



Effectiveness of the use of power of attorney to encumber mortgage rights by financial technology (fintech) companies in digital financing schemes

Adhitya Rizky Prabowo, I Gede AB Wiranata, Sunaryo

rizkyprabowo02@gmail.com, iwiranata@yahoo.com, sunaryo.1960@fh.unila.ac.id

Extraordinary Member of the Association of Land Deed Officials, Professor of law faculty, University of lampung, Lecturer of the Faculty of Law, University of Lampung

Abstract

This study examines the effectiveness of using a digital Power of Attorney to Encumber Mortgage Rights (SKMHT) by fintech companies in digital financing schemes by identifying the challenges of adapting traditional legal instruments to the dynamics of information technology, particularly concerning the validity of electronic documents and data security. The main issue faced is how to integrate electronic signatures and encryption technology in accordance with the provisions of the Electronic Information and Transactions Law (UU ITE), the Mortgage Rights Law, and the principles of the Indonesian Civil Code (KUHPerdata), while also meeting the supervisory standards set by the Financial Services Authority (OJK). The research method used is normative legal analysis, involving a literature review of relevant laws and legal documents to understand the regulatory framework underlying the implementation of digital SKMHT. The findings indicate that with the adoption of advanced technologies such as data encryption and blockchain, along with the harmonization of traditional and digital legal regulations, the implementation of digital SKMHT can enhance security, transparency, and legal certainty in digital financing transactions.

Keywords:

power of attorney, mortgage rights, fintech.

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Introduction

In the rapidly evolving digital era, fintech companies have become the spearhead of innovation in the financial sector by offering fast, efficient, and easily accessible financing solutions. This transformation requires adjustments to traditional legal instruments, one of which is the Power of Attorney to Encumber Mortgage Rights (SKMHT), as a guarantee that can secure digital financing transactions. The use of SKMHT by fintech not only meets market needs but also opens up opportunities for the development of legal aspects relevant to information technology.

Historically, SKMHT has been used as a tool to ensure debt repayment by encumbering mortgage rights on a property. This instrument has a strong legal foundation and has been recognized in various conventional financing transactions. However, with the emergence of digital systems, this traditional legal mechanism must be adapted to maintain its legal force and relevance in an increasingly digital environment, presenting challenges for regulators and legal practitioners.¹

The integration of SKMHT into digital financing schemes by fintech companies requires innovation not only in technology but also in legal compliance. The shift to digitalization demands the use of electronic signatures, real-time data verification, and the implementation of advanced cybersecurity systems. Additionally, the digital application of SKMHT must adhere to the principles of legal certainty and fairness so that all involved parties—both creditors and debtors—are legally protected.

This study aims to fill the gap in literature regarding the effectiveness of SKMHT in the digital environment, particularly within fintech companies. The research will identify the extent to which this legal instrument can ensure transaction security and manage credit risks in digital financing. Thus, this study is not only theoretical but also applicable in addressing legal challenges arising from the development of financial technology.

The research method used is a normative legal approach by examining laws and regulations, academic literature, and legal documents related to SKMHT and digital transactions. This normative approach aims to understand the legal basis underlying the use of SKMHT in digital financing transactions and how existing regulations can adapt to technological advancements. The analysis will focus on interpreting applicable laws, principles of security rights law, and the relevance of regulations governing the use of SKMHT in digital transactions.

The legal elements in this study are the main focus, especially in examining the validity and legitimacy of electronic signatures on SKMHT. This research will also discuss the relationship between SKMHT implementation and applicable regulations, such as the Mortgage Rights Law, the Electronic Information and Transactions Law (UU ITE), and regulations from the Financial Services Authority (OJK). A legal analysis will be conducted

¹<https://www.upitra.ac.id/berita/read/perkembangan-fintech-di-indonesia>

to assess the compatibility of SKMHT mechanisms with the principles of legal certainty, fairness, and consumer protection in the digital financing system.

By integrating legal aspects, this research is expected to provide a comprehensive overview of the effectiveness of SKMHT use by fintech companies in digital financing schemes. The study's findings are expected to contribute academically and practically, serving as a reference for regulators and industry players in formulating strategies to optimize legal protection in the era of digital transformation.

Discussion

The digital transformation in the financial sector has brought significant changes to conventional legal practices, one of which is the implementation of the Power of Attorney to Encumber Mortgage Rights (SKMHT) in digital financing schemes. This innovation necessitates the adaptation of traditional legal instruments to align with an increasingly modern and technology-based transaction environment while ensuring legal certainty for all involved parties.

Traditionally, SKMHT is a legal instrument that grants creditors the authority to impose mortgage rights on a property as collateral for debt repayment. The legal basis for the use of SKMHT can be found in the Mortgage Rights Law, which establishes that imposing mortgage rights on a property is a legally valid mechanism for securing debt payment. Furthermore, the principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code (KUHPerdata),² strengthens the binding force of contracts lawfully established between parties.

The development of information technology has driven the adaptation of SKMHT into a digital format, where electronic documents and electronic signatures replace physical documents. This shift presents unique challenges, particularly concerning the validity, authenticity, and integrity of digitally exchanged data. Therefore, adjustments must be made to ensure that this legal instrument continues to meet the formal and material requirements set by the law.

The legal recognition of electronic documents in Indonesia is affirmed through the Electronic Information and Transactions Law (UU ITE), which has undergone several amendments, including Law No. 19 of 2016. According to Articles 11 and 12 of the UU ITE, electronic signatures and electronic documents have the same legal standing as conventional signatures and documents, provided that the necessary verification and security processes are fulfilled.

The application of electronic signatures in digital SKMHT requires advanced encryption and data authentication systems to ensure document authenticity. This aligns with the provisions of the UU ITE, which mandate that every electronic transaction must be

²The Indonesian Civil Code (KUHPerdata), specifically Article 1338 on the principle of freedom of contract.

protected from data manipulation and identity fraud, ensuring that digital documents can serve as legally admissible evidence.³

Furthermore, traditional legal principles regarding the encumbrance of mortgage rights also require compliance with formal requirements as stipulated in the Mortgage Rights Law. Although the execution mechanism of SKMHT has undergone a digital transformation, the fundamental principles governing debt collateral must be maintained to prevent deviations from the principles of creditor and debtor protection.⁴

The principle of legal certainty, as regulated in Article 1338 of the Civil Code, emphasizes that every legally established agreement binds the parties as if it were law. Therefore, digital SKMHT must be designed to meet all underlying legal requirements, ensuring that its legal force remains intact despite being executed in electronic form.

The integration of technology, such as encryption systems, multi-factor authentication, and even blockchain technology, can enhance the integrity and transparency of digital documents. Blockchain technology, for example, offers an immutable recording system, providing strong evidence in case of disputes related to digital SKMHT. This represents an innovative approach to addressing the challenges of electronic document verification.⁵

Additionally, regulations from the Financial Services Authority (OJK) play a crucial role in overseeing the implementation of digital SKMHT by fintech companies. OJK issues guidelines and regulations governing governance, security, and operational compliance for digital financing service providers, ensuring that every transaction involving SKMHT adheres to established technical and legal standards.

OJK regulations require fintech service providers to conduct periodic internal audits and monitoring to ensure that every electronic transaction complies with applicable legal provisions. This helps maintain data integrity and transaction security in an increasingly complex digital environment.⁶

In a legal context, the implementation of digital SKMHT must also meet consumer protection standards. Although Law No. 8 of 1999 on Consumer Protection does not specifically regulate digital transactions, it provides fundamental principles of protection that must be followed to prevent misuse and unfairness in financing transactions.⁷

³Law Number 19 of 2016 on Amendments to the Electronic Information and Transactions Law (UU ITE).

⁴Seng, D. K. B. (2024). Electronic evidence. *Available at SSRN 4964150*.

⁵Handoko, R. M., Trisna, B. A. A., Pratama, R. D., & Parhusip, J. (2024). Implementasi Blockchain untuk Keamanan Sistem Pembayaran Digital dan Optimasi Transaksi Keuangan (Studi Kasus Industri Fintech di Indonesia). *Teknik: Jurnal Ilmu Teknik Dan Informatika*, 4(2), 64-74.

⁶Susanto, E., Antira, L., Kevin, K., Stanzah, E., & Majid, A. A. (2023). Manajemen Keamanan Cyber Di Era Digital. *Journal of Business And Entrepreneurship*, 11(1), 23-33.

⁷Law Number 8 of 1999 on Consumer Protection.

The obligation of service providers to offer clear and transparent information to consumers is also highly relevant in digital transactions. This ensures that consumers understand the risks and their rights in every electronic transaction, including those involving SKMHT.

The implementation of SKMHT in digital form requires the integration of information technology systems with the existing legal framework. Data verification, storage, and security processes must comply with national standards to ensure that every digital document holds the same legal weight as conventional documents.

In dispute resolution, Indonesian laws—including the UU ITE and Civil Code—have accommodated electronic evidence as legally admissible proof. Indonesian courts have shown a tendency to accept digital evidence as long as verification procedures are conducted in accordance with the legal requirements outlined in the UU ITE.⁸

The implementation of digital SKMHT also presents challenges related to the interoperability of digital systems with traditional legal procedures. Therefore, periodic regulatory reforms are necessary to keep up with technological advancements without compromising fundamental principles of security rights law.⁹

The digital recording systems used to store SKMHT documents must ensure that every transaction is accurately recorded and cannot be altered. Distributed ledger technology, such as blockchain, serves as a promising alternative to achieve this goal, as it is transparent and resistant to data manipulation.

Cybersecurity is another crucial aspect that must be considered in the implementation of digital SKMHT. Fintech companies are required to implement security measures such as data encryption and multi-factor authentication to prevent data breaches and transaction fraud.

In the context of contract law, the drafting of clauses in digital SKMHT must ensure clarity and avoid ambiguity. Using consistent legal language that adheres to national standards minimizes the risk of future disputes and ensures that the rights and obligations of the parties are clearly defined.

The regulations governing digital SKMHT are not only national in scope but also align with international standards on electronic transactions. This creates opportunities for

⁸Mayana, R. F., & Santika, T. (2021). Legalitas tanda tangan elektronik: kemungkinan dan tantangan notary digitalization di Indonesia. *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, 4(2), 244-262.

⁹Daffa, M. F., Rahman, S., & Qahar, A. (2023). Kekuatan Pembuktian Tanda Tangan Elektronik sebagai Alat Bukti dalam Perkara Perdata. *Journal of Lex Philosophy (JLP)*, 4(1), 205-221.

Indonesian fintech companies to adapt to global best practices while enhancing competitiveness in international markets.¹⁰

Harmonizing traditional regulations, such as the Mortgage Rights Law, with digital provisions under the UU ITE establishes a robust legal foundation for the implementation of digital SKMHT. The synergy between these legal systems ensures that technological innovations do not undermine fundamental principles of legal protection.

In practice, every digital transaction involving SKMHT must be supported by strict auditing and internal control mechanisms. This serves as a preventive measure to anticipate potential legal violations and minimize risks arising from technical errors or data manipulation.

A strong and adaptive legal framework will enable the sustainable development of digital financing systems. With support from regulations such as the UU ITE, the Mortgage Rights Law, and OJK guidelines, the use of digital SKMHT can provide optimal legal protection for all parties involved.

Collaboration between regulators, fintech service providers, and legal practitioners is essential in updating and refining the existing regulatory framework. This collaborative approach ensures that every technical and legal aspect of digital transactions is regularly updated to keep pace with technological advancements.

Overall, the integration of SKMHT into digital financing schemes is supported by a comprehensive legal framework, including the Mortgage Rights Law, the UU ITE and its amendments, and fundamental principles contained in the Civil Code. The proper implementation of regulations and harmonization between technological innovations and traditional legal frameworks ensure that digital transactions can proceed securely, efficiently, and fairly for all parties involved.

Conclusion

The implementation of digital SKMHT in financing schemes by fintech companies demonstrates significant potential in enhancing transaction efficiency and security, provided that there is harmonization between traditional and digital regulations, such as the Electronic Information and Transactions Law (UU ITE), the Mortgage Rights Law, and guidelines from the Financial Services Authority (OJK). The integration of technologies such as electronic signatures, data encryption, and blockchain has proven to enhance the authenticity and transparency of digital documents used as collateral. This indicates that regulatory updates and collaboration between regulators, technology providers, and legal practitioners are key to creating a secure and reliable digital financing ecosystem. Thus, the adoption of digital

¹⁰Omiyani, S., Suprpto, S., & Saprudin, S. (2023). Digitalisasi Tandatangan Elektronik pada Akta Notaris. *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, 8(4), 3913-3930.

SKMHT, accompanied by regulatory adjustments, can provide optimal legal protection for all parties involved in digital financing transactions.

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- The Indonesian Civil Code (KUHPperdata), specifically Article 1338 on the principle of freedom of contract.