

## The Validity of Power of Attorney Burdens the Rights of Liability in the Auction of Dependants' Rights

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**Abstract.** *Right of Liability is a security right imposed on land rights as referred to in the Basic Agrarian Law. An authentic deed is an act done in the form required by law. One of these authentic deeds is the Power of Attorney to Impose Dependent Rights (SKMHT), if there is a forgery related to SKMHT in the dependent rights auction process that can cause the cancellation of the dependent rights auction, it needs to be questioned how strong SKMHT is before the law. This type of research is normative juridical research with the theory of legal certainty. Making SKMHT carried out by notaries is required to comply and obey legal provisions which are bound by making authentic deeds as stated and regulated in the Law on Rights of Dependents. The making of SKMHT is bound to certain requirements and forms that have been stipulated in laws and regulations. If certain requirements and forms are not fulfilled, then in accordance with the Explanation to Article 15 paragraph (1) of Law 4/1996, such a "power of attorney" is "null and void". In the case of the auction process, the execution of dependent rights must be complete, both materially and formally, to be able to carry out the auction execution process. Therefore, with the non-fulfillment of the objective conditions mentioned above, unlawful acts in the process of conducting this auction can be used as a basis for canceling the auction because it is null and void*

**Keywords:** Attorney; Auctions; Dependents; Power; Right.

## 1. Introduction

One form of collateral that is widely used as collateral in bank credit agreements is land rights, both with the status of property rights, business use rights, building use rights and use rights (Nugrohandini & Mulyati, 2019). One of them is with debt guarantees in the form of land and / or buildings based on dependent rights are more widely used with more consideration of providing a sense of security (*secured*) because the value of collateral is relatively stable and there is legal certainty in the execution if the debtor defaults or defaults (Sugianto, 2023).

The use of land as collateral for loans is based on the fact that the land has a relatively high economic value (G, Graduation. Bank, P. T., Indonesia, M., Senayan, T. S., Afrika, J. A., & Karno, 2018). Because, land can be encumbered with Dependent Rights (HT) which give privileges to creditors (Aziz, Franciska, & Marniati, 2023). Because, land in general, is easy to sell, the price continues to increase, has proof of rights, is difficult to embezzle, and can be burdened with Dependent Rights (HT) which give privileges to creditors (Nabila, 2023). and provide protection for creditors in case of non-performing credit, Non-performing credit category if:

1. There is a delay in interest and/or parent credit payment, more than 90 days from the due date.
2. Not repaid at all.
3. Treated renegotiation on the terms of repayment of credit and interest stated in the provision of credit.

Right of Liability is a security right imposed on the right to land as referred to in the following UUPA or not along with other objects that are an integral part of the land for the repayment of certain debts (Adrian Sutedi, 2023). Law Number 4 of 1996 concerning Land Liability Rights and contains regulations on procedures that can be taken if the debtor does not carry out its obligations (default). As a sign of proof of the existence of dependent rights, an authentic deed of dependent rights that has been registered and a certificate of dependent rights issued by the Land Office is issued and contains the title, "For Justice Based on the One and Only Godhead".

Execution auction is an auction to carry out court decisions or orders, other relevant documents and/or applicable provisions of laws and regulations. In terms of legal certainty, every auction held must publish an Auction Minute. However, in the process, auctions can be canceled with various aspects, both unlawful acts and the validity of authentic deeds in the auction process.

An authentic deed is an act done in the form required by law. That an authentic deed can only be made by and/or in the presence of an official authorized to make an authentic deed at the place where the authentic deed was issued. One of these authentic deeds is the Power of Attorney to Impose Dependent Rights (SKMHT) is a special power of attorney, does not contain the power to commit other unlawful acts other than imposing dependent rights. SKMHT is provided by the guarantor to other parties (usually to the Bank) to impose liability rights (sign APHT). If there is a forgery related to SKMHT in the dependent rights auction process that can cause the cancellation of the dependent rights auction, it needs to be questioned how strong SKMHT is before the law.

## 2. Research Methods

This type of research is a normative juridical research where it will be raised is about the theory of legal certainty for power of attorney to impose dependent rights based on Law Number 4 of 1996 concerning Dependent Rights. This research focuses on the source of legal materials in the form of literature studies based on secondary legal materials that will be associated with legal certainty in the law.

The normative juridical approach method, is The research used in this study is normative juridical. The type of normative juridical research is a research that deductively begins the analysis of the Articles in the laws and regulations governing the above problems. Juridical legal research means research that refers to the study of existing literature or secondary data used.

By using the legal approach (Statute Approach) is carried out by examining all laws and regulations that are interconnected with legal issues that are handled studied with the theory of legal certainty. It is a definite matter (condition), provision or provision. The law must essentially be certain and just. It must be a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Only because it is fair and enforced with certainty can the law perform its function. Legal certainty is a question that can only be answered normatively.

## 3. Results and Discussion

### 3.1. How the validity of a power of attorney imposes dependent rights according to Law Number 4 of 1996 concerning Dependent Rights

Power of Attorney is a special power of attorney letter, the contents of which do not include the power to take legal action other than the power of attorney to other parties to represent the grantor of the Dependent Rights or debtors to provide Dependent Rights to creditors (Sudarwanto, 2020). The Power of

Attorney to Impose Dependent Rights cannot be done orally or made under the hand, but must be in the form of a notarial Deed or PPAT Deed in accordance with the instructions in Article 15 of the Law on Dependent Rights (Nagpal & Rawandale, 2023). According to ST. Remy Sjahdeini that the legal requirements for a Power of Attorney to Impose Dependent Rights must meet the following requirements:

1. Must be made by notarial deed or deed of PPAT (General Explanation number 7 UUHT) (Satria, Yakub, & Syuryani, 2023).
2. It does not contain the power to perform legal acts other than imposing HT (Article 15 of the Law).
3. Not loading substitution power (Article 15 UUHT).
4. Clearly state the object of HT, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the giver of HT (Article 15 UUHT).
5. Must be given directly by the HT giver (Explanation of Article 15 paragraph (1) of the UUHT).

Notaries with a position as general officials are not only authorized to make notarial deeds sounded in the JN Law, but notaries are also authorized to make notarial deeds regulated by other laws both regulated and to be regulated. One example is the deed of Power of Attorney Imposing Dependent Rights which is regulated in the Law on Dependent Rights that must be made in an authentic deed structure that can or can be made by a notary or PPAT (Muslim, Hadiyantina, Mundzir, & Ayub, 2023).

Making SKMHT carried out by notaries is required to comply and obey legal provisions which are bound by making authentic deeds as stated and regulated in the Law on Rights of Dependents. This is done so that the Power of Attorney Imposing Dependent Rights that has been made by a Notary Public still has perfect legal evidentiary power as an authentic deed and does not cause other legal consequences (Yuliana YW, Sulastri, 2020).

Power of Attorney Imposing Liability Rights that are formally defective or have negligence in making them only has the power of proof as the deed under hand will greatly endanger the creditor. This is because the Power of Attorney to Impose Dependent Rights made by a notary or PPAT at any time cannot be used as a reason for making APHT by PPAT, so that the guarantee of land rights cannot be paired with Dependent Rights. When this happens, the creditor is said to have

a threatened position because he no longer has the right as a concurrent creditor who has executory power (control) over the object guaranteed by the debtor.

The obligation to carry out a Power of Attorney Imposing Dependent Rights at the time of granting Dependent Rights is regulated in Article 15 of the 1996 Dependent Rights Law. The use of Power of Attorney Encumbering Dependent Rights is limited where the grantor of dependent rights cannot actually appear before the PPAT at the time the Deed of Granting Dependent Rights is made. In such case, the granting party may appoint the beneficiary of the dependent rights or another party as its representative to represent it in granting the dependent rights. The grant of power to impose the Right of Liability is made into the Power of Attorney to Impose the Right of Dependent. Basically, the substance of the Power of Attorney to Impose Dependent Rights is the granting of power, namely to do or carry out a certain business, in this case, namely "imposing Dependent Rights" or only one specific act to impose Dependent Rights only in the form of a Deed of Granting Dependent Rights (Valdino, n.d.).

The word "obligation" for the establishment of SKMHT should not be interpreted to mean that every provision of a dependent right loan must be accompanied by SKMHT, which is not referred to in Article 15 paragraph (1) of the dependent rights law. That is, if the grant of dependent rights is authorized by another party or person, then the power of attorney "must" be stated in the form of a deed, notary deed, or PPAT deed. The form of the deed is in the form of SKMHT, as required in article 15 paragraph 1 of the Law on Rights of Dependents of 1996. The Power of Attorney Encumbers the Right of Liability gives a strong position to the creditor because the Power of Attorney Encumbering the Right of Liability cannot be withdrawn and cannot be terminated for any reason. Therefore, creditors do not need to worry about the strength of the Power of Attorney Encumbering the Rights of Dependents, they need to pay attention to the validity period of the Power of Attorney Encumbering the Rights of Dependents, because according to the law, the Power of Attorney Encumbering the Rights of Dependents will become invalid when the validity period has expired. The validity period of the Power of Attorney Encumbering Dependent Rights cannot be extended, so the PPAT must really pay attention and consider the validity period of the SKMHT to avoid the inability to do APHT because the validity period of the SKMHT has expired.

In decision 42/Pdt.G/2017/PN Pwr does not consider the existence of a Power of Attorney Imposing Dependent Rights Forged by Notary Persons/PPAT which is basically according to the theory of legal certainty. Notaries have the main authority to make authentic deeds. A Notary Deed is considered authentic if the act is done in the form prescribed by law, done by or in the presence of an authorized official, the official is authorized to do the act depending on where

the act was done. A deed can be said to be authentic if it meets the requirements for the validity of an authentic deed, namely by reading, signing, signing and signing witnesses. There are several legal consequences regarding an authentic deed that is legally flawed, namely that the deed is null and void, the deed can be canceled.

The making of SKMHT is bound to certain requirements and forms that have been stipulated in laws and regulations. If certain requirements and forms are not met, then in accordance with the Explanation to Article 15 paragraph (1) of Law 4/1996, such a "power of attorney" is "null and void" According to the explanation of Article 15 paragraph (1) of the Law, the non-fulfillment of the conditions as Article 15 of the Law on Dependent Rights regarding the content of the Power of Attorney to Impose Dependent Rights results in the relevant power of attorney being null and void, which means that the relevant power of attorney cannot be used as a basis for making a Deed of Granting Dependent Rights

### **3.2. The legal consequences of the Dependent Rights Auction Process for which the Power of Attorney imposes the Dependent Rights are formally disabled**

Auctions have a considerable role in order to meet the needs of the community, with the principle of openness, the principle of competition, the principle of justice, the principle of legal certainty, the principle of efficiency and the principle of accountability (Rahayu, Udin, & Yuliyani, 2023). Right of liability is a form of material security on land for the repayment of certain debts (Zahri, Yahya, & Adli, 2023). The execution auction of the dependent rights is an application of Article 6 of Law Number 4 of 1996, where if the debtor defaults, the creditor has the right to sell the object of the dependent rights on his own power through a public auction. Through this method, it is expected that the highest price can be obtained for the object of liability (Aziz et al., 2023). One of the privileges of liability is that the law grants the holder a mortgage in the form of a coercible right that has the same permanent legal effect as a court decision.

The auction of the object of the insured is carried out on the grounds of default by the debtor to the creditor regarding the repayment of the loan, leasing or credit (Yeremiariam & Djajaputra, 2023). In addition to coercive means, the implementation of dependent rights can be carried out by a joint implementing body based on the provisions of Article 6 of Law Number 4 of 1996 concerning Dependent Rights.

Public auctions mentioned in the Law on Dependent Rights are one way of selling property mortgaged here, through the Wealth and Auction Service Office (KPKNL). The auction for the implementation of dependent rights is carried out by the State Office of State Auction and Auction Services (KPKNL) which is the

authorized official in this matter. The auction conducted by KPKNL is of course based on applicable legal provisions. In Article 1 point 5 PMKRI No.213/PMK.06/2020, it is defined that an execution auction is an auction to carry out court decisions or determinations, other documents likened to it, and/or implement provisions in laws and regulations.

In decision 42/Pdt.G/2017/PN Pwr does not consider the existence of a Power of Attorney Imposing Dependent Rights Forged by Notary Persons/PPAT which is basically according to the theory of legal certainty. KPKNL or Class II Auction Officer must examine the completeness of the auction requirements documents and the formal legality of the subject and object of the auction if it is based on the provisions in Article 11 PMK 213 / PMK. 06/2020 clearly states: "The Head of KPKNL or Class II Auction Officer shall not reject an application for auction registration sent to such person as long as the relevant documents are eligible for summons. Complete and responsive offer. However, if the opposite happens, the Head of KPKNL or Class II Auction Officer must reject the auction application which is not his authority, the required documents are incomplete or do not meet the legality of the subject and object of the auction (Khoiruddin & Kuswardani, 2023).

In the case of the auction process, the execution of the rights of dependents must be complete, both materially and formally, to be able to carry out the auction execution process. The auction officer will check the completeness of the documents provided by the applicant for the right of dependent, both the completeness of APHT (Deed of Granting Rights of Dependents), SKMHT (Power of Attorney to Impose Rights of Dependents), SKT (Land Certificate).

It is known that unlawful acts in the auction process can clearly be a reason to consider canceling the auction because it does not meet the conditions of the agreement stipulated in Article 1320 juncto Article 1335 of the Civil Code. Article 1335 of the Civil Code provides that an agreement made without reason or for wrong or prohibited reasons, has no legal force. Where in a covenant. An agreement is an event where both parties agree to do something (achievement). It can be said, that the two parties who agree with each other accept achievements and give each other counter achievements (Prasetyo<sup>1</sup> et al., 2023). Subjective conditions and objective conditions must be met. The act of falsifying SKMHT carried out by Notaries and PPAT individuals who occur in negligence can harm other parties, in this case the original owner of the goods and only benefit the seller. So that the cause of this agreement becomes not halal, far from reasonable which can harm certain parties. Therefore, with the non-fulfillment of the objective conditions mentioned above, unlawful acts in the process of conducting this auction can be used as a basis for canceling the auction because it is null and void.

#### 4. Conclusion

SKMHT is a special power of attorney or power of attorney whose contents do not contain the authority to perform legal actions, other than authority over other parties on behalf of the grantor of dependent rights. SKMHT is recorded in a Notary Deed that is legally binding. According to Article 15 paragraph (1) of the UUHT, non-fulfillment of the requirements of the contents of the SKMHT as referred to in Article 15 of the UUHT causes the relevant power of attorney to be invalid. This means that the power of attorney concerned is invalid. It can be used as the basis for making APHT. Similarly, for Notary deeds that are invalid as official deeds, their status or legal consequences are regulated in Article 41 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 which states: Stipulated as follows. Based on Articles 38, 39 and 40, the document can only be used as evidence as a deed document under hand. In the case of the execution process of the rights of dependents, the required documents must be complete both materially and formally to be able to carry out the auction execution process. The auction officer will check the completeness of the documents provided by the applicant for the right of dependent, both the completeness of APHT (Deed of Granting Rights of Dependents), SKMHT (Power of Attorney to Impose Rights of Dependents), SKT (Land Certificate), etc. Violations of SKMHT committed by a negligent Notary and PPAT can harm other parties, in this case the original owner of the goods and only benefit the seller. Therefore, the reason for this agreement is that it is invalid, far from reasonable and may harm some parties. Therefore, if the above objective conditions are not met, then the violation of law in organizing this auction can be used as a reason to cancel the auction because it is invalid.

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