

## RECONSTRUCTION OF THE REGULATION ON THE VALIDITY PERIOD OF THE POWER OF ATTORNEY TO CHARGE MORTGAGE RIGHTS (SKMHT) IN MSME CREDIT TO ENSURE LEGAL CERTAINTY



**Ihsan Ariyanto Wibowo<sup>1</sup>**  
Universitas Negeri Jember, Jember, Indonesia  
[ihsan.ariari@gmail.com](mailto:ihsan.ariari@gmail.com)

**Firman Floranta Adonara<sup>2</sup>**  
Universitas Negeri Jember, Jember, Indonesia  
[firmanfloranta.fh@unej.ac.id](mailto:firmanfloranta.fh@unej.ac.id)

**Iwan Rachmad Soetijono<sup>3</sup>**  
Universitas Negeri Jember, Jember, Indonesia  
[iwan.fh@unej.ac.id](mailto:iwan.fh@unej.ac.id)

### Abstract

The provision of credit to Micro, Small, and Medium Enterprises (MSMEs) often uses a Power of Attorney to Charge Mortgage Rights (SKMHT) as the initial binding of collateral before making a Deed of Granting Mortgage Rights (APHT). However, the regulation of the SKMHT period creates legal uncertainty, especially regarding Article 15 paragraphs (3) and (4) of the Mortgage Rights Law and banking technical provisions. The ambiguity of norms affects legal protection for creditors and debtors and may cause disputes in executing collateral. This research first analyzes the regulations on the SKMHT period and the vagueness of norms in MSME credit with land collateral. Second, it evaluates the reconstruction of ideal norms for SKMHT period settings to ensure legal certainty and protection in MSME credit practices. The research uses three approaches: the Statute Approach to examine SKMHT regulations, the Conceptual Approach to analyze legal doctrines, and the Comparative Approach to compare legal arrangements or court decisions from other countries. Three legal theories are applied: Legal Certainty Theory to resolve SKMHT term issues, Legal Protection Theory to analyze protection for creditors and debtors, and Responsibility Theory to review obligations of parties in MSME credit. The results show unclear norms cause legal uncertainty, and failure to convert SKMHT into APHT results in nullity. Therefore, reconstruction of SKMHT term norms in MSME credit with land collateral is required to ensure permanent legal force.

**Keywords:** SKMHT, Time, Period, Regulation

## INTRODUCTION

The provision of credit by financial institutions may be carried out with or without collateral. However, unsecured credit poses a high risk to financial institutions, because in the event of default, losses are difficult to recover. Conversely, credit secured by collateral places the financial institution in a safer position, as the collateral may be executed if the debtor fails to fulfill their repayment obligations. In practice, every credit applicant is required to submit a written credit application to the bank regardless of the credit amount. The existence of collateral ensures that the debt will be repaid on time and enables the creditor to sell the object of collateral should a breach of contract occur.

For Micro, Small, and Medium Enterprises (MSMEs), credit serves as an essential instrument for sustaining and expanding business activities, including procurement of raw materials, working capital, and business development. However, MSMEs often face difficulties in accessing formal financial institutions due to high-risk perceptions, insufficient collateral, limited financial literacy, and issues of creditworthiness. To expand financial access, the government introduced the People's Business Credit (KUR) Program, as stated in the Regulation of the Coordinating Minister for Economic Affairs Number 6 of 2020, which provides financing for productive and feasible businesses that do not have adequate additional collateral.

In banking practice, the most widely used collateral mechanism is the Mortgage Right (Hak Tanggungan) over land. Under Law Number 4 of 1996 on Mortgage Rights, the granting of a mortgage should ideally be executed through a Deed of Granting Mortgage Rights (APHT). However, in certain situations, the APHT cannot be immediately executed, and therefore a Power of Attorney to Charge Mortgage Rights (SKMHT) is issued as an initial binding before its conversion into APHT. To ensure legal certainty, the SKMHT has a validity period of one month for certified land and three months for uncertified land.

The Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) subsequently issued Decree Number 22 of 2017, stipulating that for micro credit, the SKMHT remains valid until the expiration of the principal credit agreement. Although this regulation provides convenience for MSME borrowers, it simultaneously creates legal issues. Many banks do not convert the SKMHT into APHT due to cost considerations. As a result, when debtors default, banks are unable to execute the collateral through the State Wealth and Auction Service Office (KPKNL). Without APHT, the creditor does not hold a factual security right over the collateral and loses its status as a preferred creditor, becoming merely a concurrent creditor.

This legal uncertainty may disadvantage creditors, weaken the security function, and potentially allow opportunistic behavior from debtors who understand the loophole. The regulation also does not provide a special policy regarding the cost of registering APHT for micro credit, resulting in inadequate legal protection for banks. Furthermore, this situation impacts notaries/PPAT as public officials who prepare the deed, because the failure to elevate an SKMHT into an APHT undermines the legal certainty and reliability of the deed issued.

Therefore, there is an urgent need to reconstruct the regulation governing the validity period of SKMHT in MSME credit to ensure legal certainty and protection for all parties. A revised regulatory framework should resolve normative weaknesses, reinforce the legal position of creditors, and safeguard the execution of collateral. Based on this background,

this research is entitled: “Reconstruction of the Regulation on the Validity Period of the Power of Attorney to Charge Mortgage Rights (SKMHT) in MSME Credit to Ensure Legal Certainty.”

## **REVIEW OF LITERATURE**

Several previous studies have examined the legal position and implications of the Power of Attorney to Charge Mortgage Rights (SKMHT) in credit agreements. First, the thesis by Tri Riqqah Ananda (2023), Magister Hukum, Fakultas Hukum Universitas Muhammadiyah Sumatera Utara (UMSU), formulates the legal problem concerning: “How is the legal concept of SKMHT as collateral binding in Micro, Small, and Medium Enterprise credit?” This study uses a normative juridical method, focusing on statutory norms and library analysis. The findings show that the Mortgage Rights Law stipulates the Deed of Granting Mortgage Rights (APHT) as an authentic deed executed before a Land Deed Official (PPAT) and registered at the Land Office to ensure legal certainty for creditors in executing collateral. Article 13 of the Mortgage Rights Law mandates that SKMHT must be elevated to APHT within a specific period, and failure to do so renders the SKMHT invalid.

The second reference is the thesis by Sri Endah Cahyani (2019), Magister Hukum Kenotariatan, Fakultas Hukum Universitas Islam Malang, entitled “The Issuance of SKMHT Without Being Followed by APHT.” The problem formulation focuses on the legal consequences for creditors if SKMHT is not followed by APHT. Using a normative juridical method, the research concludes that many debtors provide collateral whose land ownership status remains in the form of letter C. As a result, SKMHT is issued with a three-month validity period and must be extended repeatedly while waiting for the conversion of letter C into a land certificate—a process that may take up to twelve months. Consequently, there is a possibility that the SKMHT cannot be extended or upgraded into APHT, which weakens the creditor's legal position.

This thesis departs from the previous studies by explicitly analyzing the gap of study or state of the art regarding the regulation of SKMHT in microcredit. The researcher conducts a normative critique of the SKMHT validity period and its impact on the creditor's legal standing. This study emphasizes the legal consequences of the SKMHT validity period in MSME credit agreements under the Mortgage Rights Law, particularly the ambiguity in interpreting the time limit, especially for MSME credit with land collateral. Furthermore, this study aims to formulate an ideal regulatory concept to guarantee the legality of SKMHT, ensure legal protection and certainty for creditors, and strengthen the implementation within notarial practice. Unlike previous research, this thesis also analyzes the inconsistency between the Mortgage Rights Law and the Minister of ATR/BPN Regulation No. 22 of 2017 in the context of legal protection for creditors in the MSME sector.

## **RESEARCH METHOD**

This research adopts a normative juridical method, namely legal research conducted by examining legal norms contained in statutory regulations, doctrinal writings, and various authoritative legal sources related to the validity of the Power of Attorney to Charge Mortgage Rights (SKMHT) within MSME credit agreements. Normative juridical research

is appropriate because the problem raised in this study pertains to the interpretation, application, and consistency of written legal norms governing mortgage rights and creditor protection. This method also emphasizes law as prescriptive rules that determine legal obligations, rights, and procedures.

### 1. Approach

#### 1) Statute Approach

For analyze the research problem comprehensively, three legal approaches were applied: Statute Approach This approach was carried out by examining statutory regulations governing mortgage rights, credit agreements, banking activities, and land registration. The statute approach aims to explore the philosophical foundation and ratio legis behind the regulation of SKMHT, particularly the time limitation for elevating SKMHT into the Deed of Granting Mortgage (APHT). Through this approach, the research evaluates whether the current norms provide legal certainty for creditors in securing MSME credit.

#### 2) Conceptual Approach

The conceptual approach is used to analyze doctrines, legal theories, and scholarly views related to legal certainty, legal protection, authority, and the nature of security rights. This approach provides the theoretical basis for interpreting unclear or inconsistent legal norms. It is also used to develop legal arguments on how SKMHT should be regulated to guarantee creditor rights and maintain legal certainty in notarial practice.

#### 3) Comparative Approach

The comparative approach is conducted by comparing legal arrangements or judicial practices in other jurisdictions regarding the validity and enforceability of security instruments in credit agreements. This comparison helps to identify similarities and differences and may serve as a reference for recommendations on the development of Indonesian mortgage law, especially for MSME credit.

### 2. Legal Materials

The research relies on two types of legal materials:

**Primary Legal Materials** Primary legal materials are authoritative and binding. In this study, they include:

Indonesian Civil Code

Law Number 4 of 1996 on Mortgage Rights

Law Number 10 of 1998 on Banking

Law Number 2 of 2014 on the Notary Office

Minister of ATR/BPN Regulation Number 22 of 2017 on the Time Limit for the Use of SKMHT

Regulation of the Coordinating Minister for Economic Affairs Number 6 of 2020 on MSME Credit

These materials form the principal basis for examining the legal validity, time limitations, and consequences of SKMHT in MSME credit.

**Secondary Legal Materials** Secondary materials include legal textbooks, journals, scholarly articles, dissertations, theses, legal commentaries, legal dictionaries, and academic writings relevant to mortgage rights and creditor protection. These materials support interpretation and provide analytical depth in constructing legal arguments

### 3. Legal Analysis Technique

The legal materials collected were analyzed using qualitative prescriptive analysis, namely by interpreting legal norms through grammatical, systematic, and teleological interpretations. This technique is used to determine the coherence between legal norms and their application in practice, and to assess whether the existing regulations ensure legal certainty and protection for creditors using SKMHT in MSME lending.

#### 4. Legal Material Collection

The collection of legal materials in this research was conducted through several stages of normative legal research, namely literature review, identification of legal materials, classification, and elimination of irrelevant information to determine the legal issues to be answered. Primary and secondary legal sources that are relevant to the validity period of SKMHT in MSME credit were systematically gathered and examined to support legal analysis and argumentation.

Primary legal materials—such as statutory regulations—were collected using inventory and categorization techniques, ensuring that all relevant provisions governing SKMHT, APHT, mortgage rights, banking regulations, and MSME credit were included. Secondary legal materials—such as textbooks, journals, theses, legal commentaries, and court decisions—were collected using the card system, which consists of:

- (a) summary cards containing the main ideas of the author,
- (b) quotation cards for essential statements or legal arguments, and
- (c) review cards containing the researcher's assessment and analytical notes.

All collected materials were then organized, classified, and examined using statutory and conceptual approaches to obtain a synchronized understanding of the legal norms governing SKMHT in MSME lending.

#### 5. Legal Material Analysis

The legal materials obtained from primary and secondary sources were analyzed descriptively and prescriptively to answer the research problems. Descriptive legal analysis is used to interpret legal concepts, norms, and the structure of positive law without testing hypotheses, but rather by systematically presenting and analyzing legal content relevant to the research.

The analytical process involved:

describing the applicable legal norms,  
systematizing and interpreting statutory provisions,  
comparing them with legal theories and principles, and  
evaluating consistency between regulations.

This research uses qualitative normative analysis, meaning that conclusions are drawn based on legal reasoning and interpretation of the applicable laws associated with the issues discussed. The final conclusions were formulated using a deductive reasoning method, moving from general legal principles to specific conclusions regarding the validity period and legal consequences of SKMHT in MSME credit.

**The Regulation of the Validity Period of the Power of Attorney to Charge Mortgage Rights (SKMHT) contains normative ambiguity, especially in MSME credit transactions secured by land collateral**

**The Definition and Legal Basis of MSME Credit Agreements Secured by the Power of Attorney to Encumber Mortgage (SKMHT)**

The legal basis for the use of the Power of Attorney to Encumber Mortgage (Surat Kuasa Membebaskan Hak Tanggungan/SKMHT) in MSME credit agreements is regulated, among others, by the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1996, which became effectively enforceable on 1 August 1996. This regulation stipulates the official forms and templates of SKMHT to be used in the practice of imposing Mortgage Rights.

Functionally, the SKMHT is a specific power of attorney granted by the landowner to the creditor or another authorized party to impose a Mortgage Right on the secured object. The SKMHT serves as a solution to practical situations where the process of imposing Mortgage Rights often requires a longer period, while the credit agreement must be executed immediately.

In the author's view, understanding SKMHT should not be limited merely to its normative aspects, but must also consider its historical basis, the objectives of its establishment, its relation to contract law and banking regulations, and the form of legal protection afforded to the holder of the SKMHT by examining real cases as objects of study. It should be noted that, historically, SKMHT was originally designed for non-bank financing institutions. This mechanism allows an individual who acquires property through a financing scheme to use the property being financed as collateral, which will later be encumbered with a Mortgage Right once all administrative requirements have been completed. Thus, the SKMHT functions as a bridge between the urgent need to disburse credit and the relatively time-consuming land administration process.

**Interpretation of SKMHT Under the Principle of Lex Superior Derogat Legi Inferiori**

The principle of Lex Superior Derogat Legi Inferiori serves as a reference for banking institutions in carrying out debt-credit relationships between creditors and debtors. Explicitly, the Mortgage Rights Law (Law No. 4 of 1996) does not regulate the validity period of the Power of Attorney to Encumber Mortgage (SKMHT). This legal vacuum creates an issue in micro credit agreements. Consequently, banks refer to Articles 1131 and 1132 of the Indonesian Civil Code to ensure legal certainty and legal protection in micro credit agreements. Provisions in the Civil Code are considered more specific in regulating collateral for credit agreements.

Article 1131 states:

“Every movable and immovable object of the debtor, both existing and future, shall constitute security for the performance of the debtor's obligations.”

This provision implies that all of a debtor's assets automatically serve as collateral for debt, whether the assets already exist or will exist in the future.

Article 1132 stipulates that the assets serve as common collateral for all creditors, and the proceeds of their sale shall be distributed proportionally according to the amount of each creditor's claim, unless a creditor has a lawful right to precedence

Article 1131 of the Indonesian Civil Code provides a general form of security for creditors in ensuring repayment of the debtor's obligations. The provision affirms that a

debtor's entire estate—movable or immovable, present or future—constitutes collateral for all personal obligations. This general security arises directly by virtue of law and is intended for the benefit of creditors without specifying a particular object.

In a material juridical perspective, the concept of collateral in banking practice has a very broad scope. In simple terms, collateral is anything provided by the debtor to the creditor as proof of commitment to fulfill payment obligations. Such collateral may be in the form of physical assets (such as land, buildings, or vehicles) or non-physical assets (such as securities or third-party guarantees).

### **The Concept of Reconstructing the Normative Regulation of the SKMHT Validity Period to Ensure Legal Certainty and Legal Protection in the Practice of Providing MSME Credit**

#### **Reconstruction of SKMHT in MSME Credit Agreements to Ensure Legal Certainty**

Every credit facility granted by a financial institution necessarily contains a defined maturity period. This period represents the time frame agreed upon by the parties for repayment. Practically, it is almost impossible to find a credit agreement without a specified term. Based on the duration, credit can be classified into three categories: short-term credit, which has a maturity period of no more than one year; medium-term credit, with a duration ranging from one to three years; and long-term credit, with a duration exceeding three years.

In principle, the credit-granting procedure constitutes a series of stages designed by the bank to facilitate prospective debtors in obtaining financing. These procedural stages must be implemented by both the bank and the prospective debtor, subject to the prevailing requirements and regulatory provisions. Thus, the determination of credit terms and procedures is inseparable from legal certainty in the implementation of security instruments, including the Power of Attorney to Encumber Mortgage (SKMHT). Reconstruction of the SKMHT mechanism in MSME credit agreements is therefore necessary to ensure that the validity of the SKMHT is aligned with the characteristics of the credit term, so that the creditor's legal position remains protected until the imposition of mortgage rights is completed.

The reconstruction of legal norms regarding the validity period of the Power of Attorney to Encumber Mortgage (SKMHT) should emphasize efficiency through flexible time limits based on the type of credit. A reformed regulation ought to differentiate between consumer loans and productive MSME financing. For consumptive credit, the existing time limit of one to three months may remain applicable. However, for productive MSME credit, the validity of the SKMHT should be automatically extendable until the mortgage encumbrance (APHT) is completed, with a maximum extension of six to twelve months.

Under this model, the SKMHT shall remain legally valid as long as the administrative process for the registration of mortgage rights is demonstrably ongoing and supported by written evidence. Further, synchronization of SKMHT regulation with banking sector policies is essential to ensure legal protection and certainty for both creditors and debtors in the implementation of mortgage rights. A more flexible regulatory framework not only aligns with administrative realities but also supports financial access and legal security within MSME lending practices.

## **Legal Protection of the Power of Attorney to Encumber Mortgage Rights (SKMHT) for Creditors**

The General Elucidation point 7 and the elucidation of Article 15 paragraph (1) of the Mortgage Law (UUHT) stipulate that the granting of Mortgage Rights must be carried out directly by the Grantor of Mortgage Rights through personal appearance before a Land Deed Official (PPAT). The Power of Attorney to Encumber Mortgage Rights (SKMHT), which must be drawn up in the form of an authentic deed, serves this purpose. The authority to draw up SKMHT is not only granted to Notaries, but also to PPATs, as PPATs operate at the district level to ensure equitable access to land registration services.

The contents of the SKMHT must comply with several legal requirements. First, it may not grant authority to enter into legal acts other than the encumbrance of Mortgage Rights. Second, it may not include substitution of power (*kuasa substitusi*). These formal requirements are intended to protect creditors by ensuring that the authorization granted through SKMHT remains specific, limited, and directly related to the establishment of Mortgage Rights.

## **CONCLUSION**

1. Article 15 paragraph (3) of the Mortgage Rights Law (UUHT) regulates the validity period of the Power of Attorney to Charge Mortgage Rights (SKMHT) in MSME credit agreements. However, this regulation still creates normative ambiguity, particularly when applied to MSME credit agreements secured by land. The regulation on the validity period of SKMHT in the UUHT and its implementing regulations has not fully accommodated the characteristics of MSME credit, which generally involve more dynamic administrative processes and economic conditions. Consequently, this leads to potential legal uncertainty for creditors, especially when the process of granting mortgage rights cannot be completed within the prescribed timeframe. As a result, creditors may face difficulties in encumbering the mortgage right and ultimately lose their preferential rights over the collateralized object if the debtor defaults while the SKMHT has expired, leaving the creditor only as a concurrent creditor. Therefore, to prevent default risks, banks or creditors often rely on Articles 1131 and 1132 of the Civil Code in MSME credit agreements using SKMHT as collateral.
2. The reconstruction concept of the regulation regarding the validity period of SKMHT in MSME credit agreements still raises legal uncertainty. Ideally, a reconstructed and more suitable normative arrangement should provide a flexible and contextual time period that aligns with the characteristics of MSME credit, which often requires a longer duration and more complex administrative procedures. The new norm should accommodate distinctions between types of credit, for example: consumer credit may remain within a period of 1–3 months, while productive MSME credit could be automatically extended until the mortgage granting process is completed, at least 6–12 months. The SKMHT should remain valid as long as the administrative process towards the granting of mortgage rights is still ongoing and can be proven in writing. Additionally, synchronization between mortgage encumbrance procedures and banking sector mechanisms is necessary, while ensuring the principles of legal certainty, legal

protection, and fairness for all parties involved. maintain good interactions with customers to build a positive image and long-term loyalty.

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