of authentic deeds related to land matters. In practice, a PPAT cannot refuse to create a deed for the registration of Mortgage Rights if requested unless there are legitimate reasons, such as the applicant's failure to meet the required juridical conditions for the registration of the Mortgage Rights deed.

Article 15, Paragraph (1) states that according to General Explanation No. 7 on the principles of granting Mortgage Rights, the encumbrance of Mortgage Rights must be executed personally by the grantor. If necessary, when the grantor cannot be present before the Land Deed Official (PPAT), a Power of Attorney to Impose Mortgage (SKMHT) may be used. This power of attorney must be directly granted by the grantor and must meet specific content requirements. Failure to meet these requirements will render the SKMHT legally invalid, meaning it cannot be used as a basis for the creation of a Deed of Granting Mortgage Rights (APHT). Consequently, the PPAT is obliged to refuse the request to create an APHT if the SKMHT is not personally made by the grantor or does not meet the necessary requirements.

In the event of a default, the Mortgage Rights will be executed, giving the first Mortgage Rights holder the priority to sell the mortgaged property. According to Article 6, if the debtor defaults, the first Mortgage Rights holder has the right to sell the mortgaged property through a public auction and to receive payment of the debt from the proceeds of the auction sale. This right is based on the promise that if the debtor defaults, the Mortgage Rights holder is entitled to sell the mortgaged property through a public auction without the need for the grantor's consent. Any remaining funds from the sale will remain the property of the Mortgage Rights holder.

Several factors can result in the termination of Mortgage Rights

- a. Debt settlement mortgage rights depend on the existence of the debt they secure. If the debt is settled or extinguished for any reason, the associated Mortgage Rights are automatically terminated.
- b. Release of mortgage rights the mortgage rights holder can release these rights by providing a written statement to the grantor, thereby changing their status from a preferred creditor to a concurrent creditor.
- c. Mortgage rights clearance based on a ranking determination by the District Court Chairperson, the clearance of mortgage rights can occur if the grantor of the land requests that the land be freed from the mortgage rights. This is regulated in Article 19 of the Mortgage Rights Law to protect the interests of buyers by ensuring that the purchased property is free of any encumbrances if the purchase price is insufficient to cover the secured debt.
- d. Termination of Land Rights Encumbered by Mortgage Rights 1). Expiration of the land rights, unless extended before the expiration date. 2). Termination before the expiration date. 3). Revocation for public interest. 4). Voluntary release by the land rights holder. 5). Destruction of the land.

At the Notary and PPAT offices in Grobogan Regency, the necessary evidence for recording the termination of Mortgage Rights includes:

- a. The Mortgage Certificate, annotated by the creditor, indicating that the debt has been paid off or a written statement from the creditor.
- b. A written statement from the creditor releasing the Mortgage Rights.
- c. A court decision ranking determination in the case of Mortgage Rights clearance.
- d. A court order for the deletion of the Mortgage Rights if the creditor refuses to issue a deletion statement.

The role of the PPAT in the process of encumbering mortgage rights is to mediate between

the interests of the creditor and debtor, ensuring both parties receive fairness, utility, and legal certainty in the mortgage process. The PPAT's responsibility includes the accuracy of the deeds they create, which serve as protection for the involved parties. In case of a dispute, the deed should be sufficient for legal authorities without requiring the PPAT's presence, as the deed represents their work. This emphasizes the importance of preparing the deed correctly to provide security for all parties, ensuring a smooth process without causing harm.

Based on the above explanation, the creation of the APHT by PPATs in Grobogan Regency complies with Law No. 4 of 1996 and Government Regulation No. 37 of 1998 concerning the Role of Land Deed Officials. Additionally, it aligns with Government Regulation No. 24 of 1997 on Land Registration, which replaced Government Regulation No. 10 of 1961. The PPAT, as a public official, is authorized to create deeds of transfer of land rights, encumbrance of land rights, and other deeds regulated by applicable laws, assisting the head of the land office in registering land through deeds that serve as the basis for registering changes in land registration data. This provides legal certainty to the public regarding the creation of the APHT and instills confidence in the PPAT in Grobogan Regency.

According to Hans Kelsen's theory, law is a system of norms—statements that emphasize the "ought to be" aspect, including rules on what should be done. Norms are deliberative human products. Laws, which consist of general rules, serve as guidelines for individual behavior within society, both in relationships with other individuals and with society as a whole.

2. Obstacles Faced by PPAT in the Process of Mortgage Right Encumbrance and Their Solutions

In Grobogan Regency, one of the common challenges encountered by Notaries and Land Deed Officials (PPAT) during the mortgage right encumbrance process is the practice of allowing mortgages on uncertified land by some banks. This practice poses significant risks. Due to issues related to uncertified land, PPATs face several obstacles:

External Obstacles The certification process is time-consuming, involving several stages:

- a. Land measurement
- b. Plotting of the land map
- c. Review by Committee A
- d. A three-month public announcement
- e. Issuance of the decree
- f. Certification process

The prolonged timeframe creates legal uncertainty, increasing the risk of the debtor defaulting before the certificate is finalized, which would prevent execution of the mortgage. To address this, the PPAT should wait until the certification process is complete and issue a formal statement to the creditor indicating that the certificate is not yet available.

Internal obstacles the initial land history and the requirements for certification may not guarantee the issuance of a certificate after the process is complete. This also results in legal uncertainty. For example, if a third party raises an objection during the public announcement period, claiming ownership of the land, the process cannot proceed. To address this, the PPAT should issue a statement to both the creditor and debtor indicating that the uncertified land cannot be used as an object of Mortgage Rights.

The Mortgage Rights Law allows landowners to mortgage uncertified land. Article 10, paragraph 2 of the Mortgage Rights Law states that if the object of the Mortgage Rights is land converted from an old right that meets the registration requirements but has not yet been registered, the granting of Mortgage Rights can be carried out simultaneously with the application for land rights registration. However, while the law permits the encumbrance of uncertified land with mortgage rights, this practice involves significant risks.

The practice of encumbering uncertified land with mortgage rights typically begins with the

issuance of a Power of Attorney to Charge Mortgage (SKMHT) by the PPAT, followed by the creation of a Deed of Granting of Mortgage Rights (APHT). However, this method is less than ideal, as the SKMHT is not intended for situations where the land is uncertified but rather for instances where the grantor of the mortgage cannot be present at the time of granting. If the land certificate is not yet available, the APHT cannot be issued even if the SKMHT expires, necessitating the issuance of a new SKMHT. The SKMHT is valid for three months, a period meant to allow for the collection of the necessary documents for land rights registration, which can be time-consuming. Allowing the encumbrance of uncertified land with mortgage rights further extends this timeframe.

Based on the explanation provided by Notaries and PPATs in Grobogan Regency, who refer to Article 10, paragraph 2 of the Mortgage Rights Law, it is clear that the process of encumbering uncertified land involves both external and internal obstacles. When such obstacles arise, causing harm to the public, it is imperative that the public receives legal protection during the land registration process to prevent further harm. According to the legal theory of Philipus M. Hadjon, legal protection is the safeguarding of human dignity and the recognition of human rights as granted by law, protecting individuals from arbitrary actions.

E. Conclusion and Suggestion

1. Conclusion

Based on the results and discussion of the judicial review of the deed-making official, several conclusions can be drawn, namely as follows:

- a. The role of the Land Deed Official (PPAT) in the mortgage encumbrance process in Grobogan Regency is to mediate between the interests of the debtor and the creditor, ensuring that both parties receive a sense of fairness, utility, and legal certainty in securing mortgage rights. The PPAT's responsibility extends to the deeds they create, providing protection to the involved parties. In the event of a dispute between the parties, the official legal authority can rely solely on the deed without requiring the presence of the PPAT, as the deed itself represents the PPAT's work. Therefore, the deeds must be prepared accurately to ensure the security of all parties, allowing the process to proceed smoothly without causing harm to any party.
- b. The primary challenge faced by PPATs in the mortgage encumbrance process is the practice of some banks allowing mortgage rights to be imposed on uncertified land, which carries significant risks. 1). External obstacles these originate from the land office itself, where the certification process is lengthy. The PPAT's solution is to wait until the certificate is completed and to provide the creditor with a statement indicating that the certificate is not yet available. 2). Internal obstacles these stem from the mortgage object itself. For example, if a third party disputes ownership during the announcement period, the process cannot proceed. To address this, the PPAT will issue a statement to the creditor and debtor, indicating that uncertified land cannot be used as an object of mortgage rights.

2. Suggestion

Based on the discussion and conclusions regarding judicial review by the deed-making official, the following recommendations can be made:

- a. It is recommended that Land Deed Officials (PPATs) play a more active role in assessing the validity of documents, whether in the form of authentic deeds or underhand agreements, to ensure that the legalization of mortgage rights registration is guaranteed.
- b. Banks should be urged to professionally scrutinize the imposition of mortgage rights on potential creditors, as uncertified land may lead to future complications.
- c. The Land Office is advised to expedite the certification process, as delays could lead to disputes over the land being processed for certification.

References

- A'an Efendi, Freddy Poernomo, IG. NG Indra S. Ranuh, 2017, Legal Theory, Sinar Grafika, Jakarta
- Dewi Nurul, 2016, Settlement of Financing Contract Disputes with Collateral of Mortgage Rights in Sharia Banking Practice, Sinar Grafika, Yogyakarta.
- Gaol, Selamat Lumban, 2021, Validity of Land Sale and Purchase Agreement Deed as Basis for Making Land Sale and Purchase Deed in the Context of Transfer of Land Rights and Misuse of Conditions (Misbruik Van Omstandigheden), Vol.11 No.1, Scientific Journal of Aerospace Law.
- Haryati, Felisha, , 2018, Violation of Notary Code of Ethics Regarding Unfair Competition Among Notary Colleagues Reviewed from the Regulations of the Code of Ethics of the Indonesian Notary Association (I.n.i), Vol. 3, No. 1, Journal of Law Volkgeist.
- Harnita, Muazzin, Zahratul Idami, 2019, Responsibility of PPAT in Determining the Value of Land and Building Sale and Purchase Transactions in Banda Aceh City, Vol. 8, No. 3, Udayana Master of Law Journal.
- Herlien Budiono, 2016, Collection of Civil Law Writings in the Notary Sector Part One, Citra Aditya Bakti, Bandung.
- HS, Sali, 2016 Techniques for Making Deeds for Land Deed Making Officials, PT. Raja Grafindo Persada, Jakarta
- Indrajaya, Rudi, Yogastio Esa, and Rizkika Arkan, 2020, Notary and PPAT: An Introduction, Refika Aditama, Bandung.
- Lubis, Irwansyah, Anhar, and M. Zuhdi, 2018, Notary Profession and Land Deed Making Officials, Mitra Wacana Media, Bandung.
- Mustofa, 2017, Demands for Making PPAT Deeds, Karya Media, Jakarta.
- PipipTapipah Surtini, S.H, 2019, PPAT Job Regulations, Rumah Grafis, Sumedang.
- Pugung, Solahudin, 2021, Regarding Land and Its Sale and Purchase Laws and PPAT Responsibilities, Deepublish, Yogyakarta
- Putri, Kurnia Dewi, 2017, Differences Between a Paid Sale and Purchase Agreement and an Unpaid Sale and Purchase Agreement, Vol.4 No.4, Jurnal Akta. Rasyid, Laila M, 2019, Application of Clear and Cash Customary Norms in Civil Court Practices, , Vol. 7 No. 2, Jurnal Ilmu Hukum Reusam.
- Rondonuwu, Giovanni, 2017, Legal Certainty of Land Rights Transfer Through Sale and Purchase Based on PP Number 24 of 1997 Concerning Land Registration, Vol.4., Jurnal Lex Privatum.
- Ravianto, Ronal and Amin Purnawan, 2017, The Role of Land Deed Officials (PPAT) in Collecting Land and Building Acquisition Fees, Vol.4. No.4, Jurnal Akta.
- Salim HS, 2016, Land Deed Official (PPAT) Deed Making Techniques, Rajawali Pers, Jakarta.
- Samsaimun, 2018, PPAT Position Regulation Introduction to Land Deed Official (PPAT) Position Regulation in Land Rights Transfer in Indonesia, Pustaka Reka Cipta, Bandung, West Java.
- Sari, Ratih Mega Puspa, Sidik Purnama, Gunarto, 2018, The Role of PPAT in Land Certification Due to Sale and Purchase, Vol.5, No.1, Jurnal Akta.,
- Sihombing, B.F, 2019, PPAT Legal System in Indonesian Land Law, Prenada Media Group, Jakarta.
- Urip Santoso, 2016, Land Deed Making Officials Perspective of Regulation, Authority and Nature of Deeds, Prenadamedia Group, Jakarta.
- Utomo, Hatta, Isnaini Wahyu, 2020, Understanding the role of the position of Land Deed Making Officials, Prenada Media, Jakarta.
- Waskito, Hadi Arnowo, 2017, Agrarian Land and Spatial Planning, Prenada Media, Jakarta.
- Zulhadji, Ardiansyah, 2016, Transfer of Land Rights Through Land Sale and Purchase According to Law Number 5 of 1960, Vol.5 No.4, Lex Crimen Journal.