



Analysis of the Juridical Rights of Dependents based on Skmht in Home Ownership Financing of PT Bank NTB Syariah Mataram Branch

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Abstract

The purpose of this research is to examine and analyze the binding force of the provisions of the BPN Head Regulation if it is associated with the Rights Act and the factors that cause the SKMHT not to be tied with APHT after 3 months. The method used in this research study was the normative method of empirical research. The approach used is the legislation approach, conceptual approach, and the sociology of legal approach. The result of this research is the first binding force of the provisions of the Board of BPN Regulation if it is associated with the law of dependents then the use of SKMHT in the provision of subsidized housing financing facilities by the Bank NTB Syariah Mataram Branch in the implementation is not followed by APHT, so that the use of SKMHT will be valid until the expiration of the By referring to the regulation of the Minister of Agrarian state/head of national Land Agency No. 4 of 1996 concerning the determination of the use of power of Attorney (SKMHT) to guarantee the settlement of certain credits, which in this case subsidized housing credits. And the factors that cause is not continued with APHT because of its production procedure is old and the cost is quite high.

Keywords: *The Right of Liability; SKMHT; Housing Financing*

Introduction

Banking is one of the solutions for people who needs funds to be able to buy a home, one of the banking that provides home ownership financing facility in Indonesia including Bank NTB Syariah, which is one of the banking products that is engaged in the financing of housing and is a government bank that is designated in terms the provision of financing is associated with the assurance to implement the contract agreement or borrow money, as well as provide protection and legal certainty to the giver and receiver as well as to other interested parties. Pursuant to Act No. 4 of 1996 on the rights of liabilities set forth in article 15 paragraph (3) UUHT states that for the right to land already registered, SKMHT shall be followed by APHT at least 1 (*one*) month after the SKMHT is signed. While article 15 paragraph (4) UUHT states that for land rights that have not been registered must be followed by APHT at least 3

(three) months after the SKMHT is signed. The upper limit of the land concerned is certified but not recorded on behalf of the rightsholders as a new rightsholders.¹

SKHMHT Setting is set up in the Minister of Agrarian/Head of National Land Agency No. 3 of 1996 governs the form of SKHMHT, deed of liabilities provision, Book of Rights and certificate of liability. The Minister of Agrarian/Head of the National Land Agency has published regulation of the Minister of Agrarian and Spatial/Head of National Land Agency number 22 of 2017 concerning determination of the time limit on the use of authorization letter shall impose the right to guarantee the repayment of certain credit, which essentially discusses about the validity period of SKMHT.

Bank NTB Syariah Mataram Branch provides financing of subsidized home ownership to the recipient of the facility generally does not overwhelms the material that is physically collateral, but only has the right to the administrative material, the process only until the right of liability to charge the rights (SKMHT) only with no liability for the object of guarantee, it does not have the material rights to the warranty factually.

This needs to be done research to examine the binding strength of the provisions of the regulation of the head of National Land Agency No. 22 of 2017 if it is associated with Law No. 4 of 1996 on the rights of liabilities and what factors cause not to continue the binding of SKMHT to APHT after a period of 3 months in the Bank NTB Syariah Mataram Branch.

Research Method

The type of research used in this legal study is normative and empirical. The approaches used in this research are the statue approach, conceptual approach, and sociology approach to law. The type of data used in this research is primary data, which is data from social facts related to the work of real law encountered by researchers. Secondary data, i.e. departing from social facts referenced from books, research results and scientific journals. Used as a result data that supports primary data in the discussion and analysis process.² The legal materials used in this research is primary legal materials is binding legal materials, and consist of statutory regulations. Secondary legal material is a legal material that provides explanations about the primary legal material, such as the draft law, research results, works from the law, and so on.³ Tertiary legal materials is material that provide instruction as well as explanations of primary and secondary legal material; Examples are the legal dictionary, the Encyclopedia, the cumulative index, and so on.

The techniques used in collecting the data and the legal materials are as follows:

1. In normative legal studies, data collection techniques is conducted with the study of libraries on primary legal materials, secondary legal materials, as well as tertiary legal materials and/or non-legal materials. The search for the legal materials can be done by reading, viewing, listening, or now many of the transmission of legal materials through the Internet.⁴
2. In empirical research law, data collection techniques can be done with field studies, there are three techniques of field study either used jointly or individually. The three techniques are interviews, polls or questionnaire, and observations.⁵ Field studies in this study were obtained by in-depth interview

¹ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaanya*, Cet 8, (Jakarta: Djambatan, 2007), p. 443

² Mukti Fajar ND dan Yulianti Achmad, *Dualisme Penelitian Hukum Normatif&Empiris*, Pustaka Pelajar, Yogyakarta, 2015, p. 59

³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 2006, p. 52.

⁴ Mukti Fajar ND dan Yulianti Achmad, *Op. Cit.*, p. 160.

⁵ *Ibid*

techniques with respondents and informant. Further interviews as a data collection tool is done by referring to the list of questions that have been compiled first.

Discussion

The binding power of the provisions of the regulation of the head of National Land Agency No. 22 year 2017 if it is associated with Law No. 4 of 1996 on the rights of liabilities

A. Provisions of Regulatory Head of National Land number 22 of 2017

In the consideration of the regulation of the Minister of Agrarian state/head of National Land Agency number 22 of 2017 about the determination of the time limit of the use of power letter shall impose the right to guarantee the repayment of credit in accordance with the provisions of article 15 paragraph (5) of Law No. 4 of 1996 on the rights to land and objects relating to land, hereinafter referred to as Law of liability, the validity deadline of power of attorney shall impose the right of liability given to guarantee certain types of credits except where in article 1 the regulation of the Minister of Agrarian state/head of National Land Agency number 22 year 2017 stipulates that the authorization letter to charge the rights (SKMHT) valid until the expiration of the principal agreement of credit.

In practice a credit is divided into several groups, as follows:⁶

1. Credit seen from the goal consists of:
 - a. Consumptive credit, which is given for the purpose of obtaining or purchasing goods and consumption needs, needs to meet the demands of life.
 - b. Productive credit is a credit that is given in order to facilitate the course of the production process.
2. Credit seen from a period of time consist of:
 - a. Short-term credits are credits that are at maximum 1 (*one*) year.
 - b. The medium term credit is a credit that timed at 1 (*one*) to 3 (*three*) years.
 - c. Long-term credits are credit that timed more than 3 (*three*) years
3. The credits seen from the collateral, as follows:
 - a. Unsecured credit, i.e. referred to Blangko, given to the customer without any warranty, the granting of credit does not mean that there is no guarantee at all, but the collateral in the form of bonafidity and prospects remains in the attention and emphasized in earnest in the consideration of its creditor.
 - b. Credit with the guarantee is the granting of credit with the guarantee of the debtor, which is a property or securities or individual guarantees.

Based on the above classification, subsidized housing credits are included in the consumptive credit, as credit is given to debtors commonly used to buy a home or habitable residence which is one of the basic human needs. In the use of this SKMHT, to prevent implementation of the SKMHT and in order to be done in real time, the SKMHT limited period of validity for land rights that have not been listed is valid 3 (*three*) months. If the period is not fulfilled, it may be null and void.

⁶ Hassanudin Rahman. 2015. *Aspek-Aspek Hukum Pemberian Kredit Perbankan di Indonesia*. Bandung: PT. Citra Aditya Bakti. p. 183

In regulation of the Minister of Agrarian state/head of National Land Agency number 22 of 2017 on determination of usage deadline. Power of attorney charges the right of liability (SKMHT) to guarantee.

The settlement of certain credits, as in article 1, mentions "*the letter of authorization to impose on the rights granted to guarantee the repayment of the types of small business loans as referred to in the decree of the Board of Directors of Bank Indonesia No. 26/24/KEP/Dir dated 29 May 1993 below is valid until this time the expiration of the relevant principal agreement*", including:

1. Credit given to small business customers, which includes:
 - a. Credit to village Unit Cooperative
 - b. Business loan;
 - c. Credit to the primary cooperative for its members
2. Housing credits are given for the procurement of residential,

The following:

- a. Credits which are given to finance the ownership of the core Home, simple home or stacking home with a maximum land area of 200 m² (*two hundred square meters*) and the building area of not more than 70 m² (*seventy square meters*);
 - b. Credits given to the ownership of *Kapling* ready to build (KSB) with a land area of 54 m² (*fifty four square meters*) and credits given to finance the building;
 - c. Credits provided for repair or refurbishment of the home as referred to as letter A and B;
3. Other productive credit credits provided by commercial banks and bank's creditors with the credit ceiling not exceeding Rp. 50.000.000, 00 (*fifty million Rupiah*), there are:
 - a. Rural public credit (*distributed by Government Bank*);
 - b. Business Services Credit (*distributed by Government Bank*).

Regulation of the Minister of Agrarian and Spatial/Head of National Land Agency of the Republic of Indonesia number 22 of 2017 about determination of the use deadline of power of attorney to impose rights to guarantee settlement of certain credit. In article 2 of ministerial Regulation No. 22 of 2017 concerning authorization letter to impose rights of liabilities stating that to ensure repayment of financing/loan shall be valid until the expiry of principal agreement as follows:

- a. Credit/financing/loan provided to the customer of micro enterprise and small business, in the sphere of understanding of the productive business belonging to individual and/or individual business entity.
- b. Credit/financing/loan intended for housing procurement, namely as follows:
 - a) The ownership or the improvement of core homes, simple homes or a stacking home with a maximum land area of 200 m² (*two hundred square meters*) and a building area of not more than 70 m² (*seventy square meters*);
 - b) The possession or improvement of *Kavling Siap Bangun* (KSB) with a land area of 54 m² (*fifty four square meters*) up to 72 m² (*seventy two square meters*) and credit given to finance the building.
 - c) Credit/financing/other productive loan with the ceiling up to Rp. 200.000.000, 00 (*two hundred million rupiah*).

Accordingly, the use of authorisation letter to impose the right of liability (SKMHT) in the provision of subsidized housing financing facility by the Bank of NTB Syariah Mataram branch in the implementation is not followed by the deed of Entitlement (APHT), so the use of SKMHT applies the term until the expiration of the principal agreement, the credit agreement. With reference to the regulation of the Minister of Agrarian state/head of National Land Agency No. 22 of 2017 concerning determination of the use of power of attorney (SKMHT) to guarantee the settlement of certain credits, which in this case subsidized housing credits.

The purpose of using SKMHT by Bank NTB Syariah Mataram Branch against subsidized housing financing to save costs. And the debtor no longer needs to SKMHT signatures again if the SKMHT timed out for temporarily behind the name has not been completed.

B. Law No. 4 of 1996 on Liabilities

With the provision of the right of liability (SKMHT) for certain credit shall not be increased into APHT (*Grant of Rights Act*) and remain valid until the expiration of the principal agreement of credit. It is the case that distinguishes the provisions of the right of liability (SKMHT) in general that if the right of liability impose the rights of liability (SKMHT) is not upgraded to APHT within a certain time, the right of liability charges (SKMHT) becomes null and void.

Based on the explanation of UUHT and regulation of the Minister of Agrarian state/head of BPN No. 22 of 2017 number 1 concerning the promises in the SKMHT and APHT, there is a provision “*when required by the authorer that in the APHT will be loaded certain promises, the recipient of authority requires the power to list the agreed promises in APHT.*”

Also mentioned in the Decree of Board of Directors of Bank Indonesia No. 26/24/KEP/Dir dated 28 May 1993, that SKMHT is valid until the expiration of the principal agreement (*credit agreement*) in question. In line with the growing credit problems that are needed at present, the decree of the Board of Directors of Bank Indonesia No. 26/24/KEP/Dir dated 28 May 1993 has been revoked and replaced with decree of director of Bank Indonesia No. 30/55/KEP/Dir dated 8 August 1998. Decree of Bank Indonesia director number 30/55/KEP/Dir has been used as the basis for the provision of credit facilities because the letter of the Board of Directors of Bank Indonesia is not contrary to the Constitution 1945 and *the Pancasila* which is the welfare of Indonesian people both materil and spiritual.

This can be seen from the Indonesian banking objective, namely “*that the Indonesian banking aims to support the implementation of national development in order to improve equitable, economic growth and national stability toward improving the welfare of many people.*” In article 1 Regulation of the Minister of Agrarian/Head of National Land Agency number 4 of 1996 has determined the type of small business credit whose SKMHT can be valid until the end of the principal agreement.

Factors that lead to not continued binding SKMHT to APHT after a period of 3 months in the Bank NTB Syariah Mataram Branch

The factors arising in the execution of the letter of attorney impose the right of liability (SKMHT) as a credit guarantee that is the first of the cost in the process of increasing the right of liability (SKMHT) into a liability granting act (APHT) by the Land Deed Official (PPAT) and the subsequent process in the certificate of authorisation on the object of power of attorney charging rights (SKMHT) which is unregistered will require a large fee too. In addition to the cost, the time in the use of authorization letter shall impose a right of liability (SKMHT) specified in article 15 paragraph (3) and (4) Act No. 4 of 1996 concerning the right to the land and objects relating to the land of the bank feel too short. Because in practice that occurs in general good the lands that have been registered although has not been registered

take a long time in the process of processing so that it has not completed the creation of the deed of liability (APHT) deadline of power of a right of liability (SKMHT) has expired first.

In the author's interview with the staff of financing Bank NTB Syariah Mataram Branch obtained data that the cost of giving SKMHT to notary/PPAT is around Rp. 200 thousand to Rp 300 thousand, while the cost of binding guarantee up to the level of APHT is Rp. 1 million to Rp. 2 million. So it is in line with the government's aim to provide waivers of costs to people who apply for certain credits so as not to be weighed too much in obtaining business capital from the bank.

The basic purpose of the binding of collateral to the APHT level is the cost of the right to the burden of liabilities is very costly by the debtor, therefore the Government through the regulation of the Minister of Agrarian state/head of the National Land Agency number 22 of 2017 give flexibility to the creditors to simply do the binding guarantee until the power of authorization shall impose rights (SKMHT) alone, should not be upgraded to the deed of grant of Liability (APHT).

Conclusion

Provisions of article 2 letter b number 1 regulation of the Minister of Agrarian and Spatial/Head of National Land Agency number 22 of 2017 the above determines that the SKMHT to guarantee the Home Ownership Credit Agreement is valid until the expiration of the principal agreement. So, as long as the KPR agreement occurs, the SKMHT remains valid without any APHT. With the length of the period of KPR as the principal agreement, the longer the validity of the SKMHT used to guarantee its repayment, in which case the Home Ownership Credit (KPR) is subsidized by the Bank NTB Syariah Mataram Branch as a provider of facilities.

The factors arising in the execution of the letter of attorney impose the right of liability (SKMHT) as a credit guarantee that is the first of the cost in the process of increasing the right of liability (SKMHT) into a Liability granting Act (APHT) by the Land Deed Official (PPAT) and the subsequent process in the certificate of authorisation on the object of power of attorney charging rights (SKMHT) which is unregistered will require a large fee too. In addition to costs, the time in the use of authorisation letter imposes the right of liability (SKMHT).

References

- Ali Ahmad, 2002, *Menguak Tabir Hukum*, Gunung Agung, Jakarta.
- Amiruddin dan Zainal Asikin, 2016, *Pengantar Metode Penelitian Hukum*, Edisi Revisi, Cet. IX, PT. Raja Grafindo Persada, Jakarta.
- Azheri Busyra, 2011, *Corporate Social Responsibility dari Voluntary menjadi Mandotary*, Raja Grafindo Perss, Jakarta.
- Djumhana Mohammad, 1993, *Hukum Perbankan di Indonesia*, Citra Aditya, Bandung.
- Harsono Boedi, 2007, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaanya*, Cet 8, Jakarta.
- H.S. Salim, 2007, *Perkembangan Hukum Jaminan*, PT. Raja Grafindo Persada, Jakarta.

- H.S Salim dan Erlies Sepriana, 2017, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Cetak ke 5, PT Grafindo Persada, Jakarta.
- Muhammad Abdulkadir, 2010, *Hukum Perusahaan Indonesia*, Citra Aditya Bakti, Bandung.
- Notoatmojo Soeekidjo, 2010, *Etika dan Hukum Kesehatan*, Rineka Cipta, Jakarta.
- Purwahid Patrik dan Kashadi, 2000, *Hukum Jaminan*, Fakultas Hukum Universitas Diponegoro, Semarang.
- Ridwan HR, 2006, *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta.
- Sjahdeini Sutan Remy ,1999, *Hak Tangungan, Asas-Asas, Ketentuan Ketentuan Dan Masalah yang Dihadapi oleh Perbankan*, Cet.1, Bandung.
- Syahrani Ridwan, 2000, *Rangkuman Intisari Hukum*, Citra Aditya Bakti, Bandung.
- Marzuki Peter Mahmud, 2008, *Pengantar Ilmu Hukum*, Kencana, Jakarta.
- _____, 2014, *Penelitian Hukum Edisi Revisi*, Cetakan Ke- IX, Kencana Prenadamedia Group, Jakarta.
- Mukti Fajar dan Yulianto Ahmad, 2010, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, Cet. I, Pustaka Pelajar, Yogyakarta.
- Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Regulations, LN Number 104 of 1960, TLN Number 2043.
- Indonesia, Law Number 4 of 1996, concerning Mortgage Rights and Objects Related to Land, LN 422 of 1996, TLN Number 3632.
- Indonesia, Law Number 10 of 1998 Amendment of Law Number 7 of 1992 concerning Banking.
- Indonesia, Law Number 21 of 2008 concerning Sharia Banking, LN Number 94 Year 2008, TLN Number 4867.
- Indonesia, Regulation of the Minister of Agrarian Affairs / Head of the Republic of Indonesia BPN Number 4 of 1996 concerning Stipulation of the Deadline for the Use of SKMHT for Guaranteeing Repayment of Credit - Certain Credit.
- Indonesia, Regulation of the Head of the Republic of Indonesia Agency Number 8 of 2012 Concerning Changes to the Regulation of the Minister of Agrarian Affairs / Head of the Republic of Indonesia BPN Number 3 of 1997 concerning the Procedures for Filling in SKMHT.
- Indonesia, Regulation of the Head of the RI Agency Number 2017 Regarding the Establishment of the SKMHT Deadline for Guaranteeing Repayment of Certain Loans.
- Indonesia, Bank Indonesia Board of Directors Decree Number 26/24 / KEP / DIR 1993.

- Azhar Pasaribu, 2014, *Keabsahan Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) yang dibuat oleh Notaris yang ditentukan Badan Pertanahan Nasional*, Tesis Magister Kenotariatan Universitas Islam Malang.
- Ferry Assaad,dkk, 2017, *Kekuatan Hukum SKMHT sebagai dasar pembebanan Hak Tanggungan dalam perjanjian kredit*, Tesis Magister Kenotariatan Unversitas Hasanuddin, Makassar.
- Rifki Yusuf,*Peran Notaris dalam Penggunaan Akta SKMHT Yang Tidak Diikuti APHT Terhadap Debitor Wanprestasi Terkait Pemberian Fasilitas Kredit Pemilikan Rumah Subsidi (Studi Kasus di Bank Tabungan Negara Pekalongan)*,Tesis Program Magister Kenotariatan Fakultas Hukum UNISSULA, Semarang.

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