Application and Implications of Setting Up A Power of Attorney Form to Impose Dependent Rights (SKMHT) Made in Front of Notaries in Banyumas Regency

Lita Wulandari
Faculty of Law, University of Jenderal Soedirman

Abstract
The Form of Power of Attorney to Impose Dependent Rights (SKMHT) made by notary deed is stipulated in Article 96 paragraph (1) of the Head Regulation of the National Land Agency No. 8 of 2012 and Article 38 of the Law of the Notary Department No. 2 of 2014. This research aims to analyze the arrangements on the form of SKMHT made before notaries and to analyze the application and implications of SKMHT form arrangements made before notaries in the Banyumas Regency. This research uses normative juridical research methods with a statute approach and conceptual approach. The result of the research obtained is that the form of SKMHT with the proper notarial deed is as stipulated in Article 38 UUJN number 2 of 2014. Violation of the provision causes the notary deed to be degraded as a deed under hand (Article 41 UUJN No. 2 of 2014) and implicates its dependent rights to be invalid so that the creditor does not have a position of priority or precedence to the holder (Droit de preference).

Keywords: Notary Deed, Power of Attorney Imposing Mortgage Rights (SKMHT), Mortgage Rights

Introduction
Based on the provisions in Article 51 of Law No. 5 of 1960 on the Basic Regulation of Agrarian Fundamentals, which has been announced in Statute Book No. 1960 No. 104, Additional Statute Book No. 2043 (hereby called UUPA), it is mentioned that there has been a strong guarantee rights institution and may be charged to land rights, namely Dependent Rights instead of mortgage institutions and creditverbands. According to J. Satrio referred to as Dependent Rights is a guarantee institution, where the object that becomes the guarantee of a debt (alliance) is an object in the form of land (Satrio, 1997).
The mandate of Article 51 of the UUPA can only be realized on April 9, 1996, which is stipulated in Law of the Republic of Indonesia No. 4 of 1996 concerning Dependent Rights on Land and Land Related Objects, which has been announced and published in the State Gazette of the Republic of Indonesia dated April 9, 1996, under Number 42, Additional Statute Book No. 3632 (hereby called UUHT). Article 1 paragraph (1) of the UUHT gives the meaning of "Dependent Rights on land and objects related to the land", hereby referred to as "Dependent Rights", as follows:

"Dependent Rights are the guarantee rights imposed on land rights as referred to in Law No. 5 of 1960 on the Basic Rules of Agrarian Fundamentals, following or not following other objects that are one entity with the land, for the repayment of certain debts that give priority to certain creditors against other creditors."

The General Explanation Section number 7 of the UUHT explains that in granting dependent rights, dependents must be present in front of PPAT. If for some reason it cannot present itself, it is obligatory to appoint another party as its power of attorney, with a Power of Attorney imposing dependent rights (abbreviated as SKMHT), in the form of an authentic deed. So SKMHT in this case is not a guarantee institution, but only a power of attorney from the giver of dependent rights as a power of attorney to the creditor as the beneficiary in the implementation of the binding of the Dependent Rights on the object of credit guarantee in the form of land.

Article 15 paragraph (1) of the UUHT determines that SKMHT must be made by notary deed or PPAT deed. Thus, even if it must be made by an authentic deed, the choice is not only by notary deed but can also be made by PPAT deed (Sjahdeini, 1999). Authentic deed as a proof tool has an important role in every legal relationship in people’s lives. The need for written proof in the form of authentic deed is increasing, in line with the growing demand for legal certainty in various economic and social relationships.

In legislation, PPAT and notary are two different positions, which distinguishes the two is the legal basis governing both. The notary authority to make an authentic deed (notary deed) specifically the Deed of Power of Charge of Dependent Rights in both the form of a minute deed and in original is regulated in Law No. 2 of 2014 on Amendment to Law No. 30 of 2004 on Notary Department, which has been announced in Statute Book No. 3/2014 Additional Statute Book No. 5491, namely in Article 15 Paragraph (1) and Paragraph (2) letter f (Article 15 Section 1 and 2) and Article 16 Paragraph (3) letter d (Article 16 Section 3). The authority of PPAT to make an authentic deed concerning certain
legal actions in the field of land, especially the granting of the power to impose dependent rights is as stipulated in Article 2 paragraph (1) and paragraph (2) letter f of Government Regulation No. 37/1998 concerning the Regulation of the Office of the Land Deed That has been announced in Statute Book no. 52/1998, along with the implementing regulations.

SKMHT is made in the form of a notary deed (hereby called SKMHT Notarial) or PPAT deed is based on the location of the object of its dependent rights. If the Object of Dependent Rights is located within the working area of PPAT then SKMHT is made by deed of PPAT, thus based on Article 4 paragraph (1) of Junction Article 12 of Government Regulation No. 24 of 2016 on Amendment to Government Regulation No. 37 of 1998 on the Department of PPAT which has been announced in the Addition of Statute Book No. 5893; whereas if the object of dependent rights is located outside the working area of the PPAT then SKMHT is made by notary deed following Article 18 of Law No. 30 of 2004 on the Notary Department which has been announced in Statute Book No. 117 Of The Republic of Indonesia No. 4432.

Furthermore, regarding the substitution and form (anatomy) of the SKMHT deed, if associated with the notary department and PPAT, it has been regulated in their respective laws and regulations. The substitution or form of SKMHT Notarial deed which is a notary deed is as stipulated in Article 38 of Law No. 2 of 2014 on Amendment to Law No. 30 of 2004 on Notary Department (hereby called UUJN Renewal abbreviated UUJN-P). Article 1 paragraph (7) of UUJN confirms that a notary deed is an authentic deed made by or before a notary according to the form and procedure stipulated in this law. On the other hand, the substance and form of SKMHT are also regulated in the Regulation of the Head of national land agency of the Republic of Indonesia No. 8 of 2012 on Changes to the Regulation of the Minister of State of Agrarian/Head of National Land Agency No. 3 of 1997 on the Provisions of Implementation of Government Regulation No. 24/1997 on Land Registration for herein called PERKABAN No. 8 of 2012, which is stipulated in Article 96 paragraph (1) p. viii. Article 96 Paragraph (1) of the PERKABAN that the form of deed used in the creation of the deed as referred to in Article 95 paragraph (1) and paragraph (2) and the procedure of filling is made following the attachment of the PERKABAN. PERKABAN No. 8 of 2012 regulates the form of PPAT deed related to land registration, however, the provision becomes out of sync because, appendix VIII of the Bandage implies that the provisions of SKMHT made by notary or PPAT form should refer to the form contained in appendix PERKABAN Number 8 the year 2012, especially the attachment concerning SKMHT. When reviewed from the attachment position of
a rule of law, Maria Farida explained that the attachment is an integral part of the relevant legislation (Farida, 2007). Therefore, part of the attachment of the United States has a binding power also to the notary who makes the deed related to the land (SKMHT), when on the other hand, regarding the anatomy of the authentic deed made by /before the notary is also stipulated in Article 38 UUJN-P. It can be seen that the arrangement of different forms of SKMHT Notarial in 2 (two) regulations namely in UUJN-P and PERKABAN Number 8 in 2012 can certainly give rise to multi interpretation in its implementation, so there seems to be a problem especially for the arrangement of SKMHT notarial form that is interesting to be analyzed by the author.

Based on the author's initial observations, several notaries in Banyumas Regency in the manufacture of SKMHT Notarial using deed whose form refers to the form of SKMHT stipulated in PERKABAN No. 8 of 2012, do not refer to Article 38 UUJN-P. Article 41 of UUJN-P asserts that violation of the provisions of Article 38 UUJN-P resulted in the deed only having the power of proof as a subordinate deed (relegated to a deed underhand). Based on General Explanation number 7 UUHT, SKMHT must be in the form of an authentic deed, thus if degraded then the SKMHT Notarial cannot be used as the basis for registration of Dependent Rights. In other words, the validity of the granting of Dependent Rights (APHT) depends on the validity of its SKMHT. Legal risks that may also arise, namely the aggrieved party may file a civil lawsuit and the notary may be subject to civil penalties and costs of damages and interest against the notary concerned. There are drawbacks to this form of SKMHT Notarial, but in practice, it remains in use. Notaries and BPN appear to be ignoring the legal risks. In the future, there will be no legal problem with its use.

Based on the above background, the author is interested in analyzing the arrangements on the form of Power of Attorney imposing dependent rights (SKMHT) made before notaries and the application and implications of setting up a Form of Power of Attorney Charging The Right of Custody (SKMHT) made before a notary in Banyumas Regency.

Research Method

The research method used in discussing this research issue is a normative juridical research method. Normative legal research is legal research conducted by researching library materials or mere secondary data (Soekanto, 2014). However, the literature research can be supplemented by field research (Mertokusumo, 2009). The method of approach used is a statute approach by conducting a review of the legislation related to the central theme of research
and conceptual approach to analyze the relevant concepts in this study that can be found in the views of scholars or legal doctrines to obtain the results that want to be achieved (Marzuki, 2006).

This type of research when reviewed from its type then this research includes prescriptive research. This type of prescriptive research is research aimed at getting suggestions on what to do to address certain issues (Soekanto, 2015).

The research was conducted in Banyumas Regency, especially in several SKMHT Notarial deed made by Notary-PPAT which became a sample in this study, and the SKMHT Notarial deed received by the Office of the National Land Agency (BPN) of Banyumas Regency as the basis for registration/installation of Dependent Rights.

In this study, the primary data source was obtained from secondary data research supported by primary data. Secondary Data is data obtained from library materials. Secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto, 2014). The primary legal material is the binding legal materials (Soekanto, 2014), which consist of: The Civil Code, Law No. 5/1960 concerning The Basic Rules of Agrarian Fundamentals, Law No. 4/1996 concerning Dependent Rights on Land and Land Related Objects, Law No. 30 of 2004 concerning Notary Office, Law No. 2 of 2014 concerning Changes to Law No. 30 of 2004 concerning Notary Positions, Government Regulation No. 24/1997 on Land Registration, Government Regulation No. 37/1998 on Land Deed Official Office Regulation No. 24/2016 on Changes to Government Regulation No. 37/1998 on Regulation of The Office of The Deed, Regulation of the Minister of State for Agrarian/Head of National Land Agency No. 3/1997 on The Provisions of Government Regulation No. 24/1997 , Regulation of the Head of National Land Agency of the Republic of Indonesia No. 8/2012 on Changes to the Regulation of the Minister of State for Agrarian/Head of National Land Agency No. 3/1997 on the Provisions of Implementation of Government Regulation No. 24/1997 on Land Registration, Law No. 12/2011 on The Establishment of Legislation, Draft SKMHT Deed made before notary in Banyumas Regency, SKMHT Notariil Deed from BPN. Secondary legal materials are materials that provide explanations of primary legal materials (Soekanto, 2014) namely literature, books, legal journals, legal papers, articles, writings by legal circles, or related agencies related to this research. Tertiary legal materials: dictionary, print, and electronic media. Secondary legal materials are materials that provide explanations of primary legal materials (Soekanto, 2014) namely literature, books, legal journals, legal papers, articles, writings by legal circles, or
related agencies related to this research. Tertiary legal materials are materials that provide guidance and explanation of primary legal materials as well as secondary legal materials (Soekanto, 2014). Tertiary legal materials in this study include a dictionary, print, and electronic media. Primary Data is data obtained directly from the community (Soemitro, 1990). In normative legal research is also supported by primary data obtained through field research. Primary data research obtained by purposive sampling technique is a data source sampling technique with certain considerations. Or in other words, sampling is taken based on research needs (Sugiyono, 2008). Primary data collection is conducted by interview, which is a question and answer process conducted by researchers with verbal informants namely to 5 (five) people from Notary-PPAT practitioners in Banyumas Regency who have held notary positions between 10 (ten) to 20 (twenty) years and the Head, staff or related parties of the National Land Agency (BPN) of Banyumas Regency. In this study, the authors used data collection techniques conducted with literature studies, depth interviews, and observations. The data collected in the study will be analyzed using qualitative analysis. Furthermore, in concluding, the authors use a deductive approach method, which is a method that deals with the problems examined from the rules or general principles towards writing that are specific.

Discussion

The results of the study in the form of secondary data are as follows:

1. Form of SKMHT stipulated in PERKABAN Number 8 the year 2012, Article 96 paragraph (1) letter h, appendix VIII.

2. Form of SKMHT in the form of Notarial Deed stipulated in Article 38 UUJN Number 2 of 2014, is as follows:
   
   (1) Each Act consists of:
       a. the beginning of the Act or the head of the Act;
       b. deed body; and
       c. the end or closing of the Deed.

   (2) The beginning of the Act or the head of the Act contains:
       a. title of Deed;
       b. Deed number;
       c. hours, days, dates, months, and years; and d. Full name and place of notary position.

   (3) The Deed Body contains:
a. full name, place and date of birth, nationality, occupation, position, position, the residence of the intercepted and/or persons they represent;
b. information about the position of acting face to face;
c. the contents of the Act which is the will and desire of the interested party;
d. the full name, place, and date of birth, as well as the work, position, position, and residence of each identifying witness.

(4) The end or closing of the Act contains:
a. description of the reading of the Act as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
b. description of the signing and place of signing or translation of the Act if any;
c. the full name, place, and date of birth, occupation, position, position, and residence of each witness of the Act; and
d. a description of the absence of changes that occur in the creation of the Act or a description of any changes that may be in the form of additions, scribbles, or replacements and the number of changes therein.

(5) The Deed of Substitute Notary and Notary Temporary Officer, in addition to containing the provisions as referred to in paragraphs (2), (3), and (4), also contains the number and date of appointment determination, as well as the official who appointed it.

3. In the practice of notarization, there are 2 (two) forms of SKMHT Notariil, namely as follows:
a). Form of SKMHT Notariil based on Article 8 of 2012 Article 96 Paragraph (1) letter h, appendix VIII.
b). Form of SKMHT Notariil based on Article 38 UUJN No. 2 of 2014.

4. Form of SKMHT Notariil in the Office of BPN Banyumas Regency which is based on PERKABAN Number 8 of 2012, which was changed only the header and notary position only.

A. Settings regarding SKMHT forms made before a notary (SKMHT Notariil)

Article 15 paragraph (1) of the UUHT states that SKMHT must be made in writing by being stipulated in an authentic deed, can be a notary deed or PPAT. This means the official authorized to make a notary deed is a notary, while the official authorized to make the PPAT deed is PPAT. Notaries and Officials of land deed makers (PPAT) are subject to different regulations.
SKMHT is created in the form of SKMHT Notariil or PPAT based on the location of the object of dependent rights. If the Object of Dependent Rights is located in the working area of PPAT then SKMHT is made by deed of PPAT, so based on Article 4 paragraph (1) Junction Article 12 of Government Regulation No. 24 of 2016 and if the object of dependent rights is located outside the working area of PPAT then SKMHT is made by notary deed according to Article 18 UUJN No. 30 of 2004.

After the validity of PERKABAN number 8 in 2012, it is determined the form of PPAT deed following the attachment of the TURBAN including one of them SKMHT. The PERKABAN regulates the form of PPAT deed related to the registration of land, however, the provision becomes out of sync because, the attachment VIII of the Bandage implies the provisions of SKMHT made by the notary or PPAT its form should refer to the form contained in the perkaban attachment, especially the attachment concerning SKMHT. Until the provision is reviewed from the attachment position of a rule of law then the attachment is an integral part of the relevant legislation (Farida, 2007).

The regulation stipulated in Article 96 of PERKABAN No. 8 of 2012, namely as follows:

(1) The form of deed used in the creation of the deed as referred to in Article 95 paragraph (1) and paragraph (2), and the filling procedure is made following the Appendix of this Regulation consisting of:
   a. Deed of Sale and Purchase (appendix I);
   b. Exchange Act (appendix II);
   c. Deed of Grant (appendix III);
   d. Deed of Entry Into the Company (appendix IV);
   e. Deed of Sharing Of Joint Rights (appendix V);
   f. Deed of Granting Dependent Rights (appendix VI);
   g. Deed of Granting Building Rights/Right to Use on Land Of Property (Appendix VII);
   h. Power of Attorney Imposes Dependent Rights ((Appendix VIII);

(2) Deleted.

(3) The registration of land registration data amendment as referred to in Article 95 paragraph (1) and the creation of the Deed of Granting Dependent Rights as referred to in Article 95 paragraph (2) cannot be done based on the deed whose manufacture is not following the provisions in paragraph (1).

(4) The preparation and manufacture of the deed as referred to in paragraph (1) shall be carried out by each Land Deed Making Officer, Replacement
Land Deed Making Office, Temporary Land Deed Making Office, or Special Land Deed Making Office.

(5) The Head of the Land Office rejects the registration of the deed of the Land Deed Official which is not following the provisions as stipulated in paragraph (1)."

Based on the above, i.e. appendix VIII PERKABAN which implies the provisions of SKMHT made by notaries or PPAT form should refer to the form contained in the attachment of PERKABAN and the provisions of Article 96 paragraph (3) of the United Association which reads: "Registration of land registration data changes as referred to in Article 95 paragraph (i) shall not be made based on the deed that is made incompatible with the provisions in paragraph (i)". This means that the manufacture of SKMHT by a notary must also be subject to the forms and provisions outlined in Article 96 paragraph (1) of the United Foods. This indicates the conflict/conflict/insynchronousness of the regulations specified in Article 15 paragraph (1) of the LAWHT with PERKABAN No. 8 of 2012, thus resulting in a different interpretation for parties concerned with SKMHT Notariil by interpreting that the SKMHT Notariil Act should refer to the provisions of the PERKABAN instead of UUJN.

Related to the issue of conflicting rules that give rise to the multi interpretation of the form of SKMHT Notariil that occurs between Article 15 paragraph (i) of the HT Law and the provisions of PERKABAN No. 8 of 2012, thus, if analyzed based on the theory of legal certainty derived from the Juridical-Dogmatic teachings based on Hans Kelsen’s analytical positivism in the legal world, who tend to see the law as an autonomous, independent one, because for adherents of this thought the law is nothing but a collection of rules and the purpose of the law is nothing but guaranteeing the realization of legal certainty. The certainty of the law is manifested by the law by its nature which only makes a rule of law generally. The general nature of the rule of law proves that the law is not intended to realize justice or benefit, but rather solely for certainty (Ali, 2002). Concerning this, Bernard L. Tanya, Yoan Simanjutak, and Markus Hage mentioned that "The legal certainty in the law is made based on the real legal circumstances (rechtswerkelijkeheid) and in the law, there are no multi interpreted terms that can be interpreted differently (Tanya, 2010). Thus according to the author's analysis, there is a conflict of rules regarding the form of SKMHT Notariil that occurs between Article 15 paragraph (i) of the UUHT and the provisions of PERKABAN 8 No. 2012 Article 96 paragraph 1 letter h which raises confusion or multi interpretation, causing no legal certainty.

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According to Amir Mahmud as head of the Land Rights Registration Subsection, the format and form of SKMHT created by Notary and PPAT are the same, all must follow the same rule that is PERKABAN Number 8 the year 2012. The conflicting rules, in this case, are that notaries have their own rules namely UUJN, all submitted to notaries to follow UUJN or PERKABAN. The Land Office itself follows the rules of The United Front No. 8 of 2012. Based on Article 96 paragraph (3) of the United States, BPN reserves the right to reject SKMHT Notariil which does not comply with Article 96 paragraph (1) of appendix LETTER VIII.

Furthermore, Maria Emelia Widyanti Iskandar said, "In practice, there are 2 (two) forms of SKMHT Notariil i.e. with a format that refers to PERKABAN, but some refer to UUJN, this depends on or adjusted local BPN rules. The truth is that SKMHT Notariil is made in accordance with UUJN because the notary has its own regulation, namely UUJN. It is not suitable if the SKMHT Form of PERKABAN is simply replaced with a header and a notary position and then becomes SKMHT Notarial. If SKMHT is made by notary deed then subject to UUJN especially Article 38 Junction Article 41." This was conveyed by Cecep Machron Dani who said that in practice SKMHT is made in the form of "mixed" i.e. SKMHT is made with the form of a notarial deed with SKMHT PPAT form in accordance with PERKABAN, the correct is made in accordance with the provisions of UUJN, but finally in the notary pre-election follow only the provisions of each local BPN, whether when the registration of dependent rights BPN receives the SKMHT Deed in accordance with UUJN or in accordance with PERKABAN No. 8 of 2012.

The types and hierarchies of the Laws and Regulations in Indonesia following Article 7 paragraph (1) of Law No. 12 of 2011 on the Establishment of Legislation are as follows:

a. Constitution of the Republic of Indonesia year 1945;
b. Provisions of the People’s Assembly;
c. Replacement Government Law/Regulation;
d. Government Regulations;
e. Presidential Regulations;
f. Provincial Regional Regulations; and
g. District/City Regulations

Furthermore Article 8 of Law No. 12 of 2011 states:

(1) The type of legislation other than as referred to in Article 7 paragraph (1) shall include the regulation stipulated by the People’s Assembly, House
of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Financial Examiner Body, Judicial Commission, Bank Indonesia, Minister, agency, institution, or commission of a level established by Law or Government at the behest of the Law, Provincial Representative Council, Governor, District/City Representative Council, Regent/Mayor, Village Head or level.

(2) The legislation as referred to in paragraph (1) is recognized for its existence and has binding legal force as long as it is ordered by a higher Law or established by authority.

Thus Article 8 paragraph (1) of Law No. 12 of 2011 expands the scope and scope of Article 7, so not only those in Article 7 but all legislation made by institutions, bodies, and so on. Article 8 paragraph (2) affirms the binding requirements of the rules made by the body, the institution i.e. as long as it is ordered by higher legislation or formed based on its authority.

Regulation of the Head of National Land Agency No. 8 of 2012 (PERKABAN No. 8 of 2012) is a change to the Regulation of the Minister of State of Agrarian/Head of National Land Agency No. 3 of 1997 concerning The Implementation Provisions of Government Regulation No. 24/1997 concerning Land Registration. Institutionally the National Land Agency changes an institutional structure that is vulnerable to a very short time. In 1997 it still used a format with the name of the Minister of State of Agrarian/National Land Agency, while in 2012 the National Land Agency was used as a state institution and its position is in line with the ministry with the name of the National Land Agency of the Republic of Indonesia/BPN RI.

Based on the hierarchy of legislation stipulated in Article 7 paragraph (1) Junction Article 8 of Law No. 12 of 2011, PERKABAN No. 8 of 2012 is a rule of law under the law which is a regulation that revises the ministerial regulations, which in the title and considerations of PERKABAN No. 8 of 2012 has linked or explained its position as a change from the Regulation of the Minister of State of Agrarian /Head of National Land Agency No. 3 of 1997 concerning The Provisions of Implementation of Government Regulation No. 24 of 1997 concerning Land Registration. The amended norm is Article 96 of the Minister of State for Agrarian/Head of National Land Agency No. 3 of 1997 amended by Article 96 of the PERKABAN No. 8 of 2012.

Concerning the establishment of legislation, it is necessary to pay attention to the level of the legislation itself, so as not to cause overlap or even conflict between the legislation with each other. Based on the theory of the violation of norms and principles *lex superior derogat legi inferiori*,
basically in the event of conflict / in synchronous between the high and low legislation, then the higher legislation paralyzes the lower legislation, if the higher legislation is contrary to the lower legislation governing the same material, then higher legislation prevails (Mertokusumo, 2009). Related to these theories and principles, PERKABAN No. 8 of 2012 cannot negate Article 15 paragraph (i) of the UUHT. Article 15 paragraph (i) that determines SKMHT can be made in 2 (two) forms namely notary deed and PPAT deed remains valid. SKMHT in the form of notary deed must comply with the provisions of Article 38 UUJN-P Junction, 1868 KUHPedata, and Article 15 of the UUHT while, SKMHT in the form of PPAT deed must be made following the provisions of PERKABAN Number 8 of 2012 and Article 15 of the Law.

J. Satrio states "Our logic says that the power to impose dependent rights made on a notary note should not be expressed in the SKMHT blanko provided by the Land, because the notary deed is regulated in the regulation of the Notary Department (UUJN) and not just any agency also regulates the form of notary deed. With the regulation of notary deed with the Regulation of the Notary Department, the notary deed, to be valid, must meet the requirements outlined in the Regulation of the Notary Department (Satrio, 2004).

Herlien Budiono argues based on the provisions of Article 15 paragraph (i) of the UUHT, the creation of SKMHT can be done by notary deed or PPAT deed. Therefore, for a notary there is a UUJN, then the provisions making the deed must be subject to follow the provisions in Article 38 of UUJN. Thus, the form of a deed of power when made in the form of PPAT deed must be fulfilled all provisions required for the creation of the SKMHT (Article 95 paragraph (2) of the Regulation of the Minister of Agarari No. 3 of 1997). And if SKMHT is made in the form of a notary deed, the provision stipulated on the procedure of manufacture and form of notary deed must be followed following UUJN, provided that the contents of its SKMHT must be qualified and contain the content specified in article 15 paragraph (i) of the UUHT (Adjie, 2014).

Furthermore, the author scrutinized about the shortcomings of what is in the SKMHT blanko based on PERKABAN Number 8 of 2012 when compared to the provisions of UUJN-P so that the SKMHT made by the notary still meets the provisions contained in UUJN and maintained its authenticity. This research was conducted by further analyzing the beginning of the deed, deed body, and the end or closing of the deed of the SKMHT blanko issued by BPN compared to the provisions of UUJN, as follows:
1. Preliminary Comparison of Deed from SKMHT based on PERKABAN No. 8 of 2012 Article 96 Paragraph (i) Letter h (Appendix VIII) and UUJN No. 2 of 2014, can be seen in the scheme as follows:

By using the parameters of Article 38 paragraph (2) of UUJN-P, the inclusion of notary headers, the absence of inclusion of hours, the absence of information about the notary position area, and the inclusion of notary decree numbers can be categorized as violating the provisions of Article 38 paragraph (2) of UUJN-P. The inclusion of notary position is also very important in determining whether the deed is authentic or not, because one of the requirements of the authentic deed stipulated in Article 1868 of the Penal Code is that the official is authorized in the place where the deed was made, which to be able to prove such authority can be seen from the information on the notary position at the beginning of the deed, and the place of signing of the deed in the final notary deed.
According to Article 15 paragraph (1) UUJN that the notary authority is to make a deed, not to make a letter such as "Power of Attorney To Impose Dependent Rights" (SKMHT). Granting qualifications as a Public Official to notaries and PPAT authorized to make SKMHT should (read) make a Deed of Power of Charge of Dependent Rights (AKMHT) following APHT (Adjie, 2009). Habib Adjie further argued that the more appropriate word is not "letter" but "Deed of Power of Charge of Dependent Rights" (Adjie, 2009).

Article 41 of UUJN states that "Violation of the provision stipulated in Article 38, Article 39 and Article 40 resulting in the Act only having the power of proof as a deed underhand. If we are consistent on the sound of Article 1 para graph (1), Article 1 paragraph (7), Article 38, Article 41 UUJN-P, and Article 1868 of the Civil War then it can be concluded that each notary deed must be made in the form stipulated in Article 38 UUJN-P.

2. Comparison of Deed Bodies of SKMHT based on Article 8 of 2012 Article 96 Paragraph (1) letter h (Appendix VIII) and UUJN No. 2 of 2014, as follows

a) The Format of Power of Attorney to Impose Dependent Rights (SKMHT) PERKABAN Number 8 the year 2012 consists of:
   1) The company of the parties (filled in the full name, place, and date of birth, nationality, occupation, place of residence, ID card number (if any), position, position and description of the position of the interceptor).
   2) Introduction of intercepts or the presence of identifying witnesses.
   3) Fill in the deed.

b) UUJN's Certificate of Liability (SKMHT) format consists of:
   1) Full name, place, and date of birth, nationality, occupation, position, position, the residence of the intercepted and/or persons they represent;
   2) Information on the position of acting against;
   3) The contents of the deed which are the will and wishes of the interested party; and
   4) The full name, place, and date of birth, as well as the work, position, position, and residence of each identifying witness.

After we know about the deed body in Blanko SKMHT issued by BPN and see the provisions of the deed body based on Article 38 (3) of the UUJN above then it can be known that the deed body in Blanko SKMHT issued by BPN is not contrary to the provisions concerning the deed body stipulated in Article 38 (3) of the UUJN above.
3. The final comparison of a deed from SKMHT based on PERKABAN No. 8 of 2012 Article 96 (i) letter h of appendix VIII and Article 38 UUJN No. 2 of 2014, can be seen in the scheme as follows:

Based on the comparison to the beginning of the deed, the body, and the contents of the above deed, then we can conclude that SKMHT is made in the form of a notarial deed (notarial) is very different from SKMHT made by PPAT. The form of SKMHT Notarii should be made by following Article 38 UUJN-P so that the authenticity of the deed is maintained. Notaries in making SKMHT are not allowed to use or fill out SKMHT form/form provided by BPN (PERKABAN No. 8 of 2012) because this exceeds its authority as a notary in making the deed as stipulated in Article 15 paragraph (i) of UUJN No. 2 of 2014 and Article 1868 BW. Thus the form of
the deed made before the Notary shall be following the Law of the Notary Department, if in the registration process there is a is synchronous to its regulations, the notaries should provide explanations to the local land office so that the authenticity of the deed made by the notary is maintained, and to ensure the legal certainty of the intercept.

B. Implementation and Implications of The Arrangement of The Form of Power of Attorney to Impose Dependent Rights (SKMHT) made before a Notary in Banyumas Regency

In this study, regarding the implementation of SKMHT form arrangements made before notaries in Banyumas Regency, found some notaries have qualified specified in UUJN-P, some do not qualify this because if SKMHT Notariil is made with the form referring to article 38 UUJN-P then some land offices will not accept the SKMHT or refuse registration of its Dependent Rights (APHT), the rejection is because the land office requested and required the format in the manufacture of SKMHT must follow PERKABAN Number 8 the year 2012. In the practice of notarization, the arrangement of this form of SKMHT Notariil is not much questioned, when in fact it has important meaning when we delve into the authority of each in the framework of the creation of a Power of Attorney Charging Dependent Rights (SKMHT) and understand the legal risks that will occur if the requirements as authentic deed are not fulfilled.

One of the obligations of a notary is to be careful in carrying out his/her position. This is stipulated in Article 16 of the UUJN which reads: "In carrying out his/her office, the Notary is obliged to (a) act honestly, carefully, independently, impartially, and safeguard the interests of the relevant parties in legal conduct." Carefully, in this case, means that in carrying out his/her position, a notary must be thorough and careful for each deed to be made following the provisions listed in UUJN so that every deed made by the notary is a good and correct deed, a quality deed and positive impact and maintained authenticity so that the parties in the deed can be protected by its interests.

Alewsiyus argues that following the provisions of the prevailing laws and regulations and to qualify a deed to become an authentic deed must meet the provisions stipulated in article 1868 of the Civil Code among others must meet the requirements of the form of deed stipulated in the law. For a notarial deed of course must be made following UUJN, especially Article 38, based on medianotaris.com retrieved 15 June 2019, at 10 p.m. This was conveyed by Imarotun Noor Hayati, Notary at Banyumas district who stated, "In practice, in
general, the land office requires using the SKMHT format of PERKABAN, although if reviewed from UUJN, the notary deed made does not follow the format specified in UUJN then if anyone is questioned in front of the court it may be considered to have no authentic power, only as a deed under the hand.” While Kuntarno argues, in principle, whatever its form, either following the United States or UUJN, the important thing is its substance and has been agreed and signed by the parties. In practice, the form created by notaries adjusts the BPN rules respectively and generally requires the form according to PERKABAN.

Based on these things, the provisions of making an authentic deed for the two public officials namely notary and PPAT in making SKMHT must be clearly defined, where the notary in carrying out its duties to make an authentic deed is stipulated in Article 38 UUJN No. 2 of 2014, while the PPAT is stipulated in Article 96 paragraph (i) of the United States No. 8 of 2012, so that the provision stipulated in the creation of authentic deed of these two public officials in making SKMHT not misinterpreted by interested parties and still maintaining authenticity over SKMHT as notary deed and as a deed of PPAT.

The difference of view about the regulation of SKMHT made with the notarial deed is due to the regulation stipulated in the PPAT (PERKABAN No. 8 of 2012) act made without looking at the general provisions regarding authentic deed stipulated in the Civil War and UUJN. Besides, competent parties in the field of land do not understand the importance of authentic deed made by notaries. Notaries and notary organizations (INI) shall be firm that the manufacture of SKMHT made by notary deed shall be carried out subject to the provisions of Article 38 UUJN-P. Thus notary organizations and PPAT have to sit together with the National Land Agency (BPN) on this subject, so that the implementation in the field, especially in the registration section of the Land Office there is uniformity and avoid registration of the Deed of Granting Dependents (APHT) denied registration by the Land Office, given the development of the needs of creditors in the field, does not close the possibility that creditors will use notary services in different working areas with certificates guaranteed in creditors (usually "Banks") and tied dependents.

If the form of SKMHT Notarial deed does not meet the provisions of UUJN, the evidentiary power of SKMHT made by the notarial deed is based on Article 41 of UUJN which is associated with the provisions of the authentic deed which is based on Article 1868 and 1888 civil code, therefore the SKMHT deed does not meet the criteria as an authentic deed, the deed is relegated to
"underhand deed", but it does not appear to be much ignored by both the Notary and BPN as interested parties to the SKMHT deed.

The biggest difference between an authentic deed and a deed made underhand is (Tobing, 1999):

1) The authentic deed has a definite date (note the sound of article 15 UUJN which states "guarantees the certainty of the date and so on), while regarding the date of the deed made underhand is not always so.

2) Grosse of an authentic deed in some cases has exetorial powers such as a judge's ruling, while a deed made under the hand never has exatorial power.

3) The likelihood of the loss of a deed made underhand is greater than an authentic deed.

With the unfulfillment of the formal requirements of a notarial deed, it will certainly bring important legal consequences for the legitimate or non-SKMHT as the basis of the creation of APHT, because based on Article 15 (1) of the Lawht is determined that SKMHT must be made in a notary deed or PPAT. SKMHT Notarii made incompatible with UUJN cannot be said as a notary deed as stated in Article 1 (7) UUJN-P so that SKMHT is made by the notary cannot be used as the basis for the creation of APHT.

By only having the power of proof as a deed underhand, the condition will affect the process of charging the next Dependent Right until the birth of the Dependent Rights. The effect on the process of charging dependent rights is related to the creation of the Deed of Granting Dependent Rights (APHT) by PPAT. APHT as evidence has been done a legal action granting Dependent Rights, will be questionable perfection as a perfect proof tool. This is because the basis used (SKMHT) to grant dependent rights by dependents is relegated to a deed underhand. SKMHT and APHT must comply with the legislation, as it will serve as one of the conditions of the birth of dependent rights by the local Land Office.

Thus, the validity of the implementation of the granting of dependent rights depends on the validity of its SKMHT. If SKMHT Notarii is relegated to a deed underhand, then the SKMHT deed cannot be used as the basis for the "creation" of dependent rights (the creation of the Dependent Rights Act/ APHT) because UUHT requires it to be in the form of an authentic deed. If the basis of its charges does not qualify as an authentic deed as required in Article 15 (i) of the UUHT, of course, its dependent rights become invalid, the dependent's rights may not be born so that the creditor does not have the right to put his/her holder to other creditors (Droit de preference) (Harsono, 2008) when the execution of the Dependent Rights is carried out if the debtor is injured. This privilege does
not belong to creditors, not dependents. If the notary's actions incur losses then the injured party may file a civil lawsuit and the notary may be penalized civilly and maybe the reason for the indemnified party to demand reimbursement, damages, and interest against the notary concerned.

The legal power of SKMHT has a profound effect on its authenticity. If this raises the issue, it will result in harm to the interested parties in SKMHT, which was the desired deed in the form of a notary deed has perfect evidentiary powers because the difference of views on the arrangement makes SKMHT has no legal force. The position of the second party (Creditor) is very clearly at stake in the protection of the law over its rights. Very at risk of law, if the first party (Debtor) knows and understands the position of the SKMHT above, the first party may apply for the cancellation of its guarantee because the SKMHT made by notary deed is not a notary deed because it does not meet the terms and conditions as a notary deed under Article 38 UUJN-P where the loan/credit has been received.

As long as the performance in the credit agreement guaranteed with the Dependent Rights is fulfilled properly by the debtor, then the Dependent Rights as a guarantee of the property do not appear to function. The new Dependent Rights appear to be very functional when the debtor is injured by an appointment (default).

Conclusion

1). The regulation stipulated in Article 38 of UUJN No. 2 of 2014 Junction Article 1868 of the Junction Civil Code Article 15 paragraph (1) of the Law. Article 41 of UUJN affirms that violation of the provision stipulated in Article 38 UUJN No. 2 of 2014 results in the act only having the power of proof as a deed under hand (degraded). The form of SKMHT Notarial Deed based on Article 96 paragraph (1) of PERKABAN No. 8 of 2012 letter h appendix VIII is inappropriate. The form/format of the SKMHT Notarial Deed made following the Perkaban cannot be applied to the manufacture of notary deed because contrary to the form of notary deed stipulated in article 38 UUJN number 2 of 2014, there are deficiencies that result in the SKMHT deed not meeting the criteria as an authentic notary deed.

2) The application of the arrangement of SKMHT Notariil form made in front of notaries in Banyumas Regency, for notary officials there are qualified specified in UUJN, some are not qualified because it is made following the form of deed stipulated in PERKABAN Number 2 the year 2012 (a form of a deed of PPAT but made by notary/form "mixed"), this happens because the notary follows
In general, BPN office requires that SKMHT Notariil must follow the way of making SKMHT deed stipulated in PERKABAN. If it does not comply with these provisions then the SKMHT cannot be accepted registration when the Deed of Granting Dependent Rights (APHT) based on the SKMHT is registered to BPN. The validity of the granting of dependent rights depends on the validity of the SKMHT. If SKMHT Notariil is degraded into a deed underhand, then the SKMHT deed cannot be used as the basis for the "manufacture" of the Deed of Granting Dependent Rights (APHT) because UUHT requires it to be in the form of an authentic deed. If the policy of charging does not qualify as an authentic deed as required in Article 15 (1) of the UUHT, of course, its dependent rights are invalid, the rights of dependents may not be born so that the creditor does not have a preferred or precedence position to the holder (Droit de preference) to other creditors when the execution of the Dependent Rights if the debtor is injured. This privilege is affirmed in Article 1 number (1) and Article 20 paragraph (1) of Law No. 4 of 1996. If the notary's actions incur losses then the injured party may file a civil lawsuit and the notary may be subject to civil penalties and maybe the reason for the indemnified party to demand reimbursement, damages, and interest against the notary concerned.

**Suggestions**

1) The notary shall carry out his/her position properly and following the provisions of the applicable law. As long as the provisions regarding the form and format of SKMHT have not been changed, then a notary must follow the format of SKMHT Notariil by looking at the provisions contained in UUJN No. 2 of 2014 so that the SKMHT deed made before the notary is maintained authenticity and has perfect evidentiary power. Besides, material loss occurs if until there is an annulment of the deed due to the violation in the form of a violation of the position concerning which should be done notary because making the deed is not following UUJN.

2) The relevant parties in SKMHT (BPN, INI, and IPPAT) should coordinate and reconcile thoughts on the form and format of SKMHT so that the deed made before the notary authenticity is maintained.

3) The government must urgently address this issue by synchronizing regulations regarding SKMHT Notarial. Especially for the National Land Agency, it is expected to understand that notaries in the creation of the deed have their provisions and regulations that must be adhered to. Besides, the
implementation of land registration must be following and in line with the provisions of the prevailing laws and regulations, lest the land office refuses the registration of dependent rights for unfounded reasons.

**References**


