PPAT Responsibilities in Credit Agreements with Mortgage Guarantee

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Abstract

A credit agreement with mortgage rights is a legal arrangement that involves the lender, borrower, and a PPAT, who is tasked with formalizing the land deed as a legal document outlining the rights and obligations of all parties involved. The objective of this study is to examine the obligations of Land Deed Drafting Officials (PPAT) concerning the execution of credit agreements with collateral rights. Employing a normative legal approach, the findings emphasize the pivotal role of PPAT in administering mortgage rights within such agreements. PPAT not only acts as the executor of the Deed of Granting Mortgage Rights (APHT) but also shoulders responsibilities including verifying legal data, ensuring document completeness, and adhering to legal regulations. Moreover, the study underscores the significance of timeliness in the registration procedure, setting a deadline of 7 working days post-signing of the APHT. Any delays in registration, particularly stemming from PPAT negligence, may entail legal ramifications and pose risks for creditors. In summary, the research outcomes offer a thorough understanding of the vital role played by PPAT in overseeing the encumbrance of Mortgage Rights, thereby enhancing security and legal assurance in credit transactions with Mortgage Guarantee.

Keywords: *Land Deed Drafting Officer (PPAT), Credit Agreement, Guarantee, Mortgage.*

A. INTRODUCTION

Legal developments in economic security play a central role in efforts to realize sustainable national development, in line with the principles of Pancasila and the provisions of the 1945 Constitution. This is the basis for state administration in creating just and prosperous people's welfare. In this context, effective and progressive legal instruments are needed to facilitate sustainable economic development. Development actors, including the government, individual communities and legal entities, have a crucial role in encouraging economic growth and maintaining national stability (Junef, 2021).

The need for large amounts of funds is an unavoidable obstacle in realizing national development. As development activities increase, the need for funds also increases. The majority of these funds come from credit activities. Therefore, legal developments in economic security are not only related to aspects of regulation and legal protection, but also consider mechanisms for obtaining and managing efficient funds. In this perspective, the development of credit law and economic guarantees is an important key in supporting sustainable national development and realizing overall people's welfare (Kusumaningtyas, 2016).

Banking credit stands as a primary service offered by traditional banks, serving as a crucial avenue for individuals in need of financial resources. According to Article 1 point 2 of Law no. 10 of 1998 concerning Banking, the provision of credit to the public via banking channels involves a credit agreement between the bank (as the credit provider) and the debtor (as the credit recipient), establishing a legal relationship between both parties. This credit agreement plays a pivotal role in the process of granting, managing, and executing credit (Supartayana, 2020).

Typically, credit agreements are drafted by the bank, while debtors are tasked with comprehending its terms. Nevertheless, it's imperative to acknowledge that credit agreements demand careful attention from both parties. This is because such agreements play a critical role in governing the terms between debtors and creditors, delineating the rights and responsibilities of each party involved. The debtor's endorsement of the credit agreement creates a legal commitment binding both debtor and creditor, thus endowing the agreement with legal authority equivalent to that of the law (Kusumastuti, 2019).

Credit agreements between debtors and creditors frequently incorporate guarantees or collateral, serving as a safeguard for the creditor in case of default in debt repayment. The legal foundation governing mortgage rights as a form of collateral available to creditors is established in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT). This legislation stipulates that mortgage rights extend to land rights, encompassing objects inherently connected to the land, as defined in Law Number 5 of 1960 concerning Agrarian Principles (UUPA) (Djatmiko, 2017).

Mortgage rights grant the creditor a prioritized position over other creditors, offering an added layer of security as they can utilize these rights as collateral for repayment of specific debts. Beyond instilling confidence in creditors, mortgage rights incentivize debtors to fulfill their obligations promptly and contribute to establishing a structured framework of legal procedures in credit agreement execution. Consequently, a comprehensive comprehension of mortgage rights regulations and their function in credit agreements is crucial to ensure clarity regarding the rights and responsibilities of all parties involved and to mitigate potential disputes in the future (Risa, 2017).

The provision of mortgage rights as collateral in a credit agreement involves the drafting of a Deed of Granting Mortgage Rights (APHT) prepared by the Land Deed Drafting Officer (PPAT), following the provisions of relevant laws and regulations. PPAT plays a crucial role in ensuring the legal and lawful execution of the APHT creation process. The creation of an APHT is intricately linked to the primary agreement between the creditor and the debtor, whether in the form of an authentic deed or a private deed. These mortgage rights, stemming from this agreement, serve as an ancillary or supplementary agreement associated with the primary agreement (Djia & Tan, 2022).

It's crucial to highlight that once the debt tied to the Mortgage is fully settled by the debtor, the Mortgage will either terminate or be removed. This removal process

necessitates the debtor to affix a Royal Stamp at the National Land Agency (BPN) or the Agrarian and Spatial Planning (ATR) office of the Republic of Indonesia. Failure to undergo this process will result in the mortgage rights remaining recorded on the land rights certificate. Consequently, if this legal procedure is disregarded, the deed executed by the PPAT for creating the Mortgage will lose its validity as evidence of this transaction. A comprehensive understanding of the Mortgage Rights process, debtor responsibilities, and the role of PPAT in fulfilling its obligations is imperative to uphold the validity and continuity of mortgage transactions and mitigate potential legal disputes in the future (Al Hakiem, 2021).

Research on "PPAT Responsibilities in Credit Agreements with Mortgage Guarantee" has very important significance in the context of national development and legal order. This research details the responsibilities of Land Deed Drafting Officials (PPAT) in drawing up credit agreements with collateral for mortgage rights, which is a crucial element in banking and land transactions. Through an in-depth understanding of PPAT's responsibilities, this research can contribute to increasing the clarity of PPAT's role, ensuring compliance with statutory regulations, and optimizing legal protection for all parties involved in the agreement. The implications of this research can include improving regulations, practical guidelines for PPAT, as well as providing insight for parties involved in credit agreement transactions with collateral rights, with the ultimate goal of supporting economic growth and legal stability in Indonesia.

This research aims to understand and analyze the responsibilities of Land Deed Officials (PPAT) in the context of credit agreements with mortgage rights. Thus, the main objective is to identify the role of PPAT in making these agreements and measure the extent to which its performance is in accordance with applicable regulations. The benefits of this research involve increasing understanding of the legal process and the role of PPAT, so that it can make a positive contribution in the development of policies and best practices in credit agreement transactions with collateral rights. In addition, it is hoped that the research results can serve as a guide for the parties involved, including PPAT, credit providers and borrowers, to increase clarity and security in carrying out these transactions, thereby supporting sustainable economic growth and legal stability at the national level.

B. METHOD

This research specifically carries a normative legal approach, which focuses on the analysis and interpretation of various legal rules that are relevant to the research context. The data used comes from legal materials found through searches or literature studies of primary, secondary and tertiary legal materials (Soekanto, 2007). In the analysis process, the content analysis method is carefully applied to describe legal event material or legal products in detail, allowing for in-depth interpretation in the discussion. Data collection was carried out through documentation procedures, where researchers utilized guidelines in the form of notes or quotations, as well as conducting legal literature searches, including books and online sources related to the

identification of this research problem. In this qualitative research framework, the data acquisition process is designed to understand the phenomenon thoroughly and in depth in accordance with the research objectives and focuses on a holistic approach.

C. RESULTS AND DISCUSSION

The definition of responsibility according to the legal dictionary refers to the concepts of liability and responsibility. The term "liability" in a legal context refers to the legal responsibility of a person or entity for actions or obligations that can give rise to legal consequences. This includes responsibility for violations of law or contractual obligations that can require legal liability before a third party or court (Sinaga, 2019).

Meanwhile, the term "responsibility" is broader and includes moral and ethical dimensions apart from legal aspects. Responsibility includes the moral or ethical obligations of a person or body in carrying out its duties or responsibilities towards other parties or society in general. In a legal context, responsibility can refer to awareness of legal responsibility, but also includes aspects of moral or ethical responsibility that can strengthen the integrity and sustainability of social relations (Said & Nurhayati, 2020). The term liability itself refers more to legal responsibility, namely:

First, the process of granting mortgage rights commences with the preparation of a Deed of Granting Mortgage Rights (APHT) by the Land Deed Making Officer (PPAT). This step often precedes the formalization of a debt and receivable agreement between the creditor and debtor. Prior to the creation of an APHT, the involved parties may enter into a debt and receivables agreement, which includes a commitment to furnish mortgage rights as collateral for the repayment of specific debts. This commitment is delineated in detail within the debt and receivables agreement, outlining the rights and obligations of each party and incorporating the promise to provide mortgage rights as an integral aspect of the debt repayment assurance. Consequently, the APHT serves as a legal instrument that materializes this commitment, imparting specific legal validity regarding mortgage guarantees. In this context, the APHT is not merely an administrative formality but rather a tangible expression of a binding debt and receivables agreement, offering legal assurance and safeguarding for both parties involved in credit transactions with mortgage rights (Purnomo, 2014).

Second, the registration process at the Land Office is a pivotal stage in the journey of Mortgage Rights, signifying the official establishment and enforcement of the guarantee. After the Land Deed Making Officer (PPAT) has prepared the Deed of Granting Mortgage Rights (APHT), the document needs to undergo official registration either at the Land Office or the National Land Agency (BPN). This registration process results in the Mortgage Right being recorded in the Land Rights Certificate, certifying that the land and related assets have been committed as collateral with Mortgage Rights. Moreover, this registration provides legal clarity and the official authorization required for Mortgage Rights to be recognized universally by third parties and relevant legal entities (Jayanti & Darmawan, 2018)

The registration procedure involves submitting necessary documents, verifying their legality, and updating the land ownership status at the local land office. Following this, the Land Office issues a new certificate confirming the presence of the Mortgage Right, providing clarity to all involved parties, such as creditors and debtors, regarding the guarantee's status and terms. Through registration at the Land Office, Mortgage Rights acquire legal protection and can be enforced in line with the provisions detailed in the APHT. This process validates legality and ensures legal security in credit transactions associated with mortgage rights.

The process of imposing mortgage rights comprises several essential stages, organized sequentially to ensure legal clarity and comprehensive protection for all parties involved. It initiates with a debt and receivable agreement between the creditor and debtor, wherein the debtor commits to offering mortgage rights as collateral for specified debts. Following this, the subsequent stage involves the issuance of Mortgage Rights through the preparation of a Deed of Granting Mortgage Rights (APHT) by the Land Deed Making Officer (PPAT). This APHT serves as a tangible legal document that formalizes and solidifies these commitments.

The third and final stage of the entire process involves the registration and issuance of a Mortgage Rights certificate at the Land Office or National Land Agency (BPN). This registration process encompasses administrative procedures, verification of legality, and updating of land ownership status. With this registration, Mortgage Rights are officially recorded and recognized by third parties and related legal agencies. Thus, registration is a crucial step in marking the birth of Mortgage Rights which effectively become legal collateral for land and land-related objects, providing a solid legal basis for implementing credit agreements and involving various related parties (Imanda, 2020).

In simpler terms, registration occurs under specific conditions: Firstly, when there exists a debt agreement or any other agreement leading to a debt, which includes a pledge to offer land rights as collateral. This underscores the significance of a well-defined legal framework in financial transactions and property assurances. Such debt and receivable agreements are consistently documented in writing, either privately or through a notarial deed, underscoring the legitimacy and clarity of the commitment between the lender and the borrower. This document not only serves as the legal basis for actions concerning collateral provision but also establishes a robust and dependable legal foundation for safeguarding the rights and duties of each party involved. Consequently, debt and receivable agreements function not solely as legally binding instruments but also as crucial pillars in facilitating collateral provision, such as land rights, thereby ensuring security and legal assurance in financial and property dealings.

Second, the commitments outlined in the debt and receivable agreement, particularly regarding the provision of land rights as collateral, are subsequently actualized through the process of granting Mortgage Rights over the land. The significance of this step is evident in the drafting of the Deed of Granting Mortgage Rights (APHT) before the Land Deed Making Officer (PPAT). Fulfilling this

commitment necessitates the use of an authentic deed, mandated for its validity and legal enforceability. In this regard, the granting of Mortgage Rights must be formalized through an authentic deed, rather than a private one. With the presence of PPAT as the authorized official, this process is conducted in compliance with the correct legal provisions, rendering the APHT an official document recording the grant of Mortgage Rights as collateral. By adhering to an authentic deed, the transparency and legality of the Mortgage Rights granting process are ensured, furnishing the requisite legal certainty and protection inherent in property guarantees.

The initial phase of preparing a Deed of Granting Mortgage Rights (APHT) by the Land Deed Making Officer (PPAT) involves gathering juridical data concerning various entities, including debtors, creditors, prospective grantors, and prospective holders of Mortgage Rights. This also encompasses gathering legal information pertaining to the objects of Mortgage Rights and other documents associated with the primary agreement, namely the debt and receivable agreement. In this data collection process, PPAT plays a pivotal role in ensuring that all involved parties possess the legal authority to engage in legal actions and that the objects being pledged as collateral are devoid of any disputes. The decision to proceed with or reject the creation of an APHT hinges on the validity and authenticity of the collected juridical data.

After confirming the juridical data, the subsequent step involves the Land Deed Making Officer (PPAT) creating a Deed of Granting Mortgage Rights, adhering to the regulations specified in Article 101 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) Number 3 of 1997. During this process, it is crucial for the individual offering the Mortgage Rights to be physically present before the PPAT. However, if circumstances prevent the mortgage provider from being present, they have the option to authorize another party through a Power of Attorney to Charge Mortgage Rights (SKMHT). This authorization requires the drafting of a document by the PPAT or a Notary, serving as an authentic deed.

Before the deed is signed, the PPAT is obligated to thoroughly explain its contents to the concerned parties, elucidating the purpose and objectives behind its creation, as well as the subsequent registration procedures mandated by applicable regulations. This entire process underscores the crucial role of PPAT in ensuring the validity and transparency of all transactions, upholding regulatory compliance, and imparting understanding to the involved parties regarding the implications of executing an APHT and the subsequent steps to be taken.

Article 13 Paragraph (2) imposes a time limit on the submission of registration files, requiring the Land Deed Making Officer (PPAT) to send the Deed of Granting Mortgage Rights (APHT) and associated documents to the Land Office within 7 working days of the APHT signing. This 7-day period begins from the moment the APHT is signed. However, it appears that this time constraint may be enforced regardless of whether all the necessary files or documents for registration are

complete, although the APHT should only be signed by the PPAT if all required documents are in order.

In instances where registration delays surpass the stipulated 7 working days, accountability varies depending on the cause of the delay. If the delay results from the negligence of the parties failing to furnish the required documents promptly, the PPAT bears no responsibility for the incident. However, if the delay ensues from negligence on the part of the PPAT, then the PPAT becomes liable for any losses incurred by creditors. These losses may encompass impediments such as the obstruction of Mortgage Rights objects, hindering the registration process. Furthermore, the PPAT may also face potential sanctions as outlined in Article 23 of the Mortgage Rights Law (UUHT).

To elaborate further, the responsibility of the PPAT extends beyond merely drafting the APHT to ensuring the timely submission of registration documents. Failure to adhere to this responsibility can result in tangible losses for creditors, such as delays in accessing the Mortgage Rights guarantee or encountering complications in legal proceedings. Consequently, strict adherence to deadlines and diligent oversight of the registration process are essential to safeguard the interests of all parties involved in credit transactions with Mortgage Rights

PPAT's accountability in the execution of drafting APHT encompasses a range of responsibilities, commencing with the meticulous verification of juridical data and culminating in the submission of a Power of Attorney to Charge Mortgage Rights (SKMHT) to creditors. Throughout this process, PPAT must exercise caution and precision to guarantee adherence to all procedures and legal provisions, thereby upholding the integrity of the transaction and safeguarding the rights of all involved parties in granting Mortgage Rights..

D. CONCLUSION

Drawing from the descriptions provided, this study delves into the procedure of implementing Mortgage Rights in credit agreements where Mortgage Rights serve as collateral, with a specific emphasis on the responsibilities of the Land Deed Drafting Officer (PPAT). The process initiates with the establishment of a debt and receivable agreement, which is subsequently actualized through the conferral of Mortgage Rights, facilitated by the drafting of a Deed of Granting Mortgage Rights (APHT) in the presence of the PPAT. Subsequently, the PPAT assumes a crucial role in verifying juridical data, ensuring document completeness, and drafting the APHT in accordance with pertinent legal provisions. In essence, the PPAT is tasked with ensuring transaction validity and clarity, regulatory compliance, and providing clarity to involved parties regarding the implications of APHT creation and subsequent steps. Additionally, this research underscores the significance of timing in the Mortgage Rights registration process, with a stipulated 7-day limit post-APHT signing. Registration delays, especially if stemming from PPAT negligence, may result in legal ramifications, while negligence from other parties can jeopardize creditor interests. Hence, this study offers a comprehensive insight into PPAT responsibilities in

overseeing the Mortgage Rights encumbrance process to foster security and legal certainty in credit agreements with Mortgage Guarantee.

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