

Transfer of Land Ownership Through Frant with The Guaranteed Object

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Abstract: This study aims to analyze how the concept of transferring land ownership rights through grants and how land status is obtained through grants, but the object remains a mortgage object. This article uses normative legal research methods. The sources of legal materials used are primary legal materials and secondary legal materials. The procedure for collecting legal materials in this article is to study library materials. Analysis of legal material sources was carried out descriptively. The results of the study concluded that the transfer of ownership rights to land due to grants can only be registered if the PPAT makes a deed. The contents and procedures for drawing up a deed are regulated in the Regulation of the Minister of Agrarian Affairs/Head of BPN No.3 of 1997. For the transfer of ownership rights to land through a grant, a PPAT deed cannot be made because the object of the grant deed is still an object of mortgage rights. To anticipate that grants can still be made, a grant-binding agreement was made before a Notary in order to fulfill legal protection for the parties.

1. Introduction

Land for human life is a very important thing. Earth has a multidimensional meaning: From the economic side, land is a means of production that can bring prosperity. Politically the land can determine a person's position in making community decisions. The land's cultural capital can determine its owner's high and low social status. The land is sacred because everyone will return to the land at the end of life. The reality is that the land always stays the same, but the need for land is increasing. In the juridical sense, according to the law on the regulation of agrarian principles (UUPA), the land is the surface of the Earth. Furthermore, the right to land is to use or benefit from the land. The word "use" implies that the right to land is used for the benefit of the building (non-agricultural). In contrast, the word "take advantage" implies that the right to land is used for the benefit of not building but of Agriculture, engagement, livestock, and plantations.

Article 4 Paragraph 1 of the UUPA regulates the granting of land rights to individuals, which states that: "based on the right to control from the state as referred to in Article 2 (earth, water, and space, including natural resources contained therein at the highest level controlled by the state as the organization of power of all people) determined the existence of various rights on the surface of the Earth, called land that can be given to and owned by people, either alone or together with other persons and legal entities.

Various land rights are regulated in the provisions of Article 16 Paragraph 1, Article 53 of the UUPA, and Government Regulation No. 40 of 1996 concerning the right to use, right to use buildings, and right to use land (PP No. 40 of 1996): "which includes land rights that are permanent, namely property rights, Business Use Rights, building use Rights, use rights, along with temporary rights, namely lease rights, land clearing rights, Forest Product Collection rights and other rights that are not included in the rights above that will be stipulated by law."

According to the provisions of Article 20, paragraph 1 of the UUPA, "property rights are hereditary rights, the strongest and fulfilled that can be owned by people on land by considering the provisions in Article 6 (land rights have a social function). "The word "Hereditary" means that property rights can continue as long as the owner is alive, and if the owner dies, then it can be passed on by his heirs as long as it qualifies as the subject of property rights. The word "strongest" means that property rights over land are stronger than other land rights, do not have a certain time limit, are easily maintained from interference from other parties, and are not easily removed. The word "Full" means that the right of ownership of the land gives the authority to its owner the widest when compared with other land rights, not brink on other land rights, and the use of land is wider when compared with other land rights.

Legal acts such as transferring land rights are carried out when the right holder is still alive. Ways to facilitate the transfer of rights to an object or item legally to gain legal force are also regulated in positive law. This is very necessary because if in the future there is a dispute or a problem with the goods or rights and the parties concerned in the implementation of the land grant practice, the parties concerned can make it as evidence. After all, there is legal recognition. The transfer of property rights to land due to the transfer/transfer of a right must be proven by a deed made by and in front of the land deed officer (PPAT).

In Indonesia, the transfer of land rights is based on Government Regulation No. 10 of 1961 concerning land registration (PP No. 10 of 1961) as amended by Government Regulation No. 24 of 1997 on Land Registration (PP No. 24 of 1997). Article 37, paragraph 1 PP No. 24 of 1997 stated that:" the transfer of land and property rights to flats through sale and purchase, exchange, grant, income in the company and other legal acts of transfer of rights, except the transfer of rights through auction can only be registered if proven by a deed made by PPAT authorized under the provisions of applicable laws and regulations."

The transfer of land rights to other parties can be through the land grant process, which is the provision of one person to another without compensation or wages, given sincerely and voluntarily, in practice this grant has been going on for a long time in the community from the past until now, the owner of the grant wants that his property can be distributed by the will of the owner of the property and before the grantor dies. Therefore, the transfer of land rights due to grants must be carried out by the applicable provisions of Article 19 of the UUPA Jo Article 37 PP No. 24 of 1997.

However, on the other hand, sometimes there is an obstacle so that the giver and the recipient of the grant have yet to be able to transfer rights to the land through the deed of Grant made by PPAT. One of them is when the object of the grant is still pledged to a third party. Articles 25, 33, and 39 of the UUPA state that: property rights, the right to use, and the right to use the building can be used as collateral debt with an encumbered mortgage. Then in Article 51 of the UUPA, it is stated that: mortgage rights that can be imposed on property rights, Business rights, and building rights in Articles 25, 33, and 39 are regulated in the law.

The term guarantee is a translation of the Dutch *Zekerheid* or *cantie*, which generally covers how creditors guarantee the fulfillment of their bills in addition to the debtor's general liability for his goods. With the birth of Law No. 4 of 1996 on deferred rights to land and land-related objects (UUHT) set on April 9, 1996, this law consists of 2 chapters and 31 articles. The presence of the law is intended as a substitute for mortgages and *creditverband*. Thus the engagement of debt guarantee objects in the form of land is fully carried out through the mortgage guarantee institution, as mentioned in Article 1 Number 1 of the UUHT, which states that "mortgage is a guarantee right imposed on land rights as referred to in the UUPA, following, for the expansion of the debt that gives priority to certain creditors against other creditors." However, considering the provisions of Article 51 of the UUPA, which only states that mortgage rights that can be imposed on property rights, Business rights, and building rights can cause problems with the development and progress of economic development.

When property rights are used as debt security, a binding grant agreement for land will usually be made. This is because, besides being the object of grants, the land is often used as an object of guarantee to third parties (creditors). The most accepted guarantee by creditors is land because the land has a high economic value and will not decrease in value. The registration of land raises several problems and obstacles. The constraints of the community are the high cost of registration and the community does not understand the function of the certificate so people are not interested in registering land rights. The implementation of the registration of land procedure was long ago so *Tibul* customary law (custom) prevailing in society is strong enough to regulate land issues either in the form of buying and selling, grants and inheritance.¹ The security of the land is known as the mortgage. Encumbrance of land with mortgage rights is regulated specifically through UUHT. The regulation explains that the land rights that can be charged with mortgage rights are property rights, Business rights, building rights, and usage rights on certain lands that must be registered and, by their nature, can be transferred. The imposition of land with mortgage rights is motivated by economic development that requires considerable funds. Because land is a high-value asset, charging the land with a mortgage is arranged to provide legal certainty for creditors and debtors who have been borrowing money.

Based on the background of the above problems, the researchers want to examine related to the transfer of property rights to land through grants, but the object of the grant is still the object of mortgage rights. The following authors describe some previous research related to the transfer of property rights to land through grants to show some differences and emphasize the authenticity (originality) of research in writing this article: 1) Research from Filbert Cristo Wattilete, Barzah Latupono, and Novita Uktolseya, entitled "Juridical aspects of land transfer through the grant process." Research published in *Tatohi*² *Jurnal Ilmu Hukum*, Volume 2 Number 6, in August 2022. The results showed that the transfer of ownership of land is based on PP No. 24 of 1997; the transfer of land rights due to grants does not necessarily occur when the land is handed over by the grantor to the grantee. The difference between the research in the article with the research conducted by

¹ Bambang Sugianto, "PENDAFTARAN TANAH ADAT UNTUK MENDAPAT KEPASTIAN HUKUM DI KABUPATEN KEPAHANG". *Jurnal Panorama Hukum* 2 (2) (2017): 131-48. <https://doi.org/10.21067/jph.v2i2.2072>.

² Parinussa, Weldo, Merry Tjoanda, and Barzah Latupono. "Pembagian Harta Waris Kepada Ahli Waris Dari Perkawinan Pertama Dan Kedua Ditinjau Dari Kitab Undang-Undang Hukum Perdata." *TATOHI: Jurnal Ilmu Hukum* 1, no. 4 (October 5, 2021): 356-363. Accessed July 20, 2023. <https://doi.org/10.47268/tatohi.v1i4.612>.

the researcher is in terms of the focus of the discussion; if the previous study only focused on the transition of land rights through the grant process, then this study not only focused on the transition of land rights through the grant process but also on the object of the transition which is still the object of mortgage rights. 2) Research from Karnilla's thesis entitled "Legal review of the Deed of Grant binding agreement made before a Notary" The author is a student in the Master of Notary Studies program, Faculty of Law, Hasanuddin University, in 2021. The results showed that the notarial binding grant agreement has advantages over agreements made orally or underhand. This is because the agreement made notarial has the power of perfect proof³. The difference between the research in this article and the research conducted by the researcher is in terms of the focus of the discussion; if the previous study focused on the legal review of the deed of Grant binding agreement made before a notary in general, then this study only focuses on the transfer of land rights through the grant process whose transfer object is still the object of mortgage rights.

Based on the above background, this study will conduct an assessment related to the first, How is the concept of transferring property rights to land through grants? Moreover, secondly, what is the status of land acquired through grants but still an object of mortgage rights? This study is expected to provide information and understanding of the theory and literature on transferring property rights to land through grants with the object of mortgage rights. Become a material for developing legal Science in civil law, especially in notary law. As input for notaries and related parties in the transfer of property rights to land through grants with mortgage objects, as a contribution of thought for legal practitioners and is expected to be useful for policymakers in terms of making laws and regulations relating to the transfer of property rights to land through grants with mortgage objects.

2. Method

This research includes the type of normative legal research or doctrinal re-search. The approach used in this study is the legislation and conceptual approach. The statutory approach is made by reviewing all laws and regulations related to the issues being addressed. The conceptual approach proceeds from the views and doctrines developed in the science of law. By studying it, researchers will find ideas that give birth to legal notions, concepts, and principles relevant to the issues at hand. This is a backup for researchers in building a legal argument for solving the issues.

Sources of legal materials researchers use are primary and secondary legal materials. Primary legal material in this study consists of the *Burgerlijk Wetboek* (BW), a compilation of Islamic Law, Law No. 5 of 1960 on the Basic Rules of Agrarian principles, Law No. 4 of 1996 on mortgage rights on land and objects related to Land, Law No. 10 of 1998 on amendments to Law No. 7 of 1992 on Banking, Government Regulation No. 40 of 1996 on the right to use, building rights and land rights and Government Regulation No. 24 of 1997 on Land Registration. Secondary legal materials that researchers use include law books, theses, theses, and law journals.

3. The Concept of Transfer of Property Rights to Land Through Grants

Property rights to land can occur in three ways, as mentioned in Article 22 of the Constitution, namely: 1) Occurs according to customary law. Land ownership occurs through land clearing (forest clearing), carried out jointly with the customary law community led by the head of the

adat. 2) Occurs due to the determination of the government. Ownership of the land that occurred originally came from state land. This land title occurs due to the application for the granting of land title by the applicant by fulfilling the procedures and requirements determined by the National Land Agency (BPN). 3) Occurs due to the provisions of the law. This property right to land occurs because the law determines it.

The transfer of property rights to land in the UUPA is regulated in Article 20, paragraph 2, which determines that “property rights can be transferred and transferred to other parties”. The transfer of land rights can be done in two ways, namely by “switching” and “transferring”: 1) Switching means transferring rights to the land without going through a certain legal act, in the sense that the rights to the land by law switch by itself. 2) Transfer or transfer of Rights is the transfer of land rights carried out deliberately by the right holder to another party. The rights transfer can be sale and purchase, exchange, Grant, according to custom, income in the company or “in-bred”, and probate grant or “legal”. Based on Article 23 of the UUPA determines: 1) Property rights and any transfers, write-offs and encumbrances with rights shall be registered by the provisions referred to in Article 19. 2) Registration, referred to in Paragraph 1, is a powerful means of proving the abolition of property rights and the validity of the transfer and imposition of such rights.

This registration of the transfer of land rights has the purpose of legal certainty and protection. The realization of certainty and legal protection for land title holders will be achieved if they register their land, especially the registration of the transfer of rights due to legal acts. The final process of land registration is the granting of certificates, especially property rights to land, due to the transfer of rights (grants) given to holders of property rights to land to prove themselves as holders of legitimate land rights. Granting a certificate of property rights to land provides certainty and legal protection for the rights holder.³

What was put forward by the Chancellery of Grants is an agreement where the first party will give an item out of kindness to the person receiving the item. According to R. Subekti, giving is a gift based on an agreement when one party can give something completely free of charge to another person, who gets the item as an agreement and accepts it. According to one party, the gift cannot be taken back for granted at that moment. A gift is an agreement in which a person who gives a grant gives away an item for free, without being able to withdraw it, for the needs of the person who delivers the item. Awarding is listed in Article 1666-article 1693 of the *Burgerlijk Wetboek* (BW). The requirement that must be owned to give gifts is that people who give and receive grants can only be done by people who are still alive. In addition, everyone can give and receive grants except those that, by law, are declared incapable.⁴

The definition of a grant, according to the *Burgerlijk Wetboek* (BW), can be found in Article 1666, which reads: “A Grant is an agreement by which the giver, in his life free of charge and irrevocably, gives up something for the donee who receives the surrender.” By looking at the provi-

³ I Dewi Ayu Widyani and L.Elly Am Pandiangan, “ANALISIS HUKUM TERHADAP HAK-HAK ATAS TANAH SEBAGAI JAMINAN HUTANG DENGAN DIBEKANI HAK TANGGUNGAN,” *Jurnal Hukum To-Ra*, (September 1, 2015), <https://doi.org/10.33541/tora.v1i2.1144>.

⁴ Wattilete, Filbert Cristo, Barzah Latupono, and Novita Uktolseya. “Aspek Yuridis Peralihan Hak Atas Tanah Melalui Proses Hibah.” *TATOHI: Jurnal Ilmu Hukum* 2, no. 6 (August 31, 2022): 583 – 603. Accessed July 20, 2023. [doi:10.47268/tatohi.v2i6.1122](https://doi.org/10.47268/tatohi.v2i6.1122).

sions above, the elements contained in Article 1666, namely: 1) Giving is a unilateral agreement made free of charge. That is, there is no sense of resistance on the part of the recipient of the gift. 2) In the grant is always required that the giver intends to benefit the party given the grant. 3) The purpose of the gift agreement is to all kinds of property belonging to the giver, both tangible and intangible, fixed and movable objects, including all kinds of giver bills. 4) Grants cannot be taken back. 5) The gift must be made while the giver is still alive. 6) The grant must be made by notarial deed.

First, the factors of habit and culture. The second, is the trust factor. Third, the fast process factor and low cost. Fourth, education factors and lack of socialization. When there is a dispute arising from the sale and purchase under the hands, of the Cangkering Village Head will try to resolve it through mediation or through deliberation and peace between the two parties.⁵ According to the compilation of Islamic law (KHI), Article 171 letter (g) says: "A grant is the Giving of an object voluntarily and without reward from someone to another person who is still alive to be owned". Furthermore, Article 210 KHI Paragraph 1 states that: "a person who is at least 21 years old, of sound mind without coercion can give as much as 1/3 of his property to another person or institution in the presence of two witnesses to be owned". In Paragraph 2, KHI states that the property to be donated must be the giver's right. When a person gives a gift that does not belong to him, his gift becomes void.

It can be concluded that a grant is the Giving of an item without expecting a reply or reward from someone to someone else who is still alive to be owned. Grants can be made on the following conditions: 1) A person who gives a grant is an adult because he has turned 21. 2) Being able to think about what is good and what is right. 3) The inheritance of goods given cannot be more than 1/3 of the inherited property. 4) In the presence of two witnesses and 5) The property is the property of the giver.

After PP No. 24 of 1997's birth, the grant must be made by deed PPAT. In addition, in making the deed of grant to note the object to be granted, PPAT only makes the deed of grant that the object is land, not other objects. When the object is movable according to the *Burgerlijk Wetboek* (BW), the deed of Grant is made before a notary. This is stipulated in Article 37, paragraph 1 of PP No. 24 of 1997, which determines: the transfer of land rights and property rights to apartment units through sale and purchase, exchange, grant, company data entry, and other legal acts of transfer of rights, except the transfer of rights through auction, can only be registered if proven by a deed made by PPAT authorized under the provisions of applicable laws and regulations.

Based on this article, it can be interpreted that the registration of the transfer of rights due to legal acts, one of which is a grant, can only be registered if a deed made by PPAT is done because the PPAT deed is one of the absolute requirements for the transfer of rights. The PPAT function in the grant is the most important requirement for the validity of the grant because without the PPAT deed is void. After the conditions stipulated in Article 37 Paragraph 1 of Government Regulation No. 24 of 1997 are met, as a final result of the registration activities for the transfer of rights, the

⁵ Muhammad Amin, Herwastoeti, and Muhammad Isrok. "Analisis Praktik Jual Beli Tanah Di Bawah Tangan Yang Dilakukan Di Hadapan Kepala Desa : (Studi Kasus Di Desa Cangkering Kecamatan Amuntai Selatan Kabupaten Hulu Sungai Utara)". *Indonesia Law Reform Journal* 1 (2) (2021):273-87. <https://doi.org/10.22219/ilrej.v1i2.17396>.

grant is given a letter of proof of Rights, commonly known as a certificate. Registration of transfer of property rights to land due to grants is an activity to adjust changes in juridical data and biological data caused by the transfer of property rights to land due to grants with existing data at the Local Land Office.

The steps to take care of the deed or land certificate are generally also used through the reverse name. The thing that needs to be seen to take care of the letter on the land of inheritance or land grant is the BPHTB portfolio and its conditions. Here are the steps and how-to: 1) Make a Certificate of inheritance (SKW) land certificate in the testator's name to be taken care of behind the name. SKW is made directly by the heir and must be seen directly by two witnesses and also seen directly by the village head at the place of residence of the heir. 2) Prepare the conditions for the transfer of ownership of the land before it is sent to the BPN area, and complete the requirements to take care of the transfer of ownership of the land given. The main conditions that must be completed are filling out and signing on the stamp application form, collecting identity or personal biodata, SKW, non-conflicting land statement, and physically controlled land statement. 3) Prepare expenses in making a deed of gift. 4) People who apply can wait for the process above for five working days to get ownership of the land, while the waiting process can be checked directly on the website.

Before getting a land grant letter, one must ensure that there is a land gift statement letter because the statement letter can avoid problems that arise, and the form of this letter can be studied if needed. The deed of gift is registered to the Land Office then after the deed of Grant is signed, PPAT is obliged to submit the deed and related archives to the Land Office to be registered for a maximum of 7 days from the date it is signed. PPAT then submitted a written notice of the form, content and manner of making PPAT deeds (including grant deeds) stipulated in the regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 on the implementation of PP No. 24 of 1997 on Land Registration and amendments to it. All requirements must be met so that the registration process can run smoothly and realize legal certainty and protection.

The transfer of rights to land grants is carried out, among others: 1) The person, in this case, the person who gives the gift to the person who receives the gift comes to the PPAT Office to carry out the transfer of land rights and make an agreement to carry out the grant transaction, as well as the agreement on ownership and obligations, payment of taxes, and other costs that arise are closely related to. 2) The certificate was given to PPAT, then immediately checked the validity of the Land Office and sought the value of the land on the certificate. 3) Certificates that have been checked and said to be free of problems; after that, a deed of gift is made. 4) The letter of gift that has been typed, after being read by PPAT in front of the parties and witnesses, and the parties who agree and understand the contents of the deed of gift, then sign the deed of gift. 5) Deed of a signed gift, immediately look for the letter number endorsed by PPAT, then register at the Land Office. 6) Archives are listed on the counter as archive recipients. The archives listed are checked early, and if there is an archive error, it will be returned for repair, but if it is correct, the archive can be received immediately. 7) If it has been checked, the archive is given to the entry section (entering archive data) so that the data can be entered into the archives at the Land Office to get the file number, and then the file is paid to the treasurer at the land office or Bank. 8) If the fee at the payment counter has been paid, the archive is given a land Book section; the land book referred to here is a copy of the original certificate that will be given to the Land Office. 9) If the land book certificate has been

obtained, then the archive is given to the typing section, after which the archive is typed on behalf of the old ownership into ownership or the person who received the gift. 10) After that, the archive was initiated and re-examined by the head of the section of land rights and land registration of the head office. 11) Archives that have been initialed and signed by the head of the Land Office then get the number 208 (208 is a settlement number which is a term in the Land Office); after getting the number 208, officer 208 submits the file to the delivery counter D and certificate in the name of the new owner can be taken. Grant the object of agricultural land, which will then be converted into housing; if the prospective recipient of the grant domiciled outside the district of the location of the existence of the land to be donated, it must be sought permission to change the use of land the legal basis is contained in the regulation of the head of BPN RI No. 2 of 2011.

By article 1667 of the BW, the implementation of the transfer of property rights through giving must first look at the method of giving. According To Articles 1682-1685 of The *Burgerlijk Wetboek* (BW): 1) Accordance with Article 1682 of the *Burgerlijk Wetboek* (BW) states that no gift, except that mentioned in Article 1687, is made by a notarial deed, the original of which is kept by the notary; 2) Article 1683 of the *Burgerlijk Wetboek* states there is no gift to bind the giver or issue a result which, however, other than starting the day of the gift with a firm word has been received by the donee himself or by a person who by an authentic deed by the donee has been authorized to receive gifts to the donee or; 3) Article 1685 of the *Burgerlijk Wetboek* states that giving to immature persons under parental authority must be received by the person exercising parental authority. The guardianship of minors under guardianship or guardianship must be received by the guardian or guardian, whom the District Court must authorize. Article 1687 of the *Burgerlijk Wetboek* states that the Giving of movable property or debt collection letters to the designator from one hand to another does not require a deed and is valid by mere delivery to the donee or to a third party who receives the gift on behalf of the donee, to be valid evidence, the letter of a gift must be made and signed by the competent authority and the parties concerned therein. In addition, in making the deed of grant, it is necessary to consider the object to be granted because, in PP No. 24 of 1997, it is determined that for the object of the land grant, a deed of grant by PPAT must be made. However, if the object is other than that (meaning that the object of the grant is a movable object), then the provisions in the BW are still used as the basis for making the deed of grant, which is drawn up and signed by a notary. 4) Article 1686 of the *Burgerlijk Wetboek* states that the ownership of the rights to the objects referred to in the gift, even if the gift has been legally accepted, does not transfer to the donee other than by way of delivery carried out by articles 612, 1613, 616, and from now on; 5) The deed of gift is a legal force of ownership of the land and further creates a certificate of ownership of the land by the existing reality with no gift.

Several articles still allow some rights to the grantor even though the grant has been granted so that the grantor's rights are still attached to the object being donated. Some articles regulated by BW are as follows: 1) Article 1669 States: "It is permissible for the giver to pledge that he still has the enjoyment or favour of the results of the donated objects, both movable and immovable objects or that he can give the enjoyment or favour of the results to someone else; in which case the provisions of the tenth chapter of the second book of this law must be observed". 2) Article 1671 States: "(1) the giver may promise that he will use a certain amount of money from the donated objects; (2) if he dies using the amount of money, then what is donated remains for all to the donee". 3) Article 1672 States: "The benefactor may promise that he still has the right to take back the objects he has given, either in the case of the grantee himself, or if the grantee beset his descendants will die earlier

than the benefactor, but this can not be agreed otherwise only for the benefit of the benefactor himself”.

Article 1673 States: “The effect of the right of repossession is that all alienation of things given away is nullified, while they return to the comforter, free from all the burdens and mortgages placed upon it from the time of consolation”. In addition to granting rights to the grantee, some prohibitions should not be agreed upon in the grant of grants, namely: 1) Article 1667 States, “Grants can only be about objects that already exist. If the grant includes new objects that will exist in the future, then the grant is void”. 2) Article 1668 States, “the giver may not pledge that he retains the power to sell or give to another person an object referred to in the grant; such a grant, considered void”. 3) Article 1670 States, “A grant is void if it is made on the condition that the donee will pay off debts or other things, other than those expressly stated in the deed of the grant itself or a list affixed to it”. 4) Article 1678 States: “It is forbidden to have compassion between husband and wife during the marriage”. 5) Article 1684 States: “Afflictions given to a married woman are inadmissible except by the provisions of Chapter V of Book 1 of the BW.”

According to Article 212 of the KHI, a grant cannot be withdrawn except for a grant from a parent to his child. The provisions of Article 212 KHI by the panel of judges are interpreted to be carried out when the donee is still alive, but if the child has died, then the object of the grant passes to the heirs and cannot be withdrawn. This is by the arguments of jurisprudence in the book of Al Muhalla juz 9 p. 149, which reads: “If a child dies after being given a grant, then there is no ownership of the grant, and the object of the grant becomes inheritance law and the father’s affairs have been broken in the grant.” The relationship with the cancellation of the grant can be summed up as follows: 1) In KHI, grants can be withdrawn unless, in the grant agreement, certain conditions must be met by the grantee. 2) The amount of the donated property is at most 1/3 of the total amount of the donor’s property unless he has no other heirs. 3) KHI is not an absolute rule on the grant process because KHI is only a reference, not the rule of law; further, according to Dr H. Kasjim Salenda, S.H, M. Th.I that at the time of the transfer of property through the grant, the process begins at the time of making the deed of transfer of the grant; at that time, the right of ownership of the donated property has been transferred, and there is no longer a right for the owner of the grant.

PPAT Deed is an authentic deed in the case of certain legal actions, especially in the case of transfer of land rights from one party to another party. An authentic deed is a deed made by an authorized official for that, in the place where the deed was made and the format is in accordance with the provisions of the legislation in force.⁶ BW also expressly regulates the withdrawal and abolition of grants, namely, Article 1688, which determines “a grant cannot be withdrawn or abolished because of it, but in the following cases: 1) Because it does not meet the conditions with which the grantor has been done; 2) If the grantee has been guilty of committing or assisting in the commission of a crime aimed at taking the soul of the benefactor or of another crime against the benefactor; 3) If he refuses to provide the breadwinner, this person falls into poverty.”

If the giver has not delivered the goods, the donated goods remain with him, and the donee can no longer demand their delivery. Suppose the giver has delivered the goods, and he demands them back. In that case, the donee is obliged to return the donated goods with the proceeds from

⁶ Valerio Xaverius Tjipto, “Keabsahan Akta PPAT Yang Tidak Ditandatangani Para Saksi (Studi Putusan PN. No.16/Pdt.G/2015/Pn.Krg)”. *Recital Review* 2 (2) (2020): 57-76. <https://doi.org/10.22437/rr.v2i2.9589>.

the day of filing the lawsuit, or if the goods have been sold, return the price at the time of filing the lawsuit, also accompanied by the proceeds from that time (Article 1691). The grantee's lawsuit against the grantee is terminated with the lapse of 1 (one) year from the day of the occurrence of the event that is the reason for the claim, and the grantee can be informed of the event (article 1692 of the *Burgerlijk Wetboek*). Based on the above, it becomes clear that in the *Burgerlijk Wetboek*, there are still several possibilities for withdrawing grants.

4. Status of land acquired through grants but still the object of mortgage

Article 25 of the UUPA states that land with title status can be secured by burdening the right to land with a mortgage. Furthermore, this provision is confirmed by the provisions of Article 4 of the constitution; from the formulation of Article 4, it is known that in addition to the land plot, buildings, plants, and works that have existed or will exist are one unit with the land plot, whether or not the property of the land rights holder, can also be burdened with a mortgage, as long as and as the owner acts. The burden is expressly stated in the deed of granting the mortgage in question.

According to the provisions of Article 1 Number 2 of Law No. 10 of 1998 on Banking (Banking Law), the definition of a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit or other forms in order to improve people's living standards better. In this case, the function of banks as financial intermediaries and supporting infrastructure is vital to support the smooth running of the economy. Guarantee in credit is a means of protection for the security of creditors and certainty in the repayment of debts by the debtor. The object of bank credit guarantee must be adjusted to the guidelines used by the bank concerned, among others, regarding the collateral allowed for a loan so that the collateral can be an effective means of credit repayment in the event of a performance by the debtor, it has become a necessity if the giver and recipient of credit and other related parties.

The purpose of the credit guarantee is to protect the bank from the risk of intentional and unintentional losses. More than that, the guarantee submitted by the debtor is a burden so that the debtor will sincerely return the credit he took. Collateral should exceed the amount of credit granted. This means that the credit guarantee is expected to cover the debtor's debt in the event of congestion. Credit guarantees can be mortgages, fiduciaries, liens, and mortgages on land. The right to land is the most widely used form of security as collateral in bank credit agreements. The land that is used as a credit guarantee in order to fulfill the will of the creditor, the land must be burdened with the right to guarantee. Guarantee rights that burden the land as such, according to the UUPA, are referred to as the right of Liability.

A mortgage is a material right that must be made with an authentic deed and registered and is assessor and executorial, which is given by the debtor to the creditor as a guarantee for the payment of his debts whose object is in the form of land with or without everything that is on the land. Article 1 point 1 of the Constitution regulates the definition of mortgage rights, namely: "mortgage on land and objects related to land, after this referred to as the mortgage is a guarantee imposed on the right to land as intended in the constitution, following or not following other objects that are one unit with the land, for the repayment of certain debts, which give priority to certain creditors against other creditors". The land is a guaranteed item for debt repayment that is most preferred by financial institutions that provide credit facilities. Because land, in general, is easy to sell, the price continues to increase, it has proof of Rights, it is challenging to be embezzled, and it can be burdened with liabilities that give privileges to creditors. In the UUPA, the right to guarantee land, called mortgage rights, is regulated in Article 25; Article 33; article 39; Article 51, and Article 57.

Article 25, Article 33, and Article 39 of the UUPA stipulated the land rights that can be used as collateral for debt with encumbered mortgage rights, namely land with the status of property rights, rights of Use, and building rights. According to Article 51 of the Constitution, the mortgage will be regulated by law and Article 57 of the Constitution. As long as the law has not been established, the provisions regarding mortgages and creditverband will apply. With the issuance of the UUHT, the provisions regarding mortgages on land contained in Book II of the *Burgerlijk Wetboek* and the provisions regarding creditverband contained in Staatsblad 1937 number 190 are declared no longer valid. Because it is seen as no longer by the civil law system in the law of guarantees and the needs of credit activities and in connection with the development of Indonesia's economic system. The issuance of UUHT is significant, especially in creating the unification of national land law, especially in land security rights.

Regarding the birth of mortgages, rights can be understood from the provisions of Article 13 of the UUHT. According to the provisions of Article 13, paragraph 1 of the UUHT, "granting of mortgage rights must be registered with the Land Office". Furthermore, Article 13 paragraph 2 stipulates "no later than 7 (seven) working days after the signing of the deed of granting the mortgage as referred to in Article 10 paragraph 2, PPAT shall send the deed of granting the mortgage in question and other required letters to the Land Office". The Land Office carries out registration of mortgage rights by making a land Book of mortgage rights, recording it in the land Book of rights to land that is the object of mortgage rights, and copying these records on the certificate of rights to the land in question.

According to Article 4 UUHT, which can be used as the object of liability: 1) Property rights, Building rights, and Business rights are regulated in Article 4, paragraph 1 of the law. 2) The right to use state land that, by its nature, is transferable. Article 7 of the UUHT States," The mortgage continues to follow the object in the hands of whomever the object is. Elucidation of Article 7 states: "This property is one of the special guarantees for the interests of mortgage holders. Even though the mortgage object has been transferred and belongs to another party, the creditor can still exercise his right to execute if the promise injures the debtor."

The subject of this mortgage is regulated in Article 8 and Article 9 of the UUHT; from the provisions of these two articles, it can be concluded that the subject of law in the mortgage is the subject of law related to the mortgage agreement. In Article 8 and Article 9, UUHT contains provisions on the subject of mortgage Rights, which are as follows: 1) The mortgagor is an individual or legal entity that has the authority to carry out legal actions against the object of the mortgagee at the time of registration of the mortgagee's rights; 2) The mortgage holder is an individual or legal entity who is a party to the repayment of the receivables provided. The apartment developers who still have a responsibility to the buyers and owners of the apartment units must do maneuvers to maintain the continuity of the company even in an economic crisis.⁷

The transfer of mortgage rights based on what is mentioned in Article 16 Paragraph 1 of the UUHT must be registered with the Land Office. With the registration of land rights at the district/city land office, the people who register the land will be guaranteed legal certainty about the owner of the land after the holding of the transfer of land rights activities which will be carried out with

⁷ Ariawan Gunadi, "AKIBAT HUKUM BAGI PEMILIK SATUAN RUMAH SUSUN TERHADAP DEVELOPER RUMAH SUSUN YANG DINYATAKAN PAILIT OLEH PENGADILAN NIAGA", *Jurnal Hukum Adigama* Vol. 3 No. 2 (2020): 1260-1283. DOI: <https://doi.org/10.24912/adigama.v3i2.10613>.

a new certificate with new juridical data/name of the new owner of the rights. The legal assurance referred to here is: 1) Legal certainty regarding the person or legal entity who owns the land right, who owns the land plot, or the subject of the right. 2) Legal certainty of the land he owns. This right concerns the location, top, and area of the land plot or object of rights. 3) Legal protection of land rights.

In Article 15, Paragraph 1 letter (c), UUHT clearly stated limits of the subject matter of a power of attorney to impose liability rights (SKMHT). Restrictions on the main content of the SKMHT are to prevent the lapse of a power of attorney and to achieve legal certainty; the SKMHT is limited in time. Provisions on time limits to carry out binding obligations confirm that SKMHT is not a condition in the process of encumbrance because the requirement of encumbrance is encumbrance encumbrance and registration at the Land Office. Making SKMHT an absolute power of attorney means it cannot be substituted as other power of attorney in a judicial lawsuit. The making of SKMHT in the form of an absolute power of attorney will not end, in the sense that it does not end for any reason unless a power of attorney has been implemented or has completed its validity period. This is regulated in Article 15 Paragraph 2 UUHT.

SKMHT is a process taken in the transition of land rights as collateral through granting, registration, and erasure of the mortgage. Therefore, systems and procedures become essential in the maintenance of the SKMHT. The mechanism of granting mortgage rights in SKMHT is the key to delegating to third parties because of the promise of debt repayment. It is stipulated in Article 10, paragraph 2 of the Constitution that: the granting of mortgage rights is preceded by a promise to provide mortgage rights as a guarantee for the repayment of certain debts, which are outlined in and are an integral part of the agreement on the debts in question or other agreements that give rise to such debts. The granting of mortgage rights is carried out by doing the deed of granting mortgage rights (APHT) by PPAT by applicable laws and regulations.

In practice, before the land rights certificate is completed, APHT can not be made, even though the period of SKMHT has expired. In this situation, a new SKMHT is made after completing the certificate and proceeding with APHT. This is different from what is stated in Article 10, paragraph 3 of the Constitution, that the imposition of mortgage rights on lands that have not been registered must be in line with the process of registration of rights to the land. Thus it should be at the time of Notary / PPAT make APHT then it should also be done registration of land rights at once, without having to mending the certificate of land rights is complete.⁸

As mentioned above, the transfer of property rights to land through grants must be made by PPAT deed. However, on the other hand, some problems make the grantor and the grantor unable to hold the funeral directly before PPAT, for example, because the granted object is still the object of mortgage rights. Moving on from the problems faced by the grantee who cannot grant the land directly through the deed of Grant made before PPAT, then to anticipate that the grant can still be done, the grantee and the grantee agree to make an agreement or preliminary agreement in advance about the land to be granted or in notary practice commonly called a binding grant agreement before a notary in order to fulfill legal protection for the parties.

⁸ Fikalya Anli, Ahmad Fauzi, and Ferry Susanto Limbong, "Tanggung Jawab Notaris Dan PPAT Dalam Pembuatan APHT Berdasarkan SKMHT Pada Bank Mandiri Di Kabupaten Labuhan Batu," *Legalitas* 14, no. 2 (January 14, 2023): 285, <https://doi.org/10.33087/legalitas.v14i2.330>.

5. Conclusion

Based on the contents of the discussion, the author can conclude that: first, the registration of the transfer of property rights to land due to grants can only be registered if PPAT does a deed. The content and method of making PPAT deeds (*including grant deeds*) are regulated by the Minister of Agrarian Affairs/Head of BPN number 3 of 1997 on implementing PP No. 24 of 1997 on Land Registration and amendments. Second, the transfer of property rights over land through grants cannot be made with a PPAT deed because the grant object is still the object of mortgage rights. So to anticipate that the grant can still be done, the grantor and the grantee agree to make an agreement or preliminary agreement in advance about the land to be donated or in notary practice, commonly called a binding grant agreement before a notary in order to fulfill legal protection for the parties. Suggestions from the author to the public to meet the requirements specified in the regulation of the Minister of Agrarian Affairs/Head of BPN number 3 of 1997 before registering the transfer of rights so that the registration process can run smoothly and realize certainty and legal protection. For the transfer of property rights over land through grants that cannot be made with a PPAT deed because the granted object is still the object of the mortgage, a grant-binding agreement can be made before a notary to fulfill legal protection for the parties.

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