



Legal Provisions Through The Deadline of Decision of Assets to Grant Liability Rights (APHT) Registered By PPAT

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Artikel info

Artikel history

Received : 29-03-2021

Revised : 06-04-2021

Approved : 18-04-2021

Keywords: legal consequences; APHT; PPAT

Abstract

The purpose of this research is to find out, understand and analyze whether the delay in registering APHT affects the validity of the Mortgage Rights and to find out, understand and analyze the legal consequences of the passing of the deadline for registering APHT by the PPAT. After researching with the statutory approach and the opinions of scholars, it was concluded that the delay in registering APHT did not affect the validity of the APHT, so that after the APHT was registered it did not affect the birth process of the Mortgage and the validity of the Mortgage Rights, the new Mortgage would be born after 7 (seven)) the day the APHT is registered completely along with the documents needed for registration, as evidenced by the issuance of a Certificate of Mortgage. Delay in registration will only delay the birth of the Mortgage Rights, but will not affect the validity of the APHT for the Mortgage Registration process. The legal consequence of the passing of the time limit for the obligation to register APHT by PPAT can result in a lawsuit and sanctions against the PPAT itself, both civil and administrative, and can cause losses to the parties who agree, especially creditors.

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2021



Introduction

The economic progress of the Indonesian people is currently growing rapidly. In addition to technological developments that make work easier, the development of easy access to foreign currency loans is also an important factor in economic progress. The community, both as individuals and as business entities, continues to strive to increase consumer and productive needs. To meet these needs, a source of funding is needed, including in the form of a credit to support the increasing demand for working capital. The public can apply for a foreign currency loan from a bank by providing a guarantee to the bank, in this case, the foreign currency lender is called the creditor, and the party receiving the foreign currency loan is called the debtor. This relationship is called a credit agreement; credit can also help maintain the stability of the country's economy because credit will increase the number of commodities needed by the community, accelerate production and trade, and indirectly improve the people's standard of living (Budiono, 2011).

Credit provided by the World Bank is risky, so the World Bank must apply the principle of prudence in implementing loans to ensure that the public funds collected are maintained and safe. To reduce this risk, credit guarantees are based on the ability and ability of the debtor to pay off debts. The guarantee function is to convince the World Bank that the debtor can repay the credit given to him under the agreed credit agreement. Guarantee not only provides legal protection for creditors as credit providers but also legal protection for debtors as credit recipients. The guarantee law is a legal clause that regulates the relationship between the guarantor and surety. certain debts or guarantees. Credit facilities with collateral from objects or individuals (M Bahsan SH, 2020).

Substantive guarantees are guarantees provided by a creditor to a debtor or between a creditor and a third party to ensure the implementation of the debtor's obligations. Real estate collateral in the form of land rights "in this case the land title owned by the debtor is used as collateral. If the debtor is unable to repay the loan, the World Bank will use it for repayment through auction sales." Collateral in the form of mortgage rights regulated in the provisions of Law Law No. 4 of 1996 (regarding mortgage rights over land and objects related to land) (Undang-Undang Nomor 4 Tahun 1996, 1996).

Granting of mortgage rights is carried out by the land contract formulation officer (PPAT) issuing the mortgage right agreement (APHT), then registration is carried out at the land office, but before the APHT is formulated, the power of attorney for the mortgage must be enforced. Rights (SKMHT) can be submitted to a notary or PPAT. The document must clearly state the object of the mortgage, the amount of debt, and the name of the creditor's identity, as well as the name and name of the debtor (if the debtor is not the identity of the debtor) mortgage guarantor. This provision is contained in Article 15 paragraph (1) of the Law on Mortgage Rights.

After the signing of the APHT, PPAT is required to register the APHT at the Land Office no later than 7 working days, this provision is contained in Article 13 paragraph (2) of the Mortgage Rights Law. However, in daily practice, some PPATs are late in registering APHT to the Land Office, of course, is not under legal objectives, namely legal certainty, especially if it causes consequences for creditors as parties with an interest in settling their debts.

Research Methods The

type in this thesis research is the normative type, with the statutory approach or the *Statute Approach* and the *Conceptual Approach*. The statute approach means that the problems formulated in this thesis are reviewed, analyzed, and resolved under the applicable legal regulations, in this case, Law Number 4 of 1996 concerning Land Mortgage and Land-related Objects, the Banking Law. A conceptual approach is an approach that is carried out by using the opinions of scholars which will later be used as a supporting basis based on concepts related to the issue of guarantee rights.

The technique of collecting legal materials is through data collection on cases that occur in the practice of practitioners in the field and through literature study, namely taking inventory of laws and regulations, books, magazines, lecture materials, and other writings to obtain legal materials. under the object of research understudy for a further systematic arrangement based on the subject matter in the study.

Legal materials obtained through data collection from the opinions of scholars and an inventory of statutory regulations and other supporting legal materials are then analyzed qualitatively which are then described. The next stage is to perform analysis using deductive and inductive reasoning. The synthesis of the two reasoning above is to answer or provide solutions to problems related to the expiration of the PPAT registration obligation PPAT.

Results and Discussion

The function of registration is to fulfill the principle of publicity. The registration is intended as a notification to the public that the object of land rights has been used as collateral for the settlement of debts, in other words, the fulfillment of this publicity principle is to participate in binding third parties, this was also expressed by Habib Adjie. "With the inclusion of these promises In APHT, which is then followed by registration of Mortgage Rights at the Land Office, the Principle of Publicity is fulfilled, thus the promises have a binding position against third parties "(Adjie, 2000) if APHT is not registered or the principle of publicity is not fulfilled. , then the third party is not bound by the agreement and promises made by the creditor and the guarantor of the object of guarantee, the agreement only binds the parties who agreed. J. Satrio said that "The purpose of the principle of publicity in land registration is that by paying a certain amount of money, people can see the land book and from the land book it can be seen the characteristics of the land concerned, both regarding the subject and object of their rights" (Satrio, 1997), the thing that was conveyed by J. Satrio was regarding the registration function, the purpose of registration was so that third parties could directly know the condition of the land in question, whether or not it was being imposed on the Insurance Rights, knowing the condition of the object could be useful information for a third party, and in the event of a legal action involving a third party, the third-party is bound by the promises made by the creditor and the guarantor of the object of guarantee.

Whereas in the Law on Mortgage Rights it is not determined due to the law on delay in registering APHT. If traced in the Mortgage Rights Law, we can see that APHT is made based on SKMHT, where SKMHT is regulated in Article 15, namely:

Article 15

- (1) Power of Attorney to impose Mortgage Rights must be made with a notary deed or PPAT deed and meet the following requirements
 - a. does not contain the power to perform legal actions other than to impose Mortgage Rights;
 - b. does not contain substitution power;
 - c. clearly states the object of the Mortgage, 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 guarantor of the Mortgage.
- (2) Power to Impose Mortgage Rights cannot be withdrawn or cannot be terminated by any cause except because the power has been exercised or because the period has expired as referred to in paragraph (3) and paragraph (4)
- (3) Power of Attorney Imposing Mortgage Rights regarding registered land rights must be followed by a Deed of Granting Mortgage Rights not later than 1 (one) month after it is granted.

- (4) Power of Attorney to impose mortgage rights regarding land rights that have not been registered must be followed by a Deed of Granting Mortgage Rights not later than 3 (three) months after being granted.
- (5) The provisions as referred to in paragraph (3) and paragraph (4) do not apply if the Power of Attorney to impose Mortgage Rights is issued to guarantee certain credit as stipulated in the prevailing laws and regulations.
- (6) Power of Attorney to impose Mortgage Rights which are not followed by the making of the Deed of Granting Mortgage within the stipulated time as referred to in paragraph (3) or paragraph (4) or the time determined according to the provisions as referred to in paragraph (5) shall be null and void by law.

In Article 15 paragraph (3) and paragraph (4), there is a time limit for the obligation to make APHT after the SKMHT is granted, namely 1 (one) month for land rights that have been registered and 3 (3) months for land rights that have not been registered. Passing the time limit for making this APHT in terms of Article 15 paragraph (6) means that SKMHT is null and void. SKMHT for Article 15 paragraph (2) cannot be withdrawn for any reason except because the power of attorney has been exercised or due to the expiration of the period for making APHT. This provision shows that if the SKMHT alone is not binding on the object of guarantee, it is only limited to granting the power of attorney to impose the Mortgage Rights by the owner on the power of attorney. By making APHT so that the collateral object is bound and the owner is obliged to submit the collateral object for debt repayment. The SKMHT must be given directly by the mortgage provider and must meet the requirements regarding the content as stipulated in the Mortgage Rights Law. Failure to fulfill these conditions causes the SKMHT concerned to be null and void, which means that if the power of attorney concerned cannot be used as the basis for making APHT. PPAT is obliged to reject the application to make APHT if the SKMHT is not made by the mortgage provider himself.

Due to the passing of the deadline for APHT registration, it does not reduce or affect the validity of the Mortgage Rights, the absence of APHT registration only results in not being bound by the third party to the promises made by creditors and owners of the object of the Mortgage, these promises only bind the parties who agree. . In the implementation, if PPAT is late in registering APHT, PPAT can still register APHT accompanied by a message of delay and does not reduce the validity of the Mortgage. with other creditors ”(Chalik & Hay, 1982). It's just that if the APHT is not registered immediately it will be able to cause problems if the owner of the object loses his authority over the object so that the APHT cannot be registered, and if the property rights of the object have been transferred to a third party and the third party does not know if the object has been guaranteed, this can be done. cause problems in the future, because by not registering APHT so that the third party is not bound by the promises contained in the APHT.

APHT registration aims so that their rights can be born and creditors as interested parties are protected by the Mortgage Law. But with the delay in APHT registration, of course, also affects the birth time of the Mortgage, wherein the mass of time there can be claims from third parties, confiscation of the legal panel, or the imposition of bankruptcy to the guarantor of the Mortgage Rights, where creditors or PPAT do not always recognize the

economic condition of the Debtor. . Of course, this matter will create losses for the creditor as the creditor.

According to JBJM ten Berge quoted by Habib Adjie in the Indonesian Notary Lawbook:

Broadly speaking, administrative sanctions can be divided into 3 (three) types, namely:

a. Reparative

Sanctions These sanctions are intended to correct violations of the legal order. It can be in the form of stopping the forbidden act, the obligation to change attitudes/actions so that the original state is determined, the act of correcting something that is against the rules. For example, coercion to do something for the government and payment of forced money which is determined as punishment.

b. Punitive

Punitive sanctions are an additional burden, penalties are classified as retaliation, and preventive actions that cause fear to the same offender or possibly to other offenders. For example, the payment of fines to the government, strong warning

c. Regressive

Sanctions as a reaction or a form of disobedience, revocation of rights over something that is decided according to law, as if returned to the actual state of the law before the decision was taken. For example, revocation, change, or suspension of a decision (Adjie, 2011).

The Mortgage Law provides for sanctions for PPAT who are late or negligent in fulfilling Article 13 paragraph (2) regarding the time for APHT registration, which is contained in Article 23 paragraph (1) of the Mortgage Law:

Article 23

- (1) Officials who violate or fail to comply with the provisions 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:
- a. verbal warning;
 - b. written warning;
 - c. temporary dismissal from office;
 - d. dismissal from office.

There are 4 (four) administrative sanctions, which these sanctions range from a verbal warning to the dismissal of office.

If the PPAT violates the sanctions imposed due to negligence in fulfilling the APHT registration obligations within 7 days after the APHT is signed, it can be in the form of an oral warning, with the lightest sanction and the highest duty exemption. But, if PPAT is late in registering for APHT, it can send an extension deed to the person in charge of the land office. The person in charge of the land office has rarely taken any sanctions against the PPAT so that he can process the APHT registration again. Meanwhile, the purpose and objective of mandatory registration within 7 days are to take sanctions to ensure legal certainty and avoid things that may harm the parties concerned. When rules cannot be

enforced through sanctions and cannot be explained through procedures (activity law), or the rules are useless, because they do not want to be made without sanctions and actual implementation, then the enforcement of legal principles becomes meaningless. This has a deterrent effect on those who break the law and do not enforce the discipline of the law itself.

What happens if a mortgage provider is seized by a court or goes bankrupt after the 7-day APHT registration deadline has passed? Registration is a prerequisite for making a mortgage. Therefore, if the mortgage has not been created, all the rights granted by the mortgage law have not been created, and the creditor will only be a concurrent claim with the same amount of payments on the account. Like other creditors, it can hurt creditors, and creditors can file a lawsuit against the PPAT.

According to Article 23 paragraph (1) of the Mortgage Rights Law, pending PPAT registration may be subject to administrative sanctions such as temporary suspension or suspension. However, what happened was that PPAT was never sanctioned for delaying APHT registration. In the provisions of Article 23 paragraph (3) of the Mortgage Rights Law, namely, "the sanctions as referred to in paragraph (1) and paragraph (2) will not reduce the sanctions that can be imposed based on other applicable laws and regulations". stipulates that the sanctions in paragraph (1) do not reduce the sanctions that can be imposed based on other applicable laws and regulations. In this case, the sanctions can be based on Article 1365 of the Arms Convention and PP No. 37 of 1998 (Peraturan Pemerintah Nomor 37 Tahun 1998, 1998).

For parties who suffered losses due to late registration of APHT can file a civil lawsuit over the mistakes of the PPAT. Minor error from the manufacturer (Prodjodikoro, 1984). So that the delay in registering APHT as stipulated in the Mortgage Law, which is 7 days after the signing of the APHT can be an element of error for PPAT, regardless of the value of the severity of the error.

If the delay in registering APHT causes a loss to the parties, it is based on Article 1365 BW. "Every act that violates the law and brings harm to other people, obliges the person who caused the loss due to his mistake to compensate for the loss" This provision requires everyone who causes harm to another person to compensate under the loss caused by him. "The loss referred to here is the loss of property in general, which includes: a. losses suffered by the sufferer, and; b. the profit that should have been obtained "(Setiawan: 1982), if PPAT's actions cause losses or do not get the benefits that should be obtained, PPAT as a public official can be held accountable in a civil manner based on these provisions, where if PPAT in carrying out its position causes losses to others, then the PPAT is also obliged to compensate for the losses caused by it.

Errors or omissions that cause PPAT to be late in registering APHT, are they included in *wanprestatie*? According to (Harahap, 1982), "*wanprestatie* is the implementation of obligations that are not on time, or done not accordingly", the implementation of something that should be someone's obligation that is not done fully or only partially, or if it is not done on time This is included in *wanprestatie*, so if the obligation is not carried out properly, which is not under what has become an obligation, if we look at Article 13 paragraphs (1) and (2) registration is an obligation of the PPAT which is limited by time, namely no later than 7 days, and this registration has been entrusted by law and the parties to the PPAT which has been specially appointed to register APHT. So that if PPAT is late in registering APHT or

does not even register APHT as determined by the Mortgage Law, it can be said that the PPAT has fulfilled the elements of wanprestatie.

Sanctions for PPAT are also contained in Government Regulation Number 37 of 1998, this provision is contained in Article 10 paragraph (1) and paragraph (2), namely:

Article 10

- (1) PPAT was honorably dismissed from his position because:
 - a. own request;
 - b. no longer able to carry out their duties because of the state of physical health or mental health, after being declared by the competent health examination team at the request of the Minister or a designated official;
 - c. committing minor violations of prohibitions or obligations as PPAT;
 - d. appointed as a civil servant or ABRI;
- (2) PPAT was dishonorably dismissed from his position, because:
 - a. commit serious violations of prohibitions or obligations as PPAT;
 - b. sentenced to imprisonment/imprisonment for committing a criminal offense punishable by imprisonment or imprisonment of up to 5 (five) years or more based on a court decision that has obtained permanent legal force.

In the provisions of Article 10 paragraph (1) letter c, PPAT which commits a minor violation of the prohibition or obligation as PPAT can be dismissed with respect, and in paragraph (2) letter a, PPAT that has committed a serious violation of the prohibition or obligation as PPAT can be dismissed with disrespect. This sanction provision was imposed on PPAT by the Minister, this provision is regulated in article 5 of Government Regulation Number 37 of 1998, which is further regulated regarding sanctions in the regulation of the head of the national land agency of the Republic of Indonesia number 1 of 2006 concerning provisions for implementing government regulation number 37 of 1998 concerning office regulations. official land deed maker Article 28:

- (1) PPAT is honorably dismissed from his position by the Head of the Agency because:
 - a. own request;
 - b. no longer able to carry out tasks because of the state of physical health or mental health, after being declared by the health examination team to be authorized at the request of the Head of the Agency or a designated official;
 - c. committing minor violations of prohibitions or obligations as PPAT;
 - d. appointed as a civil servant or member of the TNI / POLRI.
- (2) PPAT is dishonorably dismissed from his position by the Head of the Agency, because:
 - a. commit serious violations of prohibitions or obligations as PPAT;
 - b. sentenced to imprisonment/imprisonment for committing a criminal offense punishable by imprisonment or imprisonment for a maximum of 5 (five) years or more based on a court decision that has permanent legal force;
 - c. violates the professional code of ethics.

The Head of the Agency is the Head of the National Land Agency of the Republic of Indonesia, when PPAT commits both negligent and deliberate violations, both minor and

serious, as well as violations of the PPAT code of ethics, the head of the agency that imposes sanctions on PPAT, this provision is different from a Notary when it commits a violation, a Notary if committing a violation, the sanctions will be given by the Regional Supervisory Council, Central Supervisory Council, and the Minister depending on the sanctions imposed. this provision is contained in the provisions of articles 73 and 76 of the UUJN.

Passing the deadline for APHT registration can result in losses in the emergence of a lawsuit against PPAT, and if there is a lawsuit that results in the confiscation of the object of guarantee, the creditors risk losing their preferred rights because the Mortgage has not been born.

Conclusion The

Delay in registering APHT has no effect on the legality of the APHT so that after the APHT is registered it does not affect the process of the birth of the Mortgage and the validity of the Mortgage, a new Mortgage will be born after 7 (seven) days the APHT is registered completely along with the documents needed for registration, evidenced by the issuance of a Certificate of Mortgage. Delay in registration will only delay the birth of the Mortgage Rights, but will not affect the validity of the APHT for the Mortgage Registration process. The legal consequence of the passing of the time limit for the obligation to register APHT by PPAT can result in a lawsuit and sanctions against the PPAT itself, both civil and administrative, and can cause losses to the parties who agree, especially creditors.

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