

## Legal Consequences of Ppat Delay in Skmht Registration To Become Apht in The Conception of Legal Security

Nurul Rizqi Hidayah

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,  
E-mail: [rizqidian.hidayah@gmail.com](mailto:rizqidian.hidayah@gmail.com)

**Abstract.** *This research aims to determine the legal consequences of delays in registering a Power of Attorney to Charge Mortgage Rights (SKMHT) to become a Deed of Granting Mortgage Rights (APHT, and to find out the responsibility of PPATs who are late in following up a Power of Attorney to Charge Mortgage Rights (SKMHT) to become a Deed of Granting Mortgage Rights (APHT). The research approach method used in this research is the sociological juridical legal research method. The specifications of this research use descriptive analysis. The type of data used in this research is primary data which includes the 1945 Constitution; Law No. 5 of 1960; Rights Law Dependents; Civil Code; Criminal Code, as well as secondary data containing books and other supporting documents. Collecting research data using interview techniques and studying documents or library materials. The data analysis method used in analyzing the data is analysis qualitative interactive model as proposed by Miles and Huberman. The results of the research show that the implementation of credit with collateral for mortgage rights at banks has legal regulatory procedures regarding Power of Attorney to Encumber Mortgage Rights (SKMHT) contained in article 15 paragraph (1) of Law No. 4 of 1996 concerning Mortgage Rights for Land and Objects related to it. land and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning Determination of Time Limits for the Use of Power of Attorney Imposing Mortgage Rights to guarantee the repayment of certain loans. Due to the legal delay in registering the Power of Attorney to Charge Mortgage Rights (SKMHT) to become a Deed of Granting Mortgage Rights (APHT), the SKMHT that has been made will be null and void by law. Meanwhile, SKMHT which does not have a time limit will not be null and void because the SKMHT is valid until the end of the main agreement.*

**Keywords:** APHT; Legal Consequences; SKMHT.

### 1. Introduction

As part of national development, economic development is one of the efforts to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To ensure that this development can

continue to be carried out in a sustainable manner, both by individuals and legal entities, it is necessary financing funds are not small.<sup>1</sup>

The problem in the business world that most often arises is about entrepreneurs who want to develop their business but are constrained by small capital. In general, many entrepreneurs are unable to provide themselves with all the capital required for their business activities<sup>2</sup>. To meet the availability of capital, entrepreneurs need other parties, namely banking institutions or financing institutions, to provide capital loans through a credit agreement mechanism

Providing credit to the public through banking is of course carried out with a credit agreement between the giver and the recipient of the credit so that a legal relationship exists between the two. The credit agreement is usually made by the credit provider, namely the bank, while the debtor only studies it and understands it. However, this credit agreement really needs to receive special attention from both parties because the credit agreement has a very important function in granting, managing and implementing it because there is an agreement between the two parties which we can call the debtor and creditor, because if the debtor signs a credit agreement that is considered binding on both parties and applies as law to both parties.<sup>3</sup>

The bank enters into a credit agreement with the debtor, and the bank should obtain a guarantee for the payment of its receivables, namely by requiring the debtor's customer to hand over the object to the bank.<sup>4</sup> Considering the importance of credit funds in the development process, it is appropriate that credit givers and recipients, as well as other related parties, receive protection through a strong guarantee rights institution that can provide legal certainty for all interested parties.<sup>5</sup>

Objects that are often the object of collateral are land. This is because land has an economic value that continues to increase, is easy to sell, has proof of title, is difficult to embezzle and, if encumbered with mortgage rights, gives creditors a special position.<sup>6</sup> Land as collateral for obtaining credit cannot be separated from

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<sup>1</sup>I Kadek Adi Surya, Ketut Abdiasa, I Dewa Nyoman Gde Nurcana, "Imposing Mortgage Rights on Land Rights as a Collateral Object", in Untab Ilmiah Magazine, Vol. 13 No. September 2, 2016, page 160.

<sup>2</sup>Hermansyah. Indonesian National Banking Law (Jakarta: Kencana, 2005). Page 45

<sup>3</sup>Sutan Remy Sjahdeini. 1999. Mortgage Rights, Principles, Provisions and Problems Faced by Banking. Cet. 1, Bandung: Alumni, page 26.

<sup>4</sup>Samia Alwi Assery, Suhariningsih, M. Hamidi Masykur, "Implementation of Registration of Deeds Granting Mortgage Rights that Exceed the Registration Deadline (Study at BPN Malang Office)", via [www.unibraw.ac.id](http://www.unibraw.ac.id), accessed March 20 2023.

<sup>5</sup>Adrian Sutedi, 2012, Mortgage Law, Jakarta, Sinar Graphics. pages.93-94.

<sup>6</sup>Efendy Warin. 1991. Practices of Using Land as Credit Collateral, Jakarta: PT Rajawali Pers, 1991, page 9.

Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, hereinafter referred to as "UUPA" which regulates land. With the enactment of the UUPA on September 24 1960, the security right to land was called "Mortgage Rights".<sup>7</sup>

Mortgage Rights are a form of guarantee for debt repayment, with pre-emption rights with the collateral object being land rights as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).<sup>8</sup>

The mortgage right imposition stage consists of two stages, namely the granting stage which is carried out before the PPAT, and the registration stage which is carried out by the Head of the Land Office.<sup>9</sup>

The imposition of mortgage rights must be carried out by the person giving the mortgage rights himself, and if the giver of the mortgage rights cannot be present before the Land Deed Making Officer (PPAT), then if necessary, he must appoint another party as his attorney by making a power of attorney to impose mortgage rights (SKMHT) in the form of an authentic deed. .<sup>10</sup>

In relation to the Power of Attorney to Impose Mortgage Rights (SKMHT), further provisions of article 15 paragraph (3) state that "A Power of Attorney to Impose Mortgage Rights regarding land rights that have been registered must be followed by the making of a Deed of Mortgage Rights no later than 1 (one) month after being granted "and the provisions of paragraph (4) which state that a Power of Attorney to Impose Mortgage Rights regarding land rights that have not been registered must be followed by the preparation of a Deed of Granting Mortgage Rights no later than 3 (three) months after being granted," provisions of article 15 paragraph (3) and (4) The Mortgage Rights Law clearly and emphatically mandates that a Power of Attorney to Encumber Mortgage Rights (SKMHT) must be followed by the making of a Deed of Granting Mortgage Rights (APHT) no later than 1 (one) month for collateral objects in the form of land that has been certified and no later than - no later than 3 (three) months for collateral objects in the form of land that has not been certified. So there is an obligation for PPAT to complete becoming APHT before the SKMHT period ends. If this time period is not met, the SKMHT becomes "null and void" (Article 15 paragraph (6) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land).

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<sup>7</sup>Habib Adjie, 2008. Mortgage Rights as a Guarantee Institution for Land, Bandung, Mandar Maju, page. 6.

<sup>8</sup>Kartini Muljadi and Gunawan Widjaja. 2005, Mortgage Rights. Jakarta: Kencana Prenada Media Group. page.14.

<sup>9</sup>Boedi Harsono, Indonesian Agrarian Law History of the Formation of Basic Agrarian Laws, Content and Implementation, (Jakarta: Trisaksi University Publishers, 2013), page. 430

<sup>10</sup>R. Soegondo. Law of Evidence. Jakarta: PT. Pradnya Paramita. 1991. page. 89

These provisions do not apply in the case of SKMHT given to guarantee certain credit, which is stipulated in the applicable laws and regulations. This is determined by Article 15 paragraph (5) UUHT.<sup>11</sup>

Based on this background, the author is interested in conducting research with the title "Legal Consequences of Ppat Delays in Skmht Registration To Become Aphht in The Conception of Legal Certainty"

## **2. Research Methods**

The research approach used in this research is the sociological juridical research method. Sociological juridical research emphasizes research that aims to obtain legal knowledge empirically by going directly into the object.<sup>12</sup>The specifications of this research use descriptive analysis, namely research that, apart from providing a description, writing and reporting an object or event, will also draw general conclusions from the problem being discussed. Data sources come from primary data and secondary data. Data collection methods include interviews, Document Study or Library Material. The data analysis method used in analyzing the data is interactive model qualitative analysis as proposed by Miles and Huberman.

## **3. Results and Discussion**

### **3.1. Legal Consequences of Delay in Registration of Power of Attorney to Encumber Mortgage Rights (SKMHT) to become Deed of Granting Mortgage Rights (APHT)**

A power of attorney to impose mortgage rights or what is often called SKMHT is a truly special power of attorney, limited to granting or imposing mortgage rights solely. The function of the SKMHT is to act as a substitute if the person giving the Mortgage Rights cannot appear before the Land Deed Making Official.

There are 2 (two) reasons for using SKMHT, namely:

#### **1. Subjective Reasons:**

- a. The mortgagor cannot appear in person before the Notary / PPAT to make a Deed of Granting Mortgage Rights,
- b. The procedure for imposing mortgage rights is long,
- c. The cost of using mortgage rights is quite high,

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<sup>11</sup>Sutan Remy Sjahdeini, Mortgage Rights, Principles, Basic Provisions and Problems Faced by Banking (A Study of the Mortgage Law), (Bandung: Alumni Publisher, 1999) page 113.

<sup>12</sup>Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 88.

- d. Short-term credit provided,
- e. The credit given is not large, and
- f. Debtors are very trustworthy.

## **2. Objective Reasons:**

- a. Certificate not yet issued,
- b. Transfer of name to the land of the Mortgagee has not yet been carried out,
- c. The division/merger of land has not been completed in the name of the person giving the Mortgage Rights, and
- d. Roya/The deletion has not been carried out.

The time limit for using SKMHT is regulated in article 15 paragraph 3 and paragraph 4 of Law Number 4 of 1996 concerning Mortgage Rights. For Mortgage Rights objects, land rights that have been registered no later than 1 month after the SKMHT is signed must be followed by the use of APHT. Meanwhile, objects of mortgage rights over land that have not been registered no later than 3 months after being given the SKMHT are signed and must be followed by making an APHT. The SKMHT takes effect when the SKMHT has been made and signed by the parties providing mortgage rights and the dependent recipient, then after the SKMHT is signed the SKMHT period begins to take effect.

Before the enactment of the Mortgage Rights Law, the use of SKMHT was often used to postpone the imposition of Mortgage Rights on credit collateral. Many creditors hold SKMHT which will only be implemented if there are signs that the debtor is breaking his promise. Even though the risk resulting from the mortgage being not yet charged is fully borne by the creditor (collateral holder).<sup>13</sup>

After the SKMHT is created and signed, the Notary/PPAT makes the APHT. APHT is an Authentic Deed which specifically contains the granting of Mortgage Rights to certain creditors as collateral for repayment of their receivables. After the APHT is created and signed, the APHT must be registered with the Land Office no later than 7 (seven) working days after the signatory of the APHT submits it to the Land Office with the documents required for registration.<sup>14</sup>After the APHT is registered at the Land Office, the Local Regency/City Land Office issues a Mortgage Rights Certificate as a basis for collateral to the Bank.

If within the specified time limit, the SKMHT in question is not followed by the

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<sup>13</sup>Interview with Mr. Agus Setyojati SH, M.Kn PPAT Grobogan Regency

<sup>14</sup>Article 1 Paragraph 5 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

implementation of making an APHT, in accordance with the provisions in Article 15 paragraph 6 of Law Number 4 of 1996 concerning Mortgage Rights, then the SKMHT is null and void. It is stated, among other things, in the Explanation to Article 15 paragraph 6 of Law Number 4 of 1996 concerning Mortgage Rights, that the provisions regarding the time limit for SKMHT to come into effect are intended to prevent the time for the implementation of that power from being prolonged.

There are SKMHT provisions which require a time limit and some which do not have a time limit. For SKMHT which concerns a time limit, it must be made immediately for the imposition of Mortgage Rights to be implemented because it is limited by the time period, the time period of which has been regulated in Law Number 4 of the Year. 1996 concerning Mortgage Rights in Article 15 paragraphs (3) and (4).

Based on an interview with Mr. Agus Setyojati SH, M.Kn PPAT Grobogan Regency. If the certified SKMHT exceeds the specified time period, then the SKMHT is null and void, however other legal remedies can be taken by making a repeat SKMHT or a new SKMHT.

Therefore based on the author's logical reasoning that is, if the SKMHT process for certified land exceeds the specified time limit, the Notary/PPAT will make a new SKMHT with the approval of the creditor and debtor, the contents of which are in accordance with the old SKMHT. However, on the other hand, the repetition of the new SKMHT will cause several difficulties for banks/creditors, namely:

1. There is a possibility that debtors who have received credit will refuse to make a new SKMHT.
2. During the long period of time for the SKMHT and APHT creation process, bad credit may occur due to unexpected factors.
3. There are costs involved in making a new SKMHT.

If there is a Power of Attorney to Encumber Mortgage Rights (SKMHT) that is not upgraded to APHT in accordance with applicable statutory provisions, then the SKMHT is null and void by law. So of course there is nothing that can be used as a basis for registration at the Land Office and the Mortgage Rights never arise. This will be detrimental to creditors if a default occurs because they will not be able to execute the Mortgage Rights object. This is because the Bank's position as a creditor is weak because it only acts as a concurrent creditor which does not have the right to execute the collateral object.

### **3.2. Responsibilities of the Official Land Deed Maker in Making a Power of Attorney to Impose Mortgage Rights (SKMHT) to become a Deed of Granting Mortgage Rights (APHT) that has exceeded the period specified by law.**

The granting of Mortgage Rights must be attended and carried out personally by the person giving the Mortgage Rights as the party who has the authority to carry out legal actions to impose mortgage rights on the object being used as collateral. However, if it is really necessary and he is unable to do so, his presence to provide mortgage rights and sign the APHT can be authorized by another party. Thus, the function of the SKMHT is as a tool to overcome the problem of the Mortgage Rights giver being unable to appear before the PPAT.

The granting of power of attorney must be done before a Notary or PPAT, with an authentic deed called SKMHT. The form and contents of the SKMHT are determined by Regulation of the Minister of State for Agrarian Affairs/Head of BPN Number 3 of 1996. The form is provided by BPN through the post office (Article 15 paragraph (1) UUHT). SKMHT is made by the Notary or PPAT concerned in two copies. Everything is original ("in originali"), signed by the person giving the power of attorney, the recipient of the power of attorney, 2 witnesses and the Notary or PPAT who made it. The sheet is kept at the relevant Notary or PPAT office. Another sheet is given to the power of attorney for the purposes of granting Mortgage Rights and using the APHT. When using SKMHT there are no minuta and "grosse" is not made as a copy. PPAT is obliged to refuse to make an APHT based on a power of attorney that is not an "in original" SKMHT, the form of which is provided by the National Land Agency and the form and contents of which are determined by Ministerial Regulation.

Based on Article 15 paragraph (3) UUHT, in principle the SKMHT for registered land is only valid for 1 (one) month and must be followed by making an APHT, except for land that has not been registered. The SKMHT is valid for 3 (three) months and is mandatory. followed by the creation of an APHT (Article 15 paragraph (4) UUHT).

One of the aims of limiting the time for using the SKMHT is to avoid prolonging the implementation time for making the APHT. The making of the deed must be witnessed by at least 2 (two) witnesses according to the provisions of the applicable laws and regulations.

In original 13 paragraph (2) it is stated that no later than 7 working days after signing the APHT, PPAT is obliged to send the APHT and other required documents to the Land Office. The grace period of 7 days is calculated from the time the APHT is signed. It can be concluded that this time limit provision may be given regardless of whether the documents or papers required for registration have been received completely by the PPAT or not, but for the sake of PPAT security, the APHT should only be signed if all the documents or documents



required for registration have been completed.<sup>15</sup>

Based on an interview with PPAT Grobogan Regency which stated that "it is true that the maximum APHT registration is 7 working days, sometimes the publication time is only 2 days, depending on the BPN corrector, if there is a revision it must be carried out within a maximum of 3 days, if there is a delay it will be closed, and the costs will be charged to the PPAT or notary." However, now it is made easier with the existence of an electronic system where PPAT and banking can collaborate in the APHT registration process. When the author asked whether there had ever been any delays, it turned out that one of the PPATs or other notaries also experienced delays, as the results of the author's interview stated that "the orders we receive in one month are only approximately 20 deeds, so there is no overload, however Our work is not only for HT but there are several others, so we sometimes miss the repairs that the corrector has given us and it turns out that it has passed the maximum limit so we have to repeat and make payment again.

The results of the research that the author obtained in the field, PPAT had an error, because all the requirements for making SKMHT had been fulfilled by the bank, so actually the process of making SKMHT into APHT had to be carried out by PPAT by giving the number and date in the APHT. Because of this negligence, PPAT made an error.

Any action that has resulted in loss to someone can be said to be an unlawful act, which relates to the bank's liability to PPAT for losses arising from PPAT's negligence in following up SKMHT to APHT. Losses arise due to PPAT's negligence, so that the position of the bank which with the APHT is fulfilled becomes a preferred creditor, because of PPAT's negligence it will become a concurrent creditor. With the bank's position as a creditor changing, the bank's interest in collateral is reduced, so that everything the bank does to protect its collateral is in vain. PPAT's negligence can be categorized/included in unlawful acts, so that PPAT can be held liable for negligence in following up SKMHT to become APHT.<sup>16</sup>

This provision means that a PPAT can be immediately dismissed from his position if what he has committed is a serious violation and the imposition of

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<sup>15</sup>Enjang Teguh Brawijaya, I Gst Ayu Agung Ariani, "The Obligation to Make a Deed of Granting Mortgage Rights (APHT) Immediately After a Power of Attorney for Imposing Mortgage Rights (SKMHT) is Established" in <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/11899>, accessed March 20, 2023.

<sup>16</sup>Fuat Rifai, Lucky Endrawati, Abdul Madjid, "Judicial Analysis of the Provisions of Power of Attorney Imposing Mortgage Rights (SKMHT) for Certain Credit as an Effort to Achieve Balanced Legal Protection for Creditors (Banks)", via <http://www.unibraw.ac.id>



sanctions does not reduce the sanctions that can be imposed. In the explanation of Article 23 UUHT, it is stated that the imposition of witnesses is adjusted to the severity of the violation. This provision means that a PPAT can be immediately dismissed from his position if what he has committed is a serious violation and the imposition of sanctions does not reduce the sanctions that can be imposed.

#### 4. Conclusion

The legal consequences of the delay in following up the Power of Attorney to Charge Mortgage Rights (SKMHT) into a Deed of Granting Mortgage Rights (APHT) are for SKMHT within a predetermined time limit, if within the grace period the APHT is not immediately made, then the SKMHT that has been made will be null and void by law. . Meanwhile, SKMHT which does not have a time limit will not be null and void because the SKMHT is valid until the end of the main agreement. PPAT's responsibility if the certified SKMHT exceeds the registration period to become APHT as determined, that is, other legal remedies can be taken by making a new SKMHT or New SKMHT. The rules that limit the time period for following up from SKMHT to APHT should be revised because the time is too short, whereas to take care of other administration requires a time period that exceeds the provisions of existing laws and regulations.

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