

# Juridical Analysis of The Discrepancy in The Format of The Certificate of Charge for The Right of Protection in Terms of Law Number 30 of 2004 Concerning The Position of Notary

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## ABSTRACT

Based on Law No. 30/2004 of the Position of Notary as amended by Law No. 2/2014, the authority of a notary as a general officer is to make a notarial deed which is an authentic deed, as long as the making of the deed is not also assigned or excluded to other officials or other people stipulated by law. In line with that, Article 15 paragraph (1) of Law No. 4/1996 on Dependent Rights to Land and Objects Related to Land gives authority to notaries to make a Power of Attorney to Impose Dependent Rights (SKMHT). Article 84 of the UUJN regarding civil sanctions against Notaries and Article 85 of the UUJN regarding administrative sanctions against Notaries, then there are no sanctions for Notaries if the deed made before or by the Notary does not meet the provisions of Article 38 of the UUJN. Although UUJN does not provide for sanctions for Notaries who make deeds not in accordance with the provisions of Article 38 of the UUJN, then in this case it must be linked to other legal rules that have to do with notarial deeds, in this case namely Articles 1868 and 1869 of the Civil Code (KUHPer). The problem is How is the violation if the notary follows the method of making SKMHT in accordance with the PPAT in terms of Perkaban and the legal consequences of the notary's actions if in the case of the notary committed a violation of the manufacture of SKMHT in accordance with the bandage To answer this problem, this type of research is normative. The data used are secondary data, collecting literature study data, and analyzing qualitative data and drawing conclusions of deductive methods. The conclusion of this author states that (1) Notaries do not have the authority to make SKMHT with deeds, in accordance with Article 15 of Law No. 30/2004 as amended by Law No. 2/2014 and Article 1868 BW, Notaries are only authorized to make deeds instead of making letters as is the case with SKMHT as mandated in Article 15 paragraph (1) of Law No. 4/1996, (2) The notary in making the power of attorney to impose dependent rights cannot use the SKMHT blangko that has existed so far, but or the Notary is not authorized to make SKMHT by using the SKMHT blangko, then the Notary must make it in the form of a Notarial deed (not a letter) by fulfilling all the provisions stated in Article 38 of the UUJN and not using the SKMHT blangko.

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## ABSTRAK

Berdasarkan Undang-Undang No. 30/2004 tentang Jabatan Notaris sebagaimana telah diubah dengan Undang-Undang No. 2/2014, kewenangan notaris sebagai pejabat umum adalah membuat akta notaris yang merupakan akta autentik, sepanjang pembuatan akta itu tidak juga ditugaskan atau dikecualikan kepada pejabat lain atau orang lain yang ditetapkan undang-undang. Sejalan dengan itu, Pasal 15 ayat (1) UU No. 4/1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah memberikan kewenangan kepada notaris untuk membuat Surat Kuasa Membebaskan Hak Tanggungan (SKMHT). Pasal 84 UUJN mengenai sanksi perdata terhadap Notaris dan Pasal 85 UUJN mengenai sanksi administratif terhadap Notaris, maka tidak ada sanksi bagi Notaris jika akta yang dibuat di hadapan atau oleh Notaris tidak memenuhi ketentuan Pasal 38 UUJN. Meskipun UUJN tidak mengatur sanksi bagi Notaris yang membuat akta tidak sesuai dengan ketentuan Pasal 38 UUJN, maka dalam hal ini harus dikaitkan dengan aturan hukum lain yang ada hubungannya dengan akta Notaris, dalam hal ini yaitu Pasal 1868 dan 1869 Kitab Undang-undang-undang Hukum Perdata (KUHPer). Permasalahannya adalah Bagaimana pelanggaran jika notaris mengikuti cara pembuatan SKMHT sesuai dengan PPAT dalam hal Perkaban serta akibat hukum dari perbuatan notaris jika dalam kasus notaris melakukan pelanggaran pembuatan

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SKMHT sesuai dengan perkaban Untuk menjawab permasalahan tersebut, tipe penelitian ini ialah normatif. Data yang digunakan adalah data sekunder, pengumpulan data studi kepustakaan, dan analisis data kualitatif serta penarikan kesimpulan metode deduktif. Kesimpulan dari penulis ini menyebutkan bahwa (1) Notaris tidak mempunyai kewenangan dalam membuat SKMHT dengan akta, sesuai dengan Pasal 15 UU No. 30/2004 sebagaimana telah diubah dengan UU No. 2/2014 dan Pasal 1868 BW, Notaris hanya berwenang membuat akta bukan membuat surat seperti halnya SKMHT sebagaimana yang diamanatkan dalam Pasal 15 ayat (1) UU No. 4/1996, (2) Notaris dalam membuat kuasa membebaskan hak tanggungan tidak dapat menggunakan blangko SKMHT yang selama ini ada, tapi atau Notaris tidak berwenang untuk membuat SKMHT dengan mempergunakan blangko SKMHT, maka Notaris wajib membuatnya dalam bentuk akta Notaris (bukan surat) dengan memenuhi semua ketentuan yang tercantum dalam Pasal 38 UUDN dan tidak mempergunakan blangko SKMHT.

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## I. INTRODUCTION

The Dependent Rights Law aims to provide a foundation for the enactment of a strong Dependent Rights Institution, including regarding the Power of Attorney to Impose Dependent Rights (SKMHT). Article 15 paragraph 1 provides an opportunity for the dependent rights giver to use SKMHT, in the event that the dependent rights provider cannot be present before the Notary /PPAT when making the Deed of Dependent Rights Granter. Then in the case of land rights that are the object of dependent rights do not yet have a certificate. Power of Attorney charging dependent rights (SKMHT) is considered valid if it is made by a Notarial deed or Deed of Land Deed Making Officer (PPAT), besides that according to Article 15 paragraph (1) of the Dependent Rights Act, the Power of Attorney to Impose Dependent Rights must meet several requirements, namely: A power of attorney shall not contain any other legal act other than a power of attorney; it Does not contain the power of substitution; and Clearly state the object of the dependent right, the amount of the debt and the name and identity of the creditor, and the name and identity of the debtor if the debtor is not the provider of the Dependent Rights.

The existence of this debt guarantee is preceded by a debt receivables agreement because the guarantee agreement is *accessoire*. Similarly, with The Right of Dependents (HT) as a guarantee of debt on land, it is impossible as an agreement that can stand alone. To be able to provide the HT, it is not just as long as there is a basic agreement, but in the agreement, there must be a clause about the provision of HT as collateral for a debt. The provision of HT as collateral for the debt, in addition to starting with an agreement to provide HT as collateral for repayment of debts, must also be attended to and carried out by the HT giver (the debtor) himself in the presence of the Land Deed Making Officer (PPAT) (Supramono, 2013).

The substance of SKMHT is the granting of power, namely to conduct or carry out one particular affair, in this case namely "charging Dependent Rights" or only one act to impose HT only in the form of APHT (Habib Adjie, 1999). Based on the sound of Article 15 paragraph 1: "Power of Attorney charging dependent rights must be made with notaries deeds or PPAT deeds", then dependent rights and SKMHT must be made notarially with a Notarial deed or PPAT deed. It will be a problem when

the SKMHT format given by Perkaban Number 8 of 2012 is also used by a Notary, because the PPAT format used by a notary will be contrary to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Article 16 paragraph 1, the PPAT format consists of two copies of SKMHT and both are original minuta deeds, one was handed over to the local Land Office, and the other was kept by the PPAT as its warkah. Meanwhile, the Notary only makes one minuta deed.

In this case it can be fatal to the deed made and therefore can bring certain legal consequences to the Notary who made the deed. This is one of the problems that interfere with the duties of a Notary. This is not in accordance with the authority possessed by a Notary, namely to make an authentic deed, not fill in the blanks. In Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary (Statute Book of the Republic of Indonesia of 2004 Number 117, Supplement to the Statute Book of the Republic of Indonesia Number 4432; hereinafter referred to as Law No. 30/2004) as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Statute Book of the Republic of Indonesia of 2014 Number 3, Supplement to the Statute Book of the Republic of Indonesia No. 5491; henceforth referred to as Law No. 2/2014) it is affirmed, that "The Notary is authorized to make authentic Deeds concerning ....., all of which are so long as the making of the Deed is not also assigned or excluded to other officials or other persons prescribed by law". Similarly, before Article 1 number 1 of Law No. 30/2004 as amended by Law No. 2/2014 stated "A notary is a general official who is authorized to make authentic deeds and". Based on these provisions, it is clear that the authority of the Notary is to make authentic deeds, not to make letters, or to fill in blanks, such as SKMHT.

The formulation of legal norms contained in Article 15 paragraph (1) of Law No. 4/1996 contains conflicts (internal inconsistencies). On the one hand, Article 15 paragraph (1) of Law No. 4/1996 requires that the power to charge HT is made/stated by a Notarial deed, but on the other hand, it requires that the form of power of attorney to charge HT is in the form of a "Letter". In fact, Article 15 paragraph (1) of Law No. 4/1996 requires that the power of charge for HT is made/stated by a Notarial deed or PPAT deed, not stated in the form of a "Letter". Similarly, it is implied that a provision of SKMHT must be made using an authentic deed, both made by a Notary and ppap. because as a general officer, the deeds made by Notaries and PPAT are authentic deeds in accordance with the authority granted by the Notary Position Law and the PPAT Position Regulations (Wiguna, 2017).

The problem of SKMHT is the result of regulations that are the legal basis of SKMHT not in accordance with the Law that regulates the authority and position of Notaries and regulations that are the basis for the Land Agency in this case the National Land Agency (BPN). Some Land Offices still require that SKMHT made notarally must still follow the method of making the SKMHT deed stipulated in Perkaban Number 8 of 2012 which if it is followed by a Notary then this will be a violation of the form of notarial deed established by UUJN, so that the SKMHT made becomes ineligible as an authentic deed as stipulated in Article 1868 of the Civil Code (R.Soebekti & Tjitrosudibio, 2004) and consequently the right of the dependent becomes problematic and if the basis of its encumbrance does not qualify as an authentic deed of course the right of the dependent becomes null and void and the SKMHT cannot be registered with the Land office where the object of the land is located.

In this study, the formulation of the problem will be stated as follows, is there a violation if the notary follows the method of making SKMHT in accordance with the PPAT in terms of Perkaban? and What are the legal consequences of the notary's actions if in the case of the notary committing a violation of the manufacture of SKMHT in accordance with the bandage?

## II. RESEARCH METHOD

Research on "Juridical Analysis of Discrepancies in the Format of Certificates Imposing The Right of Protection Reviewed from Law Number 30 of 2004 concerning the Position of Notary." The nature of the research used, namely descriptive research, the analysis of this research is expected to obtain a systematic and detailed picture of the problem under study (Soerjono, 1989) In this study, the

author used secular data as data that supports the existence of primary data, while the two data include the following (Soerjono, 1989).

Secondary data is data sourced from library materials which are basic tools that are classified as secondary data secondary data consisting of primary legal materials, secondary legal materials: Primary legal materials are binding legal materials consisting of basic norms or methods, basic regulations, laws and regulations, jurisprudence, treaties, and/or applicable legal materials; Secondary legal materials, that is, legal materials that provide explanations regarding primary legal materials. In this study, the Law on the Position of Notary, Perkaban Number 8 of 2012 was used as well as the results of internet searches related to the object of research. As well as other sources related to the problem under study.

This research uses normative research, this is research that examines document studies, which uses various secondary data such as laws and regulations, legal theory and can be in the form of expert opinions.

Data collection is carried out through literature studies (Soerjono, 1989) which is carried out by searching, integrating and studying about the problems that occur, as well as document studies carried out by reviewing the applicable laws and regulations and related to writing this journal, literature, writings, and other scientific papers obtained in Indonesian university libraries and accessing data via the internet.

Data analysis in this study uses qualitative methods. Analysis of research data contains a description of the ways of analysis that describe how a data is analyzed and what are the benefits of the research object data. That this research uses data analysis in the form of qualitative which means that the efforts passed by working in organizing data.

### III. RESULT AND DISCUSSION

1. Violation if the notary follows the method of making SKMHT in accordance with PPAT in the case of Kaban.

Sometimes the debtor or third party as the owner of the guarantee cannot be present to make APHT, so the debtor or third party who owns the guarantee makes SKMHT (Bakarbesy, 2014). The necessity to make SKMHT in granting HT is regulated in Article 15 of Law No. 4/1996. The use of this SKMHT is limited to when the HT giver is completely unable to be present in the presence of the PPAT, when the creation of the APHT is carried out. In the event of such circumstances, the HT giver may appoint the HT holder or another party as its power of attorney to represent it in the granting of the HT. The granting of the power of attorney to charge the HT is set forth in the SKMHT.

The substance of SKMHT is the granting of power, namely to conduct or carry out one particular affair, in this case namely "charging Dependent Rights" or only one act to impose HT only in the form of APHT (Habib Adjie, 1999). This SKMHT is a special power of attorney addressed to HT holders or other parties to represent the HT giver present before the PPAT to charge the HT, since the HT giver cannot come to face himself to take action to charge the HT before the PPAT. Therefore, if it is "absolutely necessary", then the charge of HT can be authorized in a special power of attorney granted directly (himself) by the giver of HT. The use of this SKMHT is specifically intended to charge a mere HT, not intended for other purposes outside of charging HT into the APHT. The manufacture and use of SKMHT is based on 2 (two) reasons, as followst:

- a. Subjective conditions i.e.: HT givers cannot present themselves in the presence of a notary/PPAT to make APHT; a long process /long HT loading procedure; The cost of making HT is quite high; Short-term credit awarded; The credit given is not big/small; Highly trusted/bona fide debtors.
- b. Objective requirements are: certificates have not been published; The reverse of the name on the land of the HT giver has not been carried out; The settlement/incorporation of the land has not been completed on behalf of the HT giver; Roya/scribbling has not been done (HS, 2004).

The necessity to make SKMHT should not be interpreted, that every grant of HT is required to be accompanied by SKMHT, this is not the intention of Article 15 paragraph (1) of Law No. 4/1996. That is, if the granting of Dependent Rights is authorized to other parties or people, then such a power of attorney is "obliged" to be stated in the form of a deed, either a notarial deed or a PPAT deed. The form of the deed is in the form of SKMHT as required in Article 15 paragraph (1) of Law No. 4/1996. SKMHT is a deed made by a general official, in this case a Notary or PPAT, so that formally that SKMHT has binding force and as a strong evidence (Habib Adjie, 1999). The manufacture of SKMHT is bound by certain requirements and forms that have been stipulated in the laws and regulations. If certain requirements and forms are not met, then in accordance with the Explanation of Article 15 paragraph (1) of Law No. 4/1996, such a "power of attorney" is threatened with "null and void". Again, the obligations here are related to the "obligations" of pouring the SKMHT in the form of notarial deeds or PPAT deeds. In addition to having to be made with a notarial deed or PPAT deed, the manufacture of SKMHT must also meet certain requirements as stipulated in Article 15 of Law No. 4/1996, namely:

- a. SKMHT is made solely in order to charge HT. The SKMHT does not contain the power to perform other legal acts than the power to impose HT. It is prohibited, for example, to contain the power to sell, lease HT objects, or extend land rights;
- b. SKMHT does not contain the right of substitution. In SKMHT it is prohibited to contain the power of attorney for the replacement of the beneficiary through transfer. In this case, it does not constitute a substitution, if the beneficiary of the power of attorney gives power to the other party in the context of the assignment to act on his behalf, for example, the Board of Directors of the Bank assigns the exercise of the power of attorney he received to the Head of his Branch or another party;
- c. SKMHT must clearly state the object of the HT, the amount of the debt with the name and identity of the creditor, the name and identity of the debtor if the debtor is not the HT giver. Clarity as to the essential elements in the loading of this HT is indispensable for the benefit of the protection of the HT giver; and
- d. The power of attorney for the HT is irrevocable or irreversible for any reason whatsoever, except: Repealed by mutual agreement; The power has been exercised; The validity period of the SKMHT has expired or expired; Not implemented or not followed by the creation of APHT; Annulment of the court (Mustofa, 2014).

The authentic value of a notarial deed is inseparable from the fulfillment or not of a procedure that has been prescribed in the regulations governing it which in this case is the Notary Position Regulation. A deed can be said to be authentic if it meets: A notarial deed is a deed made by the person authorized to do so; There is a certainty of the date; There is a certainty of who signs, signed by the person concerned himself; The notary has advised before the deed is made, which ones are prohibited and which are not; If anyone denies the truth of the deed, then the one who denies it must prove, who is denied has nothing to prove; The notarial deed must be by a notary.

Deeds that are the duties and authorities of the Notary include: Make a deed of establishment / articles of association: (business entities, social entities (foundations), cooperatives, and take care of the ratification of business entities); Make deeds of agreement, for example: (Land sale and purchase agreement; Land rent; Debts and receivables; Cooperation and ); Marriage agreement; Making a will deed; Make a fiduciary deed; Legalizing (certifying the matching of photocopies of letters); Make and legalize (legalize) the letters under hand, such as: (Power of attorney; Affidavit; and Letter of approval)

The form of SKMHT turned out to be determined in the form of a fill/form as stipulated in the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1996 concerning the Form of Power of Attorney for Granting Dependent Rights, Deed of Grant of Dependent Rights, Land Book of Dependent Rights, and Certificate of Dependent Rights (hereinafter referred to as PMNA/ PerKaban No. 3/1996), which was then reaffirmed in Article 96 paragraph (1) of PMNA/PerKaban No. 3/1997 as amended by PerKaban No. 8/2012. In Article 96 paragraph (1) it is

affirmed (Peraturan Kepala Badan Pertanahan Nasional Nomor 8 Tahun 2012 Tentang Perubahan Atas Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran, 1997).

The form of deed used in making the deed as referred to in Article 95 paragraph (1) and paragraph (2), and the procedure for filling is made in accordance with the Annex to this Regulation which consists of: Deed of Sale and Purchase; Deed of Exchange; Grant Deed; Deed of Income into the Company; Deed of Division of Common Rights; Deed of Grant of Dependent Rights; Deed of Grant of Building Use Rights / Right of Use on Property Rights Land; Power of Attorney For Dependents.

Because not all Notaries are PPAT and not all PPAT are Notaries (Sjahdeini, 1999), SKMHT whether carried out with a Notarial deed or a PPAT deed must contain matters in accordance with the requirements as stated in Article 15 paragraph (1) of Law No. 4/1996. In other words, the power of attorney agreement imposes HT has a coercive nature, in the sense that the parties are not free to determine for themselves, both the form and content of the agreement for making its SKMHT deed. As a result of not making an SKMHT deed in accordance with these provisions, the deed has no legal consequences or is null and void (Budiono, 2007). If the Notary wants to continue to make SKMHT, the Notary must make it in the form of a Notarial deed (not a letter) by fulfilling the provisions of the Notarial deed form and not using the SKMHT blangko (Adjie, 2009).

Thus, it means that the Notary does not have the authority to make or fill in the SKMHT blangko / fill in, because of the notary's authority in making SKMHT, even though the authority to make SKMHT is sourced from Article 15 paragraph (1) of Law No. 4/1996. Notaries in making SKMHT are not allowed to use or fill out SKMHT fields / forms / blangko provided by BPN, this exceeds his authority as a Notary in making deeds as stipulated in Article 15 paragraph (1) UU No. 30/2004 as amended by Law No. 2/2014 (Indonesia, 2004) and Section 1868 BW (R.Soebekti & Tjitrosudibio, 2004). The notary is obliged to make a power of attorney to charge the HT with a deed, not in the form of a letter, as is the case with SKMHT. In connection therewith, if the Notary intends to make a power of attorney to impose HT, it should be stated in the Deed of Power of Attorney charging dependent rights or the Power of Attorney charging dependent rights in accordance with the authority of the Notary to make a deed, so that the Notary does not exceed his authority.

2. The legal consequences of notarial actions if they violate the manufacture of SKMHT in accordance with the bandage.

Article 84 of the UUJN regarding civil sanctions against Notaries and Article 85 of the UUJN regarding administrative sanctions against Notaries, then there are no sanctions for Notaries if the deed made before or by the Notary does not meet the provisions of Article 38 of the UUJN. Although UUJN does not provide for sanctions for Notaries who make deeds not in accordance with the provisions of Article 38 of the UUJN, then in this case it must be linked to other legal rules that have to do with notarial deeds, Article 1868 B.W. is the source for the authenticity of notarial deeds is also a (Indonesia, 2004) the basis of the legality of the existence of a Notarial deed, with the following conditions: the deed must be made by (door) or in the presence (ten overstaan) of a General Officer; the deed must be made in the form prescribed by statute; and The General Officer by – or before whom the deed was made, shall have the authority to make the deed in this case i.e. Articles 1868 and 1869 of the Civil Code (KUHPer).

Article 1868 B.W. is the source for the authenticity of the Notary deed as well as the basis for the legality of the existence of the Notary deed, with the following conditions (R.Soebekti & Tjitrosudibio, 2004): the deed must be made by (door) or in the presence (ten overstaan) of a General Officer; the deed must be made in the form prescribed by statute; and The General Officer by – or in whose presence the deed was made, shall have the authority to make the deed.

The authority of the Notary in making authentic deeds as long as it is not excluded to other parties or officials, or the Notary is also authorized to make them in addition to being able to be made

by other parties or officials, meaning that the authority of the Notary in making authentic deeds has general authority, while the other party has limited authority. Article 15 of the UUJN has determined the authority of the Notary. This authority is a limitation, that a Notary may not perform an act outside of that authority. Notary actions beyond the authority that have been determined, can be categorized as acts outside the authority of the Notary.

The notary must be authorized as long as it comes to the place, where the deed is drawn up. Article 18 paragraph (1) of uujn specifies that the notary must be domiciled in the district or city area. Each Notary in accordance with his wishes has a domicile and has an office in the regency or city area (Article 19 paragraph (1) uujn). The notary has an area of office covering the entire territory of the province from its place of residence (Article 19 paragraph (2) of the UUJN) (Indonesia, 2004).

A Notarial Deed which has the power of proof as an underhand deed may occur if it does not meet the provisions as mentioned in Article 1869 BW, i.e. because :bthe non-authority of the general officer concerned, or the incapacity of the general officer concerned, or defects in their form.

By using the parameters of Article 15 and Article 38 of the UUJN jis Articles 1868 and 1869 of the Civil Code, the SKMHT made before a Notary does not qualify as a Notarial deed, namely: the non-authority of the general officer concerned, or the incapacity of the general officer concerned, or defects in its form.

If the Notary in making the power of attorney to impose dependent rights still uses the SKMHT stamp, then the Notary has acted outside its authority, so that the SKMHT does not have the power of proof as an authentic deed, but only has the power of proof as a deed under his hand. Then, the Notary who is authorized to do a Notarial deed, but turns out to make SKMHT, which is a deed made outside his authority, the inability of the Notary to understand the implementation of the duties of the notary position and the defect in the form of a deed made by or before the Notary, then if such a Notary action has caused losses to the party whose name is in the deed, who had hoped that the deed would be cooled in the form of a Notary deed that had the power of proof which is perfect, but because it violates the provisions of Article 1869 of the Civil Code, being a deed that has the power of proof as a deed under the hand, the party whose name is in the deed can file a civil lawsuit with the district court against the Notary so that the Notary is sentenced to civil sanctions, in the form of reimbursement of costs, compensation and interest to the Notary.

An act is categorized as an unlawful act if the act is: Violates the rights of others; Contrary to the rule of law; Contrary to decency; Contrary to propriety in paying attention to the interests of oneself and the property of others in the association of daily life.

The responsibility of the notary is criminally for the deeds he made. Criminal in this case is a criminal act committed by a notary in his capacity as a general official authorized to make a deed, not in the context of an individual as a citizen in general. The elements in criminal acts include: 1. Human actions, 2. Fulfilling the formulation of laws and regulations, meaning that the principle of legality applies, *nullum delictum nulla poena sine praevia lege poenali* (no act is prohibited and threatened with criminality if this is not or has not been stated in the law), and 3. It is against the law. The responsibility of a notary based on the Notary Position Law (UUJN), the responsibility of a notary in carrying out the duties of his position based on the notary code of ethics. This is confirmed in article 4 of the UUJN on the oath of office of a notary. Perkaban No. 22 of 2012 concerning The Determination of The Deadline for The Use of Power of Attorney Imposes Dependent Rights to Guarantee Repayment of Certain Credit so as not to obtain an incorrect conclusion in interpreting the validity period of SKMHT.

#### IV. CONCLUSION

In order for the Notary who made the SKMHT not to exceed the authority in making the SKMHT, the power to charge the HT made by the Notary should be stated in the form of a deed of charging dependent rights in accordance with the authority of the Notary to make a deed as stipulated in Article 15 paragraph (1) and Article 38 of Law No. 30/2004 as amended by Law No. 2/2014. Notaries

do not have the authority to make SKMHT with deeds, in accordance with Article 15 of Law No. 30/2004 as amended by Law No. 2/2014 and Article 1868 BW, Notaries are only authorized to make deeds instead of making letters as well as SKMHT as mandated in Article 15 paragraph (1) of Law No. 4/1996. The notary is only authorized to make a Deed of Power of Attorney to Impose Dependent Rights or Power of Attorney to Impose Dependent Rights, not to make a Power of Attorney to Impose Dependent Rights, moreover, he must use the Blangko / fill / form SKMHT as stipulated in PMNA / PerKaban No. 3/1997 as amended by PerKaban No. 8/2012.

If the Notary in making the power of charges dependent rights still uses the SKMHT blank, then the Notary has acted outside its authority, so the SKMHT does not have the power of proof as an authentic deed but only has the power of proof as a deed under the hand. Thus, the Notary who is authorized to do a Notarial deed, but turns out to make SKMHT, which is a deed made outside his authority, the inability the Notary to understand the implementation of the duties of the notary position and the defect in the form of a deed made by or before the Notary, then if such a Notary action has caused losses to the party whose name is in the deed, who had hoped that the deed would be cooled in the form of a Notary deed that had the power of proof which is perfect, but because it violates the provisions of Article 1869 of the Civil Code.

## V. ADVICE

It is recommended that PPAT have a special list or record of all the SKMHT it makes so that it is easy to control to find out when the validity period of the SKMHT it made expires. Because the SKMHT that has expired cannot be used again as a basis for the right to make APHT if this happens, it can cause weakness / potential losses to creditors (banks). Notaries who neglect to register their liability rights so that the time expires can be sued civilly in the form of compensation by the Bank for their losses because the bank's position is only as a concurrent creditor which should be the existence of SKMHT which becomes APHT to become a preferred creditor. The issue of whether or not the bank's lawsuit is granted or the nominal depends on the judge who heard the civil case.

For this reason, the government must immediately overcome this problem by synchronizing regulations. Especially for the National Land Agency, there must be an awareness that notaries in making deeds have their own provisions and regulations that must be obeyed. Regulations or policies implemented at the central level (Head of BPN) must be strictly obeyed and carried out by subordinate agencies (Land Offices). In addition, the implementation of land registration must be in accordance with and in line with the provisions of the applicable laws and regulations, especially if the regulation concerned is a regulation issued by BPN itself. Often as ppat we have implemented what is specified or regulated in the regulations but instead the land office refuses to do it ourselves for unfounded reasons.

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