

Juridical analysis of legal protection for creditors on the validity of the Power of Attorney to Encumber Mortgage (SKMHT) executed before a notary from the perspective of security law

Metta Tjia¹, Markus Gunawan², Irpan Husein Lubis³
Batam University, Batam, Kepulauan Riau, Indonesia^{1,2,3}
irpanhusein42@gmail.com³



Article History

Received on 29 May 2025
1st Revision on 18 June 2025
Accepted on 21 June 2025

Abstract

Purpose: This study analyzes the legal protection of creditors regarding the validity of the Power of Attorney to Encumber Mortgage Rights (Surat Kuasa Membebankan Hak Tanggungan/SKMHT) made before a Notary. It specifically examines differences in SKMHT formats between Notaries and Land Deed Officials (PPAT) and their implications for creditor protection and integration with land registration systems.

Methodology: A descriptive juridical-sociological approach was employed, combining normative legal analysis with empirical research. Data collection involved statutory and literature reviews as well as field research, including interviews with notaries, PPATs, and land office officials.

Results: The study reveals that creditor protection in Indonesia remains fragmented under several legal instruments such as the Civil Code, Mortgage Law, Banking Law, and Notary Law. Land offices generally require SKMHTs to comply with formats issued by the Head of the National Land Agency for integration with the electronic mortgage system (HT-el), creating challenges for SKMHTs drafted by Notaries.

Conclusion: The research concludes that harmonization between the Notary Law and agrarian laws is essential to ensure uniform recognition of SKMHTs across institutions, thereby strengthening legal certainty for creditors and improving the effectiveness of the electronic mortgage registration system.

Limitation: The study is limited to SKMHT implementation in Indonesia and does not include a comparative assessment with other jurisdictions.

Contribution: This research contributes by identifying regulatory gaps and offering harmonization measures to reinforce creditor protection, improve procedural uniformity, and support the effective operation of the electronic mortgage registration framework.

Keywords: *Creditors, Legal Protection, Notary, SKMHT*

How to Cite: Tjia, M., Gunawan, M., Lubis, I. H. (2025). Juridical analysis of legal protection for creditors on the validity of the Power of Attorney to Encumber Mortgage (SKMHT) executed before a notary from the perspective of security law. *Annals of Justice and Humanity*, 4(2), 141-153.

1. Introduction

The practice of borrowing and lending money has existed for a long time in societies that recognize money as a means of payment (Junaidi, 2023; Munthe, Respationo, & Erniyanti, 2025). Almost everyone views borrowing and lending as essential activities for supporting economic growth and improving living standards (Baihaqi, 2024). The law of collateral is closely related to economic law, given that developments in sectors such as industry, trade, corporations, and transportation require financial support. Financial institutions, both banks and non-bank financial institutions (NBFIs), must provide funds for development, accompanied by protection mechanisms to ensure the repayment of the funds distributed (Acharya, Cetorelli, & Tuckman, 2024). Thus, in credit distribution, creditors (banks and NBFIs) need legal certainty and protection to guarantee the safe return of disbursed funds (Khoidin, 2017; Lamabelawa, 2025).

Legal certainty is crucial to ensure that funds are returned according to the agreed-upon terms. The law of collateral acts as a protective instrument for creditors by providing a mechanism that governs the rights and obligations of the parties and outlines the procedures for resolution in the event of default (Prasetyo & Zuroidah, 2024). In Indonesia, collateral institutions can be classified based on various aspects, such as formation mechanisms, characteristics, the collateralized object, and authority over it. Generally, collateral is divided into two main categories: general and specific collateral (Fauzan, Diana, Amelia, & Latif, 2025; Pranoto & Soemartono, 2023). General collateral refers to a creditor's right to claim all the debtor's assets to fulfill obligations, as stated in Article 1131 of the Civil Code. Specific collateral provides the creditor with a priority right over certain collateral objects, such as material collateral, specifically mortgages, which will be discussed in this study. In 1996 (Irmayanti, Simanjuntak, & Naim, 2024), the government enacted Law No. 4 of 1996 concerning Mortgage Rights, which serves as a collateral instrument for land and related objects. As defined in Article 1, paragraph 1 of Law No. 4 of 1996, the mortgage right is a security right over land in accordance with Law No. 5 of 1960 on Basic Agrarian Regulations, with or without other objects attached to the land, intended to secure the repayment of certain debts and provide creditors with priority rights over other creditors.

The mortgage right cannot be divided, meaning that it applies to the entire collateral object, even if the debtor has repaid part of the debt. Therefore, the mortgage covers the entire collateral object until the debt is fully paid (Rachman, 2024). Additionally, mortgage rights are an accessory agreement, meaning that they depend on the principal agreement between the debtor and creditor (Tiendas, 2024). Thus, a mortgage can only be canceled if the underlying principal agreement ends. The provision of mortgage rights is carried out by creating the APHT by the PPAT, as outlined in Government Regulation (PP) No. 24 of 1997 concerning Land Registration. The APHT is the main requirement for establishing a mortgage and must be registered with the land office to obtain legal force. An APHT can only be created if there is an agreement to provide a mortgage in a debt agreement or other agreements that create debt obligations as the principal agreement. Furthermore, SKMHT is often used when the loan is short-term, small in amount, or when the debtor is highly trusted. The objective reasons for using SKMHT include incomplete land administration, such as unissued land certificates, ongoing land title transfers, unresolved land subdivisions or consolidations, and unresolved mortgage cancellations (Badriyah, Suharto, & Kashadi, 2019).

According to Article 15, paragraph (1) of Law No. 4 of 1996 (UUHT), the SKMHT must be made in an authentic deed, which can be in the form of a notarial deed or a deed made by a PPAT (Firmansyah & Rosando, 2023). The creation of the SKMHT must also meet the requirements regulated in Articles 15, paragraphs (1) and (2) of the UUHT (Usman, 2024). In principle, the scope of duties of Notaries and PPATs differs fundamentally. A Notary has authority throughout the province, whereas a PPAT only has authority within the jurisdiction of the land office at the district or municipality level. In addition to territorial differences, the regulations governing these professions also vary. The creation of an SKMHT in both notarial and PPAT forms must comply with the provisions set out in the Mortgage Law (Samudra & Baidhowi, 2025).

However, in practice, discrepancies exist in the notarial creation of SKMHT, particularly in the header of the deed. Some Notaries use a header similar to the SKMHT format created by PPAT, including the appointment decree and the position of the office (Mekka, 2022). Based on Article 38 of the Notary Law (UUJN), the header of a notarial deed should include only the title, deed number, date, month, year, and the

notary's name and office. This discrepancy raises questions about the conformity of the notarial deed format with the regulations and its legal implications for the validity of the SKMHT created (Hana & Djaja, 2024). If the notarial SKMHT is deemed invalid, the creditor may lose legal certainty in obtaining collateral rights over the mortgaged object. This can lead to the invalidation of the APHT made based on the SKMHT, causing the mortgage not to be registered or even considered void by law (Hamid & Leviza, 2024). Consequently, the creditor does not have execution rights over the collateral if the debtor defaults, weakening the creditor's position in the credit agreement and increasing the risk of bad debts. Therefore, the author is interested in further research on "A Juridical Analysis of Legal Protection for Creditors Regarding the Validity of the Power of Attorney to Charge Mortgage Rights (SKMHT) Created Before a Notary in the Perspective of Collateral Law".

2. Literature review

2.1. Indonesian Collateral Law

To support economic development in Indonesia, collateral law requires specific attention. As economic development progresses, society's need for financial resources to meet daily living expenses increases. Siregar (2024) defines collateral as an obligation provided by a debtor or third party to a creditor to guarantee the fulfillment of obligations in a contract. The legal basis for collateral in Indonesia is governed by several laws. Article 1131 of the Civil Code states that all of a debtor's assets, whether movable or immovable, and both present and future, are collateral for all civil obligations that the debtor has created (Wahyuni & Purwanto, 2024). Article 1132 of the Civil Code further explains that all assets are collectively guaranteed for all creditors. The proceeds from the sale of the debtor's assets are distributed proportionally based on each creditor's claim, unless a legal provision grants priority rights to certain creditors (Aldaba & Roisah, 2025). These principles serve as guidelines for implementing collateral law, ensuring legal certainty, protection for the parties involved, and smooth financial transactions. Collateral plays a significant role in supporting economic development because it benefits both creditors and debtors. For creditors, collateral creates security in commercial transactions and guarantees the repayment of the principal loan and interest. For debtors, collateral allows them to obtain credit from banks, providing legal certainty and supporting business continuity and its growth.

2.2. Mortgage Rights

As outlined in Article 1, paragraph 1 of the Mortgage Rights Law (UUHT), Mortgage Rights are security rights imposed on land and related objects. This right serves as collateral for certain debts and grants priority to specific creditors. The Mortgage Right applies to land rights as regulated in Law No. 5 of 1960 on Agrarian Basic Regulations, with or without other objects attached to the land. Land rights give the holder, whether an individual, group, or legal entity, the authority to manage, utilize, and/or control a piece of land according to the applicable laws (Suwondo & Saputra, 2019). With the enactment of the UUHT, land rights were converted and unified into mortgage rights. The UUHT was established to unify land law, specifically in the context of land collateral. According to Article 1, paragraph 6 of the Conversion Regulations of the Basic Agrarian Law, the previous mortgage and credit bond rights were converted into the Mortgage. This change marked the alignment of property collateral systems in Indonesia, making mortgage rights the only recognized form of land collateral under national law.

The Mortgage Right involves two primary parties: the Mortgagor and the Mortgagee. As stated in Article 8 of the UUHT, the Mortgagor is an individual or legal entity that has legal authority over the mortgaged object. In other words, the mortgagor is usually the debtor, although other legal entities may also provide collateral to guarantee the debtor's debt, provided they have the legal authority to act on the collateral. This authority must exist at the time the Mortgage Right is registered. Moreover, debtors no longer play a role in the roya process in the electronic system, as the creditor directly receives the roya results. The role of PPAT has also simplified, as in the electronic system, the creditor now submits the Mortgage Right registration, not PPAT. However, the PPAT still plays a role in sending registration documents electronically, while the creditor uploads other required documents. The land office has also simplified its duties, as it no longer prints Mortgage Rights certificates or records them on the land title certificate. The results of the Mortgage Right service are now automatically issued on the seventh day, even before an inspection is carried out. The land office only prints the Mortgage Right record and roya notes to be affixed to the land title book. While the roya of the Mortgage Right is still issued by the land office, this process is now conducted electronically.

2.3. Power of Attorney to Impose Mortgage Rights (SKMHT)

The granting of Mortgage Rights must generally be done directly by the mortgagor, as the party with legal authority over the collateral. However, if the Mortgagor is unable to attend, the process of granting the Mortgage Right and signing the Deed of Granting Mortgage Right (APHT) may be delegated to another party. The power of attorney must be executed before a Notary or the Land Deed Official (PPAT) through an authentic deed known as the Power of Attorney to Impose Mortgage Rights (SKMHT). The SKMHT serves as a legal instrument allowing the imposition of a Mortgage Right even if the Mortgagor cannot be present before the PPAT. This is in accordance with Article 15, paragraph (1) of the Mortgage Rights Law (UUHT), which states: "The Power of Attorney to Impose Mortgage Rights must be made in the form of a Notarial deed or a deed by the Land Deed Official." In line with this provision, SKMHT must be granted directly by the mortgagor and meet the requirements outlined in Article 15, paragraph (1) of the UUHT, including its contents. If these requirements are not met, the SKMHT is legally void. Consequently, the SKMHT cannot be used as a basis for creating the APHT and loses its legal force.

According to Article 15 of the UUHT, the creation of an SKMHT can be done not only by a Notary but also by a PPAT. The SKMHT must be an authentic deed, meaning it must be created in the form of an authentic deed, but it can be done by either a Notary or a PPAT. However, in the SKMHT, the granted power must be explicitly stated without substitution rights. This is based on Article 1803, paragraph (2) of the Civil Code, which allows for substitution rights under certain conditions, such as when the object of the Mortgage Right is outside the Mortgagor's domicile. Therefore, including the phrase "without substitution rights" in the SKMHT has significant legal implications because, if not explicitly stated, the SKMHT may be deemed to grant substitution authority to the recipient. If the SKMHT meets both the formal and substantial requirements, Article 15, paragraph (2) of the UUHT states that the power to impose the Mortgage Right cannot be revoked or terminated, except in two cases: after the Mortgage Right is imposed or after the period stated in Article 15, paragraphs (3) and (4) of the UUHT has ended.

In practice, this provision also applies to land that has been certified but not yet registered in the name of the mortgagor as the new holder, for instance, due to an ongoing transfer or land division process. In this case, the use of SKMHT is aligned with land originating from the conversion of prior rights. Although still required for land registration and the imposition of the Mortgage Right, the SKMHT can be extended or renewed, although restrictions on the number of SKMHT uses in a single Mortgage Right transaction may be necessary. Thus, the power in SKMHT is irrevocable and does not expire for any reason, including the mortgagor's death. The power only ends once it has been executed, or the term specified in the law has expired. This provision is designed to provide legal protection for creditors, who are typically the recipients of power in the Mortgage Right imposition process.

2.4. Notary's Authority in Creating SKMHT

In performing their duties, notaries must comply with the provisions outlined in Law No. 2 of 2014, amending Law No. 30 of 2004, concerning the Position of Notary. Article 1, paragraph (1) of the UUJN states: "A Notary is a public official authorized to create authentic deeds and other powers as regulated in this law or other regulations." Additionally, Article 1, paragraph (7) explains: "Notarial deeds are authentic deeds created by or in the presence of a Notary in accordance with the form and procedure stipulated in this law." Based on these provisions, it can be concluded that a Notary is a public official authorized to create authentic deeds, with the form and procedure of their creation following the rules outlined in the UUJN. Therefore, ideally, in carrying out their duties, a Notary must adhere to all the regulations set forth in the UUJN, including the form and procedure for creating each deed (Famdale, 2021). An authentic deed by a public official only proves facts witnessed directly by the official in their capacity, such as what they saw, heard, and did. In contrast, deeds created by the parties involved serve as perfect evidence for those parties, their heirs, and anyone acquiring rights under the deed, as regulated by law. Meanwhile, a private deed, if its signature is not disputed, has material probative power equivalent to that of a *partij akten* in an authentic one. This means that the deed is a binding piece of evidence for the parties signing it, their heirs, and others acquiring rights based on it.

2.5. Legal Protection for Creditors

Legal protection refers to efforts to safeguard legal subjects through various legal instruments, whether repressive or preventive, and written or unwritten provisions. As a manifestation of the law's function, legal protection enables the law to create order, justice, utility, peace, and legal certainty. Law plays a crucial role in society as an instrument for establishing order and harmony, thus safeguarding the interests of individuals. Essentially, the law protects human interests through norms and rules. As a set of regulations, the law is general and normative. Its general nature means that it applies to every individual, while its normative aspect defines how individuals must comply with these rules. The role of law in society is reflected in its function of protecting individuals whose interests are threatened or disturbed. Every dispute arising in society must be resolved based on the law to prevent self-judgment from occurring. The primary objective of law as an instrument to protect human interests is to create order in society and ensure a harmonious and balanced life. There is an inherent link between legal subjects and the objects protected by law, which also creates obligations. Rights and obligations arising from legal relationships must be guaranteed by law to ensure that individuals feel secure in fulfilling their interests. This highlights that legal protection guarantees or ensures that an individual will receive their rights and meet their obligations, creating a sense of security for them.

3. Methodology

3.1. Research Type

Based on the research title and problem formulation, the analysis method applied is normative legal research (Salim & Nurbani, 2019). This approach is used in legal studies based on regulations, doctrines or relevant legal principles. Additionally, this normative legal research is supported by interviews with sources with academic and practical expertise in the field. The chosen sources include legal academics and practitioners with direct experience in applying the law related to the issue being studied. This approach aims to provide a more comprehensive perspective; thus, the results are not only theoretical but also reflect the legal realities in practice.

3.2. Research Approach

The approach used in this study includes both statutory and conceptual approaches. The statutory approach involves reviewing legal regulations relevant to the research issue. This study focuses on analyzing existing regulations to understand how they address the issue at hand. In addition, this research uses a conceptual approach based on developing legal theory and doctrines. This approach aims to build a concept that can serve as a foundation for legal analysis. By using both approaches, this study will gain a comprehensive understanding and provide a solid basis for analyzing the legal issues discussed.

3.3. Research Location and Data Sources

The author conducted research in several Notary and PPAT offices in Batam and Tanjung Pinang, as well as the Batam Land Office, which is relevant to this study. The data sources used in this study are divided into the following categories:

1. Primary Data
 - a. The 1945 Constitution of the Republic of Indonesia.
 - b. Interviews with Notaries and PPATs with expertise in mortgage creation and registration.
 - c. The Civil Code (KUHPerdata) serves as the legal basis for agreements and property rights.
 - d. Laws and regulations related to mortgages and collateral institutions are also included.
 - e. Ministerial and Government Regulations regarding electronic mortgage registration (HT-el).
2. Secondary Data
 - a. Primary legal materials, such as relevant court decisions or jurisprudence.
 - b. Secondary legal materials, such as law books, scholarly articles, academic journals, and publications discussing related legal aspects.
 - c. Tertiary legal materials, such as:
 - i. Legal dictionaries and the Indonesian Dictionary are used as references for understanding legal terms.
 - ii. Credible online sources such as government agency websites and legal organizations related to the research topic.

3.4. Data Collection Techniques

In this study, data collection techniques included approaches involving primary, secondary, and tertiary data. Primary data were obtained through direct interviews with Notaries and PPATs experienced in mortgage creation and registration to gain a deep understanding of the practical application of SKMHT. Secondary data were derived from the Civil Code and various regulations related to mortgages and credit agreements. These data served as the main foundation for analyzing the legal aspects of the study.

3.5. Data Analysis

The author will analyze the collected data using a qualitative approach, systematically reviewing primary and secondary data to gain a comprehensive understanding of the legal issues being studied. Secondary data, including regulations, court decisions, and legal literature, were examined in depth to identify patterns and relevant legal principles. The analysis results are presented in structured explanations with direct citations from legal sources and expert opinions to strengthen the arguments. The obtained data were interpreted based on existing legal theories and principles, providing a deeper understanding of the study's subject. Interviews with sources such as Notaries and PPATs will support the findings from doctrinal studies, helping to clarify and reinforce the findings. This analysis is expected to offer systematic answers to the research problem and draw accurate conclusions based on the normative legal approach.

4. Result and discussion

4.1. Legal Regulation of Legal Protection for Creditors Regarding the Validity of the Power of Attorney to Impose Mortgage Rights (SKMHT) Created Before a Notary in the Perspective of Collateral Law

In Indonesian civil law, particularly in the Civil Code (KUHPerdata), collateral is a crucial instrument that provides legal protection to creditors to ensure that the debtor's obligations are met. The Civil Code recognizes two types of collateral: general and specific. General collateral is regulated in Articles 1131 and 1132 of the Civil Code, which state that all debtor assets, movable and immovable, both existing and future, serve as collateral for all debts. In practice, the principle of *paritas creditorum* is applied, granting all creditors equal rights to claim debts from the debtor's wealth unless a creditor holds a specific collateral.

This is often seen in bankruptcy proceedings, where all the debtor's assets are pooled and distributed proportionally to creditors based on their claims. Thus, the entire debtor's wealth is subject to all the creditors. This reflects the *paritas creditorum* principle, which means that creditors are on equal footing in claiming debts from the debtor's assets unless a creditor has a preferential right through specific collateral. The Civil Code also regulates specific collaterals, providing creditors with a privileged position. Examples of specific collateral include pledges and mortgages. Pledges, as collateral for movable property, are regulated by Articles 1150 to 1160 of the Civil Code. These provisions state that a pledge grants the creditor the right to hold and sell the debtor's movable property to settle the debt if the debtor defaults. This allows creditors to directly execute rights on the pledged object, legally protecting them from potential losses. Meanwhile, mortgages, regulated by Articles 1162 to 1232 of the Civil Code, are collateral for immovable properties such as land and buildings.

Through a mortgage, creditors gain property rights on the collateral object and have the authority to execute the mortgage to collect their debt, prioritizing other creditors. This collateral system shows that the Civil Code establishes a strong legal protection framework for creditors. In general collateral, creditors are protected by the debtor's entire wealth, whereas specific collateral gives creditors a preferential position to recover their debts before others. However, some provisions regarding collateral in the Civil Code, such as mortgages, have evolved through specific regulations, such as Law No. 4 of 1996 concerning Mortgage Rights, which replaced land mortgages. Nonetheless, provisions in the Civil Code remain relevant as the normative and historical foundation for collateral regulations in Indonesia and as the source of *lex generalis* in civil law systems.

Moreover, creditor protection is governed by other specific laws, such as Law No. 10 of 1998 on Banking (Banking Law). To understand the form of legal protection provided to banks, we first look at the definition of a bank according to Article 1, paragraph 2 of the Banking Law, which is an institution that collects funds from the public in the form of deposits and distributes them in the form of credit or other financing to improve public welfare. According to Article 1, paragraph 11 of the Banking Law, credit is the provision of money

or claims equivalent to it based on an agreement between the bank and another party, wherein the borrower is obliged to repay the debt after a specified period with agreed-upon interest. Although not explicitly regulated in the Banking Law, creditor protection is indirectly addressed in Article 8, paragraph (1), which minimizes credit risk. When providing credit or financing based on Sharia principles, banks must ensure, through a thorough analysis or good faith, the debtor's ability to repay the debt or return the financing as agreed. This highlights that credit granted by banks inherently involves risk, and as a creditor, the bank must follow prudent credit principles. To mitigate these risks, credit collateral must be based on trust between the bank and the debtor in credit repayment.

To earn this trust, the bank must assess the debtor's character, ability, capital, collateral, and business prospects. Collateral is a key criterion for credit evaluation by banks. As explained in this provision, collateral can include goods, projects, or claims financed by relevant credit. According to the law, land ownership can be used as collateral. As previously explained, immovable property collateral, such as land, is regulated by the provisions of the UUHT. In this section, a debtor may provide land as collateral to a creditor by imposing a mortgage on the land. To make the land a legally valid collateral object, a Deed of Granting Mortgage Rights (APHT) must be created by the Land Deed Official (PPAT) and subsequently registered at the local land office. If the Mortgagor cannot attend to sign the APHT, an SKMHT must be granted first, which can be created by a PPAT or Notary, as regulated in Article 15 of the UUHT. However, SKMHT can only include specific authority to impose a mortgage without covering other legal actions. The SKMHT must not include substitution clauses and must clearly state the collateral object, debt amount, and creditor's full identity. If the Mortgagor is not the debtor, the debtor's identity must also be explicitly mentioned to clarify the legal relationship underlying the collateral.

However, the SKMHT created by PPAT differs in format and structure, following the provisions in the Attachment to the Regulation of the Head of BPN No. 8 of 2012 regarding amendments to the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997. PPAT's SKMHT has a specific format that includes the cover page with PPAT's identity, position, jurisdiction, appointment date, and address. The deed number format follows a sequential number for the current year, followed by a slash and the year of creation. The most noticeable difference between SKMHT created by a notary and those created by a PPAT is the inclusion of the deed header. Practically, PPAT's SKMHT must contain a deed header that includes PPAT's identity, jurisdiction, and appointment details, as specified in the regulations.

Thus, both Notary- and PPAT-created SKMHTs are legally valid authentic deeds, but they differ in terms of form, structure, and technical provisions. These differences are important to understand, as they affect the formal validity of the SKMHT as the basis for creating the APHT. If the SKMHT is deemed invalid because it does not meet formal or material requirements, it results in the invalidity of the APHT and the failure to register the mortgage, ultimately harming the creditor's legal position. Notaries, as public officials authorized to create authentic deeds, including SKMHT, are legally obliged to ensure that all requirements are met, ensuring that the mortgage imposed on the collateral object is lawfully registered at the Land Office under the UUHT provisions, thus providing effective legal protection and certainty for the creditor.

Therefore, the legal regulation of SKMHT created before a notary from the perspective of collateral law has been comprehensively regulated through various laws, including the Civil Code, UUHT, Banking Law, and UUJN. The existence of the SKMHT as a valid and authentic legal instrument is crucial for ensuring legal certainty and protecting creditors' rights in credit agreements. Notaries, as public officials, bear the legal responsibility to ensure that SKMHT complies with all formal and material requirements according to the applicable provisions, supporting the lawful registration of the mortgage at the Land Office. Therefore, the validity of the SKMHT created by notaries determines the validity of the APHT and directly impacts the legal strength of the mortgage and the creditor's position as the holder of the Mortgage Right.

4.2. Implementation of Legal Protection for Creditors Regarding the Validity of Power of Attorney to Impose Mortgage Rights (SKMHT) Created Before a Notary in the Perspective of Collateral Law

In practice, SKMHT is created when the party granting the Mortgage Right, the owner of land rights, or the owner of a unit in a condominium, cannot attend to sign the APHT before the PPAT. In such cases, the grantor can delegate authority to another party via SKMHT, as outlined in Articles 15 (1) and (2) of the UUHT. The purpose of the SKMHT is to provide a valid legal basis for the limited and specific delegation of authority to take a single legal action—imposing a mortgage on the collateral object. This allows the mortgage process to proceed without delaying credit transactions. In banking practice, the speed and accuracy of collateral binding are crucial to ensure legal certainty for the creditor's position as a collateral holder. However, owing to the specific nature of the SKMHT and its close connection with the creation of the Mortgage Right, it must meet the stringent formal and material requirements set out in the UUHT. If SKMHT is not made according to the regulations, the APHT created based on it may be declared invalid, leading to the Mortgage Right not being registered at the Land Office, thereby weakening the creditor's position in collecting the debt.

As previously explained, SKMHT can be created by both Notaries and PPATs. However, there are significant differences in form and structure between SKMHT created by a Notary and one created by a PPAT, especially in the deed header, comparative structure, and layout of other formal information. In practice, the registration of the APHT based on the SKMHT created by a notary depends on the policies and administrative provisions of the local Land Office. Differences in practice were observed according to interviews with practitioners. Some Notaries create SKMHT following Article 38 of the UUJN, which does not include the deed header, as is customary in notarial deeds. However, some Notaries include the deed header and structure the SKMHT according to the format in the Appendix to BPN Regulation No. 8 of 2012.

This is due to requests from the Land Office, the authority responsible for registering the Mortgage Right, to align the SKMHT with the format specified in the BPN Regulation, especially regarding the layout, deed header, and identities of PPATs or Notaries. This request is based on the Land Office's administrative needs to ensure that the documents comply with the formatting and standards used in the electronic land system (HT-el) to ensure smooth verification and registration processes. Thus, although Notaries are not required by the UUJN to include a deed header in SKMHT, in practice, Notaries often adjust the structure and format of SKMHT to meet the administrative requirements imposed by the land authority for Mortgage Right registration.

This reflects the importance of harmonizing the normative provisions attached to the Notary's role with the practical needs of the land administration agency. The goal is to ensure the formal validity of SKMHT in the APHT registration process and to ensure optimal legal protection for the creditor's rights as the holder of the Mortgage Right. In practice, legal protection for creditors in the implementation of the Mortgage Right is crucial, as the collateral is intended to provide legal certainty and guarantee debt repayment in case of default. The SKMHT, as the document initiating the creation of the APHT, must meet the formal and material requirements set by law to be a valid basis for registering the Mortgage Right at the Land Office. If the SKMHT created by a notary does not meet the administrative expectations of the local Land Office, such as lacking a deed header or having a non-compliant structure, the APHT registration may be delayed or rejected. Such a rejection risks harming the creditor's legal interests, as without registration, the Mortgage Right does not fully attach and lacks the power of execution. This potentially reduces the legal certainty that creditors should have as providers of credit facilities.

The implementation of legal protection for creditors regarding the validity of SKMHT created before a notary reflects systematic efforts to ensure legal certainty and prevent future disputes. This protection is realized through preventive, repressive, and administrative approaches that complement each other to ensure that the imposition of the Mortgage Right is lawful, orderly, and in accordance with applicable legal provisions. Thus, the creditor's legal position as a collateral holder is strengthened and optimally protected, both formally and substantively.

4.1.3. Legal Barriers and Solutions in Protecting Creditors Regarding the Validity of Power of Attorney to Impose Mortgage Rights (SKMHT) Created Before a Notary in the Perspective of Collateral Law

In the practice of imposing mortgage rights, especially using SKMHT as the basis for creating APHT, various barriers are often encountered that may weaken the creditor's legal position as a collateral holder. These barriers can be normative or technical-administrative, and if not properly addressed, they can lead to the invalidity of the collateral or even the failure to register the Mortgage Right, ultimately harming the creditor. Therefore, a systematic identification of these barriers and relevant legal solutions is necessary. The barriers referred to by the author are as follows:

1) Normative Barriers

One of the main obstacles in providing legal protection to creditors in the imposition of a Mortgage Right through SKMHT is the inconsistency in the interpretation and application of legal norms regarding the format and structure of SKMHT created by notaries. Although Article 15 (1) of the UUJN explicitly states that Notaries have the authority to create authentic deeds for any legal act required by the parties or mandated by law, in practice, there are differences in the interpretation of the formal structure of SKMHT between Notaries and the Land Office. The differences mainly involve the format or structure of the SKMHT. According to Article 38 of the UUJN, a Notary prepares deeds in three main parts: the opening, body, and closing, without explicitly requiring the inclusion of a deed header, as is customary for PPAT deeds. However, some Land Offices, in the technical process of registering the Mortgage Right, require SKMHT, even when created by a notary, to follow the format specified in the Appendix to BPN Regulation No. 8 of 2012 on Amendments to the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997. This format includes the deed header with the full identity of the PPAT, jurisdiction, appointment number and date, and the office address.

This issue becomes complex because, legally, the format in the Appendix to the BPN Regulation is intended for PPATs as the technical executors of land registration, not for notaries who are governed by the formal deed structure under the UUJN. As a result, when a notary prepares an SKMHT according to the UUJN structure without including a deed header, the Land Office may reject the SKMHT as the basis for creating an APHT and registering the Mortgage Right. Therefore, the normative barrier of the inconsistent acceptance of the SKMHT by the Land Office is a fundamental issue that can undermine the effectiveness of legal protection for creditors. Concrete normative and administrative steps are needed, such as harmonizing regulations between agencies and creating integrated technical guidelines, so that SKMHT created by notaries can be uniformly and lawfully recognized across Indonesia.

2) Legal Barriers

Legal defects in the SKMHT can arise if the deed does not meet the formal and material requirements set forth in Articles 15 (4) and (5) of the UUHT. These provisions state that SKMHT must clearly specify (i) the collateral object in the form of land rights, (ii) the debt amount secured, (iii) the full identity of the creditor and debtor, and (iv) no substitution clause. If any of these elements are missing, the SKMHT may be declared legally defective, either formally or materially, by the court. A formal defect occurs when the SKMHT is not prepared according to the procedures set by law, such as being unsigned in the presence of an authorized official (Notary/PPAT), lacking complete identification of the parties, or not being made in authentic deed form. A material defect occurs when the substance of the SKMHT contradicts applicable laws, for example, including a substitution clause explicitly prohibited by Article 15 (5) of the UUHT, or if the collateral object is not specifically and clearly identified in the agreement.

If the SKMHT used as the basis for creating the APHT is declared invalid, the legal validity of the APHT is also nullified. In collateral law, this invalidity directly affects the failure to register the Mortgage Right over the mortgaged land. In other words, the Mortgage Right cannot be lawfully registered at the Land Office because the foundational document (SKMHT) lacks legal legitimacy. This situation severely harms the creditor's legal position, as one of the main protections for creditors in credit relationships is valid and legally executable collateral. Without the registration of the Mortgage Right, the creditor loses the preferential and execution rights that should be attached to the collateral. As a result, if the debtor defaults, the creditor cannot immediately execute the collateral to recover the debt but must compete with other creditors as an unsecured

creditor. This contradicts the principle of preventive legal protection, which aims to prevent loss and legal disputes from the outset by ensuring that the legal requirements for documents are met.

In the context of legal protection for creditors, this situation underscores the need for preventive and proactive measures to minimize the risk of losing collateral rights owing to administrative negligence. First, the bank, as the creditor, along with the notary, must provide comprehensive legal explanations to the debtor during the creation of the SKMHT. This explanation should include the understanding that the SKMHT is temporary, has a limited duration, and must be followed up with the creation of an APHT so that the Mortgage Right can be registered and acquire legal force as collateral. This education is crucial to ensure that debtors understand the legal consequences of any delay or negligence in following up on the SKMHT.

5. Conclusion

5.1. Conclusion

1. The legal protection of creditors in Indonesia is governed by several important legal instruments. The Civil Code (KUHPerdata) establishes the basis for both general and special collaterals. Creditors are protected under Articles 1131 and 1132 of the Civil Code, which state that all of the debtor's property serves as a general guarantee for their debts, as well as through special guarantees such as pledges and mortgages on both movable and immovable property. As developments have occurred, land mortgages have been replaced by Mortgage Rights (Hak Tanggungan), as regulated by Law No. 4 of 1996 on Mortgage Rights (UUHT). In this mechanism, the Power of Attorney to Impose Mortgage Rights (SKMHT) becomes the initial instrument before the Deed of Granting Mortgage Rights (APHT) is executed. The SKMHT must meet both formal and material requirements, as stipulated in Article 15 of the UUHT, to be legally valid. Law No. 10 of 1998 on Banking (Banking Law) strengthens creditor protection, particularly for banks, by requiring the principle of prudence in granting credit. In this case, legal and enforceable guarantees, such as Mortgage Rights, are crucial in mitigating credit risks. The Notary's authority to create SKMHT as an authentic deed is affirmed in the Notary Position Law (UUJN), particularly in Articles 15 and 38, which regulate the formal structure and the form of notarial deeds. However, in practice, administrative obstacles arise because the SKMHT format created by notaries differs from that of the PPAT SKMHT format, as regulated in the Head of the BPN Regulation No. 8 of 2012, which requires a specific deed header and format for registering Mortgage Rights through the land registration system (HT-el). This difference has implications for creditor protection, as SKMHT that do not meet formal requirements can cause APHT to be invalid, resulting in Mortgage Rights not being registered and weakening the legal standing of the creditor as the holder of the collateral.
2. In practice, many Land Offices require that the SKMHT prepared by notaries follow the format set out in the Head of BPN Regulation to ensure consistency with the HT-el system. This discrepancy creates tension between the juridical norms in the UUJN and the administrative needs of land registration systems. Therefore, Notaries often adjust the structure to ensure that Mortgage Rights are registered and creditors' legal protections are maintained. The forms of legal protection for creditors concerning SKMHT can be divided into three approaches: preventive, through the creation of guarantee documents in accordance with the requirements of the UUHT, UUJN, and the regulations; repressive, by taking legal action when rights violations or damages occur due to defective SKMHT; and Administrative, by ensuring that SKMHT meets the technical requirements for registration of HT-el according to agrarian regulations. Therefore, legal protection for creditors in the implementation of SKMHT created by notaries requires harmonization between civil and agrarian legal norms so that guarantee documents can be legally used, properly registered, and ensure the creditor's legal standing as the holder of a strong and protected mortgage right.
3. The implementation of legal protection for creditors regarding SKMHT made before a notary faces several normative, juridical, and administrative obstacles that may result in the invalidity of the Mortgage Rights guarantee, weakening the creditor's legal position. Normative obstacles arise from the lack of harmony between the UUJN and the BPN Regulation regarding the format and structure of the SKMHT, particularly regarding the inclusion of the deed header. This misalignment causes discrepancies in the acceptance of documents by Land Offices. Juridical obstacles occur when the SKMHT does not meet the formal and material requirements outlined in Article 15 of the UUHT, such as failing to include the complete identity of the parties or the inclusion of substitution power, which can render the SKMHT and its associated APHT void. Administrative obstacles concern the limited validity period of SKMHT (1 or

3 months), which is often overlooked or misunderstood by the debtor, resulting in the guarantee losing its legal basis if the APHT is not executed and registered promptly. To overcome these obstacles, legal solutions are required: harmonization of regulations between UUJN and agrarian regulations so that Notarial SKMHT can be uniformly recognized by Land Offices; enhanced prudence by deed officials in drafting SKMHT that meet formal and material requirements; legal education for debtors; and the implementation of administrative reminder systems by banks and Notaries to ensure SKMHT does not expire. With these solutions, the validity of SKMHT can be maintained, the enforceability of APHT can be ensured, and legal protection for creditors as the holders of Mortgage Rights can be optimally achieved, in accordance with the legal principles of collateral in Indonesia.

5.2. Recommendations

1. The legal regulation regarding the protection of creditors on the validity of SKMHT made before a Notary in the context of collateral law should be done through harmonization of regulations between UUJN, UUHT, and technical regulations such as the Head of BPN Regulation by the government through the Ministry of ATR/BPN and the Ministry of Law and Human Rights. This harmonization aims to avoid overlapping norms and differences in interpretation between Notaries and Land Offices regarding the formal format of SKMHT. Additionally, a unified national technical guideline on the format and standards of SKMHT prepared by notaries, which is uniformly recognized by all Land Offices in Indonesia, should be issued to ensure legal certainty and optimal protection for creditors in the practice of providing immovable collateral.
2. The implementation of legal protection for creditors regarding the validity of SKMHT made before a notary in the context of collateral law should be carried out through the application of prudence and professionalism principles by Notaries and PPATs in drafting and processing SKMHT and APHT. Notaries must adjust the structure of SKMHT to meet the administrative needs of the Land Office while not disregarding the provisions of UUJN to facilitate the registration of Mortgage Rights. Conversely, banks, as creditors, should have strict internal procedures and an automatic administrative reminder system to ensure that SKMHT is promptly followed by APHT within the specified timeframe. Thus, legal protection for creditors will not only rely on normative aspects but also on careful, orderly, and legally compliant technical execution.
3. Obstacles and solutions related to the protection of creditors regarding the validity of SKMHT made before a notary in the context of collateral law should be addressed through cross-sectoral regulatory harmonization (civil law, land law, and notary law) to overcome normative obstacles; careful research by notaries and creditors to ensure SKMHT meets the requirements of Article 15 UUHT to address juridical obstacles; the formation of an integrated document management system between banking and notary offices that provides reminders before the SKMHT's validity period expires; and legal education for debtors on the importance of APHT as the continuation of SKMHT to avoid misunderstandings that could harm the creditor.

References

- Acharya, V. V., Cetorelli, N., & Tuckman, B. (2024). Where Do Banks End and NBFIs Begin?. *SSRN Electronic Journal*, 1-53. doi:<https://doi.org/10.2139/ssrn.4760963>
- Aldaba, R., & Roisah, K. (2025). Kedudukan Personal Guarantee dan Benda yang Dijaminkan dalam Kepailitan Debitor. *Jurnal Ilmu Hukum, Humaniora dan Politik*, 5, 2370-2376. doi:<http://dx.doi.org/10.38035/jihhp.v5i3.4235>
- Badriyah, S. M., Suharto, R., & Kashadi, K. (2019). Implikasi Hukum Penggunaan Surat Kuasa Membebankan Hak Tanggungan Sebagai Jaminan dalam Perjanjian Kredit Pemilikan Rumah. *Law, Development and Justice Review*, 2(1), 58-71. doi:<https://doi.org/10.14710/ldjr.v2i1.5140>
- Baihaqi. (2024). Perkembangan Pinjaman Online Terhadap Pertumbuhan Ekonomi Masyarakat Pidie Jaya. *Jurnal Al-Mizan*, 11(1), 1-12. doi:<https://doi.org/10.54621/jiam.v11i1.820>
- Famdale, G., N.. (2021). Tinjauan Yuridis Terhadap Bentuk Akta Skmht yang Dibuat Oleh Notaris Menurut Pasal 38 Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. *Jurnal Hukum Adigama*, 4(2). doi:https://doi.org/10.24912/adigama.v4i2.17126?utm_source=chatgpt.com

- Fauzan, F., Diana, N. N., Amelia, R., & Latif, A. (2025). Jenis-Jenis Hak Jaminan Dalam Perspektif Hukum Perdata dan Hukum Islam: Studi Konseptual. *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 2(9), 1-7. doi:<https://doi.org/10.5281/zenodo.15178682>
- Firmansyah, M. A. W., & Rosando, A. F. (2023). Perlindungan hukum terhadap kreditur akibat hapusnya hak milik atas tanah sebagai objek jaminan hak tanggungan. *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum*, 2(6), 600-605. doi:<https://doi.org/10.55681/seikat.v2i6.1069>
- Hamid, W. A., & Leviza, J. (2024). Pembatalan Surat Kuasa Membebaskan Hak Tanggungan Pada Putusan Nomor 663/PDT. G/2019/PN. MDN. *Jurnal Media Akademik (JMA)*, 2(1).
- Hana, K., & Djaja, B. (2024). Kajian Yuridis Peralihan Kewajiban Kepada Konsumen Setelah Penandatanganan Akta Jual Beli. *Ranah Research: Journal of Multidisciplinary Research and Development*, 6(4), 1088-1094. doi:<https://doi.org/10.38035/rj.v6i4.980>
- Irmayanti, A., Simanjuntak, K., & Naim, S. (2024). Perlindungan Hukum Bagi Kreditur Akibat Berakhirnya Jangka Waktu Hak Guna Bangunan Yang Dibebeani Hak Tanggungan. *Judge: Jurnal Hukum*, 5(2), 120-132. doi:<https://badge.dimensions.ai/details/doi/10.54209/judge.v5i02.669?domain=https://journal.cattleyadf.org>
- Junaidi. (2023). Pinjaman Keuangan: Analisis Akad Pembiayaan Multiguna dengan Agunan SK PNS di Bank Aceh Syariah. *LABATILA: Jurnal Ilmu Ekonomi Islam*, 7(2), 81-93. doi:<https://doi.org/10.33507/lab.v7i02.1199>
- Khoidin, M. (2017). Hukum Jaminan (Hak-Hak Jaminan, Hak Tanggungan dan Eksekusi Hak Tanggungan). *Surabaya: Laksbang Yustisia*.
- Lamabelawa, V. S. (2025). Hambatan Pelaksanaan Putusan Pengadilan oleh Pemerintah. *Kajian Ilmiah Hukum dan Kenegaraan*, 4(1), 11-26. doi:<https://doi.org/10.35912/kihan.v4i1.5064>
- Mekka, M. F. (2022). Juridical Analysis of The Discrepancy in The Format of The Certificate of Charge for The Right of Protection in Terms of Law Number 30 of 2004 Concerning The Position of Notary. *LEGAL BRIEF*, 11(4), 2604-2612.
- Munthe, D., Respationo, H. M. S., & Erniyanti, E. (2025). Juridical Analysis of Notaries' Role in Drafting and Ratifying Deeds of Amendment to Limited Liability Companies' Articles of Association for Shareholders' Legal Certainty. *Annals of Justice and Humanity*, 4(2), 85-97. doi:<https://doi.org/10.35912/ajh.v4i2.3412>
- Pranoto, W. S. A., & Soemartono, G. P. (2023). Legal Certainty of Creditor's Rights in The Fiduciary Agreement. *UNES Law Review*, 6(1), 3054-3068. doi:<https://doi.org/10.31933/unesrev.v6i1.1097>
- Prasetyo, D. I., & Zuroidah, Z. N. (2024). Legal Framework and Creditor Rights in Bankruptcy: Analyzing Property Collateral Protection. *Acitya Wisesa Journal of Multidisciplinary Research*, 3(1), 71-83. doi:<https://doi.org/10.56943/jmr.v3i1.636>
- Rachman, A. H. (2024). Pemecahan Sertifikat Hak atas Tanah yang Masih Dibebeani Hak Tanggungan. *JURNAL ILMIAH NUSANTARA*, 1(4), 290-298. doi:<https://doi.org/10.61722/jinu.v1i4.1747>
- Salim, H., & Nurbani, E., S. (2019). Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi. *RajaGrafindo Persada, Jakarta*.
- Samudra, F. G. M., & Baidhowi, B. (2025). Kedudukan Hukum Surat Kuasa Membebaskan Hak Tanggungan Dalam Pemberian Fasilitas Kredit Pemilikan Rumah Subsidi. *Jurnal Ilmiah Nusantara*, 2(4), 675-683. doi:<https://doi.org/10.61722/jinu.v2i4.5163>
- Siregar, D. (2024). Legal Effects of Credit Agreement Restructuring on Collateral in an Effort to Rescue Non-Performing Loans. *Jurnal Hukum Prasada*, 11(1), 1-8. doi:<https://doi.org/10.22225/jhp.11.1.2024.1-8>
- Suwondo, D., & Saputra, I. (2019). Peran dan Tanggung Jawab Pejabat Pembuat Akta Tanah dalam Pelaksanaan Kegiatan Pendaftaran Tanah. *Jurnal Hukum*, 35(2), 185-205. doi:<http://dx.doi.org/10.26532/jh.35.2.185-205>
- Tiendas, K. B. I. (2024). Tinjauan Hukum Persoalan Kepemilikan Atas Kapal Laut Dikaitkan dengan Hak Jaminan Kebendaan Menurut Hukum di Indonesia. *Lex Privatum*, 13(5), 1-12.
- Usman, R. (2024). *Hukum jaminan Kebendaan Tanah (Hak Tanggungan)*. Malang: PT Literasi Nusantara Abadi Grup.

Wahyuni, H. H., & Purwanto, P. (2024). Analisis Hukum Terhadap Jaminan Kredit Dalam Perspektif Pencegahan Kredit Macet. *Binamulia Hukum*, 13(2), 297-311. doi:<https://doi.org/10.37893/jbh.v13i2.954>