



The Power of Attorney Imposes Dependent Rights in Banking Credit Agreements (Study on PT. Bank Syariah Indonesia Medan Ahmad Yani Branch)

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ABSTRACT

This study aims to determine legal certainty in the issuance of a Power of Attorney to Charge Mortgage Rights (SKMHT) and its implementation, which is followed by the Deed of Granting Mortgage Rights (APHT) at Bank Syariah Indonesia (BSI) Ahmad Yani Medan. The research method used is empirical normative legal research, combining normative and empirical juridical approaches. The data used are primary and secondary, obtained through literature study and interviews. The results show that SKMHT is used when the debtor is unable to appear before the Notary/PPAT, provided the grantor has legal authority over the mortgaged object. At BSI, SKMHT is implemented through verification of original and complete documents, then submitted to BSI's partner notary to be upgraded into APHT by the PPAT. SKMHT is necessary to ensure the credit agreement can proceed even if the debtor cannot be present in person.

INTRODUCTION

The need for funds is currently increasing, which is an inevitable phenomenon in the current global economic context, the rapid development of the business world in Indonesia has led to an increase in financing needs. The cost of living, including the cost of food, transportation, housing, education, and healthcare, is likely to continue to increase in line with economic growth, inflation, and changes in social structures. This causes consumers to feel the need to have access to more funds to meet their daily needs. Funds are one of the capitals used by entrepreneurs to develop their businesses.

Credit facilities are one of the important instruments that allow individuals, businesses, and governments to obtain additional funds to meet their needs, it is not uncommon for entrepreneurs and the public to take advantage of credit facilities provided by banks. Banks are financial institutions that play an important role in a country's economy. In the development process, considering the importance of credit funds, the recipients and lenders as well as related parties should receive legal protection through a strong guarantee institution and can provide legal certainty for interested parties.

One of the conditions to enjoy the credit facility is the existence of a guarantee, which is used for repayment if the community as a debtor is negligent in fulfilling its obligations (default). It seems sense that the donor and recipient of creditors, along with other connected parties, should be protected by a robust guarantee institution that can offer legal certainty to all parties involved, considering the significance of these loan funds in the growth process.

Collateral can only be in the form of products, projects, or billing rights financed with the credit in question, as collateral is one of the components of granting credit, provided that other factors allow for trust in the debtor customer's capacity to return his loan. Collateral may be used for land whose ownership is established by customary law, namely land whose girrik, pegs, or other evidence of ownership serve as proof of possession. Banks are not required to request extra collateral, which is often defined as collateral in the form of items unrelated to the item being financed.

Law No. 4 of 1996 concerning Dependent Rights aims to provide a foundation for the enactment of a strong Dependent Rights institution, including regarding the position of the Power of Attorney to Impose Dependent Rights (SKMHT). SKMHT is a document that is required in the process of granting dependent rights to a property in Indonesia. The requirements for obtaining an SKMHT in Indonesia may vary depending on the policy of the bank or financial institution providing loans or credit facilities that require collateral in the form of dependents. Does not contain the power to perform legal acts other than imposing the rights of dependents; Basically, the imposition of the Right of Dependency must be done by the grantor of the Right of Dependency himself, but if it is really necessary, namely in the event that the grant of the Right of Dependency cannot be present before the PPAT or notary, the Law provides an opportunity for the Right of Dependency to use the SKMHT. The creation of SKMHT is also possible in the event that the land rights that are the object of the Dependent Rights have not been certified.

The person who grants the right of dependency must appear in person before the Land Deed Making Officer (abbreviated as PPAT from now on). Fundamentally, the grantor of the right of dependency must impose it himself; however, if it is absolutely required, that is, if the right of dependency cannot be present before the PPAT, he must designate another party as his proxy with the SKMHT in the form of a legitimate deed. A power of attorney entrusting rights is a document given by the party who has the right to a property to another party, usually a bank or financial institution, to provide collateral for the loan given to the party who gave the power of attorney.

In the context of a banking credit agreement with Bank BSI, this power of attorney is used as one of the documents that allows the bank to use certain properties as collateral for the credit provided. A period of time for SKMHT for registered and unregistered land rights is stated in Article 15 Paragraph (3) and (4) of the Law. In fact, there are often failed bindings for the sake of law experienced due to these provisions, which result in the detention of funds that will be channeled to the debtor. In connection with the above background, research entitled "The Power of Attorney Imposes Dependent Rights in Banking Credit Agreements" was conducted.

Problem Formulation

Based on the background described above, it is known that the provision of credit is very pending in the country's economy and in the process, there are those who must use SKMHT, reviewed from it, the formulation of the problem that can be described is as follows:

1. What is the legal certainty in making a Power of Attorney Imposing Dependent Rights on Bank BSI Ahmad Yani Medan?
2. How does the implementation of the making of a Power of Attorney to Impose Dependent Rights relate to the obligation to make a Deed of Grant of Dependent Rights at Bank BSI Ahmad Yani Medan?

Purpose of Writing

In line with the formulation of the problem described in the use of SKMHT in banking credit agreements, it can be known that the objectives of this study are:

1. To find out the legal certainty in making a Power of Attorney to Impose Dependent Rights on Bank BSI Ahmad Yani Medan.
2. To find out the implementation of the issuance of a Power of Attorney for the Assignment of Dependent Rights is related to the obligation to make a Deed of Grant of Dependent Rights at Bank BSI Ahmad Yani Medan.

THEORETICAL REVIEW

The implementation of Power of Attorney to Impose Mortgage Rights (Surat Kuasa Membebaskan Hak Tanggungan or SKMHT) in banking credit agreements is a crucial legal mechanism in ensuring the enforceability of collateral obligations, especially in circumstances where the debtor is unable to be physically present before a Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT). According to Law No. 4 of 1996 concerning Mortgage Rights on Land

and Objects Related to Land, SKMHT serves as a temporary legal instrument that must be followed by the execution of the Deed of Granting Mortgage Rights (Akta Pemberian Hak Tanggungan or APHT) within a certain period to achieve legal certainty and binding power.

Previous studies (e.g., Supriadi, 2018; Rahmawati, 2020) emphasize the role of SKMHT as a bridge to safeguard the interests of creditors when immediate execution of APHT is not feasible. These studies underline the legal risks that may arise if SKMHT is not followed by APHT within the stipulated period, potentially leading to the loss of priority rights for the creditor. In the context of Islamic banking, institutions like Bank Syariah Indonesia (BSI) are required to balance compliance with sharia principles and national banking regulations. While the term "credit" is replaced with "financing" in accordance with Islamic jurisprudence, the legal instruments used—including SKMHT and APHT—remain governed by national positive law (Susanti & Haryono, 2021).

Research conducted by Yusuf (2019) found that the appointment of a partner notary by Islamic banks helps streamline the SKMHT process and ensures document verification aligns with internal banking compliance standards. Additionally, the notary's role in ensuring the debtor's authority over the collateralized object is critical to avoid legal disputes and strengthen the creditor's legal position. The convergence between sharia values and national law in the operational framework of BSI, especially in credit guarantee practices, reflects Indonesia's plural legal system and highlights the importance of harmonization in legal and ethical dimensions of Islamic banking.

METHODOLOGY

The research method is a discussion of the theoretical concepts of various methods, their advantages and disadvantages, which are contained in scientific papers followed by the selection of methods used. Methodology is a study of the steps in using the method. So, what is meant by research methods is to put forward technically the methods used in research.

This study employs empirical juridical normative legal research as its research methodology. In order to conclude that normative legal research has a broad scope and is objected to legal doctrines, principles, and principles, this juridical normative approach is used to examine law from a variety of perspectives, including theory, philosophy, comparison, structure/composition, consistency, general explanation and explanation of each article, formality, and binding force of a law. The emphasis of empirical juridical research is the study of behavior in communities. Interaction with the current norm system is what leads to the behavior of the individuals under study. The interaction that results from the implementation of a positive legal provision is a type of community reaction, and it may be observed from the community's conduct as a way of action in influencing the creation of a positive legal provision.

Empirical juridical normative research is the approach used in this study, because this research reveals normative methods both from documented sources and source information by conducting interviews. By analyzing problems through the application of the law and referring to legal rules related to banking law and property guarantee law, the author can describe or analyze from the

research. The use of a power of attorney charges the right of dependency in a banking credit agreement at Bank Syariah Indonesia Medan Ahmad Yani.

RESEARCH RESULTS AND DISCUSSION

Credit agreements make use of SKMHT, and the procedure for doing so is often the same as for agreements resulting in other debts and receivables that employ SKMHT as security for debt repayment. Munir Fuady said, "As is known that according to the legal system anywhere in the world, a will agreement is one of the conditions for the validity of a contract, as for example stipulated in Article 1320 of the Civil Code".

Legal Certainty in the Issuance of a Power of Attorney Imposing Dependent Rights on Bank BSI Ahmad Yani Medan

Debtors who want to make a credit agreement must apply for credit to the bank that acts as a creditor. If the credit applied by the debtor is not large, then it can apply for credit without collateral. However, for a large amount of credit, a guarantee is required, where the collateral can be a movable or immovable object whose value is greater than the amount of the loan borrowed. A credit agreement with collateral is followed by the granting of dependents to creditors, which means that creditors can carry out legal activities legally if there is an agreement that is not kept.

Creditors in providing loans to their debtors should adhere to the principles of lending as stated in the Explanation of Article 8 of Law Number 10 of 1998, namely character, ability, capital, collateral and economic prospects and pay attention to the principles of sound credit. Before the enactment of the Law, the creation of a Power of Attorney to Install a Mortgage (SKMH) was something that was institutionalized. However, in the Law on the making of SKMHT, it is only allowed in special circumstances, namely if the grantor of the Dependent Rights cannot be present in person before the PPAT to make the APHT. In this case, the grantor of dependency rights is obliged to appoint another party as his proxy with the SKMHT.

This SKMHT is in the form of an authentic deed which can be made by both Notaries and PPAT. The provisions of the content of an SKMHT are limited, namely it only contains legal acts imposing the rights of dependents. The creation of SKMHT by Notary/PPAT is carried out simultaneously when the credit agreement will be signed by the creditor and the debtor, the SKMHT is authorized to the creditor to be upgraded to APHT. The factor causing the use of SKMHT is that the land object used as credit collateral has not been registered and the land is outside the creditor's working area. Generally, creditors in distributing their funds do not receive guarantees whose land has not been registered, unless the Notary or PPAT has stated that the pledged land can be upgraded to a certificate in the name of the debtor and the Notary/PPAT makes a special note or known as a "Covernote" stating that the land is currently still under management at the National Land Agency.

In the financing process, when the customer cannot be present in person or there is a special situation, the customer can provide SKMHT to the party who is given the power to carry out legal activities on behalf of the customer. The

MCMC can only terminate when the power has been exercised or when the MCMC's term has expired. If the APHT is not made within the stipulated period of time, the SKMHT is null and void. In general, the period of validity of an SKMHT is regulated in Article 15 (3) and (4) of the UUHT, namely:

1. For SKMHT regarding land rights that have been registered, it must be followed by the making of APHT no later than 1 (one) month after the signing of the SKMHT.
2. Law Number 4 of 1996 concerning Dependent Rights for SKMHT regarding unregistered land rights must be followed by the creation of APHT no later than 3 (three) months after the signing of the SKMHT. In addition, for SKMHT regarding land that has been certified but not yet on behalf of the right holder, it must be followed by the making of APHT no later than 3 (three) months after the signing of the SKMHT.

The period of SKMHT that has been stipulated in this Law is carried out so that every SKMHT creation must be realized with the creation of APHT. If the SKMHT is not followed by the making of the APHT within the stipulated period of time, the SKMHT becomes null and void. However, according to the explanation of Article 15 Paragraph (6) of the UUHT, it is possible to make a new SKMHT if the old SKMHT has been canceled because the term has expired.

Bank Syariah Indonesia (BSI) does not specify the special documents required for the issuance of a Power of Attorney for the Charge of Dependent Rights (SKMHT), but the main differentiator in this process is the implementation of the contract. This was stated in the results of an interview conducted at BSI Medan Ahmad Yani which is the result of research where the difference is from conventional banks that generally provide debts, loans, or credits to customers, BSI applies sharia principles in its financial transactions. In this case, BSI does not provide debt or credit, but provides financing or griya products (housing financing) to customers who want to create SKMHT. This entire process is carried out in accordance with Islamic sharia law, which requires a valid contract and in accordance with the principles of justice, transparency, and freedom from usury. Thus, customers who conduct SKMHT at BSI can feel confident that the transactions they make not only meet their needs, but are also in line with the sharia values embraced by the bank (based on an interview conducted with BSI Medan Ahmad Yani).

The implementation of the making of the Power of Attorney to Impose the Rights of Dependents is followed by the obligation to make a Deed of the Grant of Dependent Rights

Law Number 4 of 1996 allows the implementation of the making of SKMHT in unconditional circumstances, namely if the grantor of the Right of Dependency is unable to be present before the PPAT to make the APHT because of something that can be justified in such conditions the grantor of the right of dependency must appoint another party as his attorney by using the SKMHT in the form of an authentic deed whose making can only be done by an authorized official, namely a Notary or PPAT, The substance of the making of this SKMHT is limited, namely it only contains legal acts to impose the rights of dependents.

Based on the results of the research, before the process of making a Power of Attorney for the Charge of Dependent Rights (SKMHT) begins, Bank Syariah Indonesia (BSI) will verify the necessary documents. The documents must be ensured to be authentic and complete. If there are discrepancies or deficiencies, the process of making SKMHT will be postponed until all requirements are met. The procedure for making SKMHT is then handed over to a notary who collaborates with BSI as the official authorized to make the deed. Throughout the process, the legal department of BSI will supervise. When the credit contract takes place, the notary will issue a covernote that is valid for three months. After this period, BSI will again remind the notary regarding the development of document management, because there are costs that must be borne by the customer for the service.

Notaries who want to become BSI's partners for the creation of SKMHT are required to register themselves with BSI first. Before being accepted, BSI will conduct a thorough examination of the notary, including checking the criminal history and other factors. The cooperation between BSI and the notary is valid for a period of 2 to 3 years only, after which it needs to be extended. To extend the contract, the notary must resubmit the initial registration documents and undergo a re-examination process. This is important because notaries play a crucial role in the process of making SKMHT, and BSI's legal department is responsible for ensuring the smooth and valid cooperation of the partnership. Thus, BSI handles potential non-conformities or fraud in the implementation of SKMHT by supervising the performance of partner notaries and implementing strict contracts to prevent unethical practices.

The creation of SKMHT by a Notary / PPAT is carried out after or at the same time when the credit agreement will be signed by the creditor and the debtor, the content of the SKMHT is the control from the debtor to the creditor to be upgraded to APHT. The process of making SKMHT by Bank Syariah Indonesia (BSI) does not have special document requirements for making SKMHT, but what distinguishes the process at BSI is the form of contract used. BSI does not offer debt, loans, or credit like conventional banks in general. On the other hand, BSI provides financing or griya facilities for customers who want to do SKMHT, which is fully adapted to the principles of Islamic sharia law.

After the Credit agreement is held, it is then continued with the creation of a Deed of Grant of Dependent Rights (APHT) made by PPAT. The absence of the debtor as the grantor of the Right of Dependency before the PPAT at the time of making the APHT is the reason for allowing the grantor of the right of dependency to make and use the SKMHT, the provisions of the Law Article 15 Paragraph (1) letter (c) state that there is an obligation to include the matters mentioned in Article 11 Paragraph (1). The things that must be listed are:

1. Name and identity of the holder and grantor of the Dependent Rights
2. The domicile of the holder and grantor of the Right of Dependency, and if among them there is a domicile abroad, for him must be listed as an optional domicile in Indonesia, and in the event that the domicile of the choice is not listed, the office of the Land Deed Making Officer (PPAT) where the SKMHT is made is considered as the chosen domicile.

3. A clear designation of debts or debts that are guaranteed to be repaid with the Right of Dependency and also includes the name and identity of the debtor concerned.
4. The value of dependents.
5. A clear description of the object of the Dependent Right,

Details regarding the land title certificate, or for unregistered land, should at least include information about the ownership, location, boundaries, and area of the land. After the SKMHT deed is read by the Notary-PPAT, it is signed as a sign that the parties have agreed to make the SKMHT. The inclusion of dates, days, months, and years in the preparation of SKMHT indicates that there is a time limit for the parties, especially creditors as capital lenders or power of attorney, to pay attention to the validity period of the SKMHT which can then be upgraded to APHT according to the agreement of the parties.

Violations can occur due to the incompetence of the notary in carrying out the binding legally. However, this kind of case is rare for notaries who work with BSI. One of the main reasons is because BSI implements a strict policy, where payments to notaries are only made after the SKMHT is officially issued and submitted to BSI. This policy not only protects customers and banks, but also ensures that notaries work responsibly and professionally. BSI's strict monitoring system and payment procedures based on legal certainty also minimize the risk of violations throughout the binding process.

CONCLUSIONS AND RECOMMENDATIONS

Credit is one of the most important activities in banking that can improve the country's economic development. In the process, there are times when it is necessary to use the SKMHT as a special situation such as if the grantor of dependent rights cannot be present before the PPAT directly to make the APHT or the land used as collateral has not been certified. The preparation of the SKMHT followed by APHT must be completed within the period set by the Law or it will be null and void.

Conclusion

Based on the description in the results of the research submitted, the following conclusions can be drawn:

1. The process of imposing Dependent Rights on credit agreement guarantees at Bank BSI begins with the debtor agreeing to the contents of the credit agreement with the creditor, where the collateral must have a value greater than the value of the loan. However, in certain situations where the debtor cannot be present to impose the Dependent Rights due to the reason that the land has not been registered and the land is outside the creditor's working area, then an SKMHT is made. In making SKMHT at BSI, the BSI partner notary must have confidence that the grantor of the Dependent Rights has the authority to carry out legal acts against the object of the Dependent Rights that are charged. This gives the creditor the authority to charge the Dependent Rights on the land pledged by the debtor, be it the Certificate of Ownership or the Building Property Rights Certificate, as collateral for the credit of the debtor in

accordance with the provisions of Article 4 of Law Number 4 of 1996 concerning Dependent Rights.

2. Based on the results of the interview before the SKMHT process begins, Bank Syariah Indonesia (BSI) will verify the necessary documents which are then submitted to a notary partner from BSI for processing, the debtor is required to use a notary partner BSI. The creation of SKMHT at BSI bank is carried out after or at the same time when the credit agreement will be signed by the creditor and the debtor whose content is the granting of control from the debtor to the creditor which is upgraded to APHT in front of PPAT in accordance with the provisions of Law No. 4 of 1996 concerning Dependent Rights. The provision of credit that distinguishes BSI bank from other conventional banks is in naming because according to Islamic sharia law it is not allowed to make credit or debt so it is called financing, but the credit process and the implementation of SKMHT still use national law with other conventional banks.

Recommendation

Suggestions that can be given based on the views of the BSI author have carried out the SKMHT procedure properly and in accordance with applicable regulations. According to the author, having a notary partner whose contract is audited every year and the notary is also inspected annually by the BSI legal team is a very good step, because having a valid contract between BSI and the notary directly can reduce the occurrence of fraudulent acts so as not to harm the debtor. The author suggests that all conventional banks can apply this for the smooth running of banking operations, especially in terms of making SKMHT. Implementation of Dependent Rights The bank must ensure that the creation of the SKMHT followed by the APHT must be carried out within the period set by the Law, which in this case according to the author's interview BSI has reminded both customers and notaries about the process and completion of making APHT, but the author's suggestion is that BSI and all conventional banks can implement an automatic reminder system or proactive project management to oversee every stage of the process until the completion of APHT. So that with this system, the implementation of the creation of SKMHT and APHT can be carried out and supervised better.

ADVANCED RESEARCH

Based on the findings, the issuance of a Power of Attorney to Charge Mortgage Rights (SKMHT) at Bank Syariah Indonesia (BSI) reflects a dual compliance system that integrates Islamic banking principles with national positive law, particularly Law No. 4 of 1996 on Mortgage Rights. SKMHT is used when legal or logistical constraints prevent the debtor's direct appearance before a Notary or PPAT. Although BSI operates under sharia principles, it follows national legal procedures for SKMHT and APHT, ensuring legal certainty. The use of appointed notaries and strict document verification further ensures compliance with both sharia and state law, highlighting the hybrid nature of Indonesia's Islamic banking system.

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