

Juridical Review of the Period of Power of Attorney Imposing Mortgage Rights in Relation to Legal Certainty

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ABSTRACT

A power of attorney to impose mortgage rights is one of the products made by a notary which is commonly used in the banking sector related to mortgage rights. SKMHT is a vital legal tool in property transactions involving financing. Determining the time period in the power of attorney plays a crucial role in ensuring efficiency and legal certainty in the context of collateral to obtain credit from the bank. This paper aims to provide a juridical analysis of the time period for the power of attorney to impose mortgage rights, with a focus on efforts to increase efficiency and certainty law.

Through a juridical-normative approach, the author investigates various legal regulations relating to determining the period of time for a power of attorney to impose mortgage rights. Apart from that, this research also examines general practices in banking related to determining the term of power of attorney.

The results of the analysis highlight that determining the time period for a power of attorney to impose mortgage rights has significant implications for the efficiency of transactions in banking, especially in terms of ensuring legal certainty for the parties involved. This research emphasizes the importance of paying attention to the SKMHT validity period in order to achieve a balance of interests between creditors and debtors.

The implication of this research is to provide an understanding that there is a need for reform in the regulations regarding the period of validity of SKMHT related to time efficiency and legal certainty for creditors and debtors.

Keywords: SKMHT, term, mortgage rights

I. INTRODUCTION

Before discussing the Power of Attorney to Charge Mortgage Rights (SKMHT), the author briefly explains the Mortgage Rights themselves.

Mortgage Rights are security rights imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, whether or not including other objects which are an integral part of the land, for the repayment of certain debts owed to other creditors¹.

Objects that are used as collateral in repayment of a debt from a debtor to a creditor are encumbered with Mortgage Rights. The giver of the mortgage right is the debtor as the owner of the collateral and the recipient of the mortgage right is the creditor. To carry out the granting of the Mortgage Rights burden, sometimes the debtor cannot be present when making the deed of granting the Mortgage Rights, so to speed up the process, a SKMHT is created. SKMHT is given to individuals or other parties as their power of attorney to be present when making the deed granting Mortgage Rights.

One of the duties and authorities of a notary is to make a Power of Attorney to Charge Mortgage Rights (SKMHT) which functions in the banking sector, especially providing credit.

¹ Article 1, Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land

This SKMHT is used by banks to impose mortgage rights on land certificates which are used as collateral or collateral by debtors for loans to banks. With SKMHT, the bank, in this case, the creditor can ask the National Land Agency (BPN) in the area where the land is located, to impose a mortgage or place a mortgage on the land certificate.

SKMHT has become a very important legal instrument in the context of providing collateral for a debt, especially in property transactions. Along with its crucial role, the issuance of SKMHT often faces complex challenges, causing irregularities in the process.

One of the aspects that is the main focus is the implementation period of the SKMHT itself. Clarity regarding this time period is essential because it will affect the rights and obligations of the parties involved in the transaction.

In an effort to understand the problems that arise related to the issuance of SKMHT, this research uses case study methods and legal document analysis. Through this approach, researchers aim to identify several problems that

often arise, such as lack of clarity in determining the implementation time period, the complexity of administrative requirements, and slow bureaucratic processes that can hinder the smoothness of the publishing process.

Apart from that, legal uncertainty is also an important factor influencing the SKMHT issuance process. The existence of certain unforeseen conditions can cause delays or even termination of the SKMHT issuance process.

The implication of this research is the importance of reform in the regulations regarding the validity period of SKMHT, especially in the practice of Notary positions. This reform is expected to increase legal clarity and certainty in the issuance of SKMHT, as well as reduce the risks and administrative obstacles that often disrupt this process. So that the issuance of SKMHT by a notary can be carried out in accordance with its function.

II. METHOD

Research methods are a process of procedures and principles solving a problem to be researched. Then, this research uses a type of normative juridical research, namely analyzing existing rules. Sui Generis science or legal science is a science that has its own character and type and cannot be equated with other branches of science. This research uses material that is focused on legal materials that are related to the main issues raised so that they are in accordance with the sui generis character of legal science. The research used in this journal is normative research. Based on the opinion of I Made Pasek Diantha², normative legal research has the function of providing juridical arguments when there is a vacuum, ambiguity and conflict of norms, which is able to examine a law so that a legal truth is found.

This type of legal research is carried out in a normative juridical manner where the law is conceptualized as what is written in statutory regulations (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.³ This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations.⁴

III. RESULTS AND DISCUSSION

Mortgage rights are a tool that plays an important or crucial role in banking practices where the public (debtors) need funds and to obtain these funds the debtor makes a credit loan to the bank (creditor) by providing a guarantee for the repayment of the credit debt which can be

² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. (Jakarta: Prenada Media Group, 2017), hlm.12.

³ Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum*. Raja Grafindo Persada Jakarta. 2012. hal 118

⁴ Soerjono Soekarto, *Pengantar Penelitian Hukum*, UI Press. Jakarta. 1984. hal 20.

called collateral, to In order to continue to obtain the credit, the collateral used as collateral for repayment of the debt must be encumbered with a Mortgage, so that the creditor is willing to issue credit to the debtor as stated in a credit agreement.

The credit agreement is a predecessor agreement (panctum de contrahendo). Thus, this agreement precedes the debt and receivables agreement (loan-reimbursement agreement). Meanwhile, the debt and receivables agreement is the implementation of a predecessor agreement or credit agreement. It seems that this explanation is clear enough if the meaning of the predecessor in the credit agreement is differentiated from the meaning of implementing the debt and receivables agreement. The difference between credit agreements and accounts receivable agreements lies in their nature. Credit agreements are consensual while debt and receivable agreements are real⁵. The credit agreement is consensual obligatory in nature, where this agreement includes a condition that the credit recipient will guarantee the credit with mortgage rights. The promise does not stand alone, but is part of the credit agreement (obligatory), namely giving rise to rights and obligations, the obligation to receive credit with the agreement by providing collateral to the bank as the credit provider. The guarantee in the agreement must be registered, the delivery in the registration is by laving⁶. When providing credit, banks must pay attention to sound credit principles. To reduce this risk, providing credit guarantees to debtors to pay off their debts as agreed is an important factor that banks must pay attention to. To gain confidence, before granting credit, the bank must carry out a thorough assessment of the character, abilities, capital, collateral and business prospects of the debtor⁷.

⁵ H. Budi Untung, *Kredit Perbankan Indonesia* (Yogyakarta: Andi Offset, 2011)

⁶ Mariam Darus Badruzaman. *Perjanjian Kredit* (Bandung: Alumni, 1983).

⁷ H. Budi Untung, *Kredit Perbankan Indonesia*

Credit provided by banks should be obliged to provide legal protection for credit givers and recipients as well as for related parties to receive protection through a legal guarantee institution for all interested parties in connection with the provision of credit⁸. Basically, the types of credit guarantees consist of individual guarantees (personal guarantees), which are guarantees in the form of statements of capability given by a third party to fulfill the debtor's obligations to the creditor and material guarantees, which according to their nature, material guarantees are divided into 2 (two), namely guarantees with tangible objects (material) and collateral.

The types of credit guarantees consist of personal guarantees, which are guarantees in the form of statements of capability given by a third party to fulfill the debtor's obligations to the creditor and material guarantees, which according to their nature, material guarantees are divided into 2 (two), namely guarantees with tangible objects. (material) and collateral with intangible objects (immaterial). The types of land rights that can be used as collateral are Ownership Rights, Business Use Rights, Building Use Rights, and Use Rights, which are regulated in Article 4 of Law Number 4 of 1996 concerning Mortgage Rights. Must be registered and according to its nature can be transferred and burdened with mortgage rights in the event that the grant of mortgage rights is preceded by a promise to provide mortgage rights as collateral for repayment of the debtor's performance (debt) to the creditor, which is stated in the agreement and is an inseparable part of the credit agreement, the agreement is made with an authentic deed. The guarantee given by the debtor is a guarantee in the form of an immovable object, namely land, so it is closely related to Law Number 4 of 1996 concerning Mortgage Rights.

⁸ Nindyo Pramono. *Hukum Perbankan* (Yogyakarta: Laksbang Pressindo, 1999).

The granting of Mortgage Rights on an object must be preceded by a principal agreement or what is called a credit agreement, this is confirmed in the provisions of Article 10 point (1) UUHT, which states that: "The granting of Mortgage Rights is preceded by a promise to provide Mortgage Rights as collateral for repayment of certain debts, which is stated in and is an inseparable part of the relevant debt and receivable agreement and other agreements that give rise to the debt." Encumbrance on the object of land rights as binding on the credit agreement, namely the granting of Mortgage Rights. UUHT determines that the stage of granting mortgage rights is carried out by making a Deed of Granting Mortgage Rights (APHT) by the Land Deed Official. Next after signing the APHT is the registration of the APHT at the land office where the land object of the mortgage rights is located as regulated in Article 13 UUHT. In making the grant of Mortgage Rights, in principle the grantor of Mortgage Rights must be present before the Land Deed Making Officer (hereinafter referred to as PPAT), because for some reason he cannot be present in person, he is obliged to appoint another party as his proxy with a power of attorney to impose mortgage rights which generally called SKMHT which is in the form of an authentic deed.

Regarding the provisions regulated in Government Regulation Number 24 of 2016, Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials and their Implementing Regulations. Article 1 paragraph (7) of the Notary Position Law confirms that a notarial deed is an authentic deed made by or before a Notary in the form and procedures stipulated in the law.

SKMHT is a tool to assist in the implementation of the provision of mortgage rights which is commonly used in daily banking practice. SKMHT is made only for a single legal act, namely the power to impose mortgage rights. SKMHT is issued when the person giving the mortgage right is unable or unable to be present at the time of making the deed granting the mortgage right. That is when the SKMHT plays a role, so that the person/individual who receives the power of attorney from the power of attorney can sign the mortgage right so that the process can continue.

SKMHT is one of the products produced by a notary or Land Deed Official (PPAT), the issuance of SKMHT by a notary or PPAT is based on Article 15 of the Mortgage Rights Law⁹. In the UUHT, in particular Article 15 paragraph (1) states that SKMHT must be made by notarial deed or PPAT with the following requirements that must be met:

- 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 include the object of the mortgage right, 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 right.

Furthermore, Article 15 paragraph (2) UUHT: The Power to Encumber Mortgage Rights cannot be withdrawn or cannot be terminated for any reason except because the power has been exercised or because the term has expired as intended in paragraph (3) and paragraph (4).

In paragraph (3) and paragraph (4) this article states the period of validity of the SKMHT, as follows:

⁹ Article 15, Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land

Paragraph (3): A power of attorney to impose mortgage rights regarding registered land rights must be followed by the preparation of a deed granting mortgage rights no later than 1 (one) month after it is granted.

Paragraph (4): A power of attorney to impose mortgage rights regarding unregistered land rights must be followed by a deed granting mortgage rights no later than 3 (three) months after it is granted.

For the object of Mortgage Rights located within the PPAT work area, the SKMHT is made with a PPAT deed, and if the object of mortgage rights is located outside the PPAT work area then the SKMHT is made by a Notary with a Notarial deed. The official authorized to make SKMHT is the local Notary and PPAT where the object is located. Notary's Authority. based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. The authority of a PPAT is subject to the provisions regulated by the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012. Amendment

to the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 23 of 2009. Amendment to the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006. Amendment to Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

Starting from the description above, we discuss the Power of Attorney to Charge Mortgage Rights (SKMHT) which is made before a notary or PPAT and the validity period of SKMHT in credit agreements according to Law Number 4 of 1996 concerning Mortgage Rights.

The period of validity of the SKMHT as stipulated in the UUHT, especially in Article 15 paragraph (3) and paragraph (4), namely 1 (one) month and 3 (three) months is very inadequate. This is because in practice there are many obstacles in the registration process for granting Mortgage Rights which does not only involve 1 (one) agency but can involve 29 (two) or more agencies. For example; The agencies most involved in this process are the National Land Agency (BPN), banking, KPP, and dukcapil (if it turns out that the personal data of the person giving the Mortgage Rights is lacking or has expired or needs to be updated), and other obstacles relating to registration of granting Mortgage Rights.

Legal certainty for SKMHT itself becomes less essential. Legal certainty is a principle which states that the law must be clear, understandable and can be applied consistently in a society or country. This means that everyone must be able to know what is prohibited and permitted according to the law, as well as the consequences of breaking or obeying the law. Legal certainty is very important to create stability, justice and trust in a country's legal system.

Legal certainty in making authentic deeds refers to the principle that the deed must meet the legality and validity standards set by law. Several important aspects of legal certainty in the context of making authentic deeds include: Notary's Authority: An authentic deed must be made by a notary who has the legal authority to make the deed. The notary is responsible for ensuring that the process of making an authentic deed is carried out in accordance with applicable legal provisions.

Formal Provisions: Making an authentic deed must follow the formal provisions that have been determined, such as format, writing and other procedures in accordance with applicable laws and regulations. This is important to ensure the clarity and validity of the contents of the deed.

Certainty of Content: The contents of an authentic deed must be clear, unambiguous, and in accordance with the facts that occurred. The notary must ensure that all information contained in the authentic deed is an accurate representation of the event or transaction being reported.

Protection of the Parties Involved: Legal certainty in making an authentic deed also aims to protect the interests and rights of the parties involved in the transaction or event recorded in the deed. Authentic deeds provide strong and accountable evidence of the agreements that have been made.

The researcher discusses the SKMHT time period stipulated in the UUHT which provides very limited time and is not free to carry out the objectives of making the SKMHT and is related to legal certainty regarding SKMHT made by a notary or PPAT.

In the Explanation of Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.

Article 15 Paragraph (1): As stated in the General Explanation number 7, in principle, the imposition of Mortgage Rights must be carried out by the person giving the Mortgage Rights himself. Only when absolutely necessary, ie In the event that the person giving the Mortgage Rights cannot appear before the PPAT, the use of a Power of Attorney to Encumber the Mortgage Rights is permitted. In line with this, the power of attorney must be given directly by the mortgage provider and must meet the requirements regarding its content as stipulated in this paragraph. Failure to fulfill this requirement will result in the relevant power of attorney being null and void, which means that the relevant power of attorney cannot be used as a basis for making a Deed of Granting Mortgage Rights. PPAT is obliged to reject the application to make a Deed of Granting Mortgage Rights, if the Power of Attorney to Encumber the Mortgage Rights is not made by the person giving the Mortgage Rights himself or does not meet the requirements referred to above.

Letter a: What is meant by does not contain the power to carry out other legal actions in this provision, for example does not contain the power to sell, rent out the object of Mortgage Rights, or extend land rights.

Letter b: What is meant by the definition of substitution according to this Law is the replacement of the power of attorney through transfer. It is not a substitution if the recipient of the power of attorney gives power of attorney to another party in the context of an assignment to act on his behalf, for example the Bank's Directors assign the implementation of the power of attorney they receive to the Branch Head or another party.

Letter c: Clarity regarding the main elements in the imposition of Mortgage Rights is very necessary for the purposes of protecting the person giving the Mortgage Rights. 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).

Paragraph (4): Land that has not been registered is land as intended in Article 10 paragraph (3). The time limit for using a Power of Attorney to Encumber Mortgage Rights regarding unregistered land rights is determined to be longer than for land that has been registered in paragraph (3), bearing in mind that the making of a Deed of

Granting Mortgage Rights on unregistered land rights must be carried out simultaneously with the application for registration of rights to the land in question as specified in Article 10 paragraph (3), which first needs to be completed with the requirements. Requirements for registration of unregistered land rights include the submission of documents that require time to obtain, for example a certificate of land history, a certificate from the Land Office that the land in question has not yet been certified, and if proof of ownership of the land is still in the name of a person who has death, inheritance certificate and inheritance distribution letter. The provisions in this paragraph also apply to land that has been certified, but has not been registered in the name of the person giving the Mortgage Rights as the holder of the new land rights, namely land for which the transfer of rights, splitting or merging has not been registered.

Paragraph (5): In the framework of implementing development and considering the interests of economically weak groups, for the granting of certain credit determined by the Government such as program credit, small credit, home ownership credit, and other similar credit, the validity period for the Power of Attorney to Charge Mortgage Rights as intended paragraphs (3) and paragraphs (4) do not apply. Determining the time limit for the Power of Attorney to Encumber Mortgage Rights for certain types of credit is carried out by the Minister with authority in the land sector after coordinating and consulting with the Minister of Finance, the Governor of Bank Indonesia, and other relevant officials.

Paragraph (6): Provisions regarding the time limit for a Power of Attorney to Encumber Mortgage Rights are intended to prevent protracted execution of the power of attorney. This provision does not rule out the possibility of creating a Power of Attorney to Encumber new Mortgage Rights.

It is clear that the explanation section of the UUHT, especially the explanation of paragraph (6), allows for the creation of a new SKMHT if the registration process for granting Mortgage Rights has not been completed, this is what makes the deed or SKMHT made by a PPAT notary less of a concern for its validity, because the SKMHT can be bolted several times for the same object of Mortgage Rights, the certainty of SKMHT becomes uncertain and not strong because it can be made several times.

By assuming the above, the researcher intends to discuss things that should not happen and not make the SKMHT that has been made by a notary or PPAT redundant because the time period given by the UUHT is not in accordance with the conditions in the field, namely the registration process for granting Mortgage Rights.

The registration process for granting Mortgage Rights can take longer than the estimated time, if that happens then the SKMHT that has been created for this purpose will expire so a new one must be created. This not only makes SKMHT like ordinary letters which can be made several times but also costs money and time for the parties involved.

The person giving the power of attorney in SKMHT is an individual or person who is unable to attend or is unable to attend at the time of making the deed granting the burden of mortgage rights. When the existing SKMHT becomes expired due to the time period, then the person giving the power of attorney must make another SKMHT in front of a notary or PPAT, this is what makes it ineffective and inefficient, if the person is not there or is absent or has even died, making the problem even more complex.

The public assumes that a deed made by a notary or PPAT is authentic, but if it can be made several times for the same object, this makes the public also question the seriousness of the authentication of the deed, in this case SKMHT.

The government provides an opportunity by creating a new SKMHT as explained in the explanation of the UUHT, but this does not make it better nor does it bias the legal certainty of the SKMHT.

Legal certainty in the eyes of the public regarding the Power of Attorney to Charge Mortgage Rights (SKMHT) is important because SKMHT is a document that regulates the granting of mortgage rights over land or property.

The following are several things that are of concern to the public regarding SKMHT legal certainty:

Legality and Validity of Documents: The public needs to be sure that the SKMHT created has fulfilled all applicable legal requirements, such as being made by an authorized notary and fulfilling other formal requirements. This is important so that the SKMHT is valid and can be recognized by related parties and legal agencies.

Accuracy of Content: The public needs certainty that the contents of the SKMHT reflect the actual agreement between the giver and recipient of mortgage rights. SKMHT must be clear in regulating the rights and obligations of each party involved, including provisions regarding the payment of debts guaranteed by the mortgage rights.

Protection of the Rights of the Parties Involved: SKMHT legal certainty also means providing protection for the rights of the parties involved, both givers and recipients of mortgage rights. A valid SKMHT can be strong evidence in upholding these rights in the eyes of the law.

With the SKMHT validity period being inadequate, this creates a protracted problem for notaries, PPATs, banks and debtors.

IV. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Providing Mortgage Rights is one way to obtain funds from the bank by submitting a collateral guarantee owned by the customer to obtain funds from the bank in the form of credit, the process of which will continue with making a credit agreement if the bank, in this case the creditor, has carried out an inspection and risk assessment, etc. others to provide credit facilities to their customers.

To make a deed granting Mortgage Rights, the person giving the Mortgage Rights (debtor) must be present in person, however, if it is true that the person giving the Mortgage Rights is unable to attend or is unable to attend for one reason or another, then you can make a SKMHT in front of a notary or PPAT.

SKMHT is a tool that plays an important role in banking practices, especially in terms of lending funds with collateral that is tied to a credit agreement between the bank and its customers. And SKMHT will only be available if the person giving the mortgage right is unable to attend or is absent at the time of making the deed granting the mortgage right.

The problem that arises is that there is a period of validity of the SKMHT stipulated in the UUHT, namely 1 (one) month for objects (land) that have been registered followed by APHT and 3 (three) months for objects (land) that have not been registered which must also be followed by making APHT. The SKMHT validity period for both registered and unregistered objects is very inadequate considering that the registration process for granting Liability Rights itself takes more time than the SKMHT validity period. So if the SKMHT period has expired and the process of granting Mortgage Rights has not been completed, a new SKMHT must be created again for the same object. This creates uncertainty regarding the validity and authenticity of the SKMHT.

The researcher's suggestion is that the government review the UUHT which states the period of validity of the SKMHT by paying attention, considering and observing the conditions, obstacles that occur in the field, not only on paper.

By improving or adjusting the validity period of the SKMHT with the registration process for granting Mortgage Rights, there will be orderly, efficient, effective administration and, above all, legal certainty regarding the SKMHT made by a notary or PPAT.

It is hoped that this research can help and be useful for banking practitioners, notaries, BPN and the government to pay more attention to current developments, regulations and community habits in implementing, creating, applying existing and applicable regulations and legislation.

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