

The Power Position of Attorney to Encumber Mortgage Rights (SKMHT) in a Credit Agreement as a Binding Guarantee for Mortgage Rights

Reksi Yanuar Anantio¹⁾ & Widayati²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: reksiyanuar@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: taufan@unissula.ac.id

Abstract. *The aim of this study to find out and analyze the position of a Power of Attorney for Imposing Mortgage Rights (SKMHT) in a credit agreement as a binding guarantee for Mortgage rights and to find out, analyze obstacles and find solutions to implementing the imposition of Mortgage Rights with a Power of Attorney for Imposing Mortgage Rights (SKMHT) based on Law No. 4 of 1996. This study uses empirical juridical research methods, in this study using primary data in the form of interviews and documentation. Based on the research it was concluded that 1) The position of the Power of Attorney for Imposing Mortgage Rights (SKMHT) in a credit agreement as a binding guarantee for Mortgage is very important. SKMHT functions as a legal instrument that provides legal certainty for creditors and debtors in credit agreements. SKMHT strengthens the guarantee of mortgage rights by giving creditors the power to register mortgage rights for collateral objects. In the context of legal protection, SKMHT protects the interests of creditors and debtors and ensures balance and justice between the two. 2) In carrying out the imposition of mortgage rights with a Power of Attorney for Imposing Mortgage Rights (SKMHT) based on Law No. 4 of 1996, there are several obstacles that can interfere with legal certainty. Some of these obstacles include ambiguity or deficiencies in the preparation of SKMHT, administrative problems in the registration process, rejection or obstacles from the Land Office. To overcome these obstacles, several solutions need to be implemented such as clear and accurate SKMHT preparation, increasing the efficiency of the registration process.*

Keywords: Agreements; Attorne; Credit; Mortgage.

1. Introduction

As community activity increases in the field of economic development, the capital factor certainly plays a very important role. The need for capital to facilitate production activities is largely obtained through credit activities. Banks are financial institutions that can provide funds in the form of loans to the community for business development. Considering the importance of the position of credit funds, it is appropriate for credit givers and recipients to receive protection through strong guarantee institutions that can provide legal certainty. Credit agreements are always related to binding collateral. This is done by the Bank so that the Bank can be assured that the credit given to its customers can be used according to their needs and can be returned safely.

The existence of collateral bound in the form of a guarantee imposition agreement will be able to reduce risks that may occur if the recipient of the credit defaults or is unable to return the credit or loan. Thus, the guarantee in this credit agreement aims to guarantee that the debtor's debt will be paid in full.¹

Land is collateral for payment of credit repayments to Banks providing credit facilities. Land is generally easy to sell, the price keeps increasing and has proof of title. Article 1 paragraph (1) of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as the Mortgage Law) stipulates:

Mortgage, is a guarantee right that is imposed on land rights as referred to in Act Number 5 of 1960 concerning Basic Agrarian Regulations, including or not including other objects that are an integral part of the land, for the settlement of certain debts , which gives priority to certain creditors over other creditors;

Mortgage Rights are a strong security rights institution for immovable objects in the form of land used as collateral, because they provide a higher position (priority) for creditors holding Mortgage Rights compared to other creditors.²

The advantage of the Mortgage Right is that it has the same executorial power as a court decision that has obtained permanent legal force. So that if the debtor defaults, then based on the executorial title contained in the Mortgage Certificate, the Mortgage holder can request the execution of the Mortgage Certificate to the Chairperson of the authorized District Court. Then the execution will be carried out like the execution of a decision that has permanent legal force. There is no need to file lawsuits and proceedings in court which will take a long time and incur substantial costs.

¹Adrian Sutedi, "The Law of Mortgage", (Jakarta: Sinar Graphic, 2012), p. 24.

²Ibid. p. 17.

The process of imposing Mortgage Rights in order to provide legal certainty must be attended by debtors and creditors to sign the Deed of Granting Mortgage Rights (hereinafter referred to as APHT) before the Land Deed Making Officer. However, there are times when it turns out that when the time is set for signing the deed, the debtor is unable to attend, so the law determines that a Power of Attorney for Imposing Mortgages (hereinafter referred to as SKMHT) can be given to the recipient of the Mortgage (Bank) in the form of an authentic deed.³

Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) determines "An authentic deed is a deed which, in the form determined by law, is made or made in the presence of public officials who have authority for that purpose in the place where the deed is made." Furthermore, Article 1 number 7 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries (hereinafter referred to as the Law on the Position of Notaries) determines "A notarial deed is an authentic deed made by or in the presence of a Notary according to the form and procedures stipulated in this Law.

The strength of an Authentic Deed as a means of proof is determined in Article 1870 of the Civil Code, "An Authentic Deed provides between the parties and their heirs or people who have rights from them, complete or perfect and binding evidence regarding what is contained in it." From the provisions of Article 1870 of the Civil Code, an Authentic Deed has absolute evidentiary power, especially if the deed contains an agreement that is binding on both parties making the agreement. So, if there is a dispute between the parties making the agreement, then what is stated in the Authentic Deed is perfect evidence, so it no longer needs to be proven with other means of evidence.⁴

An authentic deed made by a notary must be made in a form that has been determined by law, this is one of the characteristics of a notary deed. Notarial deed as evidence in order to have perfect evidentiary power, if all procedural provisions and procedures for making a deed are met. If there are procedures that are not fulfilled and the procedures that are not fulfilled can be proven, then the deed through court proceedings can be declared as a deed that has the power of proof as a private deed. If it is in such a position, then the value of the evidence is handed over to the judge.⁵

The Law on the Position of Notaries has determined the form and structure of the deeds they make. The existence of the form of deed listed in the Law on Notary

³Shinta Andriyani, "Judicial Study of Power of Attorney Imposing Mortgage Rights According to Law NO 2 of 2014 concerning Notary Positions". *Jatiswara Law Journal*. 2017, p. 12.

⁴R. Soegondo Notodisoerjo, "Notary Law in Indonesia An Explanation", (Jakarta: Raja Grafindo Persada, 1993), p. 43.

⁵Habib Adjie, "Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary Public, Second Edition, (Bandung: Refika Aditama, 2007), p. 77.

Positions will make it easier for Notaries to carry out their authority. The form of a Deed made before a Notary includes 3 (three) things, as follows:

1. Beginning of Deed or Head of Deed;
2. Deed Body;
3. End or Closing of the Deed.

One of the Final or Closing Sections of the Deed includes a description of the reading of the deed, a description of the signing and the place where the deed was signed, if any. Article 44 of the Notary Position Law determines:

Immediately after the deed was read, the deed was signed by each appearer, witness and Notary, except if there were appearers who were unable to sign by stating the reasons.

The meaning of a signature in a deed is to determine the validity of the legal acts made by the parties contained in the deed.⁶

In practice it is not uncommon that the signing of a Notarial deed by one of the parties is not carried out in the presence of a Notary Public. This situation also occurs when signing Notarial deeds related to the banking world, such as signing SKMHT. As a result, the SKMHT can be degraded into a private deed. This of course also affects the strength of the evidence before the court.

Based on the description above, this research aims to find out and analyze the position of a Power of Attorney for Imposing Mortgage Rights (SKMHT) in a credit agreement as a binding guarantee for Mortgage rights and to find out, analyze obstacles and find solutions for implementing the imposition of Mortgage Rights with a Power of Attorney for Imposing Mortgage Rights (SKMHT) based on Law No. 4 of 1996.

2. Research Methods

This study uses qualitative research methods by going directly to the field to obtain data by building a theory from the data found. This type of research is juridical-empirical in nature, meaning that legal research is studied and then examined as law in action studies or studying, researching and analyzing the interrelationships between law and related social institutions. The author uses a juridical-empirical type of research because the data needed is a distribution of

⁶Salim HS, "Technique for Making a Deed One (Theoretical Concept, Authority of a Notary, Form and Minuta of the Deed)", (Jakarta: Rajawali Pers, 2016), p. 85.

information that does not need to be quantified. Dissemination of information obtained by researchers from observations and interviews with sources, so that authors will know the results obtained for further study and analysis based on the laws and regulations that regulate them. The analysis process is carried out by researchers using descriptive analysis by providing an accurate picture of individual characteristics, circumstances, symptoms and other symptoms in society. The steps taken by the author to analyze include data collection, data reduction, data presentation, and drawing conclusions or data verification.⁷

3. Results and Discussion

The position of the Power of Attorney for Imposing Mortgage Rights (SKMHT) in the Credit Agreement as a Binding Guarantee for Mortgage Rights

Encumbering Mortgage can be done in two ways, namely firstly the Mortgage giver comes directly to give it before the PPAT by directly signing the APHT, secondly imposing the Mortgage by using SKMHT as a basis for acting in granting Mortgage. The second method is used if the mortgage right giver cannot appear directly before the PPAT.

A power of attorney, in general, is a letter containing the delegation of authority from the power of attorney as the owner of the power to the recipient of the power of attorney, to carry out the authority or represent the interests of the owner of the authority or the original giver of the power of attorney in a certain event. In the Civil Code it is explained that "the granting of power (lastgeving) is an agreement by which a person gives power to another person, who receives it to carry out an affair on his behalf."⁸

Basically, the grant of power of attorney is given in the form of an agreement between the principal and the recipient of the power of attorney to carry out a certain action or business. Therefore, regarding the validity of the grant of power of attorney, it must also contain the conditions for the validity of an agreement. Where in the agreement, there are subjective conditions, namely the agreement of those who bind themselves and the ability to make an agreement, then objective conditions, namely a certain thing and a lawful cause. Provisions regarding subjective terms and objective conditions that apply in general in the granting of power of attorney, basically also apply in making SKMHT. This is because the substance contained in the SKMHT based on statutory regulations is included in the category of granting power of attorney.

⁷Miles, Matthew B. and A. Michael Huberman. (2005). *Qualitative Data Analysis* (translation). Jakarta: UIPress. p. 6.

⁸Provisions of Article 1792 of the Civil Code.

According to Alwesius, "SKMHT is a letter or deed containing the power of attorney granted by the Collateral Giver/Land Owner (Author) to the Authorized Party to represent the Authorizer to carry out the granting of Mortgage Rights to Creditors over land belonging to the Authorizer".⁹

SKMHT given by the Mortgage giver cannot be made verbally or made using a letter or deed of attorney under the hand and must be in a special power of attorney. In UUHT provisions, SKMHT must be made with a notarial deed or PPAT deed.¹⁰

In addition to the above, in making SKMHT which is the basis for making APHT, you still have to pay attention to the authority possessed by the authorizer as the right holder. The extent to which the principal has the right to act on the object of the Mortgage. This is because, in the land registration system, the principle of *nemo plus iuris* is known, which states that basically everyone can only be justified in transferring the rights he has, it is not justified to transfer rights that do not belong to him.

In general, the implementation of the imposition of mortgage rights on land is usually preceded by the existence of a principal agreement, namely a loan agreement or also known as a credit agreement. The legal relationship between the Notary and the Bank is usually referred to as the relationship between the bank partner/cooperation partner, the stages that must be carried out in implementing the credit agreement are generally as follows:¹¹

1. The Bank sends an order in advance to the Notary/PPAT to ask for and prepare all the deeds and documents needed in making the Credit Agreement;
2. After receiving the order and the required files, the Notary immediately prepares the deed and checks the certificate of ownership used as collateral for the credit in advance to the local BPN office.
3. If the checking results have come out of the BPN office and the deeds desired by the bank have been prepared by the Notary/PPAT, the Notary notifies the bank to immediately carry out the credit agreement by making a promise about the time the credit agreement is signed by both parties which in this case is debtors with creditors conducted before a Notary/PPAT.

⁹Alwesius, "Power of Attorney Imposing Mortgage Rights (SKMHT Must Be Made By Notary Or PPAT)", 24 January 2022, <http://alwesius.blogspot.com/2011/09/blog-post.html>, (07.51).

¹⁰Provisions of Article 15 paragraph (1) of the Law of the Republic of Indonesia Number 4 of 1996

¹¹Nina, Legal Staff of Bank Artha Puspa Mega, Interview 26 May 2023.

4. In accordance with the agreed date, day and time, the parties are required to appear before a Notary/PPAT to carry out the credit agreement.

In practice, the imposition of Mortgage can be made directly by APHT where the certificate is already in the name of the debtor or the guarantor of the Mortgage itself, and preceded by SKMHT where the APHT is not directly charged.¹²

As is well known, in principle every APHT making must be attended by the parties concerned, namely the Mortgage giver as the party authorized to carry out legal actions to impose Mortgage Rights on the object that is used as collateral and the Mortgage Holder. However, if the mortgage giver is unable to attend in person to make the APHT, then the mortgage giver can give power of attorney to other people or to the mortgage holder. This power of attorney is granted by creating a SKMHT. SKMHT is a special power of attorney addressed to the Mortgage holder or other parties to represent the Mortgage giver present before the Notary/PPAT to charge the Mortgage,¹³The use of SKMHT is often used to delay the imposition of mortgages on credit guarantees. Many creditors hold SKMHT which will only be implemented if there are symptoms that the debtor will default. Even though the risk due to the imposition of the Mortgage is fully borne by the creditor (collateral holder).

To be able to carry out the imposition of Mortgage, as a prospective debtor must complete the formal requirements. These requirements consist of subjective and objective requirements. Subjective terms in the Mortgage Right can be referred to as the subject. In a Mortgage Agreement there are two parties who are bound, namely as follows:¹⁴

- 1) Mortgage Giver, namely the person or party that guarantees the Mortgage object.
- 2) The Mortgage Holder, namely the person or party who receives the Mortgage Right as collateral for the receivables they provide.

According to Article 8 of the Mortgage Rights Law, it is stated that:

“(1) The Mortgage Giver is an individual or legal entity that has the authority to take legal action against the object of the Mortgage in question. (2) The authority to take legal action against the Mortgage object as referred to in paragraph (1) must be with the Mortgage giver at the time the Mortgage registration is carried

¹²Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

¹³Supriadi, "Agrarian Law", (Bandung: Sinar Graphic, 2012), p. 186.

¹⁴Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

out." In Article 9 of the Mortgage Law it is explained that: "The Mortgage Holder is an individual or legal entity who is domiciled as a party who owes a debt."

In Article 8 and Article 9 of the Mortgage Law it has been determined that the legal subjects in the Mortgage consist of the giver and the Mortgage holder. The Mortgage giver himself can be an individual or legal entity that has the authority to take legal action against the object of the Mortgage in question. The objective conditions in question are as follows:¹⁵

1. Original certificate
2. Land and building tax (PBB) for the current year
3. Building construction permit (IMB) if there is a building
4. Photocopy of the owner's National Identity Card (KTP) as a legal subject
5. Photocopy of Family Card and Marriage Certificate

As a prospective creditor you must complete the following requirements:¹⁶

1. Photocopy of the debtor's Resident Identity Card (KTP) or those authorized to sign the credit agreement;
2. Photocopy of the bank's articles of association from first to last;
3. Photocopy of Ministerial Decree for PT Creditor;
4. Letter of approval for granting credit (original) submitted to a notary.

Based on this, an SKMHT must be made in the form of an authentic deed. Notaries and PPATs are public officials authorized to make deeds that have perfect evidentiary power which are then better known as authentic deeds based on the provisions in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, hereinafter referred to as UUJN and Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Making Officials (PPAT). In granting SKMHT by the authorizing agent with an authentic notarial or PPAT deed, there are several conditions that must be contained in the substance of the SKMHT, these conditions include:

¹⁵Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

¹⁶Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

1. Does not contain the power to carry out legal actions other than imposing mortgage rights;
2. Does not contain the power of substitution;
3. Clearly state the object of the Mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the giver of the Mortgage.¹⁷

There are substantive requirements as described above, of course there are separate legal consequences, if these conditions are not fulfilled in making SKMHT. In the elucidation of the provisions of Article 15 paragraph (1) UUHT it is explained, if the conditions as mentioned above are not fulfilled, it will result in the SKMHT that has been made null and void by law.

Referring to the objective requirements for the validity of an agreement, the conditions specified in the provisions above are part of the objective requirements. Where in the objective conditions it is stated that an agreement must mention a certain thing which is the object of the agreement. Regarding a certain matter in question, Komariah explained "that a certain matter means that the goods which are the object of an agreement must at least be able to determine the type".¹⁸

The elements mentioned above are obligations that must be fulfilled in making SKMHT. In other words, according to Herlien Budiono, "the power of attorney agreement imposes Mortgage Rights has a coercive nature, in the sense that the parties are not free to determine for themselves, both the form and content of the SKMHT deed making agreement".¹⁹

In practice, there are two differences in encumbrances on Mortgage Rights, namely encumbrances which can be directly made by APHT where the certificate is already in the name of the debtor or guarantor of their own mortgage rights and encumbrances on Mortgage Rights which cannot be directly made by APHT, in other words they must be preceded by SKMHT.²⁰

¹⁷Provisions of Article 15 paragraph (1) of the Law of the Republic of Indonesia Number 4 of 1996.

¹⁸Komariah, "Civil Law, Fifth Printing", (University of Muhammadiyah Malang Press: Malang, 2005), p. 175.

¹⁹Herlien Budiono, "Collection of Civil Law Writings in the Notary Field, Second Print", (Citra Aditya Bakti: Bandung, 2008), p. 57.

²⁰Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

Inggita as staff of Notary-PPAT Agus Miftah, SH. M.Kn., MH explained that the process of imposing Mortgage can be carried out in 2 ways, namely:²¹

1. If the certificate which is used as collateral is clear of Mortgage Rights, the process of encumbering Mortgage Rights can be carried out immediately if the certificate which is collateral for the debt is cleared of Mortgage Rights, then the deed made by a Notary or PPAT is:
 - a. Credit agreement that has been signed by the debtor and the bank made before a notary
 - b. Deed of Granting Mortgage Rights (APHT) between the debtor and the bank.
2. If the collateralized certificate is still burdened with a Mortgage or is in the process of buying and selling.
 - a. The credit agreement signed between the debtor and the bank made before a Notary-PPAT.
 - b. Power of Attorney for Imposing Mortgage Rights (SKMHT) if the land certificate that is used as collateral is still burdened with Mortgage Rights and will be processed royally at the national land office.
 - c. Making Deed of Granting Mortgage Rights (APHT) based on Power of Attorney for Imposing Mortgage Rights (SKMHT) which has been signed between the debtor and the bank.

In making a Power of Attorney to Charge Mortgage Rights (SKMHT), the parties first make an agreement about what will be included in the agreement.

In practice in the field, SKMHT is used by debtors to precede the implementation of the imposition of Mortgage Rights. The reasons for making SKMHT are various conditions, such as the certificate has just been converted, there has just been a buying and selling process, where the certificate is in the process of changing its name, the certificate is in the process of being renovated, the certificate has not been handed over to the new bank and has not been checked because it was preceded by the take process. over, or because the location of the land is outside the Notary's position as PPAT.²²

According to Article 15 paragraph (1) letter c of the Mortgage Law, it is explained that: "clearly state the object of the Mortgage, the amount of the debt and the

²¹Inggita as staff of Notary-PPAT Agus Miftah, SH. MH Interview on 25 May 2023.

²²Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

name and identity of the creditor, the name and identity of the debtor if the debtor is not the giver of the Mortgage".

According to the explanation of Article 15 paragraph (1) letter c UUHT, the amount of debt referred to in this letter is the amount of debt in accordance with what was agreed as intended in Article 3 paragraph (1) UUHT. The initial mechanism for granting Mortgage Rights begins with the Credit Agreement process carried out by the bank, where if the person giving the Mortgage Rights is unable to attend, the party giving the Mortgage Rights can provide power of attorney to take care of the Mortgage Rights. This power of attorney is the power of attorney to charge mortgage rights which can be given to the bank or a third party to take care of the mortgage rights.

After the process of making and signing the credit agreement is carried out, an SKMHT is made. SKMHT is given by the mortgagee to the mortgagee to take care of the mortgage. In line with this, the 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 SKMHT content results 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 APHT.²³

SKMHT that has been made cannot be withdrawn or cannot expire for any reason, thus the provisions regarding the expiration of the power of attorney as stipulated in Articles 1813, 1814 and 1816 of the Civil Code do not apply to SKMHT. This SKMHT can only end if the power of attorney has been exercised or if the SKMHT period has ended. SKMHT cannot be separated from the history of previous guarantee laws, in this case regarding Power of Attorney to Install Mortgage regulated in the Civil Code. Based on this, the legislators set a time limit for SKMHT where in general the validity period of an SKMHT is regulated in Article 15 paragraph (3) and paragraph (4) UUHT, namely: a. For SKMHT regarding land rights that have been registered, it must be followed by making APHT no later than 1 (one) month after the SKMHT is signed. b. For SKMHT regarding land rights that have not been registered, it must be followed by making APHT no later than 3 (three) months after the SKMHT is signed.

The provisions regarding the validity period of the SKMHT as regulated in the provisions of Article 15 paragraph (3) and paragraph (4) of the UUHT do not apply in the case that the SKMHT is given to guarantee certain credits stipulated in the applicable laws and regulations. The specific credits in question are credit for small credit programs, home ownership loans and other similar loans.

²³Rachmadi Usman, "Articles Concerning Mortgage Rights on Land", (Jakarta: Djbatan, 1999) p. 119.

In legal actions, the making of SKMHT is a form of agreement or agreement, so of course the granting of this power of attorney binds the authorizer and the authorized person to be able to carry out the agreed legal actions. The binding power of the agreement is a form of recognition of the agreement itself. According to Munir Fuady, *pacta convent quae neque contra leges neque dalomalo inita sunt omnimodo observanda sunt*, namely legally binding an agreement made legally and not originating from fraud must be fully followed. It is further stated that such a contract is binding on the parties who make it, where its binding power is equivalent to the binding power of a law.²⁴The legal action agreed upon in the SKMHT is to authorize the recipient of the power of attorney to appear before the PPAT in order to represent the interests of the power giver to make and sign the APHT. The binding of the parties in SKMHT is absolute and at the same time becomes a law for him.

In principle, the granting of the Mortgage must be attended and carried out by the person giving the Mortgage as the party authorized to carry out legal actions to impose the Mortgage on the object being used as collateral. However, in certain circumstances which result in the absence of the Mortgage Rights grantor, his presence to grant the Mortgage Rights and sign the Deed of Granting Mortgage Rights (APHT) can be authorized by another party.²⁵

These provisions are contained in Law No. 4 of 1996 concerning Mortgage Rights over Land and Land-Related Objects (UUHT) specifically in the General Explanation section number 7 and Elucidation to Article 15 paragraph (1). Based on several definitions of SKMHT above, it can be said that the substance of SKMHT is the granting of power of attorney, so it is also necessary to pay attention to the regulations relating to the granting of power of attorney in general which have been regulated in the Civil Code (Civil Code). The Civil Code actually does not provide a single article that specifically defines the word "Power of Attorney", all that can be found is a definition of the act of "Granting Power of Attorney".

Various rules regarding the granting of power of attorney can be found in articles 1792 to 1819 of the Civil Code. If it is associated with the form of power of attorney, then according to Article 1796 paragraph (2) of the Civil Code the power of attorney in SKMHT is a special power of attorney. This is clearly seen where in Article 15 paragraph (1) letter a UUHT it is specifically stated that one of the SKMHT requirements is that it does not contain the power to take other legal actions than imposing a Mortgage Right. Meanwhile, in terms of acceptance of the SKMHT power of attorney which must be made before a Notary or PPAT as

²⁴Munir Fuady, "Grand Theories in Law, 1st Edition", (Jakarta: Kencana, 2013), p. 210-211.

²⁵Boedi Harsono, "Indonesian Agrarian Law - History of the Establishment of the LoGA, its Contents and Implementation (Revised Edition)", (Jakarta: Djitangan, 2003), p. 44.

explained in the Explanation of number 7 and Article 15 paragraph (1) UUHT can be categorized as an authentic type of power of attorney as described in Article 1793 of the Civil Code.

Regarding the requirements for SKMHT, they have been specifically regulated in Article 15 UUHT, where the main requirements related to making SKMHT are stated in Article 15 paragraph (1) UUHT, which contains:

"A power of attorney to charge mortgage rights must be made with a notarial deed or PPAT deed and fulfill the following requirements:

- a. does not contain the power to carry out legal actions other than imposing mortgage rights;
- b. does not contain a substitution power;
- c. clearly state the object of the Mortgage Rights, the amount of the debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the provider of the Mortgage Rights."

SKMHT in the UUHT is regulated in Article 15. Paragraph (1) of this article regulates that: Power of Attorney to Encumber Mortgage Rights must be made by notarial deed or PPAT and fulfill the following requirements:

- a. Does not contain the power to carry out legal actions other than the imposition of Mortgage Rights;
- b. Does not contain the power of substitution;
- c. Clearly include the HT object, the amount of the debt, and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the HT provider.

SKMHT is made with an authentic deed, because the making of SKMHT must be before a Notary, if it is made by a PPAT, namely a PPAT whose existence reaches the sub-district area, in order to make it easier to provide services to parties who need them (General Explanation of UUHT number 7). The SKMHT is made when absolutely necessary, namely in the event that the HT giver cannot appear before the PPAT to sign the APHT. So, it is permissible to use SKMHT. This power of attorney must be given directly by the giver of HT and must meet the requirements regarding the contents, namely it does not contain the power to carry out other legal actions than imposing Mortgage Rights; Does not contain the power of substitution; and clearly state the object of HT, the amount owed, and the name and identity of the creditor,

Failure to fulfill these requirements will result in the relevant power of attorney being null and void, meaning that the SKMHT cannot be used as a basis for an application for making an APHT. PPAT is also obliged to reject an application for making an APHT, if the SKMHT is not made by the HT provider himself or does not meet the above requirements.

The requirements for making an SKMHT are that it does not contain the power to carry out other legal actions in this provision, for example it does not contain the power to sell, rent HT objects, or extend land rights. SKMHT also does not contain substitution power, meaning the replacement of the power of attorney through transfer. Not a substitute, if the recipient of the power of attorney gives power of attorney to another party in the framework of control to act on his behalf, for example the Board of Directors of the Bank assigns the executor of the power of attorney he receives to the Head of the Branch or another party (Explanation of Article 5 paragraph (1) letter b).

SKMHT is made by a notary or PPAT 2 sheets, all of which are original (in original), signed by the authorized person, the authorized person, and 2 witnesses as well as the notary or PPAT who made it. One sheet is kept at the Notary Office or PPAT who made it, the other sheet is given to the authorized person for the purposes of imposing HT in making APHT before the PPAT.

SKMHT is very different from SKMH for Mortgages which is regulated in Article 1171 paragraph (2) of the Civil Code, where in making the SKMH a *minuut* is made and a *"grosse"* is made as a copy. The SKMHT form is provided by the National Land Agency (BPN) the form and contents are stipulated by a Ministerial Regulation. When a Mortgage comes into effect, in practice, for encumbrances on all types of immovable objects, including land rights, it is rare for the parties to undertake a direct Mortgage imposition. Almost always, the imposition of mortgages always uses the initial agreement, namely with SKMH. This is done with various considerations, including that the process of signing the mortgage deed until the mortgage certificate is issued requires a long time and is expensive.²⁶

Authority to Install Mortgages is a power of attorney granted by the Debtor to the Creditors who place mortgages on behalf of the Debtor, who in this case is the owner of the land.²⁷In practice, SKMH has been institutionalized, as a pre-binding collateral institution, because every mortgage imposition is always

²⁶Maria SW Sumardjono, "Welcome the Enactment of the Law on Mortgage Rights on Land and Objects Related to Land". Seminar Paper, Yogyakarta, March 25 1996.

²⁷Dewi Kaniawati, "Some Problems with Power of Attorney to Install Mortgages (SKMH) as Pre-Bind Collaterals", Examples of Cases in Bang Bumi Daya, Undergraduate Thesis, Faculty of Law, University of Indonesia, Depok, 1991, p. 8

preceded by making SKMH which is carried out to overcome various problems that often arise. In installing a mortgage, certain formalities are required which take time, so with the SKMH it is hoped that the time can be shortened.

This is related to the creditor's trust in the debtor. Creditors who feel quite sure of the credibility of their debtors, feel no need to take mortgage charges directly. Therefore, the guarantee is only carried out by holding the SKMH, the creditor feels safe enough. A new charge will be made when there is an indication that the debtor will default or default.

SKMHT regulated in the UUHT is a special power of attorney, the form of which is determined by the Ministry of Agrarian Affairs-Head of BPN. The power giver must give HT and the deed must be authentically drawn up by a Notary or it can also be a PPAT. PPAT is authorized to make SKMHT in order to facilitate the provision of services to parties who need it, because PPAT can reach the sub-district area.

In order to provide protection to the interests of creditors (as parties who are generally given the power to charge the promised HT), the nature of SKMHT is absolute power, or power that cannot be withdrawn and cannot end for any reason, even if the HT giver dies. .

SKMHT is given a time limit for its use, so that this power will end once it is exercised or the time period has expired. Article 15 paragraphs (3) and (4) UUHT regulates the period of validity of the SKMHT. For HT objects that have been registered (certified), then no later than one month after being given, it must be followed by making APHT. If the land rights used as collateral for debt have not been registered, then the period of use is limited to three months. For land that has not been registered (not yet certified) the period is longer, because for the purposes of making the APHT it is necessary to submit more documents to the PPAT, than for HT objects that have already been registered. The three month time limit does not apply if the land rights in question have already been certified.²⁸

The three-month determination is not intended to complete land registration, but to accelerate the realization of the APHT.²⁹Completion of registration of land rights, which generally takes more than three months when it comes to Customary Property Rights, so that it is carried out after the APHT is made. At the time the APHT was made, the ownership rights of the former HM Adat did not

²⁸Boedi Harsono, "Mortgage Issues and Credietverband", in Seminar report on Mortgages and Other Guarantee Institutions, National Legal Development Agency", (Jakarta: Ministry of Justice, 1977), p. 446.

²⁹Loc. cit

need to be certified. If it is not followed by making APHT within the specified time, then the SKMHT becomes null and void by law.

SKMHT is not given a time limit, if it is intended for certain projects, namely types of Small Business Credit, as referred to in the Decree of the Board of Directors of Bank Indonesia dated May 29, 1993 number 26/24/KEP/Dir another term limit is stipulated by Regulation Minister of State for Agrarian Affairs/Head of the National Land Agency number 4 of 1996.

The function of the SKMHT is in the form of a special power of attorney which is made only in special circumstances, namely if the HT giver cannot present himself before the PPAT when making the APHT, so the HT giver must appoint another party as his proxy by making an SKMHT whose deed is authentic. So the function of SKMHT is not the same as SKMH during mortgages, so it cannot be treated like SKMH in HT charges.

There are substantive requirements as described above, of course there are separate legal consequences, if these conditions are not fulfilled in making SKMHT. In the elucidation of the provisions of Article 15 paragraph (1) UUHT it is explained, if the conditions as mentioned above are not fulfilled, it will result in the SKMHT that has been made null and void by law.

Referring to the objective requirements for the validity of an agreement, the conditions specified in the provisions above are part of the objective requirements. Where in the objective conditions it is stated that an agreement must mention a certain thing which is the object of the agreement. Regarding a certain matter in question, Komariah explained "that a certain matter means that the goods which are the object of an agreement must at least be able to determine the type".³⁰

The elements mentioned above are obligations that must be fulfilled in making SKMHT. In other words, according to Herlien Budiono, "the power of attorney agreement imposes Mortgage Rights has a coercive nature, in the sense that the parties are not free to determine for themselves, both the form and content of the SKMHT deed making agreement".³¹

In practice, there are two differences in encumbrances on Mortgage Rights, namely encumbrances which can be directly made by APHT where the certificate is already in the name of the debtor or guarantor of their own mortgage rights

³⁰Komariah, "Civil Law, Fifth Printing", (University of Muhammadiyah Malang Press: Malang, 2005), p. 175.

³¹Herlien Budiono, "Collection of Civil Law Writings in the Notary Field, Second Print", (Citra Aditya Bakti: Bandung, 2008), p. 57.

and encumbrances on Mortgage Rights which cannot be directly made by APHT, in other words they must be preceded by SKMHT.³²

Inggita as staff of Notary-PPAT Agus Miftah, SH. M.Kn., MH explained that the process of imposing Mortgage can be carried out in 2 ways, namely:³³

1. If the certificate which is used as collateral is clear of Mortgage Rights, the process of encumbering Mortgage Rights can be carried out immediately if the certificate which is collateral for the debt is cleared of Mortgage Rights, then the deed made by a Notary or PPAT is:

a. Credit agreement that has been signed by the debtor and the bank made before a notary;

b. Deed of Granting Mortgage Rights (APHT) between the debtor and the bank.

2. If the collateralized certificate is still burdened with a Mortgage or is in the process of buying and selling.

a. The credit agreement signed between the debtor and the bank made before a Notary-PPAT.

b. Power of Attorney for Imposing Mortgage Rights (SKMHT) if the land certificate that is used as collateral is still burdened with Mortgage Rights and will be processed royally at the national land office.

c. Making Deed of Granting Mortgage Rights (APHT) based on Power of Attorney for Imposing Mortgage Rights (SKMHT) which has been signed between the debtor and the bank.

In making a Power of Attorney to Charge Mortgage Rights (SKMHT), the parties first make an agreement about what will be included in the agreement.

In practice in the field, SKMHT is used by debtors to precede the implementation of the imposition of Mortgage Rights. The reasons for making SKMHT are various conditions, such as the certificate has just been converted, there has just been a buying and selling process, where the certificate is in the process of changing its name, the certificate is in the process of being renovated, the certificate has not been handed over to the new bank and has not been checked because it was

³²Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

³³Inggita as Notary-PPAT staff Agus Miftah, SH. MH Interview on May 25 2023.

preceded by the take process. over, or because the location of the land is outside the Notary's position as PPAT.³⁴

According to Article 15 paragraph (1) letter c of the Mortgage Law, it is explained that: "clearly state the object of the Mortgage, the amount of the debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the giver of the Mortgage".

According to the explanation of Article 15 paragraph (1) letter c UUHT, the amount of debt referred to in this letter is the amount of debt in accordance with what was agreed as intended in Article 3 paragraph (1) UUHT. The initial mechanism for granting Mortgage Rights begins with the Credit Agreement process carried out by the bank, where if the person giving the Mortgage Rights is unable to attend, the party giving the Mortgage Rights can provide power of attorney to take care of the Mortgage Rights. This power of attorney is the power of attorney to charge mortgage rights which can be given to the bank or a third party to take care of the mortgage rights.

After the process of making and signing the credit agreement is carried out, an SKMHT is made. SKMHT is given by the mortgagee to the mortgagee to take care of the mortgage. In line with this, the 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 SKMHT content results 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 APHT.³⁵

SKMHT that has been made cannot be withdrawn or cannot expire for any reason, thus the provisions regarding the expiration of the power of attorney as stipulated in Articles 1813, 1814 and 1816 of the Civil Code do not apply to SKMHT. This SKMHT can only end if the power of attorney has been exercised or if the SKMHT period has ended. SKMHT cannot be separated from the history of previous guarantee laws, in this case regarding Power of Attorney to Install Mortgage regulated in the Civil Code. Based on this, the legislators set a time limit for SKMHT where in general the validity period of an SKMHT is regulated in Article 15 paragraph (3) and paragraph (4) UUHT, namely: a. For SKMHT regarding land rights that have been registered, it must be followed by making APHT no later than 1 (one) month after the SKMHT is signed. b. For SKMHT regarding land rights that have not been registered, it must be followed by making APHT no later than 3 (three) months after the SKMHT is signed.

³⁴Agus Miftah, Notary and PPAT of Tegal City, Interview 25 May 2023.

³⁵Rachmadi Usman, "Articles Concerning Mortgage Rights on Land", (Jakarta: Djabatan, 1999) p. 119.

The provisions regarding the validity period of the SKMHT as regulated in the provisions of Article 15 paragraph (3) and paragraph (4) of the UUHT do not apply in the case that the SKMHT is given to guarantee certain credits stipulated in the applicable laws and regulations. The specific credits in question are credit for small credit programs, home ownership loans and other similar loans.

In legal actions, the making of SKMHT is a form of agreement or agreement, so of course the granting of this power of attorney binds the authorizer and the authorized person to be able to carry out the agreed legal actions. The binding power of the agreement is a form of recognition of the agreement itself. According to Munir Fuady, *pacta convent quae neque contra leges neque dalomalo inita sunt omnimodo observanda sunt*, namely legally binding an agreement made legally and not originating from fraud must be fully followed. It is further stated that such a contract is binding on the parties who make it, where its binding power is equivalent to the binding power of a law.³⁶The legal action agreed upon in the SKMHT is to authorize the recipient of the power of attorney to appear before the PPAT in order to represent the interests of the power giver to make and sign the APHT. The binding of the parties in SKMHT is absolute and at the same time becomes a law for him.

In principle, the granting of the Mortgage must be attended and carried out by the person giving the Mortgage as the party authorized to carry out legal actions to impose the Mortgage on the object being used as collateral. However, in certain circumstances which result in the absence of the Mortgage Rights grantor, his presence to grant the Mortgage Rights and sign the Deed of Granting Mortgage Rights (APHT) can be authorized by another party.³⁷

These provisions are contained in Law No. 4 of 1996 concerning Mortgage Rights over Land and Land-Related Objects (UUHT) specifically in the General Explanation section number 7 and Elucidation to Article 15 paragraph (1). Based on several definitions of SKMHT above, it can be said that the substance of SKMHT is the granting of power of attorney, so it is also necessary to pay attention to the regulations relating to the granting of power of attorney in general which have been regulated in the Civil Code (Civil Code). The Civil Code actually does not provide a single article that specifically defines the word "Power of Attorney", all that can be found is a definition of the act of "Granting Power of Attorney".

Various rules regarding the granting of power of attorney can be found in articles 1792 to 1819 of the Civil Code. If it is associated with the form of power of

³⁶Munir Fuady, "Grand Theories in Law, 1st Edition", (Jakarta: Kencana, 2013), p. 210-211.

³⁷Boedi Harsono, "Indonesian Agrarian Law - History of the Establishment of the LoGA, its Contents and Implementation (Revised Edition)", (Jakarta: Djangan, 2003), p. 44.

attorney, then according to Article 1796 paragraph (2) of the Civil Code the power of attorney in SKMHT is a special power of attorney. This is clearly seen where in Article 15 paragraph (1) letter a UUHT it is specifically stated that one of the SKMHT requirements is that it does not contain the power to take other legal actions than imposing a Mortgage Right. Meanwhile, in terms of acceptance of the SKMHT power of attorney which must be made before a Notary or PPAT as explained in the Explanation of number 7 and Article 15 paragraph (1) UUHT can be categorized as an authentic type of power of attorney as described in Article 1793 of the Civil Code.

Regarding the requirements for SKMHT, they have been specifically regulated in Article 15 UUHT, where the main requirements related to making SKMHT are stated in Article 15 paragraph (1) UUHT, which contains:

"A power of attorney to charge mortgage rights must be made with a notarial deed or PPAT deed and fulfill the following requirements:

1. does not contain the power to carry out legal actions other than imposing mortgage rights;
2. does not contain a substitution power;
3. clearly state the object of the Mortgage Rights, the amount of the debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the provider of the Mortgage Rights."

SKMHT is a special power of attorney in the form of a letter that is centered on the creditor or other person as a representative for the debtor/on behalf of the certificate that is used as collateral to appear in front of the Notary/PPAT to undergo the process of signing the Mortgage, relating to the debtor/on behalf of the certificate that is used as collateral not can come to take action to impose Mortgage Rights in front of a Notary/PPAT.

SKMHT is an absolute power of attorney which is marked by being unable to be withdrawn, revoked and canceled and cannot even end for any reason unless it has been implemented or the time period has expired/expired and therefore SKMHT is said to be absolute because it is the same as an absolute power of attorney in which a clause is stated that the person giving the power of attorney will ignore Article 1814 in conjunction with Article 1813 of the Civil Code relating to the completion of a power of attorney.

The imposition of mortgage rights can also be seen from the UUPA, namely "Granting mortgage rights is preceded by a promise to provide mortgage rights as guarantees for repayment of certain debts, which are stated in the letter, which

are an integral part of the agreement on the debts concerned or other agreements that give rise to the debt." . After the granting of the Mortgage will then proceed with the process of registering the Mortgage as written in the UUHT, this HT registration is regulated in Article 13 paragraph (3) of the UUHT where the Mortgage process is carried out by the BPN by issuing a Mortgage certificate and recording it on the land sheet. which becomes the HT object and is copied back to the certificate in question.

In practice, before the final land title certificate the APHT cannot be processed, even though the SKMHT period has expired and in this situation a new SKMHT is made, in other words the SKMHT can be extended. After the certificate is complete then continue with APHT. This is not the same as land in Article 10 paragraph (3) UUHT, namely that granting HT to unregistered land must be accompanied by the process of registering the land. Therefore, when a Notary/PPAT makes an APHT at the same time it is also done with the land in question having its rights registered so that you don't have to wait for the land certificate to be final. The mandatory thing that must be done by PPAT is to send APHT to the Land Office based on the provisions of the articles in UUPA with the aim of providing legal certainty to HT recipients. UUHT also states, namely "The date of the Land Mortgage book is the seventh day after complete receipt of the documents required for its registration." Based on this article, therefore, the date on the HT land book is the date the HT was issued and is very dependent on the date the APHT was submitted in full to BPN by the obligated party, namely PPAT.

Article 1335 of the Civil Code states that an agreement which is executed without a reason or is executed with a reason but the reason is false or forbidden will be deemed to have no force. Likewise, the UUHT explains that the power to charge HT cannot be withdrawn or cannot expire for any reason except because the power has been exercised or because the validity period has expired as in paragraph (3) and paragraph (4). And if the SKMHT's active period has expired, and the SKMHT is not signed or the SKMHT is extended, then it is as if the agreement did not take place, and is null and void.

Power of Attorney to Encumber Mortgage Rights (SKMHT) has an important position in credit agreements as a binding guarantee for mortgage rights. SKMHT is a legal instrument used to authorize creditors (guarantee recipients) to register mortgage rights over a collateral object, such as land or buildings.

In the context of credit agreements, SKMHT has several functions and roles that need to be analyzed. The following is an analysis of SKMHT's position in credit agreements with legal protection theory:

1. Collateral Binder

SKMHT serves as a tool to bind collateral in a credit agreement. With SKMHT, creditors have the right to execute collateral if the debtor defaults or does not fulfill its obligations in accordance with the credit agreement. SKMHT provides legal certainty to creditors that the mortgage on the collateral object has been granted by the debtor.

2. Mortgage Rights Registration

SKMHT allows creditors to register mortgage rights at the local Land Office. This registration gives enforceability and legal validity to the warranty. Thus, SKMHT becomes the legal basis for creditors to protect their interests in collateral objects and obtain priority in settling receivables in the event of default.

3. Legal Protection for Creditors

Legal protection theory emphasizes the importance of providing adequate legal protection to creditors in credit agreements. SKMHT acts as an instrument of legal protection for creditors by providing clear and measurable rights to the collateral provided by the debtor. In the event that the debtor does not fulfill his obligations, the creditor can use the SKMHT as a basis for protecting his interests and executing the collateral.

4. Legal certainty

SKMHT also provides legal certainty to both parties, namely creditors and debtors. Through SKMHT, the rights and obligations of each party related to mortgage rights are regulated clearly and firmly. This prevents uncertainty or different interpretations related to the collateral object and debtor's obligations.

In conclusion, SKMHT has an important position in the credit agreement as a binding guarantee for mortgage rights. SKMHT provides legal certainty, protects the interests of creditors, allows registration of mortgage rights, and becomes the basis for executing collateral in the event of default.

In the context of legal protection, SKMHT also involves the principles of justice and balance between creditors and debtors. This principle ensures that creditors do not abuse their rights to collateral rights and do not cause excessive losses to debtors. For example, creditors cannot execute collateral without a valid reason or take unfair advantage of the collateral object.

In addition, SKMHT can also provide legal protection for debtors. With the SKMHT, debtors have clarity regarding their obligations and responsibilities regarding the guarantee provided. SKMHT also provides debtors with the

opportunity to defend their rights and submit a defense if there is a discrepancy between the credit agreement and its implementation.

In the event of a dispute between creditors and debtors related to SKMHT, the principles of justice and balance will be taken into consideration by the court or dispute resolution institution to decide the dispute. The goal is to reach a fair and balanced decision for both parties.

In legal protection theory, it is important for the legal system to provide an effective mechanism for enforcing rights and obligations related to SKMHT. This can include clear arrangements regarding SKMHT registration, dispute resolution procedures, and monitoring of creditors' actions in implementing guarantees.

In the end, SKMHT's position in credit agreements as binding collateral for mortgage rights is closely related to the principle of legal protection. SKMHT provides legal certainty, protects the interests of creditors, and ensures balance and justice between creditors and debtors. In the context of legal protection, it is important for the legal system to regulate and enforce effective mechanisms to protect rights and obligations related to SKMHT.

3.1 Obstacles and Solutions in the Implementation of Imposing Mortgage Rights with a Power of Attorney for Imposing Mortgage Rights (SKMHT) Based on Law No. 4 of 1996

The implementation of the encumbrance of the Mortgage that has been discussed above starts from the making of the Credit Agreement which is followed by the making of the SKMHT and is increased by making the APHT until the issuance of the Mortgage Certificate for its implementation in the field, of course the work does not run smoothly and experiences many obstacles.

The inhibiting factors in the implementation of SKMHT which will later be upgraded to APHT on land based on the implementation of this financing/credit agreement include the following:

1. Inhibiting Factors From Creditors (Financial Institutions/ Banks).

Implementation in the field has many problems when the SKMHT is made and then upgraded to APHT which will be sent to be registered with the Land Agency, but the timeframe for collecting supporting documents is not complete, because the registration of Mortgage Rights to the local Land Office is not just a deed. submitted but must also attach other supporting documents.

2. Inhibiting Factors From the Debtor

Based on research in the field, it turns out that costs are an obstacle for debtors when upgrading SKMHT to APHT where the certification process for objects that are collateral from SKMHT that have not been registered and if the process of conversion, splitting, combining certificates, inheritance, buying and selling, grants, is carried out is A number of processes must be passed first before the collateral for land is charged as a Mortgage to the local land agency. If a debtor wants to apply for credit to a bank with a large amount of immovable property in the form of land as collateral, a Mortgage must automatically be placed and Debtors are subject to Non-Tax State Revenue, abbreviated as PNBP, which must be paid to the state

Obstacles in making SKMHT, especially by the Notary/PPAT who legally made the SKMHT, were not found. This is because the arrangements regarding SKMHT are clearly regulated in the UUHT, but these obstacles are found in administrative arrangements, namely in the process of using SKMHT to become APHT which is as follows:

1. Cost is one of the obstacles to upgrading SKMHT to APHT. This is not because of the cost of upgrading SKMHT to APHT by PPAT, but because the next process, namely the certification of unregistered SKMHT objects, requires expensive fees. Meanwhile, Article 15 paragraph (5) UUHT applies to other SKMHT that do not experience these obstacles, this is based on the amount of each credit, where there is no need to comply with the validity period of the power of attorney, in the case of guaranteeing certain credits that are applied in laws and regulations. invitations, such as small loans, home ownership loans, and others (Regulation of the State Minister for Agrarian Affairs/Decree of the National Land Agency Number 4 of 1996 concerning Explanation of the deadline for Using SKMHT to Guarantee Repayment of Certain Credits),
2. For land that has not been certified/registered, after the SKMHT is signed, the process that often becomes an obstacle is the certification process. This is because the process requires a large amount of money. Regarding the provisions for the validity period of SKMHT, it has been regulated in the UUHT. Article 15 of the UUHT regulates the period of SKMHT as stated in Article 15 paragraph (3): If the creditor accepts binding land rights that have been registered, it must be followed by making APHT no later than 1 (one) month after it is granted. In the provisions of Article 15 paragraph (4): If the creditor accepts the binding of a land right that has not been registered, it must be followed by making an APHT no later than 3 (three) months after it is granted.

With the provisions regarding the short validity period of SKMHT while the credit agreement period is longer than these provisions, it will be detrimental to the creditor. In terms of credit granting, it is unlikely that bad credit will occur even if the credit has only been given three months before the validity period of the

SKMHT. The bottleneck can occur not because the creditor's analysis of the feasibility of the business that will be given is not good, but the bottleneck can occur as a result of changes in economic conditions or changes in regulations that occur. If there is a change in these circumstances, of course the debtor will not provide a new SKMHT if the old SKMHT has expired, because of bad faith the debtor sees an opportunity to be able to evade his responsibility to pay back his debt or try to stall for time. The debtor will try to prevent the bank from burdening the mortgage on the land that has been pledged for credit.

With the factors that become obstacles in the implementation of SKMHT which will be upgraded to APHT, most Notaries-PPATs provide solutions that can be taken or used to overcome obstacles that occur in the field, including the following:

1. Efforts to Overcome Inhibitory Factors from Creditors (Financial Institutions/Banks).

To overcome this inhibiting factor is not an excuse for the Notary-PPAT is regarding the inaccuracy of 7 (seven) days to register their mortgage rights to the local Land Office office which has been determined by law and regulation. So from the Notary-PPAT side solved this problem by providing understanding, direction and warning to bank employees, especially in the marketing and legal department who take care of the document equipment section from the debtor regarding the provisions for the existence of a limited time period for registration of Mortgage Rights from the Land office,

2. Efforts to Overcome Inhibiting Factors from the Debtor

To solve the problem of inhibiting factors on the part of the Debtor. Inhibiting factors on the part of the debtor include the large costs imposed on the Debtor regarding the issue of Non-Tax State Revenue (PNBP) which is felt to be quite burdensome in installing Mortgage Rights where the guarantee is for more than one area of the right to land. The way to overcome the problem that is used to make costs less expensive and relieve the debtor can be circumvented by installing one mortgage right where the collateral included in the APHT clause is more than one guarantee and each guarantee contains a different amount of mortgage fees but then the total The guarantees that are borne are accumulated into one nominal amount of the Mortgage Rights.

In overcoming other obstacles, namely regarding the short period of time for installing Mortgage Rights, it can be done by renewing the SKMHT. As stated, in UUHT Number 4 of 1996 article 15 paragraph 4 that regarding the validity period of SKMHT for land that has not been certified until the issuance of the certificate plus 3 months APHT must be made. In practice, even though the registration of

land rights, whether the acquisition is through buying and selling, inheritance, grants, distribution of joint rights, conversion and acquisition of other rights, has been completed, and it has been 3 months since the issuance of the certificate of land rights from the land office, but the APHT has not been made. because the good costs incurred for the installation of mortgage rights are expensive,

So on the basis of a mutual agreement between creditors and debtors who have not made APHT to install their Mortgage, it is enough to renew the signing of SKMHT as a substitute for the previous SKMHT whose term has ended. The renewal of the signing of the SKMHT was carried out by the creditor for the benefit of the debtor himself as the party issuing the loan, and because the creditor did not want to burden the debtor with the large costs of installing APHT at the Land Office. In addition, in renewing the signing of the SKMHT, the creditor did not experience any obstacles when the debtor re-signed the renewed SKMHT.

From these obstacles, of course, there are solutions that the authors can describe as follows:

1. Preparation of clear and accurate SKMHT

The solution to overcome this obstacle is to ensure that the preparation of the SKMHT is carried out carefully and clearly. This involves good cooperation between the parties involved, such as debtors, creditors and lawyers. Careful and accurate preparation can avoid ambiguity or inconsistency in the SKMHT, thereby strengthening legal certainty.

2. Increased efficiency of the registration process

To overcome administrative obstacles, efforts need to be made to increase the efficiency of the SKMHT registration process at the Land Office. This can be done through simplifying procedures, using information technology, and training for responsible officers. Increasing efficiency will speed up the implementation of the imposition of mortgage rights and increase legal certainty.

3. Clarification of regulations and communication with the Land Office

To overcome objections or obstacles from the Land Office, clearer clarification of regulations and good communication between the parties involved and the Land Office are needed. In the event of a rejection of SKMHT registration, clarification can be made regarding the legal basis which is the reason for the refusal and seek appropriate solutions. Good communication with the Land Office is also important to gain a better understanding of the procedures and requirements that must be met.

4. Effective monitoring and supervision system

To maintain legal certainty in implementing the imposition of mortgage rights, an effective monitoring and supervision system is needed. This can be done by authorized institutions to ensure that the SKMHT registration process is carried out appropriately, including ensuring compliance with legal requirements and avoiding practices that are detrimental to the parties involved.

5. Counseling and education to related parties

Counseling and education regarding the procedures and requirements for imposing mortgage rights and the importance of SKMHT can help reduce obstacles in its implementation. This can be done by competent parties, such as legal institutions, banking associations, or parties related to the property sector. Counseling and education will provide a better understanding to related parties, so that they can better prepare and carry out the imposition of mortgage rights.

By overcoming these obstacles and implementing appropriate solutions, the implementation of imposing mortgage rights with SKMHT can be carried out more effectively and efficiently. The application of the theory of legal certainty will strengthen legal protection for all parties involved and provide certainty in credit agreements involving mortgage rights.

4. Conclusion

The position of the Power of Attorney for Imposing Mortgage Rights (SKMHT) in a credit agreement as a binding guarantee for Mortgage Rights is very important. SKMHT functions as a legal instrument that provides legal certainty for creditors and debtors in credit agreements. SKMHT strengthens the guarantee of mortgage rights by giving creditors the power to register mortgage rights for collateral objects. In the context of legal protection, SKMHT protects the interests of creditors and debtors and ensures balance and justice between the two. Through SKMHT, creditors obtain certainty that the mortgage rights have been granted by the debtor, while the debtor has clarity regarding his obligations and responsibilities regarding the collateral. Thus, SKMHT as a binding guarantee for mortgage rights plays a vital role in providing legal protection, legal certainty, and maintaining a balance between creditors and debtors in credit agreements.

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