

The Validity of Authentic Deeds for Mortgage Loan Agreements in Banks When the Signing of the Contract is Not Conducted Before A Notary/Ppat

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Abstract : The Mortgage Loan Agreement (Kredit Pemilikan Rumah/KPR) in Indonesia is one of the central components in banking financing activities, which carries substantial economic and commercial value. Within the KPR process, the use of an authentic deed is indispensable. The validity of an authentic KPR deed signed without the presence of a Notary/PPAT constitutes a violation of the professional code of ethics and an unlawful act. This journal research employs a normative legal research method, which positions law as a structure and system of norms, using primary legal materials such as statutes and regulations, secondary materials such as books and journals, and tertiary materials including manuals and explanatory documents related to the primary and secondary sources. The findings show that a KPR deed signed without the Notary's presence loses its authentic character and is downgraded to a private deed, thereby losing its perfect evidentiary value (*volledig bewijs*). This condition weakens the legal position of the bank as creditor in collection and collateral execution, increases the risk of disputes with debtors, and reduces legal certainty for all related parties. A Notary/PPAT who fails to ensure compliance with formal procedures may be held civilly liable based on Articles 1365 and 1366 of the Indonesian Civil Code and may also face ethical sanctions from the Notary Honorary Council (DKN) and the Notary Honorary Assembly (MKN). Professionalism of the Notary/PPAT in performing their duties is crucial to maintaining the legal legitimacy of KPR deeds and protecting the interests of both creditors and debtors.

Keywords : Notary/PPAT, Mortgage Loan (KPR), Validity of Authentic Deed, Unlawful Act

I. INTRODUCTION

The Mortgage Loan Agreement (Home Ownership Credit/KPR) in Indonesia constitutes one of the primary elements in banking financing activities, bearing not only substantial economic value but also significant business value. This aligns with the view of Melani, who asserts that property financing transactions require a strong legal foundation because they involve high-value assets and the risk of default, which directly affects the creditor's position.¹ Therefore, banks generally require the preparation of an

¹ May Rista Melani, A Comparative Study between Authentic Deeds and Private Deeds, (Malikussaleh University, 2024), pp. 12-13.



authentic deed as the legal basis for the credit agreement and the encumbrance of a security right (Mortgage right), with the purpose of ensuring certainty regarding the date of execution, the identity of the parties, the object of the agreement, and the accuracy of the legal formulation in the event a dispute arises. Kwang and Ridwan describe an authentic deed as “a primary evidentiary instrument that minimizes interpretive disputes between creditor and debtor because the wording of the deed is formally drafted by a public official”.²

Normatively, the definition and characteristics of an authentic deed are regulated in Article 1868 of the Indonesian Civil Code (KUHPerdara), which states that an authentic deed is a deed made in the form prescribed by law, by or before a public official authorized for that purpose. Its evidentiary strength is perfect with respect to what is stated therein and can only be rebutted through very limited counter-evidence.³ A similar explanation is provided by Melani (2024), who emphasizes that an authentic deed possesses external, formal, and material evidentiary power, thereby placing it in a superior legal position compared to a private deed.⁴

The function of the Notary/PPAT as a public official authorized to draw up authentic deeds is reaffirmed in the Law on Notarial Office (UUJN) and Government Regulation No. 24 of 2016 concerning the Implementation of Government Regulation No. 37 of 1998 on PPAT (PP PPAT). Article 16 paragraph (1) letter m of UUJN requires the Notary to read the deed aloud, explain its meaning and legal implications to the parties, and ensure that the signing is carried out in his or her presence so that the principle of personal appearance an essential formal element of an authentic deed is fulfilled. This implementing regulation is further strengthened by PP PPAT, which imposes an obligation on PPAT to prepare authentic deeds and ensure that all parties sign the deed in his or her presence. Compliance with these obligations constitutes a fundamental requirement for the birth of authenticity. Signing without the presence of the Notary/PPAT causes the deed to lose its authentic character and potentially be downgraded to a private deed. Therefore, any violation of these formal obligations results in problems of legitimacy and may give rise to administrative, civil, and ethical liability for the Notary/PPAT.⁵

Despite the explicit requirements in UUJN and PP PPAT mandating the presence of the parties before the Notary/PPAT, deviations in practice continue to be found, such as the use of “proxy signatures,” execution of signing outside the Notary’s or PPAT’s office without their supervision or presence, or signing being conducted only before the Notary’s employees. These practices not only bypass the element of direct appearance (personal appearance requirement) but also undermine the formality that constitutes an essential requirement for the creation of an authentic deed. Such procedural irregularities lead to doubts about the authenticity of the deed, thereby opening the possibility that the deed may be degraded into a private deed, which legally carries far weaker evidentiary

² Vanesia Ciayadi Kwang & Fully Handayani Ridwan, “Liability of Notaries and PPAT for Transfer of Rights Not Fulfilling Formal Requirements,” Indonesian Notary, Vol. 6 No. 2, 2024, p. 5.

³ Indonesian Civil Code (KUHPerdara), Article 1868.

⁴ Melani, Op.cit., p. 18.

⁵ Rahayu Putri, *The Position of Notarial Deeds in the Perspective of Authenticity* (Jakarta: Kencana, 2023), pp. 55-57.

strength. This consequence ultimately creates legal uncertainty and opens the door to disputes concerning the validity of the document used as evidence.⁶

In the context of housing finance, particularly mortgage financing (KPR), the legal relationship between the bank and the debtor relies heavily on the presence of authentic deeds, including the credit agreement deed and the deed of encumbrance of security rights. In cases of default, late payment, non-performing loans, or disputes concerning the collateral, the bank as creditor is highly dependent on the formal and material strength of the authentic deed to take legal actions such as collection, proof, and execution of collateral through parate execution or private sale. If the deed forming the basis of financing is formally defective due to not being signed before a Notary, the legal position of the bank as creditor can become severely weakened. This condition not only hampers the process of resolving non-performing loans but also increases the risk of financial loss, reduces the effectiveness of credit security mechanisms, and undermines the legal certainty that should be guaranteed by an authentic deed.⁷

Thus, the urgency of this research lies in the need to analyze in depth the validity of an authentic KPR deed where the signing process is not carried out before a Notary/PPAT but only represented by the Notary's staff, as well as the resulting forms of legal accountability. This issue is important because the formal obligations of the Notary/PPAT in the preparation of an authentic deed constitute an essential requirement that cannot be disregarded. A Notary, before the deed is signed by the parties, is obliged under UUJN to read the deed before the parties and witnesses, explain its contents and legal meaning, ensure the parties' understanding of its substance, and then supervise the signing directly. This obligation is not merely an administrative requirement but a fundamental element that distinguishes an authentic deed from a private deed. Moreover, the signing of an authentic deed must be conducted before the Notary/PPAT as a public official authorized to grant formal legitimacy to the declarations of will made by the parties. This is in accordance with Law No. 5 of 1960 on Agrarian Principles and its implementing regulations, which affirm that any deed of transfer of land rights and/or security rights must be executed before a PPAT to attain authentic strength. However, in practice, there are cases where the signing of the deed is not conducted before the Notary/PPAT but is instead handled by their staff. Such practice clearly violates UUJN and the legal provisions concerning PPAT, thereby eliminating the essential requirement of personal appearance before the public official. When this procedure is violated, a deed that is formally recorded as an authentic deed becomes vulnerable to being downgraded to a private deed and consequently loses its perfect evidentiary force.

II. RESEARCH METHOD

1. Type and Method of Research

Legal research is a scientific process aimed at discovering legal rules, legal principles, and legal doctrines used to answer the legal issues being examined.⁸ This

⁶ Habib Adjie, *New Interpretation of Notary Liability* (Bandung: Refika Aditama, 2018), pp. 76-79.

⁷ Fitriana & Siregar, "Legal Protection for Creditors in Banking Credit Agreements," *Journal of Law and Economics*, Vol. 5 No. 1 (2021), pp. 44-46.

⁸ Salim HS & Erlies Septiana Nurbani, *Application of Legal Theory in Thesis and Dissertation Research* (Jakarta: Rajawali Pers, 2017), p. 13.

research uses the type of normative legal research, namely research based on secondary data through library studies, which is commonly referred to as legal research.⁹

The choice of this research type is based on the necessity to examine formal legal norms, particularly those related to the legal responsibility of Notaries/PPAT in cases where the signing of an authentic deed for a mortgage loan agreement at a bank is not conducted before them. The method used is the qualitative method, namely an analytical technique that yields descriptive data in the form of written or oral statements related to the object of study.¹⁰ The qualitative approach enables comprehensive analysis of practices, legal provisions, and the legal responsibility of Notaries/PPAT who commit negligence in the execution of mortgage loan agreements.

The discussion of this research places emphasis on the validity and legal responsibility of Notaries/PPAT in cases where the signing of an authentic deed for a mortgage loan agreement at a bank is not conducted before them.

2. Approach Method

In legal research, there are several approach methods that can be used. According to Peter Mahmud Marzuki, the approaches include the statutory approach, case approach, historical approach, comparative approach, and conceptual approach.¹¹

This research uses the statutory approach to analyze the norms, principles, and hierarchy of legal regulations related to the validity and legal responsibility of Notaries/PPAT in cases where the signing of an authentic deed for a mortgage loan agreement at a bank is not conducted before them.

3. Types and Sources of Data

The type of research used is normative legal research, with the main data sources consisting of library materials (secondary data). Secondary data consists of:

- a. **Primary Legal Materials**
 - 1) The Indonesian Civil Code (KUHPPerdata)
 - 2) Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on Notarial Office
 - 3) Law No. 4 of 1996 concerning Security Rights over Land and Land-related Objects (UUHT)
 - 4) Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning the Regulation of Land Deed Officials (PPAT)
- b. **Secondary Legal Materials**
Legal textbooks, academic journals, research findings, articles, seminar papers, and other sources from mass media or digital repositories.¹²
- c. **Tertiary Legal Materials**

⁹ Johnny Ibrahim, *Theory & Methodology of Normative Legal Research* (Malang: Bayumedia, 2016), p. 45.

¹⁰ Rachmad Safa'at, *Legal Research Methods* (Malang: UB Press, 2015), p. 78.

¹¹ Peter Mahmud Marzuki, *Legal Research: Revised Edition* (Jakarta: Kencana, 2017), pp. 132-135.

¹² Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: RajaGrafindo Persada, 2020), p. 56.

Dictionaries, encyclopedias, legal bibliographies, and cumulative indexes.¹³

4. Data Collection Techniques

The data collection techniques used in this research include:

a. Library Study,

which involves collecting and examining written documents such as regulations, legal literature books, journals, and other documents supporting the analysis.¹⁴

b. Document Study,

which involves examining official documents originating from banking institutions and debtors, including credit agreements, credit addenda, and other administrative documents.¹⁵

5. Data Analysis Technique

The data are analyzed using qualitative analysis techniques, namely analysis carried out through the processes of data reduction, classification, verification, and drawing conclusions.¹⁶

Data reduction is conducted from the early stages of the research, including the determination of the research focus, the selection of theories, and the process of data collection. The research conclusions are subsequently verified to ensure the validity of the arguments and the consistency of the research results.¹⁷

III. DISCUSSION

1. The Validity of Authentic Deeds for Mortgage Loan Agreements (KPR) Signed Without the Presence of a Notary/PPAT

Authentic deeds hold an essential position within the evidentiary system of Indonesian civil law because they provide perfect evidentiary strength (*volledig bewijs*) for the parties as well as third parties. In the context of a Mortgage Credit Agreement (*Kredit Kepemilikan Rumah/KPR*), an authentic deed functions as a legal instrument that ensures certainty of the relationship between the creditor and the debtor. As a financial institution, the bank relies heavily on authentic deeds to ensure that all obligations and rights of the parties are set forth in a document endowed with the highest degree of legal legitimacy.¹⁸ This is especially important considering the substantial value of mortgage loans and the risk of default that may arise in the future.

As an evidentiary instrument endowed with perfect legal force, an authentic deed not only reflects the will of the parties but also ensures that its execution has been carried out in accordance with legally prescribed procedures. Therefore, any deviation from the

¹³ Sudikno Mertokusumo, *Understanding Law: An Introduction* (Yogyakarta: Cahaya Atma, 2019), p. 21.

¹⁴ Bambang Sunggono, *Legal Research Methods* (Jakarta: RajaGrafindo Persada, 2014), p. 112.

¹⁵ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2014), p. 62.

¹⁶ Muhammad Syahrani, *Qualitative Legal Research Methodology* (Makassar: Pustaka Pena, 2016), p. 99.

¹⁷ Lexy J. Moleong, *Qualitative Research Methodology, Revised Edition* (Bandung: PT Remaja Rosdakarya, 2018), p. 248.

¹⁸ Ramadhani, *The Evidentiary Strength of Authentic Deeds in Indonesian Civil Law* (Bandung: Refika Aditama, 2019), p. 54.

formal requirements in the making of a deed directly affects its legal status and evidentiary strength.

Article 16 paragraph (1) letter m of the Notary Office Law (UUJN) stipulates that:

“A Notary is obliged to read out the deed, explain its contents, and ensure that the deed is signed directly by the parties in his/her presence”.¹⁹

In addition, pursuant to Law Number 5 of 1960 concerning Land Deed Officials (PPAT), any deed related to the transfer of land rights or mortgage rights must be executed before a PPAT in order to acquire authentic evidentiary power. Accordingly, a mortgage deed (akta KPR) executed without the presence of a Notary/PPAT as the competent public official risks losing its authentic character and weakening its evidentiary strength before the law.

This provision affirms that the physical presence (personal appearance) of the parties is a formal requirement that cannot be disregarded in the making of an authentic deed. The article forms the normative basis that an authentic deed is valid only if all formal procedures are strictly complied with by the Notary.²⁰

The obligation to read out and explain the substance of the authentic deed aims to ensure that the parties truly understand its contents, the scope of their rights and obligations, as well as the legal consequences arising from the act embodied in the deed.²¹ This requirement also serves as a form of preventive legal protection, ensuring that no coercion, mistake, or misrepresentation occurs at the time of signing. Thus, the role of the Notary/PPAT is not merely administrative but constitutes a professional responsibility to safeguard legal certainty and the free will of the parties.

The requirement of the direct presence of the appearing parties, including the direct presence of the Notary/PPAT without delegation to employees during the signing of the deed, is a crucial element determining the authenticity of the deed. A violation of this formal obligation causes the deed to lose its authentic character. Signing that is not carried out before a Notary/PPAT such as signing by proxy, depositing signatures, or signing outside the supervision of the Notary/PPAT results in the deed being downgraded to a private deed (akta di bawah tangan), as affirmed in evidentiary doctrine.²² In such circumstances, the deed no longer possesses the perfect evidentiary strength of an authentic deed under Article 1868 of the Indonesian Civil Code (KUHPERDATA), and merely serves as *begin van bewijs* (preliminary evidence).²³

Article 1868 of the Indonesian Civil Code provides:

¹⁹ Indonesia, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary, Article 16 paragraph (1) letter m, p. 12.

²⁰ Rahmawati, Notary Liability in Fulfilling Formal Requirements of Authentic Deeds (Jakarta: Kencana, 2021), p. 45.

²¹ Lestari, A., “Preventive Legal Protection in the Making of Notarial Deeds,” *Journal of Law and Notarial Studies*, Vol. 7 No. 2, 2020, p. 118.

²² Suhartono, B., *Law of Evidence and the Strength of Notarial Deeds* (Bandung: Refika Aditama, 2019), pp. 73-75.

²³ Putri, M., *Validity of Authentic Deeds and Risks of Formal Defects* (Yogyakarta: Deepublish, 2022), p. 90.

“An authentic deed is a deed made in the form prescribed by law, by or before a public official authorized to do so at the place where the deed is made”.

Thus, the process of reading out and signing the deed is not merely an administrative formality but forms an integral part of the authentication process. The absence of the parties at the time of signing eliminates the authentic character that constitutes the essence of the deed. A deed not signed before a Notary automatically loses the formal requirements that qualify it as an authentic deed.²⁴

In the practice of mortgage credit agreements, it is often found that the signing of KPR documents is conducted at the bank's office without the presence of the Notary/PPAT. Such practices may include:

- a. deposited signatures;
- b. use of powers of attorney; or
- c. signing by the debtor outside the Notary's/PPAT's office and later submitted for the Notary/PPAT to sign.

These practices constitute deviations from the procedures for executing authentic deeds as stipulated in Article 16 paragraph (1) of the Notary Office Law (UUJN). The provision requires the Notary to read out the deed, explain its meaning and substance, verify the identities of the parties, and supervise the signing process which must be conducted in his/her presence. This obligation is imperative because it is inherent to the Notary's function as a public official entrusted with ensuring the authenticity of a deed. Furthermore, pursuant to Law Number 5 of 1960 on PPAT, any deed relating to the transfer of land rights or mortgage rights must be executed before a PPAT to acquire authentic status. Therefore, practices that disregard the presence of the Notary/PPAT such as signing by proxy or improper powers of attorney are clearly contrary to legal requirements and risk reducing the deed to a private deed.

When a mortgage deed (akta KPR) is signed without the presence of the Notary/PPAT whether entirely or partially during the stages of the credit transaction the deed no longer meets the elements of authenticity and becomes a private deed, based on Article 1874 of the Indonesian Civil Code, which states:

“Private writings are deeds signed privately, letters, lists, household documents, and other writings made without the involvement of a public official”.

Consequently, the authentic deed becomes a mere private agreement that does not possess the perfect evidentiary strength inherent in an authentic deed.²⁵

In theory, although such a deed remains materially valid as an agreement under Article 1320 of the Civil Code because the parties still meet the subjective and objective requirements its status as evidence becomes significantly weakened. This particularly disadvantages the creditor in a Mortgage Credit (KPR) agreement, as it loses the strong evidentiary basis required in the event of default, dispute, or enforcement of the mortgage right in the future.

²⁴ Lestari, M., *Administrative Sanctions for Notaries under the Notary Law (UUJN)* (Jakarta: Sinar Grafika, 2019), p. 67.

²⁵ Rahmawati, *Civil Evidence Law* (Jakarta: Prenadamedia Group, 2020), p. 45.

A deed may be classified as a private deed when the process of reading out and signing is not conducted in accordance with the formal procedures required for an authentic deed, which fall within the authority of the Notary.²⁶ The absence of the Notary not only eliminates a formal requirement but also removes the supervisory and verification functions, thereby stripping the deed of its objective guarantees and public trust values inherent in an authentic deed. Therefore, a deed signed without the Notary's presence fails to qualify as an authentic deed and automatically loses the perfect evidentiary force provided under Article 1868 of the Civil Code.²⁷

The Bank, as the creditor in KPR agreements, is placed at a weakened legal position when the authentic deed no longer possesses perfect evidentiary force, particularly when the debtor defaults. The Bank requires maximum evidentiary strength to enforce collateral or pursue debt collection. A deed that has been downgraded to a private deed does not provide such legal certainty.²⁸ A debtor may even argue that he/she never received an explanation of the deed's contents, raising allegations of defective will or misrepresentation at the time of signing. Putri provides an example in which, in several disputes, debtors successfully contested the contents of the deed because it was executed without fulfilling the formal requirement of the parties' presence.²⁹

The signing of a mortgage deed outside the presence of a Notary/PPAT gives rise to significant legal consequences, both formally and materially. Based on Article 16 paragraph (1) letter m of the Notary Office Law (UUJN) and Article 37 paragraph (1) letter a of Law Number 5 of 1960 on the Basic Agrarian Law in conjunction with Government Regulation Number 24 of 1997 on Land Registration governing PPAT duties, the presence of the Notary/PPAT during signing is an absolute formal requirement. If this requirement is disregarded, the resulting mortgage deed does not meet the standards of an authentic deed, thereby losing its authentic character and being reduced to a private deed.³⁰

A mortgage deed (akta KPR) that is formally defective increases the legal risks for the bank. In the practical execution of mortgage collateral, banks rely on authentic deeds as the basis for collecting arrears or executing collateral. When the deed is merely a private deed, the bank's legal credibility as a creditor is weakened, enabling the debtor to refuse or delay enforcement.³¹

2. The Legal Liability of Notaries/PPAT Who Allow Signing Without Their Presence

A Notary/PPAT, as a public official authorized to execute authentic deeds, is obligated to ensure that every authentic deed drafted and signed by the parties fulfills all formal requirements as stipulated in Article 16 paragraph (1) of the Notary Office Law

²⁶ Suhartono, "Validity of Notarial Deeds in the Perspective of the Notary Law (UUJN)," *Journal of Notarial Studies*, 2021, p. 83.

²⁷ Yuliana, *Law of Contracts and Evidence* (Bandung: Refika Aditama, 2022), p. 102.

²⁸ Nugraha, R., *Notary Professionalism in the Formation of Authentic Deeds* (Malang: UB Press, 2021), p. 121.

²⁹ Putri, N., "Validity of Deeds Made Without the Presence of the Parties," *Indonesian Notary Journal*, Vol. 5 No. 1 (2023), p. 45.

³⁰ Putri, M., *Op.cit.*, p. 90.

³¹ Rahmawati, D., *Op.cit.*, p. 45.

(UUJN) and Article 37 paragraph (1) letter a of Government Regulation Number 24 of 1997 on Land Registration, as well as the obligations of PPAT as regulated in Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (BPN) Number 3 of 1997. These obligations encompass several essential aspects: (1) the complete reading of the deed to the parties, (2) a detailed explanation of the substance and intent of the deed, and (3) the supervision of the signing process, which must be conducted directly in the presence of the Notary/PPAT. These obligations are not merely administrative, but serve as preventive legal protection for all parties, ensuring that the deed is signed knowingly, voluntarily, and free of coercion.³²

In cases where a mortgage deed (*akta KPR*) is executed or signed without the presence of the Notary/PPAT, the authentic deed loses its authentic status and carries only the evidentiary force of a private deed, which requires additional evidence to prove its content and validity. This situation weakens the legal position of the bank as the creditor and increases the risk of disputes with the debtor. Thus, negligence by the Notary/PPAT in ensuring the direct presence of the parties and verifying the validity of powers of attorney not only results in civil liability but also directly affects the evidentiary force of the authentic deed. A deed signed without compliance with formal procedures loses its authentic character, thereby forfeiting its perfect evidentiary force (*prima facie*) and requiring supplementary evidence to establish its contents and validity.

These legal consequences show that the professionalism of the Notary/PPAT is not merely an administrative responsibility, but a crucial instrument for preserving the legal legitimacy of the mortgage deed. Such professionalism ensures that every deed produced can serve as a valid legal basis for the creditor in enforcing its rights, while also providing legal certainty for the debtor regarding their obligations. Failure by the Notary/PPAT to execute these formal requirements may weaken the creditor's legal position, open avenues for disputes, and cause financial or reputational loss. Moreover, compliance with the formal procedures by the Notary/PPAT serves as a preventive instrument safeguarding all parties from potential legal conflicts. In other words, the professionalism of the Notary/PPAT in ensuring that the deed is validly signed before the authorized public official and through legitimate authority strengthens the legitimacy of the mortgage deed, reduces the risk of disputes, and reinforces legal certainty for both creditor and debtor.³³

Following the assessment of the legal validity of a mortgage deed (*akta KPR*) from the perspective of the Notary Office Law (UUJN), the Civil Code (KUHP *perdata*), and the authority of PPAT under Government Regulation Number 24 of 1997 on Land Registration and Ministerial Regulation Number 3 of 1997, the next step is to understand its implications for mortgage rights (*hak tanggungan*) under Law Number 4 of 1996 concerning Mortgage Rights (UUHT).³⁴ The UUHT strictly regulates that a mortgage right may only be established on land or property whose registration is supported by lawful documents that fulfill all prevailing legal requirements, including the validity of the deed underlying the establishment of the mortgage right. In this regard, the mortgage

³² Putri, M., *Op.cit.*, p. 90.

³³ Lestari, A., *Op.cit.*, p. 121.

³⁴ Ramadhani, K., *The Evidentiary Strength of Authentic Deeds in Indonesian Civil Law*, Bandung: Refika Aditama, 2019, p. 54.

deed (akta KPR) functions as an authentic document used as the basis for the registration of the mortgage right over the financed property; therefore, the presence of the Notary/PPAT as a public official is an absolute prerequisite for the validity and legitimacy of mortgage registration.³⁵

Article 4 of the UUHT stipulates that the registration of a mortgage right is valid only if based on a legally valid deed.³⁶ Therefore, if the mortgage deed is not signed before a Notary/PPAT, its status as an authentic deed is lost and downgraded to a private deed. This directly affects the mortgage registration process because a Notary/PPAT cannot certify a deed that is formally defective as the basis for registration.³⁷ Consequently, the bank as creditor loses strong legal protection regarding the mortgage right over the debtor's property.³⁸

Article 6 of the UUHT affirms that the registration of a mortgage right provides executorial force over the object of the mortgage.³⁹ When the deed lacks authenticity, the registration of the mortgage right cannot be fully carried out, and in the event of debtor default, the bank faces greater legal risks in executing the collateral.⁴⁰ This situation has the potential to create legal disputes, as the debtor or third parties may challenge the validity of the underlying basis for the establishment of the mortgage right.⁴¹

The validity of the mortgage deed (akta KPR) as the foundation for establishing a mortgage right is an absolute requirement; a deed that lacks authenticity cannot be used as the basis for registration, thereby weakening the mortgage right which should otherwise provide maximum protection for the creditor. This means that the professionalism and procedural compliance of the Notary/PPAT are crucial not only for the deed itself but also for the legitimacy of the mortgage right attached to the property financed through the mortgage credit. If the debtor defaults, the mortgage right is intended to provide legal protection for the creditor.⁴² If the authentic deed executed by the Notary/PPAT violates statutory provisions, the mortgage right that has been created becomes legally defective.

A Notary/PPAT who neglects the formal requirements of the UUJN and the obligations under Article 37 paragraph (1) letter a of the PPAT regulation and Government Regulation Number 24 of 1997 weakens legal certainty for all parties. The bank as creditor loses legal assurance over its rights, the debtor may become entangled in disputes, and third parties relying on the authentic deed risk suffering harm. As a result, consumer protection and prudential principles in banking transactions are compromised.⁴³

³⁵ Indonesia, Law Number 4 of 1996 concerning Mortgage Rights, Article 4.

³⁶ Putri, M., *Validity of Authentic Deeds and Risks of Formal Defects*, Yogyakarta: Deepublish, 2022, p. 90.

³⁷ Lestari, A., "Preventive Legal Protection in the Making of Notarial Deeds," *Journal of Law and Notarial Studies*, Vol. 7 No. 2, 2020, p. 118.

³⁸ Nugraha, R., *Notary Professionalism in the Formation of Authentic Deeds*, Malang: UB Press, 2021, p. 121.

³⁹ Indonesia, *Mortgage Rights Law*, Article 6.

⁴⁰ Suryaningsih, "Formal Defects in the Making of Authentic Deeds and Their Legal Consequences," *Journal of Indonesian Civil Law*, 2019, pp. 117-118.

⁴¹ Rahmawati, D., *Notary Liability in Fulfilling Formal Requirements of Authentic Deeds*, Jakarta: Kencana, 2021, p. 45.

⁴² Melani, M. R., *A Comparative Study between Authentic Deeds and Private Deeds*, Malikussaleh University, 2024, pp. 12-13.

⁴³ Ramadhani, F., *Op.cit.*, p. 54.

Overall, the signing of a mortgage deed (akta KPR) without the presence of the Notary/PPAT gives rise to serious consequences, including the degradation of deed quality, weakened evidentiary force, financial losses, potential legal disputes, and liability for the Notary/PPAT. Therefore, the formal procedures stipulated in Article 16 paragraph (1) of the Notary Office Law (UUJN) and the PPAT obligations under Article 37 paragraph (1) letter a of the PPAT regulation and Government Regulation Number 24 of 1997 must be strictly observed to ensure that the deed retains its authentic character and provides legal certainty to all parties.⁴⁴

In other words, the legal consequences of executing a deed without the presence of the Notary/PPAT extend beyond formal or civil considerations and also affect the legal protection of the creditor through the mortgage right. This reinforces that the presence of the Notary/PPAT and adherence to formal procedures are not merely administrative duties but preventive instruments that guarantee legal certainty for all parties involved in the credit agreement, including third parties relying on the deed for mortgage registration.

From a civil law perspective, the liability of a Notary/PPAT who negligently performs their duties and causes harm to another party constitutes a violation under Article 1365 of the Indonesian Civil Code, which states:

“Any act that violates the law and causes harm to another person obligates the perpetrator to compensate for such harm”.⁴⁵

A Notary/PPAT who fails to ensure that the deed is signed in his/her presence may be subject to ethical, administrative, and civil sanctions. The Notary Honorary Council (DKN) and the Notary Honorary Panel (MKN) have the authority to assess procedural violations, ranging from warnings to recommending dismissal, depending on the severity of the breach. Additionally, the Notary may incur civil liability if the resulting loss is proven to have arisen from his/her negligence.⁴⁶ Thus, not only the bank and debtor are affected, but the professionalism of the Notary/PPAT is also exposed to legal risk.

A Notary/PPAT who neglects professional duties may also incur civil liability. Negligence by the Notary/PPAT in ensuring that the deed is signed in their presence may be classified as a wrongful act (*onrechtmatige daad*). If such negligence results in losses for the debtor or the bank, the Notary/PPAT may be held civilly liable to compensate for material or immaterial damages, in accordance with the principles of civil liability.⁴⁷ This is consistent with Article 1366 of the Indonesian Civil Code, which states:

“Every person is liable not only for the harm caused by their actions, but also for the harm caused by their negligence or recklessness”.

This liability is not limited to financial compensation but also includes broader legal consequences, such as the obligation to correct the deed, bearing the risk of legal disputes, and potential ethical sanctions imposed by the Notary Honorary Council (DKN)

⁴⁴ Habib Adjie, *New Interpretation of Notary Liability*, Bandung: Refika Aditama, 2018, pp. 76-79.

⁴⁵ Indonesia, *Indonesian Civil Code (Burgerlijk Wetboek)*, Article 1365.

⁴⁶ Lestari, A., *Op.cit.*, p. 118.

⁴⁷ Suhartono, B., *Op.cit.*, p. 75.

and Notary Honorary Panel (MKN).⁴⁸ A Notary/PPAT who fails to fulfill obligations under the Notary Office Law (UUJN) may be subject to various forms of sanctions, whether administrative, civil, or ethical. Within the internal oversight mechanism of the profession, the DKN and MKN hold strategic authority to assess whether a Notary has violated ethical or procedural obligations of the office. Violations of the obligation to read the deed and ensure the presence of the appearing parties are not mere administrative errors but constitute serious breaches of professional integrity, as they may cause the deed to lose its authentic character. Similarly, under the PPAT regulations, any deed concerning land transfer or mortgage rights must be executed before a PPAT to obtain authentic status; negligence in this regard may expose the PPAT to similar legal consequences.

The obligation of the Notary to read out the deed and ensure that the signing is carried out in their presence is an absolute and imperative requirement that cannot be negotiated, delegated, or fulfilled through substitute mechanisms such as “deposited signatures” or the use of office staff. Failure to comply with this obligation may undermine public trust in the profession and result in serious ethical consequences.

In this regard, the Notary Honorary Council (DKN) has strategic authority to conduct ethical examinations concerning alleged ethical violations committed by a Notary. Such examinations include not only matters related to the Notary’s personal integrity but also professional conduct in carrying out official duties, including negligence in executing the procedures for authentic deeds as stipulated in the Notary Office Law (UUJN), as well as the obligations of PPAT in land and mortgage deeds under Articles 8 and 17 of the PPAT Regulations, which require that every deed be executed lawfully, completely, and in accordance with formal procedures. The DKN may issue ethical sanctions ranging from warnings, written reprimands, special guidance, temporary suspension of membership in the Indonesian Notary Association (INI), to recommendations for permanent dismissal for severe violations. This mechanism ensures that violations by a Notary are assessed not only from the standpoint of positive law but also from the moral and ethical standards of the profession.

Meanwhile, the Notary Honorary Panel (MKN) performs a different yet complementary function. The MKN has the authority to grant or deny approval to investigators, prosecutors, or judges who require the examination of a Notary in connection with a deed or minute they have prepared.⁴⁹ This authority aims to ensure balance between law enforcement and the protection of the Notary’s office, preventing arbitrary prosecution of a Notary for actions carried out legitimately within their official duties.⁵⁰ Likewise, in the context of the PPAT, the MKN holds a parallel role in assessing whether the PPAT’s actions in preparing land or mortgage deeds comply with the PPAT Law and professional authority, thereby protecting PPATs from unfounded legal claims while ensuring that the resulting deeds are legally valid.

From the perspective of professional accountability, the roles of the DKN and MKN are highly significant, especially in cases involving violations of deed-signing procedures, such as when a mortgage deed is signed without the presence of the

⁴⁸ Rahmawati, D., “Preventive Legal Protection in the Making of Notarial Deeds,” *Op.cit.*, p. 118.

⁴⁹ *Ibid.*

⁵⁰ Pramudito, “Enforcement of the Notary Code of Ethics by the Honorary Council,” *Indonesian Notarial Journal*, 2019, p. 54.

Notary/PPAT.⁵¹ The DKN assesses the ethical and integrity aspects, while the MKN evaluates the formal-legal aspects relating to possible examination by law enforcement authorities. The MKN also considers PPAT obligations under Articles 8 and 17 of the PPAT Regulation, which require that every land and mortgage deed be executed lawfully, completely, and in accordance with formal procedures.⁵² Through this dual-track mechanism, the accountability of Notaries/PPATs for violations of the Notary Office Law (UUJN) or PPAT regulations becomes more comprehensive, systematic, and accountable.⁵³

Thus, these two institutions serve as essential instruments to preserve the dignity of the profession, ensure accountability, and guarantee that any violations of the Notary Office Law (UUJN) or PPAT regulations particularly those relating to the authenticity of deeds and the formal obligations of PPATs in preparing land or mortgage deeds receive proportionate assessment and sanctions corresponding to the degree of the violation.⁵⁴

Therefore, the obligation of the Notary/PPAT to comply with formal procedures in the execution of authentic deeds is not merely an administrative formality but constitutes the foundation of the deed's legal legitimacy, the basis of protection for parties involved in credit agreements, and the primary instrument for preventing future losses or disputes. Negligence in fulfilling these obligations directly affects the validity of the mortgage deed, the creditor's legal position, the rights of the debtor, and the professional reputation of the Notary/PPAT.⁵⁵ As for dispute resolution, the harmed parties may pursue non-litigation methods first, including mediation and negotiation. If no agreement is reached, litigation before the District Court becomes the most appropriate option to obtain justice.

IV. CONCLUSION

Based on the results of the analysis, two main issues can be concluded narratively as follows:

- a. Regarding the validity of the Mortgage Loan Agreement (Perjanjian Kredit Pemilikan Rumah / KPR) deed that is not signed before a Notary/PPAT, this study shows that such a deed loses its authentic nature and is downgraded to the status of a private deed. As a consequence, its evidentiary strength, which was initially perfect (*volledig bewijs*), is reduced to merely preliminary evidence (*begin van bewijs*). This directly weakens the legal standing of the bank as creditor in enforcing the debtor's obligations or executing the collateral. The practice of signing outside the presence of the Notary/PPAT, including deposited signatures or the use of unauthorized powers of attorney, constitutes a deviation from the formal procedures stipulated in Article 16 paragraph (1) letter m of the Notary Office Law (UUJN) and PPAT regulations under Government Regulation Number 24 of 1997 on Land Registration and Ministerial

⁵¹ Lestari, *Notary Professional Ethics and Its Implementation* (Jakarta: Prenadamedia Group, 2021), p. 73.

⁵² Rahmawati, "The Role of the Notary Honorary Panel in the Law Enforcement Process," *Journal of Law and Notarial Studies*, 2020, p. 92.

⁵³ Santoso, *Law of the Notary Office and Liability of Officeholders* (Bandung: Refika Aditama, 2022), p. 118.

⁵⁴ Wijayanti, "Accountability of Notary Office in the Perspective of the Notary Law (UUJN)," *Journal of Legislation and Legal Ethics*, 2023, p. 61.

⁵⁵ Putri, M., *Op.cit.*, p. 90.

Regulation Number 3 of 1997. Such deviations increase the risk of legal disputes and create legal uncertainty for all parties, including third parties who rely on the deed as authentic evidence.

- b. The negligence of a Notary/PPAT in ensuring that the signing of the deed takes place in their presence gives rise to significant legal consequences. In civil law, a Notary/PPAT may be held liable under Articles 1365 and 1366 of the Indonesian Civil Code if their negligence results in losses to another party, including liability for both material and immaterial damages. Professionally, a Notary/PPAT may also be subject to ethical sanctions imposed by the Notary Honorary Council (DKN) and the Notary Honorary Panel (MKN), ranging from warnings and written reprimands to recommendations for dismissal. These findings reaffirm that the professionalism of Notaries/PPATs is not merely an administrative obligation but a crucial instrument for maintaining the legal legitimacy of the KPR deed and ensuring legal certainty in housing finance transactions. Furthermore, such negligence directly affects the registration of mortgage rights (*hak tanggungan*) over the financed property. Pursuant to Articles 4 and 6 of the Mortgage Rights Law (UUHT), the registration of a mortgage right is valid only if based on a legally valid deed. When the KPR deed lacks authenticity, mortgage registration becomes legally defective, weakening the executorial force over the collateral and increasing legal risks for the bank in cases of debtor default. Thus, adherence to formal procedures by the Notary/PPAT not only protects the interests of the parties but also ensures the legal legitimacy of the mortgage right attached to the financed property.

V. RECOMMENDATIONS

Based on the research findings and conclusions, the following recommendations are proposed:

- a. Concerning the validity of KPR deeds not signed before a Notary/PPAT, it is recommended that the Notary/PPAT professional organizations strengthen periodic supervision of their members to ensure compliance with their professional duties, as negligence may cause substantial losses to the parties involved. Additionally, these organizations should intensify public outreach and education so that the public is better informed and can participate in monitoring the professionalism and integrity of Notaries/PPATs in performing their duties.
- b. Regarding the legal accountability of Notaries/PPATs, it is recommended that Notaries/PPATs perform their duties with full professionalism and strictly adhere to ethical standards and applicable legal provisions. The Notary Honorary Council (DKN) and the Notary Honorary Panel (MKN) should impose firm sanctions, including dishonorable dismissal, on Notaries/PPATs who negligently perform their official duties, particularly those who have already received a third or final written warning. Such strict enforcement is necessary to set an example for other members and to uphold integrity, accountability, and professionalism within the notarial and PPAT professions.

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