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**LEGAL CERTAINTY ON THE DEED OF GRANTING MORTGAGE
WHICH WAS REGISTERED LATE AT THE NATIONAL LAND
AGENCY IN MAKASSAR CITY**

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Abstract

This study aims to analyze the implementation of PPAT obligations in APHT registration and the implications of APHT registered by PPAT more than 7 (seven) working days. This research was conducted using empirical research methods. The data obtained, both primary and secondary data, were categorized according to the type of data. Then the data was analyzed using qualitative methods, namely analyzing data related to the problem under study, then selected based on a logical mind to avoid errors in the data analysis process. The results of this study indicate that: 1) Mortgage registration is carried out by the Land Office by making the Mortgage Land Book and recording it in the Land Rights Book which is the object of the Mortgage Rights and copying the notes on the relevant Land Title Certificate. After the entry into force of PMATR No. 5/2020, APHT registration is done online. Mortgage registration is carried out by means of PPAT submitting APHT and supporting documents to the land office, deed and warkah documents are only submitted in scanned form through the electronic mortgage system and the land office no longer accepts physical documents. 2) The delay in APHT registration will affect the birth of Mortgage Rights. In essence, the laws and regulations provide a time limit for the registration of APHT and other documents with the aim of legal certainty for the guarantee itself and certainty of legal protection for creditors.

Keywords: Deed, Mortgage Right, Registration.

A. Introduction

Land rights are rights of control over land which contain authorities, obligations and/or prohibitions for the holder of the rights. With the right of control from the State as stated in Article 2 paragraph (1) UUPA, namely on the basis of the provisions of Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, earth, water and space, including natural resources that are contained in it at the highest level controlled by the State as an organization of community power.

Article 2 paragraph (2) of the UUPA states that the state's right to control is to give the state the authority to regulate and administer the designation, use, supply and maintenance of earth, water and space. The right to control the state is to give authority to the state at the highest level to carry out the designation, use, supply and maintenance of earth, water and space. In addition, the state has the authority to determine and regulate the rights that can be had on earth, water and space as well as determine and regulate legal relations between people and legal actions

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regarding earth, water and space with the aim of achieve the greatest prosperity of the people in the context of realizing a just and prosperous society.¹

Granting of Dependents is preceded by a promise to provide Dependents as security for the repayment of certain debts, which are set out in and are an integral part of the relevant debts agreement or other agreements that give rise to such debts. The Grant of Dependent Rights is made in the form of a Dependent Rights Grant Act² (hereinafter abbreviated as APHT) by the Land Deed Making Officer (hereinafter abbreviated as PPAT) (*see* Article 10 paragraphs (1) and (2)).

With regard to the position of PPAT with the granting of Dependents, Article 13 of the Dependents Law stipulates that: The Grant of Dependents must be registered with the Land Office and no later than 7 (seven) working days after the signing of the Dependents Grant Deed as referred to in Article 10 paragraph (2) , PPAT must send the relevant Deed of Assignment of Liability Rights and other necessary letters to the Land Office.

Referring to Article 10 paragraph (1) of the Liability Law which in essence states that the Liability Rights is an additional agreement (*accessoir*) associated with the main agreement, namely the receivables agreement. In banking practice, it appears that the credit grant agreement (principal agreement) and the guarantee agreement (*accessoir*) are listed in a separate form (model) or deed.³ Thus, the existence, transfer and abolition of the Dependent's Rights depends on the debt that is guaranteed to be repaid. The burden of liability rights must meet two stages of activities, namely:⁴ the first stage of the granting of liability rights, with the creation of APHT by PPAT, which is preceded by an agreement of guaranteed debts; and the second stage of registration by the Land Office, which is the birth of the dependent dependent stage of granting Liability Rights by PPAT (which contains the substance of the mandatory and promises that are facultative) preceded by a principal agreement, namely debt agreement.

Based on the above description, then a liability charge must be registered. However, there are still several factors that indicate that there is an APHT that is registered late. Based on the results of the author's findings⁵, the fact that occurred in the Makassar City Land Office there are still PPAT who apply for APHT registration past the time limit of 7 (seven) working days. Therefore, there are some PPATs that are subject to sanctions in the form of verbal reprimands.⁶ The delay in

¹ Muhammad Wahyu, Harustiati A. Moein, Mustafa Bola dan Muhammad Ilham Arisaputra, "Penggunaan Instrumen Kontrak dalam Pembangunan Centre Point of Indonesia". *Mulawarman Law Review*, Volume 4 Issue 2 (2019), p. 87.

² Pasal 1 angka 5 UU Hak Tanggungan, Akta Pemberian Hak Tanggungan adalah Akta PPAT yang berisi pemberian Hak Tanggungan kepada kreditor tertentu sebagai jaminan untuk pelunasan piutangnya.

³ Sri Soedewi Masjchoen Sofwan. 2003, *Hukum Jaminan Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Peroranga*). Liberty Offset: Yogyakarta. p. 37.

⁴ Purwahid Patrik dan Kashadi, 2008. *Hukum Jaminan, Edisi Revisi dengan UU HAK TANGGUNGAN*, Fakultas Hukum Universitas Diponegoro: Semarang, p. 62.

⁵ Hasil wawancara dengan Putri ayu dewi srikandi, Petugas Hak Tanggungan dan Roya Kantor Pertanahan Kota Makassar Pada Tanggal 14 Maret 2021

⁶ Merujuk pada ketentuan Pasal 23 ayat (1) UU Hak Tanggungan, bagi PPAT yang dalam melaksanakan tugasnya mengabaikan ketentuan Pasal 13 ayat (2) UU Hak Tanggungan, dapat

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the registration of APHT will result in a delay for the Land Office to make the land books of Dependent Rights and record them in the land books of land rights that are the object of Dependent Rights and copy the records on the relevant land bag rights certificate, this of course makes it difficult to achieve certainty law and also to the detriment of the interests of debtors and creditors that have been laid down in the APHT

B. Research Methods.

This study uses a type of empirical legal research that examines and analyzes how the law works in society.⁷ By using a sociological approach that aims to understand the law in a social context.⁸ Empirical research includes research that is mostly carried out by the study of social sciences on law as a symptom or phenomenon that can be observed.⁹ The author conducted research at the Makassar City PPAT office and the Makassar City Defense Office. The types and sources of data used as a basis to support this research are: Primary data, ie empirical data obtained directly from respondents selected *purposively* at the research location using interview techniques. And Secondary data is data obtained from the results of the study of written documents found at the study site and have relevance to the object of study. The data obtained from both primary data and secondary data are categorized according to the type of data. Then the data is analyzed using qualitative methods, which is to analyze the data related to the problem under study, then selected based on logical thinking to avoid errors in the data analysis process. The results obtained are described descriptively, that is, by describing, explaining, and describing in accordance with the problems in this study.

C. Discussion

1. On the Implementation of PPAT's Obligations in the Registration of APHT

Dependents' rights are regulated in Law Number 4 of 1996 on Dependents' Rights to Land and Land-Related Objects ("Law No.4/1996"). Article 1 number 1 of Law No.4/1996 defines the right of dependents as the right of security imposed on the right to land to guarantee the repayment of a debt that gives a primary position to certain creditors to other creditors.¹⁰ In other words, that if the debtor breaches the promise, the creditor holding the Liability Rights has the right to sell through public auction the land as collateral in accordance with the provisions of

dikenakan sanksi administratif berupa teguran lisan, teguran tertulis, pemberhentian sementara dan pemberhentian dari jabatan.

⁷Bambang Waluyo, 2002, *Penelitian Hukum Dalam Praktik*, Jakarta: Sinar Grafika, p. 15

⁸Soerjono Soekanto, 2010, *Pengantar Penelitian Hukum*, Jakarta: UI Press, p. 43

⁹ Irwansyah, 2020, *Penelitian Hukum (Pilihan Metode & Praktik Penulisan Artikel)*, Yogyakarta: Mirra Buana Media. p.43

¹⁰ Dwina Natania, dkk, 2020. "Penyampaian Akta Pemberian Hak Tanggungan oleh Pejabat Pembuat Akta Tanah Setelah Diberlukannya Peraturan Menteri ATR/KBPN Nomor 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik", ACTA DIURNAL: Jurnal Kenotariatan Fakultas Hukum Unpad, Volume 3, Nomor. 2, p. 275.

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the relevant legislation, with the right to take precedence over other creditors.¹¹

The birth of dependents' rights is implemented through 2 (two) stages of activities, namely the stage of granting dependents' rights and the stage of registration of dependents' rights. The first stage begins with the making of a principal agreement in the form of a credit agreement or money lending agreement or other agreement that gives rise to a money lending relationship between creditors and debtors, to be followed by the granting of collateral rights. Thus, the liability grant agreement is an accessory agreement *APHT* that must be stated in¹²

An *APHT* contains substance that is mandatory, namely with respect to the name and identity of the holder and provider of the Dependent Rights, the domicile of the parties concerned, the clear designation of the debt or secured debts, the value of the liability, and a clear description of the Dependent Rights. In addition, in the *APHT*, the parties can also include promises that are facultative in nature,¹³ which aims to protect the interests of creditors as holders of Defendants. Although these promises are facultative, they are always included in the *APHT*. Land as an object of Liability includes other things that are in union with the land. This is possible because of its physical nature to be one with the land, both existing and future, in the form of permanent buildings, hardwoods and works, provided that the objects belong to the right holder or to other parties (objects- the object belongs to another party, the person concerned/owner must sign the *APHT*).¹⁴

The process of charging Liabilities is carried out through two stages of activities, namely:¹⁵

- a. the stage of granting Liabilities, with the making of the Deed of Assignment of Liabilities by the Land Deed Making Official, hereinafter referred to as *PPAT*, which is preceded by an agreement of guaranteed debts;
- b. the stage of its registration by the Land Office, which is the time of birth of the Charged Liability Rights.

In the implementation of land administration and land registration recorded in the Land Office must always be in accordance with the actual circumstances or status of the land in question, both concerning the physical data of the land, as well as legal relations concerning the land, or juridical data this, especially the recording of changes in juridical data that have been recorded previously, the role of *PPAT* is very important. According to the provisions in Government Regulation Number 24 of 1997 on Land Registration, the transfer and encumbrance of rights to land can only be registered if proven by the *PPAT* deed. In the legislation, *PPAT* is

¹¹ Penjelasan Umum Angka 4 Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah

¹² *Ibid.*

¹³ Pasal 11 Ayat (2) Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 Tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah

¹⁴ Pasal 4 Ayat (4) Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah

¹⁵ Penjelasan Umum angka 7 Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah

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mentioned as an official who functions to make an act that intends to transfer rights to land, grant new rights or impose rights on land.¹⁶

The process of granting dependents' rights is done at the PPAT office with the APHT made by the PPAT. The stage of registration at the Land Office is the birth of the rights of dependents charged. Exactly at the time the dependents are booked in the land book at the land office. Therefore, registration at the Land Office is the most important part for creditors regarding the certainty of the guarantee of the debtor who gives the right to take precedence over other creditors who also hold the right to depend on the same land object. This means that APHT must be registered by PPAT at the Land Office. The Land Office that has recorded the APHT in the land book of the land office will issue a certificate of liability in accordance with the applicable laws and regulations. The certificate issued to the dependent has the same executive power as a court decision that has acquired permanent legal force.¹⁷ According to Notary Muh Asyura, the dependents' rights before being registered are in the form of a certificate that has been renamed and usually after a credit agreement with the bank. To rename the certificate, a check must be done, after checking, then the sale and purchase process, which is then renamed, after renaming the certificate, the rights of dependents must be registered. Registered within a period of 7 days, it is intended to avoid the possibility of confiscation or other actions against the certificate, so it is immediately registered. After being registered with BPN, the certificate of liability is submitted to the bank concerned.¹⁸

The burden of dependents' rights does not stop at the stage of granting dependents' rights through the creation of APHT. Article 13 UUHT stipulates that the granting of dependents must be registered with the land office by PPAT sending the original second sheet of APHT and a letter to the land office within no later than 7 (seven) working days after the signing of APHT. registration is a condition for the birth of the Dependent Rights, so that if the Dependents have not been born, all the rights granted in the Dependent Rights Act are also not born, the creditor will only be a concurrent creditor whose debt repayment is the same as other creditors, so as to cause loss to creditors, who can file a lawsuit at PPAT.¹⁹ In the current development, it is known that there is an Online system that is different from before the online system.

APHT with Online system, in the application the relevant data is input and then the BPN will verify, that is, the required data is complete, then the BPN will confirm via email that the data on behalf of the person is complete. In addition to inputting data to the BPN, then also send it again to the relevant bank. The bank will verify the registration to BPN, so that both the PPAT and the bank both have a registration path. Furthermore, the bank will print a payment order letter, namely the Deposit Order Letter ("SPS"), the PPAT will make the payment of the value of the

¹⁶ Penjelasan Umum atas Peraturan Pemerintah No. 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah

¹⁷ Riky Rustam, 2017. *Hukum Jaminan*, Yogyakarta: UII Press, hal. 198-199.

¹⁸ Hasil wawancara Notaris Muh. Asyura,

¹⁹ Surya Harinata, 2014. "Akibat Hukum Lewatnya Batas Waktu Kewajiban Mendaftarkan APHT oleh PPAT", *Calypra: Jurnal Ilmiah Mahasiswa Universitas Surabaya* Vol.3 Nomor.2.

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dependent's rights based on the SPS. After making the payment, the bank will print another 1 sheet of liability certificate.²⁰

In order to utilize the technology that is considered to improve land services, especially the rights of dependents, which meet the principles of openness, punctuality, speed, convenience and affordability for public services, as well as to adapt to legal, technological and community needs.²¹ The Ministry of Agrarian and Spatial Planning/National Land Agency ("Ministry of ATR/BPN") stipulates Ministerial Regulation ATR/KBPN Number 9 of 2019 on Electronically Integrated Liability Services ("Ministerial Regulation ATR/KBPN Number 9 of 2019"), which is adult this has been revoked and declared no longer valid based on Article 37 of the Regulation of the Minister of ATR/KBPN Number 5 of 2020 on Electronically Integrated Liability Services ("PMATR No. 5/2020") ..

According to Article 1 number 7 PMATR No. 5/2020 that the electronic liability service is a series of liability rights service processes in order to maintain land registration data organized through an integrated electronic system. Electronic systems as referred to in these provisions are a series of electronic devices and procedures that serve to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information.²²

The Integrated Liability Electronic System ("*HT-el*") is an integrated electronic system developed by a technical unit that has duties in the field of data and information to process *HT-el Services*,²³ which is maintained reliably and securely and is responsible for the operation of electronic systems²⁴.

The types of *HT-el* are:²⁵

- a. registration of dependent rights;
- b. transfer of dependents' rights;
- c. change of creditor name;
- d. removal of dependents' rights.
- e. data repair.

There are differences in the mechanism of delivery of deeds and letter documents by PPAT to the land office in order to register the rights of dependents. Law No. 4/1996, PP Land Registration and PP Regulation of PPAT require PPAT to send physical documents to the land office and thus require the land office to receive and store dependent registration documents in original (physical) form, whereas today with regulations on rights electronic liabilities, deeds and letter documents are only submitted in the form of scans through the electronic liability

²⁰ Hasil wawancara Notaris Kasmaningsih Kasim.

²¹ Bagian Menimbang huruf a Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional No. 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik.

²² Pasal 1 angka 6 Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional No. 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik

²³ Pasal 1 angka 8 Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 5 Tahun 2020 Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik.

²⁴ Pasal 4 ayat (1) Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 5 Tahun 2020 Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik

²⁵ Pasal 6 Ayat (1) Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 5 Tahun 2020 Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik.

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rights system and the land office no longer accepts physical documents because it is the goal of the Ministry of ATR/BPN to reduce the number of letters in the land office and create land offices with the concept of zero letters by implementing letter online.²⁶

PMATR No. 5/2020 limits the role of PPAT to as a sender of documents. This is different from the provisions in Law No. 4/1996 which gives full duties to PPAT starting from the granting of dependent rights until the birth of dependent rights by completing the entire process of registration of dependent rights. In the process of charging dependents rights before the occurrence of electronic rights, PPAT is tasked to make APHT to meet the stage of granting dependents, then PPAT is also given the obligation to register dependents to the land office, which in practice in the process of registration of dependents in addition to submitting documents. dependents, PPAT through its officer also pays PNBPN as stated in the SPS so that the document can be processed by the land office until the land office issues a certificate of liability rights and submits the certificate of liability rights to PPAT officer to then be submitted to the dependents. Different things are regulated in PMATR No. 5/2020, which through the provisions of Article 9 paragraph (1) regulates that the application for electronic liability services is submitted by the creditor. Further Article 9 paragraph (2) PMATR No. 5/2020 stipulates that the completeness document in the framework of dependents registration is submitted by PPAT, so that in the implementation of electronic liability services, PPAT is only tasked to create APHT and complete the completeness document into the electronic liability system, while the liability registration process until issuance a certificate of liability is executed by the creditor.²⁷

In practice, according to Notary Public Kasmaningsih Kasim, the online system is more effective, faster and not too much operational compared to the conventional system, so that the PPAT no longer communicates with the bank and the defense.²⁸ From the presentation, it is seen that PPAT has an important role in land registration activities, because PPAT serves as an extension of the government's hand, in this case the land office, to carry out land registration activities so that a legal certainty on land ownership is created by confirming any legal act on land. which is set out in an authentic deed.²⁹ In the process of registration of dependent rights, PPAT is fully responsible in the entire network of registration of dependent rights until the issuance of the certificate of dependent rights.³⁰

A person can own land privately, not based on personal interests alone, but must also be remembered by group interests, this is where togetherness is not. The concept states the legal relationship between humans and the land they own, or

²⁶ Dwina Natania, dkk. *Op.cit.*, hal. 279.

²⁷ *Ibid.* hal. 283.

²⁸ Hasil wawancara Notaris Kasmaningsih Kasim

²⁹ Budi Untung, 2015. *22 Karakter Pejabat Umum (Notaris dan PPAT) Kunci Sukses Melayani*, Yogyakarta: Andi, hal. 26.

³⁰ Dwina Natania, dkk., *Op.cit.*, hal. 278.

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control, or whatever other interests, which are bigger and more beneficial to people (Article 6 of the UUPA) that land has a social function.³¹

In addition, there are arrangements in PMATR No. 5/2020 that PPAT is also responsible for the material truth of the documents it submits into the electronic liability rights system. Article 20 paragraph (4) PMATR No. 5/2020 states that in case the document used as the basis for the issuance of an electronic liability certificate is declared false, the sender of the document, including PPAT as the sender of the document in the electronic registration and/or transfer of liability service, is liable both criminally and civilly.³²

With the creation of APHT by PPAT, the rights of dependents have not been born, but the rights of newborn dependents at the completion of the entire process of registration of dependent rights. Registration of dependent rights is done by PPAT submitting the APHT and a letter supporting the deed to the land office no later than 7 (seven) days from the signing of the deed in question. UUHT stipulates that the delivery of APHT and letter must be done in the best and safest way to record the rights of dependents as soon as possible so as to provide legal certainty for the parties. With the delivery of deeds and letters done directly, then both the PPAT and the land office have original evidence that there has been a legal act in the form of encroachment on land rights or property rights over certain apartment units.³³

2. Implications of APHT registered by PPAT for more than 7 (seven) working days.

Basically, the burden of Dependent Rights must be done by the provider of Dependent Rights. Only if it is absolutely necessary, that is, in the event that the provider of the Dependent Rights cannot appear before the PPAT, is the use of the Power of Attorney to Charge the Dependent Rights (“SKMHT”) allowed. In accordance with that, the power of attorney must be issued directly by the provider of the Dependent Rights and must meet the requirements regarding the contents as stipulated in article 15 of Law No. 4/1996. Failure to comply with this requirement will result in the power of attorney in question being void by law, which means that the power of attorney in question cannot be used as the basis for the making of the Deed of Assignment of Liability. PPAT must reject the application to make the Dependent Rights Grant Act, if the SKMHT is not made by the Dependent Rights giver or does not meet the requirements referred to above.³⁴

There is a time limit for the obligation to make APHT after SKMHT is given, which is 1 (one) month for land rights that have been registered and 3 (three) months for land rights that have not been registered. The passage of the deadline for making this APHT resulted in SKMHT being canceled for legal reasons. SKMHT cannot be withdrawn for any reason except because the power has been exercised or

³¹ Suryana, A. Suriyaman M. Pide Atang dan Kahar Lahae, “Pelepasan Hak atas Tanah Masyarakat Adat Suku Hatam: Tantangan dan Perkembangan Kontemporer”. *Al-Azhar Islamic Law Review*, Volume 3 Nomor 1 (2021), h. 32.

³² *Ibid.*, hal. 279.

³³ *Ibid.*, hal. 280

³⁴ Penjelasan Pasal 15 ayat (1) Undang-Undang No.4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah

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because the period for making APHT has expired. This provision indicates that the making of SKMHT alone does not bind the object of guarantee, but only limited to the authorization to impose Liability Rights by the owner to the proxy. With the creation of APHT, the collateral object is bound and the owner is obliged to hand over the collateral object for debt repayment. The grant of SKMHT must be given directly by the provider of the Dependent Rights and must meet the requirements regarding the load as stipulated in the Dependent Rights Law.

Failure to meet these requirements will result in the SKMHT in question being void by law, which means that the power of attorney in question cannot be used as the basis for making the APHT. PPAT must reject the application to make APHT, when SKMHT is not made by the provider of the Dependent Rights. As a result of the law passing the deadline for registration of APHT, does not reduce or affect the validity of the Liability, the non-registration of APHT only causes third parties not to be bound by the promises made by creditors and owners of the object of Liability, these promises only bind the parties to the agreement. In practice, if PPAT is late in registering APHT, PPAT can still register APHT with a letter of delay and does not reduce the validity of the Liability Rights. Thus when the collateral received by the Bank has been properly secured in accordance with the law of Liability, the bank has a preferred position over other creditors.³⁵

Related to SKMHT over time, based on the results of the interview of Notary ABD Muis that "if it passes from 7 (seven) days is almost the same as the result that the ends are the same as the result that will be obtained because it is also tied and only *accessoir*, but if not bound by rights liability but the obligation later the consumer must still pay the debt, but not binding which the implication of the ends will lead to not bound the right of execution, it is the end or consequence if APHT is not registered. By having executive power that is, in essence, for the sake of justice based together with court decisions. Article 15 in Law 4/1996, where it is explained that SK APHT is not a power of attorney that can be substituted, the period in paragraph (3), is 1 month and 3 months."³⁶

Based on the applicable provisions, APHT registration is no later than 7 (seven) working days after the signing of APHT, but in practice according to Notary Muh Asyura, most of the time depends on the bank in signing the file submitted by PPAT which sometimes has to wait temporarily. the number used has already started running.³⁷ In addition, to the constraints mentioned above, according to Notary Kasmaningsih Kasim, the delay in the registration of APHT can also be caused by vague data, because the customer has previously given it to the bank which is then submitted to the PPAT.³⁸

Related to the online system that if the period of 7 (seven) days is passed, it will automatically be rejected. However, according to Notary ABD Muis, it is first seen from the elements of the BPN because it is common for some to settle. If the electronics are still confirmed by the BPN, and the collection at the Pusdatim is also

³⁵ Chalik dan Marhainis Abdulhay, 1982. *Beberapa Segi Hukum Di Bidang Perkreditan*, Jakarta: Yayasan Pembinaan Keluarga UPN Veteran, hal. 68.

³⁶ Hasil Wawancara notaris Abd. Muis,

³⁷ Hasil Wawancara Notaris Muh Asyura.

³⁸ Hasil wawancara Notaris Kasmaningsih Kasim,

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usually late. With the rules of the online system, sometimes creditors do not put themselves, the delay, in addition PPAT in this case is too trusting of staff, while never controlling whether staff work or not, it is one of the indicators because it is not implemented due to lack of files.³⁹

In PMATR No. 5/2020 stipulates that the head of the land office may refuse the *HT-el* if there is a seizure and/or blockade during the *el*, and there are other reasons based on the provisions of legislation.⁴⁰ In the event of an emergency beyond human control (*force majeure*) and/or certain circumstances that cause the HT-el System to be disrupted and the results of the HT-el Service cannot be published, the HT-el Service application is declared void.⁴¹ The denial and cancellation of the service is notified to the creditor through the HTel, Electronic Domicile and/or other electronic media.⁴²

Since the enactment of PMATR No. 5/2020, then APHT registration is done with the online system. With the online system, if there is a data error, it will be passed to PPAT because PPAT is the one who inputs the data, while before the online system the PPAT only prepares files, ID cards and all related documents which then the BPN will print a certificate. Technically, PPAT inputs the relevant data which then the BPN will check if it is complete and all data is readable.⁴³

As for the purpose of the registration period of 7 (seven) working days, which by Notary ABD Muis conveyed that in land registration known there is a social principle which in essence is "everyone does because in this case we adopt a negative land registration system", everyone can do and can check against the certificate, in publicity.⁴⁴

Related to APHT that is registered for more than 7 (seven) working days, in Law 4/1996, sanctions are set for PPAT who are late or negligent in fulfilling the obligation, namely in Article 23 paragraph (1) of Law No. 4/1996, which regulates that officials who violation or negligence may be subject to administrative sanctions, in the form of:

- a. verbal reprimands;
- b. written reprimands;
- c. temporary dismissal from office;
- d. dismissal from office.

In addition, the provisions of sanctions for PPAT are also regulated in PP No. 37/1998, as regulated in article 23, namely:

- a. PPAT was dismissed with respect from his position due to:
 - 1) his own request;

³⁹ Hasil wawancara dengan Notaris ABD Muis, hal. 8

⁴⁰ Pasal 24 ayat (1) Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional No. 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik

⁴¹ Pasal 25 ayat (1) Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional No. 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik

⁴² Pasal 24 ayat (2) dan Pasal 25 ayat (2) Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional No. 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik

⁴³ Hasil wawancara Notaris Kasmaningsih Kasim

⁴⁴ Hasil wawancara Notaris Kasmaningsih Kasim.

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- 2) is no longer able to carry out his duties due to his physical or mental health condition, after being declared by the authorized medical examination team at the request of the Minister or an appointed official;
 - 3) commit minor violations of prohibitions or obligations as PPAT;
 - 4) appointed as a civil servant or ABRI;
- b. PPAT was dismissed with disrespect from his position, because: he
- 1) committed a serious violation of the prohibition or obligation as PPAT;
 - 2) sentenced to imprisonment/imprisonment for committing a criminal act punishable by imprisonment or imprisonment for a term of 5 (five) years or more based on a court decision that has acquired permanent legal force.

The provisions of the sanction were imposed on PPAT by the Minister, as regulated in article 5 paragraph (1) of PP No. 37/1998 namely "*PPAT appointed and dismissed by the Minister*". Regarding the sanction, it is further regulated in the Regulation of the Head of the National Land Agency No. 1 of 2006 on the provisions of the implementation of Government Regulation Number 37 of 1998 on the Regulation of the Office of the Official Land Deed Maker.

In practice, PPAT if it is late to register APHT, can send a letter of late deed addressed to the Head of the land office, where almost no sanction is given to the PPAT and the registration of APHT can be processed again. Whereas the provisions of the obligation to register within 7 days have the purpose and objectives as well as sanctions for the creation of certainty in the law and prevent things that could harm the interested parties. According to Habib Adjie "There is no point in enforcing the rules of law when the rules cannot be enforced through sanctions and enforce the rules in question procedurally (procedural law)", the rules of law contained in a rule in the absence of sanctions and explicit application of such sanctions will render the rules or regulations useless, because in the absence of clear sanctions and enforcement, they will not have a deterrent effect on the person who violates them and will not create order in the law itself.

PPAT's civil liability is related to gaps, omissions and/or negligence in the making of deeds that deviate from formal and material requirements. Civil sanctions are imposed on PPAT if the act committed causes a loss. Thus referring to the provisions of Article 1365 of the Civil Code⁴⁵ requires the fulfillment of 4 (four) elements, namely the existence of deeds, the existence of elements of error, the existence of losses suffered, the existence of a causal relationship between errors and losses.

This provision obliges every person who causes loss to another person to compensate for the loss in accordance with the loss caused by himself. The loss in question is the loss of property in general which includes: a. losses suffered by the sufferer, and; b. the benefits that should be gained.⁴⁶ If the actions of PPAT cause losses or do not obtain the profits that should be obtained, PPAT as a public official

⁴⁵ Purna Noor Aditama, 2018. "*Tanggung Jawab Pejabat Pembuat Akta Tanah Dalam Memberikan Perlindungan Hukum Bagi Para Pihak Pada Peralihan Hak Atas Tanah Melalui Jual Beli*", Lex Renaissance, Volume 3, Nomor 1, hal. 196.

⁴⁶ Rachmat setiawan, 1982. *Tinjauan Elementer Perbuatan melawan Hukum*, Bandung: Alumni Bandung, hal. 29.

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can be held accountable in civil, then the PPAT is also obliged to compensate for the losses caused by it.⁴⁷

Thus, the legal consequences of the Registration of Liabilities exceeding the time limit determined by legislation, can be classified as:⁴⁸

- a. Legal Consequences for PPAT Article 23 paragraph (1) UUHT, that: Officials who violate or neglect to meet the provisions as referred to in Article 11 paragraph (1), Article 13 paragraph (2), and Article 15 paragraph (1) of this Law and/or its implementing regulations may be subject to administrative sanctions, in the form of: verbal reprimands; written reprimands; temporary dismissal from office; d. dismissal from office.
- b. Legal Consequences for Creditors. To provide protection to creditors is not enough just to be made in the form of a Deed only, but also must be accompanied by its registration at the Land Office to know that the land has really been charged with Liability. With the birth of the Right of Dependents, if the debtor defaults, then the repayment of the receivables will be given priority. Delay in registration causes the Preferred Rights of the creditor to be suspended, thus posing a risk if later there is an application for foreclosure from the court on the object of the Dependent Rights. Therefore, after the signing of the APHT by the parties, the PPAT who made the deed sends the file to the Land Office to be registered so that it is known that there is a Liability Right imposed on the Land Right. It has been outlined in the provisions of Article 13 paragraph (4) of Law No.4/1996, that the date of the land book of Liability Rights is the date of the seventh day after full receipt of the documents required for registration and if the seventh day falls on a holiday, the land books in question are given dated the next working day. This means that the time of submission of APHT and its completion has a direct effect on the date of publication of the land book of Liability Rights in question. The consequence of the late registration of APHT along with other letters is that the longer the registration, the longer the issuance of the Certificate of Liability.

In essence, the Legislation provides a time limit for the registration of APHT and other documents with the purpose of legal certainty for the guarantee itself and legal certainty for creditors. To ensure legal certainty and provide protection to interested parties, in the legislation regulated sanctions imposed on the implementers concerned, for violations or negligence in fulfilling the various provisions of the implementation of their respective duties.⁴⁹ Law No.4/1996 is oriented towards legal certainty for the creditor as the holder of the mortgage which is determined through the birth of the mortgage based on the time the mortgage was recorded. The certainty of the birth of mortgage rights is important to determine the position of creditors as creditors who are prioritized over other creditors. When the

⁴⁷ Surya Harinata, *Op.cit.*, hal. 11-12.

⁴⁸ Ayu Tamala, 2018. “*Pelaksanaan Pendaftaran Akta Pemberian Hak Tanggungan (APHT) oleh PPAT di Kabupaten Langkat*”, Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan Fakultas Hukum Universitas Syiah Kuala, Vol. 2 (2) Mei, hal. 459-460.

⁴⁹ Penjelasan Umum angka 11 atas Undang-Undang No.4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah

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birth of mortgage rights depends on the stage of registration of mortgage rights, thus Law No. 4/1996 regulates the sanctions that can be imposed on parties who fail to register mortgage rights.⁵⁰

D. Closing

1. Conclusion

The birth of mortgage rights is carried out through 2 (two) stages of activity, namely the stage of granting mortgage rights and the stage of registration of mortgage rights at the land office where APHT is made by PPAT. Article 13 and Article 14 of Law no. 4/1996, stipulates that the granting of Mortgage Rights must be registered and the PPAT must send the relevant APHT and other documents required to the Land Office. The registration of the Mortgage Rights is carried out by the Land Office by making the Mortgage Land Book and recording it in the Land Rights Book which is the object of the Mortgage Rights and copying the notes on the certificate of the Land Title in question.

After the entry into force of PMATR No. 5/2020, APHT registration is done online. Mortgage registration is carried out by means of PPAT submitting APHT and supporting documents to the land office, deed and warkah documents are only submitted in scanned form through the electronic mortgage system and the land office no longer accepts physical documents. Granting mortgage rights must be registered at the land office and is an absolute requirement for the birth of mortgage rights, no later than 7 (seven) working days after signing the APHT. With the delay in APHT registration, it will affect the birth of Mortgage Rights. In essence, the laws and regulations provide a time limit for the registration of APHT and other documents with the aim of legal certainty for the guarantee itself and certainty of legal protection for creditors. In order to guarantee legal certainty and provide protection to interested parties, the laws and regulations regulate the sanctions imposed on the implementers concerned. Article 23 paragraph (1) of Law No. 4/1996, stipulates that officials who violate or are negligent may be subject to administrative sanctions, in the form of: verbal warning; written warning; temporary dismissal from office; dismissal from office.

2. Suggestions

In carrying out his duties as a PPAT, especially in terms of making and registering APHT, the PPAT must pay attention to and implement all the provisions of the applicable laws and regulations, and work carefully to apply the precautionary principle, in order to avoid any losses that may result in the parties. related issues, including losses for PPAT itself.

The parties comply with all procedures and carry out the required stages. In particular for PPAT to register the APHT within 7 (seven) working days after the APHT is signed, so that a certificate of Mortgage can be born and provide legal certainty as appropriate for creditors as interested parties whose rights are protected by law regarding guarantee guarantees from debtors which gives priority over other creditors.

⁵⁰ Dwina Natania, dkk., *Op.cit.* hal. 288.

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