

## Legal Implications of The Use of Permit to Open State Land as Collateral for Debt: A Case Study of Regional Regulation of Balikpapan City No. 1 of 2024

Fitrizki Eka Sari,<sup>1</sup> Imam Koeswahyono,<sup>2</sup> Hamidi Masykur<sup>3</sup>

Faculty of Law University Brawijaya Malang, Indonesia  
Email: Ftrzkieks@gmail.com

### ABSTRACT

Indonesia is a country abundant in natural resources and human resources, aiming to provide prosperity for its people. The need for credit and the provision of credit facilities require collateral. The government has established a credit guarantee institution capable of providing legal certainty and legal protection. One of these institutions is the Mortgage Rights institution regulated by Law Number 4 of 1996 concerning Mortgage Rights on Land and Related Objects (UUHT). In the city of Balikpapan, East Kalimantan, there is a legal product in the field of land management based on regional autonomy, adhering to the principle of decentralization that grants authority through the enactment of Regional Regulation Number 1 of 2014 concerning State Land Opening Permits, known as "Izin Membuka Tanah Negara" (IMTN). IMTN is a permit granted by the Mayor or designated official to individuals or legal entities to open and/or utilize state-owned land directly controlled by the government. In this Regional Regulation, it is explicitly stated that IMTN cannot be used as collateral for debt transactions. However, in Balikpapan, there are still cooperatives or financing institutions that accept IMTN as collateral, binding it with a credit guarantee that is subsequently accompanied by an additional agreement known as "Surat Kuasa Membebaskan Hak Tanggungan" (SKMHT). The existence of collateral with IMTN as the object is not permitted, as IMTN serves as administrative evidence for the initial proof of land rights ownership in Balikpapan. IMTN can later be processed to become land rights (Ownership Rights, Building Utilization Rights, Right to Use), which has led Notaries and Banks to accept IMTN as collateral.

### Keywords:

IMTN, SKMHT,  
Balikpapan  
Regional  
Regulation, Credit  
Collateral Objects

### INTRODUCTION

Indonesia, with its abundant natural resources and the potential of its human resources, must strive for the welfare of its population through strong national development efforts. National development is inevitably linked to legal aspects, which means that every sector of national development must be supported by a clear legal framework and regulations to ensure legal certainty. Especially in the economic context, national development requires significant investments, and one of the entities that plays a role in the economic sector by providing services such as lending is the banking institutions.

In providing credit guarantees and their facilities, collateral is often required. This is because, frequently, providing collateral can pose issues for the lender if the borrower's repayment does not align with the credit agreement. (Sri Soedewi Masjchoen Sofwan, 2001). Since the era of independence until the present, numerous legal regulations on collateral have been enacted and have become laws.

The government has established a credit guarantee institution capable of providing legal certainty and legal protection. One of them is the Mortgage Right institution regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Related Objects (UUHT), which is a continuation of the implementation of Law Number 5 of 1960 concerning the Basic Agrarian Regulations in Article 1 paragraph 1 of Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Related Objects in the State Gazette of the Republic of Indonesia in 1996 Number 42. (I. Sari, 2020)

Immovable assets like land are often chosen as collateral by the majority of banks in banking business practices through collateralization with the Mortgage Right institution. This is because of the advantages offered by the Mortgage Right institution, which can provide convenience and certainty for creditors in the execution process in case of debtor default, as it eliminates the need for a regular civil lawsuit procedure that consumes time and costs. (Boedi Harsono, 2008)

- a. Ownership right;
- b. Right to use;
- c. Building usage right;
- d. Right of use;
- e. Lease right;
- f. Right to open land;
- g. Right to collect forest product;
- h. Other rights not included in the above-mentioned rights which will be determined by law, as well as temporary rights as mentioned in Article 53. (Sukarman & Prasetya, 2021)

The Law on Mortgage Rights itself cannot be separated from land within the territory of the Republic of Indonesia, which is one of the main natural resources. Besides having deep spiritual value for the Indonesian people, it also plays a very strategic role in meeting the increasingly diverse and growing needs of the country and its people, both at the national level and in its relations with the international community. Although it can generally be bought and sold, in the view of the Indonesian people, who have not yet been influenced by Western thought, land is not a commodity for trade, as evidenced by the attitudes and actions of some entrepreneurs in their economic activities. Land is not an investment object, let alone a speculative one. (Boedi harsono, 2007)

In the legal sense, land has been officially defined. Land is the surface of the earth, as stated in Article 4 of the Agrarian Basic Law, which reads, "based on the right of control by the State... various rights to the surface of the earth, referred to as land, which can be granted to and owned by individuals..." (Rasyidi, 2021)

Philosophically, land is often interpreted as "land" rather than "soil," so land is seen in a multidimensional vision. Heru Nugroho states that land holds multidimensional meanings for society:

1. Economically, land serves as a means of production that can bring prosperity.
2. Politically, land can determine a person's position in decision-making within society
3. Culturally, land can determine the social status and hierarchy of its owner. Land has a sacred meaning as it deals with inheritance and transcendental issues. (Heru Nugroho, 2002)

Recognizing the importance of the benefits of land for humans and its status as a non-renewable natural resource, the government, through various policies, strives to regulate the utilization, designation, and use of land for the welfare of the Indonesian people. In the city of Balikpapan, East Kalimantan, there is a Regional Regulation in the field of land management based on regional autonomy principles that adhere to the principle of decentralization. (Simandjuntak, 2015)

which grants authority through the enactment of Regional Regulation of Balikpapan City Number 1 of 2014 concerning State Land Opening Permit, State Land Opening Permit (IMTN). IMTN is a permit issued by the Mayor or designated officials to individuals or legal entities to open and/or utilize land directly controlled by the state. (D. R. Sari, 2017)

The State Land Opening Permit (IMTN) itself does not serve as a Right Certificate or Proof of Ownership but rather serves as the initial evidence for processing the registration of overlapping land in Balikpapan City or as a precursor to the land rights certificate conversion. With the clarification that the State Land Opening Permit is not a Proof of Right Certificate, such ownership is not allowed to be used as collateral, as regulated in Regional Regulation of

Balikpapan City Number 1 of 2014 concerning State Land Opening Permit, Balikpapan City Regional Gazette Year 2014 Number 1, Article 12 paragraph (1), which reads:

Land classified as state land controlled by individuals or legal entities through IMTN cannot:

- a. be transferred to others; or
- b. be used as collateral for debt

The Regional Regulation has stated that IMTN cannot be used as collateral for debt. However, in Balikpapan City, there are still cooperatives or financial institutions that accept IMTN as collateral, which is bound by a Credit Guarantee followed by an Additional Agreement, namely SKMHT. Based on the existing Regional Regulation, using IMTN as collateral is not allowed, as IMTN serves as administrative evidence for initial proof of land rights in Balikpapan City. IMTN can later be processed to become land rights (Ownership Rights, Right to Build, Right to Use), which makes Notaries and Banks willing to accept IMTN as collateral.

### **METHOD**

The research method employed in this study is Normative Legal Research (Zainudin Ali, 2013) which focuses on examining the principles or norms in positive law regarding the prohibition of using the Permit to Open State Land, as stipulated in Regional Regulation of Balikpapan City Number 1 of 2014 Article 12 paragraph (1) letter b, which states that the Permit to Open State Land cannot be used as collateral.

The research methods used include the Statutory Approach and the Conceptual Approach, as outlined. (Dyah Ochtorina & A'an Efendi, 2014) The researcher aims to examine and analyze the prohibition on using the Permit to Open State Land as regulated in Regional Regulation of Balikpapan City Number 1 of 2014 concerning the Permit to Open State Land, particularly the restriction on using the Permit to Open State Land.

The Conceptual Approach is employed by the researcher to provide a more detailed description and analysis of the prohibition on the use of the Permit to Open State Land as regulated in Regional Regulation of Balikpapan City Number 1 of 2014 concerning the Permit to Open State Land.

### **RESULTS AND DISCUSSION**

The right of the state to control land originates from the Indonesian people's right to land, which essentially involves delegating the execution of the nation's authority duties containing elements of public law. Managing all land collectively cannot be carried out by every Indonesian citizen individually. Therefore, in its implementation, the Indonesian people, as the holders of the right and the bearers of this mandate, at the highest level, delegate it to the state of Indonesia as the organization of the entire population. (Yusran & Koswara, 2022)

Regarding state land, it can be categorized into two types: free state land and non-free state land. Free state land refers to land directly controlled by the state, with no other parties having any rights over it. On the other hand, non-free state land is land on which certain rights belonging to other parties have been attached, whether controlled by the community, private legal entities, or government agencies. In the case of land controlled by the community, it may involve customary rights or customary-owned land. (Tanjung Nugroho, 2012)

From the state's perspective, based on the Right to Control State Land, the state can determine various rights over agrarian resources that can be granted to and owned by individuals, either individually or collectively with others, as well as legal entities. The various land rights in the ownership and control of agrarian resources, according to Article 16 paragraph (1) of Law Number 5 of 1960 concerning the Basic Agrarian Principles, are categorized as follows:

- i. Right of ownership;
- j. Right to Cultivate;
- k. Right to build;

- l. Right of use;
- m. Right to lease;
- n. Right to open land;
- o. Right to collect forest product;
- p. Other rights not included in the above rights to be determined by law, as well as temporary rights as mentioned in Article 53. (Sukarman & Prasetya, 2021)

The state's authority over land that is legitimately owned by individuals with specific rights is limited by the terms of those rights. In other words, the state's authority extends only as far as it is granted to the landowner to use it.

Balikpapan is one of the cities in the East Kalimantan Province with increasing land administration activities, particularly since there has been discussion about relocating the capital city of Indonesia to the Paser region, which is relatively close to Balikpapan. In the context of meeting the needs of relocating the capital city from Jakarta to East Kalimantan, especially regarding land use for investment, it will have a direct impact on land administration regulations (Nahak, 2019). With this in mind, it is expected that the land clearance rate will increase. Consequently, land administration activities, especially in Balikpapan, will experience growth. One of the efforts by the Balikpapan City government in land administration is the issuance of the Permit to Open State Land (IMTN).

Conducting government affairs in the field of land administration by providing and protecting legal certainty and land rights is one of the land administration activities in Indonesia. (Rusmadi Murad, 2013) In Article 3 of the Basic Agrarian Law, customary law community rights are recognized as long as they still exist, provided they do not conflict with the prevailing legal regulations. Therefore, to ensure that communities receive protection and legal certainty in the field of land administration, attention to proof or land ownership documents is necessary, leading to the regulation of the existence of land seals in land administration activities.

Regional autonomy, as regulated by Law No. 22 of 1999 on Regional Government, was subsequently amended by Law No. 32 of 2004 and further replaced by Law No. 23 of 2014. This means that, based on the aspirations of the community and in accordance with regional regulations, regions have the initiative to manage their own regional interests. In the context of land matters, which is one of the decentralized authorities within the framework of the Unitary State of the Republic of Indonesia, regions have the freedom to regulate and manage land affairs within the framework of basic policies and fundamental legal provisions that apply nationally, as stated in the sentence: in accordance with regional regulations. (Muchsin, 2014) Regarding the authority of regional governments in the field of land affairs, the Balikpapan City Government enacted a legal product, namely Regional Regulation Number 1 of 2014 concerning the Permit to Open State Land.

The Permit to Open State Land (IMTN), as defined in Article 1, number 13 of Balikpapan City Regulation No. 1 of 2014 concerning the Permit to Open State Land, is considered one of the types of land rights certificates recorded at the City Government Office as initial evidence of ownership of land rights. IMTN is an authorization granted by the Mayor or an authorized official to individuals or legal entities to open and/or utilize land directly controlled by the State.

Another aspect to consider when granting power is related to the clarity of words when transferring rights over an object, providing collateral for an object or land, making an agreement, or any other action that can only be performed by the owner of the respective object. The power holder should exercise the authority granted to them by the power grantor and must not act beyond the limits set by the power grantor.

The Deed of Mortgage and Transfer of Land Rights (SKMHT) can also be considered an authentic deed made by a PPAT (Land Deed Official), and it has full probative value. To ensure the perfection of a PPAT deed as evidence, the deed must be presented as-is, without the need for interpretation or evaluation. The validity of a deed prepared by a PPAT must still

meet the four essential requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, which are.(Usman, n.d.)

- A. Mutual consent of the parties involved;
- B. Legal capacity to enter into an agreement;
- C. A specific subject matter;
- D. A lawful cause.

SKMHT (Deed of Mortgage and Transfer of Land Rights) is a document or deed that contains a power of attorney granted by the Mortgagor/Landowner (Grantor of Power) to the attorney-in-fact to represent the Grantor of Power in granting a Mortgage Right to the Creditor for the land owned by the Grantor of Power. SKMHT given by the Grantor of Mortgage Right cannot be made orally or in a handwritten power of attorney and must be in a specific power of attorney document. According to the provisions of the UUHT (Law on Mortgage Rights over Land and Related Objects), SKMHT must be made through a notarial deed or a deed prepared by a PPAT (Land Deed Official). (Widjaja, 2008).

Then, regarding the implications of using IMTN as the object of collateral incorporated into SKMHT, the first concern relates to the security of the land. Based on the theory of legal certainty, SKMHT with IMTN as its object will become invalid because the legal consequence of the Deed of Mortgage and Transfer of Land Rights with IMTN as its object is null and void, as explained in Article 15 paragraph (6) of the Mortgage Law, which states that SKMHT that is not followed by the establishment of a Deed of Mortgage as referred to in Article 15 paragraphs (3) and (4), with a registration land, the SKMHT period is 1 month, and for unregistered land, it must be followed by the establishment of APHT no later than 3 (three) months after the signing of the SKMHT.

Furthermore, SKMHT (Power of Attorney for Imposing Mortgage Rights) related to the object of Izin Membuka Tanah Negara can also be considered legally defective due to procedural flaws. SKMHT may not comply with the procedures required by the Mortgage Law and the provisions of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 regarding Land Registration. Additionally, there are substantive defects because the object of SKMHT is Izin Membuka Tanah Negara, which does not correspond to the object of Mortgage Rights.

With the cancellation of SKMHT, it will result in the collateral for the credit agreement being considered null and void. This provision is stipulated in Article 15 paragraph 6 of the Mortgage Law, which states that SKMHT not followed by APHT within the specified timeframe shall be considered null and void. However, for the creation of a mortgage, it is necessary to go through not only the stage of encumbrance of the mortgage but also the registration stage at the Land Office. If the registration process cannot proceed from the stage of granting the mortgage to the creation of APHT, then the subsequent registration at the Land Office cannot be performed. This will result in the creditor's status becoming that of a concurrent creditor, meaning they do not have any preferential rights to receive repayment of their debt ahead of other creditors, and the distribution is equitable among all creditors. If all or part of the debtor's assets have been transferred to another party because they are no longer owned by the debtor, they no longer serve as collateral for the repayment of the creditor's debt. The cancellation of SKMHT can lead to the bank not having control over the debtor's collateral, which could result in losses for the bank if the debtor defaults in the future. However, the nullification of SKMHT does not affect the credit agreement itself, as the credit agreement is the principal agreement, whereas the mortgage is an ancillary agreement. With the cancellation of the ancillary agreement, the principal agreement or credit agreement remains binding on both parties.



With only a credit agreement without collateral, the general guarantee provisions specified in Article 1131 of the Civil Code will apply, positioning the creditor as a concurrent creditor subject to Article 1132 of the Civil Code. PPAT (Land Deed Official) should refuse to create SKMHT for land with unclear ownership status. IMTN is not a right to land that is the object of a mortgage as regulated in Article 51 of the Basic Agrarian Law in conjunction with Article 4 of the Mortgage Law, which includes rights to land such as Ownership Rights, Cultivation Rights, Building Use Rights, and Land Use Rights on state land that is registered.

### CONCLUSION

SKMHT (Deed of Mortgage Authorization) with IMTN as its object will be invalid because the legal consequence of the Deed of Mortgage Authorization related to the object of Opening State Land Permit is null and void. SKMHT concerning State Land Opening Permits can also be considered legally defective due to procedural defects, as SKMHT will not comply with the procedures required by the Mortgage Law and the Regulations of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulations of the Minister of Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 regarding Land Registration. Additionally, there are substantive defects because the object of SKMHT is the Opening State Land Permit, which is not in accordance with the object of the Mortgage.

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