

Legal Protection for Creditors in Credit Bank Agreement with Guarantee on the Liability Rights that have not been Officially Registered

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Abstract

Protection and provision of legal certainty that is balanced in Act Mortgage given to creditors, debtors, and Giver Mortgage and Third Party. It can be seen from the statement that the Mortgage has the characteristics as the right material, the which can be defended against third parties, always follow the object in the hands of whoever it was (Droit de Suite), an easy and sure execution of execution , as well as giving the position of preferred (preferent) to creditors. Before the enactment of Law Mortgage, implementation Mortgages in practice rarely the parties to take immediate manufacture of the Deed of Mortgage, almost always happens is Making Powerful Charge / install Mortgages for various s good, Among others, that the process of signing the Deed of Mortgage to the issuance of a Certificate of Mortgage takes old with a fairly high cost, and The Bank already knows Debtor well feel no need to do the loading directly Because they feel quite safe, and what happens is that the loading only after the symptoms of the Debtor in default / breach of contract with all its consequences.

Key Words: legal protection, credit agreement, mortgage

1. Introduction

National development carried out during this effort is sustainable development in order to realize a just and prosperous society based on Pancasila (state principles of Republic of Indonesia) and the constitution of 1945. In order to achieve these objectives, the development activities should always pay attention to the harmony and balance the various elements of development, including field economics and finance.

The banking sector has a strategic position as an intermediary and supporting the payment system is a crucial factor in the development process. Accordingly, the necessary improvements and legal certainty to the National Banking system, especially with regard to the distribution of funds to the public through credit. Article 8 paragraph (1) of Law No. 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), determining that provide credit or financing based on the principles of Shariah, Commercial Bank must have confidence based on in-depth analysis on faith and the ability and willingness to repay their debts Customer Debtor or returns in accordance with the financing agreement.

In order to gain confidence in the capability and capacity of the debtor, before giving credit, bank should conduct a careful assessment. Credit assessment is an activity to assess the state of the prospective debtor and assessment or analysis of this credit will greatly affect the quality of the credit portfolio of the bank.

The function of collateral (guarantee) - as one aspect of the assessment in the analysis of credit - is as a safeguard against the possibility of debtors who do not pay back the loan it receives. In practice, collateral in the form of immovable or land is a guarantee of the most received by any bank, because they have a high economic value and in times to come that value will not decline.

Issue about collateral in the form of land stipulated in the Law of the Republic of Indonesia Number 4 Year 1996 on Mortgage of Land and Their Bodies relating to Land (Law No. 4 Year 1996/9 April 1996 / LN No. 42). According to Article 1 paragraph 1 of Law No. 4 of 1996 stated that the Mortgage is Right Guarantee imposed on land rights as stipulated in Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles, following or not following the objects Another is the unit to the ground, for the repayment of certain debt obligations, which gives preferred status to certain creditors to other creditors. This is understandable, because if a loan is released without any collateral, then the risk will be very high because if the business is financed by the loan failure or loss and the borrower no longer able to repay the loan, then the the bank as the creditor would be harmed because of the not performing loans. However, if there is a collateral held by the bank, the bank can withdraw funds by selling through the auction of the collateral.

Prior to the issuance of the Law of the Republic of Indonesia (Law No. 4 of 1996/9 April 1996 / LN No. 42) on Mortgage of Land and Their Bodies related to Land, the provision of security institutions on land used as Mortgages stipulated in the Law on Civil (Civil Code) and the registration was based on *overcrijving ordinance* (stb. 1834 No. 27). The provisions of the Mortgage is still valid based on the provisions of Article 57 of Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles which states that during the Law on mortgage as mentioned in article 51 has not been formed, then the applicable are the provisions regarding Mortgage and creditverband.

Furthermore, with the enactment of Law No. 4 of 1996 on Mortgage, then realization has been the unification of

the Land Law National is one of the main objectives of the basic law of agrarian, and with the enactment of Law Mortgage (UUHT) that the entire provision about mortgages and creditverband no longer valid and instead applied the provisions in the Law on mortgage (explanation figure 2 of Law Mortgage (UUHT)). Among the various matters covered by the Law on Mortgage, there are three (3) main things that need attention, namely:

1. The development and affirmation of the Object Mortgage.
2. Problems related to Power of Attorney Imposing guarantee right (SKMHT) that the substance and conditions are different with the practice prior to the Law on Mortgage.
3. The assertion of the power of executorial to the certificate of guarantee right.

Protection and provision of legal certainty that is balanced in Law on Mortgage given to creditors, debtors, and giver mortgage and third party are related. It can be seen from the statement that the mortgage has the characteristics as the right material, which can be defended against third parties, always follow the object in the hands of whoever it was (Droit de Suite), an easy and sure of execution, as well as giving the position of preferred to creditors.

Before the Law on Mortgage, implementation mortgages in practice rarely the parties to take immediate manufacture of the Deed of Mortgage, almost always happens is making power of attorney imposing guarantee right for various reasons, among others, that the process of signing the Deed of Mortgage to the issuance of certificate of mortgage takes old with a fairly high cost, and The bank already knows debtor well feel no need to do the loading directly because they feel quite safe, and what happens is that the loading only after the symptoms of the Debtor in default of contract with all its consequences. If in practice the rules Mortgages long to give the impression of imposing the authority to make mortgages as being institutionalized, then in Law on Mortgage-making Power of Attorney Imposing Mortgage can only be exercised in special circumstances, ie when giver mortgage unable to attend alone in front of the Land Deed Officer (PPAT) to create Imposition Mortgage Deed (APHT). In this case giver mortgage shall designate another party as proxies by a Power of Attorney Imposing Mortgage shaped the making of the authentic and submitted to the Land Deed Officer in the area of land concerned.

The main content Power of Attorney Imposing Mortgage also limited, which only makes the act of Law Imposing mortgage and should not include the right to replace the authorized person through diversion (substitution), as well as Power of Attorney Imposing Mortgage shall contain the name and identity of the creditor, debtor, amount debt and mortgage objects (Explanation of Article 15 paragraph (1)). Restrictions on the basic content of mortgage Imposing Power of Attorney is to prevent prolonged authorizer and to achieve legal certainty then the power of attorney is limited in time. Provisions on the deadline for implementing the obligation is imperative asserted that the Power of Attorney Imposing Mortgage is not a requirement in the process of imposing mortgage deed, because the prerequisite is the imposing Mortgage is Imposition mortgage and registration at the Land Office.

The publication of Act Mortgage is basically a response to the development of the World Trade and Banking highly need the assurance rights Institutions are strong and able to provide legal certainty for the parties to the loan disbursement of Banking through credit bank which risk is quite high. Therefore we need a guarantee that rights can provide a strong guarantee and have legal certainty.

Basically giver mortgage shall present themselves before loading PPAT Mortgage means giving must be done by parties object Mortgage, only if under certain circumstances prospective Mortgage can not present itself, then allowed to menguasakannya to other parties. The authorization is mandatory or imperative if the prospective Mortgage can not present itself before PPAT.

The authorization shall be conducted in the presence of a notary or PPAT an authentic deed, called the Power of Attorney Imposing Mortgage (SKMHT). Apart from having the form of an authentic and notary or PPAT with forms that have been set, then the validity SKMHT must be met certain requirements, as provided for in Article 15 paragraph (1) of the Act Mortgage, namely:

1. SKMHT not load power to perform legal acts other than the power to impose Mortgage or legal actions in addition to the power to impose Mortgage is not allowed, for example, includes the power to sell, lease object Mortgage or extend land rights.
2. Not allowed to put the power of substitution. In this case the power is prohibited to be transferred to another party, in addition to those already mentioned clearly in SKMHT. But in this case must be distinguished not constitute the power of substitution, if the authorized person authorizes another party in order confirmation for acts represent, for example, bank directors commissioned receives power to His bank branch manager or other designated party to represent.
3. Mandatory clearly stated object mortgage, the amount of debt and the name and identity of the creditor, as well as the name and identity of the debtor, if the debtor is not giver mortgage. It needs to be stated explicitly, because there is the possibility of the landowner or objects used as mortgage, do not necessarily have a building that is on it, if different from the debtor's identity must be included and signed SKMHT.

The amount of debt referred to in SKMHT is an appropriate amount of debt or who have agreed in Article 3

paragraph (1). If it can not be called a fixed loan should at least be able to formulate a simple estimate to be applied in calculating the final amount of the debt.

Clarity or amount of this debt that is guaranteed is a very important factor for both the creditor and the debtor, if the execution will be carried out based on mortgage certificates or under hand sales or sales on its own power through public auction. Specified in article 15 paragraph (2) that SKMHT irrevocably due to any cause. This provision is reasonable enforced in order to protect the interests of creditors, as the party who generally gets the power to impose mortgage. Also determined that SKMHT can not expire, unless the authority concerned has implemented or because it exceeds the time limit its use.

Based on the above, the proposed formulation of the problem as follows:

1. How does the legal consequences of the Power of Attorney Imposing Mortgage (SKMHT) Notary that is not followed by the manufacture of Giving Mortgage Deed?
2. What form of legal protection for creditors in the credit agreement with the guarantee of security rights that have not been registered in the Land Office
3. How Notary deed strength in the manufacturing of the Power of Attorney Imposing Mortgage?
Based on what has been presented on the background of the research above, it is the goal of this research is:
 - a. To identify and assess the legal consequences of the Power of Attorney Imposing Mortgage (SKMHT) Notary that is not followed by the manufacture of Giving Mortgage Deed.
 - b. To identify and analyze the form of legal protection for creditors in the credit agreement with the guarantee of security rights that have not been registered in the Land Office.
 - c. To identify and assess the strength of the deed of Notary in the manufacture of Power of Attorney Imposing Mortgage

II. Research Methods

1. Nature Research

The study, to be carried on a normative legal research, ie research that promotes library research to obtain secondary data as main data.

2. Data Sources

The data in this library research is secondary data which is legal materials consisting of:

- a. Primary law materials, namely legal binding material consisting of:
 - 1) Code of Civil Law (Civil Code)
 - 2) Act No. 5 of 1960 on the Basic Regulation of Agrarian
 - 3) Act No. 4 of 1996 on Mortgage of Land and Their Bodies relating to Land
 - 4) Act No. 10 of 1998 on the Amendment of Law Number 7 of 1992 concerning Banking
 - 5) other legislation related to this research.
- b. Secondary law materials, ie materials that provide legal guidance and explanation of the primary legal materials, which consist of literature books, papers, articles, research, and other scientific papers related to the study.
- c. Tertiary Laws materials, ie materials that provide legal guidance and explanation of the primary legal materials and secondary legal materials consisting of:
 - 1) General Indonesian Dictionary
 - 2) Law Dictionary
 - 3) Dictionary English – Indonesia
 - 4) Encyclopedia

3. Data Analysis

The data have been collected both from the research literature and field research qualitatively analyzed with descriptive methods.

- a. Descriptive; the method of analysis by describing the real situation on the ground.
- b. Qualitative, the method of data analysis by classifying and selecting the data obtained from the study according to the quality and truth, then connected with the theories of the study of literature in order to obtain answers to problems in this study. In the analysis of this data is used inductive way of thinking, that concludes the study of things that are special to then conclude a general nature

III. Results And Discussion

1. Effects of the Power of Attorney Imposing Mortgage (SKMHT) Created by Notary Deed Not Followed by Giving Mortgage.

The legal consequences of the Power of Attorney Imposing Mortgage (SKMHT) Notary that is not followed by the manufacture of Giving Mortgage Deed is autumn / null and void. This is in accordance with the provisions of Article 15 paragraph (3) and (4) of Law No. 4 of 1996 (UUHT) which states that the deadline belakunya SKMHT is 1 (one) month for the right to land that has been registered and three (3) a month for the right to land

that has not been registered. SKMHT which is registered in the Land Office late into the fall / null and void and the parties are primarily providers mortgage must publish a new SKMHT with the notary deed.dfr

Deadline for entry into force of SKMHT different from the provision of mortgages that give you the freedom of time to the creditor to impose mortgage of land as collateral but the Act Mortgage, in any provision of credit to guarantee the land, require the creditor to impose mortgage within a certain time limit, If within a certain time limit creditors based SKMHT not immediately followed by the manufacture of the Mortgage Deed SKMHT Provision has been made that the law is declared void / null and void. With the cancellation of the SKMHT not rule made SKMHT new round Mortgage providers are willing to sign a new SKMHT. If the giver mortgage not willing to sign a new SKMHT it will be difficult for the creditor if one day will imposing mortgage. Creditors lose preferential rights over the object mortgage.

SKMHT validity period or the time limit imposing mortgage, specified in Article 15 paragraph (3) and (4) UUHT by dividing two land categories, namely:

- a. For soils that have been registered (the land that is bersertipikat) then no later than within 1 (one) month from SKMHT signed, the creditor shall make Deed Granting Mortgage;
- b. For unregistered land (land that has not been bersertipikat) then at the latest within three (3) months from SKMHT signed creditor shall make Deed Granting Mortgage. SKMHT usage time limit for the right to land that has not been registered for longer than is already registered, for the manufacture of Entitlement Act Dependant on land rights have not been registered should be made in conjunction with the application for registration of land rights which require a wide range of requirements. Conditions of registration of land rights for example, a history of the land certificate, certificate from the Land Office that the land has not been bersertipikat and others.
- c. For land that has been certified but has not been registered on behalf of Mortgage (as the holder of the rights to the new land), land which has not been listed transitional rights, solution or merger, then at the latest within three months from SKMHT signed, the creditor shall make Deed Giving Mortgage.

According to Article 10 paragraph (1) that the beginning of the stage giving Mortgage preceded the promise of providing Mortgage as a guarantee repayment of certain debt, as outlined in the agreement meru-pakan debts and inseparable part of the debts concerned agreements or agreements Other raises the debt. Accessoir according to the nature of the administration Mortgage Mortgage should be a follow-up of the principal debt agreement, ie the agreement of debts and other arrangements, such as wealth management agreements minors or under guardianship, followed by dependents rights giver by the manager.

At the time of administration Mortgage, then prospective candidates Mortgage and Mortgage must be present before PPAT. According to Article 8 paragraph (1) UUHT giver Mortgage is individual, or legal entity;

Either individual or legal entity must have the authority (authorities) to take legal actions ter-hadap objects Mortgage concerned. The authority must exist in the provider at the time of registration mortgage is done. While the Mortgage holders are Individuals or legal entity.

which serves as the indebted party (Article 9).

- a. About the Power of Attorney Imposing Mortgage (SKMHT).

Basically giver Mortgage shall present themselves before notary (PPAT), means granting imposing mortgage must be done by the parties who have mortgage object, only if under certain circumstances prospective Mortgage can not present itself, then allowed to authorize the to other parties. The authorization is mandatory or imperative if the prospective Mortgage can not present itself before PPAT.

The authorization shall be conducted before a notary or PPAT an authentic deed, called the Power of Attorney Imposing Mortgage (SKMHT).

Apart from having the form of an authentic deed and made before a Notary or PPAT with forms that have been set, then the validity SKMHT must be met certain requirements, as provided for in Article 15 paragraph (1) UUHT, namely:

1. SKMHT not load power to perform legal acts other than the power to impose Tang-gungan rights or legal actions in addition to the power to membe-bankan Mortgage is not allowed, for example, includes the power to sell, lease object Mortgage or extend land rights.
2. Do not load the power of substitution. In this case the power is prohibited to be transferred to another party, in addition to those already mentioned clearly in SKMHT. But in this case must be distinguished not constitute the power of substitution, if the authorized person authorizes another party in order to act on behalf affirmation of his, such as bank directors commissioned receives power to His bank branch manager or other designated party to represent.
3. Must be clearly stated object Mortgage, the amount of debt and the name and identity of the creditor, as well as the name and identity of the debtor, if the debtor is not giver Rights Mortgage. It needs to be stated explicitly, because there is the possibility of the landowner or property used as security rights, do not necessarily have a building that is on it, if different from the debtor's identity must be included and signed SKMHT.

The amount of debt referred to in SKMHT is an appropriate amount of debt or which has been agreed in Pasa 13 paragraph (1). If it can not be called a definite amount (fixed loan), most do not have to be formulated estimates that are easy to apply in calculating the final amount of the debt. Clarity or amount of this debt that is guaranteed is a very important factor for both the creditor and the debtor, if the execution will be carried out based on the certificate of Mortgage or under hand sales or sales on its own power through public auction.

Specified in Article 15 paragraph (2) that SKMHT irrevocably due to any cause. This provision is reasonable enforced in order to protect the interests of creditors, as the party who generally gets the power to impose Mortgage. Also determined that SKMHT can not expire, unless the authority concerned has implemented or because it exceeds the time limit its use.

Regarding the use SKMHT time limit should be linked to the status of the land, as object Mortgage, - which is already certified (registered) or not registered (not yet certified) this is specified in Article 15 paragraph (3) to 1 to paragraph (6).

SKMHT over land rights that have been certified shall be followed by the manufacture of Deed Granting Mortgage (APHT) concerned no later than 1 (one) month after SKMHT given Article 15 paragraph (3), and a time limit of 3 (three) months, if the right land as collateral have not registered or have not been certified to Article 15 paragraph (4).

The ratio of the time limit for longer because of the manufacturing APHT on land that has not been registered should be made in conjunction with the application for registration of the relevant right which must first be equipped with a variety of documents or other information, while those who are already registered sufficiently included certificates and warkah-warkah else needed.

For land which has not been registered, the candidate-providers must be able to demonstrate Mortgage / provide valid evidence on his property at the time of manufacture SKMHT. Regarding evidence of land ownership for land registration and can be used as collateral are, among others, girik, petuk or other recognized form, the elucidation of Article 10 paragraph (3) of Law No. 4 of 1996.

That the provision of three (3) months also applies to land that has been certified but have not been transferred on behalf of the Mortgage as the holder of the rights to the new land, for example, certificates of land still in the name of the deceased; then at the time of registration must be included certificate of inheritance and letters division of inheritance.

This provision shall also apply to land that has been berser-tifikat, but has not been registered on behalf of the Mortgage as the holder of the rights to the new land, the land that has not been listed transitional rights, solution or combination.

Noteworthy is also the substance of Article 15 (5) which have excluded the application of Article 15 (3) and (4). The substance of Article 15 (5) is then followed up with the Regulation of the Minister of Agrarian / Head of National Land Agency Number 4, 1996, dated May 8, 1996 on "Explanation Timeout Use the Power of Attorney Imposing Mortgage To Ensure Repayment of credits Specific". Deadline ber-lakunya SKMHT according to Article 1 of the Regulation that "... until the expiry of the validity period of the basic agreement that ber-sangkutan", so it will depend how long the creditors give time to the debtor to pay off debts or restore it, for example if the agreement credit agreed within 5 (five) years, then SKMHT can be mounted APHT 5 (five) years later. Then in the fifth year is not followed by the manufacture of APHT will apply the provisions of Article 15 paragraph (6) it is null and void, which also applies to Article 15 paragraph (3) and (4) UUHT.

As in practice the limit of validity SKMHT there are valid for a period of 1 (one) month for those who already have the Certificate of Land and SKMHT there are valid for three (3) months if the Certificate of Land is under the management of the Land Office and SKMHT be valid until the 6 (six) months if the evidence is in the form of Land Rights rincik or SKMHT petuk and in principle could be extended, but there are restrictions on the usage time SKMHT. The limitation period SKMHT use the one goal to avoid prolonged execution time APHT administration. If SKMHT of manufacture was not followed by the APHT is null and void, then the solution can be made new SKMHT, elucidation of Article 15 paragraph (6).

At SKMHT no minutanya and no grossnya. SKMHT made in 2 (two) in original, all signed by the grantor and the proxy, the witnesses and the Notary / PPAT are made. A sheet is kept at the office of Notary / PPAT is concerned, while the other sheets di-serahkan to the giver and the receiver's power as well as for the provision keper-luan Mortgage (APHT) concerned.

b. Granting of Mortgage Deed (APHT).

As has been described above that the provision APHT carried out in the presence of PPAT who have work areas where land is used as collateral is located. The deed is officially called Giving Mortgage Deed (APHT). On the form and substance of APHT been set by the State Minister of Agrarian / Head of National Land Agency. According to Article 39 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration that is not always PPAT can make APHT, in certain circumstances PPAT berkewajiban to reject the request to make APHT if:

1. Regarding the parcels of land that have been registered or ownership rights to the apartment units, was

- not communicated to her native ser-tifikat relevant right or certificate dise-rahkan not in accordance with the lists that exist in the Land Office; or
2. Regarding the parcels of land that has not been registered, was not delivered to him:
 - a) proof of the rights referred to in Article 24 paragraph (1) or the certificate of Village Heads / Sub stating that the control of parcels of land in question is referred to in Article 24 paragraph (2), and
 - b) certificate stating that the plot in question has not been certified Per-tanahan Office, or land located in areas far from the position of the Land Office, from the rights holder concerned with corroborated by the village chief / village, or
 - c) one or more of the parties will commit a legal act in question or one of the witnesses referred to in Pasa138 not eligible or not eligible to do so; or
 - d) one party or the parties acting on the basis of an absolute power of attorney which essentially contains a legal act of transfer of rights; or
 - e) for a legal act to be performed has not obtained a permit official or authorized agencies if ter-sebut license according to the legislation in force; or
 - f) the object of the legal acts in question are in dispute as to the physical data or data juridical; or
 - g) other conditions are not met or violated prohibitions specified in the legislation

If PPAT refused to make the deed in question, must be accompanied by reasons and notify the refusal to the parties concerned under Government Regulation No. 24 of 1997 on Land Registration. So what should be done by the PPAT very rational, because it directly PPAT has provided protection to the parties concerned.

As already mentioned above that the form and content APHT has been determined, in this connection to note the charge shall APHT, this in order to qualify the principle of specialties under Article 11 paragraph (1), that the APHT shall be disclosed:

- 1) the name and identity of the giver and receiver Mortgage.
- 2) the domicile of the parties giver and receiver Mortgage, and if among them there were domiciled outside Indonesia, for him must also be included a domicile of choice in Indonesia, and in the case of domicile option was not included in Indonesia, office PPAT where the manufacture APHT considered a chosen domicile.
- 3) appointment clearly debts or debts secured.
- 4) the value of mortgage.
- 5) a clear description of the object Mortgage.

The provisions of Article 11 paragraph (1) tersebutnya are required for the validity of Mortgage granted. If it is not included in full, then APHT concerned null and void, the elucidation of Article 11 paragraph (1).

APHT can be included in the promises given by both parties, as referred to in the first paragraph of Article I (2). In contrast to what is referred to in paragraph (1) the mandatory APHT meru-pakan charge, while the payload section (2) in the form of promises that are facultative means to be agreed or not agreed upon by the parties depending on the agreement of the parties.

With the inclusion of these promises in APHT, followed by registration of Rights Dependent on the Land Office, it fulfilled the principle of publicity, thus these promises have mengi-kat position towards third parties.

There is the promise of being forbidden to do, namely the appointment referred to in Article 12 UUHT, which is prohibited pem-berian agreement authorizes the creditor to have the object Mortgage if the debtor default. The intent of this ban is to protect debtors and other Mortgage giver, especially if the object value Mortgage exceed the secured debt, or the possibility of also object Mortgage is in a strategic place and have good prospects.

Nevertheless not prohibited for creditors Mortgage holders to become the object of buyers Mortgage, provided through the procedure set out in Article 20 UUHT (Explanation of Article 12 UUHT).

Appointments are required (must exist and agreed) included in APHT is referred to in Article 11 (2) e are associated with Article 6, which authorizes the holder mortgage to sell the objects Mortgage if debtors default, through public auction and take cash settlement of accounts receivable from the sale proceeds.

If there is more than one holder Mortgage lenders and agreed as stated in Article 11 paragraph (2) letter e, then the authority is in the holder of the first Mortgage (ranked number one). The sales made through public auction conducted by the Office of the Auction. In carrying out the sale of the Mortgage object and take repayment of its receivables applicable authority existing preferential creditors Mortgage holders, as the application of the principle of droit de preference and droit de suite.

APHT made in duplicate 2 (two) of which are signed by the giver and receiver Mortgage Mortgage, witnesses and PPAT. One sheet is kept in the office PPAT. The following other sheet-warkah other necessary warkah delivered to. Land Office for registration purposes Mortgage.

2. The Form of Legal Protection for Creditors In Credit Agreement With Mortgage Guarantee are yet Registered in the Land Office

The Power of Attorney Imposing Mortgage or abbreviated SKMHT is granted power of attorney mortgage providers (owners of collateral objects) to the lender as to charge the recipient Mortgage Mortgage Mortgage over the object. SKMHT a special power of attorney that authorizes special creditor to charge any Mortgage. In practice in banking, loading Mortgage is not done alone by the grantor Mortgage (owner objects assurance) is performed in conjunction with the signing of the credit agreement but was preceded by making a Power of Attorney Imposing Mortgage.

By making SKMHT means giving Mortgage not conducting itself in the imposition of Mortgage characterized by signing the Giving Mortgage but authorizes the creditor as a recipient Mortgage at any time to impose Mortgage. SKMHT development habits that are not immediately followed by the imposition of Mortgage not provide security for the lender because by making SKMHT unborn Mortgage means that creditors do not already have preferential rights to the collateral.

Imposing habit Mortgage preceded by making SKMHT due to several problems:

- a. Mortgage loading costs quite expensive. Mortgage loading costs charged to the debtor so that the costly financial burden of the debtor.
- b. A small amount of credit, the lender feels no need to immediately install the Mortgage. Installation of the new Mortgage done if there are signs of troubled borrowers credit quality. By having SKMHT lenders can charge at any time without having to present Mortgage guarantor.
- c. Certificates of land rights is the object Mortgage not yet published at the time credit is granted, is still in the process of completion.
- d. To do roya partially on land that has been burdened Mortgage in practice it is not easy to avoid the bank to put an Mortgage. Roya needed in order partial sale of houses (with mortgage facilities were built on land that is burdened Mortgage).

According to Article 15 UUHT, SKMHT must meet the requirements to be used by the creditor as a basis for the imposition of Mortgage. The terms of making SKMHT namely:

- a. Created by notarial deed or deed PPAT;
- b. SKMHT should be provided directly by the Mortgage is the owner of the rights to the land that became the object of Mortgage;
- c. No load power to perform legal acts other than the charge Mortgage. The meaning of other legal acts for example the power to sell, lease or power objects Mortgage extend land rights have expired;
- d. No load power of substitution means on the basis SKMHT endorsee shall not give more power to the other party as a replacement power;
- e. State clearly the object of Mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not giver Mortgage.

If these requirements are not met then akibanya SKMHT null and void so that the power of attorney can not be used as the basis for granting Mortgage Deed. Thus SKMHT form and content must meet the requirements specified legislation should not include a variety of provisions outside the provisions of the law.

SKMHT given to creditors giver Mortgage Mortgage as the recipient can not be revoked or withdrawn or can not be ended by any cause except for power have been implemented or because the validity period has expired power of attorney according to the time specified by law. SKMHT containing such requirements can not be revoked in order to protect the interests of creditors when all the time it takes the lender will charge

Mortgage by making Imposition Mortgage Deed. SKMHT requirements which can not be revoked is contrary to the ways the expiration of the authorization under Article 1813 of the Civil Code which confirms the authorizing can revoke or withdraw power of attorney.

Mortgage is a guarantee land rights to the repayment of certain debt, which gives preferred status to certain creditors to other creditors. In a sense, that if creditors default, the lender Mortgage holder the right to sell by public auction the land as collateral under the terms of legislation concerned with the rights predate than other creditors. The preferred position of course not reduce the preference receivables countries according to the provisions of applicable law.

Mortgage stipulated in the Act is basically Mortgage Mortgage is charged on land rights. But in reality it is often the objects such as buildings, plants and the work that remains is stau unity with the land as collateral. Known as the National Land Law is based on customary law, which uses the principle of horizontal separation.

Accordingly, it is in relation to buildings, crops and the work of the National Land Law also uses the principle of horizontal separation. In the framework of the principle of horizontal separation, objects that constitute an integral part of the land according to the law is not part of the land in question. Therefore any legal actions regarding the rights to the land, is not in itself includes such objects.

However, the application of the principles of customary law is not absolute, but always pay attention to and adapted to the reality and needs of the development community faces. On the basis of the fact that the nature of customary law, in the context of the principle of horizontal separation, the law stated that the imposition Mortgage Mortgage over land is also possible include objects as referred to above. It has been conducted and

justified by the law in practice, all these objects is a unity with the land concerned and participation pledged as collateral, expressly stated by the parties in the Deed Granting Rights dependents. Buildings, plants and works that participated used as collateral it is not limited to that held by the holder of the rights to the land in question, but may also include those owned by other parties. While building the use of underground space, which is physically nothing to do with the existing buildings on the surface of the earth on top of it, is not included in the settings according to the provisions of the Mortgage Law Mortgage. Therefore, this Law is entitled: Law on Mortgage of Land and Their Bodies Relating to Land and can be called Act Mortgage.

Mortgage imposing process is carried out through two phases of activities, namely:

- a. Mortgage granting stage, with the establishment of the Mortgage Deed Granting Land Deed Officer, hereinafter referred to as PPAT preceded by agreements that guaranteed debts
- b. phase of registration by the Land Office, which is when birth Mortgage charged.

According to the legislation in force, PPAT is a public official who is authorized to make the deed of transfer of rights over land and other certificates in order charging land rights, which form aktanya set, as does evidence of certain legal acts concerning land located within its respective area respectively. In its capacity as mentioned above, the deeds made by PPAT is an authentic deed.

Definition of legal acts of loading of land rights which manufacture aktanya the authority of PPAT, covering deed loading Broking land Property Rights referred to in Article 37 of the Law of the Agrarian and deed in order to load Mortgage regulated in Law Rights dependents. In providing Mortgage, Mortgage providers must be present before PPAT. If for any reason unable to attend himself, he must appoint another party as proxies by a Power of Attorney Imposing Mortgage, abbreviated SKMHT, in the form of an authentic deed. Manufacture SKMHT in addition to the Notary, also assigned to the PPAT whose existence until the districts, in order to facilitate the delivery of services to those in need.

At the time of making SKMHT and Deed Granting Mortgage, must already exist confidence in the Notary or PPAT has the authority, that the giver Mortgage has the authority to take legal actions against the object Mortgage charged, although the certainty of its authority to the newly required at the time of administration rights the dependents listed.

At this stage of the provision by giving Mortgage Mortgage to creditors, Mortgage concerned unborn. Mortgage was a newborn when dibukukannya in the land book at the Land Office. Therefore certainty about when didaftarnya Mortgage is very important for the lender. That time is not only determine the preferred position of the other creditors, but also rank them in relation to other creditors who are also holders of Mortgage, the same land as collateral. To obtain certainty about the time of registration, the Act Mortgage determined that date the land book Mortgage in question is dated the seventh day after the receipt of the letters Yag required for such registration is complete by the Land Office and if the seventh day falls on a holiday, the land concerned was given a book dated next business day.

In order to obtain certainty about the position preferred for creditors holders of Mortgage is, determined also that the deed granting Mortgage along with other documents required for registration, shall be sent by PPAT to the Land Office not later than seven (7) working days after signing, Similarly, the implementation of the authority to make Mortgage which meant above specified deadline, ie 1 (one) month for the right to land that has been registered and three (3) months for the right to land that has not been registered.

Therefore Mortgage by their nature constitute ikuatan or accessoir at a certain receivables, which is based on an agreement of debts or other agreement, then the birth and existence is determined by the receivables are guaranteed repayment.

One characteristic of a strong Mortgage is easy and certainly in the implementation of its execution, if the debtor default. Although the general provisions on execution has been set in the Civil Procedure Code in force, it is necessary to include special provisions on execution Mortgage in Act Mortgage, the governing body Parate executie referred to in Article 224 Revised Indonesia Regulation Updated (Het Herziene Indonesisch Reglement) and Article 258 of Law Reglemen Event For Regions outside Java and Madura (Regeling van het tot Reglemen Rechtswezen in gewesten Buiten de Java en Madura).

In connection with that the certificate Mortgage, which serves as a letter of evidence Mortgage, affixed irah-irah with the words "FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD", to provide executorial power equal to a court decision that has legal effect fixed. In addition Mortgage certificate is declared as a substitute grosse acte hypotheek, which for execution on the ground hypotheek defined as a condition in implementing the provisions of the articles of both reglemen above.

For unity of understanding and certainty regarding the use of such provisions is reaffirmed in Act Mortgage, that as long as there are no regulations that govern it, the rules regarding the execution hypotheek regulated in both reglemen such, apply to the execution of Mortgage.

To facilitate and simplify the implementation of the provisions of the Act Mortgage for the interests of the parties concerned, to the Chairman of the District Court granted certain authorities, namely: the determination to authorize the lender to manage objects Mortgage, the determination of matters relating to the petition cleaning

object deletion Mortgage and Mortgage.

3. The strength of Deed In Making Power of Attorney Imposing Mortgage

Article 15 paragraph (1) of Law No. 4 of 1996 on Mortgage over the Land and Their Bodies Relating to Land confirms that SKMHT shall be made by notarial deed or deed of PPAT, then form SKMHT specified in point h of Article 96 paragraph (1) Regulation of the State Minister of Agrarian / Head of National Land Agency No. 3 of 1997 on the implementation of Government Regulation No. 24 of 1997 on Land Registration. Thus, the authority to make SKMHT exist on the notary and PPAT.

In Article 15 paragraph (1) of the Law Notary determines that: "Notary has the authority to make the deed and terms and conditions notary deed under the provisions of Article 38 UUJN". When examined more deeply, it turns out the beginning and end of the present SKMHT made before a notary, not in accordance with the provisions of Article 38 UUJN, meaning not qualify as a notary deed.

Now the question arises, what is the legal effect of a notarial deed which is not in accordance with the provisions of Article 38 UUJN? If we read Article 84 UUJN regarding notary and civil sanctions against Article 85 UUJN concerning administrative sanctions against the notary, no sanctions for notary when the deed made before or by a notary does not comply with the provisions of Article 38 UUJN. Although UUJN not set penalties for the notary who made the deed does not comply with the provisions of Article 38 UUJN, in this case should be linked with other legal rules that have to do with a notary deed, in this case Article 1868 and 1869 Code of Civil Law.

Basically under Article 15 of the Law Notary, a notary has the authority to make a Power of Attorney Imposing Mortgage (SKMHT), but in fact in practice notaries rarely or almost never exercise these powers as the manufacture SKMHT was done by PPAT form SKMHT already provided by the Office of Land and PPAT stay filling in accordance with a format that is standard. This was stated in Article 44 of Government Regulation No. 24 of 1997 on Land Registration jo. Regulation of the Minister of Agrarian / Head of National Land Agency No. 3 of 1997 on the implementation of Government Regulation No. 24 of 1997. Under the provisions of Article 114 to Article 120 of the Regulation of the Minister of Agrarian / Head of National Land Agency Number 3, 1997 determined that the object registration Mortgage only accepted by the Land Office when granting Mortgage Deed (APHT) made by PPAT. So therefore if SKMHT made by a notary, then the certificate can not be registered at the Land Office.

Basically notary deed SKMHT authorized to make, it's just that the report entered in the SKMHT reportorium notary and may be registered in the Land Office. During this time notary concerned in making his SKMHT made by notary deed and in practice SKMHT can be registered at the Land Office. The notary authority in making SKMHT based on Article 15 of Law No. 4 of 1996 on Mortgage over the Land and objects relating to the ground.

The legal basis notary authority to make SKMHT is Article 15 of Law No. 4 of 1996 (Act Mortgage) and General Explanation No. 7 of Law No. 4 of 1996 (Act Mortgage). The difference SKMHT Notary and PPAT is as follows:

- a. At SKMHT by a notary at the mentioned position of the notary and the basic authority to make that SK Menhukham, being on SKMHT made by PPAT then the authority is the decree of appointment by the Head of BPN / State Minister of Agrarian
- b. When SKMHT made by PPAT then he must follow pertanahannya office work area, limited means, outside the working area he should not make SKMHT. But if SKMHT by notary then there is no limit working area.
- c. Notary who made the deed made SKMHT reports examined by the Regional Supervisory Council (MPD), whereas when the report was made by PPAT into the BPN (the nation body of Land affair of Republic Indonesia).

At present there are still differences of opinion on the notary authority in making SKMHT it should be subject to regulation Notary Act or the regulations related to land issued by the State Minister of Agrarian / Head of National Land Agency. Therefore, according to him to be safe if the notary will make SKMHT should follow the form provided by the Land Office.

Article 1868 of the Civil Code is the source for the authenticity of the notarial deed is also the legal basis of the existence of a notarial deed with the requirements as follows:

- a. It shall be made by the (door) or presence (ten overstaan) a public official
- b. It shall be made in the form prescribed by law
- c. Public officials by deed or before whom it was made must have the authority to make such deed.

Article 38 UUJN governing the nature and form of certificate does not specify the nature of the deed. In Article 1 point 7 UUJN determined that: "The deed is authentic deed made by or before a notary according to the form and procedure set forth in UUJN".

Deed made by the (door) notary in notary practice called relaas deed or deed of news events Guang Yu Book Store description is seen and witnessed by a notary public notary himself at the request of the parties to the

action or actions of the parties done poured into the form of a notarial deed. Deed made before (ten overstaan) a notary in the practice of so-called notary deed containing the description or information or statements of the parties given or told before a notary. The parties desirous that description or statement poured into the form of a notarial deed.

Notary deed, good deed or deed relaas party, which became the main base or core in the manufacture of a notary deed, ie there must be the desire or the will (wilsvorming) and requests of the parties. If the wishes and requests of the parties does not exist, will not make a notary deed in question. To meet the demand of the parties wishes dna notaries can advise to remain grounded in the rule of law. When the notary advice followed by the parties and set forth in a notarial deed, remains that such advice is the desire and demand of the parties, not the advice or opinion or content notary deed is an act of the parties not deeds or notarial acts.

Understanding as mentioned above is one of the juridical character of the notarial deed, does not mean a notary as the perpetrator of the deed, notary remain outside the parties or not parties to the deed. With such a position notary if a notary deed in question, it remains the position of the notary is not a party or participating undertake or assist the parties in the criminal legal qualification or as a defendant or co-defendant in a civil case. Placement notary as a party to participate or assist the parties with the qualification to make or put false information into an authentic deed or placing notary as a defendant related to a deed made by or before a notary, it has hurt the notary and the notary are not understood by Other law enforcement agencies regarding notary and notary position in Indonesia. Anyone not able to give any other interpretation on the notarial deed or otherwise bonded to the notary deed.

At the level of law (notary) is right on the notary and the notary, if a notary deed disputed by the parties, then:

- a. The parties come back to the notary to make a deed of cancellation of the deed. Thus, the act has no binding canceled again the parties and the parties to bear the consequences of the cancellation.
- b. If the parties have not agreed to the deed in question to be canceled, either party may sue the other party to the lawsuit to degrade into a notary deed deed under the hand. Once degraded, the judge who examined the lawsuit could give its own interpretation on notary deed that has been degraded, would remain binding on the parties or canceled? It relies on the evidence and the judge's assessment.

If the position of the other, the one party feels aggrieved of a deed made notary, those who feel aggrieved can mengajukan lawsuit in the form of claims for compensation to the notary concerned with the obligations of the plaintiff, the lawsuit must be proved that the loss was a direct result of Notarial Deed. In the second position, the plaintiff must be able to prove what is infringed by a notary, both from the aspect of outward, formal aspects, and aspects of the material on the notarial deed.

When told the notary office of the notary rules still apply (PJN), it is still doubtful whether the certificate is made in accordance with the law? First setting notary Indonesia based Instruktie voor de Notarissen Residerende in Nederlands Indie with Stbl No. 11, dated March 7, 1822, then the Reglement op Het notary ambt in Indonesie (Stbl. 1860: 3), and règlement is derived from the wet op het Notarisambt (1842). Furthermore, the règlement translated into PJN. Although notaries in Indonesia arranged in the form règlement, it is not problematic because since the notary institution was born in Indonesia, setting no more than a form règlement and institutionally by Act No. 33 of 1954 does not regulate the form of certificates. After the birth UUJN, the presence of a notary deed received confirmation because its shape is determined by law. In this case specified in Article 38 UUJN.

If the notary in charge mortgage making power still using blank SKMHT, notary had acted beyond its authority so SKMHT does not have the force of proof as the authentic document, but only has the strength of evidence as the deed under the hand. Thus, a notary who is authorized to make a notary deed, but it makes SKMHT, which is a deed made outside authority, not mempunyai notary understand the task execution position notary, and deformed deed made by or before a notary public, if the action notaries as it has caused harm to the person whose name is on the deed, which had hoped the deed desired in the form of a notarial deed that has the strength of evidence is perfect, but because it violates the provisions of Article 1869 of the Civil Code, into a deed that has the strength of evidence as the deed under the hand, the person whose name is on the deed may bring a civil action to the district court to order the notary notarized civil sanctions in the form of reimbursement of costs, damages and interest to a notary.

That the greatest consumers who use SKMHT, namely banking (bank) which serves as a creditor. It is inconceivable if there was a debtor who know and understand the position SKMHT as mentioned above, the debtor concerned may file a cancellation of the loan (credit) on the grounds SKMHT not notary and does not meet the terms and conditions as the notary deed under Article 38 of Law Position Notary and is certainly open for opportunities like this one made by the debtor, then notary civilly sued by the bank because of a deed which only has the strength of evidence as the deed under the hand.

So that the above does not happen, should the notary to comprehensively integral makes provisions regarding

notary and also not to create or fill in the blank SKMHT. If notaries still wants to make a certificate authority to make a security interest to creditors and debtors, made just Deed Attorney Imposing Mortgage (AKMHT) in accordance with the authority of the notary to make the deed (Article 15 paragraph (1) UUJN), in accordance with the terms and conditions of the deed notary under Article 38 UUJN and of course also in accordance with the provisions of Articles 1868 and 1869 of the Civil Code. However, if it is still intending to impose to fill the blank SKMHT, make it in position as PPAT not as a notary.

Conclusion

1. Due to the laws of the Power of Attorney Imposing Mortgage (SKMHT) Notary that is not followed by the manufacture of Giving Mortgage Deed is autumn / null and void. This is in accordance with the provisions of Article 15 paragraph (3) and (4) of Law No. 4 of 1996 (UUHT) which states that the deadline belakunya SKMHT is 1 (one) month for the right to land that has been registered and three (3) a month for the right to land that has not been registered. With the cancellation of the SKMHT not rule made SKMHT new round Mortgage providers are willing to sign a new SKMHT. If the giver Encumbrance not willing to sign a new SKMHT it will be difficult for the creditor if one day will make loading Encumbrance
2. By making SKMHT means giving Encumbrance not conducting itself in the imposition of Mortgage characterized by signing the Giving Encumbrance but authorizes the creditor as a recipient Mortgage at any time to impose Mortgage. SKMHT development habits that are not immediately followed by the imposition of Encumbrance not provide security for the lender because by making SKMHT unborn Encumbrance means that creditors do not already have preferential rights to such guarantees
3. Pursuant to Article 15 of the Law Notary, a notary has the authority to make a Power of Attorney Imposing Mortgage (SKMHT), but in fact in practice notaries rarely or almost never exercise these powers because SKMHT-making was done by PPAT form SKMHT already provided by the Office of Land and PPAT stay filling in accordance with a format that is standard. This was stated in Article 44 of Government Regulation No. 24 of 1997 on Land Registration jo. Regulation of the Minister of Agrarian / Head of National Land Agency No. 3 of 1997 on the implementation of Government Regulation No. 24 of 1997. Under the provisions of Article 114 to Article 120 of the Regulation of the Minister of Agrarian / Head of National Land Agency Number 3, 1997 determined that the object registration Encumbrance only accepted by the Land Office when granting Mortgage Deed (APHT) made by PPAT. So therefore if SKMHT made by a notary, then the certificate can not be registered at the Land Office

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