

The Legal Position of the Credit Agreement on the Mortgage Object in the Status of the Sale and Purchase Agreement

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Abstract. *This research aims to find out and analyze the legal position of the credit agreement on the object of collateral for land rights that are still in the status of a binding sale and purchase agreement in full with the Bank. The type of research is empirical normative and research specifications are descriptive analytical research. The data required prioritizes secondary data through document study methods or library materials and primary data as support through interviews. Methods of data analysis using the method qualitative analysis. Based on the research, it was concluded that the legal position of the credit agreement on the object of collateral for land rights which is still in the status of a binding sale and purchase agreement in full is a credit agreement who have met the subjective requirements and objective requirements based on article 1320 of the Civil Code and article 38 of the UUJN for notarized credit agreements that are in the principal agreement binding on the parties and the Debtor is subject to carrying out his achievements based on the agreement contained in the credit agreement. The guarantee agreement that was preceded by SKMHT and the drafting of which was contrary to UUHT is invalid or null and void and cannot be used as a basis for granting mortgage rights and registration at the land office and the Bank is domiciled as a concurrent creditor. The principal agreement does not terminate over an invalid guarantee agreement. Conversely, if the main agreement is canceled then the follow-up agreement (accessoir) become void or terminate automatically. Debtors who heed the implementation of the contents of the credit agreement can take a persuasive approach (non-litigation) or attempt a default lawsuit (litigation) in court based on a mutually agreed credit agreement at the beginning of the credit.*

Keywords: Agreement; Binding; Credit; Dependents.

1. Introduction

Banks extending credit must comply with the 5C principles of analysis, namely Character, Capacity, Capital, Collateral, and Conditions for Debtors. Collaterals or guarantees originating from the sale and purchase of land rights between the debtor and an individual or legal entity are confirmed to have been carried out before the PPAT. Article 37 Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration states that the transfer of rights to land and ownership rights to apartment units, one of which is through buying and selling, can only be registered if proven by a deed drawn up by the authorized PPAT according to the provisions of laws and regulations. Collateral is required to guarantee the repayment of the Debtor's debt/credit in the event that the Debtor defaults or breaks his promise not to pay off his credit.¹(Kurniasari & Hasana, 2022)MImproving prudential banking and mitigating credit risk at the Bank for defaults on Debtors in the future. The granting of credit is stated in the credit agreement as the main agreement, followed by binding collateral through the imposition of mortgage rights to obtain guarantee legal certainty, the principle of publicity and having a position as a preferred creditor. The PPAT Deed is one of the data sources for maintaining juridical data in land registration and as a strong basis for registering transfers and encumbrance of rights over the land in question.²(Donnald & et.al., 2022)

General explanation of number 7The Mortgage Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, explains that the making of a Power of Attorney for Imposing Mortgage Rights (SKMHT) and Deeds for Granting Mortgage Rights (APHT), must have confidence in a Notary or PPAT that the Mortgage giver has the authority to take legal action against the object of the Mortgage being charged, although certainty regarding the possession of this authority is only required at the time the Mortgage is registered.The granting of mortgage rights under certain conditions may be preceded by an SKMHT.The SKMHT made must be stated according to the name stated on the certificate or after the occurrence of AJB PPAT in the land rights transfer transaction.³(Agustina & Djunaedi, 2022) SKMHT is a letter or deed containing the power of attorney granted by the collateral provider/land owner (authorizer)

¹Kurniasari, M. A., & Hasana, D. (2022). "Legal Protection of Third Parties in Credit Agreements with Liability Guarantee". (<http://jurnal.unissula.ac.id/index.php/jk/article/>, Ed.) *Jurnal Konstaterring*, 1(1), 45.

²Donnald, T. E., & et.al. (2022). *Hukum Kenotariatan Prinsip Kepastian Hukum Kekuatan Mengikat Akta In Originali*. Yogyakarta: Laksbang Pustaka.

³ Agustina, D. H., & Djunaedi. (2022). "Juridical Implications of Power of Attorney Imposing Mortgage as Collateral in Credit Agreements at Regional Bank Public Company". (<http://jurnal.unissula.ac.id/index.php/jk/articl>, Ed.) *Jurnal Konstaterring*, 1(1), 178.

in this case the debtor to the recipient of the power of attorney, namely the creditor to represent the principal in carrying out the granting of mortgage rights over the land owned by the attorney.⁴(Narsudin II, 2022)

The transfer of land rights before the PPAT cannot be carried out immediately due to various problems, such as: the unavailability of a permit for the transfer of rights (IPH) from the agency holding the HPL for the land over the Land Management Rights (HPL), a certificate of land rights is in the process of being settled at the land office or in the process of certifying in cases of buying and selling with developers, deletions or roya not directly carried out by the seller at the time of the original guarantee, annual taxes or Land and Building Tax (PBB) and taxes related to the transfer of land rights require a certain time to comply while credit must be disbursed immediately and binding credit and guarantees are carried out as protection for creditors. In the arena of land registration requirements, you have to wait for SSPD validation which sometimes takes a long time, besides that you have to change the transaction value and BPHTB payment amount if the value submitted by the taxpayer does not match the calculation of the authorized service.⁵(Retnanindyani, 2021) One of the notary authorities in article 15 paragraph (2) letter f Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary as a public official which making deed related to land. The implementation of this authority has limitations, namely only for deeds that are not assigned to other officials including PPAT. The authority of a Notary and PPAT sometimes creates ambiguity in meaning or legal ambiguity (vague norm), one of which is in making deeds related to land.⁶(Haryanto & Purnawan, 2021) This authority has not been specifically regulated and does not have further explanation, but is considered capable of providing solutions to the problems faced by debtors, banks and other stakeholders in the transfer of land rights that have not met the requirements for registration and signing of AJB PPAT.

Making a Sale and Purchase Agreement (PPJB) is legal findings Notary and has become a living law within the notary environment. PPJB only applies to the parties who bind themselves to the agreement. Aims to bridge the process of making a new principal agreement, namely a sale and purchase agreement or AJB before the PPAT after the registration requirements for the transfer of land

⁴ Narsudin, U. (2020). Perjanjian Pengikatan Jual Beli (PPJB) dan Permasalahannya? *Webinar : Perjanjian Pengikatan Jual Beli (PPJB) dan Permasalahannya ?* (U. Narsudin, Ed.) Notarindo.

⁵Retnanindyani, BM (2021). "The Effect of the Increase in the Selling Value of Tax Objects Land and Building Tax (NJOP PBB) on the Transfer of Land Rights at the Notary Office PPAT". (<http://jurnal.unissula.ac.id/index.php/SANLaR/arti>, Ed.) SANLaR, 3(1), 35.

⁶Haryanto, T., & Purnawan, A. (2021). "The Authority Differences of Notary and PPAT in Making of Land Deed Certificate". (<http://jurnal.unissula.ac.id/index.php/SANLaR/arti>, Ed.) SANLaR, 3(2), 518.

rights are met.⁷(Latumeten, 2021)PPJB is followed by the power of sale and becomes the basis for implementing AJB PPAT.PPJBmade temporarily so that the object of sale and purchase in the form of land rights in the PPJB cannot be bound or agreed to be transferred to another party by the owner prior to the occurrence of AJB PPAT.⁸(Pangesthi, 2021) PPJB has three functions, namely guaranteeing by law, the existence of trust from each party and minimizing risk.⁹(Khairunsyah, Purba, Sunarmi, & Sembiring, 2021)There are 2 types of PPJB that are often encountered in house buying and selling transactions, namely installment/unpaid PPJB and paid PPJB. The PPJB in this study is a paid PPJB because it is made simultaneously with the implementation of credit disbursement on credit applications made by the Debtor to the Bank to finance the settlement of the purchase of a house or land with a third party/seller and at the same time serves as a credit guarantee.PPJB is an obligatoir agreement because it has not transferred the property rights of the objects that are the object of sale and purchase and only places rights and obligations to both parties, namely placing the obligation for the seller to hand over ownership rights to the goods he sells to the buyer so that it can be said that in a sale buying land ownership rights to the land have not been transferred as long as the land has not been handed over.¹⁰(Haryani, 2021)

Porigin 1 point 11 Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Residential Areas determines PPJB is: carried out by development actors prior to construction for flats or in the process of construction for single houses and row houses which are made before a notary". PPJB is of limited use, which is intended for houses that are still in the process of being built by developers.Accommodation of PPJB regulations is more intended for consumer protection, rather than for developers.¹¹(Rosalind & Sari, 2022) Other regulations also stipulate that the PPJB may submit an application for registration by interested parties at the land office on the general register and/or certificate of land rights and the parties.party pays the tax.

⁷ Latumeten, P. (2021, 09 28). Potret Hukum PPJB dan Kuasa Jual Dalam Perkembangan Hukum. *Webinar : Potret Hukum PPJB dan Kuasa Jual Dala Perkembangan Hukum*. TF Law Centre.

⁸Pangesti, LA (2021). "Deviation from Sale & Purchase Agreement Made by A Notary in Sale of Land". (<http://jurnal.unissula.ac.id/index.php/SANLaR/arti>, Ed.) *SANLaR*, 3(1), 333.

⁹Khairunsyah, E., Purba, H., Sunarmi, & Sembiring, R. (2021). "Kedudukan Hukum Atas Perjanjian Pengikatan Jual Beli Yang Pembayarananya Dilakukan Secara Bertahap Yang Telah Dibatalkan Oleh Mahkamah Agung (Studi Putusan Mahkamah Agung Nomor: 1650 K/PDT/2015)". (<https://ejournal.uhn.ac.id/index.php/humaniora/art>, Ed.) *Visi Sosial Humaniora (VSH)*, 2(2), 261.

¹⁰Haryani, D. (2021). "Akibat Hukum Terhadap Akta Perjanjian Pengikatan Jual Beli Yang Dinyatakan Prematur Berdasarkan Putusan MA No. 680K/Pdt/2017". (<http://pdrh.law.ui.ac.id/opac/fh/abstrakpdf.jsp?id>, Ed.) *Indonesian Notary*, 3(1), 6.

¹¹Rosalind, M., & Sari, R. D. (2022). "Karakteristik Sistem Pre Project Selling Perumahan Ditinjau dari Asas Keseimbangan". (<http://jurnal.untagsmg.ac.id/index.php/duniahukum/>, Ed.) *Jurnal Ilmiah Dunia Hukum*, 7(1), 24.

The amount of PPJB tax paid has been regulated in article 3 of Government Regulation of the Republic of Indonesia Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and the Sale and Purchase Agreement on Land and/or Buildings and their Amendments. This regulation cannot be implemented by all parties because it does not yet contain a firmness in requiring every PPJB made by a Notary to be recorded in the land title book coupled with the absence of technical implementation instructions. Even though at the time of imposition of tax it was said that the subject of the tax object could be taxed, if there has been a transfer of rights from the first party (the seller) to the land rights of the second party (the buyer), but in PPJB land rights it may be said that there has not been a transfer of these rights, because at this stage there is only a binding regarding the rights and obligations of the parties, as described above that the nature of the Sale and Purchase Agreement (PPJB) is consensual and obligatory.¹²(Wijaya, Seputra, & Suryani, 2021)

PPJB's position in land transactions is only limited to preliminary agreements or assistance and not as proof of the transfer of land rights so that the granting of mortgage rights with SKMHT cannot be carried out from PPJB, but after the transfer of land rights is carried out before the PPAT. Banks often face guarantee problems as above and one of them is the BPR where the research is carried out, namely the registration requirements for the transfer of land rights are not complete and have not been made before the PPAT when granting credit. The debtor's immediate need for funds is inevitable because the seller wants to transfer his house immediately. In improving services to the community and maintaining the performance of lending, the implementation of credit must be carried out immediately. Credit disbursement by the Bank is followed by implementing the credit agreement and binding collateral preceded by SKMHT from PPJB. For a sale and purchase agreement that has been made initially in the form of a PPJB accompanied by a selling power of attorney, it is enough that only the buyer is present who then acts as the seller based on the selling power.¹³(Mulyono, 2013)

This condition can pose a risk to the Bank and normatively the implementation of collateral binding with SKMHT from PPJB is contrary to the applicable laws and regulations. SKMHT becomes invalid and null and void and has implications for further legal actions, namely the granting of mortgage rights and registration at

¹² Wijaya, N. G., Seputra, I. P., & Suryani, L. P. (2021). "Pengenaaan Pajak Pada Perjanjian Pengikatan Jual Beli Hak Atas Tanah". (<https://www.ejournal.warmadewa.ac.id/index.php/ana>, Ed.) *Jurnal Analogi Hukum*, 3(1), 69.

¹³Mulyono, B. E. (2013). "Pelaksanaan Peralihan Hak Atas Tanah Berdasarkan Perjanjian Pengikatan Jual Beli Dan Kuasa Untuk Menjual Yang Dibuat Oleh Notaris". (<http://jurnalhukum.unisla.ac.id/index.php/independ>, Ed.) *Jurnal Independent*, 1(2), 69.

the land office. Mortgage rights do not have legal certainty and the principle of publicity and the power of execution of guarantees when the debtor defaults cannot be carried out because of the position of the bank as a concurrent creditor. Based on the background above, the writer is interested in conducting further research with the title: "The Legal Position of the Credit Agreement on the Mortgage Object in the Status of the Sale and Purchase Agreement."

2. Research Methods

The type of research used is empirical normative approach legislation (statue approach). This method is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced and used as basic reference material in conducting research.¹⁴(Irwansyah, 2021) The research specifications are descriptive analytical while the data required prioritizes secondary data through the method of studying documents or library materials and primary data as a support through interviews. Data analysis using the method qualitative analysis.

3. Results and Discussion

The Legal Position of the Credit Agreement on the Object of Mortgage Guarantee in the Status of the Sale and Purchase Agreement in Settlement

The credit agreement is the main agreement that arises because of a debt relationship between the Debtor and the Creditor. According to Subekti in Johannes Ibrahim Kosasih's book, a credit agreement is in whatever form the credit is extended, in all of this what actually happens is a loan-borrowing agreement as regulated by the Civil Code articles 1754 to 1769 concerning Borrowing and Borrowing.¹⁵(Kosasih, 2019) The credit agreement is a consensual agreement that contains agreements between the parties regarding credit received by the debtor from the bank by submitting a guarantee of land rights or accompanied by a sale and purchase transaction. The preparation of the credit agreement takes into account the fulfillment of the requirements for the validity of the agreement in article 1320 of the Civil Code, namely the existence of an agreement of the parties, the ability to make an agreement as a subjective condition and a certain matter and a lawful cause as an objective requirement. Non-fulfillment of subjective conditions has the potential to be canceled by one of the parties making an agreement in court and non-fulfillment of the objective conditions of the agreement is null and void or is deemed to have never

¹⁴Irwansyah. (2021). *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media.

¹⁵Kosasih, J. I. (2019). *Akses Perkreditan dan Ragam Fasilitas Kredit*. Jakarta Timur: Sinar Grafika.

existed. The authentic nature of this deed is an element that fulfills the desire for the realization of legal certainty.¹⁶(Prabasari & Sirtha, 2021)

The credit agreement is a basic agreement or principal agreement that has a very important position in lending transactions at the Bank. The credit agreement arises because of the existence of a credit extension by the Bank to the Debtor which contains the rights and obligations of the parties during the credit period, the credit structure, the procedure for returning credit to the Bank and other agreed upon matters. The credit agreement has several functions, namely the main agreement, which means that the credit agreement is something that determines whether or not other agreements that follow it, for example a guarantee binding agreement; evidence regarding the limitations of rights and obligations between creditors and debtors and tools for monitoring credit.¹⁷In order to protect the Bank's position as a lender from default on the Debtor in the future, each credit agreement is followed by a binding guarantee of mortgage rights based on the applicable laws and regulations. Guarantees originating from the buying and selling process must be ensured that they have been carried out before the PPAT so that the guarantee requirements for the Bank are fulfilled, namely that the mortgage rights can be bound perfectly for the sake of creating legal certainty and the principle of guarantee publicity. Under certain conditions, namely because there are incomplete registration requirements at the land office, the granting of mortgage rights can be preceded by an SKMHT given by the mortgagee, namely the debtor or credit guarantor to other parties in the form of an authentic SKMHT. SKMHT is made to bridge the process of making APHT in the future and the recipient of the power of attorney can represent it for the implementation of the granting of mortgage rights. Mortgage is an additional agreement (*accessoir*) that was born because of the principal agreement or credit agreement. PThe credit agreement can also be called the main (principal) agreement which is real in nature and the guarantee agreement is the assessor.¹⁸(Diab, 2017)

The PPJB and selling authorization were made because the conditions for registering the transfer of land rights were not complete, so that the sale and purchase before the PPAT could not be carried out. PPJB is initial agreement or assistance that has the objective of preparing, confirming, strengthening, regulating, changing or completing a legal relationship, namely buying and selling

¹⁶Prabasari, A. A., & Sirtha, I. N. (2021). "Pengalihan Hak Atas Tanah Yang Objeknya Diikat Hak Tanggungan". (<https://ojs.unud.ac.id/index.php/actacomitas/artic>, Ed.) *Acta Comitas Jurnal Hukum Kenotariatan*, 6(1), 138.

¹⁷*Ibid.*, p. 76.

¹⁸Diab, A. L. (2017). "Perjanjian Kredit Pada Bank Perkreditan Rakyat (Telaah Terhadap Penerapan Perkreditan BPR Latunru Latinro)". (<https://ejournal.iainkendari.ac.id/al-adl/article/>, Ed.) *Jurnal Al-'Adl*, 10(1), 7.

before the PPAT.(Narsudin I, 2020)¹⁹ The explanation from the PPJB above makes it clear that the PPJB is not proof of the transfer of land rights but only functions as an assistance agreement in bridging the buying and selling process before the PPAT after the registration requirements are fulfilled so that the guarantee binding cannot be carried out. Several laws and regulations that can strengthen the author's argument in this study, include:

1. PP 24/1997 Concerning Land Registration:

a. Article 37, states that:"Transfers of land rights and ownership rights to apartment units through buying and selling, exchange, grants, entry into the company and other legal acts of transferring rights, except for the transfer of rights through auctions, can only be registered if proven by a deed drawn up by the PPAT who is authorized according to provisions of the applicable laws and regulations". This article explains that the transfer of land rights is legal and has been regulated in regulations regarding land registration and one of them is through buying and selling, taking into account that:

- 1) Can only be registered if it has been carried out before the PPAT or with a PPAT deed, namely AJB PPAT
- 2) Has fulfilled the requirements for land registration at the land office.
- 3) It is carried out by public officials whose authority has been determined as stipulated in the applicable laws and regulations related to land, namely Regulations for the Position of Officials Making Land Deeds.

PPJB which is a consensual agreement made by a Notary is valid and only binds the parties to the agreements made and functions as an assistance agreement or preliminary agreement made temporarily to bridge the main sale and purchase agreement process or AJB PPAT after the registration requirements for changes in registration data complete land.The meaning and function of the binding sale and purchase agreement (PPJB) made before a Notary is actually no different from the general agreement.²⁰(Hadyanto, 2021) So that the PPJB is not part of the evidence of the transfer of land rights and the basis for implementing collateral binding. The collateral binding cannot be carried out before the AJB PPAT is made.

b. Article 44 point 1, states that: "The imposition of mortgage rights on land rights or property rights on flats, the imposition of building use rights,

¹⁹N Narsudin, U. (2020). Perjanjian Pengikatan Jual Beli (PPJB) dan Permasalahannya? *Webinar : Perjanjian Pengikatan Jual Beli (PPJB) dan Permasalahannya ?* (U. Narsudin, Ed.) Notarindo.

²⁰Hadyanto, F. (2021). "Juridical Analysis of Notary Responsibilities Relating to Deed of Sale and Purchase Binding Agreement (PPJB) that Causes Disputes". (<http://jurnal.unissula.ac.id/index.php/SANLaR/arti>, Ed.) *SANLaR*, 3(3), 848.

usufructuary rights and rental rights for buildings on property rights, and other impositions on land rights or property rights on flat units determined by statutory regulations, can be registered if proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations. This article explains that the imposition of mortgage rights on land rights can only be registered if a PPAT deed, namely APHT, has been made. In this study, the basis for making APHT is SKMHT which is made simultaneously with the signing of a credit agreement with the status of land rights not being carried out by AJB PPAT or still in the form of PPJB. So it is not appropriate if the PPAT based on the existing SKMHT is used to make APHT because in this case the APHT is a follow-up agreement and SKMHT is the main agreement. If the formation of the SKMHT is not in accordance with the applicable provisions, the APHT as a follow-up agreement becomes null and void and cannot be registered at the land office.

General explanation of number 7UUHT, states that: "At the time of making SKMHT and Deed of Granting Mortgage Rights, there must be confidence in the Notary or PPAT concerned, that the Mortgage giver has the authority to take legal action against the object of Mortgage that is imposed, even though the certainty regarding having this authority is only required at the time the granting of the Mortgage is registered.

The above article aims to make the Notary/PPAT careful in making SKMHT and APHT because the legal implications and losses to third parties, namely the Bank, are at stake. Collateral can be bound when it is accompanied by adequate conditions for the transfer of rights as required by the applicable laws and regulations. The debtor has the authority to take further legal action on the guarantee provided, namely the imposition or granting of mortgage rights on the basis of the signing of AJB PPAT. QThere are 2 differences in the imposition of mortgage rights namely charges that can be directly carried out by APHT whose deed is already in the name of the debtor/guarantor of the Mortgage itself and the imposition of Mortgage rights that cannot be directly made by APHT, in other words, must be preceded by SKMHT.²¹(Faizan & Sulchan, 2020)

2. Article 1 point 11PP No 12/2021 Concerning Amendments to PP No 14/2016 Concerning Housing and Settlement Area Management, states that: "Preliminary Sale and Purchase Agreement or Sale and Purchase Binding Agreement, hereinafter referred to as PPJB, is an agreement between development actors and everyone to buy and sell houses. or units of flats which can be carried out by the developer prior to construction for flats or in the construction process for single houses and row houses which are made before a notary".

²¹Faizan, M. A., & Sulchan, A. (2020). "Credit Agreement and Notary PPAT Responsibilities for Deed of Mortgage". (<http://jurnal.unissula.ac.id/index.php/SANLaR/arti>, Ed.) *SANLaR*, 2(3), 191.

PPJB's position in land affairs has made it clear that the PPJB is a preliminary agreement and is intended for house buying and selling transactions from housing developers (developers) which is still under development. The PPJB which was agreed upon and signed becomes the main foundation which contains provisions regarding work relations, rights and obligations as well as responsibilities of both the home buying consumer and the developer.²²(Anantyo, Badriyah, & Para) PPJB as a consensual agreement for the parties made by a Notary, then the implementation is carried out based on:

a. Article 15 paragraph (2) letter f UUJN stated that Notary has other authorities in making deeds related to land". PPJB is part of the Notary's authority in making deeds related to land in the UUJN and is limited to deeds that are not assigned or excluded to other officials or other people stipulated by law, especially the PPAT. PPJB's position in land registration cannot replace AJB PPAT as strong evidence that there has been a transfer of land rights which is part of the authority of the PPAT.

b. The preparation of PPJB Notary must pay attention to article 1320 of the Civil Code and article 38 UUJN, namely the head of the deed, the body of the deed and the end or closing.

Given the various regulations above then PPJB is not appropriate if it is used for land buying and selling transactions with individuals or other legal entities with the status of buying a second house. Making PPJB with inappropriate designations will also be a new problem in land registration and land ownership status in Indonesia because PPJB is used as the basis for making buying and selling before PPAT. The notary/PPAT must be careful in using the PPJB and ensure that it returns to its designation in this provision.

3. Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to Permen ATR No 3/1997 Concerning Provisions for Implementation of PP No 24/1997 Concerning Land Registration, explains that:

a. Article 96 paragraph (1): one of the deeds made by the PPAT, namely AJB and SKMHT, the form has been determined in the provisions and the procedure for filling it out based on the attachment.

²²Anantyo, S., Badriyah, S. M., & Para, A. (n.d.). "Kekuatan Hukum Pada Perjanjian Pengikatan Jual Beli Baik Rumah dan Ruko (Kios) di Perumnas". (<https://ejournal.undip.ac.id/index.php/notarius/ar>, Ed.) *Notarius*, 14(2), 830.

b. Article 96 paragraph (3): registration of changes to land registration data with the deed and APHT cannot be made based on a deed that is not made in accordance with these provisions.

c. Explanation of filling in the attachment to the SKMHT deed in the guarantee section number 23 letter f and 24 letter g, explaining that it is only filled in if the right to the land has been owned by the right holder, but has not been registered in his name and then details the basis for the acquisition of said right, for example the date and number of the word sale and purchase. This reiterates that the SKMHT is made after an AJB has been made before the PPAT because it has fulfilled the registration requirements, not the PPJB which is not a product of the PPAT because the PPJB only functions as an assistance agreement for making a sale and purchase agreement before the PPAT.

Supported by article 8 paragraph (2) of the UUHT which stipulates that: "the authority to take legal action against the object of mortgage rights must be with the mortgage giver at the time the registration of mortgage rights is carried out". The imposition of mortgage rights in this provision can only be imposed on land rights that have already been owned by the mortgagee or have been transferred to AJB PPAT so that new land rights will exist in the future or they do not yet have proof of transfer of rights cannot be charged with mortgage rights. The granting of new mortgage rights will bind third parties, when the granting of mortgage rights is registered and announced.²³(Agustia, Mirwati, & Azheri, 2019)

Based on the results of interviews with informants from research sites at one of the private banks, namely BPRs in Batam City in the credit administration section, information was obtained that: pEfforts are made to avoid binding guarantees, namely SKMHT from PPJB, but under certain conditions, given the need for funds for debtors and to improve credit performance at banks and provide maximum service for marketing credit products to the public, several cases of debtors are carried out, taking into account that:

a. The PPJB which is made as the basis for binding collateral is the PPJB in full and is made simultaneously with the signing of the credit agreement by the Bank partner Notary.

b. The facilities provided aim to purchase residential houses (KPR), purchase assets for investment or funding productive sectors by projecting the ability to repay debtors to the Bank on time, carry out credit analysis with the 5C principle and determine *lending margins* or the amount of the value of the financing

²³Agustia, T., Mirwati, Y., & Azheri, B. (2019). "Kepastian hukum objek hak tanggungan Belum terdaftar sebagai jaminan hak Tanggungan". (<https://ejournalunsam.id/index.php/jhsk/article/view>, Ed.) *Jurnal Hukum Keadilan*, 14(2), 242.

provided is at most from 50% to 70% of the value of the collateral object. Down Payment (DP) is required at least 30% -50% of the price of the collateral object.

c. For certain considerations, the Bank requires other additional guarantees or *personal guarantee*.

d. *Concern* in monitoring the completion of incomplete land registration requirements through the Bank partner Notary so that it does not cause a long time gap in completing the requirements needed for the further process, namely the transfer of land rights and registration of mortgage rights at the land office.

e. Addendum to the credit agreement and signing the SKMHT again carried out from the date the AJB PPAT was signed.

On the other hand, interviews were also conducted in the internal audit section and information was obtained that the implementation of the binding of guarantees at the Bank must be carried out in accordance with established internal credit policies and procedures as well as compliance with the regulations of the financial services authority and its derivatives, including the laws and regulations that apply to each implementation. Binding of guarantees for collateral objects that have not fulfilled the complete requirements for land registration at the land office carried out with SKMHT from PPJB should be avoided because it is contrary to applicable laws and regulations regarding the imposition of mortgage rights.

These matters will be a concern so that credit risk mitigation can be applied more optimally in the credit distribution process, especially in binding guarantees. Collateral is one of the important instruments of protection for the Bank for the condition of the Debtor who can be negligent at any time in fulfilling his obligations. Banks must require guarantees that can be bound perfectly based on applicable regulations so that the position of the Bank is preferred over guarantees and guarantees legal certainty and the principle of guarantee publicity. If there is a breach of contract, the Mortgage will be executed, and the first Mortgage holder will get the first priority to sell the Mortgage object.²⁴(Astuti & Hartono, 2020)This is also one of the important factors in assessing the soundness of the Bank, namely the inherent risk assessment of compliance risk parameters in the application of risk management and one of them is implementing perfect binding agreements and in accordance with applicable laws and regulations because it will be one of the weak factors in the aspect of law on the parameters of weaknesses in the engagement, as contained

²⁴Astuti, P. W., & Hartono, K. (2020). "Kedudukan Pejabat Pembuat Akta Tanah (PPAT) Dalam Proses Pembebanan Hak Tanggungan Di Kabupaten Demak". *Prosiding Konferensi Ilmiah Mahasiswa Unissula (KIMU)* 3, 53.

in Appendix II of the Financial Services Authority Circular Letter Number 1/SEOJK.03/2019 Concerning the Application of Risk Management for Rural Banks, which states that: "BPR evaluates agreements made by BPR, associated by fulfilling the legal terms of the agreement as well as the weaknesses in the agreement clauses which are detrimental to the BPR. The lower the fulfillment of the legal terms of the agreement and the more weaknesses in the agreement clauses carried out by the BPR, the higher the compliance risk for the BPR, especially from a legal aspect.

Considering this is very important and has a risk impact on the Bank, these collateral binding practices are avoided for the future or by requiring other guarantees for the Debtor so that they can provide legal protection for perfect guarantees for the Bank when the Debtor defaults in the future. Someone who does not carry out or does not fulfill the achievements which are obligations in a contract that has been held, then that person is said to have committed a default.²⁵(Kusmayanti, 2021) On the other hand, the Bank can demand the implementation of the contents of the agreed credit agreement with the Debtor through a lawsuit for default in court but this requires a lot of time and costs because the guarantee of the object with the right of mortgage has a special position as contained in Article 20 UUHT which states that the right of execution is to the Bank at any time when the Debtor defaults, based on:

- a. The right of the holder of the first Mortgage Right to sell the object of the Right Dependent if the debtor defaults, the holder of the first Mortgage has the right to sell the object of Mortgage on his own power through a public auction and collect the settlement of his receivables from the proceeds of the sale.
- b. The executorial title contained in the Mortgage certificate contains irah-irah with the words "For the sake of Justice Based on Belief in the One and Only God", the Mortgage object is sold through a public auction according to the procedure specified in the laws and regulations for settlement of the Mortgage holder's receivables with prior rights over other creditors.
- c. Buyer agreement the owner of the Mortgage Right on the sale of the Mortgage object can be carried out privately if in this way the highest price that benefits all parties can be obtained.

The binding of material guarantees for land rights guarantees is registered based on the granting of mortgage rights in the form of APHT made by the PPAT after the implementation of the AJB PPAT. The guarantee binding depends on the

²⁵Kusmayanti, H. (2021). "Tindakan Hakim Dalam Perkara Gugatan Wanprestasi Akta Perdamaian Kajian Putusan Nomor : 35/Pdt.G/2007/PN.Sal". (<https://jurnal.komisiyudisial.go.id/index.php/jy/a>, Ed.) *Jurnal Yudisial*, 14(1), 103.

main agreement and vice versa the main agreement is essentially not dependent on the mortgage right. The credit agreement can be executed, but the guarantee given to the Bank does not have legal certainty and the principle of publicity and is able to place the Bank in a position as a concurrent creditor.²⁶(Sofwan, 2011)This is the background of the Bank for every credit given to the Debtor is always accompanied by the signing of the credit agreement as the main agreement and binding guarantees for the guarantee provided by the Debtor during the credit period and carried out at the same time.

Apart from being an *accessoir* agreement with the main agreement, namely the credit agreement, APHT is also in binding collateral to become an *accessoir* with SKMHT which is made together with the credit agreement. The position of the credit agreement as the principal agreement is due to the provision of credit facilities to debtors. In order to maintain the position of the Bank in the future in the event of default of the Debtor, a collateral bond is carried out with a mortgage right because the guarantee provided is in the form of land rights. Every legal action taken by the bank will determine the position of the bank as a creditor.²⁷(Kristina, 2019)In accordance with the nature of the *accessoir* of the Mortgage, the existence of the Mortgage depends on the existence of receivables that are guaranteed for repayment. Such is the nature of SKMHT as an agreement subject to collateral binding. If the making of SKMHT conflicts with the process of forming it based on the UUHT, then the follow-up agreement, namely APHT, cannot be registered at the land office and becomes null and void by law and the creditor is domiciled as a concurrent creditor. The sequence of deeds born from the process of granting mortgage rights must be carried out in accordance with UUHT and statutory regulations.

Based on the above, the legal position of the credit agreement with collateral for land rights which is still in the status of a binding sale and purchase agreement in full is a basic agreement or principal agreement for credit provided by the Bank to the Debtor which remains valid and binds the parties by fulfilling the conditions the validity of the agreement in article 1320 of the Civil Code and article 38 UJN for Notary credit agreements. As in pOrigin 1338 paragraph (1) of the Civil Code states that: "all agreements made legally apply as laws for those who make them". The credit agreement has the value of legal certainty and the parties must comply with the agreement made and mutually agreed upon and carry out all of their rights and obligations as specified in the credit agreement. KLegal certainty in a credit agreement guarantees the rights and obligations of

²⁶Sofwan, S. S. (2011). *Hukum Jaminan Di Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan*. Yogyakarta: Liberty Offset Yogyakarta.

²⁷Kristina, J. (2019). " Perjanjian Pengikatan Jual Beli Hak Atas Tanah Sebagai Jaminan Kredit Hak Tanggungan". (<http://jurnal.ukdc.ac.id/index.php/SEV/article/view>, Ed.) *Sapientia et Virtus*, 4(2), 195.

each party as stated in an authentic deed and binds the parties and also applies as law.²⁸(Widiyastuti, Purnawan, & Fairlah, 2021) While the guarantee agreement those carried out with SKMHT whose creation is contrary to applicable laws and regulations are null and void and cannot be used as a basis for granting mortgage rights and registration at the land office.

4. Conclusion

The conclusion of this study is that the legal position of the credit agreement on the object of mortgage collateral is in the status of a binding sale and purchase agreement in full with the Bank which has met the subjective requirements and objective conditions binding the parties, especially the Debtor in carrying out his achievements on all outstanding debts and as agreed in the credit agreement as the main agreement. Guarantee agreements, namely additional agreements (accessoirs) whose formation is not based on statutory regulations, preceded by SKMHT from PPJB are invalid or null and void by law and cannot be used as a basis for granting mortgage rights until registration at the land office. Canceled follow-up agreement does not end the main agreement or credit agreement and vice versa if the main agreement is canceled then the follow-up agreement is canceled or ends automatically. Suggestions from this study are notaries and PPAT not to bind collateral with mortgage rights preceded by SKMHT from PPJB because binding guarantees from SKMHT/APHT can only be carried out after the sale and purchase is carried out before the PPAT or AJB PPAT.

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²⁸Widiyastuti, O., Purnawan, A., & Adillah, S. U. (2021). "Notaries Role Analysis in Implementation of Credit Agreements & Defaults Settlement with Guaranteed Liability". (<http://jurnal.unissula.ac.id/index.php/kimuh/artic>, Ed.) *SANLaR*, 3(3), 756.

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