

Dissenters vs Debtors Bank Promise: A Review of Normative Juridical

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ABSTRACT

The purpose of this study is to analyze how the form p potential protective laws against bankers in Indonesia to provide financing to the debtor. The form of financing provided by banks to customers is through certain businesses (UKM). Legal protection in this case if the contract defaults. Metode used is y uridis n ormatif which refers to the provisions of positive law in Indonesia through Law concerning Mortgage Rights and Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 and other laws and regulations. H acyl analysis of the study revealed that legal protection against certain banks give enough credit to the Power of Attorney Imposing Mortgage are valid until the expiration of the debt. This is as regulated in Law No. 4 In 1996, Article 15 and arranged further in the Minister of Agrarian And Spatial / Head of National Land Agency of the Republic of Indonesia ur reneged or in default then The Power of Attorney Imposing Underwriting Rights will be followed by the Deed on the Underwriting Right and registered with the land office to obtain the Underwriting Certificate. This is done because the Power of Attorney Imposing Kights is only in the form of granting power of attorney and does not constitute binding on the guarantee institution so that it does not have the power of execution. Registration into the Underwriting Right as effort to Execute collateral for the defaulted debtor.

Keywords: Banking; Debtors; Defaults; Normative Juridical

INTRODUCTION

Legal protection is an important issue for banks, especially in terms of operation. Legal protection for banks in terms of lending and borrowing operations necessary to have a clear and firm rules so that banks can carry out legal action if the debtor reneged in the agreement of debts. The operations are carried out in terms of lending and borrowing agreement required the additional agreements are the agreement of a guarantee. Banks in Article 3 of the Law of the Republic of Indonesia Number 7 of 1992 concerning banking state that banks function as a collector and distributor of public funds. Collecting public funds in this case the bank can collect funds from the community through savings provided to the public. While the channeling of funds is the bank as a financial institution that is given the authority to channel funds to the public through credit or business banks [1].

With the bank's function as one of the sources of funding for a business activity which is ultimately a stimulus for driving the economy, the role of the banking sector is very important as a driving factor for economic activity. In the process of debtor's business activities many factors can affect so that the debtor has no ability to repay loans given by the banking world. Because the funds used by banks to extend credit to debtors are public funds, the bank is obliged to keep credit or loans given to those debtors Back [2]. The provision of credit by the bank as a creditor to the debtor begins with a credit agreement which is the basis of the agreement [3].

Guarantees submitted in the form of land because the land was an object of high economic value and does not degrade its value can even be an increase in price. Therefore, the state must regulate everything related to the land, with the aim of maximum use to the people's welfare [4,5]. Land classified as immovable and can be used as collateral for the debt. Such term is defined in Act No. 4 of 1996 on Mortgage of Land along Objects Relating to Land (hereinafter referred UUHT). In-Law No. 4 of 1996 on Mortgage which has the objective to provide a foundation for the rule of Mortgage institution. Provided that the institution were strong. It stipulated in the regulations of which the position of the Power of Attorney Imposing Mortgage (SKMHT). The function SKMHT namely in terms Mortgage providers cannot be present in front of the Land Deed Officer or Notary Deed in the manufacture of Encumbrances Encumbrance [6,7].

Security agency governed by legislation such as Law No. 4 of 1996 on Mortgage is a rule that provides protection and legal certainty for providers and recipients of such guarantee. Rachmadi Usman

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said that the credit givers and recipients and other relevant parties had protection through a strong institution and the security Interest granted to provide legal certainty for all parties concerned [8]. Indonesia is a large country and based on a people's economy. Where the development of democratic economy is expected to improve the welfare of the community in a broad sense. Micro, Small and Medium enterprises (MSMEs) not only play a role in economic growth and employment, but also have a strategic position in supporting national economic development. Micro, Small and Medium Enterprises as the driving force of the populist economic system can reduce the problem of poverty and unemployment, besides those MSMEs also play a role in distributing the results of development [9].

The existence of MSMEs as the backbone of the Indonesian economy is no doubt. Its durability in dealing with the economic crisis which several times hit has also been tested. Such resilience is caused by MSMEs not having dependency on imported raw materials or foreign capital so that thirdly weakening of the rupiah, they are not affected. In fact, many of these MSMEs become export support. Either through direct export or as a provider of raw materials, the results of which will be exported. In addition, the majority of SMEs provide products and services at relatively cheap prices. Thus when there is a decline in people's purchasing power due to the crisis, MSMEs actually get a positive effect [10].

Based on the above data it is known that 98% more share is controlled by micro small and medium enterprises. But in terms of capital it is often a problem for micro and medium businesses. So that there is a need for regulations that can make it easier for micro and small businesses to get capital. Banks in carrying out their functions as suppliers in the form of credit certainly require the existence of guarantees from the debtor as a form of bank confidence in providing credit. Collateral is very important in the credit agreement so that there is a need for development of the guarantee system [11,12].

To support the development of micro small and medium enterprises in terms of getting bank credit. Indonesia through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 22 of 2017 makes it easy for certain business actors in terms of binding guarantees. Collateral that is bound as a form of debt repayment does not have to be registered with the Land Office in the form of liability for mortgages, but only enough to be bound by a Power of Attorney Imposing Mortgage Rights (SKMHT). Loans given by banks to debtors, especially to micro, small and medium enterprises, often experience problems. Problems that occur with the provision of credit given by banks in the event of a failure of payment from the debtor. Failure to pay in this case is called default.

Based on Minister of Agrarian and Spatial Planning/Head of National Land Agency of the Republic of Indonesia Number 22 of 2017 regarding the determination of the time limit the use of a power of attorney to charge encumbrance to guarantee repayment of certain loans. SKMHT under these rules can apply and used without the imposition of Mortgage Deed manufacture (APHT), but quite SKMHT until the end of the debt. SKMHT in this rule only applies to small businesses is often called by SMEs (Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency of the Republic of Indonesia Number 22 of 2017).

Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency of the Republic of Indonesia Number 22

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of 2017 do not regulate in detail the legal protection if the debtor breaks a promise. Therefore, the Bank should be protected by law if the debtor breaks a promise. This legal protection in order to provide legal certainty for the Bank in Indonesia. According to CahyoTime Limit Use of Power to weigh on Security in doingas set forth in PMA No. 22 2017 on Determination of deadline for use of a Power of Attorney to charge fees for Guaranteeing Mortgage Loans Settlement of Certain. Under these provisions, SKMHT used as collateral is apparent the need for legal reform SKMHT done to realize the objectives of the law as the basis of fairness, certainty and benefits to the community and stakeholders [13-16]. Based on this, it was analyzes by in-depth research on legal protection for Indonesian banks to SKMHT which is valid until the expiration of the debt.

MATERIALS AND METHODS

The research method is basically a series of systematic steps or methods used to find truth in a scientific work in this case is the writing of a dissertation, so as to produce a quality dissertation that is a dissertation that meets the research requirements. The method contains aspects including stages of activities carried out, materials and tools as well as ways used to collect data, process, and analyze to obtain answers to research questions [15].

Types of research

The type of research used is liter or library research, meaning a study by examining books or books related to this research originating from the library (library material). All sources come from written materials (print) relating to research problems and other literature as well as electronics [15].

Research approach

The approach used in this study is a qualitative approach, which is an approach that in data processing and analysis does not use numbers, symbols and or mathematical variables but with a deep understanding (in depth analysis) by examining the problem in case cases. In the discussion the researcher uses a normative juridical approach , which is the type of approach using statutory provisions that apply to a country or the method of doctrinal legal approach that is legal theories and opinions of legal scientists, especially those related to the issues discussed. In his discussion of researchers early this approach yuridi normative [17], that kind of approach to the use of statutory provisions that apply to a State or approach doctrinal law that legal theories and opinions of legal scholars, especially with regard to issues discussed. The juridicalnormative approach used in this study is the approach through legislation relating to the issues discussed.

Source or material

Source or materials used in the pen elitian is bersumberkan on the source material of primary research and secondary research material sources, namely

a) Primary research material sources in the form of; basic norms, laws and regulations. The regulations used as primary legal material are as follows :

1) Civil Code;

2) Law Number 4 of 1996 concerning Mortgage Rights and Land

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Related Items;

3) Law of the Republic I n donesia Number 20 Year 2008 on Micro, Small, and Medium Enterprises ;

4) Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 22 Year 2017 Regarding the Deadline for the Use of Power of Attorney Imposing Mortgage Rights to Guarantee Certain Credit Repayment;

5) Bank Indonesia Regulation Number 14/22/PBI/2012 Regarding Lending or Financing by Commercial Banks and Technical Assistance in the Context of Micro, Small and Medium Business Development.

b) Secondary research material sources in the form of: literature books, legal research reports namely written/scientific papers relating to the issues discussed, opinions/thoughts of experts, papers, newspapers, and other facilities that provide information services relating to the discussion of issues in this study.

Data processing and analysis techniques

a) Data processing techniques

The techniques used to process data in this study are:

1) Data editing: the process of selecting, focusing on simplifying, abstracting and transforming rough data arising from data that has been collected on the results of research, especially in terms of completeness, clarity of meaning, and suitability of data.

2) Organizing data, i.e. organizing and compiling data and grouping and categorizing in such a way as to produce complete and systematic material.

3) Presentation of data: i.e. presents a collection of data obtained presented in the form of a description arranged systematically and logically that allows the conclusion drawing. Systematic, i.e. all data obtained will be linked to one another, adjusted to the subject matter examined so that it is a unified whole.

b) Data analysis

Once the data is collected it will be in the analyst is using qualitative data, the four stages to be used in analyzing the data qualitatively, namely:

1) Collection, namely the collection of data obtained from materials collected related to legislation as well as books, books, scientific works, and other literatures.

2) Reduction, namely the selection and sorting of basic and important data needed in the preparation of research, so that the direction of discussion and flow is clear

3) Display, i.e. to insert the results of data reduction into patterns that are carried out in the form of a brief description. If the pattern has been found, then it is as a standard guideline which will then be displayed at the end of the study.

4) Conclusion, i.e. drawing temporary conclusions that may change if at the time of writing the research new data is found to support the research. In applying this stage, using two methods, namely:

a. Analysis of inductive, the method of thinking that departs from the fact - the fact that special events are then drawn generalizations of a general nature.

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b. Deductive analysis, namely the mindset that departs from

General facts or events which are then drawn by generalizations that are special in nature.

RESULTS AND DISCUSSION

According to Law No. 10 of 1998 on banking, the Bank is an entity that has the function to collect funds from the public in the form of savings and channel them to the public in the form of loans or other forms with the aim of improving the living standard of the people (Law of the Republic of Indonesia Number 10 of 1998). The decree states that the task of the bank one of them is doing lending to the public. Lending by banks would require the guarantee as a form of confidence of banks in providing credit/ loans to customers/debtors. According to Susilo, Triandaru and Santoso [4] is generally the bank's main function is to collect funds from the public and channel them back to the community to share the purpose or as a Financial Intermediary. Specifically the main functions of banks are:

Agent of trust

The main basis of banking activities is trust, both in terms of raising funds and channeling funds. The public will want to leave their funds at the bank if there is an element of trust. The community believes that the money will not be misused by the bank, the money will be used properly, the bank will not go bankrupt, and at the time promised the deposit can be withdrawn from the bank. The bank itself will be willing to place or distribute funds to debtors or the public if based on the existence of an element of trust. The bank believes that the debtor will not abuse the loan, the debtor will manage the loan funds well, the debtor will have the ability to pay when due and the debtor has good intentions to repay the loan and other obligations when due.

Agent of development

The economic activities of the people in the monetary sector and in the real sector cannot be separated. The two sectors always interact and influence each other. The real sector will not be able to perform well if the monetary sector does not work well. Bank activities in the form of fund raising and distribution are very necessary for the smooth running of economic activities in the real sector. The bank's activities enable the public to carry out investment, distribution, and consumption and service activities, bearing in mind that these activities cannot be separated from the use of money, the smooth running of these activities is nothing but a community economic development activity.

Agent of service

In addition to conducting fundraising and distribution activities, banks also offer other banking services to the public. The services offered by this bank are closely related to the economic activities of the community in general. These services can include money transfer services, safekeeping of valuables, providing bank guarantees, and billing settlement.

Article 1 number 11 of Law No. 10 of 1998 concerning Banking, credit is the provision of money or bills that can be likened to it, based on agreements or loan agreements between banks and other parties that require the borrower to repay debt after a certain period of time with interest. According to Hermansah a credit agreement

is a principal agreement (principle) that is real. As a principlebased agreement, the guarantee agreement is the assessor. The Existence and termination of the guarantee agreement depends on the principal agreement. The real meaning is that the occurrence of a credit agreement is determined by the transfer of money by the bank to the debtor customer and the credit agreement has the Rights and obligations between creditors and debtors;

a. Credit agreements serve as a tool for monitoring credit

The function of credit guarantees in order to award credit in respect of the seriousness of the borrower to meet its obligations to repay the loan in accordance with the agreement and use its funds properly and carefully. Both are expected to encourage the borrower to repay the debt so that it will be able to prevent disbursement of loan guarantees that may be unwanted because it has the value (price) is higher when compared with the borrower to the bank debt. Loans extended by banks one of which is the People's Business Credit (KUR). People's Business Credit (KUR) is a government program to support the empowerment of Micro, Small and Medium Enterprises (SMEs) and cooperatives. KUR as one form of credit to MSME needs to be monitored its implementation for each credit cannot be separated from the credit risk [12-16]. Factors that can affect the profitability of SMEs in a country are based on the number of business units, level of education, type of business, family-run businesses, expertise, licenses, advertisements and bank accounts which are significant in influencing the profitability of SMEs. These factors can help the country in making a policy towards development for the better interests. As well as providing understanding for investors, investment banks and other financiers.

Based on the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises, it provides an understanding of MSMEs. Article 1 number Micro Business is productive business owned by individuals and / or individual business entities that meet the criteria for Micro Business as stipulated in this Law. Number, Small Business is a productive economic business that stands alone, which is carried out by an individual or business entity that is not a subsidiary or not a branch of a company that is owned, controlled, or is a part either directly or indirectly of a Medium-sized Business or Business Large companies that meet the Small Business criteria referred to in this Law. Number, Medium Business is a productive economic business that stands alone, which is carried out by an individual or business entity that is not a subsidiary or branch of a company that is owned, controlled, or is a part either directly or indirectly with a Small Business or Large Business with a net worth or annual sales results of less than Rp 50,000,000,000.00 (fifty billion rupiah). Liabilities of banks to provide credit and financing provided for in Article 2 paragraph Bank Indonesia Regulations Number 14/22/PBI/2012 on Lending Or Financing by Commercial Banks and Technical Assistance in the Context of Development of Micro, Small, and Medium . Whereas in paragraph banks are required to provide credit to MSMEs at a minimum of 20% (twenty percent) which is calculated based on the ratio of MSME Credit or Financing to total Credit or Financing.

Based on the above data it can be seen that the realization of credit in the MSME sector is quite high. With the high realization of credit for MSMEs, of course it will also potentially have the risk of non-performing loans or debtors defaulting. Non-performing loans are also often referred to as Non-Performing Loans (NPL). The factors for the occurrence of Non-Performing Loans (NPL) are **a.** The credit agreement serves as the principal agreement;

b. The credit agreement serves as evidence of the limitations of caused by:

a. Lack of good faith from the debtor;

b. Policies from the government and Bank Indonesia;

c. Economic conditions.

Non-Performing Loans based on Bank Indonesia Regulation No. 6/10 / PBI / 2004 concerning the Rating System for Commercial Banks, stipulates that the ratio of non-performing loans (NPL) is 5%. The calculation formula for NPL is as follows:

Ratio NPL = (Total NPL / Total Credit) x 100%

The following is the ratio between loans and Non-Performing Loans (NPL) which can be seen in the following table in (Figure 1):

Based on PBI No No. 6/10 / PBI / 2004 which requires a NPL of 5% so that banks in providing loans must pay attention to the principle of prudence. As regulated in Article 8 of Law Number 10 of 1998. Article 8 of Law No. 10 of 1998 states that in giving credit or financing berasarkan Sharia, Commercial Banks are required to have faith based or faith-depth analysis and the ability and responsibility of debtor untu k repay the debt or restore the financing referred to in accordance with the agreement.

According to Law No. 4 of 1996 on Mortgage, that the object of mortgage is land. Land used as collateral must be bound by the imposition of Mortgage Deed. But if the existence of a condition has not been met, it can be tied first with the Power of Attorney Imposing Mortgage (SKMHT). It is as specified in Article 15 paragraph states that:

1. Paragraph Power of Attorney Imposing Mortgage over land rights that has been registered shall be followed by the manufacture of Giving Encumbrance no later than one month after given.

2. Paragraph Letter of Authority Imposing Mortgage over land rights that have not been registered shall be followed by the manufacture of Giving Mortgage Deed no later than 3 (three) months after granted.

3. Paragraph The provisions referred to in paragraph and does not apply in the case of the Power of Attorney Imposing Mortgage

Granted to certain credit guarantees set out in the legislation in force. Special credit referred to in paragraph is micro by noenterprises and small businesses.

The arrangement of the SKMHT valid until the expiration of the current debt stipulated in Minister of Agrarian and Spatial Planning Head of National Land Agency of the Republic of Indonesia No. 22 of 2017. The regulation has been in accordance with the provisions of Law No. 4 In 1996, Article 15. Thus, the bankers have got a good legal protection against the use of SKMHT without APHT tied to credit for micro and small businesses as well as certain loans. In the Regulation of the Minister of Agrarian and Spatial Planning / Head of National Land Agency of the Republic of Indonesia Number 22 of 2017 SKMHT the entry into force until the expiration of the debt that is stipulated in Article 2, namely:

1. Financing or lending can only be granted to the micro and small enterprises that are productive business with individual and corporate ownership of individual businesses;

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Kelompok Bank	2013	2014	2015	2016	2017	2018												Category of Bank
						Jan	Feb	Mar	Apr	Mai	Jan	Jul	Age	Sep	ON	Nov	Des	Category of Bank
ANCH [®]																	1	LINKA
1. Bars Persen																		1. State Owned Banks
Bain Debet	204.791	341.804	383.168	646.774	405.104	425.544	491.417	803.402	514.676	\$23.166	527.008	\$27,268	\$27.888	\$12,867	\$39,254	\$43,560	501.836	Tatal
Millio	87.667	106.208	121.575	196.962	175.296	175.854	175.585	10.402	187,807	192.290	190.015	193.591	196,423	198.330	201.001	205214	252.279	More
Fact	122.730	106.580	149.373	175.808	195.643	192.907	194,957	198,245	201.800	254,400	206.575	205.318	207.201	205.758	211.308	213.308	215.401	Staf
Monergati	94,363	10.104	105.221	113,874	124.247	115,304	117 278	120.494	125.039	126.363	121.315	128.356	125.064	123,860	124,257	427.188	134.175	Madum
MS.	18.362	12.138	13.437	14.068	17,460	26.522	21.347	21.267	25.865	23.190	21.309	19.516	17.008	16.725	16.367	16.276	12,998	MPS
Mero	1.481	1.825	2.223	2.354	2.70	3.168	3.439	3.323	3,414	3.401	3.521	3.379	3.266	3214	3.158	3.175	2.710	Monie
Racil	4 922	5.512	6.733	6.004	6612	7.301	7.821	1.727	8.130	8,756	8.320	4.155	8.177	8.112	7.842	7.810	6.615	Snaf
Menergali	3.960	4.757	3.487	6.221	8.947	8.853	10.041	15.15A	9.3%	9.005	3.408	7.981	5414	1.367	5.348	8.291	4.600	Alladurt
2 BPD	623	0.63	1.623	1.22	0.000	12.5	12.35	3.827	12.55	1.123	2.12	2.40	1375	1.1	0.00	22.11	12.00	2. Repone Development Banko
Bani Dabat	45.296	\$8.817	\$1.856	82.465	75.366	61,177	\$1,288	62,705	63.440	85.281	86.172	67.463	60,000	76.962	76,900	71,252	75.005	Tatar
Marp	9.196	8.733	8.167	9.101	15.5%	12.040	12131	12.307	12.416	12.807	12.903	12,065	13.279	13.456	13.471	13,790	13.891	ARC/U
1408	21,232	22.498	23.843	25.314	27.658	25.894	26.048	26.504	27.050	27.416	27.728	28.165	28.706	25.550	21.674	29432	28.77v	Graf
Manangati	16.509	18.847	16.829	25.942	26.962	23.234	23.108	23.941	23.977	24.768	25.412	34,233	28.680	27.947	27.798	27.809	27.423	Michael
APL .	2340	5.018	5.861	8.421	6.434	6.828	6.362	6.675	8.582	6.671	8.890	6.626	6.400	6.104	6.107	6.132	8.443	MPE
Maro	685	1.013	780	341	340	618	648	804	400	100	665	100	562	625	812	621	479	More
Naci	1.338	1.647	1.940	1,054	1.871	2.073	2114	2103	2.100	2210	2240	2.201	2 2 2 3 0	2.181	2174	2.147	2.002	Small
Menengati	943	2.354	3.03	A 206	6 100	4.138	1401	3.662	3.780	3.713	1761	3.054	3.706	3.368	3.402	2414	3.922	Alecture
3. Barn Swada Nascoral																		3. Fareign Exchange Commercial Bu
Basi Debel	245.101	261,568	288.578	289.379	218.222	311.439	382.767	315.400	347.475	211.100	212.625	210.401	309.862	313,887	321.000	102.525	338.488	Tatar
Miles	21,998	25.077	24/012	16.681	15.918	16,109	15.908	15.891	16.401	67.727	17.878	17.019	15.706	15.333	21302	12417	20.047	More
Kicl	41.954	41.458	44.953	39.505	44.847	44.710	45.530	45.065	46.879	46.807	45.544	48,158	48,452	48.830	5134	\$1,720	63.004	Snaf
Manangali	101.148	194,821	220.903	224.213	245.457	240.420	241328	243.583	244.345	246.655	247.908	245,273	244.636	245-014	258-001	201.100	285.404	Administra
MPL .	5.915	7.866	5.000	8.772	18.578	10.054	11.833	10.998	11,080	51.383	\$1.776	11.867	11,308	12,000	12.467	12.633	11.892	1415
Man	750	775	748	721	\$75	586	\$79	540	554	425	608	633	717	794	044	-816	606	More
Kaci	2077	2.348	2.518	200	1.873	2.045	1.879	1.877	1.542	1.822	1.953	1.952	1 1 1 1	1,000	1210	1.010	1.871	Smar
Manangali	3,406	6.647	6.422	7.026	8.016	8 226	1.03	6.402	8.544	0.546	8217	9.002	8.345	8.342	8,757	8,779	0.324	Allecture
4. Barn Aung dan Campuran								10100		100							1.000	4. Just Verture Banks and Poreign Overal Banks
Ban Detret	324%	17.714	15,199	16.404	7.200	7.0%	7.348	7.08	7.842	240	1.478	7.479	7.40	7.614	\$.775	8.813	1.40	Tatal
Mara	10.00	10.774	17	6	102	900	17	001	1.002	1.010	1,008	001	1.027	1.040		-	401	More
Auci	404	40	214	716	814	876	431	80	796	701	812	252	721	724	822	607	808	Small
Menergali	11 532	17.540	14,300	13.715	5.40	1.405	6.637	5.541	3.715	5.708	1.000	6.717	8.725	8.862	\$216	8.116	8.007	Malar
MS.	294	341	815	473	111	626	624	627		800	600	817	878	838		847	121	MTS .
Mars		34	-	ara			-	aur.	-			10					-	
1111111	12	1	2		10		-				2						1.1	More
Kacil	10	13	28	34	106	195	258	298	233	210	236	230	233	236	242	217	240	Snaf
Menergati	238	325	765	425	306	3/1	356	365	34	358	394	\$76	574	585	862	663	- 671	Medure Total
Real Datest	605.872	671.221	728.801	822.712	-	III.em	102.020	173.502	101.007	87.10	\$14.277	P12.649	PERMIT	121.421	81.775	10.10	10.172	Rel Dove
101	18,815	25.158	28.790	25.734	14.178	38.834	10.365	38,272	18.125	45.555	40.303	38.425	38.362	31.674	38,349	31.947	12.421	

Figure 1: Detail of SMEs Credit and Detail of MKM Credit Based on Group of Bank (Billion Rp) 2013-2018.

2. Financing or lending to housing provision is limited to:

a. Land with a maximum area of 200 m^2 and the building area is not more than 70 m^2 to the ownership or core home improvement, modest houses or flats with an area, and;

b. Ready to Build plot (BCC) with a land area of 54 m^2 up to 72 m^2 and special credit is only given to the improvement of the building.

3. To finance or other productive business loans with a ceiling of up to IDR 200,000,000.00 (two hundred million rupiah).

Under the provisions of the above is very clear that SKMHT be valid until the end of the debt, this is certainly a great help for the micro and small businesses to obtain capital fund or credit. Credit given to customers must be preceded by the existence of an agreement is a credit agreement. In the execution of the loan agreement made between the bank and its customers or businesses in the form of standard agreements. Bank credit agreement is a standard agreement whose contents are determined unilaterally by the bank, with the goal of efficiency. Small businesses with its unique characteristics, is in need of funds to develop their business so as to agree on what agreed in the credit agreement, although very burdensome. Credit agreements sometimes include a clause on the exoneration be added the rights and/or reduce the obligations of the bank, so the problem is how the application of the principle of balance in the manufacture of a bank loan agreement with small business customers. Bank in designing, formulating and establishing a credit agreement with a small business, required based on the provisions of the Financial Services Authority Circular No. 13/ SEOJK.07/2014 About Baku Treaty. The credit agreement shall not contain the exoneration clause in the form of the transfer of bank liabilities to customers, and express authorization from the customer to the bank, either directly or indirectly shall not contain clauses that have indications of abuse situation.

Application of the principle balance of the parties to implement the credit agreement have been agreed in good faith, as the application of the principle of justice and fairness shall not contain a clause to the effect that the customer is subject to the new regulations, additional, secondary and changes made unilaterally by the bank, therefore the content of the agreement should not be complicated by using a simple Indonesian adapted to the type of loans,

considering the characteristics and small businesses. SKMHT an Agreement to provide power to the Bank of particular importance. It is stipulated in Article 15 paragraph of Law No. 4 of 1996 on Mortgage of the requirements of SKMHT. The requirements in SKMHT namely:

a. Load power in the not to take legal actions in addition relates to impose Mortgage.

b. No substitutes (give power to others);

c. Mortgage load object clearly, the amount of debt and the name and identity of its creditor, the name and identity of the debtor if the debtor is not giving Encumbrance.

Because SKMHT only an authorization, then SKMHT only serves as an authorization of the debtor to the bank to take legal actions in order to charge a Mortgage. According to the Code of Civil Code Article 1792, the authorization is an agreement by which a person give power to someone else, who received it, for in his name conducting an affair in Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie). Imposition Mortgage is an agreement in order to guarantee a body to guarantee a loan or borrowing which is a security agency. According to Law No. 4 of 1996 that guarantees Mortgage has the force of law in the context of execution if the debtor break a promise while SKMHT not a security agency but solely as an institution of power which has not given a definite position as a preferred creditor.

Based on the above very clearly that SKMHT not have the force of law in carrying out execution if the debtor reneged in paying credit. Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency of the Republic of Indonesia Number 22 Year 2017 only regulates the entry into force SKMHT until the expiration of the debt, while if their reneged on the promise of the debtor then on the basis of the provisions of SKMHT that the Bank can as soon as possible of binding into Encumbrance. Under the provisions of Law No. 4 In 1996, Article 15 i.e. when SKMHT the time of limit specified in the regulations are not followed by the granting of mortgage deed null and void. Secure rights to land as collateral and not registered if the debtor did break a promise when SKMHT ends, then the lender cannot be executed directly against the guarantee. SKMHT have been made null and void because it does not follow with APHT and land registration process is carried

out until the end of the time period such SKMHT.

Thus that Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency of the Republic of Indonesia Number 22 Year 2017 has provided certainty and legal protection of enactment SKMHT until the expiration of the debt only to provide convenience and relief for small businesses (SMEs) and entrepreneurs with the number of a particular loan, whereas in case of breaking a promise to be tied into a deed granting of mortgage and registered land office. The binding is accompanied by a certificate of registration will be given. In the certificate as the provisions set forth in Article 14 paragraph of Law No. 4 of 1996 has executorial power, which has the same meaning as the court ruling that has obtained permanent legal force.

CONCLUSION

Based on the results of research and analysis we concluded that SKMHT has a function to loans to micro and small businesses as well as certain businessman are valid until the end of unmanageable debt in the Minister of Agrarian and Spatial Planning/Head of National Land Agency of the Republic of Indonesia Number 22Of 2017. Provisions it also complies with Article 15 of Law No. 4 of 1996 on Mortgage. With the exclusion of the legislation then in force until the expiration SKMHT debt created to provide protection and legal certainty for Indonesian banks to provide credit to micro and small businesses as well as certain business. It is a form of government assistance through the banking system to make it easy for debtors among the micro and small businesses as well as certain business.

SKMHT valid until the expiration of the debt will be binding to the Deed of Encumbrances Encumbrance (APHT) if the debtor reneged and registered with the local land office. Making the imposition of mortgage deed and the registration is done with regard to the execution of collateral objects. SKMHT be followed binding encumbrance because SKMHT only for the provision of power and not an insurance agency. Making the imposition of mortgage deed and the registration is done with regard to the execution of collateral objects. SKMHT be followed binding encumbrance because SKMHT only for the provision of power and not an insurance agency. Making the imposition of mortgage deed and the registration is done with regard to the execution of collateral objects. SKMHT be followed binding encumbrance because SKMHT only for the provision of power and not an insurance agency, so it cannot be used as a basis for carrying out guarantees.

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