

## Legal Protection For Skmht Holders (Authorization Letter To Charge Money Rights) Which is Not Continued on The Installation of The Apht (Deed of Granting Money Rights)

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**Abstract.** SKMHT and APHT have very important functions, especially in providing credit in banking institutions. Providing credit and as a means of protection for debtor security for certainty of debtor debt repayment is a guarantee institution. This study aims to analyze the legal protection for creditors holding a Power of Attorney to Charge Mortgage Rights (SKMHT) in order to avoid legal risks due to not continuing the installation of the Deed of Mortgage Rights (APHT) and what are the legal consequences for creditors holding a Power of Attorney to Charge Mortgage Rights (SKMHT) which is not continued with the Deed of Mortgage Rights (APHT). The research method used is a normative approach by analyzing related laws and regulations, especially the Civil Code (KUHPerdota), Law Number 4 of 1996 concerning Mortgage Rights, UUJN, Ministerial regulation Agrarian State/Head of BPN Number 3 of 1996, and Government Regulation Number 24 of 1997. The results of the study indicate that creditors holding SKMHT that are not continued to APHT are in a weak position because they do not have executorial power and are only considered as concurrent creditors in accordance with Articles 1131 and 1132 of the Civil Code. If the creditor cannot carry out parate executie, then they must take legal action through a civil lawsuit in court if the debtor is in default. This condition results in high risks for creditors, especially in terms of receivables repayment. The importance of making APHT immediately after SKMHT is made to provide legal certainty and adequate protection for creditors. In order to avoid the risk of not continuing the installation of APHT, it is necessary to improve coordination between banks, notaries, and land institutions to ensure that the APHT making process runs smoothly and on time.

**Keywords:** Creditors, Legal Protection, Mortgage Rights

## 1. Introduction

Economic development in Indonesia, both in the industrial, agricultural, trade and service sectors, requires significant business capital support. Institutions that can help aim to meet the needs of the community in the form of financial assistance as business capital, namely banking institutions.

Banking institutions are very popular with the public because they can help collect funds from the public in the form of savings, and redistribute them in the form of credit funds or other forms to improve the standard of living of the people as regulated in Article 1 Paragraph (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

In banking institutions, the function of SKMHT and APHT is very important, especially in providing credit. Providing credit and as a means of protection for the security of debtors for the certainty of debt repayment is a guarantee institution. One of the guarantee institutions used by banks in providing credit is the Mortgage Right.

If reviewed from Law Number 4 of 1996 concerning Mortgage Rights (hereinafter referred to as "UUHT"). Then with the existence of this Mortgage Right, it will provide legal certainty as a form of legal protection.<sup>1</sup> UUHT was born in 1996 which departed from the imperative instructions of Article 51 UUPA which is not much different from the process of issuing a mortgage deed, on the mortgage certificate also known as SKMHT.

SKMHT is a power of attorney given by the owner of land or building rights to a bank or financial institution as collateral to provide mortgage rights.

According to Article 15 paragraph (3) UUHT which confirms the time period for determining the SKMHT, namely that for land that has been registered, the SKMHT must be immediately followed by the creation of an APHT within one month after being granted. For land that has not been registered, this obligation must be fulfilled within three months. If the requirements regarding the time period are not fulfilled, the SKMHT becomes null and void. Void and void in the SKMHT occurs if the time limit for the SKMHT to become an APHT, namely one month for land that has been registered, and three months for land that has not been registered or has a certificate but has not been registered in the name of the mortgagee as the holder of the rights to the new land, is not fulfilled or is violated.

APHT is a document containing the notary's approval of the installation of the mortgage. Installation of APHT is an important step in the guarantee process.

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<sup>1</sup> Boedi Harsono and R. Subekti, 1989, *Guarantees for the Granting of Credit According to Indonesian Law*, Citra Aditya Bakti, Bandung, p. 402.

SKMHT holders who do not continue the process by making an APHT are potentially facing legal risks, including losing legal protection against mortgage rights that should be provided by the APHT. This can open up opportunities for other parties to sue or abuse the rights to the land/building in question.

Based on the background described above, the author will conduct a study entitled "**Legal Protection For Holders of Skmht (Power of Attorney To Grant Mortgage Rights) Which is Not Continued in The Installation of Apht (Deed of Granting Mortgage Rights)**".

## **2. Research Methods**

This research uses normative legal research, namely research that focuses on examining and systematizing written legal materials, legal principles, legal doctrines, and applicable laws and regulations.<sup>2</sup>The approach method used in this study is a quantitative approach method, namely an approach that uses Legislation as a basis for conducting analysis. The data sources obtained in this study come from secondary data, namely data obtained through literature studies.<sup>3</sup>namely by studying legal materials, as well as libraries such as literature or books, laws and regulations and other reading sources related to the problems in this research.

The data collection technique used in this study is the secondary data collection method, namely data collection through literature studies. Literature studies aim to study, research, and trace secondary data including primary materials, namely legal materials that bind secondary materials, namely those that provide explanations regarding primary legal materials and tertiary legal materials, namely materials that provide instructions or explanations for primary and secondary legal materials. The author in analyzing the data of this study used a descriptive analysis method, with the hope that the researcher in analyzing wants to provide a description or explanation of the subject and object of research as the results of the research he conducted and the data analysis used is a qualitative normative approach to secondary data.

## **3. Results and Discussion**

### **3.1. Legal protection for SKMHT holders to avoid legal risks due to discontinuation of APHT installation**

- a. Legal protection serves as a means to create security and comfort in society to avoid conflict and prevent vigilante actions. Thus, legal protection provides a guarantee or certainty that everyone will obtain their rights and obligations.

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<sup>2</sup> Sri Mamudji, 2005, *Methods of Legal Research and Writing*, Publishing Agency of the Faculty of Law, University of Indonesia, Jakarta, p. 68.

<sup>3</sup> Soejono Soekanto, 1986, *Introduction to Legal Research*, UI-Press, Jakarta, p. 10.

Legal protection can be interpreted as an effort given to legal subjects through preventive and repressive law enforcement.

- b. Based on Law Number 4 of 1996 concerning Mortgage Rights on land and objects related to land, there are two forms of legal protection, namely: first, Preventive Legal Protection, aims to prevent violations of the law or legal disputes by providing an opportunity for individuals to file objections or opinions before a decision is taken. Second, Repressive Legal Protection, aims to resolve legal disputes or violations that have occurred by involving strict law enforcement actions.
- c. There is a clause contained in Article 15 regarding SKMHT, namely as follows:
- d. The Power of Attorney to Encumber Mortgage Rights cannot be revoked or terminated for any reason whatsoever except because the power has been executed or because the term has expired.
- e. Power of Attorney to Encumber Mortgage Rights regarding registered land rights must be followed by the preparation of a Deed of Grant of Mortgage Rights no later than 1 (one) month after being granted.
- f. A Power of Attorney to Encumber Mortgage Rights regarding rights to land that have not been registered must be followed by the preparation of a Deed of Grant of Mortgage Rights no later than 3 (three) months after being granted.
- g. The Power of Attorney to Encumber Mortgage Rights (SKMHT) may be legally void if it is not followed by the preparation of a Deed of Encumbrance of Mortgage Rights (APHT).
- h. The author concludes that in order to provide legal protection and legal certainty to all parties, especially the Creditor, the granting of the mortgage rights must be registered. Regarding the time of registration of the Mortgage Rights, it is very important for the Creditor. The institution that has the authority to register the Deed of Granting of Mortgage Rights (APHT) is the Regency/City Land Office. The process of granting mortgage rights carried out by the debtor to the creditor using a PPAT deed, then the Mortgage Rights in question have not yet been born. After the creation of the Mortgage Rights land book by the Land Office, the Mortgage Rights have just been born. In order to avoid legal risks, it is necessary to improve coordination between banks, notaries and Land Institutions to ensure that the APHT creation process runs smoothly and on time. Creditors holding SKMHT that are not continued to APHT are in a weak position because they do not have executorial power and are only considered concurrent creditors in accordance with Articles 1131 and 1132 of the Civil Code. The forms of legal settlement efforts that can be carried out by banks are either litigation or non-litigation. Non-litigation legal

efforts are dispute resolution outside the court, namely through mediation, negotiation, conciliation and arbitration. If the debtor's dispute resolution efforts do not have good faith to carry out non-litigation legal efforts, namely through general courts and commercial courts.

### **3.2. Legal consequences for SKMHT holders who do not continue installing APHT**

SKMHT has a time limit as stipulated in Article 15 paragraph 3 and paragraph 4 of Law Number 4 of 1996 concerning Mortgage Rights which requires it to be followed by the installation of APHT. The article states that SKMHT regarding registered rights must be followed by the creation of APHT no later than 1 month after being signed or given power of attorney to burden the relevant Mortgage Rights. As a consequence, the SKMHT within a period of 1 month must be used by the authorized person to carry out the burden of mortgage rights by signing and registering the APHT.

Meanwhile, for land rights that have not been registered, including land that has been certified, but has not been registered in the name of the person granting the mortgage as the new right holder, namely land whose transfer of rights, division or merger has not been registered, the obligation to make an APHT must be carried out no later than 3 months after the signing or granting of the Power of Attorney to Encumber the Mortgage Rights in question as stipulated in Article 15 paragraph 4 of Law Number 4 of 1996 concerning Mortgage Rights.

The Power of Attorney to Charge Mortgage Rights (SKMHT) is a temporary collateral instrument that must be immediately followed by the preparation of a Deed of Charge Mortgage Rights (APHT) to provide legal certainty and executorial rights to creditors. If the SKMHT is not followed up with an APHT, especially in cases of default by the debtor, there are several significant legal consequences for the holder of the SKMHT.

The legal consequences for debtors who are negligent or commit a breach of contract can give rise to rights for creditors, namely:<sup>4</sup>

- a) Demand fulfillment of obligations,
- b) Demand termination of the agreement or if the agreement is reciprocal, according to the cancellation of the agreement,
- c) Demand compensation,
- d) Demand fulfillment of the obligation accompanied by compensation,

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<sup>4</sup> Handri Raharjo, 2009, *Contract Law in Indonesia*, Pustaka Yustisia, Yogyakarta, pp. 81-84.

e) Demand termination or cancellation of the contract with compensation.

Mortgage Rights that are not registered at the land office will result in legal consequences, namely the Mortgage Certificate cannot be issued. If the Mortgage Certificate is not issued, then the mortgage right will never be born, so that the Creditor will have difficulty executing, if the Debtor is in default or breach of promise, because in the UUHT it has been explained that if the Debtor is in default, the object that is the object of the mortgage right can be executed by means of implementing an executorial title, selling the object that is the object of the mortgage right and selling underhand.

To provide legal certainty, Article 13 of the UUHT requires Mortgage Rights to be registered at the BPN. Registration has a legal meaning as a series that is inseparable from the process of the Mortgage Right agreement. In addition, Registration is a manifestation of the principle of publicity and legal certainty. The property rights of the Mortgage Right are only born since registration is carried out at the BPN and as evidence is the issuance of the Mortgage Right Certificate. Therefore, in order to minimize the lack of legal protection for both Creditors and Debtors related to the creation of Credit Agreements, Debt Recognition, and APHT installation, PPAT Notaries must carry out their duties as well as possible in accordance with their functions and duties as Public officials, especially when making (editing) Credit Agreement Deeds (PK), Debt Recognition (PH), it is attempted to be balanced regarding the rights and obligations of both Creditors (Banks) and Debtors. Because in practice, each Bank has its own Credit Agreement (PK) and Debt Acknowledgement (PH) form where the Notary is asked to make it according to/the same as the form required by the Bank, there are even several Banks that have printed standard agreements, where the Notary is only asked to legalize the standard agreement, which automatically greatly protects the Bank and is detrimental to/reduces the Debtor's rights).

The legal consequences for SKMHT holders who do not have APHT installed are in accordance with the provisions of Article 15 paragraph (6), which reads:

"A Power of Attorney to Encumber Mortgage Rights which is not followed by the making of a Deed of Granting of Mortgage Rights within the time specified as referred to in paragraphs (3) and (4), or the time specified according to the provisions as referred to in paragraph (5) will be void by law."

Not followed by the installation of APHT, the creditor only has the status as a concurrent creditor in accordance with Articles 1131 and 1132 of the Civil Code (KUHPerdata). Concurrent creditors do not have priority in debt repayment and must share the proceeds from the sale of the debtor's assets with other creditors. This means that the creditor does not have a special position and will receive payment after the creditor who has preferential rights.

Creditors who only hold SKMHT without APHT, do not have execution rights. This means that creditors cannot carry out *parate executie* (direct execution) on land or building collateral, creditors do not have the right to conduct auctions. Creditors' settlement efforts are limited, namely they can only file civil lawsuits in court, mediation efforts and negotiations to demand debt repayment, which often takes time and is quite expensive.

#### **4. Conclusion**

Legal protection given to the holder of Mortgage Rights will be weak if they still use SKMHT, as collateral without a Mortgage Rights certificate that has executorial power. Legal protection given to the recipient of HT will be weak, if they still hold SKMHT. According to Articles 1131 and 1132 of the Civil Code, it is explained that creditors holding SKMHT only have the position of concurrent creditors who do not have special rights. Creditors holding SKMHT cannot carry out *parate executie* and can only file a civil lawsuit in Court if the debtor is in default. This provision provides protection for the grantor and holder of Mortgage Rights by having to register and validate it at the Land Office or PPAT due to the provisions of the Mortgage Rights registration deadline. The form of legal protection for creditors when the debtor defaults, is in the form of the credit agreement itself according to the Explanation of Article 10 of Law Number 4 of 1996. So that the position of SKMHT in this case does not yet have executorial power which has an impact on creditors according to the Collateral law only having the position of concurrent creditors who do not have special rights as stated in Article 1132 of the Civil Code. If the Mortgage Right has not been registered and is still SKMHT but the debtor cannot fulfill his obligation to pay the debt, then the creditor can take several legal measures to save himself from the defaulting debtor, forms of legal protection that can be carried out by the bank either through litigation or non-litigation. Non-litigation legal measures are dispute resolution outside the court, namely through mediation, negotiation, conciliation and arbitration. If the debtor's dispute resolution efforts do not have good faith to take non-litigation legal measures, namely through the general court and commercial court. The legal consequences of SKMHT are limited to a period of validity for land rights that have been registered, namely 30 (thirty) days and those that have not been registered, namely 3 (three) months. If the period is not met, then it is null and void by law. This means that the power of attorney cannot be used as a basis for making APHT, then the general guarantee provisions contained in the Function of SKMHT will be enforced as a substitute if the Mortgage Grantor cannot be present before the Land Deed Officials. Thus, in order for a SKMHT to be valid, it must be made with an authentic deed by a Notary or a Deed by a Land Deed Official (PPAT), a notarial deed is intended as an authentic deed that has strong evidentiary power. In practice, before the land rights certificate is completed, the (APHT) cannot be made and if the SKMHT has expired, a new SKMHT will be made, after the land rights certificate is completed,



it will be continued with the APHT. Because SKMHT is an absolute power, the process of charging HT using SKMHT is carried out with an agreement based on trust from the parties regarding the credit agreement and the SKMHT object which is used as collateral.

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