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Legal Implications of Not Following Up on SKMHT to Become APHT in Digital Banking

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Abstract. *This study aims to analyze the legal status of the Power of Attorney to Impose Security Rights (SKMHT) both before and after the expiration of its validity period, as well as the forms of legal protection for creditors, debtors, and Land Deed Officials (PPAT) when the SKMHT is not followed up by the execution of a Deed of Granting Security Rights (APHT) in digital-based banking credit practices. The research employs a normative legal method using statutory and conceptual approaches. Legal materials consisting of primary, secondary, and tertiary sources were gathered through literature review and analyzed qualitatively. The findings indicate that the SKMHT constitutes a special power of attorney that is temporary in nature and does not automatically create a Security Right. Prior to the expiration of the validity period, the SKMHT retains legal force provided it meets formal and material requirements. Once the validity period expires without the execution of an APHT, the SKMHT becomes void by operation of law; Consequently, no Security Right is created, and the creditor loses their preferential status and executive rights over the collateral object. Legal protection can be strengthened through compliance with legal provisions, adherence to the prudential principle, monitoring of the SKMHT's validity period, transparency toward the debtor, and the integration of digital systems among banks, PPATs, and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN).*

Keywords: *Banking; Digitalization; Legal; Protection; Security.*

1. Introduction

Evolving banking practices demand a fast, efficient credit process that still ensures legal certainty for all parties. In credit relations, land collateral plays a strategic role because it provides protection to creditors in the event of default by the debtor. Research on the legality of SKMHT confirms that the validity of this instrument is directly related to creditor protection and compliance with formal requirements stipulated by law. This situation demonstrates that accelerating banking services is inseparable from the need to ensure the legal validity of collateral documents.[1]

A Power of Attorney to Encumber a Mortgage (SKMHT) is used when directly encumbering a Mortgage through an APHT cannot be done. The SKMHT serves as a preliminary instrument that grants the authorized party specific authority to encumber the Mortgage. A study of the notary's responsibilities in drafting the SKMHT shows that the authority, deed formality, and compliance with legal provisions are crucial in maintaining legal certainty. Therefore, the SKMHT is not a substitute for an APHT, but rather a temporary means toward the creation of a Mortgage.[2]

Problems arise when the SKMHT is not immediately followed up with an APHT within the specified timeframe. Studies of expired SKMHTs in banking practice indicate legal issues regarding the creditor's position if the power of attorney is not followed up. A time limit is necessary to prevent the encumbrance of the Mortgage Right from remaining in limbo and to ensure the status of the collateral remains clear to both parties and third parties.[3]

From a legal certainty perspective, a SKMHT that has passed the time limit without the creation of an APHT loses its basis for use as an instrument for imposing a Mortgage Right. Research on the legal certainty of a SKMHT issued by a notary places the fulfillment of legal requirements as a crucial factor determining the validity of the power of attorney (Prakoso & Permana, 2025). Failure to comply with these requirements can have consequences for the creditor's position, particularly since the Mortgage Right has not yet been created before the APHT is created and registered.[4]

Banking digitization accelerates credit analysis, data exchange, and financing administration. However, digitalization does not eliminate the legal formalities involved in establishing mortgages. In digital-based practices, the collateral encumbrance process involves banks, Land Deed Officials (PPAT), and electronic land registration systems, making coordination and oversight increasingly crucial. Digital transformation should be viewed as a means of efficiency, not as an

[1]Adrian Sutedi, Mortgage Law, Jakarta: Sinar Grafika, 2018, pp. 1–3.
[2]Ahzar Pasaribu, “The Validity of a Power of Attorney to Encumber Mortgage Rights (SKMHT) Made by a Notary Appointed by the National Land Agency (BPN),” Journal of Law and Notary Affairs, Vol. 2, No. 1 (2018), p. 15.
[3]Amira Khairunissa, Kashadi, and Yuli Prasetyo Adhi, “Credit Agreement with Power of Attorney to Encumber Mortgage Rights (SKMHT) Which Expires at the Regional Company Bank Perkreditan Rakyat Kendali Artha, Kendal Regency,” Diponegoro Law Journal, Vol. 2, No. 2 (2013).
[4]Bhim Prakoso and Bayu Indra Permana, "Legal Certainty of Power of Attorney Imposing Mortgage Rights Made by a Notary," Notaire, Vol. 8, no. 3 (2025), p. 278–296.

excuse to reduce the procedures underlying the creation of property rights.[5]If the SKMHT expires without being processed into an APHT, the creditor does not obtain the Mortgage Rights and does not acquire a preferential position based on the collateral. Conversely, the debtor and third parties obtain certainty that the authority under the SKMHT does not last indefinitely. Studies on the nullity of SKMHT confirm that this time limit also serves as a legal protection instrument by preventing uncertainty regarding the status of the land object.[6]

This issue becomes increasingly important in digital banking because administrative delays can occur between different systems and parties. Therefore, legal protection cannot simply rely on normative provisions; it also requires a monitoring mechanism that can ensure the prompt upgrade of SKMHT to APHT. Based on these issues, this study aims to analyze the legal status of SKMHT before and after the expiration of the term, as well as the implications of not following up on SKMHT to APHT in digital banking practices.

2. Research Methods

This research is a normative legal study using a statutory and conceptual approach. The statutory approach is used to examine provisions related to SKMHT (Serving Certificate of Ownership), APHT (Deed of Mortgage), Mortgage Rights, the position of Notary/PPAT (Notary Public/PPAT), banking, and the provision of technology-based banking services. The conceptual approach is used to examine the concepts of legal certainty, legal protection, power of attorney, collateral, and banking digitalization as developed in legal doctrine.[7] The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Law on Mortgage Rights, the Law on Banking, the Law on the Office of Notaries, and regulations relating to digital services and Mortgage registration. Secondary legal materials come from books, scientific journals, and relevant legal papers, while tertiary legal materials are used as supporting materials. Legal materials were collected through library research. Relevant legal materials were identified, grouped based on research issues, and then linked to the problem formulation. Analysis was conducted qualitatively by identifying, classifying, connecting, interpreting, and drawing legal arguments from relevant provisions and concepts.

[5]Maria Gradillas and Llewellyn DW Thomas, "Distinguishing Digitization and Digitalization: A Systematic Review and Conceptual Framework," Journal of Product Innovation Management, Vol. 42, no. 1 (2025).
[6]Sanabila Adha Nur'Aida and Sumiati, "Mortgage Rights: The Key to Legal Protection for Creditors and Debtors," Fundamental: Scientific Journal of Law, Vol. 14, No. 2 (2026), pp. 120–130.
[7]Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 15.

3. Results and Discussion

3.1. Legal Status of SKMHT Before and After the Expiration of the Term

The SKMHT serves as a special, temporary power of attorney to impose a mortgage right through an APHT. In the land title security system, the SKMHT is not identical to the mortgage right because the property right is only created after the APHT is created and registered with the Land Office. Therefore, at the SKMHT stage, the creditor does not yet have a preferential position over the collateral object. This position demonstrates a clear distinction between the authority to impose collateral and the emergence of the collateral right itself.[8]The use of a SKMHT is essentially a solution to situations where an APHT cannot be created at the time a credit agreement is executed. In banking practice, this situation can occur because the land administration process has not been completed, the certificate is still being processed, or the mortgagee is unable to be present to sign the APHT. The SKMHT allows the credit process to continue, but it is only temporary and must be immediately finalized through an APHT.

The validity of a SKMHT depends on the fulfillment of formal and material requirements. The deed must be drawn up by an authorized official and contain a specific power of attorney to encumber the mortgage. The SKMHT also cannot contain a substitution power of attorney and must comply with provisions regarding the object, the party granting the power of attorney, and the contents of the power of attorney. Research on the legality of the SKMHT before a notary shows that deviations from formalities can affect the legal force of the deed and the protection of creditors.

In addition to these initial requirements, the validity of the SKMHT is also limited by time. For registered land rights, the APHT must be prepared no later than one month after the SKMHT is issued. For unregistered land rights, the validity period is three months, with exceptions for certain types of credit as stipulated by law. These limitations indicate that the SKMHT was originally designed as a temporary instrument, not as a stand-alone guarantee.[9]

Before the term expires, a SKMHT that meets the requirements retains legal force as a special power of attorney. However, this power only grants the authority to take necessary actions in order to encumber the Mortgage Right. The creditor has not yet obtained preferential property rights over the land. Therefore, if the debtor defaults while the SKMHT is still valid but the APHT has not been created and registered, the creditor's position is not the same as that of a fully formed Mortgage Right holder. This time limit embodies the principle of

[8]Boedi Harsono, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Content and Implementation, Jakarta: Djambatan, 2008, pp. 420–425.
[9]Republic of Indonesia Law Number 4 of 1996, Article 15 paragraph (6).

legal certainty. Strict provisions regarding the time limit prevent the power of attorney from continuing indefinitely and provide clarity to the principal, the recipient of the power of attorney, and third parties regarding the status of the land object. From a legal certainty perspective, norms that determine the time limit also reduce the potential for multiple interpretations regarding whether the SKMHT can still be used after its validity period has expired.

Once the time period expires and the SKMHT is not followed up with an APHT, the SKMHT is legally void. Consequently, the SKMHT can no longer be used as a basis for creating an APHT. The power of attorney terminates, and the Mortgage Right is no longer created based on the SKMHT. This consequence demonstrates that the expiration of the time period is not merely an administrative matter, but an event that directly changes the legal standing of the parties.[10]

When a Mortgage Right is not created, the creditor loses its preferred creditor status and the executorial rights inherent in the Mortgage Right. The creditor then assumes the position of concurrent creditor, provided there is no other valid collateral. This situation increases legal and financial risks, particularly if the debtor subsequently defaults, goes bankrupt, or the collateral object conflicts with the interests of other creditors. The nullity of the SKMHT after the expiry of the time period differs from the situation where the SKMHT was legally flawed from the outset. An SKMHT may become invalid due to failure to meet formal or material requirements upon its creation. Meanwhile, a previously valid SKMHT may lose its validity due to failure to act upon it within the specified time limit. Therefore, the validity of an SKMHT is not only assessed at the time of its creation but must also be assessed in terms of compliance with the time limit for its upgrade to an APHT. The time limit also provides protection for the debtor and third parties. If the authority based on the SKMHT can continue indefinitely, the status of the land object will remain uncertain. With the nullity provision, after the expiration of the period without an APHT, no authority can be exercised based on the old SKMHT. This creates certainty regarding the legal status of the collateral and prevents the use of an expired power of attorney.[11]

In relation to the theory of legal certainty, the provisions regarding the SKMHT time limit demonstrate that the law provides an objective measure of when a power of attorney remains valid and when it loses its force. This aligns with the view that legal certainty requires clear, predictable, and consistently applied rules. In this context, certainty relates not only to the existence of written norms but also to the parties' compliance with those norms.

[10]Piters Djajakustio, "Power of Attorney to Assign Mortgage Rights (SKMHT) is Void by Law: Urgency and Alternatives for Building a New Concept of Legal Protection for Creditors," Anti-Corruption Journal, Vol. 4, No. 1 (2023), pp. 25–44.

[11]Philipus M. Hadjon, Legal Protection for the People in Indonesia (Surabaya: Bina Ilmu, 1987), pp. 2–5.

From a legal protection perspective, the SKMHT mechanism provides a balance. Creditors are given the opportunity to use a temporary instrument when an APHT cannot be created, while debtors and third parties are assured that this authority has limits. Thus, the nullity provision is not merely a sanction for negligence, but also a mechanism to maintain orderly land administration and balance the interests of the parties.

3.2. Legal Protection for Creditors, Debtors, and Land Deed Officials (PPAT) in Digital-Based Banking

Digitalization has transformed banking service mechanisms, including the credit granting process. Debtor eligibility analysis, document exchange, communication, and some administrative processes can now be conducted electronically. These changes offer the benefits of speed and efficiency, but also create new requirements for document monitoring and coordination between parties. In the context of mortgage guarantees, digital acceleration does not eliminate the obligation to comply with the legal procedures that underlie the creation of property rights.[12]The SKMHT (Special Property Title Certificate) remains relevant in digital-based credit processes because it serves as a temporary instrument when an APHT cannot yet be issued. However, the use of SKMHT in digital systems requires more structured oversight due to its limited duration. If the administrative system does not accurately record the issuance date and deadline, there is a risk that the SKMHT will expire without further action. This risk can stem from internal bank negligence, delays in PPAT (PPAT) registration, land administration issues, or poor coordination between systems.

For creditors, legal protection is primarily achieved through compliance with all stages of the Mortgage Right encumbrance. Banks must ensure that the SKMHT is legally created, promptly processed into an APHT, and subsequently registered through the applicable mechanisms. Internal oversight must be able to demonstrate the status of each SKMHT from its creation through to the completion of the APHT and registration. This is part of the application of the precautionary principle in credit risk management. Creditors also need an administrative system that can provide warnings before the SKMHT expires. This mechanism is crucial because nullity occurs based on legal provisions, not because a new decision from another party is required. Therefore, the internal oversight system must prioritize the expiration date of the SKMHT as a key parameter in collateral management.[13]

[12]Setyaningsih, Hidayat Abdulah, and Anis Mashdurohatun, "The Role of Notaries in Making Deeds of Granting Mortgage Rights (APHT) for Credit Agreements between Creditors and Debtors with Mortgage Guarantees in Purwokerto," Jurnal Akta, Vol. 5 No. 1 (2018).
[13]Republic of Indonesia Law Number 10 of 1998 concerning Banking, Article 2 and Article 29 paragraph (2).

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If the SKMHT expires without an APHT, the creditor cannot maintain its preferred position based on the SKMHT. The absence of a Mortgage Right results in the creditor losing the property rights and executorial rights that should have been obtained after registration. Therefore, legal protection for creditors cannot only be provided after a default occurs, but must be established from the outset through compliance with and oversight of the collateral encumbrance process. For debtors or Mortgage providers, legal protection is reflected in the certainty that the Mortgage encumbrance is carried out based on legitimate approval and authority. Debtors also have the right to obtain information regarding the status of the SKMHT, whether it has been upgraded to an APHT, and whether the Mortgage Right has been registered. This transparency is important so that debtors know the legal status of the land that is the object of collateral and avoid facing uncertainty due to unmonitored administrative processes.

The termination of a SKMHT without an APHT also provides protection for the debtor. Once the SKMHT is legally void, the authority based on that power of attorney can no longer be used to create an APHT. If the creditor still requires a mortgage, the process must be carried out based on a valid legal basis and with valid approval in accordance with applicable regulations. Thus, the debtor is not in a situation where the old power of attorney can be used indefinitely.

For Land Deed Officials (PPATs), legal protection is closely related to the careful and procedural exercise of their authority. PPATs must ensure that the requirements for deed preparation are met and provide adequate explanations regarding the temporary nature of the SKMHT and its legal consequences. If a PPAT has exercised his authority in accordance with the provisions, but the delay in upgrading to APHT is caused by another party, the PPAT enjoys protection because he has performed his duties in accordance with legal standards.[14]Conversely, if the delay or failure of the process stems from the negligence of the Land Deed Official (PPAT) in exercising his authority, legal liability may arise. Therefore, certainty regarding who is responsible for the delay needs to be established through documented records and communication. This is increasingly important in digital-based services, as each stage can involve electronic data and documents.

Digitalization should not be interpreted as reducing legal formalities. Electronic systems should be used to strengthen compliance, transparency, and oversight. The creation of APHT (Land Title Deed) and the registration of Mortgage Rights must still comply with legal requirements, while technology is used to expedite the process, monitor status, and prevent delays. Therefore, digital transformation is a supporting instrument for legal certainty, not a substitute for

[14]Setyaningsih, Hidayat Abdulah, and Anis Mashdurohatun, "The Role of Notaries in Making Deeds of Granting Mortgage Rights (APHT) for Credit Agreements between Creditors and Debtors with Mortgage Guarantees in Purwokerto," Jurnal Akta, Vol. 5, No. 1 (2018).

legal procedures.[15]System integration between banks, Land Deed Officials (PPAT), and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) can be a crucial mechanism to prevent the expiration of SKMHT (Subject to Land Deed) without an APHT (Property Deed). Ideally, an integrated system should be able to record the SKMHT issuance date, calculate the deadline, indicate the APHT stages, and provide notification before the deadline. This mechanism can minimize the potential for administrative negligence and facilitate the tracking of each party's responsibilities.[16]

From a legal protection theory perspective, these efforts constitute preventive protection because they are aimed at preventing losses before a dispute occurs. Repressive protection is still necessary if a dispute or loss has already arisen, but preventive mechanisms play a crucial role because the primary risk in a Mortgage Deed (SKMHT) is the expiration of authority due to the lapse of time. Therefore, time-frame monitoring becomes a tangible form of legal protection. Balanced legal protection places creditors, debtors, and Land Deed Officials (PPAT) in distinct but interrelated positions. Creditors require assurance that collateral can be legally encumbered; debtors require assurance that their land is not encumbered without legitimate authority; and Land Deed Officials require certainty regarding the scope of their authority and responsibilities. All of these interests can be realized if the Mortgage Right encumbrance process is conducted in an orderly and documented manner.

Research findings indicate that legal protection is already provided through the UUHT framework, but its implementation still requires administrative and technical strengthening. For creditors, failure to create an APHT eliminates the Mortgage Right and preferential status. For debtors, the expiration of the SKMHT provides certainty regarding the termination of the power of attorney. For PPATs, protection is provided as long as the authority is exercised in accordance with the provisions. Therefore, strengthening digital integration is necessary to ensure the goals of certainty, justice, and benefit can be achieved simultaneously.[17]

3.3. Legal Character of SKMHT as Special Power of Attorney

The SKMHT must be positioned appropriately within the legal framework of collateral. This instrument is neither a Mortgage Right nor a substitute for an APHT, but rather a special power of attorney granted to carry out the act of encumbering a Mortgage Right. This characteristic explains why the SKMHT is

[15]Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary in conjunction with Law Number 2 of 2014.
[16]Philipus M. Hadjon, Legal Protection for the People in Indonesia, Surabaya: Bina Ilmu, 1987, p. 25.
[17]Regulation of the Financial Services Authority of the Republic of Indonesia Number 21 of 2023 concerning Digital Services by Commercial Banks, Article 1 number 4 and Article 3.

temporary and why its existence is always linked to the APHT creation process. If the SKMHT is understood as a stand-alone guarantee, there will be an error in determining when the creditor's property rights arise. Research in this thesis shows that property rights only arise after the APHT is created and registered with the Land Office. Therefore, the SKMHT is only a preliminary instrument that bridges the practical needs of providing credit with the legal formalities required to encumber collateral.[18]

The unique nature of a SKMHT is also evident in the limitations of its content and authority. This power of attorney is specifically directed to encumber a mortgage on a particular object and may not be used for legal acts outside of that purpose. This nature distinguishes the SKMHT from a general power of attorney in civil law. These limitations are intended to prevent the power of attorney from obtaining excessive authority over the grantor's land. In notarial and land practice, limitations on content are crucial because errors in formulating the power of attorney can affect the validity of the deed and the continuation of the APHT process.[19]

The relationship between the SKMHT and the credit agreement also needs to be distinguished. The credit agreement forms the basis of the debt-receivable relationship between the bank and the debtor, while the SKMHT represents the authority to impose collateral. Therefore, the existence of a credit agreement does not automatically transform the SKMHT into a Mortgage Right. Similarly, the existence of the SKMHT does not mean the bank has acquired property rights over the land. This distinction is important in determining the legal consequences of a default before the APHT and registration are complete. The creditor remains in a binding relationship based on the credit agreement, but does not yet have property rights that confer preferential rights over the land.[20]

3.4. Formal and Material Requirements for the Validity of SKMHT

The validity of a SKMHT (Land Title Deed) cannot be measured solely by whether the deed has been drawn up by an authorized official. Both formal and material requirements must be met simultaneously. Formally, the deed must be drawn up by a notary or landowner (PPAT) in accordance with their authority and in accordance with deed-making procedures. Subsequently, there must be an authorized party granting power of attorney, a clear object of the land rights,

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[18]Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 15.

[19]Metta Tjia and David Tan, "The Validity of a Deed of Power of Attorney to Encumber Mortgage Rights Drawn Up by a Notary," Repertorium: Scientific Journal of Notary Law, Vol. 11, No. 1 (2022), p. 16.

[20]Ahzar Pasaribu, "The Validity of a Power of Attorney to Assign Mortgage Rights (SKMHT) Made by a Notary Appointed by the National Land Agency (BPN)," Journal of Law and Notary Affairs, Vol. 2 No. 1 (2018), p. 15.

and the purpose of granting the power of attorney consistent with the encumbrance of the mortgage. Failure to comply with any of these elements can raise questions about the legal validity of the SKMHT.[21]

Formal requirements are crucial because deeds drawn up by public officials are considered valid and valid precisely because of the authority and procedures stipulated by law. Therefore, verifying the parties' identities, authority to act, ownership documents, and object suitability is not merely an administrative task. All these stages relate to the validity of the deed and the protection of the parties. In this context, the role of notaries and land certificate holders (PPAT) is crucial in preventing disputes, as errors early in the process can carry over to the APHT (Deed of Land Deed).[22]

Material requirements also determine whether the granted power of attorney can actually be used to encumber the mortgage. The land must be identifiable, and the principal must have authority over it. If the basis for authority over the object is lost or if there is a change in circumstances that makes encumbrance impossible, the SKMHT cannot be considered independent of the legal status of the collateral object. Compliance with the form, content, authority of the parties, and the collateral object remains a crucial requirement. The link between formal and material requirements and the principle of legal certainty is evident in the need to provide an objective measure of when a power of attorney can be exercised. The law not only grants authority but also determines how that authority must be granted and for what purpose. Therefore, the validity of a SKMHT is the result of fulfilling several interrelated elements. This fulfillment serves as the basis for the process of upgrading to an APHT (Authorized Power of Attorney).[23]

3.5. SKMHT Timeframe and Its Importance

The time limit for a SKMHT is one of the main characteristics that distinguishes it from a regular power of attorney. In this study, for registered land rights, an APHT must be made no later than one month after the SKMHT is granted, while for unregistered land, a three-month time limit applies, with exceptions specified for certain types of credit. This time limit is not merely an administrative target, but rather the validity limit of the power of attorney. This means that the parties cannot extend the validity of an old SKMHT simply by allowing time to pass

[21]Ida Ayu Agung Nara Kirana Udiyana and I Made Sarjana, "A Legal Study of Notary Responsibilities in Making Powers of Attorney to Assign Mortgage Rights," Acta Comitas, Vol. 6, No. 3 (2021), pp. 670–676.
[22]Law Number 30 of 2004 concerning the Position of Notary in conjunction with Law Number 2 of 2014.
[23]Ida Ayu Agung Nara Kirana Udiyana and I Made Sarjana, "A Legal Study of Notary Responsibilities in Making Powers of Attorney to Assign Mortgage Rights," Acta Comitas, Vol. 6 No. 3 (2021), pp. 670–676.

without completing the collateral encumbrance.[24] From a legal certainty perspective, the existence of a time limit allows each party to anticipate the consequences of their actions or omissions. The bank knows when the APHT must be completed, the PPAT knows when the deed must be drawn up based on a valid power of attorney, and the debtor knows when the authority under the SKMHT expires. Third parties also benefit from this clarity because the legal status of the land is not left in limbo. Therefore, the time limit is part of the legal protection system, not simply a technical limitation.[25] In banking practice, delays can occur due to administrative factors, incomplete land documents, title transfer processes, division, roya, or the presence of the debtor or mortgagee. The SKMHT provides temporary space to address these conditions, but this space remains limited. According to the thesis, the time limit prevents the encumbrance of the mortgage from remaining in limbo. Without a time limit, the creditor could potentially delay the preparation of the APHT indefinitely, leaving the collateral's status uncertain.[26] Due to its limited nature, time monitoring must be carried out actively. Monitoring should not only be carried out when the SKMHT period is nearing its end, but also from the time the SKMHT is created. The creation date, type of land object, registered or unregistered category, deadline date, APHT preparation status, and registration status must be recorded in the bank's administration system. This mechanism is even more crucial in digital services, as the volume of documents and processing speed can increase the risk of missing deadlines if not accompanied by a control system.[27]

3.6. Void by Law as a Legal Consequence of the Passing of Time

In the context of a SKMHT, nullity by law occurs because the law stipulates this consequence when the term expires without the issuance of an APHT. Therefore, nullity by law in this situation differs from simply terminating an administrative relationship. This provision operates directly based on legal norms. Once the validity period expires, the power of attorney can no longer be used as a basis for the issuance of an APHT. This provides legal certainty to ensure that the authority to encumber a Mortgage does not continue indefinitely.[28]

The first consequence is the termination of the power of attorney. The power of attorney can no longer use the old SKMHT to sign the APHT on behalf of the principal. The second consequence is the non-arising of the Mortgage Right based on the power of attorney. The third consequence relates to the creditor's

[24]Law of the Republic of Indonesia Number 4 of 1996, Article 15.
[25]Bhim Prakoso and Bayu Indra Permana, loc. cit.
[26]Boedi Harsono, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Contents and Implementation, Revised Edition, Jakarta: Djambatan, 2008, pp. 420–425.
[27]Amira Khairunissa, Kashadi, and Yuli Prasetyo Adhi, “Credit Agreement with Power of Attorney to Encumber Mortgage Rights (SKMHT) Which Expires at the Regional Company Bank Perkreditan Rakyat Kendali Artha, Kendal Regency,” Diponegoro Law Journal, Vol. 2 No. 2 (2013).
[28]Republic of Indonesia Law Number 4 of 1996, Article 15 paragraph (6).

position, namely the loss of the opportunity to obtain status as a Mortgage Right holder based on the revoked SKMHT. Therefore, the passing of the deadline has a cascading effect on the collateral formation process.[29] The nullity provision also provides protection to the grantor of the Mortgage Right. Once the power of attorney loses its legal force, the previous authority to encumber the land cannot be maintained. Thus, the grantor is not continuously bound by a power of attorney that has exceeded the legally stipulated limit. From a third party's perspective, this situation clarifies that land rights cannot be considered to be in the process of being encumbered by a Mortgage Right based on the old SKMHT if the APHT is not issued within the specified time.[30] For creditors, these consequences demonstrate that the SKMHT is insufficient to provide the same sense of security as a mortgage. The bank still has the right to collect under the credit agreement, but this right does not automatically translate into property rights over the land. Therefore, collateral management must be treated as part of credit risk management. The legal risks of delays relate not only to the validity of the documents but also to the potential deterioration of the creditor's position in the event of default or bankruptcy.[31]

3.7. Creditor's Position After the SKMHT Expires

Mortgage rights grant certain creditors priority in the repayment of receivables. This privilege is the primary characteristic of collateral and distinguishes it from general collateral. When a SKMHT is not processed into an APHT, the property rights that should have arisen are never established. Thus, the creditor loses the basis for demanding treatment as the holder of a Mortgage Right over the land.[32] In such circumstances, the creditor essentially reverts to the position of a concurrent creditor, competing with other creditors based on general collateral provisions if no other preferred basis exists. This risk explains why banks must ensure that the process from SKMHT to APHT and registration runs as a continuous chain.

The loss of preferential status also relates to executorial rights. The protection afforded by a Mortgage Right allows creditors to obtain repayment through the enforcement mechanism for the collateral, in accordance with legal provisions. If the Mortgage Right has not yet been established, this special mechanism cannot be used based on a revoked SKMHT. Thus, early administrative failures can

[29] Piters Djajakustio, "Power of Attorney to Assign Mortgage Rights (SKMHT) is Void by Law: Urgency and Alternatives for Building a New Concept of Legal Protection for Creditors," Anti-Corruption Journal, Vol. 4, No. 1 (2023), pp. 25–44.
[30] Philipus M. Hadjon, Legal Protection for the People in Indonesia, Surabaya: Bina Ilmu, 1987, pp. 2–5.
[31] Piters Djajakustio, "Power of Attorney to Assign Mortgage Rights (SKMHT) is Void by Law: Urgency and Alternatives for Building a New Concept of Legal Protection for Creditors," Anti-Corruption Journal, Vol. 4 No. 1 (2023), pp. 25–44.
[32] Law of the Republic of Indonesia Number 4 of 1996, Article 1 number 1.

develop into greater legal risks when the credit relationship enters the dispute or collection stage.[33]This condition does not mean that the debtor's debt is extinguished. The credit agreement remains the basis of the obligation between the parties. The issue lies in the quality of protection for debt repayment. Banks, which initially hoped for material collateral, may find themselves in a weaker position if such collateral is never provided. Therefore, the preparation and registration of an APHT are not merely complementary but crucial elements that determine the quality of creditor protection.[34]

3.8. Analysis Based on the Theory of Legal Certainty

The theory of legal certainty is used in this study to assess whether the norms regarding SKMHT provide clarity regarding rights, obligations, procedures, and legal consequences. Gustav Radbruch's thinking places legal certainty as one of the fundamental values of law. In the context of SKMHT, this certainty is evident in the determination of the requirements for its creation, the timeframe, and the legal consequences if the timeframe is not met. With clear criteria, the parties can understand from the outset the consequences of the success or failure of the mortgage encumbrance process.[35] The failure to convert the SKMHT into an APHT demonstrates the importance of legal certainty. Without an APHT and registration, the land remains unencumbered by a mortgage. From the creditor's perspective, this means the expected guarantee has not yet been established. From the debtor's perspective, the land title should not be considered encumbered simply because a SKMHT has been issued. From a third party's perspective, the time limit prevents a situation where a previous power of attorney continues to be used as a justification for encumbering the land after it is no longer valid.[36]Legal certainty also relates to the division of responsibilities. Banks are responsible for overseeing the collateral they receive, Land Deed Officials (PPAT) and Notaries are responsible for drafting deeds according to their authority, while debtors have the right to know the status of their collateral. When these responsibilities are recorded and traceable, the encumbrance process becomes more transparent. Conversely, when the process is spread across multiple parties without clear records, disputes over who was negligent become more difficult to determine.[37]

[33]Ridel Adisetia, "Execution of Mortgage Rights as Legal Protection for Creditors," Lex et Societatis, Vol. 5, No. 10 (2017), pp. 56–96.
[34]Adrian Sutedi, Mortgage Law, Jakarta: Sinar Grafika, 2018.
[35]Gustav Radbruch, Legal Philosophy, trans. Kurt Wilk, Harvard University Press, Cambridge, 1950, p. 107–119.
[36]Gustav Radbruch, Legal Philosophy, trans. Kurt Wilk, Harvard University Press, Cambridge, 1950, p. 107–119.
[37]Setyaningsih, Hidayat Abdulah, and Anis Mashdurohatun, "The Role of Notaries in Making Deeds of Granting Mortgage Rights (APHT) for Credit Agreements between Creditors and Debtors with Mortgage Guarantees in Purwokerto," Jurnal Akta, Vol. 5 No. 1 (2018).

4. Conclusion

The SKMHT is a special power of attorney that is temporary in nature and does not automatically create a Mortgage Right or the creditor's position as a preferred creditor. Before the term ends, the SKMHT remains legally binding as long as it meets the formal and material requirements, but must be followed up with an APHT within the specified time limit. After the term ends without an APHT, the SKMHT is null and void, cannot be used as a basis for making an APHT, and the Mortgage Right does not arise, so the creditor loses its preferred position and executorial rights over the collateral object. Legal protection for creditors, debtors, and Land Deed Officials (PPAT) can be strengthened through the application of prudential principles, monitoring the validity period of SKMHT (Special Property Deed Certificates), information transparency, and digital system integration between banks, PPATs, and the Ministry of ATR/BPN. Banks need to establish a supervisory system capable of providing warnings before SKMHT expires; PPATs and Notaries need to ensure formal and material requirements are met and provide explanations to the parties; debtors need to obtain information regarding the status of their collateral; and regulators need to promote a digital system that is safe, transparent, and integrated, and remains oriented towards legal certainty.

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