Application of Prudential Principles in Registration of Granting Mortgage Right (APHT)

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Abstract
The precautionary principle serves as a guideline for PPAT in carrying out the APHT registration process. In-Law No.4 of 1996 concerning Underwriting Rights, PPAT Position, and Civil Regulations No.1 Year 2006 implies the precautionary principle regarding the provision that the PPAT is personally responsible for the duties and authorities in the process of making the deed. PPAT must apply accuracy in registering APHT to the Land Office. Registration becomes an important moment for the birth of Underwriting Right, the fulfillment of the principle of publicity, the position of the preferred creditor as the holder of the Underwriting Right. The data used in this study are secondary data with primary data as secondary data supplementary data. The approach method used in this study is the normative juridical approach. The results of the study obtained concluded that 2 (two) terms of the application of the precautionary principle of the form and content of APHT made by PPAT in accordance with applicable regulations, however, APHT registration occurred later than the 7 (seven) working day deadline. Not applying the precautionary principle can lead to legal consequences for the PPAT, APHT, and preferred creditors, from the aspects of civil, criminal, and administrative law. Preventive and repressive legal protection for all parties concerned in the series of APHT registration processes. Suggestions for PPAT need to apply the precautionary principle to minimize late APHT registration, the Land Office needs to apply administrative sanctions.

Keywords: prudential principles; APHT registration; legal consequences

Introduction
Based on the Agrarian Principal Law (abbreviated as UUPA) Land rights as collateral for debt repayment are stipulated in Article 51 Junction Article 57 of the UUPA on Mortgages or Credietverband (Staatsblad.1908 No.542 as amended by Staatsblad 1937 No.190). In relation to the arrangement of land rights and in line
with the development of credit activities, a provision governing legal action on land rights as a guarantee of debt repayment refers to the provisions of the UUPA. The provisions are expected to accommodate the rights and obligations of interested parties through the institution of guarantee rights in the form of Dependent Rights with the legal products of Law No. 4 of 1996 on Dependent Rights (herein abbreviated as UUHT). Dependent Rights gives priority to certain creditors against other creditors. Debtors when injured, creditors have the right to execute through a public auction of land that is guaranteed under the provisions of the applicable laws and regulations, with the right to precede from other creditors. (Sutedi, 2006, p. 2) It is stipulated in Article 1 paragraph (1) of the UUHT, that:

"The right of dependents on land and land-related objects, herely called Dependent Rights, is a guarantee imposed on land rights as referred to in Law No. 5 of 1960 concerning the Basic Rules of Agrarian Fundamentals, following or not following other objects that are one unit with the land, for the repayment of certain debts, which give priority to certain creditors against other creditors".

The provision stipulates that the Dependent Right is a privilege for the creditor of the Dependent Rights holder also referred to as the preferred creditor. Dependent Rights will be born if the creation and registration of the Deed of Granting Dependent Rights (hereby abbreviated as APHT). APHT is a Deed whose form and contents have been determined by the Ministerial Regulation. APHT is a formal proof that legal action has been taken to grant dependent rights from debtors and or bail owners to creditors as collateral for debt repayment. Article 1 number 5 of the UUHT provides the definition of APHT that "Deed of Granting Dependent Rights is a deed of PPAT containing the granting of Dependent Rights to certain creditors as collateral for the repayment of its receivables".

The authority to create APHT is by the Land Deed Making Office (hereby called PPAT), as stipulated in Article 1 paragraph (4) of the UUHT governing:

"The Office of the Land Deed Maker herely called PPAT is a public official authorized to make a deed of transfer of land rights, a deed of the burden of land rights, and a deed of granting the authority of the charging power of charge of the Rights of Dependents according to the prevailing laws and regulations".

PPAT is a public official who has the authority and responsibility to make APHT as the binding of credit guarantee between the debtor or the owner of the guarantee as to the giver of dependent rights with creditors as holders of
Dependent Rights. APHT is registered by PPAT to the Land Office as an authorized agency to register land rights and maintain a general register of land registration. The land office then made the Land Book or Sertipikat Hak Tanggungan as a form of fulfilled publicity principle in accordance with the provisions of Government Regulation of the Republic of Indonesia No. 24 of 1997 on Land Registration.

Registration of APHT must be carried out because it relates to the rights of creditors preferential if in the future the debtor defaults (injury of promise), then the creditor can carry out the execution of the object of Dependent Rights. Executions are carried out based on the Share of Dependent Rights held by creditors whose position is equivalent to the Court’s Ruling. In Article 13 Paragraph (2) of the UUHT regulates the procedure for registration of Dependent Rights that no later than 7 (seven) business days after the signing of the Deed of Granting Dependent Rights as referred to in Article 10 paragraph (2) of the right concerning the granting of Dependent Rights is carried out by the creation of APHT, then PPAT shall submit the Deed of Granting the relevant Dependent Rights and other necessary warkah to the Land Office. Administrative sanctions include verbal reprimands, written reprimands, temporary dismissals from office, and dismissal from office if PPAT is late to register APHT.

The authority of PPAT is not only limited to carrying out its obligations and responsibilities in the creation of APHT as an authentic deed, but there is still the responsibility of carrying out the stage of APHT registration procedure to fulfill the rights of creditors preferentially. The above is part of the principle of prudence that should be observed by PPAT. The principle of prudence becomes a guideline for PPAT in carrying out the APHT registration process. The principle of prudence has the meaning of imposing a cautious attitude both on oneself and for others by paying attention to the consequences of every action taken, both for now and in the future. (Smith, 2017) In UUHT, Government Regulation No. 38/1998 as amended by Government Regulation No. 24/2016 on The Regulation of the Office of Land Deed Maker (hereby abbreviated as PPAT Department Regulation) and its implementation regulation stipulated by the Head of Land Agency National Number 1 the year 2006 (hereby abbreviated as Perkaban No.1 year 2006) implied the principle of prudence about the provision that PPAT is personally responsible for the implementation of duties and positions in each deed until PPAT is obliged to apply thoroughness, thoroughness in the making of the deed, the reading of the deed before the parties, the signing of the deed, as well as the fulfillment of the completeness of the warkah, including accuracy in conducting the registration of APHT. Registration becomes an important moment for the realization of legal certainty for interested parties, especially for creditors as holders of Dependent
Rights. Not closing the possibility in the waiting period of the application process APHT registration is done by PPAT, there can be other legal problems, for example appearing confiscated bail from the courts, so APHT registration can not be done.

Based on secondary data in the form of APHT Number 301/2018 as well as registration data of Dependent Rights obtained by the author of the National Land Agency of Purbalingga Regency, that the provisions of Article 13 paragraph (2) concerning the registration of APHT maximum 7 (seven) working days have not been carried out consistently, every month most APHT late registered by PPAT with various constraints in internal PPAT and services in the Land Office. This is a fact that should be considered by the PPAT, that the principle of prudence is not applied in the APHT registration procedure which affects the delay of registration. The carefulness and accuracy of PPAT in carrying out a series of APHT registration procedures as a form of application of prudential principles that can cause legal consequences if not applied. For PPAT may be sued for damages by the aggrieved party in this case the creditor preferential both material and immaterial losses, because PPAT does not meet its obligations and the result of an error (schuld) either due to negligence or intentional ness of the Unborn Liability Rights.

In relation to the background that has been comprehensively reviewed from the prevailing laws and regulations with the problems that often occurs regarding the registration of APHT, the author hereby makes the title of the study namely: Application of The Principle of Prudence in the Registration of Deed of Granting Dependent Rights (APHT).

Research Problems

Based on the background description above, the authors will analyze more deeply about APHT registration delays and limit the scope of research with the following problem formulations:

1. How to apply the principle of prudence in APHT registration?
2. What are the legal consequences of not applying the principle of prudence in the registration of APHT?

Research Method

This study uses a type of normative juridical research. Normative juridical legal research or literature includes 3 (three) approaches applied in this study, among others: Statute approach and Conceptual approach. The data used in this study is secondary data and primary data as a complement to secondary data. The method of data analysis used is qualitative normative.
Discussion

1. Application of Prudential Principles in APHT Registration
   a. Procedure For Granting Dependent Rights and Registration of APHT

   Article 10 Paragraph (2) explains that the granting of Dependent Rights is done by the creation of the Deed of Granting Dependent Rights (APHT) by PPAT in accordance with the prevailing laws and regulations. The creation of APHT is one of the authority and responsibility of PPAT. The authority of PPAT in making deed, especially APHT, is a personal responsibility carried out professionally, thoroughly, and carefully. The authority and responsibility of PPAT are not only limited to the creation of APHT, but there are several stages of formal procedure that must be carried out until it is completed in accordance with the prevailing laws and regulations. The stages of the procedure are as follows:

1. Checking The Security Documents and Validation of The Identities of the Parties
2. The Creation of APHT And Deed Must Be Read By PPAT
3. PPAT Registers Dependent Rights By Sending APHT and Warkah to BPN/Land Office
4. BPN/Land Office Issues Certificate of Dependent Rights

   The procedure of making APHT as a form of charging dependent rights up to the registration of Dependent Rights is a condition of formal that must be carried out by the relevant parties namely PPAT, Creditors, Debtors, and/or owners of dependent rights objects (as guarantors of debtor debtors), as well as witnesses. This is the application of the authority and responsibility attached to PPAT as a public official to provide services to interested parties. A public official is authorized to act and a decision will of course give rise to responsibility as a result of the authority it has. Similarly, a legal action committed by a public official must be in accordance with the authority mandated by the legislation. Philipus M. Hadjon states that authority (bevoegdheid) is associated with the rule of law (rechtsmacht). (Hadjon, 1997) PPAT has the legal powers that are protected by the law relating to its authority to make authentic deeds including APHT and has a connection with the agency of the National Land Agency (abbreviated BPN) to exercise authority in providing public services.
Regarding legal responsibilities that are a consequence of the authority attached to the PPAT. According to Hans Kelsen, a person is legally responsible for a particular act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act. (Kelsen, 2006) The legal action of the creation of APHT until the registration process at the Land Office is the responsibility that must be carried out by PPAT based on the provisions of the applicable legislation and the legal consequences that can arise both civilly, criminally, or administratively if the registration process of PPAT is not in accordance with the Law. This signalizes the principle of prudence has not been applied properly.

The concept of legal responsibility of a public official, according to Kranenburg and Vegtig, (Ridwan, 2006) there are 2 theories of accountability, Fautes de service, namely the theory that losses to third parties are charged to the agency of the official concerned. In connection with the Organization of Land Deed Officials (IPPAT) which in this theory explains that if any wrongdoing is made by then the agency/organization that oversees the PPAT is solely responsible to the aggrieved third party. In this context, the IPPAT Organization cannot be held responsible for any negligence or negligence by PPAT, because PPAT is personally responsible for the deed it made or other legal actions. Fautes personelles, which is the theory that losses to third parties are charged to officials because the action has caused harm. In this theory the burden of responsibility is shown to people as personal more appropriate for PPAT as a public official who if by his authority has made a mistake and resulted in the loss of not only the interested parties but also third parties e.g. APHT made turns out to be an error in the inclusion of the guarantee object, PPAT continues the process according to the wishes of the parties facing by making and registering APHT when knowing the object of APHT guarantee in dispute, then with that condition the PPAT in question must be held personally accountable.

b. Qualification of Prudential Principles

PPAT's obligation applies the principle of prudence to minimize the error and inaccuracy of the creation of APHT, invalidating the identity of the parties and the original check of the haka certificate on the land of the guarantee object, the fulfillment of the completeness of
the warranty (supporting documents), and inaccuracies in the registration of APHT that exceed the deadline of 7 (seven) business days. In general, the principle of prudence can be interpreted as the basis of truth which is the basis of thinking and acting with a cautious attitude. (Usman, 2003) A cautious attitude to PPAT does not mean to be afraid and avoid legal actions of authentic deed making and registration of Dependent Rights, but a more cautious, careful, and conscientious attitude to minimize errors, inaccuracies, and inaccuracies.

The principle of prudence is the basic principle for PPAT so that its main tasks and functions are carried out effectively and efficiently in terms of time in particular. Given that there are errors or errors in the process of charging dependent rights, the registration of APHT will be delayed beyond the seven-day deadline, and the process at the Land Office will also be longer. This is because in the Land Office there are also various constraints resulting in the exit of the Dependent Rights Sertipikat exceeding the time limit which is more than 1 (one) month from the date of application for registration of APHT, especially if it has to go through the process of Roya, transfer of rights (reverse name, devolution), conversion (an increase of rights to unregistered land) can be more than 6 (six) months of completion until the completion of the Sertifikat Hak Tanggungan. This condition is very detrimental to the interested parties, especially creditors in relation to lending to debtors, and possibly over time the Debtor defaults or injuries, the promise turns out to be unborn Dependent Rights and the constraints on PPAT and the Land Office.

The cautious attitude for PPAT in the context of deed creation and registration of APHT is a disciplined, careful, and appropriate attitude and accuracy. This attitude is to carry out the duties of PAPT authority by taking into account the legal consequences that may arise in the future against the creation of deed or the charging of Dependent Rights and registration of APHT. According to Adam Smith, prudence is presented as moral priorities theory, (Smith, 2017) Moral Priorities Theory becomes the benchmark for the application of the principle of prudence. Moral Precedence is defined as the priority in moral action to do good and right in accordance with the prevailing provisions. A Notary-PPAT must act in a manner of moral precedence as a form of
caution, discipline, impartiality, and fairness in carrying out its authority and responsibilities.

In the provisions of the UUHT, the Regulation of the PPAT Department, qualifications regarding the application of the principle of prudence are implied in some provisions that make the basic principle for PPAT to apply it as a moral priority to act carefully, disciplined, impartial and full of justice, namely as follows:

1) In UUHT the principle of prudence is regulated in:

a. Article 10 Paragraph (1) stipulates that the granting of dependent rights is preceded by a promise to grant dependent rights as collateral for the repayment of certain debts, which are set forth in and are an integral part of the debt receivable agreement in question or any other agreement that incurs such debt. According to J. Satrio, some of the elements contained in Article 10 Paragraph (1) are (Satrio, 1997) preceded by a promise to grant dependent rights, as collateral for the repayment of certain debts, which are poured in and are an integral part of the corresponding debt covenant or other agreements that incur such debts. The granting of Dependent Rights is an accessor agreement (additional agreement) attached to the agreement of debts (principal agreements) and other agreements that incur such debts. PPAT must understand very well that the granting of Dependent Rights has an important legal position in relation to the rights and obligations of creditors and debtors.

b. Article 10 paragraph (2) governs that the granting of Dependent Rights is carried out by the creation of the Deed of Granting Dependent Rights by PPAT in accordance with the prevailing laws and regulations. It is clearly regulated that the full authority and responsibility for the creation of APHT is by PPAT. PPAT must uphold its commitment and professionalism by prioritizing the principle of prudence and the manufacture of APHT immediately processed.

c. Article 11 Paragraph (1) governs that in the Deed of Granting Dependent Rights shall be listed regarding the name and identity of the holder and giver of dependent rights; the holder and giver of dependent rights; the appointment of clearly guaranteed debts or debts; the value of dependents; and a clear description of the object of dependent rights. This article explains that PPAT should be careful
with regard to the inclusion or filling of the identity description of the holder and the giver of the Dependent Rights, the domicile of the parties, the nominal debt, the guaranteed debt, the value of the dependents, and the object of the Dependent Rights. These elements are an important part of providing legal powers to the parties listed in the deed. PPAT must be thorough and careful in making APHT; slight errors in the inclusion of data can be fatal to interested parties.

d. Articles 13 paragraphs (1) and (2) govern that the granting of Dependent Rights shall be registered with the Land Office. No later than 7 (seven) business days after the signing of the Dependent Rights Act, PPAT shall submit the Relevant Dependent Rights Awarding Act and other necessary warrants to the Land Office. This article confirms that the APHT that has been made by PPAT must be registered with the Land Office and given a short period of only 7 (seven) business days. At this stage of registration, PPAT should be careful because at this stage the consistency and professionalism of PPAT are still being tested. Accuracy and ineptness in the registration of APHT which is a series of previous processes that are described in Article 10 Paragraph (1) and (2) UUHT, as well as Article 11 Paragraph (1) UUHT.

e. Article 14 Paragraph (4) stipulates that: unless other than promised, the rights of the land that has been enslaved by the record of the burden of dependent rights as referred to in Article 13 Paragraph (3) are returned to the holder of the rights to the land in question". Notaries-PPAT must carefully understand the provisions of Article 14 Paragraph (4), the section of the sentence "except when promised otherwise" is one of the bonds of receivables as a principal agreement and accompanied by the binding of collateral with the burden of Dependent Rights as an additional agreement in which the clause stipulated in the rights to the land is handed over to the Holder of Dependent Rights (Creditors). Do not let notary-PPAT be negligent so that it is wrong to hand over the rights of the land not to the holder of the Dependent Rights but to the holder of the rights to the land. Without exception, dependent rights must be handed over to the Holder of Dependent Rights. In accordance with the provisions of Article 14 Paragraph (5) that the Dependent Rights Clause be handed over to the holder of dependent rights.
2) Some provisions of the PPAT Department Regulation that imply the principle of prudence are as follows:

a. Article 2 paragraph (1) explains that PPAT is in charge of carrying out a portion of land registration activities by making a deed as evidence of the conduct of certain acts concerning land rights, one of which is the granting of Dependent Rights. Regulation of the PPAT Department as an umbrella regulation governing the duties and authority of PPAT also confirms Article 10 Paragraph (2) of the UUHT that PPAT has the authority to make a deed of granting Dependent Rights by applying the principle of prudence. Considering APHT is an authentic deed that has the perfect evidentiary power.

b. Article 3 Paragraph (1) affirms that to carry out the basic duties as referred to in Article 2 Paragraph (1) a PPAT has the authority to make an authentic deed concerning the legal actions of land rights located within its working area. PPAT must understand the working area that covers the province, but this provision has not been effectively implemented because there is no Ministerial Regulation as a regulation of its implementation. Regarding the working area still use the previous provision that covers the district/municipality.

c. Article 12 Paragraph (1) The working area of PPAT is a provincial territory but is still applying the previous provision which is the municipality/district area because there is no Ministerial Regulation governing the working area of PPAT (Article 12 Paragraph (3)).

d. Article 21 stipulates that the deed of PPAT is made in the form stipulated by the Minister. The PPAT Deed is made with the original form in 2 (two) sheets for the first sheet as much as 1 (one) double is stored by the relevant PPAT and the second sheet as much as 1 (one) double or more according to the number of land rights that become the object of legal action in the deed submitted to the Land Office for registration purposes. PPAT is allowed to make its own blangko APHT but with the form set by the Minister. The form of APHT should not be changed so as not to be legally flawed, for the contents of APHT must also be in accordance with the provisions of Article 11 Paragraph (1) of the UUHT which is the implementation of the principle that the
Right of Dependents adheres to the principle of Speciality and Publicity. In accordance with the principle of specialty, objects and subjects must be mentioned in detail in order to provide legal certainty to the parties and based on the principle of registration or publicity also to interested third parties. The error of appointing the correct measuring letter/image of the situation will result in the cancellation of the Dependent Rights and so is the neglect of the obligation to mention in detail the object of the Dependent Rights. This is important to protect the interests of givers and holders of Dependent Rights as well as third parties.

e. Article 22 governs that the deed of PPAT must be read/explained its contents to the parties by attending by at least 2 (two) witnesses before being signed immediately by the parties, witnesses, and PPAT. PPAT is obliged to read/ explain the contents of the deed to the parties and ensure that the parties are actually present as stated on the identity of the parties and not replaced by others (there is an exception to the power of attorney). Witnesses, from PPAT employees themselves, of course, must be legally capable, meaning not in amputation, from the aspect of age already including adult or married.

Based on the above provisions regarding the registration process APHT can be drawn a provisional conclusion that the principles of prudence include:

1. Notary-PPAT shall check the documents of land rights as an object of guarantee of Dependent Rights in the Land Office and validate the identity documents of the parties as well as other supporting documents.

2. Granting dependent rights is done by the creation of APHT by PPAT. APHT should be read by PPAT to interested parties and as soon as it is read/explained its contents, the deed is signed by interested parties, witnesses, and PPAT. Must be attended by at least 2 (two) witnesses in the reading and signing of APHT.

3. The signing of the deed of interested parties is present on the same day, date, and time when dealing with PPAT.

4. PPAT makes APHT whose form and contents are in accordance with the applicable regulations. Based on the data on identity documents and the nature of the land must correctly include the name and
identity of the holder and the claimer along with the description of the object of the Dependent Rights, a clear designation of the guaranteed debt, the value of the dependent.

5. PPAT working area is covering the district/city area (still following the old provisions, and the new provisions have not been effectively implemented because there has not been a Regulation of the Minister as an implementation regulation governing the working area of PPAT.

6. PPAT must register APHT no later than 7 (seven) business days from the signing of APHT and notify in writing to the interested parties that the APHT registration process has been carried out.

7. Notary-PPAT submits the original land rights and dependent rights to creditors unless otherwise promised by the interested parties.

Based on the Author's provisional conclusions on the qualifications of prudential principles, that lawmakers and their implementation regulations have created a comprehensive regulatory umbrella. The goal is to provide legal certainty and legal protection with respect to the authority and responsibility of PPAT and it is expected that there will be no legal vacancy in any legal action.

b. Application of Prudential Principles in APHT

Based on secondary data the author analyzes provisions that imply the principle of prudence has not been applied entirely. In APHT No. 301/2018 can represent and provide a more in-depth explanation that thoroughness, thoroughness, discipline, and accuracy have been used as benchmarks or not yet thorough in the APHT registration process, with the following analysis:

1) The identity of the Creditor and debtor and the owner of the guarantee are fully listed including the domicile of the parties. The parties present before the PPAT and sign the APHT are only Creditors, but this does not violate the prevailing provisions because the previous owner of the guarantee has been present before the PPAT and signed the Power of Attorney Charging Dependent Rights (SKMHT) Number 396/ 2018 which means that the owner of the guarantee as the claimer of the Dependent Rights has authorized the Creditor as the holder of the Dependent Rights to sign the APHT. In APHT No. 301/2018 the Debtor is in debt not at once as the owner of the guarantee, and the guarantor
who is the owner of the dependent rights guarantee object is a third party.

2) The numbering and provision of APHT dates are not the same as the date of the Credit Agreement. In APHT listed dated August 20, 2018, while in the Credit Agreement listed on August 9, 2018, this does not violate the rules because there was previously signing with SKMHT No.396/2018 in advance because there are other legal action processes, such as Roya/ scribble of Dependent Rights and so on so that APHT cannot be made in conjunction with the date of the Credit Agreement.

3) PPAT has read the contents of the deed to the parties present with attended by 2 (two) witnesses and after being read then the deed is invited by interested parties, witnesses and PPAT. This has been explained at the end of the deed.

4) The Object of Dependent Rights in APHT No. 301/2018 has been clearly and detailedly listed. Start Property Number, Date and Letter Number Measure, Land area of the guarantee object as well as the address of its location. The object of guarantee on behalf of the guarantor (third party) and for the granting of this Dependent Right has been approved by the spouse/wife. The nominal amount of debt and the value of dependent rights have been included in the APHT and is burdened with the first-rank Dependent Rights. There was an error in the inclusion of the dependent rights rating which should have been the first stage listed in the second stage until the renvoi was done.

5) In APHT No. 301/2018 the PPAT working area has been in accordance with the location of the dependent rights guarantee object in the same district as the seat of the PPAT.

6) The signing of APHT on August 20, 2018, and the registration of APHT Number 301/2018 was only done on September 19, 2018, so that there was a delay of 22 (twenty-two) business days from the date of signing of APHT so that it exceeded the deadline of 7 (seven) business days. APHT registration is nearly 1 (one) month late with conditions on APHT there are only a few revisions or renvoi and guarantee objects on behalf of the guarantor as the owner of the guarantee. It can be concluded that there is no process of other legal actions e.g. behind the name of the Zertifikat or conversion that takes months. The period of APHT with SKMHT is still in accordance with the applicable provisions of 10 (ten) days.
The application of prudential principles based on APHT No. 301/2018 has in principle been largely applied in accordance with the laws and regulations of its implementation. There were no fatal or significant errors in the process of making APHT, but based on the list of dependent registration applications on the above two APHT there have been delays in registration of APHT that exceed the deadline of 7 (seven) business days with delays of close to 1 (one) month. Registration preparation by PPAT cannot meet 7 (seven) working days because the application of prudential principles has not been carried out consistently due to several processes that must be passed first and have not been able to maximize limited time. Delay in the registration of APHT is considered common because most PPAT do so, from the Land Office also provides tolerance and leeway by simply requiring to attach a letter of application for late registration of APHT (Hartoyo, 2019), even though there are no rules on it. This should be of concern because the Land Office also plays an important role in monitoring and performing surveillance functions to PPAT in the APHT registration process. The purpose of the Land Office must supervise the application for APHT registration in relation to the speed and accuracy of service in BPN/land office which affects the success of APHT registration in accordance with the provisions of the legislation. The crucial obstacle of the Land Office is the filing of land book land rights that have not been organized with a manual search system has not been integrated with the online system that already exists in the registration officer section, a lack of human resources that is not comparable to the work that exceeds the capacity so the queue of APHT registration documents is very much. (Hartoyo, 2019) It should be made on the seventh day from the date of application for APHT registration (if the seventh day of the holiday then the seventh day is the next business day in accordance with the provisions of Article 13 Paragraph (4)) with the complete requirements accepted by the Land Office, but in practice, most completion of APHT registration exceeds 1 (one) month. The Land Office made a land book and published a Dependent Rights Agreement beyond the seventh day after the application for APHT registration was received.

The date of the land book of Dependent Rights has a very important role. The Land Book of Dependent Rights has a decisive influence on the position of creditors of dependent rights holders against fellow
creditors against the same Debtor (Article 1132 and Article 1133 of the Criminal War). Determine the creditor's position with fellow creditors preferential (Article 5 Paragraph (2) of the UUHT) and the position of the Creditor if the Debtor falls into bankruptcy. This is because in such an event the creditor's position against another fellow Creditor depends on the creditor's position as the holder of the Dependent Rights to determine that the other is preferential to the other and/or the separatist Creditor in bankruptcy. The creditor's position as a preferred creditor against another fellow creditor depends on when the Dependent Rights are born, and for all that the date of the Land Book of the Dependent Rights is the date that determines both the birth of the Dependent Right, the position of the Creditor preferential and its rank against the fellow creditor preferential. (Satrio, 1997, p. 144-145)

2. **Due to The Law Of Unsentence of Prudential Principles in APHT Registration**

Any legal action performed by the subject of the law may arise as a result of the law if performed in accordance with the principles contained in the applicable provisions. According to Ishaq, the result of the law is the result of a legal event, *(Ishaq, 2008)* because an act of law is caused by a legal act, while a legal action can also give birth to a legal relationship, then the consequences of the law can also be interpreted as a result of legal action and/or legal relationship. The application of the principle of prudence in the registration of APHT can have legal consequences not only on APHT but also to PPAT as a public official and interested party, especially creditors of dependent rights holders.

With regard to the legal consequences arising from the absence of prudential principles in the registration of APHT, it is also related to the legal protection for the parties that exist in the entire application process of APHT namely PPAT, debtors, creditors, and BPN / Land Office. Legal protection for the parties as stipulated in the legislation must be realized. Philipus M Hadjon suggested that the protection of the law for the people includes two things: *(Hadjon, 1987)*

1. Preventive Legal Protection, a form of legal protection where the people are given the opportunity to object or their opinion before a government decision gets a definitive form.
2. Repressive Legal Protection, a form of legal protection that is more aimed at dispute resolution.
The onset of such rights and obligations must also arise in the interests of each individual resulting in tensions between the two parties and in this context the protection of the law serves to regulate the various interests and tensions with the umbrella of the laws and regulations of its implementation. In connection with the registration of APHT, the fulfillment of the rights and obligations of the parties namely debtors, creditors, including PPAT and PBN / Land Office is governed by the UUHT and its implementation regulations, in terms of the debtor's right to obtain a credit loan facility in the form of money, and his obligation to pay off his debts in installments to creditors, creditors have an obligation to provide credit facilities to debtors with agreements made in the clauses of credit agreements. Creditors have the right to reclaim their receivables in the form of credit installments from debtors. The debtor is also obliged to submit the original certificate of land rights as an object of debt guarantee, creditors are entitled to execute the guarantee with the execution parate (Article 6 UUHT) if the debtor defaults. PPAT has an obligation to conduct a complete series of APHT registration process until the stage of registration of APHT in order for the Dependent Rights to be born immediately and to prevent the delayed birth of the Dependent Rights then regulated provisions on the registration of APHT for no later than 7 (seven) business days (Article 13 Paragraph (2) of the UUHT). Similarly, BPN / Land Office monitors and monitors the performance of PPAT so that the implementation of APHT registration is carried out carefully and appropriately. Article 13 Paragraph (3) of the UUHT governs the obligation of BPN / Land Office to issue a Certificate of Dependent Rights recorded in the land book of land rights as a form of legal certainty for debtors and or bail owners and creditors.

Repressive legal protection is legal protection for resolving disputes. Done if preventive legal protection does not run properly, there is no running of rights and obligations between the legal subjects of both persons and groups/entities. A repressive form of legal protection that is that both parties to credit agreements (debtors and creditors) can seek redress if any rights are not fulfilled. PPAT may be liable for damages if its obligations and or due to its faults (negligence or negligence) result in unfulfilled rights of interested parties, especially the application of prudential principles in the registration of APHT. The provision of criminal sanctions and administrative sanctions to PPAT that are negligent or intentional including
the interceptors either together or one of the participating parties or who ordered the PPAT to commit the falsification of the authentic deed.

With regard to the consequences of the law not applying the principle of prudence in the registration of APHT and legal protection for interested parties, it can be reviewed from 3 (three) aspects of the law namely civil law, criminal law, and administrative and the author analyzes as follows:

a. Aspects of Civil Law
   
   Reviewed from aspects of Civil Law can cause legal consequences for the subject of the law, namely the interested parties and PPAT, as well as the legal object namely APHT, and related to the uns applying principle of prudence in the registration of APHT namely as follows:

   1. Inaccuracies in the Creation of APHT
      
      The form of inaccuracy in the creation of APHT is incompatible with the provisions of Article 1 number 5 of the ACT OF LAW that APHT is a deed of PPAT containing the granting of Dependent Rights to certain creditors as a guarantee of repayment of receivables, APHT must be made by PPAT as a general officer who gets a mandate from the law. Validation of the identity of the parties is less thorough and careful, so the deed becomes legally flawed. Misformation and content of APHT in terms of the inclusion of the identity of the parties, the domicile of the parties, the object of guarantee of Dependent Rights, the nominal amount of debt, and the amount of the value of dependents may result in APHT legal defects not meeting the objective elements (Article 1320 of the Criminal Code), APHT may be null and void and inauthentic APHT (Article 1869 of the Criminal Code), the deed is made by the employee, in this case, the PPAT is not powerful or incapable and legally defective in its form then degraded into a deed underhand.

   2. Delay of APHT Registration
      
      The delay in registration of APHT due to the lack of prudential principles clearly inflicts harm on the interested parties both material and immaterial losses so that it is included in the unlawful acts (onrechtmatige daad) stipulated in Article 1365 of the Penal Order that "any unlawful act, which brings harm to another person, obliges the person who, due to the wrong to issue the loss, indemnifies it". The person who has committed an unlawful act shall indemnify experienced by others, concerning the damages also affirmed in Article 1366 of the Criminal Court, that everyone is liable, not only for the damage caused
by his/her actions but also for the losses caused by his negligence or lack of care"). Every act is unlawful and results in harm to others requiring the person who inflicts harm because of his wrongdoing.

The claim for damages becomes the right of the Creditor as the indemnity party to the APHT registration process. Creditors who have been harmed by the delay in registration of APHT can file a civil lawsuit on the basis of PPAT errors. Article 1243 of the Civil War details the losses that must be reimbursed in the form of costs, losses, interest. These three indemnity components can be applied to delays in registration of APHT because PPAT errors do not meet "achievements" and are considered to have defaulted for the implementation of APHT registration.

The delay in registration of APHT if linked to Rosa Agustina's opinion that in determining an act against the law can be qualified as unlawful, it is necessary 4 (four) conditions namely (Augustine, 2003, p. 117) contrary to the legal obligations of the perpetrator, contrary to the subjective rights of others, contrary to decency, contrary to propriety, conscientiousness and, prudence. Based on these qualifications at least entered into three qualifications that are contrary to the legal obligations of the perpetrator, namely PPAT who does not perform the obligation in accordance with the prevailing provisions, and this obligation is also interpreted as "achievement" if not fulfilled then PPAT has defaulted. Contrary to the subjective rights of others, namely the right of creditors preference as holders of Dependent Rights, and of course contrary to propriety, thoroughness, and prudence due to the lack of prudential principles.

Based on the analysis of aspects of civil law, that APHT is a deed that forms from the granting of Dependent Rights from debtors as holders of Dependent Rights and creditors as recipients of Dependent Rights that urge the granting of dependent rights to be registered with APHT records made by PPAT by the prevailing provisions so that it is not legally flawed. This relates to the rights of creditors, namely the birth of dependent rights with the issue of a certificate of Dependent Rights as the fulfillment of the principle of publicity and legal certainty for preferential creditors in particular. The rights of preferential creditors are not fulfilled due to errors either due to negligence or intentionality of PPAT so that the principle of prudence is not thoroughly applied creditors can seek damages either using mediation/kinship (non-
litigation) or file a lawsuit to the Court (litigation). The act of seeking damages can be done by creditors if there is an unlawful act (Article 1366 juncto Article 1365 of the Criminal Code) and the unfulfillment of the obligations (achievements) of the PPAT.

b. Aspects of Criminal Law

Aspects of criminal law relating to the principle of prudence in the registration of APHT can be reviewed from honesty, integrity, impartiality, thoroughness, and meticulousness that become the guidelines of Notary-PPAT. The ineffect of this can be fatal for PPAT because it is related to a criminal offense. The principles of prudence that are included in the criminal element are as follows:

1. **Does Not Include Actual Data and Information On APHT**

   Notary-PPAT shall pour all information into the deed he made by the actual conditions and by the will of the parties on the condition that it does not violate the provisions of the applicable legislation. Notary-PPAT is not allowed to add, reduce and eliminate information, any sentences, and words from such documents and/or letters, if they are aware of anything that is not by the provisions of Notary-PPAT must refuse to conduct the registration process of APHT. Based on Article 264 Paragraph (1) and Paragraph (2) juncto Article 263 Paragraph (1) of the Penal Code, that the falsification of authentic deeds including the type of counterfeiting of criminal threat letters is severe which is eight years. It is not trivial and merely negligence or administrative error only related to the falsification of data and information on the deed because it turns into the realm of criminal law whose criminal threat is not mild. In APHT Number 301/2018 the data and information contained in APHT are by the PPAT validated data and the information on APHT has been by the existing facts without any deduction, addition, deletion of data, and information from the interested parties, so as not correction and revision of the Land Office. APHT’s position becomes inauthentic if there are untruths in the contents and descriptions of the deed and falsification or manipulation of other documents.

2. **The deed is Not Read out In Front Of the Parties**

   Based on the provisions of Article 22 of the PPAT Department Regulation that the PPAT deed must be read/explained its contents to the interested parties or present in the presence of PPAT both creditors, debtors, and or owners of collateral objects and
witnesses. The purpose of the provision is to ensure that PPAT has included the correct data and information in the deed by the documents obtained by PPAT. The contents and information in the deed are poured into the actual condition without any deletion, omission, addition, and reduction of content and information. Ensure that the interceptor knows, understands, and understands the contents of the deed. Similarly, article 16 paragraph (1) of the letter m UUJN is also stipulated concerning the obligation of notaries to read the deed before the intercept with two witnesses.

3. Not Attended by At least 2 (Two) Witnesses

The reading and signing of the deed must be attended by at least 2 (two) witnesses by the provisions of Article 22 of the PPAT Department Regulation. Witnesses may come from the PPAT employee in question. The witnesses are certainly legally capable, adults with a minimum age of 21 (two pulu one) years and or/ under 21 (twenty-one) years old but married, not in amputation. This can be proven by the identity documents of the witnesses and the PPAT must know the witnesses, not the false witnesses used temporarily by the PPAT to sign the deed only. APHT Number 301/2018 has fulfilled the provisions of the law by being attended by 2 (two) witnesses from PPAT employees. PPAT must ensure that these witnesses are legally capable and that witnesses must be known by the PPAT.

4. APHT Is Not Signed By The Parties On the Same Day, Date, And Hour

At the time the deed has been read by PPAT according to the day, date, and time stated on the deed, then immediately after that the deed must be directly signed by the parties present, witnesses and PPAT. It also refers to Article 22 of the PPAT Department Regulation that as soon as the deed is read it must be immediately recorded. As a result of the law if signed on different days, dates, hours it is feared that unwanted things will occur, for example, one of the interested parties suffers from paralysis, or dies while the person in question has not signed the deed.

Reviewed from the criminal law aspect of the form of legal protection namely in Article 263 Paragraph (1) of the Penal Code and Article 264 of the Penal Code as the right of interested parties, especially creditors to file
criminal charges if suspected of falsifying documents/letters, in this case, the authentic deed including data and information is listed incompatible with the actual data and conditions with the criminal threat of 6 (six) years. Linked to the code of conduct of office is classified as a gross violation. Based on the provisions of Article 10 Paragraph (1) letter b and Paragraph (3) letters a and b of the PPAT office rules, stipulate that PPAT "may be dismissed disrespectfully" for committing a gross violation of prohibition or liability as a PPAT, and/or sentenced to prison based on a court ruling that has the force of permanent law for committing a crime threatened with a prison sentence of 5 (five) years or more.

c. Administrative Sanctions Not Applied Prudential Principles in APHT Registration

Administrative sanctions in the case of the unsention of the principle of prudence relating to the following matters

1) Inclusion in the APHT concerning the name and identity of the Holder of Dependent Rights, the domicile of the parties, the clear designation of guaranteed debts or debts, the value of dependents, and a clear description of the object of dependent rights (Article 11 Paragraph (1) of the UUHT).

2) Granting of Dependent Rights must be registered no later than 7 (seven) business days after the arrival of APHT (Article 13 Paragraph (1) and Paragraph (2) of the UUHT).

3) Provisions regarding the use of SKMHT (Article 15 Paragraph (1)). The Power of Attorney imposes a Dependent Right to be made by notary deed or PPAT deed and meets the requirements: does not contain the power to perform any other legal action than to impose the Dependent Rights, does not contain the substitution power, clearly lists the object of the Dependent Rights, the amount of debtor, and the name and identity of the creditor, the name and identity of the debtor if the debtor is not a dependent.

Article 23 Paragraph (1) of the UUHT is clearly stipulated that, the Official who violates or neglects in fulfilling the provisions as referred to in Article 11 Paragraph (1), Article 13 Paragraph (1) and (2) and (2) and Article 15 Paragraph (1) of this Act and/or its implementation regulations may be subject to administrative sanctions in the form of: verbal reprimand, written reprimand, temporary dismissal from office, dismissal from office. Article 10 Paragraph (1) of the PPAT Department
Regulation governs the respectful dismissal of PPAT from office, because:

a. self-request;
b. no longer able to carry out its duties due to the state of the body's health or mental health, after being declared by the medical examiner's team authorized at the request of the Minister or appointed officials;
c. commit a minor violation of the prohibition or liability as a PPAT;
d. appointed as civil servant or ABRI.

The principle of prudence is not applied in the registration of APHT so it is too late to register APHT beyond the deadline stipulated by UUHT. Such violation or omission is included in a minor violation of the prohibition or obligation as PPAT (Article 10 Paragraph (1) letter c of the Regulation of the PPAT Department), then the PPAT will be dismissed with respect. In the implementation of ppat position for land registration, especially registration of Dependent Rights BPN / Land Office plays a role in conducting direct supervision to provide administrative sanctions. In contrast to the position as a Notary whose supervisory functions are in the Regional Supervisory Assembly, the Regional Pengwas Assembly, and the Central Supervisory Assembly.

These sanctions have not been implemented at this time, so they do not cause deterrent effects for PPAT. Delay in Registration apht is considered not crucial because from the Land Office itself provides leniency and tolerance. The moment of birth of the Dependent Rights is a very important moment in relation to the muculih preferential rights of creditors, determining the level/position of creditors against fellow Creditors preferen and determining the position of creditors in terms of bailout (conservatoir beslag) on the collateral objects. (Satrio, 1997) The birth of the Dependent Right gives the Creditors the right to claim damages either by non-litigation (family mediation) or litigation (civil lawsuit to the local District Court) to PPAT for being materially and immaterically harmed.

CONCLUSION

The application of prudential principles by PPAT is regulated in the provisions of the laws and regulations of its implementation along with government regulations, namely in the UUHT, bandages, regulations of the PPAT, UUJN, and PP position on land registration. The form of application of the
principle of prudence namely Notary-PPAT is obliged to check the original document guarantee and completeness of documents (warkah); create APHT that forms and contains by the applicable regulations; ensure the correctness of the contents of APHT, read the deed before the parties and there are at least 2 (two) witnesses; APHT is signed on the same day, date and time; register APHT not exceeding the maximum limit of 7 (seven) business days; rights to the land and the claimation of dependents to the Creditors.

As a result of the Law, the law does not apply the principle of prudence. Reviewed from the civil aspect of APHT if the legal flaw due to the form and content does not meet the objective element (Article 1320 of the Criminal Code) then null and void and relegated to a deed under hand (Article 1869 of the Criminal Code). PPAT may be sued for damages by creditors due to incorrect inclusion of data and information on APHT, as well as late registering APHT. Creditors have not fulfilled their preferential rights due to unborn Dependent Rights, Creditors suffer material and immaterial losses. The criminal aspect, PPAT is subject to criminal penalties if there is a falsification of letters or documents and lists incorrect data and information. Also, PPAT is subject to administrative sanctions if a minor or negligent breach does not include the identity data of the parties and domicile as well as the data of the guarantee object including the amount of debt and the value of dependents, late registering APHT exceeding the deadline of 7 (seven) business days and the use of SKMHT that does not comply with the applicable regulations. All of these aspects relate also to preventive legal protection to prevent disputes from occurring, namely the provisions in the UUHT and its implementing regulations on the rights and obligations of all parties in the APHT registration process, repressive legal protection to resolve disputes if the aggrieved party can seek damages, as well as administrative sanctions and criminal sanctions to those who commit minor violations or serious violations.

**Suggestion**

1. PPAT needs to apply a cautious attitude in the process of making APHT up to the stage of registration of Dependent Rights and minimizing delay in registering APHT.
2. BPN/Land Office agency needs to apply administrative sanctions for delaying registration of APHT so that service to the community is guaranteed quickly and correctly and maintain professionalism.
References


