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RESEARCH ARTICLE

THE ROLE OF NOTARY/PPAT (LAND DEED OFFICIAL) IN MAINTAINING THE PREFERRED POSITION OF CREDITORS WITH THE MAKING OF DEED OF GRANTING COLLATERAL AND POWER OF ATTORNEY

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Abstract

The Mortgage is a guarantee institution over land that is erased if the Land Rights entrusted with it are erased. One of the reasons for the abolition of land rights is when the rights expire or are in the process of renewing rights. Renewal of rights is the addition of the validity period of a right after the expiration period or before the expiration of the renewal period. The research is normative juridical legal research and has an analytical perspective, with research data in the form of secondary data collected by document study. The collected data will be analyzed using conceptual, statute, and case approaches. Based on the data obtained, it can be concluded that the role of the Notary in maintaining the preferred position of the creditor is to assist the debtor in renewing rights for the benefit of the creditor who has lost the object of collateral, as well as making a Deed of Granting Collateral and Power of Attorney which contains the debtor's promise to fulfill his achievements and rebinding the collateral object after completion of the rights renewal process.

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Introduction:-

Land rights in Article 16 UUPA are divided into several types, including Property Rights, Cultivation Rights, Building Use Rights, Use Rights, Lease Rights, Land Opening Rights, Rights to Collect Forest Products and other rights that are not included in the rights mentioned above which will be stipulated by law as well as temporary right as mentioned in Article 53. Land rights function as guarantees for certainty over land ownership. Besides that, land rights can be used as collateral and collateral in various economic institutions, both banking and cooperatives.

Nowadays, there are also growing economic institutions such as banking institutions and cooperative institutions that can raise large amounts of funds for debtors, so material guarantees from debtors are needed to prove their sincerity in repaying the funds they borrowed. Based on this, the Government made Law Number 4 of 1996 concerning Mortgage Rights on Land and Object to it, known as UUHT [1].

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A mortgage is a form of collateral rights over land and other objects on it, which is an integral part of the land. Mortgage rights give *droit de preferent* to creditors, which means that creditors have priority or priority in repayment of their debts from other creditors. This will be seen when executing the debtor's guarantee due to default, as stated in Article 1 paragraph (1) and Article 20 paragraph (1) UUHT [2]. Another special position of the Mortgage is *droit de suite* which means that the Mortgage continues to burden the Mortgage object in the hands of whomever the object is. The creditor retains the right to sell by auction the collateral object belonging to the debtor even though the rights have been transferred.

Article 18 UUHT confirms that the Mortgage is automatically deleted if the object of the land rights encumbered by it is erased. This happens because the Mortgage if viewed according to its nature, is an accessor agreement that depends on the receivables guaranteed to be repaid. The Mortgage will also be deleted if the receivable is written off due to settlement or other reasons. Furthermore, Article 18 paragraph (1) UUHT states that the cause of the abolition of Mortgage is caused by the abolition of Land Rights burdened with Mortgage [3].

The bank is one of the financial institutions that play an active role in collecting funds from the public and channeling them in the form of lending, where this is one of the functions of the bank is to support economic growth and development. Efforts to reduce risk in lending and guarantees are needed. Collateral as a means of protection for creditors, namely certainty over debt repayment by the debtor or by the debtor is unable to complete all obligations relating to the credit [4]. Land guarantees are the most prioritized collateral by creditors because the land is generally easy to transfer, prices are always increasing, has proof of ownership, and can be burdened with Mortgage [5].

Land rights that can be used as collateral for debt with Mortgage rights are listed in Article 25, Article 33, and Article 39 in conjunction with Article 4 paragraph (1) UUHT, namely proper rights, business use rights, and building uses rights. Land rights, as mentioned above, and based on creditor habits, property rights are the most prioritized material rights as collateral for debt because they are hereditary rights, the strongest and most fulfilled for their owners. However, creditors can receive collateral for land rights with the status of Building Use Rights. Right, to Build is the right to construct and own a building on land that is not privately owned for a maximum period of 30 (thirty) years; in other words, one day, this period may end.

In practice, the term Building Use Rights has ended, while the debts and receivables are still ongoing, resulting in losses for creditors. The loss referred to here refers to the creditor's position; initially, if the Building Use Right is still valid, then the creditor's position is preferred creditor, but if the term of Building Use Rights expires, then the creditor's position will change to a concurrent creditor. It causes creditors because their receivables no longer have collateral for repayment of debtors' debts. The Building Use Rights that expire do not necessarily cancel the credit, meaning that it does not cause the creditor's right to collect the debtor's debt to be abolished.

The Civil Code (KUHPerdata) has provided security for creditors in extending credit to debtors by providing general guarantees. The general guarantee is stated in Article 1131 of the Civil Code and Article 1132 of the Civil Code, which stipulates that all assets belonging to the debtor, both movable and immovable, existing or future, are collateral for all his agreements with creditors.

The role of the Notary/PPAT in defending Mortgage objects is very important, making SKMHT not the only way to be able to secure Mortgage objects, considering that the process of renewing rights takes approximately 6 (six) months while SKMHT is only valid for 3 (three) months and must a Mortgage Granting Deed (APHT) is made, then this is less effective because you have to re-make SKHMT until the rights renewal process is complete. Another way that can be used to save the collateral object for the benefit of the creditor is by drawing up a Granting Collateral and Power of Attorney Deed, and the deed contains the debtor's promise to fulfill his achievements and rebind the collateral object if the renewal process of his rights is complete.

One example of this legal event occurred between PT. MitraBerkahIlahi (PT.MBI) is the debtor, and Bank BNI Kroya Branch is the creditor in the credit agreement number: 2020.623-3400 dated May 18, 2020. The collateral submitted for the debtor's debt is the Building Use Right located in Kroya District and has been bound by the Deed of Granting Mortgage Rights (APHT) number: 67/2020 on May 18, 2020. Concerning the Building Use Rights, an extension was requested on April 21, 2002, valid for 20 (twenty) years until April 21, 2022. Efforts made by the Notary to save the collateral object are to draw up a Deed Granting Collateral and Power of Attorney number: 112.

Based on the explanation above, the researcher intends to examine the problem what is the Notary's role in maintaining the preferred position of the creditor by drawing up the Deed of Granting Collateral and Power of Attorney? And what is the position of the Deed Granting Collateral and Power of Attorney for Building Use Rights whose rights cannot be extended due to the expiry of the term? This study aims to analyze the role of a Notary/PPAT in maintaining the preferred position of creditors for Building Use Rights whose rights cannot be extended due to expiration and to analyze the position of the Deed of Granting Collateral and Power of Attorney for Building Use Rights whose rights cannot be extended due to the expiry of the period.

Research Method:-

This research uses a normative juridical method with a descriptive-analytical research type. The approach method used is the statutory approach method, the conceptual approach method, and the case approach method with the specification of prescriptive research analysis.

Results and Discussion:-

In carrying out his position, a Notary must act in a trustworthy, honest, thorough, independent, and impartial manner and protect the interests of the parties involved in legal actions. The position of a Notary in carrying out his responsibilities is as a public official with a legal product, namely an authentic deed, which is related to civil law provisions, especially in evidentiary law. The deed does not meet the requirements as a State Administrative Decision that is concrete, individual, and final and does not give rise to civil law consequences for a person or civil legal entity because the deed is a formulation of the wishes or wishes of the parties outlined in a Notary deed made before or by a Notary and not the will of the Notary [6].

The existence of a Notary is basically to meet the community's needs in the legal relationship between them. Everything written and confirmed by him is true; he is a powerful document maker in the legal process [7]. As a public official, a Notary can make authentic deeds. He must act carefully in making the deed. Thus, a Notary is responsible for carrying out the trust given to him by always upholding legal ethics and the dignity and nobility of his position because, if neglected, it will harm the parties [8].

From the explanation above, the role of the Notary and the PPAT is clear, meaning that the position and role of the Notary in the legal system in Indonesia has been regulated in the applicable laws and regulations or juridical norms. The state appoints notaries and PPATs as legal professionals who provide legal services to parties requesting or applying for juridical services. The basis of the Notary's important role in public life is to carry out legal norms related to, among other things, duties, obligations, authorities, and prohibitions, so with this role, the Notary is expected to be accountable, especially for law enforcement.

A Notary who must adhere to the precautionary principle, especially in making a deed to maintain its authenticity, which ultimately causes the Notary not to be trusted by the public as a public official. The precautionary principle of a Notary with careful behavior is reflected in the mastery of a Notary over the applicable laws and regulations related to the notary sector and the legal relationship of the parties in the deed being constrained. Therefore, a Notary, in carrying out his duties and positions, must be careful concerning the applicable laws and regulations so that the act that is constitutive by him retains its authenticity.

Prudence is one of the most essential principles that a Notary must apply or carry out in his position. The notary is in an honorable part of the trust, and in carrying out his job, he is required to be thorough or careful, all of which are regulated in UUJN and the Notary Code of Ethics, in the sense that he must always be consistent in implementing laws and regulations in the notary sector based on professionalism and good faith. The challenge to carry out the position professionally and adequately is increasingly important because the position as a Notary deals directly with the community's interests in providing assistance or services. A Notary needs caution in carrying out this critical position to achieve the welfare of society. Adhering to the precautionary principle of a Notary in carrying out their role as stated in the oath of office, namely in Article 4 paragraph (2), namely: "... that I will carry out my position in a trustful, honest, thorough, independent and impartial manner, that I will maintain my attitude, behavior and will carry out my obligations in accordance with the professional code of ethics, honor, dignity and my responsibilities as a Notary ...". Trustworthy and honest in this case is an attitude rather than prudence or which means thoroughness.

The precautionary principle is a principle that states that a Notary, in carrying out his functions and positions, must be careful to protect the interests of the community entrusted to him. The purpose of applying the precautionary principle is so that the Notary is always within the proper guidelines or limitations based on the Notary Code of

Ethics and UUJN. With the application of this precautionary principle, it is hoped that public trust in the Notary will remain high so that the public is willing and does not hesitate to use the services of a Notary [9].

The authority of a Notary, as stated in Article 15 of the UUJN, is to do Authentic Deeds regarding actions, agreements, and provisions required by laws and regulations and what is desired by those with an interest to be stated in the deed, guarantee the certainty of the date of doing the act, provide Grosse, copy and deed excerpts. The notary is a position that implements some of the State's authority in the realm of private law related to a study of community service and the economy in general; that is, this is not allowed to be judged as a position that is not flexible and one-way but needs to try to carry out harmonization of current events, namely the existence of encouragement for the government to guard the direction of development in an orderly, safe and legal certainty [10].

Based on the research results on the examples of legal events in this study, initially, there was a legal relationship between the parties, namely accounts payable. The debtor borrows Rp. 500,000,000.- (five hundred million rupiahs) with collateral for the Building Use Right Certificate, which the extension of the right was made on April 21, 2002, and is valid until April 21, 2022, listed in the debtor's name. Next, the creditor makes a private credit agreement with number: 2020.623-3400, and an APHT is made before the PPAT IS, registered at the local Land Office, and obtains a Mortgage Certificate. After the period for the collateral object ends, the creditor and the debtor draw up the Deed of Granting Collateral and Power of Attorney number: 112 before IS Notary, which contains the debtor's promise to pay off his debt and delivery of the Persil to the creditor if the debtor defaults.

The Notary/PPAT, in this case, should do things that can maintain the creditor's position and provide advice and solutions regarding preventive steps to deal with the expiration of the building use rights, which are used as the object of mortgage rights and cause the creditor to lose his collateral object, among others:

1. The debtor is required to provide a replacement guarantee whose value is equivalent to the guarantee that will be submitted in the process of requesting a renewal of rights;
2. The debtor's account is temporarily blocked in the amount of the collateral value that will be submitted for the process of requesting a renewal of rights, and after the process is complete, the binding and imposition of the Mortgage on the guarantee will be carried out;
3. The credit facility from the debtor is reduced to the value of the collateral that will be submitted to the process of requesting a renewal of rights;
4. A Power of Attorney for Imposing Mortgage Rights (SKMHT) is made when the credit is implemented so that when the application for renewal of rights is complete, a Mortgage is installed using the SKMHT basis.

This is consistent with the role theory according to Ralph Linton, which states that that role is a dynamic aspect of the position. If a person carries out his rights and obligations according to his position, he carries out a role. Thus the roles and positions of the two cannot be separated because they are interdependent. There is no role without a position or vice versa. There is only a position with a role. Each individual has a series of roles from various patterns in his social life. This shows that roles determine what is done for society and what can be expected from society.

The Deed of Guarantee and Power of Attorney is one of the conditions for granting credit enforced to provide legal protection to the Bank during the vacant guarantee period because the Bank does not yet hold a different guarantee right. The deed is an additional agreement to the credit agreement or debt agreement between the Bank/creditor and the debtor. It can be concluded from the contents of the deed as follows:

1. The debtor's promise or commitment that later, if the Land Rights, which are in the process of renewing rights, have been issued a certificate or proof of new rights, a new APHT will be made;
2. If the debtor defaults on the credit agreement, the debtor authorizes the Bank to transfer Land Rights.

If the parties have signed a deed of agreement or any deed drawn up before a Notary, it means that the parties have fully understood and understood the agreement's contents and agree with its provisions. Hence, the parties already know the consequences [11].

The parties to an agreement have their respective rights and obligations that must be fulfilled. An agreement is an event in which a person promises another person or where 2 (two) people promise each other to do something. From this event arises a legal relationship between the parties agreeing. The legal relationship that constitutes an engagement becomes the basis for one party to demand performance from another party obliged to fulfill the other party's demands and vice versa [12].

The conditions are the same as agreements in general; the Deed of Guarantee and Power of Attorney is a legal relationship between 2 (two) or more parties, where the parties intentionally bind themselves or bind themselves to each other, in which one party has the right, in this case, the Bank or creditors. In contrast, other parties have obligations as stipulated in Article 1313 of the Civil Code. Based on the principle of agreement in entering into agreements, creditors and debtors bind themselves in a debt agreement. Because the condition of the Land Rights to be pledged is in the process of requesting renewal of rights, such is not the object of a Mortgage guarantee institution as stipulated in contract law and guarantee law.

The deed is a signed letter that contains events that form the basis of a right or agreement, which was made from the beginning intentionally for proof. All deeds drawn up by a Notary and PPAT are authentic deeds that bind the parties listed therein to protect each party from events that could harm one of the parties. A deed can lose its authenticity for many reasons. For example, due to violations of the rules on UUJN. Another thing that can cause the power of deeds to be graded is a violation of laws and regulations regarding the legal relationship between the parties. The offense can be in the formality of doing the deed or regarding the material of the contents of the deed. Concerning violations of laws and regulations in the contents of the deed can cause annulment and annulment. The contents of the deed are the embodiment of Article 1338 of the Civil Code regarding the freedom to contract and provide certainty and legal protection to the parties regarding the agreements they make [13].

An authentic deed is determined by law or in the presence of public officials who have power at the place where the deed is made, as explained in Article 1868 of the Civil Code. In contrast, there are 3 (three) essential elements to fulfill the formal requirements of an Authentic Deed. As follows:

1. In the form determined by law;
2. Made by and in the presence of public officials;
3. A deed is made by or before a public official authorized for that purpose and at the place where the deed was made [14].

As a public official authorized to make Authentic Deeds, a notary is responsible for his actions in connection with his work in making deeds. The scope of responsibility of a Notary includes the formal correctness of the deed he made, both civil and criminal.

The parties also agreed to draw up a Deed of Guarantee and Power of Attorney, in which the debtor promises for the benefit of the creditor that he will hand over the guarantee for the Land Right when a new title certificate has been issued, then the contract is bound by APHT. With the agreement of both parties, the rights and obligations of the parties arise. In this case, if the debtor does not carry out his obligations based on the credit agreement, the bank is authorized to take over the land rights and is entitled to receive the money from the transfer or sale to pay off the debtor's debt.

The draft Deed of Granting Guarantee and Power of Attorney contains a substance that contains a power of attorney which is an attempt to protect the Bank by making a Deed of Granting Guarantee and Power of Attorney, which includes a sufficiently reasonable absolute power of attorney clause. The existence of absolute power should be recognized because this absolute power has provided a way out for urgent needs.

The granting of Mortgage by the debtor to the creditor, the Mortgage concerned has not yet been born; the Mortgage has just been born when it is recorded in the land book at the Land Office. Therefore, certainty regarding when the Mortgage is registered is very important for creditors. This moment determines not only his priority position over other creditors but also his rank in relation to other creditors who are holders of Mortgage Rights with the same land as collateral.

In comparison between creditors who have collateral rights and creditors who do not have them, the advantage is that they have a better position in their efforts to obtain fulfilment of their [15]. A better position here is better in his efforts to get a settlement of his receivables compared to creditors who do not have collateral rights [16]. From this explanation, it can be concluded that the position of the creditor to the debtor who defaults on land and building collateral that is bound by the granting of Mortgage rights which gives priority position, then by only holding the promise of the debtor or guarantor outlined in the Deed of Granting Collateral and Power of Attorney, has not given a sense of security for the creditor Bank, because it is certain that preference rights have not been born, the position of the Bank is still as a concurrent creditor. The binding of credit guarantee objects will protect the Bank's interest if it is done through a guarantee institution that can be used to bind debt collateral objects, namely Pledge, Mortgage,

Mortgage and Fiduciary Guarantees. Different laws and regulations govern each guarantee institution and will be able to provide legal certainty to creditors and debtors.

A deed can lose its authenticity for many reasons, for example, because of violations of the rules set out in UUJN. Another thing that can cause the power of deeds to be graded is a violation of laws and regulations regarding the legal relationship between the parties. The violation can be in the formality of making the deed or regarding the material of the contents of the deed. Concerning violations of laws and regulations in the contents of the deed can cause annulment and annulment. The contents of the deed embody Article 1338 of the Civil Code regarding freedom of contract and providing legal certainty and protection to the parties regarding the agreements they make.

The main reference when a deed is invalid or canceled must look at the conditions that have been violated, whether the objective conditions or the subjective conditions set out in Article 1320 of the Civil Code. The first and second conditions, namely the agreement of those who bind themselves and the ability to agree, are called subjective conditions. In contrast, the third and fourth conditions, namely a certain matter and a lawful cause, are called objective conditions. An agreement that does not meet the subjective requirements has a legal consequence that can be canceled (voidable) or experiences a condition called cancellation, while an agreement that does not meet the objective requirements results in the agreement being null and void or experiencing cancellation.

An agreement whose content is a cause that is not lawful or violates objective conditions may not be implemented because it violates law or decency. Thus it can be concluded from the provisions of the Criminal Code regarding lawful causes; this is an agreement that is not without cause, without false causes, and is not prohibited by law. Promises contained in an agreement in a Notary deed must also comply with the applicable laws and regulations regarding the subject matter of the agreement.

The notary/PPAT, in this case, should do things that can maintain the creditor's position and provide advice and solutions regarding preventive steps to deal with the expiration of the building use rights, which are used as the object of mortgage rights and cause the creditor to lose his collateral thing, among others:

1. The debtor is required to provide a replacement guarantee whose value is equivalent to the proof that will be submitted in the process of requesting a renewal of rights;
2. The debtor's account is temporarily blocked in the amount of the collateral value that will be submitted for the process of requesting a renewal of rights, and after the process is complete, the binding and imposition of the Mortgage on the guarantee will be carried out;
3. The credit facility from the debtor is reduced to the value of the collateral that will be submitted to the process of requesting a renewal of rights;
4. A Power of Attorney for Imposing Mortgage Rights (SKMHT) is made when the credit is implemented so that when the application for renewal of rights is complete, a Mortgage is installed using the SKMHT basis.

Deed of Granting Guarantee and Power of Attorney number: 112 drawn up by Notary IS, the authors argue based on exceptions to the Instruction of the Minister of Home Affairs Number 14 of 1982 and Article 39 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, where the main of the agreement for granting guarantees and power of attorney in deed number: 112 made by Notary IS is a debt agreement which is an inseparable unit aimed at guaranteeing the payment of obligations or debts from the debtor where the master agreement has a legal basis regulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

Judging from Article 12 UUHT, which states that a promise that gives authority to the holder of the Mortgage Right to own the object of the Mortgage Right if the debtor defaults are null and void by law. It is also stated in Article 1178 paragraph (1) of the Civil Code, which states that all agreements stipulating that the creditor is authorized to make the mortgaged items his property are null and void. Furthermore, it is stated in Article 39 paragraph (1) letter d of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration states that the PPAT has the right to refuse if one of the parties or parties acts based on an absolute power of attorney which in essence contains a legal act of transferring rights. Clauses as contained in Article 12 UUHT, Article 1178 paragraph (1) of the Civil Code, and Article 39 paragraph (1) letter d of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration appear in the Deed of Granting Guarantee and Power of Attorney number: 112. Transfer of rights from the creditor to the debtor if the debtor defaults and is stated in a deed is considered a covert transfer of rights.

The draft Deed of Granting Guarantee and Power of Attorney contains a substance which contains a power of attorney which is an attempt to protect the Bank by making a Deed of Granting Guarantee and Power of Attorney, which includes a sufficiently reasonable absolute power of attorney clause. The existence of absolute power should be recognized because this absolute power has provided a way out for urgent needs. However, the existence of an absolute power of attorney clause contained in the deed must still pay attention to the applicable law so as to avoid causing problems in the future. A power of attorney agreement is an agreement with whom a person gives power or authority to another person who receives it to carry out an affair and on behalf of the party giving the power or authority. This is consistent with the opinion of Taufiq Utomo et al. used in this study that a person cannot transfer rights to another person more than the rights he has, so the authorizer cannot give power more than the rights or authority he has.

The absolute power of attorney, apart from being stipulated in the Instruction of the Minister of Home Affairs Number 14 of 1982, is also regulated in the Explanation of Article 39 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which states that an absolute power of attorney is an irrevocable power of attorney by the party giving power of attorney so that in essence it is a legal act of transferring rights. What is included in the meaning of absolute power is the power that gives authority to the recipient of a power of attorney to control and use his land and to carry out all legal actions, which in principle, can only be carried out by a holder of land rights.

Violations were found in the Deed of Granting Guarantee and Power of Attorney number: 112 made before Notary IS in Article 7 regarding the implementation of the transfer of rights if the debtor defaults, at any time transfers rights in any way, but it is not explained how this will be done. There is jurisprudence in the Decision of the Supreme Court of the Republic of Indonesia Number: 2660 K/Pdt/1987, the contents of which stipulate that in debts and receivables, the debtor is given land collateral by submitting the land certificate to the creditor, if later it turns out that the debtor is in default, then the sale of collateral land this must be done through a public auction after obtaining permission from the Court. According to the jurisprudence, the sale of a collateral object that has yet to go through a public auction for which permission has been requested from the Court is illegal and null and void.

The prohibition of transferring Land Rights by using absolute power of attorney is based on the following considerations:

1. To carry out effectively the use of control and ownership of land so that it is truly by the principles of justice;
2. In this regard, land success as mandated by the President on March 1, 1982, which among other things, emphasized that efforts to control the status and use of land need to be continuously increased;
3. The use of laws governing the granting of power of attorney by carrying out covert transfers of land rights using absolute power of attorney is a form of legal action that interferes with efforts to control the status of land use, so it is, therefore, necessary to prevent it immediately.

Based on these three considerations, the Minister prohibited agrarian officials from serving the settlement of the status of land rights using absolute power as evidence for the transfer of land rights. The granting of absolute power of attorney is an agreement that arises from an agreement, which is regulated in Article 1338 of the Civil Code, which recognizes the existence of freedom of contract. With the limitation that the agreement may not conflict with laws and regulations and must be based on good faith [17].

A Notary who is a public official with the main authority to make Authentic Deeds as written evidence that guarantees certainty, order and legal protection in carrying out his duties and authorities must be guided by the obligations and prohibitions stipulated by UUJN. Article 16 paragraph (1) UUJN regulates the obligations of a Notary. One of the obligations of a notary regulated in these provisions is that a notary must act in a trustful, honest, thorough, independent, and impartial manner and protect the interests of related parties in legal actions. This is in line with the provisions in Article 4 paragraph (2) UUJN, which regulates the oath of office of a Notary, one of the contents of which is that a Notary will carry out their position carefully.

Article 16 paragraph (1) UUJN and Article 4 paragraph (2) UUJN stipulate that a Notary must be careful in carrying out his duties and position. This arrangement also has implications for the obligations of a Notary who must adhere to the precautionary principle, especially in making a deed so as not to lose its authenticity, which in the end causes the Notary not to be trusted by the public anymore as a public official. The precautionary principle of a Notary with careful behavior is reflected in a Notary's mastery of applicable law and regulation related to the notary sector and the legal relationship of the parties in the deed being constrained. Therefore, a Notary, in carrying out his duties and

positions, must be careful concerning the applicable laws and regulations so that the deed that he constitutes retains its authenticity.

A deed can lose its authenticity for many reasons, for example, violations of the rules set out in UUJN. Another thing that can cause the power of deeds to be degraded is a violation of laws and regulations regarding the legal relationship between the parties. The violation can be in the formality of making the deed or regarding the material of the contents of the deed. Concerning violations of laws and regulations in the contents of the deed can cause annulment and annulment. The contents of the deed embody Article 1338 of the Civil Code regarding freedom of contract and providing legal certainty and protection to the parties regarding the agreements they make.

Deeds that do not have the power of proof then cause an agreement not to fulfil the elements of the validity of the authenticity of the deed as stipulated in Article 1320 of the Civil Code. In line with AgusYudha's statement explaining that an agreement that does not fulfil the elements of validity or legal requirements for an agreement/agreement, both subjective and objective conditions will have the following consequences:[18]

1. "Nonexistence" if there is no agreement, then no agreement arises;
2. "Vernietigbaar" can be cancelled if the agreement was born because of a defect of will (wilsgebreke) or because of incompetence (onbekwaamheid). Article 1320, the first and second terms, means that this is related to subjective conditions so that the contract can be cancelled;
3. "Nietig" or null and void, if there is an agreement that does not meet the requirements of a certain object or does not have a cause or causes are not allowed (Article 1320 paragraph (2) and paragraph (4), this means that this is related to the objective elements, so result in the agreement being null and void.

Subekti explained further about the agreement where there is a provision in the law of the agreement that all conditions aimed at doing something impossible to do, something contrary to decency, or something prohibited by law is null and void. As a result, the agreement included in it does not have any legal force [19]. An agreement whose content is a cause that is not lawful or violates objective conditions may not be implemented because it violates law or decency [20]. Thus it can be concluded from the provisions of the Criminal Code regarding lawful causes. This agreement is not without cause, without false causes and is not prohibited by law. Promises contained in an agreement in a Notary deed must also comply with the applicable laws and regulations regarding the subject matter of the agreement.

A deed is a form of security element against risks in extending credit by banking institutions. Therefore, the Deed of Guarantee and Power of Attorney number: 112 is classified as an accessory agreement or additional agreement, which is a guarantee provided with material guarantees. The Guarantee Deed is one of the conditions for granting credit imposed by the Bank to provide legal protection to the Bank during the vacant guarantee period because the Bank does not yet hold material collateral rights. Land rights in this study, which are in the process of applying for rights, will still be the object of collateral when the rights are renewed. Furthermore, the PPAT will make a new APHT to bind the collateral object, and the creditor's position will return to being the preferred creditor with a special guarantee.

The deed made by IS Notary loses proof as an Authentic Deed. It is classified as a deed that is null and void because it violates the regulations in UUHT. The deed has the potential to cause problems at a later date. Notary IS negligent in applying various legal rules, especially regarding Mortgage where the act is classified as an Unlawful Act, especially if the contents of the agreement contained in the deed are contrary to legal provisions, especially the Mortgage or UUHT. So that the IS Notary can be subject to civil sanctions in the form of being sued in the form of reimbursement of costs, compensation, and interest.

Conclusion:-

The role of the Notary/PPAT in maintaining the preferred position of creditors for Building Use Rights whose rights cannot be extended due to the expiry of the period in this study is to draw up a Deed Granting Collateral and Power of Attorney which is one of the powers of a Notary. The Notary's actions to overcome potential problems in the making a deed where the Notary is not a party to making the deed can explain in advance to the parties the legal consequences of the deed, which in this case can be declared null and void due to the inclusion of prohibited clauses such as transfer guarantees to creditors and the inclusion of absolute power of attorney. To maintain the preferred position of the creditor, mitigation can be carried out by the parties as well as the Notary/PPAT, by making an application for renewal of rights before the rights expire and binding guarantees before the application for rights and

before the period ends by making an SKMHT until the process for renewing the rights is complete and making APHT again with the same collateral object and debt.

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