

Position of the Notary's Deed of Power of Attorney to Granted Mortgage Rights (SKMHT) Which Was Rejected by The National Land Agency (BPN) Bukittinggi City

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Abstract. *This study aims to determine the position of the Notary's Power of Attorney to Charge Mortgage Rights (SKMHT) if it is rejected by the Bukittinggi City National Land Agency Office and to determine the legal considerations of the Bukittinggi City Land Agency Office to reject the Power of Attorney to Charge Mortgage Rights (SKMHT) in the Notary Deed format. This study uses an empirical approach method, which is the real behavior (in action) of residents as a result of the enactment of normative law. The data collection technique for field research is in the form of interviews and library research using the theory of legal certainty and the theory of legal justice. Based on the research results, the basic consideration of the Bukittinggi City Land Office to reject the SKMHT in the Notary deed format is to apply the principle of caution by fully ensuring the certainty of the signatures of the parties and witnesses who should be the responsibility of the Notary. Because in the copy of the Notary deed submitted for registration there are no complete signatures from the parties and witnesses. The Bukittinggi City Land Office accepts the Notary's SKMHT if it follows the format of Attachment Villa of Perkaban No. 8 of 2012.*

Keywords: *Attorney; Encumber; Land; Mortgage.*

1. Introduction

Notary is one of the professions in the legal field. The Notary profession was born from the results of interactions between fellow members of society developed and created by society itself.¹Notary according to Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Public, hereinafter Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. Notary

¹Habib Adjie, Indonesian Notary Law, Bandung: Rafika, 2008, p.8.

is part of the state that has general powers and is authorized to exercise part of the state's powers to create authentic written evidence in the field of civil law.

A Notary has the authority to make a Power of Attorney to Charge Mortgage Rights (SKMHT) which can be done by making a notarial deed yourself or by using a deed form issued by the National Land Agency of the Republic of Indonesia (BPN-RI). However, in filling out the Form of the Power of Attorney to Charge Mortgage Rights, there are things that are not in accordance with the provisions contained in Law Number 30 of 2004 concerning the Position of Notary (UUJN). This causes the deed to lose its authenticity if the person filling out the SKMHT form is a notary.

Power of Attorney to Charge Mortgage Rights (SKMHT) is one type of authentic deed. An authentic deed is a deed made by or before an authorized official, according to the provisions that have been applied, either with or without assistance from the interested party, which records what is requested to be included in it by the interested party.²

The authenticity of a notarial deed itself can be based on the provisions of the Republic of Indonesia Law No. 30 of 2004 Article 1868 of the Civil Code in conjunction with Article 1 paragraph (1) Article 1 paragraph (7) in conjunction with Article 38 concerning the Notary Office Law (UUJN). According to these provisions, a notary is a public official who has the authority to make authentic deeds where the form and procedures as well as the notarial deed must be in accordance with those regulated in the UUJN.³

Based on Article 15 (1) of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land: "A Power of Attorney to Encumber Mortgage Rights must be made with a notarial deed or a PPAT deed...". With this provision, a notary is authorized by law to make a SKMHT. In accordance with the text of Article 15 (1) of the UUHT, the notary's authority to make this SKMHT can be carried out by making a notarial deed or by using a deed form as issued by the BPN-RI.

However, if we read the provisions of Article 96 (1) of the Regulation of the Minister of State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration and read the wording of the SKMHT formula which is Attachment 23 of the PMNA/KaBPN above, it can be seen that there is only one form of SKMHT made by both a notary and a PPAT. If we look at the provisions contained in Article 15 (1) of the Mortgage Rights Law, the form of SKMHT can be made with a notarial deed, either made in the form of a separate notarial deed or by using the SKMHT Form issued by the BPN-RI.

²Samsaimun, 2018, PPAT Position Regulations Introduction to Position Regulations for Land Deed Officials (PPAT) and Transfer of Land Rights in Indonesia, Pustaka Reka Cipta, Bandung, p 54

³Husni Tamrin, 2011, Making of Land Deeds by Notary, Lasbag Presindo, Yogyakarta, p. 11.

Unlike a notary, a Land Deed Making Officer (PPAT) is subject to the provisions stipulated in Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer and its implementing regulations. Where in filling out the deed form must be done by filling out the available deed form completely in accordance with the instructions for filling it out. While for a notary because when filling out the SKMHT Form, the notary acts in the position of a notary, the notary is not only guided by the instructions for filling out the SKMHT Form, but is also bound by the provisions contained in the Civil Code and the Notary Law (UUJN) which are the main guidelines for a notary in carrying out his/her position, so that the SKMHT made by a notary meets the requirements to be declared as a notarial deed that has the power as an authentic deed.

The reason the researcher wants to identify this problem is because in practice this is not much questioned, even though it actually has an important meaning if we delve into the authority of each in the context of making a SKMHT deed. This study aims to determine the position of the Notary's Power of Attorney to Charge Mortgage Rights (SKMHT) if it is rejected by the Bukittinggi City National Land Agency Office.

Based on the background above, the researcher is interested in discussing a study entitled The Position of the Notary's Deed of Power of Attorney to Charge Mortgage Rights (SKMHT) Which Was Rejected by the National Land Agency (BPN) of Bukittinggi City.

2. Research Methods

The approach method that will be used in this research is the empirical legal approach method. The empirical approach is knowledge based on various facts obtained from research results.⁴ The data collection method that will be used in this study is an interview with the informant. The interview method is a suggestion for data collectors to ask questions verbally or in writing in the form of a list of questions to the informant, then record the results of the questions and answers in the interview. The interview will be conducted face to face directly.

3. Results and Discussion

3.1. Legal considerations of the Bukittinggi City Land Agency Office in rejecting the Power of Attorney to Encumber Mortgage Rights (SKMHT) in the Notarial Deed format

SKMHT must be made before an authorized Public Official so that it cannot be just a private letter. Article 15 UUHT requires SKMHT to be made using a Notary deed or PPAT deed, so SKMHT must be made authentically following the provisions of the deed and made before an authorized public official in this case a Notary for a Notary deed and PPAT for a PPAT deed.

Notarial Deed according to Article 1 number 7 UUJN, is:

⁴Yayan Sopyan, Legal Research Methods, (Jakarta: Textbook, 2009), p. 19.

"A Notarial Deed is an authentic deed made by or before a Notary in accordance with the form and procedures stipulated in this Law."

Based on the Article, it can be understood that the form and procedure of a Notary deed are guided by the UUJN, the procedure of which is regulated in Article 38 of the UUJN, while PPAT according to Article 21 paragraph (1) of PP No. 37 of 1998, that PPAT deeds are made based on the form determined by the Minister (Head of the National Land Agency/Minister of Agrarian Affairs and Spatial Planning). The form of the PPAT deed must follow the format of the deed form provided in Attachment VIII a of Perkaban No. 8 of 2012. From this, Notary deeds and PPAT deeds have different forms and procedures.

The next difference is in the provisions of the Notary SKMHT sheet issued by the Notary. The Notary SKMHT only issues a copy of the Notary deed that is the same as the minutes of the deed kept by the Notary (as a state archive), while the provisions of the PPAT deed issue an original sheet that is not a copy and there are 2 (two) sheets. The first sheet is for the PPAT (as a state archive), the second sheet is for the BPN Kantah for registration of Mortgage Rights and a copy sheet is issued to the parties (Bank). Another difference is in the numbering of the deed, where the Notary deed is numbered per month while the PPAT deed is numbered per year.⁵

From the research results, it was found that the Kantah City of Bukittinggi in West Sumatra Province rejected Notary SKMHTs made following UUJN provisions and only accepted them if they were made following the provisions of Perkaban No. 8 of 2012. The reason Kantah Bukittinggi City uses Perkaban no. 8 of 2012 and rejected the SKMHT deed in Notarial deed format because Kantah Bukittinggi is subject to Perkaban No. 8 of 2012, because those who register mortgage rights and enter the Kantah Kota Bukittinggi are officials whose position is PPAT, not notaries. Apart from that, if the loan is over or above 100 million, usually the SKMHT's lifespan is only 1 month and if you haven't taken the deed number, for example if something is incomplete, then the SKMHT must be extended, but if it is not extended, the SKMHT's lifespan will expire and BPN will reject the deed.⁶

A comparison of the parts of the SKMHT deed that follows Article 38 UUJN and the SKMHT deed that follows Perkaban No. 8 of 2012 can be seen in the following table:

Table 1.

Article 38 UUJN	Appendix VIIIa Perkaban No. 8 of 2012
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⁵Ibid.

⁶Based on an interview with Marlina, SH, as the Coordinator of the Sub-Registration of Individual and Communal Institutional Land Rights at the Bukittinggi Land Office on October 30, 14.40 WIB.

Deed header	Not using deed header	Use a deed header that states the position as Notary/PPAT, name, work area, appointment decree, number, date and office address and telephone number.
Title of the deed	Power of attorney to impose mortgage rights or deed of power of attorney to impose mortgage rights	Power of Attorney Imposing Mortgage Rights
Deed number	The deed number is not accompanied by the year written and will start again after the month changes.	The serial number of the deed in the current year and is given a slash (/) in the year the deed was made.
Description of no change occurring	Clearly state including the number of errors/changes made.	Only include the renvoi when there is an error or change without mentioning the number of errors/changes at the end of the deed.
Signing of the deed	The signing of the minutes of the deed is carried out by the parties, witnesses and the Notary, while the copy of the deed is signed by the Notary and stamped by the Notary	The first and second pages are signed and initialed on each page by the parties, witnesses and the Notary/PPAT.
Sheet on the deed	Only known as the minutes of the deed and a copy of the deed. The minutes of the deed are kept as state archives and a copy of the deed is issued and submitted to the parties and the Land Office.	Made in the format of the first sheet, the second sheet and the copy sheet. The first sheet is kept as a state archive by the Notary.PPAT and the second sheet is used to be submitted to the Land Office, while the copy sheet is given to the parties.

*Source: secondary data from various literature

Based on the comparison table, it can be concluded that there are various differences between the two types of deeds, both in terms of the deed format and the registration or submission of the deed to the Land Office. If examined more deeply, the main problem with the SKMHT made before a Notary following the format of Perkaban No. 8 of 2012, there are several elements that do not meet the authenticity requirements of a Notary deed according to Article 38 of the UUJN. Several elements that are not met, namely:⁷

1. Time of making the SKMHT deed (at the beginning of the deed);
2. Place of signing the deed (at the closing of the deed); and
3. Description of whether or not there are changes that have occurred in the SKMHT (in the closing section of the deed).

⁷Gusriadi and Taufiq El Rahman, 2021, "Legal Protection for Creditors Due to Power of Attorney Imposing Mortgage Rights Degraded as Private Deeds", Journal of Law, Faculty of Law, Unissula, Volume 37, No. 2, Sultan Agung Islamic University, Semarang, p. 140.

The above elements are not included in the SKMHT in the format of Perkaban No. 8 of 2012, so it does not meet the requirements for the authenticity of a Notary deed. The addition of a deed header is not a problem because it does not reduce the elements of a Notary deed regulated in Article 38 of the UUJN and does not have implications for the substance or content of the SKMHT deed.⁸The numbering of the deed must follow the provisions of the UUJN, namely by changing the number every month, not every year as regulated in the Perkaban and it is not a problem if the year is added because this does not reduce the implications of the elements required in Article 38 of the UUJN.

3.2. Solution for Power of Attorney to Encumber Mortgage Rights (SKMHT) in Notarial Deed Format Rejected by Bukittinggi City Land Office

Based on the provisions, the Notary keeps the minutes of the deed or the original deed containing the original signatures of the parties, witnesses and the Notary in his office as a state archive and the Notary must keep its contents confidential from any party who will request or see the deed including investigators and the Judicial Institution if without the approval of the Notary Honorary Council (MKN). Therefore, the Notary only issues a copy of the deed from the minutes of the deed which is only signed by the parties or witnesses to be submitted to the parties who need it and also submitted to other parties such as Kantah for the purposes of registering the SKMHT.

Marlina, SH, further said that by attaching a photocopy of the minutes of the deed as an additional attachment to the copy of the SKMHT deed is a preventive measure by the Kantah to further prioritize the principle of caution so that no Notary violates and in the future does not cause further legal problems. If the Notary does not attach a photocopy of the minutes of the deed, then the Kantah cannot carry out double control to take preventive measures against the authenticity of the deed, namely ensuring the authenticity of the signatures of the parties.⁹

Based on the results of the study on the solution if the Notary's SKMHT in the format of Article 38 UUJN is rejected by the Bukittinggi City Office, it can be concluded that the actual problem is that the signatures of the parties and witnesses are not completely and clearly visible on the copy of the deed submitted by the Notary in carrying out the registration so that the Bukittinggi City Office will accept it if the Notary also attaches a photocopy of the minutes of the deed as an additional attachment to the copy of the deed submitted so that the Office can check the authenticity of the parties' signatures as a form of preventive action and application of the Kantah's precautionary principle.

⁸Dwi Aulia Destiana, "Legal Review of the Making of a Power of Attorney to Charge Mortgage Rights (SKMHT) by a Notary by Including the Notary's Letterhead", Postgraduate Thesis of the Master of Notary Program, Gadjah Mada University, 2014.

⁹Based on an interview with Marlina, SH, as the Coordinator of the Sub-Registration of Individual and Communal Institutional Land Rights at the Bukittinggi Land Office on October 30, 14.57 WIB.

Attaching a photocopy of the minutes of the deed as an attachment (warkah) to the copy of the SKMHT does not violate the provisions of statutory regulations. Article 66 paragraph (1) letter a UUJN states:

"(1) For the purposes of the judicial process, investigators, public prosecutors or judges with the approval of the notary's honorary council have the authority to:

a. take a photocopy of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Notary Protocol and keep it with the Notary".

In addition to submitting a photocopy of the minutes of the deed as an additional document requirement that must be attached with a copy of the Notary's SKMHT deed for registration of Mortgage Rights, namely by simply submitting the minutes of the deed (original deed) of the Notary's SKMHT in UUJN format in the form of an In Originali Deed.

Article 16 paragraph (2) of the UUJN states:

"(2) The obligation to keep the minutes of the Deed as intended in paragraph (1) letter b does not apply, in the event that the Notary issues the Deed in original.

(3) The original deed as referred to in paragraph (2) includes:

- a. Deed of payment of rent, interest and pension;
- b. Deed of cash payment offer;
- c. Protest deed against non-payment or non-receipt of securities;
- d. **Power of attorney;**
- e. Certificate of ownership;
- f. Other deeds in accordance with the provisions of laws and regulations.

(4) The deed in original as referred to in paragraph (2) may be made in more than 1 (one) copy, signed at the same time, form and content provided that in each deed the words "VALID AS ONE AND ONE VALID FOR ALL".

(5) A deed in original containing a power of attorney that has not been filled in with the name of the person receiving the power of attorney can only be made in 1 (one) copy."

Based on the provisions of Article 16 paragraph (2) of the UUJN above, the Minutes of the Deed issued in the form of in originali Notary are exempted from being stored as a Notary protocol or state archive. Therefore, the Notary can submit the minutes of the deed without a copy of the deed again. Article 16 paragraph (3) of the UUJN letter d also states that the power of attorney is included in the type of deed in originali so that the SKMHT which is an authentic Notary's cash deed is also included in the category of the type of Notary's deed in originali. Therefore, the Deed of Power of Attorney to Charge Mortgage Rights or SKMHT made before a Notary can be directly submitted with the minutes of the deed to the Kantah to register the Mortgage Rights. The deed of power of attorney in originali can be

made more than 1 (one) copy, signed at the same time, form, and content, with the provision that each deed must contain the words "VALID AS ONE AND ONE APPLIES TO ALL".

4. Conclusion

Kantah Bukittinggi City's rationale for rejecting SKMHT in Notarial deed format is to apply the precautionary principle by ensuring the complete certainty of the signatures of the parties and witnesses who should be the responsibility of the Notary. Because the copy of the Notarial deed submitted for registration does not contain complete signatures from the parties and witnesses. Kantah Bukittinggi City accepts Notary's SKMHT if it follows the format of Attachment VIIIa to Perkaban No. 8 of 2012. The author's suggestion regarding the solution for the Notary's SKMHT deed which was rejected by the Bukittinggi City Office is to simply make the Notary's SKMHT in the form of an original deed or the original as regulated in Article 16 paragraphs (2) to (5) of the UUJN, namely by submitting the minutes of the deed in the form of a copy of the deed so that a photocopy of the minutes of the deed is not required as an additional attachment.

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