



## Juridical analysis of PPAT's liability in imposing mortgage rights on land located in protected forest areas

Teuku Rulianda Zhafirin<sup>1</sup>, Sri Walny Rahayu<sup>2</sup>, Yanis Rinaldi<sup>2</sup>

<sup>1</sup> Notary Master's Study Program, Syiah Kuala University, Banda Aceh, Indonesia

<sup>2</sup> Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

### Abstract

This paper provides a juridical analysis of the liability of the Land Deed Official (PPAT) in the imposition of mortgage rights on land located in protected forest areas in Indonesia. The PPAT's role is critical in the process of land registration and transfer of land rights, including the creation of deeds for mortgage rights. The responsibilities of PPATs are governed by several laws and regulations, primarily Government Regulation Number 24 of 2016, which outlines the requirements, duties, and ethical obligations for PPATs.

The imposition of mortgage rights on land in protected forest areas presents unique challenges due to the specific legal status and conservation regulations of such land. According to the Mortgage Law, only certain types of land rights can be mortgaged, including Ownership Rights, Business Use Rights, Building Use Rights, and Usage Rights. Land in protected forest areas does not typically qualify for mortgage rights, leading to potential legal issues if such land is used as collateral.

The case in Sabang, Cot Ba'U Village, serves as an example of the complications that arise when land in protected forest areas is improperly used as mortgage collateral. In this instance, the PPAT involved failed to adhere to the applicable regulations, resulting in administrative errors and legal consequences. The PPAT issued a Cover Note to inform the creditor, BRI Syariah, that the land was ineligible for mortgage rights due to its protected status.

This paper aims to analyze the authority and responsibilities of PPATs in the context of imposing mortgage rights on land with special status, focusing on the legal and ethical obligations of PPATs and the implications of their administrative actions. The research employs both normative legal research and empirical legal research methods, combining written data and field observations.

The findings highlight the importance of compliance with all relevant legal provisions to ensure the validity and authenticity of the deeds created by PPATs. The study concludes that the responsibilities of PPATs encompass not only administrative duties but also significant moral and legal obligations. Administrative errors can result in legal consequences and sanctions, emphasizing the need for PPATs to exercise caution and adhere to regulations to protect the rights of all parties involved in land transactions. The case in Cot Ba'U Village underscores the necessity for effective solutions to enhance legal certainty and prevent similar issues in the future.

**Keywords:** PPAT, mortgage rights, protected forest areas, land deed, legal responsibility, Indonesia

### Introduction

The Land Deed Official (PPAT) plays a vital role in the process of land registration and transfer of land rights in Indonesia. The authority and responsibilities of PPATs are regulated by various laws and regulations that specifically stipulate the requirements and obligations that must be met by a PPAT. One of the important roles of a PPAT is in the imposition of mortgage rights, which serve as a guarantee for the repayment of debt provided by the debtor to the creditor. In carrying out this task, PPATs must ensure that every legal action they take complies with all applicable laws to maintain the validity and authenticity of the deeds they create.

Government Regulation Number 24 of 2016 concerning Land Deed Officials provides guidelines on the requirements to become a PPAT and the responsibilities that must be undertaken. The changes from Government Regulation Number 37 of 1998 to Government Regulation Number 24 of 2016 show adjustments in the age requirements, eligibility, and educational qualifications for prospective PPATs. The responsibilities of PPATs are not only limited to the creation of deeds but also include

administrative, moral, and legal aspects in carrying out their duties.

The imposition of mortgage rights on land located in protected forest areas poses specific challenges for PPATs. Land in protected forest areas has a different legal status and is subject to strict conservation regulations, which affect the eligibility of such land as an object of mortgage rights. The applicable legislation, including the Mortgage Law, stipulates that land rights that can be encumbered with mortgage rights include Ownership Rights, Business Use Rights, Building Use Rights, and Usage Rights.

The case in Sabang, Cot Ba'U Village, serves as a concrete example of the complexities of PPAT's responsibilities in managing the imposition of mortgage rights. In this case, the land used as credit collateral by BRI Syariah was found to be in a protected forest area, and therefore could not be encumbered with mortgage rights in accordance with applicable regulations. The administrative errors made by the PPAT in this process resulted in legal consequences and highlighted the importance of compliance with all existing legal provisions.

This paper aims to analyze the authority and responsibilities of PPATs in the imposition of mortgage rights on land, with a focus on land located in protected forest areas. This analysis includes a review of the laws and regulations governing the position of PPATs, the legal and ethical responsibilities of PPATs, and the legal implications of imposing mortgage rights on land with special status. Through this analysis, it is hoped that effective solutions can be found to ensure legal certainty in every action taken by PPATs and to protect the rights of all parties involved in land transactions.

### Research Method

The research method employed consists of normative legal research and empirical legal research, prioritizing written data and field data as the primary sources. The approach is centered on gathering data from both written sources and field observations.

### Result and Discussion

#### A. Authority and Responsibility of PPAT

The authority of a PPAT (Land Deed Official) refers to the legal actions regulated and granted to a position based on legislation. Juridically, authority is the ability given by legislation to produce legal consequences. There are three sources of authority: attribution, delegation, and mandate. Attribution is the granting of authority by lawmakers to a governmental organ, delegation is the transfer of authority from one governmental organ to another, and mandate occurs when a governmental organ allows its authority to be exercised by another organ on its behalf.

Government Regulation Number 24 of 2016 concerning PPAT serves as a guideline for PPATs in performing their duties. PPATs are appointed based on several requirements, such as being an Indonesian citizen, at least 22 years old, of good conduct, physically and mentally healthy, holding a law degree and a master's degree in notarial law, and passing an exam organized by the ministry responsible for agrarian/land affairs. These requirements differ from those in Government Regulation Number 37 of 1998, with one notable difference being the lower minimum age in the 2016 regulation.

Upon meeting the requirements and passing the exam, a PPAT is appointed by the Minister of Agrarian Affairs and Spatial Planning and must fulfill various obligations, such as submitting the deeds made to the local Land Office, managing the register of deeds made, following instructions from the Land Office, and submitting monthly reports on the deeds made.

PPATs also have ethical and legal obligations to work independently, honestly, and impartially. Their responsibilities include administrative, civil, and criminal liability. They are accountable for the deeds they make, including the validity of legal actions taken and the documents used as the basis for those legal actions.

#### B. Imposing Mortgage Rights on Land Located in Protected Forest Areas

The objects of land rights that can be mortgaged under Article 7 of the Mortgage Law include Ownership Rights, Business Use Rights, Building Use Rights, and Usage Rights. The guarantee in a credit agreement aims to ensure the repayment of the debtor's obligations to the creditor. According to the law, all movable and immovable property belonging to the debtor serves as collateral for the debtor's personal obligations.

Collateral in the banking context is additional security provided to the bank when granting credit facilities. The purpose of collateral is to protect the creditor from the risk of default by the debtor. With collateral, the creditor has legal certainty and can execute the debtor's assets if default occurs.

In the case in Cot Ba'U Village, Sabang, the land used as collateral was found to be in a protected forest area, making it ineligible for mortgage rights. The PPAT involved in this case faces moral and administrative responsibility. Administrative errors or maladministration by the PPAT can lead to legal consequences, including administrative sanctions such as reprimands, warnings, or dismissal.

The PPAT's responsibility for a deed that contains legal defects includes personal liability for the execution of their duties and position. In this case, the PPAT in Cot Ba'U Village promptly issued a Cover Note to inform BRI Syariah that the land was located in a protected forest area and could not be mortgaged. This step was taken to provide legal certainty and prevent further losses for the creditor.

### Conclusion

The responsibility of PPATs in imposing mortgage rights on land located in protected forest areas includes authority regulated by legislation, as well as moral and administrative responsibility. Administrative errors by PPATs can lead to legal consequences and administrative sanctions. The case in Cot Ba'U Village highlights the importance of caution and adherence to regulations in performing duties as a PPAT to ensure legal certainty and protect the interests of all parties involved.

### References

1. Abdul Ghofur Anshori. Indonesian Notary Institution: Legal and Ethical Perspectives, Yogyakarta: UII Press, 2009.
2. Achmad Ali. Protection of Human Rights in Land Ownership, Jakarta: Human Rights Commission, 2005.
3. Bachtiar Effendie. Collection of Writings on Land Law, Bandung: Alumni, 2016.
4. Bambang Eko Supriyadi. Agrarian and Forestry Law, Jakarta: Rajawali Press, 2013.
5. Hans Kelsen. translated by Somardi, General Theory of Law and State: Basic Principles of Normative Legal Science as Empirical Descriptive Legal Science, Jakarta: BEE Media Indonesia, 2007.
6. Salim HS. Development of Theory in Legal Science, Jakarta: Raja Grafindo Persada, 2009.
7. Samsaimun. Regulations on the Position of Land Deed Officials, Bandung: Reka Cipta, 2021.
8. Satrio. Law of Collateral Rights: Proprietary Collateral Rights, Bandung: Citra Aditya Bakti, 2002.
9. Supriadi. Forestry Law and Plantation Law in Indonesia, Jakarta: Sinar Grafika, 2011.
10. The Constitution of the Republic of Indonesia. 1945.
11. Law of concerning Basic Agrarian Principles, 1960, 5.
12. Law of concerning Mortgage Rights, 1996, 4.
13. Government Regulation of concerning Regulations for the Position of Land Deed Officials, 2016, 24.
14. Government Regulation of concerning Forestry Administration, 2021, 23
15. Aceh Qanun of concerning Aceh Forestry, 2016, 7
16. Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation of concerning Electronic Integrated Mortgage Services. 2019, 9.