

## Principle of legal certainty of power of attorney imposing mortgage rights as credit guarantee for micro, small and medium enterprises

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### ABSTRACT

A Power of Attorney to Impose a Mortgage (*Surat Kuasa Membebangkan Hak Tanggungan / SKMHT*) is a legal instrument commonly used in banking practices as collateral for Micro, Small, and Medium Enterprises (MSMEs) credit, particularly when the establishment of a Mortgage Right (*Hak Tanggungan*) cannot be carried out immediately. The use of SKMHT is intended to accelerate credit disbursement and provide administrative convenience for MSMEs. However, since SKMHT merely grants authority and does not constitute a material security right, legal issues arise concerning the application of the principle of legal certainty for creditors. This study aims to analyze the implementation of the principle of legal certainty in the use of SKMHT as collateral for MSME credit. The research employs a normative juridical method with statutory and conceptual approaches. The findings indicate that the use of SKMHT in MSME credit arrangements does not fully fulfill the principle of legal certainty, as it fails to provide strong legal protection for creditors prior to its conversion into a Deed of Granting Mortgage Rights (*AKta Pemberian Hak Tanggungan / APHT*).

**Keyword:** collateral; MSMEs credit; SKMHT

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### 1. INTRODUCTION

Micro, Small, and Medium Enterprise (MSME) credit is a strategic instrument for driving national economic growth and equitable social welfare. In banking practice, MSME credit disbursement is generally accompanied by collateral as a form of risk mitigation for the creditor. One commonly used instrument for securing such collateral is the Power of Attorney to Encumber Mortgage Rights (SKMHT).

The SKMHT is not essentially a physical collateral institution, but rather a special power of attorney granted by the debtor to the creditor, who then encumbers the Mortgage Rights through a Deed of Granting Mortgage Rights (APHT) (Silviana, 2020). However, in banking practice, the SKMHT is often used as collateral for MSME loans without immediately following up with an APHT. This situation raises legal issues, particularly regarding the legal certainty of the status and validity of the collateral.

The principle of legal certainty is a fundamental principle in civil law and collateral law. Legal certainty requires that every legal relationship be based on clear and firm norms, the legal consequences of which can be predicted by the parties. This principle provides assurance that any agreement made by the parties will be protected and enforced by law (Bachsin et al., 2025). In the context of MSME credit, legal certainty is crucial because it concerns the protection of the rights and obligations of both the creditor and the debtor as the credit recipient.

The use of SKMHT as collateral for MSME credit that is not immediately upgraded to a Mortgage Right has the potential to create legal uncertainty (Fatmawati et al., 2025). From the creditor's perspective, the SKMHT does not provide preferential rights or *droit de suite* as a Mortgage Right, thus weakening legal protection for loan repayment. Meanwhile, from the perspective of MSME debtors, prolonged use of SKMHT without clarity regarding its legal status may create uncertainty concerning collateral ownership and potential future legal liability.

Furthermore, although provisions regarding the validity period of SKMHT have been normatively regulated, in practice deviations frequently occur, often justified by the need to facilitate MSME access to credit and achieve cost efficiency. This practice raises questions as to whether the use of SKMHT as collateral for MSME credit aligns with the principle of legal certainty or instead undermines the very purpose of establishing the Mortgage Right institution. Based on these conditions, a normative legal study is necessary to emphasize the application of the principle of legal certainty in the use of SKMHT as collateral for MSME credit. Such a study is essential to assess whether current banking practices provide fair and balanced legal certainty for all parties and to formulate directions for reforming MSME credit collateral arrangements in accordance with the principles of collateral law.

## 2. RESEARCH METHOD

This research is a normative legal research, namely research that examines law as a written norm. The approaches used include a statutory regulatory approach and a conceptual approach. Primary legal materials include Law Number 4 of 1996 concerning Mortgage Rights, the Civil Code, and regulations related to MSME credit. Secondary legal materials are obtained from textbooks, legal journals, and relevant scientific works. Data analysis is carried out qualitatively by constructing reality and understanding its meaning, thus paying closer attention to processes, events, and their authenticity. Qualitative research is fundamentally aimed at understanding social phenomena from the perspective of participants, with the object of study being conditions that occur naturally (Erwinskyahbana & Ramlan, 2017).

## 3. RESULTS AND DISCUSSION

Law of the Republic of Indonesia Number 20 of 2008 concerning MSMEs defines Micro, Small, and Medium Enterprises (MSMEs) as follows: Micro enterprises are productive businesses owned by individuals or individual-owned business entities with net assets of IDR 50,000,000, excluding land and buildings for the business premises, and with annual sales turnover of no more than IDR 300,000,000.

Small businesses are independent productive businesses owned by individuals or business entities that are not part of or branches of medium-sized or large businesses, with net assets of between IDR 50,000,000 and IDR 500,000,000, and annual sales turnover of between IDR 300,000,000 and IDR 2,500,000,000.

A medium-sized enterprise is a stand-alone productive business owned by an individual or business entity that is not part of or a branch of a small or large business, with net assets of between IDR 500,000,000 and IDR 10,000,000,000, excluding land and buildings, and annual sales turnover of between IDR 2,500,000,000 and IDR 50,000,000,000.

Credit is an essential tool for MSMEs to develop their businesses. Funds obtained from credit can be used for various purposes, including purchasing raw materials, investing in new equipment, and business expansion. Indonesian MSMEs face acute problems, particularly in the area of capital, namely:

1. Difficulty accessing banks due to their inability to meet bankability requirements. Although Bank Indonesia has facilitated MSME access to banking credit, in practice not all MSMEs are able to meet collateral requirements.
2. Limited knowledge among MSMEs regarding alternative sources of funding beyond banks.
3. Unavailability of capital when orders arrive, requiring rapid funding to fulfill orders—something banks are often unable to accommodate due to lengthy credit application procedures (Primiana, 2020).

Banks and other financial institutions often view MSMEs as a high-risk sector due to weak creditworthiness, lack of collateral, and limited understanding of financial products, which complicates the lending process (Bank Indonesia, 2022). MSME Working Capital Credit serves as a financing solution for MSMEs and may be used for procurement of goods, production processes, sales and distribution, and other operational needs (Ass et al., 2024).

To support MSME development, the government provides People's Business Credit (*Kredit Usaha Rakyat* / KUR). The objective of the KUR program is to accelerate primary sector development, empower small businesses, increase access to credit and financial institutions, reduce poverty, and expand employment opportunities (Widiastuti & Rita, 2017).

Article 1 paragraph (1) of Regulation of the Coordinating Minister for Economic Affairs Number 6 of 2020 defines People's Business Credit (*Kredit Usaha Rakyat* / KUR) as credit or financing for working capital and/or investment provided to individual debtors, business entities, and/or business groups that are productive and viable but lack sufficient additional collateral.

MSME credit is a financing facility provided by financial institutions such as banks, cooperatives, or other institutions to support micro, small, and medium enterprises. The primary purpose of this credit is to help

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MSMEs overcome capital access constraints. Types of MSME credit include working capital loans for operational needs and investment loans for long-term business development.

Regarding credit provision, banks must comply with Article 8 of Law Number 10 of 1998 concerning Banking, which requires banks to have confidence, based on thorough analysis and good faith, in the debtor's ability to repay the loan as agreed (Ginting et al., 2024). This provision establishes the legal foundation for the importance of collateral in credit distribution.

As authorized credit-granting institutions, banks are required to register collateral to ensure legal certainty. Registration of bank guarantees is conducted through a notary, and one commonly used form of collateral is the Mortgage (*Hak Tanggungan*). Mortgages are widely favored by banks because they involve immovable property, such as land, which grants preferential rights to certain creditors (Dewi et al., 2021).

Law Number 4 of 1996 concerning Mortgage Rights (*Undang-Undang Hak Tanggungan*) stipulates that the imposition of Mortgage Rights must be executed through a Deed of Granting Mortgage Rights (*AKta Pemberian Hak Tanggungan / APHT*). However, when an APHT cannot yet be executed, a Power of Attorney to Encumber Mortgage Rights (*Surat Kuasa Membebangkan Hak Tanggungan / SKMHT*) may be used.

SKMHT is an authentic deed authorizing the creditor to encumber mortgage rights over the debtor's collateral. In MSME credit practice, the SKMHT functions as a temporary solution to accelerate loan disbursement, particularly when land certificates are still being processed by the National Land Agency. The normative use of SKMHT is permitted under Article 15 of Law Number 4 of 1996 concerning Mortgage Rights (Missa et al., 2025).

In MSME credit practice, a SKMHT is often employed as an initial form of collateral prior to the execution of an APHT (Zebua, 2023). This approach accommodates MSMEs' urgent need for capital to support production, distribution, and product development. The legal status of a SKMHT in MSME credit is closely linked to contractual principles and the granting of power of attorney as regulated under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*).

SKMHT is a form of power of attorney agreement, as stipulated in Article 1792 of the Civil Code, which states that a power of attorney is an agreement in which one person authorizes another to act on their behalf and for their benefit. In this context, the debtor, as the grantor of the power of attorney, authorizes the creditor to encumber the collateral object to guarantee debt repayment (Budiono, 2020).

Although frequently used, it is important to note that a Power of Attorney to Encumber a Mortgage is not a form of collateral binding but rather a means of securing a Mortgage. A Power of Attorney to Encumber a Mortgage without a Mortgage Encumbrance carries the following risks:

1. If the collateral is seized, the SKMHT cannot be upgraded to a Mortgage.
2. If the SKMHT is upgraded to a Mortgage when the loan is already in default, it will create difficulties in collecting the Mortgage Encumbrance fees.
3. Regarding the principal, if the principal who encumbers the Mortgage Encumbrance dies or goes bankrupt, the SKMHT is void.
4. The SKMHT has no preferential rights and cannot be used as a means of filing a challenge (*derden verzet*) if the loan collateral is seized.
5. The provisions of the Mortgage Rights Law stipulate the validity period of the Power of Attorney to Encumber Mortgage Rights (SKMHT): 1 (one) month for certified land and 3 (three) months for uncertified land, calculated from the date of granting the power of attorney.

SKMHT and APHT differ fundamentally in terms of function and legal force. SKMHT is merely a grant of power of attorney, meaning it does not provide legal certainty regarding the collateral for the creditor because the Mortgage Right has not been officially registered. Conversely, an APHT is a deed that formally encumbers the Mortgage Right on a collateral object and is registered with the National Land Agency (BPN), thereby granting the creditor preferential rights (rights of precedence) in the event of default by the debtor (Usman, 2020).

The use of a SKMHT carries significant legal risks. Under civil law, a power of attorney terminates upon the death of the principal, revocation of the power of attorney, or loss of legal capacity. If such conditions occur before the SKMHT is upgraded to an APHT, the creditor loses the legal basis to encumber the Mortgage Right. Furthermore, without registration of the Mortgage Right, the collateral object may be transferred or encumbered by other rights by the debtor, potentially resulting in legal disputes and losses for the creditor.

Therefore, the use of a SKMHT without subsequent execution of an APHT contradicts the purpose of collateral law, which is to provide legal certainty and protection for creditors.

Legally, a SKMHT does not constitute a material security institution. It merely grants authority and does not create preferential rights or confer executive power upon the creditor. A Mortgage Right only arises after the APHT is executed and registered at the Land Office. Consequently, the legal standing of a SKMHT remains temporary and weak from the perspective of creditor protection. To ensure adequate legal protection, creditors must promptly upgrade the SKMHT into an APHT within the prescribed timeframe and apply effective risk mitigation strategies. By adhering to legal provisions and the prudential principle, banks and financial institutions can minimize the risk of losing collateral rights and ensure lending security (Pangesti & Yovieta, 2024).

The SKMHT provides administrative flexibility for both creditors and debtors in managing collateral. Debtors are not required to immediately encumber the Mortgage Right upon loan disbursement, particularly when technical obstacles exist, such as ongoing land rights transfer or certificate issuance. The government even provides special leniency for MSMEs by allowing the SKMHT to remain valid until the loan is fully repaid, unlike non-MSME loans, which generally require upgrading to an APHT within three months after loan disbursement.

Article 2 letter (a) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 stipulates that a Power of Attorney to Encumber Mortgage Rights for securing repayment of credit remains valid until the termination of the principal credit agreement for Micro and Small Business debtors. Based on this provision, the SKMHT may remain valid until the credit is fully repaid, thereby facilitating MSMEs in completing collateral documentation.

Although not a material security institution, the SKMHT plays an important role in facilitating credit provision, particularly for Micro, Small, and Medium Enterprises (MSMEs). Its primary function is to provide flexibility in the credit disbursement process when administrative constraints prevent immediate encumbrance of Mortgage Rights. Banks may disburse credit based on the existence of a SKMHT without waiting for completion of the entire collateral documentation process. Moreover, the SKMHT assists banks in implementing the prudential principle by securing potential Mortgage Rights to be imposed at a later stage (Gunawan & Kartini, 2020).

Creditors still have a legal basis for securing collateral in the form of a potential mortgage that will be charged at a later date. In the context of MSMEs, which often face limited access to legal documents, the *Surat Kuasa Membebaskan Hak Tanggungan* (SKMHT) facilitates small businesses in obtaining loans without having to wait for the completion of collateral documentation, which can be time-consuming (Sofwan, 2020).

The SKMHT is a legal instrument that facilitates access to financing for small businesses that frequently encounter obstacles in preparing collateral documentation. If banks or financial institutions were required to wait for the completion of all collateral administration processes prior to credit disbursement, many MSMEs would be unable to obtain business capital in a timely manner.

The use of SKMHT is also influenced by government policies aimed at facilitating access to financing for small businesses. Regulations allowing the SKMHT to remain valid until the loan is fully repaid for MSMEs are intended to reduce the administrative burden on debtors, who often lack sufficient resources to immediately process an *Akta Pemberian Hak Tanggungan* (APHT). Nevertheless, this policy may pose risks to creditors if legal certainty regarding collateral rights is insufficient. Therefore, banks and financial institutions must carefully monitor MSME loans secured by SKMHT to ensure compliance with prudential banking principles (Ramadhan & Yudhayana, 2025).

Although the SKMHT facilitates borrowers' access to credit, it must still comply with applicable legal requirements to prevent potential losses for creditors. Accordingly, both debtors and creditors must understand the importance of fulfilling the legal requirements of SKMHT to ensure that the credit remains legally secure and enforceable in the event of default (Ayang Fristia M., 2023).

Law Number 4 of 1996 concerning Mortgage Rights stipulates that a SKMHT must meet specific requirements to be valid and serve as the basis for imposing a Mortgage Right. The SKMHT must be executed in the form of a notarial deed or a deed drawn up by a Land Deed Official (PPAT) and must clearly specify the collateral object and the amount of the secured debt. It must also include the complete identity of the grantor and the grantee, namely the debtor as the owner of the collateral object and the creditor or authorized party. Clear identification is essential to prevent future legal disputes. Furthermore, the SKMHT must explicitly identify the collateral object, such as land or buildings, which will later be registered with the National Land Agency (BPN) upon conversion into an APHT (Adjie, 2020).

In addition to being executed as an authentic deed, a Power of Attorney to Encumber Mortgage Rights cannot be combined with a Power of Attorney to Sell or other powers of attorney, nor can it be substituted. Thus, the authority granted is strictly limited to a single legal act, namely the encumbrance of Mortgage Rights. The SKMHT must be prepared using the standard form issued by the National Land Agency, meaning its format and contents are standardized and may only be modified to include or adjust covenants (*beding*) agreed upon by the bank and the debtor (Sukarta, 2021).

If the SKMHT does not fulfill these legal requirements, it may be declared null and void, thereby eliminating the creditor's legal basis for enforcing the collateral. Therefore, to ensure legal certainty, banks and financial institutions must cooperate with notaries and PPATs to ensure that the SKMHT complies with all statutory requirements and can be upgraded to an APHT without legal obstacles (Nurhayati & Gueci, 2019).

Furthermore, the SKMHT is subject to a time limitation as stipulated in Article 15 paragraph (3) of the Mortgage Rights Law, which requires that it be upgraded to an APHT within a prescribed period. Failure to comply with this requirement results in the SKMHT becoming invalid, thereby extinguishing the creditor's right to impose a Mortgage Right (Suhantri, 2020).

The use of SKMHT as collateral for MSME loans is normatively permitted and serves as an instrument to facilitate access to financing. However, from the perspective of legal certainty, SKMHT does not provide optimal legal protection because it merely grants authority without creating a material security right. Legal certainty is only fully achieved once the SKMHT is upgraded to an APHT and duly registered in accordance with statutory provisions. Consequently, reliance on SKMHT alone continues to present legal uncertainty, particularly for creditors.

To mitigate such risks, it is also necessary to ensure the debtor's good faith and repayment capacity. Banks may implement stricter monitoring mechanisms, such as establishing shorter internal deadlines for upgrading SKMHT into APHT or requiring additional liquid collateral, such as deposits or other easily redeemable assets, to safeguard their interests (Putri, 2025).

#### 4. CONCLUSION

The use of a Power of Attorney to Encumber Mortgage Rights (*Surat Kuasa Membebangkan Hak Tanggungan* / SKMHT) as collateral for Micro, Small, and Medium Enterprises (MSMEs) credit is normatively permitted and plays an important role in facilitating access to financing and accelerating credit disbursement. However, from the perspective of the principle of legal certainty, the SKMHT does not provide optimal legal protection because it merely grants a power of attorney and does not create material security rights, preferential rights, or executorial powers for the creditor. Legal certainty is only achieved when the SKMHT is upgraded to a Deed of Granting Mortgage Rights (APHT) and duly registered in accordance with statutory provisions. Consequently, the use of SKMHT without such an upgrade places the creditor in a legally vulnerable position and creates potential legal risks. Therefore, the application of SKMHT in MSME credit must be accompanied by the principle of prudence, strict supervision, and a normative commitment to promptly upgrade it into Mortgage Rights, so that the legal objectives of guarantees—namely legal certainty, justice, and balanced legal protection for all parties—can be optimally realized.

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