

## The Legal Position of SKMHT (Power of Attorney to Charge Mortgage Rights) in Working Capital Credit Engagements

Ike Sulistyaningrum<sup>1)</sup> & Ahmad Hadi<sup>2)</sup>

1) Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: [ikesulistyaningrum25@gmail.com](mailto:ikesulistyaningrum25@gmail.com)

2) Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: [ahprayitno@unissula.ac.id](mailto:ahprayitno@unissula.ac.id)

**Abstract.** *A Power of Attorney to Encumber Mortgage Rights is a letter containing a power of attorney made or given by the collateral provider or business owner, in this case the debtor as the party giving the power of attorney to the creditor as the party receiving the power of attorney to represent the power of attorney in granting mortgage rights to the creditor for the business capital of the power of attorney. . This research is an Empirical Juridical research aimed at finding out and explaining the procedures for making a Power of Attorney to Charge Mortgage Rights (SKMHT) in providing business capital credit facilities at Bank Mandiri, Tegal City, to find out and explain the legal position of a Power of Attorney to Charge Mortgage Rights (SKMHT) in granting credit. business capital at Bank Mandiri Tegal City and to find out and explain the legal consequences of a Power of Attorney Imposing Mortgage Rights (SKMHT) on debtors in default at Bank Mandiri Tegal City. The research approach used in this thesis is an empirical juridical legal research method which relies on primary data (field research) and the research specifications applied in this research are analytical descriptive with a population and the sampling technique used is non-random sampling with purposive sampling. The results of this research indicate that the procedure for making a Power of Attorney to Charge Mortgage Rights (SKMHT) must be made specifically and authentically before a Notary, preceded by the signing of a credit agreement. The position or function of a Power of Attorney to Encumber Mortgage Rights (SKMHT) is as a power of attorney addressed to the holder of mortgage rights or another party to represent the person giving the mortgage rights. In the event that the debtor defaults, the recipient of the power of attorney can proceed with making a Deed of Granting Mortgage Rights so that the creditor is a preferential creditor.*

**Keywords:** Attorney; Encumber; Mortgage; Rights.

## 1. Introduction

Banking institutions are one of the facilities that have a strategic role in procuring funds, in the form of meeting funding needs for economic activities by providing money loans or credit through banking credit, namely in the form of a credit agreement between the creditor as the lender and the debtor as the debtor. Articles 3 and 4 of Law Number 10 of 1998 concerning Banking state that the main function of Indonesian banking is, apart from collecting funds from the public, banks also channel public funds by providing credit in the form of banking credit business.<sup>1</sup>

Article 1 (11) of Law Number 10 of 1998 concerning Banking, states that, "Credit is the provision of money or bills of money equivalent to that, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest."<sup>2</sup>

The credit agreement is a predecessor agreement (*panctum de contrahendo*). Thus, this agreement precedes the debt and receivables agreement (loan-reimbursement agreement). Meanwhile, the debt and receivables agreement is the implementation of a predecessor agreement or credit agreement. It seems that this explanation is clear enough if the meaning of the predecessor in the credit agreement is differentiated from the meaning of implementing the debt and receivables agreement. The difference between a credit agreement and a debt and receivables agreement lies in their nature. Credit agreements are consensual while debt and receivable agreements are real.<sup>3</sup>

These risks, which are generally detrimental to creditors, need to be carefully considered by the bank, so that in the process of granting credit, the bank's confidence in the ability and ability of the debtor to pay the debt is required, as well as paying attention to the principles of sound bank credit, and in granting credit, always pay attention to principle 5 C, namely Character (Personality), Capacity (Ability), Capital (Capital), Condition of Economy (Economic Conditions), and Collateral (Collateral). One of the things required by banks in granting credit is that there is protection in the form of collateral that must be provided by the debtor to guarantee repayment of the debt for the sake of security and legal certainty, if after the agreed period of time the debtor does not pay off the debt or is in default.

Mortgage Rights based on UUHT Article 1 Number 1 are security rights imposed

---

<sup>1</sup>Law Number 10 of 1998 concerning Banking Articles 3 and 4

<sup>2</sup>Law Number 10 of 1998 concerning Banking Article 1

<sup>3</sup>H. Budi Untung. Indonesian Banking Credit (Yogyakarta: Andi Offset, 2011).

on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, whether or not they include other objects which are an integral part of the land. , for the repayment of certain debts, which gives certain creditors a preferential position over other creditors.<sup>4</sup>

Regarding mortgage rights, which are collateral rights over land to pay off certain debts, giving certain creditors a preferred position over other creditors, that if the debtor defaults, then the creditor holding the mortgage rights has the right to sell the object used as collateral with the creditor's prior rights. -other creditors (Article 1 point 1 of Law Number 4 of 1996).<sup>5</sup>

In principle, the imposition of Mortgage Rights must be carried out by the Mortgage Rights Giver himself, and if the Mortgage Grantor is unable to appear before the Land Deed Making Official (PPAT), then if necessary, he must appoint another party as his proxy by making a Power of Attorney to Charge Mortgage Rights (SKMHT) in the form of an authentic deed. . Meanwhile, article 15 paragraph (1) of the Mortgage Rights Law also stipulates that SKMHT must be made with a Notarial deed or PPAT deed.

In other words, even though it must be made with an authentic deed, the choice is not only to use a Notary's deed, but it can also be made with a PPAT deed. SKMHT must be given directly by the Mortgage Provider and must meet the requirements regarding its contents, as stipulated in Article 15 UUHT. Failure to fulfill the requirements regarding the content of the SKMHT will result in the relevant power of attorney being null and void, which means that the relevant power of attorney cannot be used as a basis for making an APHT. The Land Deed Making Official (PPAT) is obliged to reject the application to make an APHT if the SKMHT is not made by the Mortgage Rights Grantor himself or does not meet the requirements regarding its contents. These requirements regarding the contents show that the SKMHT was deliberately created specifically for the purpose of installing Mortgage Rights, then reflects the existence of legal certainty, certainty of the subject and object of the rights, certainty of the date of creation so that it is difficult to dispute its validity. In installing and registering Mortgage Rights, under certain conditions it is necessary to first create a SKMHT, related to the condition of the Mortgage Rights object.

Legal dynamization on the other hand is a necessity that takes into account aspects of possibility and impossibility. The routines are very diverse and have implications for the possibility of being unable to attend when the APHT is

---

<sup>4</sup>Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations

<sup>5</sup>Law Number 4 of 1996 Article 1 number 1

supposed to be signed, indicating that it is not possible to sign the deed directly at that time. In such conditions the law provides a solution by granting authority to impose mortgage rights in the form of SKMHT whose form has been determined. The function and use of SKMHT is as a tool to overcome if the person giving the Mortgage Rights cannot appear before a Notary or Land Deed Official (PPAT) and the power of attorney must be given directly by the person giving the Mortgage Rights.

## **2. Research methods**

This research uses an Empirical Juridical approach method which uses specifications Analytical Descriptive. The data used includes secondary data and primary data. Data collection comes from primary legal materials, secondary legal materials and tertiary legal materials.

## **3. Results and Discussion**

### **3.1. The Legal Position of SKMHT (Power of Attorney to Charge Mortgage Rights) in Working Capital Credit Engagements**

The credit agreement letter signed by the Debtor and Creditor is generally a letter of agreement in standard form. The role of the Notary in the Legalization of Banking Credit Agreements is based on Law Number 30 of 2004 as amended by Law Number 2 of 2014. Prepared by the creditor, this makes the position of the debtor weaker than the position of creditors as owners of funds. The procedure for making a Power of Attorney to Encumber Mortgage Rights in providing working capital credit facilities is as follows:<sup>6</sup>

1. Stages before and when making an agreement. Before a credit agreement is made, the repayment of which is guaranteed by a Power of Attorney to Charge Mortgage Rights, the parties first make an agreement about what will be formulated in the credit agreement. Agreement of will is one of the conditions for the validity of a contract, as for example stipulated in Article 1320 of the Civil Code.

As with credit agreements which are consensual in nature, the agreement exists or was born when there was an agreement between the two parties, namely the creditor and the debtor. With this agreement, the credit

---

<sup>6</sup>Dian Cahyo Wibowo, Gunarto Gunarto, Implementation of Power of Attorney Imposing Mortgage Rights in Pekalongan City, Deed Journal, Vol. 4, no. 2 (2017).

agreement binds both parties, meaning that the parties cannot cancel the credit agreement without the consent of the other party. If the credit agreement is canceled or terminated unilaterally, the other party can sue. After the money that is the object of the agreement has been handed over/disbursed by the creditor to the debtor, the debtor has the obligation to return the loan on time to the creditor according to the agreement in the agreement.

Apart from being consensual, the credit agreement is real because a delivery must be made, or in other words, the agreement can only be said to be binding if an agreement of will has been made and the delivery has been made simultaneously between the two parties making the agreement. The principle of consensualism contained in Article 1320 of the Civil Code means the "will" of the parties to achieve each other, there is a willingness to bind themselves to each other. This will generates confidence (*vertrouwen*) that the agreement is fulfilled. The principle of consensualism is closely related to the principle of freedom of contract and the principle of binding force contained in Article 1338 paragraph (1) of the Civil Code, which states "All agreements made legally are valid as law for those who make them". Even though the law guarantees freedom of contract for the parties, in practice, according to the notaries/PPAT respondents in making credit agreements, the position of the parties is generally unequal where the debtor's position is weaker than the creditor's position as owner of funds.

Before the enactment of the Mortgage Law, making a Power of Attorney to Install a Mortgage (SKMH) was something that was institutionalized. However, in the Mortgage Rights Law, making a Power of Attorney to Encumber Mortgage Rights is only permitted in special circumstances, namely if the person giving the mortgage rights cannot appear in person before the PPAT to make a Deed of Granting Mortgage Rights. In this case, the mortgage right giver is obliged to appoint another party as his attorney with SKMHT. This SKMHT is in the form of an authentic deed which can be made by either a Notary or PPAT. The substance of this SKMHT is limited to only containing legal acts imposing mortgage rights.

2. Stage of Installing a Power of Attorney to Encumber Mortgage Rights Based on Article 10 paragraph (2) of the Mortgage Rights Law, after the main agreement is entered into, the granting of mortgage rights is carried out by

making a Deed of Granting Mortgage Rights (APHT) made by PPAT in accordance with applicable laws and regulations. .

The absence of the mortgage right giver at the time of making the APHT is a reason that allows the mortgage right giver to make or use SKMHT, therefore Article 15 paragraph (1) UUHT emphasizes that the power of attorney in question must be special and authentic and must be made before a Notary or PPAT. Thus, the SKMHT installation stage is carried out in front of a Notary or PPAT and is carried out after a credit agreement has been entered into as the main agreement which contains the agreements between the parties regarding borrowing money by placing a Mortgage.

Based on the description in the general description of the research results above, the encumbrance of one or more land rights in one SKMHT can be carried out by a Notary or PPAT taking into account the ownership of these rights and based on the provisions governing them. Regarding ownership of the rights to working capital installed by SKMHT, the Notary/PPAT must pay attention in whose name the rights to working capital that will be installed by SKMHT are held. If one or more rights to working capital are owned by one person, then the identity of the owner of these rights is included in the SKMHT comparison as the authorizer.<sup>7</sup>

However, if the owners of the rights to working capital are different, then the identities of the owners of the business rights and working capital must be included in the SKMHT comparison as the authorizer. The installation of one or more rights to working capital in one SKMHT made by PPAT is carried out based on the form and content of the SKMHT which has been determined by the Regulation of the Minister of State for Agrarian Affairs/Head of BPN No. 3 of 1996 concerning the Form of Power of Attorney to Encumber Mortgage Rights, Deed of Granting Mortgage Rights, Mortgage Land Book, and Mortgage Rights Certificate. To guarantee the repayment of the debtor's debt, the first party is given this deed to and for the benefit of the second party, namely hereby stating that he accepts the Mortgage Rights regulated in the UUHT and its Implementing Regulations on the object or objects of the Mortgage Rights. It is also permissible for PPAT actions to contain one or more rights in one SKMHT because the SKMHT contains

---

<sup>7</sup> Damanik, JBV, & Badriyah, SM (2023). Legal Certainty Regarding Financing Agreements Preceded by SKMHT Without APHT. *AL-MANHAJ: Journal of Islamic Law and Social Institutions*, 5(2), 1883-1898.

provisions regarding each debt installment which will be followed by the imposition of one object of Mortgage Rights. This can happen if the parties agree on this matter and include the written promise in the SKMHT. Thus, parties through PPAT can include in the SKMHT one or more Mortgage Rights objects. After the SKMHT is signed, the Notary/PPAT checks the existence of rights to the land that will be used as the object of Mortgage Rights at the request of the creditor.<sup>8</sup>

This is done by the Notary/PPAT by making a letter of application and the Business Registration and Working Capital Section to provide information about the existence of the business that will be the object of the Mortgage Right, whether the rights to the business are suitable to be made the object of the Mortgage Right. The function and use of a Power of Attorney to Encumber Mortgage Rights is as a tool to deal with cases where the person giving the Mortgage Rights cannot appear before the PPAT and the power of attorney must be given directly by the person giving the Mortgage Rights.<sup>9</sup>

Installing Mortgage Rights is not easy, among other things, due to the following things:

- a. Must go through certain formalities;
- b. Takes a long time;
- c. Requires relatively high loading costs;
- d. The credit period given by creditors to debtors is basically too short and the amount is not too large;
- e. The object being pledged as collateral has not been certified;
- f. The creditor trusts the debtor, meaning that he feels guaranteed if he has received authority from the debtor to place a mortgage. On the other hand,

---

<sup>8</sup> Sayuna, I. (2016). Harmonization and Synchronization of Power of Attorney Laws Imposing Mortgage Rights (SKMHT) Viewed from the Authenticity of Deeds According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (Doctoral dissertation, UNS (Sebelas Maret University)).

<sup>9</sup> Subhan, M. (2020). Legal Certainty of Power of Attorney Imposing Mortgage Rights Due to Delay in Issuing Deed of Granting Mortgage Rights. *Journal de Facto*, 7(1), 23-37.



debtors also feel helped and safe by having mortgage rights installed by the creditor.<sup>10</sup>

### **3.2. Legal Position of Power of Attorney Imposing Mortgage Rights in Working Capital Loans**

Providing credit is generally carried out by banks (creditors) because a bank's income or profits mostly come from providing credit to debtors. This is in accordance with the provisions of Article 3 of Law Number 7 of 1992 concerning Banking that the main function of Indonesian banking is as a fund collector and channeler of public funds. The debtor's credit agreement only creates a Power of Attorney to Encumber Mortgage Rights on the grounds that the ownership of the business rights being guaranteed is not yet in the name of the person giving the Mortgage Rights, because the certificate of rights to the business has not been individually labeled with the name of the business. The SKMHT validity period is used to guarantee business credit agreements according to Ministerial Regulation No. 4 of 1996 is valid until the end of the validity period of the main agreement." So as long as the credit agreement lasts, the SKMHT is still valid without a Deed of Granting Mortgage Rights being made.

The purpose of granting power of attorney to impose mortgage rights is considering that the steps for installing collateral with Mortgage Rights are not easy, they have to go through certain formalities, take a long time and cost a lot, and land rights are not yet the property of the collateral provider, so sometimes credit is given by the creditor. is sufficiently guaranteed by simply obtaining power of attorney from the debtor to place collateral. The stages of making a Power of Attorney to Encumber Mortgage Rights are carried out before a Notary and carried out after a credit agreement has been established as the main agreement which creates agreements between the parties regarding borrowing money by installing Mortgage Rights. Regarding the agreement between the parties regarding submitting and receiving a Power of Attorney to Encumber Mortgage Rights as well as the willingness to accept the form of a Power of Attorney to Encumber Mortgage Rights and the rules governing it, namely that to guarantee the repayment of the debtor's debt, the first party is given this deed to and for the benefit of the second party, who hereby states that he accepts the

---

<sup>10</sup> Rifai, F., Endrawati, L., & Madjid, A. (2016). Juridical Analysis of the Provisions for a Power of Attorney to Encumber Certain Credit Rights (SKMHT) as an Effort to Create Balanced Legal Protection for Creditors (Banks). Brawijaya University.



Mortgage Rights regulated in the Mortgage Rights Law and its implementing regulations for the object or objects of the Mortgage Rights.<sup>11</sup>

Before the Power of Attorney to Encumber the Mortgage Rights is signed, the Notary/PPAT checks the existence of rights to the land and business that will be used as the object of the Mortgage Rights at the request of the Bank. This is done by the Notary/PPAT by making a letter of application to the National Land Agency office of the land registration section to provide information about the existence of the land which will be used as the object of the Mortgage Right, whether the right to the land is in the name of the prospective person giving the Mortgage Right, whether the right to the land is free from disputes, and whether the land rights are being encumbered with mortgage rights and at what rank the last Mortgage Right is above the land rights that will be used as the object of the Mortgage Rights.

Making a Power of Attorney to Encumber Mortgage Rights is preceded by a promise to encumber the object of the Mortgage Rights. A Power of Attorney to Encumber Mortgage Rights is made by a Notary or PPAT who is authorized and appointed to make deeds of transfer of land rights and other legal deeds.

The Deed of Power of Attorney to Encumber Mortgage Rights has a function, apart from being a special power of attorney addressed to the holder of mortgage rights or another party to represent the person giving the mortgage right to appear before a notary official to carry out the assignment of mortgage rights, as well as a form of binding credit guarantee to provide guarantees to parties bank as creditor. Indeed, this method is very practical and does not require expensive costs. Moreover, if the debtor in implementing the agreement fulfills the agreement as specified, it will make things very easy for the debtor.

If the bank credit agreement that has been signed by the parties is the main agreement, this means that the agreement providing collateral has the status of an additional agreement. The consequence of an additional agreement is that if the main agreement ends, the additional agreement also ends. However, if the additional agreement ends, it does not necessarily mean that the main agreement will end. A power of attorney to impose mortgage rights is not a

---

<sup>11</sup> Putri, FAW (2023). PERSPECTIVE OF CERTAIN CREDIT COLLATERALS WHICH ARE BOUND BY SKMHT (POWER OF ATTORNEY TO CHARGE MONITORING RIGHTS) AS A LEGAL PROTECTION MEASURE FOR CREDITORS. *Journal of Basic Education and Social Humanities*, 2(9), 1293-1300.

guarantee institution like existing guarantee institutions such as mortgage rights or fiduciaries. However, if the Power of Attorney to Encumber the Mortgage Rights is followed up into a Deed of Granting Mortgage Rights and the Deed of Granting Mortgage Rights is registered at the local National Land Agency Office by issuing a Mortgage Rights Certificate, then a Mortgage Guarantee Institution will arise.

A description of the position of the Power of Attorney to Encumber Mortgage Rights is as follows:

1. It does not have a (strong) collateral value because the holder of the Power of Attorney to Encumber the Mortgage Rights does not have the position as a preferred creditor for the business capital planned to be encumbered with the Mortgage Rights. (This creditor's position is only as an ordinary creditor).
2. There is a risk of loss for the bank if the debtor suddenly goes bankrupt or breaches his contract (default).
3. It does not have the principle of specialization in order to provide legal certainty and certainty of rights.
4. Failure to comply with the principle of publicity. The Mortgage Rights granted by the PPAT deed must be registered with the National Land Agency in the field of Land Registration (so that the land encumbrance can be known by the wider public). Then it is recorded in the Land Book, and as proof a Mortgage Rights certificate is issued.

### **3.2. Efforts to Settle Credit Agreements Based on Power of Attorney Imposing Mortgage Rights (SKMHT) When a Debtor Defaults**

In practice, credit agreements accompanied by making a Power of Attorney to Charge Mortgage Rights, whether carried out by Bank Mandiri Tegal City or by a Notary Public, within the time period for making a Power of Attorney to Charge Mortgage Rights are not in accordance with the provisions in Article 15 paragraph (3) of the Mortgage Rights Law. which reads: "A Power of Attorney to Encumber Mortgage Rights regarding rights to registered business capital must be followed by a Deed of Granting Mortgage Rights no later than 1 (one) month after it is given."

Apart from that, according to Article 15 paragraph (4) of the Mortgage Rights Law, a power of attorney to impose mortgage rights regarding land rights that have not been registered must be followed by a deed granting mortgage rights no later than 3 (three) months after it is given. According to the bank, the delay in following up on the Power of Attorney to Charge Mortgage Rights is due to the long time required in practice for the process of making a Power of Attorney to Charge Mortgage Rights, sometimes exceeding 1 (one) month. In connection with the Power of Attorney to impose Mortgage Rights which expired, there was a delay on the part of PPAT in making the Deed of Granting Mortgage Rights. This condition occurred because data was not detected when making the Power of Attorney to Encumber Mortgage Rights, so that the time period was negligent on the part of the PPAT and the preparation of the Deed of Granting Mortgage Rights was late. The result of this delay is that the Power of Attorney to Charge Mortgage Rights cannot be used and is null and void by law.<sup>12</sup>

In reality, making a Power of Attorney to Charge Mortgage Rights is used as a bridge for making a Deed of Granting Mortgage Rights at a later date because at that time a Deed of Granting Mortgage Rights could not yet be made so you had to use a Power of Attorney to Charge Mortgage Rights first, for example when making a credit agreement deed you should followed by making a Deed of Granting Mortgage Rights, but because the business permit was in the licensing process, the Deed of Granting Mortgage Rights could not be made at that time.

If the creditor agrees, at that time a credit agreement deed and Power of Attorney to Encumber the Mortgage will be made, while the Deed of Granting Mortgage Rights will be drawn up at a later date, namely after the transition process is complete. The Power of Attorney to Charge Mortgage Rights provides a strong position to the creditor because the Power of Attorney to Charge Mortgage Rights cannot be withdrawn and cannot be used because its term has expired. What needs to be taken into account is the validity period of the Power of Attorney to Charge Mortgage Rights because the Power of Attorney to Charge Mortgage Rights will be invalid for law when the validity period expires.<sup>13</sup>

---

<sup>12</sup> Badriyah, SM, Suharto, R., & Kashadi, K. (2019). Legal Implications of Using a Power of Attorney to Encumber Mortgage Rights as Collateral in Home Ownership Credit Agreements. *Law, Development and Justice Review*, 2(1), 58-71.

<sup>13</sup> Silviana, A. (2020). FUNCTION OF A POWER OF ATTORNEY TO ASSEMBLY MORTGAGE RIGHTS (SKMHT) IN GRANTING MONITORY RIGHTS (Perspective Study of Law No. 4 of 1996 concerning Mortgage Rights and Objects Related to Land). *Diponegoro Private Law Review*, 7(1), 28-39.

It is recommended that the PPAT have a special list or record of all the Power of Attorney to Encumber the Mortgage that it makes so that it is easy to control to know when the validity period of the Power of Attorney to Encumber the Mortgage that it makes. A Power of Attorney to Encumber Mortgage Rights whose validity period has expired cannot be used any longer as a basis for the right to make a Deed of Granting Mortgage Rights. If this happens, it can cause weaknesses or potential losses for creditors. It must be reminded that a power of attorney to impose mortgage rights that has expired causes the power of attorney to impose mortgage rights to be invalid by law.

Thus, it can be concluded that the SKMHT validity period cannot be extended, therefore PPAT must seriously pay attention to and take into account the SKMHT validity period so that there are no problems when an APHT is made because the SKMHT validity period has ended. In the agreement there is a possibility that one of the parties does not fulfill the achievements which is said to be a default. Forms of default can be:

- a. Not doing what he said he would do;
- b. Carrying out what was promised, but not as promised;
- c. Doing what was promised but being late;
- d. Doing something according to the agreement is not permissible to do

In the event that the debtor is in default, based on Article 1276 of the Civil Code, the creditor can sue for the following matters:

- a. Fulfill/implement agreements;
- b. Fulfilling the agreement is accompanied by the obligation to pay compensation;
- c. Pay compensation;
- d. Cancel the agreement; And
- e. Canceling the agreement is accompanied by compensation.

If the debtor is in default and the creditor has material security rights, one of which is a mortgage right, the creditor can exercise his rights based on Article 20 UUHT, namely:

1. Based on the right of the first Mortgage Rights holder to sell the Mortgage Rights object as intended in Article 6, or
2. Based on the executorial title contained in the Mortgage Rights certificate as intended in Article 14 paragraph (2), the Mortgage Rights object is sold through a public auction according to the procedures specified in the statutory regulations for repayment of the Mortgage Rights holder's receivables with prior rights over creditors. other.
3. Upon agreement between the giver and the holder of the mortgage right, the sale of the object of the mortgage right can be carried out privately if by doing so the highest price can be obtained which is beneficial to all parties. In providing credit facilities for binding working capital credit at Bank Mandiri, Tegal City, you only need to make a power of attorney to charge.

Mortgage Rights (SKMHT) whose validity period is according to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 4 of 1996 are valid until the end of the validity period of the main agreement. So as long as the Credit agreement lasts, the SKMHT is still valid, without a Deed of Granting Mortgage Rights (APHT) being made.<sup>14</sup>

The purpose of granting power of attorney to impose mortgage rights (SKMHT) in connection with the steps for installing collateral with mortgage rights is not easy, it must go through certain formalities, takes a long time and costs a lot, and the land rights are not yet the property of the debtor or collateral provider, so for credit provided by creditors who feel that they are sufficiently guaranteed if they have received authority from the debtor to place collateral.

For defaulting debtors who only have a Power of Attorney to Encumber the Mortgage, the Mortgage has not yet occurred. Therefore, creditors do not have the same rights as mortgage recipients, and therefore cannot carry out execution in the same manner as the method of executing mortgage rights objects as regulated in Article 20 UUHT. Creditors also do not have the position of preferred creditors. In this case, the creditor can only file a lawsuit in court if the debtor is

---

<sup>14</sup> Risa, Y. (2017). Legal Protection for Creditors for Debtor Defaults in Credit Agreements with Mortgage Guarantee. *Normative Legal Scientific Journal*, 5(2 November), 78-93.

in default, because there is no special guarantee in the form of material collateral and only a general guarantee as stipulated in Article 1131 of the Civil Code that all assets belonging to the debtor become collateral for the debtor's obligations to creditors. Article 1132 of the Civil Code states that all assets belonging to the debtor become joint collateral for the creditors and the distribution is equal according to the size of their respective receivables, unless there are valid reasons for prioritizing one receivable over another.<sup>15</sup>

Based on the Decree of the Director of Bank Indonesia No. 26/22.KEP/DIR dated 29 May 1993 and Bank Indonesia Circular Letter (SEBI) No. 26/4/BPPP dated 29 May 1993 regarding several efforts that can be carried out by banks, namely:

a. Rescheduling is a change in credit terms that only concerns the schedule or time period. Banks provide concessions to debtors to pay their debts that are due by postponing the due date. The bank will ask how long the debtor will be able to pay off the credit.

b. Reconditioning is a change in part or all of the credit terms which is limited to changes in the payment schedule, time period and other terms as long as they do not affect the maximum credit balance. The main aim is to strengthen the bargaining position between banks and debtors, one of the efforts is to change the conditions for providing credit guarantees. If the bank feels that the value of the collateral provided is insufficient, the bank is obliged to ask the debtor to add collateral of a type and value acceptable to the bank.

c. Restructuring, namely changes to credit terms involving:

1. Add bank funds or,

2. Convert all or part of the interest arrears into new credit.

3. Conversion of all or part of the credit into company capital participation.

Article 12 of the Business Capital Credit Agreement made by Bank Mandiri regulates "Execution of collateral", that:

---

<sup>15</sup> Natalia, T.S. (2018). Consequences of Bankruptcy Law on Creditors Holding Mortgage Rights in Executing Mortgage Rights. *Sriwijaya Journal of Management and Business*, 16(3), 153-163.

- a. If the debtor cannot fulfill his obligation to pay the repayment even though he has received warnings from the bank, the bank has the right to carry out execution of the collateral it holds, in the manner and at a price deemed appropriate by the bank within the limits provided by law. as well as other legal regulations.
- b. The proceeds from the execution and/or sale of the collateral are used to pay off the debtor's remaining debt to the bank, including all costs incurred by the bank to carry out the execution of the collateral.
- c. If the proceeds from the sale or execution of credit collateral are not sufficient to pay off the debtor's entire debt to the bank, the bank has the right to take payment for the remaining debt from the sale of other goods belonging to the debtor appointed by the debtor as collateral for this credit.

Other legal measures taken by the bank are also regulated in Article 10 paragraph (1) of the Bank Mandiri agreement, that "the bank has the right and can immediately collect payment at once for all remaining debts owed by the debtor to the bank, and the debtor is obliged to pay it immediately and simultaneously. paid off in case:

- a. The debtor is in breach of contract as regulated in Article 11 of this Bank Mandiri credit agreement.
- b. It is no longer possible for the debtor to fulfill his obligations, among other things because he dies, is dismissed from the relevant agency, is sentenced to a criminal sentence, or is physically disabled.
- c. The debtor's assets provided as collateral for credit have been destroyed.

Article 11 paragraph (2) of the Bank Mandiri credit agreement states "if after receiving a warning from the bank, the debtor is unable to pay off all remaining obligations to the bank, then the bank has the right to order the debtor to vacate the house and land which have been pledged by the debtor to the bank, no later than no later than 30 (thirty) days starting from the bank warning date."

If the debtor does not vacate the house within that time period, the bank has the right to request assistance from the authorities to remove the debtor and vacate the house. Default comes from the Dutch term wanprestatie, which means



failure to fulfill the performance or obligations that have been determined for certain parties in an agreement, whether an agreement that arises from an agreement or an agreement that arises due to law. Wirjono Prodjokikoro said that default is the absence of a performance in contract law, meaning something that must be carried out as the contents of an agreement. Perhaps in Indonesian the term "implementation of promises for performance and non-implementation of promises for default" can be used.<sup>16</sup>

The process of resolving debtors in default with credit conditions in the bad category at Bank Mandiri, Tegal City basically begins with making an APHT using a Power of Attorney to Charge Mortgage Rights which has been signed by the debtor. If the debtor defaults by being in arrears for 90 days, then based on the SKMHT that has been signed by the debtor, the debtor will proceed to the process of making a Deed of Granting Mortgage Rights (APHT).<sup>17</sup>

#### **4. Conclusion**

Making a Power of Attorney to Encumber Mortgage Rights must explain in detail the main elements contained therein, if it is not clear then it will be difficult to use as a basis for making a Deed of Granting Mortgage Rights related to a debtor in default. In the event that the debtor is in default, based on Article 1276 of the Civil Code, the creditor can sue for the following things: 1) Fulfilling/implementing the agreement, 2) Fulfilling the agreement with the obligation to pay compensation, 3) Paying compensation, 4) Cancelling the agreement, and 5) Cancelling the agreement is accompanied by compensation

#### **5. References**

##### **Journals:**

Dian Cahyo Wibowo, Gunarto Gunarto, Pelaksanaan Surat Kuasa Membebaskan Hak Tanggungan di Kota Pekalongan, Jurnal Akta, Vol.4, No. 2 (2017).

---

<sup>16</sup> Kenly, M. (2022). Legal Remedies for Debtors for Collateral Objects Auctioned Without Going Through Credit Restructuring by Banks (Civil Decision Study Number 18/Pdt. G/2019/PN. Mks). Al-Hikmah Legal Journal: Communication Media and Information on Law and Society, 3(3), 610-631.

<sup>17</sup>Badriyah Harun. 2010. Problematic Credit Dispute Resolution. Yogyakarta: Pustaka Yustisia.

- Damanik, J. B. V., & Badriyah, S. M. (2023). Kepastian Hukum Terhadap Perjanjian Pembiayaan Didahului SKMHT Tanpa APHT. *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 5(2), 1883-1898.
- Somov, A. *Wildfire Safety With Wireless Sensor Networks*. Canada: EAIPress, 2011. (Book)
- Sayuna, I. (2016). *Harmonisasi dan Sinkronisasi Hukum Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Ditinjau Dari Otentisitas Akta Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris* (Doctoral dissertation, UNS (Sebelas Maret University)).
- Subhan, M. (2020). Kepastian Hukum Surat Kuasa Membebaskan Hak Tanggungan Akibat Keterlambatan Menerbitkan Akta Pemberian Hak Tanggungan. *Journal de Facto*, 7(1), 23-37.
- Rifai, F., Endrawati, L., & Madjid, A. (2016). *Analisis Yuridis Terhadap Ketentuan Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Kredit Tertentu Sebagai Upaya Mewujudkan Keseimbangan Perlindungan Hukum Bagi Kreditur (Bank)*. Brawijaya University.
- Putri, F. A. W. (2023). PERSPEKTIF AGUNAN KREDIT TERTENTU YANG DIKAT SKMHT (SURAT KUASA MEMBEBAKANKAN HAK TANGGUNGAN) SEBAGAI UPAYA PERLINDUNGAN HUKUM KREDITUR. *Jurnal Pendidikan Dasar dan Sosial Humaniora*, 2(9), 1293-1300.
- Badriyah, S. M., Suharto, R., & Kashadi, K. (2019). Implikasi Hukum Penggunaan Surat Kuasa Membebaskan Hak Tanggungan Sebagai Jaminan Dalam Perjanjian Kredit Pemilikan Rumah. *Law, Development and Justice Review*, 2(1), 58-71.
- Silviana, A. (2020). FUNGSI SURAT KUASA MEMASANG HAK TANGGUNGAN (SKMHT) DALAM PEMBERIAN HAK TANGGUNGAN (Studi Perspektif UU No. 4 Tahun 1996 Tentang Hak Tanggungan Beserta Benda-Benda Yang Berkaitan Dengan Tanah). *Diponegoro Private Law Review*, 7(1), 28-39.
- Risa, Y. (2017). Perlindungan Hukum Terhadap Kreditur Atas Wanprestasi Debitur Pada Perjanjian Kredit Dengan Jaminan Hak Tanggungan. *Normative Jurnal Ilmiah Hukum*, 5(2 November), 78-93.

Natalia, T. S. (2018). Akibat Hukum Kepailitan Terhadap Kreditor Pemegang Hak Tanggungan dalam Eksekusi Hak Tanggungan. *Jurnal Manajemen dan Bisnis Sriwijaya*, 16(3), 153-163.

Kenly, M. (2022). Upaya Hukum Bagi Debitur Atas Objek Jaminan Yang Dilelang Tanpa Melalui Restrukturisasi Kredit Oleh Perbankan (Studi Putusan Perdata Nomor 18/Pdt. G/2019/PN. Mks). *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 3(3), 610-631.

#### **Books:**

Badriyah Harun.2010. *Penyelesaian Sengketa Kredit Bermasalah*. Yogyakarta: Pustaka Yustisia.

H. Budi Untung. 2011.*Kredit Perbankan Indonesia*. Yogyakarta: Andi Offset.

Hadi, Sutrisno, 2000. *Metodologi Reseach, Jilid I*. Yogyakarta: Penerbit ANDI.

Moloeng, L. 2012. *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya. Hal. 206

Muchtar Kusumaatmadja dan B. Arief Sidharta. 2000. *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*. Bandung: Alumni.

O.P. Simorangkir. 1998. *Seluk Beluk Bank Komersial*. Jakarta: Aksara Persada Indonesia.

#### **Internet:**

[https://scholar.google.com/scholar?q=related:UypO2pQnCL0J:scholar.google.com/&scioq=&hl=id&as\\_sdt=0,5#d=gs\\_cit&t=1702048647260&u=%2Fscholar%3Fq%3Dinfo%3AUypO2pQnCL0J%3Ascholar.google.com%2F%26output%3Dcite%26scirp%3D0%26hl%3Did](https://scholar.google.com/scholar?q=related:UypO2pQnCL0J:scholar.google.com/&scioq=&hl=id&as_sdt=0,5#d=gs_cit&t=1702048647260&u=%2Fscholar%3Fq%3Dinfo%3AUypO2pQnCL0J%3Ascholar.google.com%2F%26output%3Dcite%26scirp%3D0%26hl%3Did)

<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/31500>

[http://repository.unissula.ac.id/26360/1/21302000037\\_fullpdf.pdf](http://repository.unissula.ac.id/26360/1/21302000037_fullpdf.pdf)

<https://www.neliti.com/id/publications/146241/tinjauan-yuridis-kedudukan-surat-kuasa-menurut-undang-undang-nomor-4-tahun-1996>

Virda Yani. *Makalah Penegakan Hukum Indonesia*, artikel ([https://www.academia.edu/12114512/Makalah\\_penegakan\\_hukum\\_indonesia?auto=download](https://www.academia.edu/12114512/Makalah_penegakan_hukum_indonesia?auto=download)). Accessed on 18 May 2023

Wika. *Keadilan Dari Dimensi Sistem Hukum*. Artikel ([http://hukum.kompasiana.com.\(02/04/2011\)](http://hukum.kompasiana.com.(02/04/2011))). Accessed on 18 May 2023

### **Regulations:**

Law Number 10 of 1998 concerning Banking Articles 3 and 4

Law Number 10 of 1998 concerning Banking Article 1

H. Budi Untung. *Indonesian Banking Credit* (Yogyakarta: Andi Offset, 2011).

Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations

Law Number 4 of 1996 Article 1 number 1

Republic of Indonesia Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials.

### **Interview:**

Interview with Mr. Saputra Iriyanto as Micro Banking Manager Bank Mandiri, on November 02, 2023

Interview with Ms. Dheka as Bank Mandiri Credit Analyst, on November 02, 2023