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Legal Protection Of Notaries In Issuing Skmht (Charge Letter Of Power Of Attorney Monitoring Rights) On The Bank

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Abstract. *Land as the wealth of the Indonesian nation must be utilized for the greatest prosperity of the people. To achieve this utilization, land consolidation needs to be carried out as an effort to increase the utility and results of land use and to align individual interests with the social function of land in the context of implementing development. Land is the basic capital for development and supports the running of the economy, there is almost no development activity that does not require land. Land plays a very important role, even determining the success or failure of a development. The nature of this research is descriptive, the results of this research are expected to obtain a factual picture or description of the land consolidation policy towards the re-arrangement of land ownership and use in Tanjung Sena Village, Sibiru-Biru District, Deli Serdang Regency, where the objects of land consolidation are land, residential buildings, dry land such as oil palms and fields, and village roads. Land consolidation as one of the efforts to increase the utility and results of land use. Land utilization needs to be implemented in the form of land regulation, control, and management. The use and utilization of land is carried out by re-arranging, partnership efforts, transfer and release of land rights in accordance with applicable laws and regulations. In the framework of land use management, guidance and control are carried out. Guidance is carried out through the provision of guidelines, guidance, training, and direction, while control is carried out through supervision such as supervision, reporting and regulation. The implementation of the regional spatial planning design is not always effective in the field, some people still assume that land rights are absolute rights, meaning rights that cannot be violated against land even though land rights contain social functions, land can be used by anyone as long as legal procedures have been taken, especially if the prospective land user is the state and is used for public interest.are funfor children such as singing, storytelling, role playing and involving parents in learning at home.*

Keywords: *Legal Protection, Notary, SKMHT*

INTRODUCTION

Notary is a public official as referred to in Article 1 number 1 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary which states that "Notary is a Public Official Making Deeds. Notary is authorized to make authentic deeds and other authorities as referred to in laws and regulations." G.H.S. Lumban Tobing is of the view that Article 1 of the Regulation on the Position of Notary does not provide a complete description of the duties of a Notary. In addition to making authentic deeds, Notaries are also to validate (waarmerken and legaliseren) letters/deeds made privately, as well as provide legal advice and explanations regarding the law to the parties concerned (GHS, Lumban Tobing, 2008).

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The deed made before a Notary is perfect authentic evidence with all its consequences (A. Kohar, 2008). Notaries are appointed by the Government represented by the Minister of Law and Human Rights of the Republic of Indonesia and work for the State to serve the needs of the community in making authentic deeds. Notaries do not receive a salary from the Government, but receive a salary from the party requesting their services. In essence, Notaries as government employees are not paid by the government and are retired by the government without receiving a pension from the government (Ahmad Mustain, 2013).

The provision of credit from the bank (as creditor) to the credit customer (as debtor) must always be based on a written credit agreement between the two parties which functions as the principal agreement. In providing the credit, the bank must pay attention to the principles of healthy credit including the risks that must be faced in returning the credit. In obtaining confidence before providing credit, the bank requires certainty for the return of the loan given to the debtor, namely with collateral that functions as an additional agreement.

The provision of credit to the community through banking is certainly carried out with a credit agreement between the lender and the recipient of the credit so that a legal relationship occurs between the two, the credit agreement is usually made by the lender, namely the bank, while the debtor only studies it and understands it. However, this credit agreement should really need special attention from both parties because the credit agreement has a very important function in the provision, management and implementation because of the agreement between the two parties that we can call the debtor and creditor, because if the debtor signs a credit agreement which is considered binding on both parties and applies as a law for both (Sutan Remy Sjahdeini, 2008).

Since the birth of Law Number 4 of 1996 concerning mortgage rights on land and objects related to land, the burden of land rights as collateral for debt no longer uses the mortgage institution but uses the mortgage institution (mortgage rights). Mortgage rights are the only collateral institution for land. The position of mortgage rights is a property right that is of a nature to provide collateral (property security rights), where it was born because it was agreed by the parties as collateral for a debt.

In Article 2 Paragraph (3) UUPA it can be interpreted that the authority derived from the State's right to control the earth, water and space including the natural resources contained therein is used for the interests of the nation, welfare and independence in a free, sovereign, just and prosperous society and state. In this way, the Government has determined the existence of a land law policy as a policy relating to land.

LITERATURE REVIEW

1. Definition of Notary

Notary is the only public official who has the right to make authentic deeds as a perfect means of proof. Notary is an extension of the state where he fulfills the state's duties in the field of civil law. in order to provide legal protection in the field of private law to citizens who have delegated some of their authority to Notary to make authentic deeds, therefore when carrying out his duties, Notary must be positioned as a public official who carries out the task. In Article 1 Paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary (UUNJ), it states the definition of Notary, namely "Notary is a Public Official who is authorized to make authentic deeds and other authorities as referred to in this law (Dody Radjasa Waluyo, 2008)

The Notary's job is to establish a legal relationship between parties in written form and a certain format, so that it is an authentic deed, is a strong document maker in a legal

process. While the position of Notary was born because society needed it, not a position that was deliberately created and then socialized to society. The history of the birth of Notary began with the birth of the scribal profession in ancient Roman times. Scribae is a scholar who is tasked with recording notes and minutes of an activity or decision and then making a copy of the document, both public and private. The word Notary comes from the word "nota literaria" which means a written sign or character used to write or describe the sentence expression delivered by the source. The sign or character in question is the sign used in fast writing (stenography), which was discovered by Marcus Tullius Tiro (Tan Thong Kie, 2008).

According to Herlien Budiono, in the traffic of private legal relations, Notaries enjoy exclusive authority to make authentic deeds, the authentic deeds are given strong evidence in civil cases, so that Notaries who are authorized to make authentic deeds occupy a very important position in legal life. In many cases, Notaries act as trusted advisors to people who need legal assistance, and for clients can act as a guide.

Notaries in making authentic deeds try as much as possible to make the deed free from defects or errors. However, as humans, mistakes will definitely occur in the deed. According to Sutrisno, if a Notary makes a mistake, this is a human thing. In addition, if there are additions or deletions to the deed, then there will be problems. Therefore, Article 48 of the Notary Law states that the contents of the deed may not be changed or added, either in the form of overlapping writing, insertion, deletion, or erasure and replacing it with someone else. Changes to the deed in the form of additions, replacements, or deletions in the deed are only valid if the changes are initialed or given another sign of approval by the witnesses and the Notary.

2. Understanding Power of Attorney to Charge Mortgage Rights (SKMHT)

According to Alwesius, "SKMHT is a letter or deed containing the granting of power of attorney given by the collateral provider/land owner (the principal) to the party receiving the power of attorney to represent the principal in order to grant mortgage rights to creditors over land owned by the principal". SKMHT given by the principal of mortgage rights cannot be made verbally or made using a letter or deed of power of attorney under hand and must be in a special power of attorney. In the provisions of the UUHT, SKMHT must be made with a Notary deed or PPAT deed (Alwesius, 2009)

Therefore, the basis for providing credit is actually the trust or belief of the creditor that the debtor in the future has the ability to fulfill everything that has been agreed upon. The term credit is not found in the Burgelik Wetbook but is regulated in the Basic Banking Law Number 10 of 1998 (Banking Law), article 1 paragraph (11), where the definition of credit is stated as follows: "credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party that requires the guarantor to pay off his debt after a certain period of time with the provision of interest" The definition above can be seen that credit is a loan agreement between the bank as the creditor and the customer as the debtor. In this agreement, the bank as the credit provider believes in its customers that within the agreed period of time the customer will pay off the credit given by the bank. The time period between the granting and the re-receiving of this achievement is an abstract thing that is difficult to measure because the period between the granting and the receipt of the achievement can last for several months, but can also last for several years (Edy Putra Tje'Aman, 2010).

Credit in its early development directed its function to stimulate both parties to help each other for the purpose of achieving needs, both in the business sector and daily needs.

The party receiving the credit must be able to prove higher achievements in the form of progress in their business or obtain fulfillment of their needs. As for the party providing the credit, materially must obtain profitability based on reasonable considerations of the capital used as the object of the credit. The Indonesian Banking Law does not provide a definition of the meaning of the credit agreement. The term credit agreement is contained in the Presidential Instruction which is addressed to the Bank community. It is instructed that in providing credit in any form, banks are required to use a "credit agreement contract" (Credit Policy Guidelines (Cabinet Presidium Instruction No. 15/EK/10) dated 13 October 1996 in conjunction with Bank Negara Indonesia Unit I Circular Letter No. 2/539/UPK/Pem. dated 8 October 1966 and Bank Indonesia Circular Letter No. 2/643/UPK/Pemb. dated 20 October 1966).

Meanwhile, the definition of credit according to Article 1 paragraph 11 of the Banking Law states "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay his debt after a certain period of time with the provision of interest."

3. Definition of Bank

Bank comes from the Italian word banco which means bench. This bench is used by bankers to serve their operational activities to customers. The term bench officially and popularly became bank. A bank is a financial institution that is a place for individuals, private business entities, state-owned enterprises, and even government institutions to store their funds.

In the big dictionary of the Indonesian language, a bank is a financial business that attracts and spends money in the community, especially providing credit and services in payment traffic and money circulation.24 According to Prof. G.M. Verryn Stuart, a bank is an institution that aims to satisfy credit needs, either with its own means of payment or with money obtained from other people, or by circulating new exchange tools in the form of demand deposits. Kasmir defines a bank simply as a financial institution whose main activity is to collect funds from the community and channel these funds back to the community and provide other banking services.

METHODS

This research is a field research with a rich qualitative research type and requirements and will produce descriptive data. This research uses a qualitative research method because the tradition in social education science fundamentally depends on human observation both in individuals and in interactions with others in a society. Qualitative research methods do not actually aim to study or prove the truth according to theory but existing theories are developed using the data collected.

The definition of qualitative research method is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. Kirk and Miller qualitative research is a particular tradition in social science that fundamentally depends on observations of humans in their own region and relates to those people in their language and in their terminology. Kaelan qualitative research is the collection of descriptive data and not using numbers as its main method tool. The data collected are in the form of text, words symbols, images, although it is possible to collect quantitative data. And data can be in the form of manuscripts such as recordings, interviews, field notes, photos, video tapes, personal documents, notes or memos, and other official documents. The descriptive data will be analyzed and interpreted. Qualitative data collection is carried out using interview methods, observation and

document review. The main informants (primary sources) are elements of government, administrators of religious organizations and the community. Primary data tracing is carried out through interviews by determining key informants who are considered worthy and appropriate and know the problems being studied.

RESULTS

Implementation of Making a Power of Attorney to Encumber Mortgage Rights (SKMHT) Made Before a Notary

After the enactment of the current UUHT, the land objects that were previously burdened through a mortgage guarantee institution have been taken over by a mortgage guarantee institution. In the explanation of the UUHT it is stated that if it is really necessary, the granting of mortgage rights can be done through a power of attorney. The provisions of Article 15 of the UUHT state that the Power of Attorney to Burden Mortgage Rights (SKMHT) must be stated in the form of a Notary deed or a deed of a land deed official. The word must be made with a Notary deed and PPAT in Article 15 of the UUHT means that the form of SKMHT must be stated in the form of an authentic deed. Furthermore, in the explanation it is stated that failure to fulfill this requirement makes the power of attorney null and void by law.

Considering that the object of the mortgage rights regulated in the UUHT was previously the object of a mortgage, then in discussing SKMHT, it certainly cannot be separated from discussing the practice of SKMHT in the past. Based on Article 1171 of the Civil Code paragraph (2) it is stated that SKMHT must be stated in the form of a notarial deed and therefore the authority to state SKMHT in the form of an authentic deed is only for Notaries, now the authority to state SKMHT in addition to Notaries is also given to PPAT. The granting of authority to PPAT to state SKMHT in authentic form is related to the determination of PPAT as a public official in Article 1 number (4) of the UUHT. Because PPAT is now a public official, he is now also authorized to state SKMHT in authentic form.

In addition, in the past, SKMHT could be made by unilateral legal act (machtiging), although currently UUHT does not state that SKMHT must be made in the form of an agreement/lastgeving, but if we look at the format/SKMHT Form prepared by the National Land Agency (BPN), we get the impression that at least for SKMHT made in a PPAT deed, it must always be in the form of an agreement (lastgeving).

The making of a SKMHT by a PPAT is subject to the procedures for filling out the SKMHT as regulated in letter h (attachment 23) Article 96 paragraph (1) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 Amendment to 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. Meanwhile, for Notaries themselves, they must comply with the UUJN, because this UUJN is the main guide for a Notary in making a Notarial deed, so that every deed made by a Notary must be in accordance with the rules stipulated in the UUJN so that the deed can be declared as a Notarial deed that has the power of proof as an authentic deed.

The authenticity of a notarial deed itself can be based on the provisions of Article 1868 of the Civil Code in conjunction with Article 1 number (1) in conjunction with Article 1 (7) in conjunction with Article 38 UUJN. According to these provisions, a Notary is a public official who has the authority to make authentic deeds, where the form and procedure of the notarial deed must be in accordance with those regulated in UUJN.

Therefore, a Notary when carrying out his/her position cannot be separated from all provisions regulated in UUJN, likewise regarding the form and procedure for making each deed must be in accordance with the provisions stipulated by UUJN, even though in this case the Notary fills in a SKMHT form that has been issued by the BPN RI.

One of the obligations of a Notary is to be careful in carrying out his/her duties. This is regulated in Article 16 of the UUJN which reads: "In carrying out his/her duties, a Notary is obliged to: (a) act honestly, carefully, independently, impartially, and protect the interests of the parties involved in legal acts. Careful in this case means that in carrying out his/her duties, a Notary must be careful and full of caution so that each deed is made in accordance with the provisions stated in the UUJN, so that each deed made by the Notary is a good and correct deed, a deed that is of good quality and has a positive impact. And its authenticity is maintained so that the parties in the deed can have their interests protected.

The SKMHT Form issued by the BPN RI can be amended (renvoi) by the Notary if the Notary feels that there are deficiencies in the Form when associated with the UUJN. Therefore, it is necessary to conduct research on what things are lacking and can be added by a Notary in the SKMHT Form. Therefore, below will be examined what deficiencies in the SKMHT form that can be added by a Notary so that the SKMHT made by the Notary still meets the provisions contained in the UUJN and its authenticity is maintained. This research was conducted by further examining the beginning of the deed, the body of the deed, and the end or closing of the SKMHT form issued by the BPN RI.

Before discussing the Power of Attorney to Impose Mortgage Rights (SKMHT), the author first discusses a general overview of power, including the power contained in the Power of Attorney to Impose Mortgage Rights (SKMHT). Granting power of attorney or in Dutch called Latsgeving, is an agreement (overenkoms) by which someone gives power or authority (macht) to another person, who receives it for and on behalf of the principal (latsgever). The method of granting and receiving power of attorney can be done by authentic deed (Notarieel), by private writing (Onderhands geschrift), by ordinary letter and/or verbally. In addition to being accepted explicitly, acceptance can also be done secretly and can be concluded from its implementation. Granting power of attorney is not promised to occur free of charge. Based on article 1795 of the Civil Code, it reads as follows "Granting power of attorney can be done specifically, namely concerning only one or more specific interests, or in general, namely covering all interests of the principal". A special power of attorney only contains certain tasks, the power of attorney only orders the power of attorney to carry out one or several certain things, for example the power to sell a house or the power to sue a certain person in accordance with article 1795 of the Civil Code. While a general power of attorney contains the content and purpose of carrying out actions to manage the assets of the power of attorney, the recipient of the power of attorney takes care of everything related to the assets of the power of attorney.

Another thing that needs to be considered in granting power of attorney is the clarity of the wording in terms of transferring rights to objects, pledging an object or land, making peace or other actions that can only be done by the owner of the object in question. The recipient of the power of attorney exercising the power granted by the recipient of the power of attorney may not act beyond the limits granted to him by the recipient of the power of attorney. As long as the recipient of the power of attorney has not been released for that (his power has not been revoked/fulfilled/ended), then the

recipient of the power of attorney is responsible for negligence in exercising his power. The recipient of the power of attorney is also required to report and provide an account to the principal for what he has done as the principal. The recipient of the power of attorney is responsible for other people/or third parties who have been appointed to carry out the power granted by the principal but the person appointed turns out to be incapable of carrying out the power.

CONCLUSION

Legal review of SKMHT in the imposition of mortgage rights, namely SKMHT as one of the means that has a legal basis in realizing the smooth implementation of credit agreements between the parties, especially between creditors and debtors. In order to function as a legal tool, the SKMHT requires the presence of a Notary or PPAT as a party or institution that has legal standing and is trusted to facilitate the interests of the parties involved in the Credit agreement, especially in terms of regulating the object of the mortgage.

The making of a Power of Attorney to Charge Mortgage Rights (SKMHT) Made Before a Notary must be made in a Notarial deed or PPAT deed, however in practice the making of a notarial SKMHT deed can only be carried out by following the SKMHT form format of Perkaban Number 8 of 2012, because in the Registration of SKMHT in a notarial form it is not accepted, the Land Office is guided by the procedure for filling out the SKMHT as stipulated in Perkaban Number 8 of 2012, which is inconsistent with the form of a Notarial deed regulated in Article 38 UUJN, namely there are deficiencies that result in the SKMHT deed not meeting the criteria as an authentic Notarial deed. Notary's Accountability to Creditors in Making a Power of Attorney to Charge Mortgage Rights is In making an Authentic Deed, the Notary must be responsible if the deed he made contains an error or violation that is intentional by the Notary. On the other hand, if the element of error or violation occurs from the parties appearing then as long as the Notary exercises his authority in accordance with the regulations. The Notary concerned cannot be held responsible, because the Notary only records what is conveyed by the parties to be stated in the deed. False information conveyed by the parties is the responsibility of the parties.

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