

**A autoridade da Escritura de Terras é oficial em processos vinculativos no banco na
Indonésia**

The authority of Land Deed official in binding processes in the bank in Indonesia

**La autoridad de Escritura de Tierras es oficial en los procesos vinculantes en el
banco de Indonesia**

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Resumo

Este artigo tem como objetivo investigar mais dois problemas que questionam o papel do PPAT (*Pejabat Pembuat Akta Tanah*) na implementação da vinculação de crédito no banco. O PPAT é um certificador oficial de títulos de propriedade que é feito e usado como prova de que certas ações legais foram realizadas em relação aos direitos à terra ou à propriedade na Indonésia. Este artigo também discutirá a implementação de conceder direitos hipotecários sobre empréstimos bancários. O método utilizado foi o método descritivo analítico, com abordagem jurídica normativa. Os dados foram coletados por meio de pesquisa bibliográfica, analisada qualitativamente por meio de interpretação jurídica, baseada na abordagem das relações entre princípios jurídicos, com base no material jurídico, examinando as teorias, conceitos, princípios de direito e legislação. Constata-se que a autoridade do PPAT na concessão de direitos de hipoteca de terras em empréstimos bancários é onde o PPAT lida com a implementação de contratos de crédito no Banco até que a concessão de direitos de hipoteca possa ser colocada sobre o referido terreno. A implementação de conceder direitos hipotecários a empréstimos bancários foi seguida por uma promessa de concessão de direitos hipotecários. A concessão dos Direitos Hipotecários também é precedida de uma garantia para

conceder os Direitos Hipotecários como garantia do pagamento de determinadas dívidas, estabelecidas no contrato de dívida em questão ou em outros contratos que causam a dívida.

Palavras-chave: Contrato de crédito; PPAT; Direitos hipotecários; Banco.

Abstract

This paper is aimed at further researching two problems which question the role of PPAT (*Pejabat Pembuat Akta Tanah*) to implement credit binding in the bank. PPAT is an official certifier of title deeds which is made and used as evidence that certain legal actions have been carried out regarding land rights or ownership rights in Indonesia. This paper will also discuss the implementation of making mortgage rights on bank loans. The method used was through analytical descriptive methods with normative juridical approach. Data were collected through literature research that were analyzed qualitatively through juridical interpretation based on relations between legal principles approach based on the legal material by examining the theories, concepts, principles of law and legislation. It is found that the authority of the PPAT on granting land mortgage rights on bank loans is where the PPAT handles the implementation of credit agreements in the Bank until the granting of mortgage rights can be placed on the said land. The implementation of making mortgage rights on bank loans was followed by a promise to provide mortgage rights. The granting of Mortgage Rights is also preceded by an assurance to arrange for Mortgage Rights as a guarantee of paying off certain debts, which are set forth in the debt agreement concerned or other agreements that cause the debt.

Keywords: Credit agreement; PPAT; Mortgage rights; Bank.

Resumen

Este documento tiene como objetivo investigar más a fondo dos problemas que cuestionan el papel de PPAT (*Pejabat Pembuat Akta Tanah*) para implementar la consolidación de crédito en el banco. PPAT es un certificador oficial de títulos de propiedad que se realiza y se utiliza como evidencia de que ciertas acciones legales se han llevado a cabo con respecto a los derechos de propiedad o propiedad de la tierra en Indonesia. Este documento también discutirá la implementación de la concesión de derechos hipotecarios sobre préstamos bancarios. El método utilizado fue a través de métodos analíticos descriptivos con enfoque jurídico normativo. Los datos se recolectaron a través de investigaciones bibliográficas que se analizaron cualitativamente a través de la interpretación jurídica basada en las relaciones entre los enfoques de los principios legales basados en el material legal mediante el examen de las

teorías, conceptos, principios de derecho y legislación. Se encuentra que la autoridad del PPAT para otorgar derechos de hipoteca sobre la tierra en préstamos bancarios es donde el PPAT maneja la implementación de los acuerdos de crédito en el Banco hasta que la concesión de los derechos de hipoteca se pueda colocar en dicho terreno. La implementación de la concesión de derechos hipotecarios sobre préstamos bancarios fue seguida por una promesa de otorgar derechos hipotecarios. La concesión de los derechos hipotecarios también está precedida por una garantía de organizar los derechos hipotecarios como garantía de pagar ciertas deudas, que se establecen en el acuerdo de deuda en cuestión u otros acuerdos que causan la deuda.

Palabras clave: Contrato de crédito; PPAT; Derechos de hipoteca; Banco.

1. Introduction

PPAT is known in Indonesian as *Pejabat Pembuat Akta Tanah* or official certifier of title deeds that has been known since the enactment of Government Regulation Number 10 of 1961 concerning Land Registration, which is the implementing regulation of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or better known as UUPA. In the regulation PPAT was initially mentioned as an official who functions to make a deed that intends to transfer the land, grant new rights or impose land rights (Harsono, 1994). PPAT is an official authorized to make deeds rather than agreements that aim to transfer land rights, grant new rights to land, mortgaged land or lend money with land rights as dependents (Perangin, 1994). In that position, the deeds made by the PPAT are considered as authentic deeds.

Land Deed is made by PPAT which is used as evidence that certain legal actions have been carried out regarding land rights or ownership rights. Therefore, if the legal action is canceled by the parties, the PPAT deed no longer functions as evidence of the legal action. PPAT is a position that is appointed and dismissed by the Ministry of Land and Spatial Planning of the Republic of Indonesia to serve the community in making the land deed in certain areas. The PPAT must liaise with the bank to issue a land deed that is required in a credit agreement to be entered into by the bank with its debtor.

Credit provided by banks to customers is not without risk as it might occur. The risk that generally occurs is the risk of failure or congestion in repayment. The situation is prominent on the well-being of the bank, because the money deposited to the bank, so the risk can be leading to the public trust in the bank as well as on the security of public funds

(Sutamo, 2003). Based on the background that has been developed above, the researchers are interested in further researching this matter. The problems in this paper can be formulated in the form of the main questions as follows:

1. What is the role of PPAT in the process of implementing credit binding in the Bank?
2. How is the implementation of making mortgage rights on bank loans?

At the end of the paper, the authors are aimed at finding out the role of PPAT (*Pejabat Pembuat Akta Tanah*) in implementing credit binding in the bank as well as discussing the implementation of making mortgage rights on bank loans.

2. Methodology

In this paper, the method used was through analytical descriptive methods with normative juridical approach. Data were collected through literature research that were analyzed qualitatively through juridical interpretation based on relations between legal principles approach based on the legal material by examining the theories, concepts, principles of law and legislation relating to this research (Soekanto and Mamudji, 2014). This utilized different materials from printed books and legal experts as well as regulations / laws in order to discuss proposed problems in accordance with the theory and legal basis. The author limits the discussion of proposed problems in accordance with the theory and legal basis regarding the implementation of binding guarantees in the bank and the role of PPAT in bank guarantees based merely on the study of literature, collected works and the development of previous studies. In order to facilitate the discussion, the researchers conducted systematic writing in accordance with the outline.

3. Results and Discussion

A. Legal Aspects of Credit Implementation

Credit according to Law Number 7 of 1992, as amended by Law Number 10 of 1998 Article 1 number 11 regulates, "Credit for the provision of money or claims which can be equaled, based on an agreement to borrow between banks and other parties which requires the borrower to pay off the debt after a certain period of time with the amount of interest "

(Djumhana, 2003). In a bank credit agreement, the types of credit can be distinguished, namely (PT. Bank Negara Indonesia, 1994):

a. According to the time period

This means that the types of credit according to the period of time can only be related to the concessions given by banks to their customers to pay off the credit.

According to a period of time there are three types of credit:

1) Short-term Credit

It is called as short-term credit if the grace period given by the bank to its customers to pay off the credit is not more than one year, such as capital, trade, industrial, seasonal capital loans.

2) Medium Term Credit.

This loan usually has a term of more than one year to three years for this type, for example an investment credit for the purchase of a motor vehicle (car) or a working capital loan for project completion (construction), in which the project period is more than one year.

3) Long-term Credit.

This type of credit generally has a term of more than three years. For example: Investment loans granted to customers for financing the construction of hotels, factory buildings as well as loans granted to finance the planting of palm oil.

In the implementation of lending depending on time and process can be divided into two stages, namely the first stage which includes the application, assessment or evaluation, the decision of the leader of the credit department and the signing of the credit agreement. The next step is the transfer of money from the recipient bank. In general, banks have provided certain credit forms, which have been provided to the applicant, and the applicant must complete the credit agreement form provided by the bank.

After the credit application form is filled in and the requirements are met, the next step is where the Bank will do the analysis. Here the Bank analyzes and assesses whether the debtor's request can be considered, forwarded to the board of directors, and if approved, the loan agreement application is signed. The applicant is then given a standard contract, in which

the applicant affixes his signature. Only the signature written above the contract is entitled to withdraw or receive money from the Bank. The last stage is the transfer of money by the bank to the applicant. In general, the transfer of money does not automatically accompany the credit agreement. In reality, the credit applicant can only accept the submission after there is confirmation from the bank that the applicant may accept and use the credit. Submission of money to credit recipients also depends on the nature or type of credit agreed.

B. Guarantees in the Credit Agreement

Credit guarantees In the Civil Code can be divided into two, namely credit guarantees that were born due to the Act and credit guarantees that were born due to agreements. Credit guarantees that are born due to the Law are regulated in article 1131 of the Civil Code, namely: "All credit items, movable and immovable, existing or will be present in the future, is the responsibility of all individual engagement". So, basically it states that all debtor assets in the form of movable and immovable property, both existing and impending ones, even though they are not handed over as collateral, according to the law are guarantees for all debtors' debts. It is said to be born because of the Law, because based on the Law, namely Article 1131 of the Civil Code, all of one's assets are a guarantee of the debt made.

Because there is no specific binding which covers all debtors' assets, the credit guarantees that are born because this Law is also a guarantee for all those who owe them. So if the debtor's assets are sold, the sales are divided according to the balance or to the size of each receivable (Bahsan, 2002). . Thus, every credit agreement requires a guarantee that can be used to be assurance that the credit will be returned by the debtor. Nevertheless, it is important to know that in providing collateral loans, the most significant thing is to assess whether the business has convincing prospect as perceived from the debtor's business plan submitted to the Bank.

Every credit given by the Bank to the debtor is expected to be paid back by the debtor promptly. After the credit payment period arrives, the Bank expects that the debtor pays the agreed credit and interest in unison as stated by the agreement.

Credit provided by the Bank is usually accompanied by a guarantee, because the Bank will not give credit to anyone without a guarantee. With the requirement for collateral in the loan application, it is expected that if it turns out to be in violation of the promise (Default), i.e. not paying the debt along with interest, this guarantee will be used by the creditor (Bank) to pay off the debtor's debt. Because in accordance with the understanding of the debt

insurance, it is an agreement made between the creditor and a third party containing an agreement that if the debtor does not fulfill its obligations in accordance with the agreement made with the creditor, then the third party will fulfill the obligations concerned.

Borrowing of debt (*borgtoch*) is a guarantee in the form of an individual or legal entity with the aim of protecting the interests of creditors or banks that are general in nature, meaning that it can result in the entire assets of the guaranteeing to become collateral from the debtor concerned. Insurance agreement can be requested by the creditor by appointing a particular guarantor, or proposed by the debtor. In the guarantee of debt security, it does not mean that everyone can share, but those who are truly able to repay debtors.

C. Legal Arrangements of Land Deed Makers

The prohibition for the Land Deed Official (PPAT) in doing work, i.e.:

1. Prohibited from making a deed for himself, his husband or wife, blood relatives in a vertical straight line without degree restrictions and in a line to the side of the second degree, becoming parties or power of attorney. This is in accordance with Article 23 of Government Regulation Number 37 of 1998;

2. Prohibited from holding concurrent positions or professions as lawyers or advocates and civil servants or employees of State / Regional Owned Enterprises, in accordance with the contents of Article 7 paragraph (2) Government Regulation Number 37 of 1998.

If the PPAT does not obey the prohibited substances, the provisions of the sanctions are given when the PPAT is in violation, such as:

1. Sanctions for violations committed by PPAT are subjected to administrative actions in the form of written warnings until termination of their position as PPAT, in accordance with Article 10 of Government Regulation Number 37 of 1998 jo. Article 37 PMNA / KBPN No. 4 of 1999;

2. Sanctions for violations of not submitting monthly reports, subject to fines of IDR 250,000 per report. This is in accordance with Article 26 paragraph (2) of Law Number 20 Year 2000 concerning the Obligation of the Right to Land.

The appointment of PPAT at this time is derived from a Notary, meaning that there are two positions on the shoulders, as a Notary and as a PPAT. As a Notary, a person must refer to Law Number 30 of 2004 concerning the Position of Notary and its implementing regulations and must submit to the officials of the Department of Justice and Human Rights, while as PPAT must refer to Law Number 5 of 1960 concerning Basic Rules of Agrarian Principles along with their implementing regulations and submit to and obey officials of the National Land Agency. In this case, it means that there are two legal umbrellas that must be obeyed by someone acting in two positions.

In carrying out their duties as PPAT / Notary, all actions related to the implementation of their obligations in making the land deed will be supervised by the Head of the local Land Office, including examining the making of the deed, procuring and filling the protocol and carrying out all the obligations that have been determined, therefore before carrying out duties as a PPAT, one should coordinate first with the Land Office. Whereas in making each land deed, one should coordinate with the local Land Office to obtain information about the status of the land to be produced, whether the land has actually been registered or whether the juridical and physical data contained in the land certificate are in accordance with existing data on the land book at the Land Office. The adjustment of the data in the certificate with the data in the land book is also known as "clean check". In this case, it means that PPAT in carrying out its duties must always coordinate with related parties.

That in making the deed, one should make sure that it is actually carried out in accordance with the actual condition and the actual statement of the parties concerned, for example, the real condition is that in making the deed, the parties are actually located and signing the deed before PPAT. Whatever tasks are carried out by making the PPAT deed, all must be reported periodically to the National Land Agency, even if it does not carry out the task, meaning the act is none, it must still be reported to the National Land Agency. In this case, it means compliance in submitting a report.

D. Role of PPAT in the Process of Binding Credit at the Bank

In granting Mortgage Rights, the related party is the Land Deed Officer (PPAT) which has been regulated in Article 10 paragraph 2 of Law Number 4 of 1996 concerning Mortgage Rights which states that the granting of Mortgage Rights is carried out by making Deed of Granting Mortgage Rights by PPAT. And in Article 1 number 4 of Law Number 4 of 1996 concerning Mortgage Rights, it is explained that the Acting Authority for Land Deed (PPAT)

is a public official who is authorized to make the deed of transferring land rights, the deed of land rights, and the deed of granting power of attorney imposes Mortgage Rights in accordance with applicable laws and regulations.

In carrying out its role as an official who makes a loan agreement deed at the Bank, PPAT is responsible for making the loan agreement deed requested by the bank. As material for the document, banks must provide clear and detailed data and information and keen to explain the type and material of the credit documents requested. Notary / PPAT should not refuse a bank's request in making a deed of credit agreement unless the request from the bank or the party is in contrary to the law, public interest and decency. Notary / PPAT in practice is often faced with the problem of client requests that are contrary to the law, in this case may not directly refuse without a clear reason, but the Notary / PPAT must provide direction and explanation in regard to the best procedures that can be taken by the parties concerned with the deed requested to the Notary / PPAT.

Notary / PPAT is responsible for the truth, accuracy and entirety of the documents presented; some possible cases can include the leaking of bank confidences, whether by a Notary / PPAT or an employee; as well as problems with the documents one has made particularly the possibility of having future's error and / or intentional act carried out by a Notary / PPAT or employees or people who help with their work. The role of the Notary / PPAT is also as an authorized party to check the collateral in the form of Mortgage to ascertain whether the collateral is legal or not or to avoid if there is a possibility in the Mortgage Guarantee item that made the guarantee in a dispute law or legal case. The deed of agreement which is legalized and checked by a Notary / PPAT is to some degree done to reduce the negative factors such as that the achievements given in the form of money, goods, and services provided by the bank are absolutely guaranteed validity and return or facilitate the bank itself to execute the collateral if in the future the Debtor fails to promise or other legal issues arise.

E. Implementation of Making Mortgage Rights on Bank Credit

At the time of granting Mortgage, the prospective giver of Mortgage and the prospective Mortgage recipient must be present before PPAT. Basically the Mortgage Right provider is obliged to present\ before the PPAT, only if in certain circumstances the prospective Mortgage Right Provider cannot attend, and then it is permissible to seek it on other parties. This power of attorney is mandatory if prospective mortgage grantor cannot be

present. According to UUHT Article 13 paragraph (1), "Granting Mortgage Rights must be registered at the Land Office". Article 13 paragraph (2) states that no later than seven working days after the signing of the APHT (mortgage deed), the PPAT is required to send the relevant APHT (mortgage deed) and other parcels required by the land office. After the APHT (mortgage deed) and other parcels are received by the Land Office, the registration process is made by making a land book for the Mortgage Right that is registered and recording the Mortgage Right in the land book and the relevant land title certificate. The intended mark includes certificates of evidence relating to the object of mortgage and the identity of the parties concerned, including certificates of land rights and / or certificates of object ownership.

Registration of mortgage rights by the land office include making a land title mortgage and recording it in the land rights book which is the object of the mortgage right as well as copying the record on the relevant land rights certificate. The provisions of Article 13 paragraph (4) and paragraph (5) of the UUHT state that the Mortgage Right are born on the date the land book is made, this means that from that day on, the official creditor became the holder of the Mortgage Right, with a special position (*droit de preference*). In other words the creditor who is entitled to the Mortgage Right object as a guarantee can be proven by the existence of the relevant land certificate as the Holder of the Mortgage Right. To provide the same executorial power as a judge's decision that has permanent legal force, the Mortgage Certificate is given an advantage by affixing it to the cover of the sentence: "For the sake of justice based on the Almighty God". With the inclusion of the decree, the execution institutions can use it as stipulated in Article 224 HIR and 258 RIB (Satrio, 1997).

According to UUHT Article 14 paragraph (1), it is explained as proof of mortgage rights, the land office shall issue a mortgage certificate as proof of mortgage rights, which are the main benchmarks for the date of registration or recording it in the mortgage right book. The position of the mortgage right as a strong land security institution that is able to provide legal certainty for the parties in the credit agreement because it has the following characteristics: first, giving priority position or overtaking to the holder (certain creditors) or the term is also known in legal science as *droit de suite*. Second, through following the object guaranteed in the hands of whom the object is located (*droit de suite*). Third, fulfill the principle of specialty and publicity that can bind the third party and provide legal certainty to the parties concerned. And fourth, it is also deemed easy and certain implementation of the execution. In addition, the Mortgage Right also has several characteristics that cannot be divided and constitutes an access agreement. With these characteristics, it is expected that the

banking sector which has the largest share of credit can be protected in channeling funds to the public and creating an opportune climate in economic growth.

4. Conclusions

The role of PPAT in the process of implementing credit binding at the Bank is in which PPAT has responsibility for making the deed of credit agreement requested by the bank. As material for the document, banks must also provide clear and detailed data and information and keen to explain the type and material of the credit documents requested. Notary / PPAT may not refuse a bank's request in making a deed of credit agreement unless the request from the bank or the party is in contrary to the law, public interest and decency. And the role of the Notary / PPAT in the lending system conducted by the banking sector is to provide legal certainty for the parties entering into a credit agreement. In addition, the role of the Notary / PPAT is also as an authorized party to check collateral in the form of Mortgage Rights to ascertain whether the collateral is valid in the eyes of the law or to avoid the possibility of the legal dispute or legal case.in the guarantee item of Mortgage Right.

The authority of the PPAT on granting land mortgage rights on bank loans is where the PPAT handles the implementation of credit agreements in the Bank until the granting of mortgage rights can be placed on the said land. The implementation of making mortgage rights on bank loans was preceded by a promise to provide mortgage rights. The granting of Mortgage Rights is preceded by a promise to provide Mortgage Rights as a guarantee of paying off certain debts, which are set forth in the debt agreement concerned or other agreements that cause the debt. As a suggestion, it is expected for the PPAT which is a position is appointed by the Ministry of Land and Spatial Planning of the Republic of Indonesia to serve the community better in making the land deed in certain areas. It is also hoped that the paper can give more insights on the implementation of credit binding in the bank in Indonsia and making mortgage rights on bank loans. Future researchers can possibly deepen more topics by doing more extensive normative juridical approach or documental research using more wide-ranging materials.

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