

Juridical Review of the Form of the SKMHT Deed Which is Made by a Notary According to Article 38 of Law Number 2 of 2014 Concerning Amendment to Law Number 30 of 2004 Concerning Notary Position

Grace Natalia H Famdale^{1,*} Jeanne Neltje¹

¹ Faculty of Law, Universitas Tarumanagara, Indonesia

*Corresponding author. gegrace0212@gmail.com@gmail.com

ABSTRACT

Law becomes an inseparable part of people's lives, this results in legal systems and norms in society itself. The purpose of the existence of a legal system and legal norms is to uphold and regulate the balance between personal interests and common interests to avoid a conflict. The quality of legal perfection is verified into factors of justice, welfare and concern for the people and others. Law continues to grow and develop in society and must continue to be formed to achieve the expected goals. Based on the contents in this thesis, there are problems, namely the first how the form of the SKMHT deed made by a Notary based on Article 38 UUJN, the second. What are the legal consequences for the SKMHT deed made by a Notary that is not in accordance with the form of the deed according to Article 38 of the UUJN? overrides the Notary who made the SKMHT deed based on the PerKaban format No. 8 of 2012. The author also conducted interviews with BPN officials and also Notaries.

Keywords: Form of Deed, Notary, Power of Attorney Imposing Mortgage, Notary Position.

1. INTRODUCTION

Law becomes an inseparable part of people's lives, this results in legal systems and norms in society itself. The purpose of the existence of a legal system and legal norms is to uphold and regulate the balance between personal interests and common interests to avoid a conflict. The quality of legal perfection is verified into factors of justice, welfare and concern for the people and others.[1] Law continues to grow and develop in society and must continue to be formed to achieve the expected goals.

Theoretically, laws and regulations describe a system that does not want and does not support a conflict between the elements or parts contained in it. Legislation must be interrelated and be part of an integrated system. The need for harmonious and integrated laws and regulations is urgently needed to create order, guarantee certainty, and provide legal protection for legal subjects and objects that have been regulated by law.

In practice, the limited capability of the stakeholders in understanding and interpreting the existing regulations has an impact on the ineffective application of the law. In addition, the plurality of laws currently in force in Indonesia has created an unavoidable problem of norm disharmony which has consequences for the emergence of other legal

issues and causes the law to lose its purpose, namely to create certainty, justice and its usefulness.

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One part of the importance of legal harmonization that is oriented towards legal protection is related to the Power of Attorney for Imposing Mortgage Rights (SKMHT) made before a Notary.

Based on article 15 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT). "The Power of Attorney to impose Mortgage must be made with a Notary deed or PPAT deed".[2] Through this provision, a Notary is authorized by law to make SKMHT. In accordance with the sound of article 15 (1) of the UUHT, the authority of a notary to make the SKMHT can be done by making a notarial deed or by using a blank deed as issued by BPN-RI. However, with regard to filling out the SKMHT form, there are things that

are not in line with the provisions in Law Number 2 of 2014 concerning Notary Positions (UUJN), resulting in the deed losing its authenticity if the person filling out the SKMHT form is a person. Notary Public.

If viewed from the provisions of Article 96 (1) of the Regulation of the State Minister/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration and seeing the sound of the SKMHT form which is Attachment 23 of the PMNA/KaBPN mentioned above, it can be seen that there is only one form of SKMHT that can be made either by a notary or by a PPAT. If we look at the provisions contained in article 15 (1) of the UUHT, the form of SKMHT can be made with a notarial deed either made in the form of a notary deed itself or by using a form of SKMHT issued by BPN-RI.

That SKMHT made in the presence of Land Deed Making Officials, Substitute Land Deed Maker Officials, Temporary Land Deed Maker Officials, and Special Land Deed Making Officials must comply with the provisions contained in the Regulation of the Head of the National Defense Agency of the Republic of Indonesia (Perkaban) Number 8 of 2012 concerning Amendment to the Regulation of the State Minister of Agrarian Affairs/Head of the National Defense Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 4 of 1997 concerning Land Registration. It can be emphasized that the Perkaban only applies to Land Deed Making Officials, Substitute Land Deed Making Officials, Temporary Land Deed Making Officials, and Special Land Deed Making Officials, especially in making SKMHT, and does not apply to SKMHT made by a Notary. SKMHT made before a Notary must follow the provisions regarding the form of the deed as stated in Article 38 of the UUJN.[3]

Unlike the case with a Notary, a Land Deed Making Official (PPAT) is subject to the provisions stipulated in Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Land Deed Maker Official and its implementing regulations. In filling it out, the blank deed must be done by filling out the available deed form completely in accordance with the instructions for filling it out. As for a Notary, because at the time of filling out the SKMHT form, the Notary acts in his position as a Notary, the Notary, apart from being guided by the instructions for filling out the SKMHT form, is also bound by the provisions contained in the Civil Code (KUHPer) and the Indonesian Civil Code. The Notary Position Act (UUJN) which is the main guideline for a Notary in carrying out his position, so that the SKMHT made by the Notary meets the requirements to be declared as a notary deed which has the power as an authentic deed.

This research is interesting because there are two different rules governing the form of deed that can be made by a Notary. The problem that arises here is that the form of the deed regulated in Perkaban Number 8 of 2012 is different

from the form of the deed regulated in Article 38 of the UUJN.

The authority of a notary is to make an authentic deed. The authenticity of a notarial deed comes from Article 1 (1) of the UUJN which reads: "Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this law.[4] From the provisions of Article 1 (1) of the UUJN, a Notary is appointed as a "Public Official" (openbaar ambtenaar), thus the deed made by the Notary in his position has the nature of an authentic deed, as contained in Article 1868 of the Civil Code which reads: An authentic deed is a deed which, in the form determined by law, is made by or in the presence of public officials in power for that purpose at the place where the deed was made.[5]

In Article 15 paragraph (1) of the UUJN that a Notary has the authority to make a deed, and the terms and conditions of a Notary deed are based on the provisions of Article 38 of the UUJN. So if it turns out that there is a Notary making SKMHT which in the formal aspect of the deed follows the provisions of the Perkaban, it is clear that the SKMHT deed made by the Notary does not meet the requirements as a Notary deed according to Article 38 UUJN or the Notary does not need to make an SKMHT deed following the provisions of the Perkaban above.[6]

To understand the notary deed, it is necessary to relate it to Article 1868 of the Civil Code. Article 1868 of the Civil Code is a source for the authenticity of a Notary deed as well as the basis for the legality of the existence of a Notary deed (and deeds drawn up before a Public Official) with the following requirements:

1. The deed must be made by (door) or before (ten overstan) a public official.
2. The deed must be made in the form determined by law.
3. The public official by or before whom the deed was made, must have the authority to make the deed

Based on the provisions of Article 1868 of the Civil Code, one of the conditions for a notarial deed to be considered an authentic deed is if the deed is made in the forms determined by law. Regarding the forms of a notary deed, this has been regulated in Article 38 of the UUJN which reads:

1. Each Notary deed consists of:
 - a. the beginning of the deed or the head of the deed
 - b. deed body.
 - c. the end or closing of the deed..
2. The beginning of the deed or the head of the deed contains:
 - a. title of deed;
 - b. deed number;

- c. hour, day, date, month, and year; and
 - d. full name and domicile of the Notary.
3. The body of the deed contains:
- a. Full name, place and date of birth, nationality, occupation, position, position, residence of the appearers and/or the person they represent;
 - b. Information regarding the position of acting against;
 - c. The contents of the deed which is the will and desire of the interested party; and
 - d. Full name, place and date of birth, as well as occupation, position, position, and residence of each identifying witness.
4. The end or closing of the deed contains:
- a. Description of the reading of the deed as referred to in Article 16 paragraph (1) letter I or Article 16 paragraph (7)
 - b. Description of the signing and place of signing or translation of the deed if any
 - c. Full name, place and date of birth, occupation, position, position, and residence of each witness to the deed.
 - d. Description of the absence of changes that occurred in the making of the deed or a description of any changes that may be in the form of additions, deletions, or replacements.
5. Deeds of Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials, in addition to containing the provisions as referred to in paragraph (2), paragraph (3), and paragraph (4), also contain the number and date of appointment, as well as the official who appointed them.

2. METHOD

The methods used in writing this proposal are as follows: (1) Type of Research: The type of research in this legal research is normative or doctrinal legal research.[6] Doctrinal or normative research is research that provides a systematic explanation of the rules governing a category.[7] (2) Nature of Research: The nature of legal research has a distinctive character, namely its descriptive nature. As a descriptive science, legal science studies the purpose of law, values of justice, the validity of the rule of law, legal concepts, and legal norms. As an applied science, legal science establishes standard procedures, provisions, and signs in carrying out legal activities. (3) Data Source: (a) Primary legal materials are materials used, consisting of statutory regulations, official records, minutes of making legislation and judges' decisions. In this study, the primary legal materials used were the 1945 Constitution of the Republic of Indonesia; Code of Civil law; State Law of the

Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; State Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land; State Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary; Regulation of the Head of the National Land Agency Number 8 of 2012 changes to the Regulation of the Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, (b) Secondary Legal Material: Secondary legal materials are defined as legal materials that provide an explanation of primary legal materials. In this case, it consists of laws, scientific books and research results, (c) Tertiary Law Material: Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study the tertiary legal materials used include dictionaries (laws), encyclopedias. (4) Data Analysis Techniques: The data analysis used in this study is qualitative data analysis techniques, namely the efforts made by collecting data, synthesizing, searching and finding important patterns. (5) Research Approach: in legal research, there are several approaches. With this approach, researchers will get information from various aspects regarding the issue that is being tried to find answers to. There are 2 (two) kinds of approaches, namely: (a) statute approach: The statutory approach is an approach taken by reviewing all laws and regulations related to the legal issues being handled, (b) Case Approach: The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force, namely: the 1945 Constitution of the Republic of Indonesia; Code of Civil law; State Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; State Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land; State Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary; Regulation of the Head of the National Land Agency Number 8 of 2012 changes to the Regulation of the Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration

3. DISCUSSION

3.1 Issue

The problems that will be studied by the author in writing this proposal are: (1) What is the form of the SKMHT deed made by a Notary based on Article 38 of the UUJN? (2) What are the legal consequences for the SKMHT deed made by a Notary that is not in accordance with the form of the deed according to Article 38 of the UUJN?

3.2 Implementation of the Making of the SKMHT Deed by a Notary Judging from Article 38 of the UUJN-P.

In Chapter IV, in carrying out his office, a Notary is subject to Law no. 2 of 2014 concerning Amendments to Law No. 30 of 2014 concerning Notary Positions (UUJN-P). Article 1 (1) UUJN-P states that: "Notaries are public officials who are authorized to make authentic deeds and have other authorities as referred to in this law or based on other laws". Furthermore, Article 1 (7) UUJN-P states that: "A Notary Deed, hereinafter referred to as a Deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this law.[8] Furthermore, Article 1 (7) UUJN-P states that: "A Notary Deed, hereinafter referred to as a Deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this law.[9]

From these two provisions, it can be concluded that a notary is a public official who has the authority to make authentic deeds, where the form and procedure of the notarial deed must be in accordance with those stipulated in UUJN-P. Therefore, ideally, a notary when carrying out his position cannot be separated from all the provisions stipulated in UUJN-P, as well as regarding the form and procedure for making each deed must be in accordance with the provisions stipulated in UUJN-P.

This is different from its implementation in the field where from the results of the research that the author did, it was found that the notary in making the SKMHT deed there are two forms of deed, namely the form of the deed that follows the provisions of Article 38 UUJN-P and the form of the deed that follows the Perkaban Number 8 of 2012.

As the author has stated in the previous chapter, that according to Article 15 paragraph (1) of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land (UUHT). "The Power of Attorney to impose Mortgage must be made with a Notary deed or PPAT deed...". With this provision, the notary is given the authority by law to make SKMHT. The SKMHT deed has been regulated in Perkaban Number 8 of 2012 which in the attachment of Letter H (Attachment 23) Article 96 states that the form of the SKMHT deed is different from the form of the Notary deed as regulated in Article 38 UUJN-P. Thus, there are two different rules governing deed with different forms that can be made by a Notary.

It is interesting to observe the results of the author's interviews with the Head of BPN and also with the Notary who made the SKMHT deed referring to Article 38 of the UUJN-P and referring to Perkaban Number 8 of 2012. According to Notary Maya Sayuna, SH.MKn who is domiciled in Central Timor Regency. South and has a working area in East Nusa Tenggara Province, that it is true that there are 2 conflicting rules in making a deed by a notary, but to make a SKMHT notarial deed of the two rules

is an option for a notary as long as there is no prohibition from BPN and to bridge the burden credit with SKMHT criteria without a time limit, for example credit below 75,000,000. Credit for project work guaranteed by a personal certificate, KPR. While the SKMHT with the PPAT format, I use it for general charges, but I am still constrained by certain things to make a direct APHT.

This was confirmed by the Head of the BPN of Timor Tengah Selatan Regency who said that regarding the format of the SKMHT deed made by a Notary, it was an option for the Notary to follow the form of the deed according to UUJN-P or Perkaban. If seen in the Perkaban, it is clearly written that the format of the SKMHT deed must follow the Perkaban No. 8 of 2012 however, for Perkaban it is usually only to bind PPAT and for Notaries it is still subject to the form of a deed according to Article 38 UUJN-P.

Different conditions occur in Kupang City, according to Notary Hengki Famdale, that BPN's policy is very decisive for Notaries in making SKMHT Deeds, either following the SKMHT deed format regulated in Perkaban No. in this case is UUJN-P.

What happened in Kupang City, BPN requires Notaries to make SKMHT Deed using Perkaban No. 8/2012 format. Thus, Notaries in Kupang City do not have the option to make SKMHT deed according to the form regulated in UUJN-P.

Observing the form of the deed regulated in the two regulations, the writer will then make a juridical analysis of the different forms of the deed, especially with regard to the procedure for filling it out at the beginning of the deed or the head of the deed and the end of the deed: (1) Beginning of deed: (a) If you follow PERKABAN Number 8 of 2012, at the beginning of the deed/head of the deed, before the title of the deed, the name of the Notary is made. The inclusion of the Notary's namehead and the inclusion of a Notary Appointment Decree and Notary's address are not contained in Article 38 of the UUJN-P, so the question is whether the formal inclusion of the Notary's header and name has violated the provisions of Article 38 UUJN-P? According to the author, the SKMHT made before a Notary but the form is not appropriate because it uses a Notary's letterhead which is contrary to Article 38 of the UUJN-P, especially at the beginning of the deed. This is in accordance with the opinion of Habib Adjie, who stated that the SKMHT deed made before a Notary using the PERKABAN version of the SKMHT deed was called an Oplosan deed because it violated the formality of the deed and violated Article 38 UUJN-P. (b) The second difference at the beginning of the deed, from the two provisions, is the information regarding the hours of making the SKMHT deed. In Perkaban No. 8 of 2012 there is no information regarding the time of making the deed at the beginning of the deed. According to the author, the provisions regarding this hour are very important to maintain the quality of a deed, because in practice there is often a term known as a "deed factory", where in one day a notary can make hundreds of deeds. With the provisions regarding this hour, it can be

ascertained whether the deed has been carried out fairly or not. (2) End of deed: The difference in the final form of the deed in the second regulation can be described as follows: Observing the description of the final form of the deed/closing of the deed as regulated in the two regulations, it can be seen that the end or closing of the Deed stipulated in the form of the SKMHT Deed issued by BPN RI according to PERKABAN Number 8 of 2012 there is a difference with the end of the deed stipulated in the UUJN-P. According to the author, there are 3 (three) different important things that have consequences for the authenticity of the deed, namely: (a) There is no information on the place of signing the Deed, (b) There is no translation of the Deed (if any); and (c) A description of the absence of changes that occur in the manufacture. Deed or description of any changes that can be in the form of additions, deletions, deletions with replacements/ Renvoi. Regarding the information regarding the place where the deed was signed, one of the requirements of an authentic deed is the authority of the official who made the deed at the place where the deed was made. The authority of the Notary can be seen through the information regarding the place of signing of the deed listed at the end or closing of the deed. Therefore, the inclusion of information regarding the place where the deed was signed is very important to be able to determine that the deed has been made before an authorized Notary. If the Notary makes a deed outside his area of office, the deed only has the power of proof as an underhand deed. The absence of inclusion of the place of signing the deed in the SKMHT has also violated the provisions contained in Article 1868, Article 1869 of the Civil Code, Article 1 point (1), Article 1 point (7), Article 38 paragraph (4) UUJN-P, so it can be concluded that if a deed is defective in its form, it cannot be treated as an authentic deed.

The services provided by a notary must be professional where in carrying out his position he must be responsible for all legal actions he takes. In addition, a notary in carrying out his position must also be trustworthy, honest, thorough, independent, and impartial. Good, quality and positive service for the community can only be achieved by fulfilling all the provisions contained in the laws and regulations, especially UUJN-P and must also pay attention to the Notary Code of Ethics that has been agreed upon by the Notary Organization.

The right to sue by the client to a notary is regulated in Article 84 of UUJN-P which reads: "Actions of violation committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which results in a deed only having the power of proof as an underhand deed or a deed being null and void may become a reason for the party suffering the loss to claim reimbursement of costs, compensation, and interest to the Notary."

The claim for compensation to the notary referred to in Article 84 of the UUJN-P is due to the actions of the notary

who violates or does not follow the provisions contained in the UUJN-P so that the notary deed only has the power of proof as an underhand deed and/or even cause the deed to be null and void.

If we look at the strength of the proof of SKMHT made by a notary who is only guided by the method of filling out the SKMHT as stipulated in Perkaban No. 8 of 2012, which does not meet the formal requirements of a notary deed, the notary can be sued by a client who requests that the SKMHT be made by a notary, because the SKMHT only has the power of proof as an underhand deed. And because of that, it is a natural thing that this causes great losses for the client because the SKMHT cannot be used as the basis for making APHT which results in the result that the Mortgage cannot be registered at the Land Office.

It is important for the Notary in making each deed to carefully and thoroughly pay attention to and comply with all the provisions contained in the UUJN-P and the Notary Code of Ethics, so that the power of proof as an authentic deed of the deed made by the notary cannot be disputed by anyone. and everyone will acknowledge that the notarial deed has perfect evidentiary power. And if this happens, the notary will avoid all demands for the deed he made and can maintain the dignity and integrity of the notary in the eyes of the public.

In this study, the authors found an example of a legal case for making an SKMHT deed made by a Notary following the form of a deed regulated in Perkaban Number 8 of 2012 (attached). This case should be a lesson for Notaries so that in making the SKMHT deed it is subject to UUJN-P.

In this section we will analyze the legal consequences of the SKMHT deed that do not meet the requirements as an authentic deed and the legal consequences that must be borne by a Notary if the SKMHT he makes only has the power of proof as a private deed: (1) Legal consequences of the SKMHT deed: Based on the description above, it can be seen that several formal requirements related to the form of the deed cannot be fulfilled by the SKMHT deed format regulated in Perkaban Number 8 of 2012, especially those relating to the beginning of the deed and the end/closing of the deed, if it is associated with the form of the deed. which is regulated in Article 38 UUJN-P. With the non-fulfillment of several conditions relating to the form of the deed, the SKMHT deed made before a Notary using the Perkaban deed format Number 8 of 2012 does not meet the requirements as an authentic Notary deed. Whereas Article 1869 of the Criminal Code states that "A deed which has no power or cannot affect the employee referred to above, due to a defect in form, cannot be treated as an authentic deed, but nevertheless has the power of being handwritten if it is signed by the parties." Likewise with Article 41 of the UUJN-P which states that: "Violations of the provisions as referred to in Article 38, Article 39 and Article 40 result in the deed only having the power of proof as a private deed. If the two provisions above are related to Article 1 point 7 UUJN-P which states that: "A Notary Deed, hereinafter referred to as a deed, is an authentic deed made by or before

a Notary according to the form and procedure stipulated in this law", then it can be said that the Notary deed which is not in accordance with the form stipulated in UUJN-P, because there is a defect in its form, the Notary deed cannot be used as an authentic deed. The legal consequence is that the deed only has the power of proof as an underhand deed, if the deed is signed by the parties. In the opinion of G.H.S. Lumban Tobing, related to the difference between an authentic deed and a private deed, namely, an underhand deed never has executorial power and the possibility of the loss of an underhand deed is greater than an authentic deed. An authentic deed has the power of proving birth in accordance with the principle of *acta publica probant seseipsa*, while a private deed has no birth power. This means that the deed under the hand is valid only if the party who signed it has acknowledged the truth of the signature, meaning that if the signature has been acknowledged as true by the party concerned, then the deed is valid as perfect evidence for the parties concerned. Article 1875 of the Civil Code). [10] By not fulfilling the authentic requirements for the form of the deed, according to the author, the SKMHT made by the Notary cannot be used as the basis for making APHT. As it is known that, when SKMHT cannot be used as the basis for making APHT, the creditor will be threatened not to have rights as a concurrent creditor who has executive power over the object being guaranteed because general guarantee provisions will apply, thus the SKMHT will also be null and void. (2) Legal consequences for Notaries: In providing services to the community, a Notary as a professional must be responsible to himself and to the community. Being responsible to oneself means working for integrity, morals, intellectuals and professionalism as a part of life. In his service, a person who works professionally always maintains the noble ideals of the profession in accordance with the demands of his conscience, not just seeking personal gain. Being responsible to the community means a willingness to provide the best possible service according to his profession, without discriminating, and being responsible for all risks that arise as a result of the services provided by Notary services.

Thus, a Notary has a big responsibility for the Deed products he makes, by presenting a good and correct Deed, of good quality and having a positive impact. This hope can only be realized if a Notary in his work is submissive and obedient to the UUJN-P and the Notary Code of Ethics.

The main authority of a notary is to make an authentic deed. Authority that does not exist in other professions, therefore the authenticity of a notary deed is a very important thing. That is why a client entrusts a notary to make an authentic deed regarding all actions, agreements and provisions desired by the appearer to make a deed that has perfect evidentiary power. Once the importance of perfect evidence, a notary can be sued to replace costs, compensation and interest by parties who suffer losses caused by a deed made by a notary who only has the power of proof as an underhand deed as stipulated in UUJN-P

If you look closely, there is no special article in UUJN-P which regulates civil sanctions against Notaries. Articles containing civil sanctions against Notaries are scattered in several articles in the UUJN-P. In relation to the violation of the form of the deed which has consequences for the authenticity of the deed, it can be seen in the provisions of Article 44 paragraph (5), Article 48 paragraph (3), Article 49, Article 50 paragraph (5), Article 51 paragraph (4) UUJN-P , which in essence emphasizes that a deed that does not meet the requirements of an authentic deed results in the deed only having evidentiary power as an underhand deed can be a reason for the parties who suffer losses to demand reimbursement of costs, compensation and interest to a Notary. Thus it can be interpreted that there is a space opened by UUJN-P for Notaries to be sued in a civil manner by parties who feel aggrieved in the deed, because originally the deed was expected to be perfect evidence but because of an error in making the deed, it violated the provisions of the authentic deed as regulated in UUJN-P. Civil court lawsuits can be in the form of ordinary compensation, compensation and interest to a Notary.

Sanctions are a means of coercion as well as punishment and also so that the parties obey the provisions specified in the regulations/agreements. According to Philipus M Hadjon, sanctions are tools of power that are public law used by the authorities as a reaction to non-compliance with administrative law norms.

In a legal rule the inclusion of sanctions is an obligation, this is because if a legal regulation cannot be enforced if at the end it does not include sanctions.

There is no point in enforcing legal rules when they cannot be enforced through sanctions and enforce the rules intended procedurally (procedural law).

In this study, the authors found an example of a legal case that was brought to the Court regarding the making of an SKMHT deed made by a Notary following the form of a deed regulated in Perkaban Number 8 of 2012 (case evidence attached). This case should be a lesson for Notaries so that in making the SKMHT deed it is subject to the UUJN-P so that it does not cause legal consequences for the deed and also for the Notary himself.

4. CONCLUSION

The conclusion of the thesis entitled Juridical Review of the Form of Authentic Deed Made by a Notary According to Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions:

- 1) Power of Attorney for Imposing Mortgage Rights (SKMHT) made before a Notary using the format of the SKMHT deed according to letter H (Attachment 23) Article 96 paragraph (1) PERKABAN Number 8 of 2012 concerning Amendments to PMNA/Ka BPN RI Number 3 of

- 1997 concerning Provisions for the Implementation of PP No. 24/1997 on Land Registration do not meet the formal requirements as an authentic deed and are contrary to Article 1868 of the Civil Code, Article 1 Number (7) and Article 38 of the UUJN-P.
- 2) The legal consequences that can arise from the SKMHT deed that do not meet the requirements as an authentic deed result in the SKMHT deed only having proof of power as an underhand deed, and therefore the deed cannot be used as the basis for making APHT. This condition has legal consequences for the Notary because if the parties feel aggrieved from the deed, then according to the provisions of Article 44 paragraph (5), Article 48 paragraph (3), Article 49 paragraph (4), Article 50 paragraph (5), Article 51 paragraph (4) UUJN-P, then there is an opportunity for the parties to sue in a civil manner through the District Court for reimbursement of costs, compensation and interest to a Notary.
- 4) Banking parties must make preventive efforts in overcoming the problem of differences between norms governing the SKMHT deed so that it can provide legal certainty for the SKMHT deed. The preventive effort that the author means is to make a binding statement or agreement to the debtor so that it does not legally question the form of the SKMHT deed as a justification in the event of a conflict in the future.

REFERENCES

The Author's Suggestion on the Juridical Review of the Form of Authentic Deed Made by a Notary According to Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary:

- 1) A firmness is needed from the government, especially between the Ministry of Agrarian Affairs and Spatial Planning / Head of the Indonesian National Land Agency to coordinate with the Ministry of Law and Human Rights of the Republic of Indonesia in implementing regulations governing the SKMHT deed made by a Notary in order to create harmonization between norms in accordance with the scope of authority of each ministry. who supervises the Notary and PPAT.
- 2) At the practical level, it must be avoided with a good and correct understanding of the Hierarchy of Indonesian Laws and Regulations, and putting the public interest above sectoral interests.
- 3) For Notaries should carry out their positions professionally and consistently with UUJN-P and not be affected by disharmony of understanding that is built on a normative and practical level regarding the SKMHT deed, so that in making the SKMHT deed the reference is the SKMHT material according to the UUHT, while the form of the Notary SKMHT deed must be guided by in Article 38 UUJN-P. In addition, there needs to be courage from a Notary or INI (Indonesian Notary Association) to conduct a judicial review of Perkaban No. 8 of 2012 to the Supreme Court of the Republic of Indonesia to obtain legal confirmation and certainty for a Notary who makes an SKMHT deed so that in practice there is no longer a difference of opinion either between notary and BPN.

- [1]Adjie, Habib. Indonesian Notary Law. p.203
- [2]Adjie, Habib. Civil and Administrative Sanctions Against Notaries as Public Officials, p.49
- [3]Adjie, Habib. Indonesian Notary Law (Thematic Interpretation of Law No. 30 of 2004 concerning Notary Positions), p.40
- [4]Adjie, Habib. Mortgage as Land Guarantee Institution. Edition Revision, p.7
- [5]Ali, H. Zainuddin. Legal Research Methods, p.105
- [6]Amirudin and H. Zainal Asikin. Introduction to Legal Research Methods, p.30
- [7]Andasasmita, Komar. Notary I, Revised Edition, p.2
- [8]Arief, Siddhartha. Meuwissen on Legal Development, Legal Studies, Theory Law and Philosophy of Law, p.20
- [9]Budiardjo, Miriam. Political Science Fundamentals, p.35-36
- [10]Budiono, Herlien. Balance Principle for Indonesian Covenant Law, Covenant Law is based on Indonesian Wigati Principles, p.58