

# Legal Protection of Creditors in Credit Agreements with Warranties of Power of Attorney Impose Collateral Rights That Have not Been Registered Based on PMA/KBPN NUMBER 22 of 2017 at Pt. BPR Harta Mandiri Pekanbaru

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## ABSTRACT

Encounter rapidly growing, competitive, and integrated national economic development with increasingly complex challenges and an increasingly advanced financial system that requires policy adjustments in the economic field, including banking. Economic recovery is inseparable from the banking business's hazardous credit distribution. Therefore, collateral is significant in the issuance of credit. In practice, the Bank as a creditor provides credit facilities to the debtor. SKMHT was made to become a basis for making a Deed of Mortgage Rights (APHT). However, SKMHT has a term. Thus, both the creditor and the notary / PPAT must pay serious attention to the validity period because the expired SKMHT affects the APHT cannot be registered, so the Bank cannot execute the debtor's default guarantee object. The problems in this study are the factors that affect creditors in credit agreements with SKMHT guarantees that cannot register their rights and how to protect creditor law in credit agreements with SKMHT guarantee based on PMA / KBP Number 22 of 2017. The research method used is juridical-empirical and descriptive analysis, then analyzed qualitatively. Banks in credit binding only limited SKMHT as a bridge to make APHT. When SKMHT cannot be increased to APHT, the Bank cannot execute the guarantee object in the credit agreement. The factors that influence SKMHT cannot be upgraded to APHT because the Bank gives credit on specific credit based on the PMA / KBPN Number 22 of 2017, the process of registration of the mortgage is too long, negligent Notary / PPAT considering the expiry of SKMHT period so that the legal protection that can be done is by filing a civil suit at the local District Court with evidence of the binding of credit agreement between the Bank and the debtor. So that the object of the collateral can be executed.

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## 1. INTRODUCTION

Economic recovery is inseparable from the banking business, especially lending, which is highly risky. Banks in disbursing credit must adhere to the principle of prudence and always pay attention to sound credit principles, considering that the funds distributed by banks come from people who entrust their money to the Bank. Banks' management of public funds, in addition to striving to achieve profits, must also prioritize security or rescue for the return of these funds from the risk of loss. Therefore, collateral or collateral is essential in bank lending, although it is not absolute [1]. In the old Banking Law (vide Porigin 24 of Law Number 14 of 1967), it has been affirmed that banks are "prohibited" from providing credit if it is not accompanied by collateral. This means that collateral is the "main requirement" for banks in providing credit to debtors or customers [1].

Banks require collateral specifically bound to guarantee debtors and applies only to the Bank. This unique guarantee arises because of a special agreement between creditors and debtors, usually with collateral in the form of land, which is then burdened with dependent rights as credit collateral to the Bank. The subject of the study of guarantee law does not only concern creditors alone but is also closely related to debtors. Meanwhile, the object of study is collateral [2].

Loans provided (credit) are the provision of money or bills that can be equated with it based on a loan agreement between the Bank and other parties if the borrower is obliged to pay off his debt after a certain period with a predetermined amount of interest [3]. R. Subekti, in his book, revealed that "in whatever form the granting of credit is held, all of it is essentially a loan and loan agreement as stipulated in the Civil Code P from 1754 to Pfrom 1759" [4].

Lending by banks without collateral means increasing the risk of loss faced by banks. Banks must carry out a balancing of interest, meaning that they must be able to combine profitability orientation or profit by capturing all opportunities in business but

also strive for safety or security by asking for collateral for the return of funds distributed to customers. Without taking these steps, the occurrence of loan problems that lead to credit congestion is only a matter of time [1].

Based on this, many banks anticipate that there will be no problems [5]. Some lenders want other forms of protection with a particular position, which provide a sense of security more than the general protection provided by Article 1131 and Article 1132 of the Civil Code. Article 1131 explains that all property of the debtor, both movable and immovable, both existing and future, shall be borne by all individual engagements. The special protection the creditor desires must have the same legal basis as provided by law. This form of protection is an exceptional guarantee aimed at debtors' assets specifically appointed to guarantee debt repayment. Because it is a unique guarantee and for the legal basis to be equal or equivalent to the law, the amazing guarantee is outlined in an agreement whose position is the same as the agreement (principle *pacta sunt servanda*) [6]. Such contracts are referred to as supplementary or accessory agreements [7]. This means that a guarantee agreement cannot be separated from the main agreement, namely credit agreements, loan-borrowing agreements, and debt-receivable agreements. In practice, the Bank as a creditor every time it provides credit facilities to debtors in addition to using additional contracts is also always followed by making a Power of Attorney to Impose Dependent Rights (from now on abbreviated to SKMHT) and Deed of Encumbrance of Dependent Rights (from now on abbreviated to APHT) for guarantees that are immovable.

It must be remembered that an expired SKMHT causes the SKMHT to die by law as stipulated in Law Number 4 of 1996 concerning the Right of Liability on Land and Objects Related to Land, Article 15 paragraphs (2), (3), (4), (5):

1. Article 15 paragraph (2). The power to impose a dependent right is irrevocable or cannot be terminated for any reason except because it has been exercised or expired, as

referred to in paragraphs (3) and paragraph (4).

2. Article 15 paragraph (3). Power of Attorney Imposing Dependent Rights regarding land rights that have been registered must be followed by making a Grant of Dependent Rights no later than 1 (one) month after it is granted.
3. Article 15 paragraph (4). Power of Attorney Imposing Dependent Rights regarding land rights that have not been registered must be followed by making a Deed of Granting Dependent Rights no later than 3 (three) months after it is granted.
4. Article 15 paragraph (5). The provisions in paragraphs (3) and paragraph (4) do not apply if a Power of Attorney to Impose Dependent Rights is granted to guarantee certain credits stipulated in applicable laws and regulations.

Then the provisions in Article 15 paragraph (5), SKMHT is given to guarantee certain credits, further regulated in Article 2, Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency (from now on abbreviated to PMA / KBPN) Number 22 of 2017 concerning Determination of Time Limits for the Use of Power of Attorney to Impose Dependent Rights to Guarantee Repayment of Certain Loans are: Power of Attorney Imposes Dependent Rights to guarantee repayment of credit/financing/loan valid until the end of the main agreement, which is as follows:

1. Credit/Financing/Loans provided to Micro and Small Business customers within the scope of the definition of productive businesses owned by individuals and individual business entities.
2. Credit/Financing/Loan intended for housing procurement.
3. Credit/Financing/Other productive loans with a ceiling of up to Rp.200.000.000,- (two hundred million rupiah).

Thus, SKMHT cannot be extended, so both creditors and Notaries / PPAT must seriously pay attention and consider the validity period of SKMHT to avoid being

unable to register APHT because the validity period of SKMHT has expired [8].

Expired SKMHT will affect the inability to be registered as APHT, making it difficult for banks to execute immovable property collateral objects belonging to the defaulting debtor. Based on the above background, the author chose the title "Legal Protection of Creditors in Credit Agreements with Power of Attorney Guarantees Imposing Unregistered Dependent Rights Based on PMA/KBPN Number 22 of 2017 at PT. BPR Harta Mandiri Pekanbaru". The purpose of this study is to find out and analyze the legal protection efforts taken by banks when credit agreements with SKMHT guarantees have not been registered under PMA / KBPN Number 22 of 2017 and to describe and analyze factors that affect creditors in credit agreements with SKMHT guarantees that cannot be written for dependents. Economic recovery is inseparable from the banking business, especially lending, which is highly risky. Banks in disbursing credit must adhere to the principle of prudence and always pay attention to sound credit principles, considering that the funds distributed by banks come from people who entrust their money to the Bank. Banks' management of public funds, in addition to striving to achieve profits, must also prioritize security or rescue for the return of these funds from the risk of loss. Therefore, collateral or collateral is essential in bank lending, although it is not absolute [1]. In the old Banking Law (vide Porigin 24 of Law Number 14 of 1967), it has been affirmed that banks are "prohibited" from providing credit if it is not accompanied by collateral. This means that collateral is the "main requirement" for banks in providing credit to debtors or customers [1].

## 2. METHODS

In this writing, the method used is an empirical juridical legal research method, which consists of juridical, which means the law is seen as a norm or *das sollen*, and also comes from the word empirical, which means the law as social, cultural reality or *das sein*.

In this study, the first step was to collect data obtained based on field studies and literature studies, namely in the form of documents from the Bank and literature used to strengthen research data.

Data processing is done by adjusting between the data obtained in the field and the literature with the problem under study for later analysis. The analysis results will be presented descriptively, with the hope of clearly describing the regulations regarding SKMHT and Dependent Rights so that a comprehensive picture of the problems studied is obtained. Then, to conclude, the deductive method is used, which is the process of reasoning from one or more general statements (premises) to reach specific logical findings, making it easier to interpret data and understand the analysis results to answer existing problems.

### 3. RESULTS AND DISCUSSION

#### *3.1 Legal Protection of Creditors in Credit Agreements with SKMHT Guarantees that Have Not Been Registered Based on PMA/KBPN Number 22 of 2017*

Banking practices are challenging to resolve credit problems due to several factors, including the lack of attention to guarantee law provisions, especially in using land as credit collateral. Based on the results of an interview with Mr. Hamler., SH., MH., M.Kn about the use of SKMHT in credit agreements with guaranteed certificates on registered land, considering that it has a relatively high economic value, land as a credit guarantee among banks occupies a top priority over other credit guarantee objects, it can be classified into two legal statuses, namely land that has been registered (certified) and land that has not been registered.

In this regard, for the binding of credit with SKMHT guarantees, there are 2 (two) provisions regarding the expiration period of SKMHT, namely based on the provisions of Article 15 paragraphs (3) and (4) of the Law on Dependent Rights. Regarding land rights that have been registered, it must be followed by making APHT no later than 1

(one) month. Meanwhile, regarding land rights that have not been written, it means that in the process of changing names, Roya and others, it must be followed by making APHT no later than 3 (three) months after it is given. This means that when the expiration period of the SKMHT has expired, the provisions of Article 15 paragraph (6) are SKMHT, which cannot be upgraded to APHT due to the expiration of the SKMHT period, then the SKMHT is null and void.

The author argues that the credit agreement with SKMHT guarantee on land positions the creditor as a weak party because the credit agreement is only made by SKMHT so that if the debtor defaults, he cannot exercise his rights as a dependent right holder because his dependent rights have not been registered with the land office. SKMHT born from a credit agreement occurs because the creditor believes the loan will be safe. After all, the guarantee provided by the debtor is in the form of land rights installed by SKMHT, and the creditor is confident in the debtor's ability to return the credit by the agreement. The advantage obtained from using SKMHT is that the credit provided by creditors becomes more secure. The distinction is guaranteed due to the granting of rights and power to the Bank to get repayment from collateral if the debtor defaults, namely to repay the debt at the time stipulated in the agreement, and there is legal certainty to the Bank that the credit will still be returned by executing bank credit guarantees. With the existence of the SKMT, the debtor can increase it to APHT without the debtor's presence and registered in the land book of dependents. The position of the first creditor will take precedence over other creditors in terms of repayment of debtor debts.

Furthermore, an interview with Mr. Notary/PPAT Hamler., SH., MH., MK.n about legal protection for creditors, namely PT. Bank Perkreditan Rakyat Harta Mandiri, in using SKMHT after the credit agreement and guarantee. The credit agreement has legal force, namely by making a deed under hand or a notarial deed as the basis for binding

credit. This means legal action can be held accountable for bad debts and defaults.

According to Mr. Hamler as a Notary / PPAT in Pekanbaru City about SKMHT and creditor legal protection in the use of SKMHT as a lawful means for making APHT is SKMHT an authentic form of deed made by a Notary / PPAT, which can be used as evidence in court proceedings if needed in the litigation process, but if the SKMHT in its provisions is not followed by making APHT within the specified time, it is null and void. Given that the deadline for the validity of SKMHT on land that has been registered is 1 (one) month after it is granted and for land that has not been written only 3 (three) months after it is given, the possibility of waiting for the land registration process to be completed SKMHT can be extended, or further SKMHT signing is carried out by the boundary date contained in the clause in the contents of the SKMHT deed.

### *3.2 Factors Affecting Creditors in Credit Agreements with SKMHT Guarantees Cannot Be Registered for Dependents*

The results of an interview with Mrs. Feby Anjani as a credit admin at Bank Perkreditan Rakyat Harta Mandiri regarding the Bank's criteria in distributing credit facilities to the community, namely the implementation of credit agreements with guarantees on land, carried out first by applying to the Bank by filling out a credit application form by the debtor, based on this application the Bank will conduct a credit analysis from all legal aspects, marketing aspect, financial aspect, environmental aspect, social aspect, assurance aspect and so on. Credit agreements are essential to

PT. BPR Harta Mandiri binds credit guarantees by using SKMHT as a bridge or legal means to be upgraded to APHT and registered for dependents. Based on the results of an interview with Mrs. Yulia Elfitri, the head of the credit section, regarding the procedure for granting credit and the terms and conditions of recipients of credit facilities with SKMHT guarantees, it is stated that credit agreements with SKMHT guarantees are carried out in the following ways:

1. Making a deed of credit agreement notary or underhand, which can then be legalized;
2. Making Power of Attorney Imposing Dependent Rights (SKMHT);
3. The landowner authorizes the Bank to register the land and submit all documents required for the purpose;
4. Management of land registration of collateral objects is carried out through a Notary Office / PPAT appointed by the Bank;
5. When the land registration process is complete and the land certificate has been issued, the landowner authorizes the Bank to receive the certificate.

In practice, banks rarely make APHT directly. Banks, in this case, are only limited to making SKMT. According to Notary / PPAT Hamler., SH., MH., MK.n, regarding this matter, legal considerations are not made APHT directly because the land used as collateral may have unclear rights to land such as not yet registered in the name of the credit debtor, and land in the process of separation/separation from the joint property. Furthermore, Notary / PPAT Hamler., SH., MH., MK.n, said that in practice, Notary/PPAT always makes SKMHT by the provisions of UUHT regulations to bind guarantees for lands. It is necessary to pay attention to the expiration period of SKMHT because, based on Article 15 paragraph (2) of the UUHT, SKMHT cannot be withdrawn or cannot be terminated for any reason except because it has been done or because it expires. This is an obstacle for Notary / PPAT because the process of certifying land exceeds the period determined by UUHT regulations.

The author argues that when SKMHT cannot be upgraded to APHT by applicable laws and regulations, then the SKMHT is null and void. The guarantee charged with the SKMHT cannot be auctioned because the binding is only with the SKMHT guarantee, so it cannot be issued a certificate of liability because the SKMHT has not been upgraded to APHT and has never been registered with the local Land Office, SKMHT is only a deed that only serves as an effort to fulfill banking

administrative obligations in the event of bad debts, the Bank must immediately upgrade the SKMHT deed to APHT before the validity period of the credit agreement expires.

The results of the author's interview with respondent Mr. Ali Syahbana as Director of Operations of PT. BPR Harta Mandiri, before continuing the credit binding process, for creditors to guarantee legal protection, creditors, as banks, must pay attention to the factors that affect creditors (banks) in credit agreements with SKMHT guarantees, cannot register their dependent rights, namely:

1. Because the creditor accepts the binding of credit agreements to debtors with credit facilities for micro-enterprises and small businesses within the scope of the definition of individually owned productive enterprises, credit is intended for procuring housing and other effective loans with low ceilings. This is regulated in Article 2 PMA/KBPN No. 22 of 2017, where the provision of credit guaranteed by the SKMHT deed is the deadline until the end of the principal agreement, meaning that the SKMHT deed will not be upgraded to APHT until the debtor knows the bad debt. So, banks must carefully pay attention to the smooth return of credit facilities to guarantee debt repayment.
2. For land that has been certified, regarding the object of guarantee that is part of the joint property/inheritance, the management also involves other agencies besides the land office. For example, one must make a certificate of heritage and a statement of heirs at the village office. The process also takes a long time, especially if there are changes in regulations regarding the authority to make heir statements and inheritance certificates in the middle of managing dependent rights. Another obstacle is obtaining the heirs' consent to sign the deed, considering the sensitivity of matters regarding inheritance of many pros and cons.
3. Debtors who default are characterized by bad credit. For example, the debtor running away will affect the inability to increase APHT because the expired

SKMHT becomes a loophole for the debtor so that the object of the guarantee on his land cannot be executed.

4. Notary or PPAT who is negligent in remembering the expiration period of SKMHT. So based on Article 1365 of the Civil Code, which states "that every unlawful act that brings harm to others, obliges the person for wrongly publishing the loss, to compensate for the loss," the Bank can sue the Notary or PPAT for his negligence.

The solution to overcome the problem of the validity period of SKMHT is that the Notary / PPAT always updates the SKMHT even though, on the other hand, there is a waste of the SKMHT deed for the Notary / PPAT itself. To ensure legal certainty, another solution is between the Bank and the debtor customer to first make an agreement or statement of willingness from the debtor customer if there are obstacles in the registration process of the dependent rights willing to be asked to re-sign the expired SKMHT deed.

## CONCLUSION

Legal protection for creditors in credit agreements with SKMHT guarantees on land both underhand and notary. SKMHT and Credit Agreements prove a credit binding between debtors and creditors. Since the dependent rights have not been born as a result of the expiration of the SKMHT period, it does not cover the possibility of non-execution of the collateral object. Because creditors or banks can still execute by filing a civil lawsuit to the court by bringing a credit agreement as a legal basis for binding between debtors and creditors, factors affecting creditors in credit agreements with SKMHT guarantees cannot be registered because Notaries / PPAT in practice make SKMHT by the provisions of the UUHT, especially the rules regarding the term of SKMHT article 15 paragraphs (3) and (4). There are obstacles in the use of SKMHT as a condition for increasing APHT because in the process of installing land liability rights, there are factors that affect SKMHT cannot be

registered, namely because creditors accept the binding of credit agreements to debtors with credit facilities based on PMA / KBPN Number 22 of 2017, it is difficult to get the agreement of all parties if the object of guarantee or land is joint property or acquisition from an inheritance because the debtor defaults and the Notary Public / PPAT is negligent in remembering the expiration of the SKHT period.

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