

# **Legal Analysis of Mortgage Rights and the Power of Attorney to Impose Mortgage Rights (SKMHT) Under Indonesian Laws and Regulations**

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## **Abstract**

The regulation of mortgage rights and the Power of Attorney to Impose Mortgage Rights (SKMHT) plays a strategic role in guaranteeing legal certainty in credit agreements in Indonesia. In practice, however, the implementation of SKMHT frequently raises juridical issues, particularly regarding the period of validity, the authority of the grantor, and the legal consequences when the Deed of Granting Mortgage Rights (APHT) is not immediately executed. This study aims to analyze the legal position of mortgage rights and SKMHT within Indonesian laws and regulations, as well as to examine the legal protection afforded to creditors and debtors in their implementation. This research employs normative legal research using statutory, conceptual, and case approaches. The findings indicate that the existence of mortgage rights as a material security institution has provided stronger legal certainty for creditors, yet the practical implementation of SKMHT still encounters normative and technical obstacles. Inconsistencies in the implementation of regulations, administrative weaknesses, and limited public legal awareness often lead to legal uncertainty in credit agreements secured by land rights. Therefore, harmonization of regulations, strengthening the role of notaries and land deed officials, and stricter supervision mechanisms are necessary to ensure legal certainty and justice in the implementation of mortgage rights and SKMHT in Indonesia.

**Keywords:** Mortgage Rights, SKMHT, Legal Certainty, Credit Agreement, Land Law.

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## Introduction

The development of national economic activities has led to an increasing demand for financing facilities and banking credit. In practice, the provision of credit by financial institutions is almost always accompanied by collateral to provide legal certainty for creditors in the event that debtors default on their obligations. One of the most dominant forms of collateral used in Indonesian banking practice is Mortgage Rights, as regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (Mortgage Rights Law/UUHT) [1].

Mortgage Rights occupy an important position because they grant preferential rights to creditors in obtaining repayment of debts from the collateralized property. The existence of this institution serves as a primary instrument in ensuring the stability of national financing, particularly in the banking and property financing sectors. Conceptually, Mortgage Rights emerged as a form of national agrarian law reform aimed at replacing the hypotheek and credietverband systems, which were no longer considered compatible with the development of Indonesian land law [2].

In the process of establishing Mortgage Rights, the legal instrument known as the Power of Attorney to Impose Mortgage Rights (SKMHT) is also recognized. SKMHT is a special power of attorney granted by the holder of Mortgage Rights to another party for the purpose of imposing Mortgage Rights through a Deed of Granting Mortgage Rights (APHT). The regulation concerning SKMHT is stipulated in Article 15 of the Mortgage Rights Law (UUHT), which essentially provides administrative convenience for the parties involved in the process of establishing collateral rights [1].

Nevertheless, the existence of SKMHT has generated various legal issues in practice. One of the primary concerns relates to the limited validity period of SKMHT. Such provisions are often difficult to fulfill due to administrative obstacles, land disputes, and delays in land certificate processing. Consequently, many creditors face legal risks because the APHT cannot be executed before the validity period of the SKMHT expires [3].

This phenomenon demonstrates a gap between *das sollen* and *das sein* in the implementation of the Mortgage Rights Law. Normatively, the regulation provides legal certainty regarding the establishment of Mortgage Rights; however, empirically, its implementation continues to encounter administrative and technical challenges. This situation has become increasingly complex as credit services rapidly expand through digital financial services and financial technology-based financing systems [4].

Another issue of concern is the limited public understanding of the legal consequences of SKMHT. Many debtors perceive SKMHT merely as an administrative formality without realizing that such authorization may serve as the legal basis for the creation of Mortgage Rights, which directly bind the land object. From the perspective of legal protection, this condition has the potential to create an imbalance in the bargaining position between creditors and debtors [5].

On the other hand, developments in Indonesian security law indicate that legal certainty constitutes a fundamental element in every civil legal relationship. According to the theory of legal certainty, the law must provide protection and predictability regarding the rights and obligations of the parties involved [6]. In the context of Mortgage Rights, legal certainty concerns not only the position of creditors as holders of security rights but also the protection of debtors' rights as owners of the collateralized property.

Previous studies have generally discussed Mortgage Rights from the perspective of collateral execution or the preferential position of creditors. However, studies specifically examining the relationship between SKMHT and the effectiveness of legal protection in the implementation of Mortgage Rights remain relatively limited. Several studies focus solely on normative aspects without linking them to the dynamics of modern land administration and financing practices [7].

Furthermore, research concerning legal protection in the financial sector indicates that weak regulations and inadequate supervision may generate legal uncertainty for the parties involved in financing relationships [8]. This condition is relevant to the implementation of SKMHT, which in practice is often used repeatedly without being promptly followed by the execution of an APHT.

Based on the foregoing discussion, this study is important to comprehensively examine the legal position of Mortgage Rights and SKMHT from the perspective of Indonesian laws and regulations, while also analyzing the effectiveness of legal protection for the parties involved in their implementation. The research questions addressed in this study are as follows:

1. How are Mortgage Rights and SKMHT regulated, and what is their legal position within the framework of Indonesian laws and regulations?
2. What forms of legal protection are available to creditors and debtors in the implementation of Mortgage Rights and SKMHT?

### **Literature Review 1. Theory of Legal Certainty**

The theory of legal certainty views law as an instrument that provides clarity regarding the rights and obligations of the parties involved. Gustav Radbruch argues that legal certainty is one of the primary objectives of law, alongside justice and utility [6]. In the context of security law, legal certainty constitutes an essential element because it is directly related to the protection of the economic rights of the parties. Mortgage Rights, as a form of proprietary security rights, were established to provide certainty for creditors regarding the repayment of debts. Through the issuance of a Mortgage Rights Certificate possessing executorial power, creditors obtain a preferential position compared to other creditors [1].

However, the implementation of legal certainty in practice is often hindered by administrative obstacles and overlapping land regulations. Such issues may reduce the effectiveness of legal protection for holders of Mortgage Rights [9]. From the perspective of modern legal theory, legal certainty is not only understood as normative certainty but also as the effectiveness of legal implementation. Therefore, regulations concerning the Power of Attorney to Impose Mortgage Rights (SKMHT) must ensure synchronization between legal norms and land administration practices.

### **2. Theory of Legal Protection**

Legal protection represents a form of recognition of the rights of legal subjects guaranteed by the state. According to Satjipto Rahardjo, legal protection aims to safeguard public interests through fair and effective legal instruments [10]. In the relationship between creditors and debtors, legal protection must be provided in a balanced manner to prevent the dominance of one party over the other. Creditors require assurance of debt repayment, while debtors require certainty that their land rights will not be misused [11].

The existence of SKMHT essentially serves as a form of administrative legal protection intended to facilitate the process of establishing Mortgage Rights. However, if its use is not strictly supervised, SKMHT may be subject to abuse, thereby causing harm to the grantor of the power of attorney [12]. Studies on legal protection within the financing sector also emphasize the importance of transparency and supervision in legal relationships between financial institutions and the public [8]. This issue is particularly relevant in the establishment of Mortgage Rights, where the bargaining positions of the parties are often unequal.

### **3. Security Law Theory**

Security law consists of a set of legal provisions governing the legal relationship between creditors and debtors regarding collateral for debt repayment. According to Subekti, collateral serves to provide assurance to creditors that debtors will fulfill their obligations [13]. Mortgage Rights are classified as proprietary security rights that are accessory in nature to the principal

agreement, namely the credit agreement. This accessory nature implies that Mortgage Rights are extinguished once the principal debt has been fully repaid [1].

The principal characteristics of Mortgage Rights include *droit de préférence* and *droit de suite*. *Droit de préférence* grants creditors a preferential right over other creditors, while *droit de suite* allows the security right to follow the collateralized property even when ownership is transferred to another party [14]. In banking practice, SKMHT functions as a transitional instrument prior to the execution of the Deed of Granting Mortgage Rights (APHT). Therefore, the use of SKMHT must comply with the prudential principle and the principle of specificity within security law [15].

#### 4. Theory of Justice in Civil Law

The theory of justice in civil law emphasizes the importance of balancing the rights and obligations of the parties. Aristotle distinguished between distributive justice and commutative justice, with the latter relating to civil legal relationships among individuals [16]. In financing relationships, the principle of justice must be reflected in both the contents of credit agreements and the mechanisms for establishing security rights. Debtors should not be placed in a position that is unilaterally disadvantageous due to a lack of legal understanding [17].

The regulation of SKMHT is intended to provide administrative convenience in the establishment of Mortgage Rights. However, if the validity period of SKMHT expires before the execution of the APHT, the legal position of creditors becomes weakened and may give rise to legal disputes [18]. Therefore, the implementation of Mortgage Rights and SKMHT must prioritize a balance between legal certainty, legal protection, and justice for all parties involved.

#### Research Methodology

This study employs a normative legal research method using a statutory approach, a conceptual approach, and a case approach. Normative legal research was selected because the primary focus of the study is the analysis of legal norms governing Mortgage Rights and the Power of Attorney to Impose Mortgage Rights (SKMHT) within the Indonesian legal system [19].

The statutory approach was conducted by examining various regulations related to Mortgage Rights, including Law Number 4 of 1996 concerning Mortgage Rights, Law Number 5 of 1960 concerning Basic Agrarian Principles, the Indonesian Civil Code, and other implementing regulations. This approach aims to identify the synchronization and harmonization of legal norms governing the establishment of security rights over land. The conceptual approach was employed to understand legal concepts related to legal certainty, legal protection, the accessory principle, and the principle of publicity in security law. This approach is essential for developing academic arguments regarding the legal position of SKMHT in financing practices [20].

Meanwhile, the case approach was conducted through the analysis of several disputes related to the establishment of Mortgage Rights and the use of SKMHT. This approach was utilized to examine how legal norms are implemented in practice and how courts provide legal reasoning in resolving such disputes. The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant legislation and court decisions. Secondary legal materials consist of academic books, peer-reviewed journal articles, conference proceedings, and legal publications discussing Mortgage Rights and legal protection within financing relationships [21]. Tertiary legal materials include legal dictionaries and legal encyclopedias.

The collection of legal materials was carried out through library research. All legal materials were collected, classified, and analyzed based on their relevance to the research questions. This technique is commonly employed in normative legal research because it enables researchers to systematically construct legal arguments [22].

The legal materials were analyzed qualitatively using a descriptive-analytical method. The collected data were examined through grammatical, systematic, and teleological legal interpretation in order to obtain a comprehensive understanding of the regulation of Mortgage Rights and SKMHT. Furthermore, the findings were linked to legal theories and practical implementation in order to develop critical and contextual legal arguments [23].

### **Results 1. Regulation and Legal Position of Mortgage Rights and SKMHT from the Perspective of Laws and Regulations**

Mortgage Rights constitute a proprietary security institution over land that possesses distinctive characteristics compared to other forms of security interests. Their regulation under the Mortgage Rights Law (UUHT) demonstrates the state's effort to establish a security system that provides legal certainty and protection for both creditors and debtors [1]. Article 1 paragraph (1) of the UUHT stipulates that Mortgage Rights are security rights over land intended to secure the repayment of a specific debt, granting preferential status to certain creditors over other creditors. This provision indicates that Mortgage Rights possess both preferential and executorial characteristics.

In practice, the establishment of Mortgage Rights is carried out through a Deed of Granting Mortgage Rights (APHT) executed before a Land Deed Official (PPAT). However, if the grantor of the Mortgage Rights is unable to appear in person, a Power of Attorney to Impose Mortgage Rights (SKMHT) may be utilized as provided under Article 15 of the UUHT [1]. The existence of SKMHT essentially serves as a form of administrative flexibility in the process of establishing security rights. Nevertheless, the UUHT imposes strict limitations on its validity period. For registered land, SKMHT must be followed by the execution of an APHT within one month. Meanwhile, for unregistered land, the validity period is limited to three months.

Problems arise when, in practice, many land administration procedures cannot be completed within the prescribed time limits. As a result, the SKMHT becomes null and void by operation of law, causing creditors to lose the legal basis for establishing Mortgage Rights. This condition demonstrates a discrepancy between legal norms and the realities of land administration in Indonesia [24]. Furthermore, regulations concerning SKMHT are often treated merely as formal requirements by financing institutions without ensuring that debtors fully understand their legal consequences. Such circumstances may create an imbalance in bargaining positions within contractual relationships [25].

From the perspective of agrarian law, Mortgage Rights are closely related to the principles of publicity and specificity. The principle of publicity is realized through the registration of Mortgage Rights at the land office, while the principle of specificity is reflected in the requirement to clearly identify the collateralized object and the secured value [26]. Within the framework of modern legal protection, the regulation of Mortgage Rights should not be oriented solely toward the interests of creditors but should also guarantee the rights of debtors. This is particularly important considering that land possesses significant social and economic value for Indonesian society [27].

Therefore, a reformulation of policies concerning the validity period of SKMHT and the strengthening of the land administration system are necessary to ensure that the objective of legal certainty embodied in the UUHT can be effectively realized.

### **2. Legal Protection for Creditors and Debtors in the Implementation of Mortgage Rights and SKMHT**

Legal protection in the implementation of Mortgage Rights is fundamentally intended to maintain a balance between the rights and obligations of the parties involved in financing relationships. Creditors require certainty regarding debt repayment, while debtors need assurance that their land rights will not be executed arbitrarily [28]. Legal protection for creditors is manifested through the preferential status and executorial power attached to the

Mortgage Rights Certificate. Such a certificate possesses executorial title equivalent to a final and binding court judgment, thereby facilitating the execution process when a debtor defaults on his or her obligations [1].

However, the effectiveness of such legal protection largely depends on the proper completion of the procedures for establishing Mortgage Rights. If the Power of Attorney to Impose Mortgage Rights (SKMHT) is not followed by the execution of a Deed of Granting Mortgage Rights (APHT) within the prescribed period, creditors may lose their preferential rights [29]. On the other hand, legal protection for debtors is realized through the application of prudential principles and transparency in credit agreements. Debtors are entitled to receive clear information regarding the legal consequences of establishing Mortgage Rights and the use of SKMHT [30].

In practice, there are still debtors who sign SKMHT documents without fully understanding their legal implications. This situation reflects the inadequacy of legal education and supervision within financing practices [31]. From a consumer protection perspective, legal relationships between financing institutions and the public should be conducted fairly and proportionally. Legal protection should not be oriented solely toward the economic interests of creditors [8].

Furthermore, the digitalization of financial services has introduced new challenges in the establishment of security rights. The use of electronic documents and digital administrative systems requires more adaptive regulations to prevent potential legal abuses and regulatory loopholes [32]. Several legal scholars argue that reforms in Indonesian security law should focus on simplifying land administration procedures and enhancing the integration of the national electronic land administration system. Such measures are expected to strengthen legal certainty and improve the efficiency of establishing Mortgage Rights [33].

Therefore, legal protection in the implementation of Mortgage Rights and SKMHT should be achieved through the harmonization of regulations, enhanced supervision of financing institutions, and the strengthening of public legal literacy. These efforts are essential to ensure that the objectives of legal certainty, justice, and legal protection can be effectively realized for all parties involved.

## Conclusion

1. The regulation of Mortgage Rights and the Power of Attorney to Impose Mortgage Rights (SKMHT) within the Indonesian legal system has fundamentally provided a legal framework that ensures certainty in the establishment of proprietary security rights over land. Nevertheless, the implementation of SKMHT continues to face various normative and administrative challenges, particularly concerning its validity period and the effectiveness of the Mortgage Rights establishment process. Therefore, regulatory harmonization and reforms in land administration policies are necessary to ensure that the objective of legal certainty can be achieved more effectively.
2. Legal protection for both creditors and debtors in the implementation of Mortgage Rights and SKMHT must be carried out in a balanced manner. Creditors require certainty regarding debt repayment through effective security rights, while debtors need protection against potential abuses of authority in the establishment of security interests. Strengthening supervision over financing practices, enhancing transparency, and improving public legal awareness are essential measures in developing a fair and equitable security law system.

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