



## Legal Certainty in the Execution of Mortgage Rights for the Settlement of Non-Performing Loans

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**Abstract.** Legal certainty in the execution of Mortgage Rights is essential for protecting creditors and ensuring the effective resolution of non-performing loans (NPLs) in Indonesia. Although Law No. 4 of 1996 concerning Mortgage Rights (UUHT) provides a comprehensive legal framework for secured lending, its implementation continues to encounter significant legal and institutional challenges. This study aims to examine the extent to which the existing legal framework ensures legal certainty, identify the doctrinal, procedural, and institutional barriers affecting Mortgage Rights execution, and propose legal reforms to improve its effectiveness. The research employs normative legal research using statutory, conceptual, and case approaches. Legal materials were collected through library research and analyzed qualitatively using statutory interpretation, comparative analysis, and source triangulation. The findings indicate that the UUHT establishes a coherent framework through the principles of speciality, publicity, droit de préférence, and droit de suite, supported by executorial title, parate executie, and private sale mechanisms. However, inconsistent judicial interpretation, procedural complexity, fragmented institutional coordination, and incomplete digital implementation continue to undermine effective execution and legal certainty. As the principal contribution, this study proposes an Integrated Legal Certainty Model that combines normative harmonization, judicial consistency, institutional coordination, digital mortgage integration, and balanced creditor-debtor protection.

**Keywords:** Integrated Legal Reform, Legal Certainty, Non-Performing Loans, Mortgage Rights, Secured Transactions.

Received: March 2, 2026 | Revised: April 11, 2026 | Accepted: June 18, 2026





**Abstrak.** *Kepastian hukum dalam pelaksanaan Hak Gadai sangat penting untuk melindungi kreditur dan memastikan penyelesaian kreditur bermasalah (KPR) yang efektif di Indonesia. Meskipun UU No. 4 Tahun 1996 tentang Hak Gadai (UUHT) menyediakan kerangka hukum yang komprehensif untuk pemberian pinjaman dengan jaminan, implementasinya terus menghadapi tantangan hukum dan kelembagaan yang signifikan. Studi ini bertujuan untuk meneliti sejauh mana kerangka hukum yang ada menjamin kepastian hukum, mengidentifikasi hambatan doktrinal, prosedural, dan kelembagaan yang memengaruhi pelaksanaan Hak Gadai, dan mengusulkan reformasi hukum untuk meningkatkan efektivitasnya. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan hukum perundang-undangan, konseptual, dan kasus. Materi hukum dikumpulkan melalui penelitian kepustakaan dan dianalisis secara kualitatif menggunakan interpretasi hukum perundang-undangan, analisis komparatif, dan triangulasi sumber. Temuan menunjukkan bahwa UUHT menetapkan kerangka kerja yang koheren melalui prinsip-prinsip kebususan, publisitas, *droit de préférence*, dan *droit de suite*, yang didukung oleh mekanisme hak eksekusi, *parate executie*, dan penjualan pribadi. Namun, interpretasi peradilan yang tidak konsisten, kompleksitas prosedural, koordinasi kelembagaan yang terfragmentasi, dan implementasi digital yang tidak lengkap terus melemahkan pelaksanaan yang efektif dan kepastian hukum. Sebagai kontribusi utama, studi ini mengusulkan Model Kepastian Hukum Terintegrasi yang menggabungkan harmonisasi normatif, konsistensi peradilan, koordinasi kelembagaan, integrasi hipotek digital, dan perlindungan kreditur-debitur yang seimbang.*

**Kata kunci:** *Reformasi Hukum Terpadu, Kepastian Hukum, Kredit Macet, Hak Hipotek, Transaksi Jaminan.*

## 1. Introduction

Banks play a vital role in economic development by mobilizing public funds and providing credit to support investment, business growth, and employment. However, lending always involves the risk of borrower default, making legal certainty essential to banking operations. Creditors require a legal framework that ensures the enforceability of credit agreements and enables effective debt recovery when default occurs. Without adequate legal protection, banks face greater financial uncertainty that may reduce lending confidence and limit credit distribution. Therefore, effective creditor protection is fundamental to maintaining banking stability and supporting sustainable economic development.<sup>1</sup>

Despite improvements in banking supervision, non-performing loans (NPLs) remain a persistent challenge in Indonesia. NPLs continue to reduce bank profitability, increase operational costs, and constrain new lending, even though they remain within the prudential threshold set by the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*). Economic instability and market volatility further complicate debt recovery, particularly when creditors face obstacles in enforcing collateral rights. These conditions highlight the importance of an effective legal framework for collateral execution to protect creditors, safeguard debtor rights, and maintain financial stability.<sup>2</sup>

To reduce credit risk, Indonesian banking law recognizes Mortgage Rights (*Hak Tanggungan*) as the primary legal security over land and land-related assets. The enactment of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (*Undang-Undang Tentang Hak Tanggungan /UUHT*) established a comprehensive legal framework intended to provide certainty for secured lending transactions. Under the UUHT, creditors holding Mortgage Rights obtain preferential status over other creditors, allowing them to receive priority in the distribution of proceeds from collateral sales when borrowers default. The law incorporates several fundamental principles, including publicity, speciality, preference, and executorial enforceability, that are intended to strengthen legal certainty, facilitate debt recovery, and encourage greater confidence in the credit

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<sup>1</sup> Vincentia Wahyu Widajatun, "Correlation Floods, Natural Disasters to NPL Insmes Indonesia," (2019): 33. See also, Metya Kartikasary et al., "Factors affecting the non-performing loans in Indonesia," *Accounting* 6, no. 2 (2020): 101; Sriono et al., "Dissenters vs debtors bank promise: A review of normative juridical," *J. Legal Ethical & Regul. Issues* 24, no. 2 (2021): 14; Maria Alfons, "Implementation of The Transfer of Home Ownership Credits Under The Law," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 3 (2024): 643.

<sup>2</sup> Widajatun, "Correlation Floods, Natural Disasters," 33. See also, Kartikasary et al., "Factors affecting the non-performing loans," 101.

market.<sup>3</sup> Consequently, Mortgage Rights have become the cornerstone of secured lending in Indonesia because they provide both legal assurance and economic confidence for creditors.

However, the effectiveness of Mortgage Rights depends not only on their legal establishment but also on the availability of efficient execution mechanisms. Article 20 of the UUHT provides three alternative methods for enforcing Mortgage Rights: execution based on the executorial title contained in the Mortgage Certificate, *parate executie* through a public auction, and private sale based on mutual agreement between the creditor and debtor.<sup>4</sup> These mechanisms are designed to enable creditors to recover debts efficiently while maintaining procedural fairness for debtors. In practice, public auctions conducted through the Office of State Assets and Auction Services (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*) remain the most frequently used enforcement mechanism, whereas negotiations and voluntary settlements are generally encouraged before compulsory execution is initiated.<sup>5</sup> From a statutory perspective, these procedures appear sufficient to support an efficient and predictable system of secured debt recovery.

Nevertheless, practical implementation reveals that the execution of Mortgage Rights is often far more complicated than envisioned by the legislation. Various legal disputes continue to delay or even prevent the realization of collateral despite the existence of clear statutory provisions. Debtors frequently challenge auction procedures, dispute collateral ownership, or question property valuations. In many cases, third parties, including heirs or subsequent possessors of the collateral, file legal claims that suspend or delay execution even after auctions have been lawfully completed.<sup>6</sup> These recurring disputes demonstrate that the existence of legal rules alone does not automatically guarantee legal certainty in practice.

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<sup>3</sup> Ayup Suran Ningsih et al., “Re-Evaluation of creditor protection in mortgage enforcement: the legal perspectives of the auction enforcement of mortgage objects under the Indonesian Law,” *Masalah-Masalah Hukum* 54, no. 3 (2025): 452. See also, Muhammad Abas et al., “Kepastian Hukum Terhadap Pelaksanaan Penghapusan Hak Tanggungan Ditinjau Dari Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan,” *Justisi Jurnal Hukum* 7, no. 2 (2022): 263; Sriono et al., “Dissenters vs debtors bank promise,” 14; Alfons, “Implementation of The Transfer,” 643.

<sup>4</sup> Surizki Febrianto, and Sri Devi Ayunda, “The implementation of execution auction by creditors on debtor rights guarantee in the office of state assets and auction services (kpknl) in Indonesia,” *International Journal of Innovation, Creativity and Change* 10, no. 5 (2020): 111.

<sup>5</sup> Disa Soraya, “Legal Protection of Disadvantaged Debtor Customers in the Implementation of Object Execution Auction Procedures in Bank Credit Agreements,” *Indonesia Private Law Review* 2, no. 1 (2021): 43. See also, Ali Abdullah et al., “Kajian Perbedaan Nilai Limit Dalam Pelaksanaan Lelang Eksekusi Hak Tanggungan,” *Jurnal Hukum Sasana* 10, no. 2 (2024): 220; Ulil Afwa et al., “Implementation of Prudential Banking Principles: State Responsibility in Combating Banking Crimes in Indonesia,” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 2 (2024): 736.

<sup>6</sup> Tifani Rini et al., “Maintaining Legal Certainty in Indonesia: The Role of Legal Instruments in Protecting Auction Buyer,” *Al-Abkam* 34, no. 2 (2024): 399. See also, Ika Atikah, “The Urgency

Judicial interpretation has become another important source of legal uncertainty. Although Article 6 of the UUHT explicitly authorizes creditors to conduct parate executie without obtaining prior judicial approval, courts have not always interpreted this provision consistently. Several judicial decisions continue to require court involvement before collateral execution may proceed, creating uncertainty regarding the scope of creditors' executorial rights. This inconsistent interpretation has weakened the efficiency originally intended by the UUHT because creditors are often required to undertake additional judicial procedures before realizing their collateral.<sup>7</sup> As a result, execution procedures that were intended to be simple and efficient frequently become lengthy, costly, and unpredictable.

In addition to judicial inconsistency, several institutional and administrative problems further reduce the effectiveness of Mortgage Rights enforcement. Lengthy verification processes, administrative deficiencies, disputes concerning auction valuation, and limited coordination among banks, auction offices, land agencies, and judicial institutions often delay debt recovery while increasing litigation costs.<sup>8</sup> Furthermore, insolvency proceedings frequently create overlapping claims between secured creditors and other stakeholders, requiring careful coordination between Mortgage Rights law and bankruptcy legislation. Comparative studies also indicate that Indonesia's mortgage execution system remains relatively litigation-oriented compared with several other jurisdictions where secured creditors can enforce collateral more efficiently through streamlined procedures with limited judicial intervention.<sup>9</sup> These institutional weaknesses indicate that legal certainty depends not only on statutory provisions but also on coherent implementation across multiple legal institutions.

The Indonesian government has introduced several regulatory reforms to improve the administration of secured transactions, particularly through the

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of mortgage agreement as an effort to realize the trust by bank as Creditor," *Jurnal Hukum Dan Peradilan* 10, no. 1 (2021): 44.

<sup>7</sup> Siti Malikhatun Badriyah et al., "Implementation of the constitutional court decision regarding the execution of fiduciary guarantees and inclusion of default clauses in Indonesia," *International Journal of Criminology and Sociology* 10, no. 1 (2021): 35. See also, Nur Hakim, "Legal Protection of Secured Creditors in Contemporary Bankruptcy: A Comparative Study of Positive Law and Islamic Law," *MIL.Rev: Metro Islamic Law Review* 4, no. 2 (2025): 1198.

<sup>8</sup> Muliani Sam et al., "Public Accountability in the Management of Non-Performing Loans in Indonesia," *Public Policy and Administration* 23, no. 4 (2024): 445. See also, Muhammad Yusni et al., "Settlement of Problem/Non-performing Loans through Non-Litigation Methods by Government Banks in Indonesia," *International Journal of Criminal Justice Sciences* 16, no. 2 (2021): 138; Soraya, "Legal Protection of Disadvantaged Debtor Customers," 43.

<sup>9</sup> Bachtiar Marbun et al., "The Interplay of Banking Development and Legal Reforms," *Lentera Hukum* 11, no. 2 (2024): 232. See also, Blessing Katuka et al., "Demystifying the Role of Governance Quality and Fiscal Space on Nonperforming Loans in Zimbabwe," *Institutions and Economies* 7, no. 3 (2024): 15.

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digitalization of land registration and electronic Mortgage Rights services. Electronic registration is expected to increase transparency, reduce administrative delays, improve documentation accuracy, and strengthen legal certainty in secured lending transactions. However, recent studies suggest that the legal framework governing electronic Mortgage Rights has not yet been fully harmonized with existing procedural regulations. Questions remain regarding the legal authority of land deed officials, the evidentiary value of electronic documents, and procedural consistency between digital systems and conventional execution mechanisms.<sup>10</sup> These developments indicate that technological modernization alone cannot eliminate legal uncertainty unless accompanied by broader regulatory and institutional reforms.

Previous studies have significantly improved understanding of individual aspects of Mortgage Rights execution. Existing scholarship has discussed public auction procedures and collateral sales, legal debates concerning parate executie, constitutional and judicial developments affecting execution mechanisms, legal protection for auction buyers and creditors facing third-party claims, comparative approaches to mortgage enforcement, the relationship between secured transactions and bankruptcy law, digital transformation of Mortgage Rights administration, and contractual fairness within consumer protection law.<sup>11</sup> Together, these studies confirm the central role of Mortgage Rights in Indonesia's secured lending system while simultaneously highlighting continuing legal and procedural problems affecting their practical implementation.

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<sup>10</sup> Kartina Pakpahan, "Problems Of Implementation Of Electronic Land Certificate Arrangements As Debt Guarantee," *Prophetic Law Review* 13, no. 3 (2022): 85. See also, Nelly Azwarni Sinaga et al., "From the standpoint of progressive law, the idea of legal protection for land deed officials in the electronic mortgage system," *Edelweiss Applied Science and Technology* 8, no. 6 (2024): 5331; Riza Zulfikar et al., "Digital Land Registration Transformation: Does Indonesia's Ptsl Program Guarantee Legal Certainty, Equity, And Justice?," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 11, no. 1 (2026): 337.

<sup>11</sup> Febrianto, and Ayunda, "The implementation of execution auction," 111. See also, Soraya, "Legal Protection of Disadvantaged Debtor Customers," 43. See also Badriyah et al., "Implementation of the constitutional," 35. See also, Ningsih et al., "Re-Evaluation Of Creditor Protection," 452; Francesca Lagioia et al., "AI in search of unfairness in consumer contracts: the terms of service landscape," *Journal of Consumer Policy* 45, no. 3 (2022): 507; Ayup Suran Ningsih, "Creditor Of Fiduciary Facing Bankruptcy, What Should They Do?," *Diponegoro Law Review* 10, no. 1 (2025): 32; Pakpahan, "Problems Of Implementation," 85. See also, Sinaga et al., "From the standpoint of progressive law," 5331; Zulfikar et al., "Digital Land Registration Transformation," 337; Ratih Agustin Wulandari et al., "Analysing Collateral Execution in Islamic Banks: A Perspective on Indonesian Law in Light of Islamic Finance Principles," *Manchester Journal of International Economic Law* 1, no. 1 (2024): 216; Hakim, "Legal Protection of Secured Creditors," 1198; Rini et al., "Maintaining Legal Certainty," 399; Marbun et al., "The Interplay of Banking Development," 232.

Although previous studies have examined Mortgage Rights from the perspectives of auction procedures, parate executie, bankruptcy, judicial interpretation, and digital registration, these issues are generally discussed in isolation. As a result, existing research provides limited understanding of how legal, procedural, and institutional factors collectively affect the legal certainty of Mortgage Rights execution in resolving non-performing loans. Moreover, little attention has been given to integrating Mortgage Rights law with bankruptcy regulations, auction procedures, consumer protection, and digital land administration to strengthen creditor protection while ensuring procedural fairness. This fragmentation leaves important questions regarding the legal and institutional conditions required to achieve effective and predictable Mortgage Rights execution in Indonesia.

To address these gaps, this study develops an integrated legal certainty framework for analysing Mortgage Rights execution in resolving non-performing loans. It examines the interaction between legal interpretation, execution procedures, institutional coordination, and recent regulatory developments to explain the remaining barriers to effective collateral enforcement. By doing so, this study offers a more comprehensive understanding of Mortgage Rights execution and proposes legal reforms to strengthen creditor protection, improve debt recovery, and enhance legal certainty in Indonesia's secured lending system.

Accordingly, this study seeks to answer three research questions: (1) How does the existing legal framework governing Mortgage Rights execution ensure legal certainty in the settlement of non-performing loans? (2) What doctrinal, procedural, and institutional obstacles undermine the effective execution of Mortgage Rights in Indonesia? (3) What legal reforms are necessary to strengthen legal certainty and improve the effectiveness of Mortgage Rights execution in resolving non-performing loans? By addressing these questions, the study contributes to the development of Indonesian secured transactions law through a more comprehensive understanding of Mortgage Rights enforcement and provides policy recommendations aimed at improving legal certainty, enhancing creditor protection, and supporting more effective resolution of non-performing loans.

## **2. Research Methods**

This study employs normative legal research, which focuses on examining legal norms, principles, and doctrines governing the execution of Mortgage Rights in the settlement of non-performing loans.<sup>12</sup> Normative legal research is considered

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<sup>12</sup> Richa Rahmatin et al., "Legal Reconstruction of Electronic Land Rights Certificates Burdened with Mortgage Rights as a Form of Credit Guarantee Banking," *International Journal of Business, Economics, and Social Development* 6, no. 3 (2025): 390.

appropriate because the issues addressed primarily concern the interpretation and application of legal rules and judicial decisions relating to secured lending transactions.<sup>13</sup>

The research adopts three approaches. The statutory approach is used to examine legal instruments governing Mortgage Rights and banking activities, particularly Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Law Number 10 of 1998 concerning Banking, and procedural provisions contained in the *Herziën Inlandsch Reglement (HIR)* and *Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura (RBg)*. The conceptual approach is employed to analyze legal doctrines and theories concerning legal certainty, creditor protection, and the execution of material security rights. Furthermore, the case approach is utilized by examining judicial decisions relevant to the execution of Mortgage Rights, including Supreme Court Decision Number 3210 K/PDT/2000 concerning the implementation of Mortgage Rights execution.

The collection of legal materials was carried out through library research by identifying, classifying, and reviewing relevant legal documents and academic literature. The collected materials were subsequently analyzed qualitatively using descriptive and prescriptive methods through statutory interpretation and comparative analysis of regulations, legal doctrines, and judicial decisions. To enhance the reliability of the findings, source triangulation was conducted by comparing information derived from legislation, legal scholarship, and judicial practice to identify legal consistencies and inconsistencies affecting the realization of legal certainty in the execution of Mortgage Rights.

### **3. Results and Discussion**

#### **3.1. Assessing Legal Certainty under Indonesia's Mortgage Rights Framework**

The legal certainty of secured lending is one of the fundamental requirements for a stable banking system because credit transactions inevitably involve the risk of debtor default. Financial institutions require legal mechanisms that not only recognize security interests over collateral but also ensure that these rights can be enforced effectively when borrowers fail to fulfill their contractual obligations. In Indonesia, Mortgage Rights (*Hak Tanggungan*) represent the principal legal instrument governing security rights over land and land-related assets. Their existence serves not merely to protect individual creditors but also to support financial intermediation by encouraging banks to extend credit with greater

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<sup>13</sup> Mahmud Marzuki, *Penelitian hukum: Edisi revisi*, (Jakarta: Prenada Media, 2017), 32.

confidence. Consequently, the effectiveness of Mortgage Rights directly influences banking stability, credit expansion, and broader economic development.<sup>14</sup>

Indonesia's current Mortgage Rights regime represents a significant legal reform aimed at eliminating the fragmented security system inherited from the colonial period. Before the enactment of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (*Undang-Undang Tentang Hak Tanggungan/UUHT*), land-based security was governed by two separate institutions: *hypothek*, regulated under Book II of the Indonesian Civil Code, and *credietverband*, regulated under Staatsblad 1908 No. 542 as amended by Staatsblad 1937 No. 190. The dual application of these institutions reflected the pluralistic colonial legal system, where different categories of land rights were subject to different legal regimes. Besides creating procedural complexity, this dualism resulted in inconsistent registration procedures, overlapping execution mechanisms, and excessive reliance on judicial intervention, thereby reducing legal certainty for creditors.

The introduction of the Basic Agrarian Law of 1960 (*Undang-Undang Pokok Agraria/UUPA*) sought to unify Indonesia's land law by replacing colonial institutions with a national legal framework. Article 51 of the UUPA specifically mandated the establishment of a new security right over land that would replace *hypothek* and *credietverband*.<sup>15</sup> However, this mandate remained unimplemented for more than three decades because no implementing legislation was enacted. During this transitional period, creditors continued to rely on colonial legal institutions despite their incompatibility with Indonesia's developing banking system.

The enactment of the UUHT on 9 April 1996 therefore marked a major milestone in Indonesian secured transactions law. Rather than merely replacing previous regulations, the UUHT established a comprehensive and unified legal framework governing the creation, registration, transfer, extinction, and execution of Mortgage Rights throughout Indonesia. The law also fulfilled the constitutional objective of the UUPA by introducing a nationally applicable security institution capable of supporting modern financing activities. From the perspective of legal certainty, this legislative reform significantly reduced normative fragmentation because creditors, debtors, land administrators, and courts now operate within a single statutory framework governing land-based collateral.

The importance of this reform extends beyond legislative unification. Modern banking depends on predictable collateral enforcement because uncertainty in debt recovery increases lending risks and reduces the willingness of financial institutions to provide credit. Consequently, the UUHT functions not only as land legislation

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<sup>14</sup> Widajatun, "Correlation Floods, Natural Disasters," 33. See also, Kartikasary et al., "Factors affecting the non-performing loans," 101; Sriono et al., "Dissenters vs debtors bank promise," 14.

<sup>15</sup> Sugina Hidayanti et al., "The land legal system in Indonesia and land rights according to the basic agrarian law (UUPA)," *Legal Brief* 11, no. 1 (2021): 371.

but also as an important component of Indonesia's financial regulatory system by providing legal assurance that secured obligations may be enforced when borrowers default.<sup>16</sup>

The legal certainty created by the UUHT is primarily reflected in the legal characteristics of Mortgage Rights themselves. Unlike personal guarantees that depend upon the debtor's personal responsibility, Mortgage Rights constitute proprietary security rights that attach directly to immovable property. As a result, the security remains effective regardless of subsequent transfers of ownership until the secured obligation has been fully discharged. This proprietary nature significantly strengthens creditor protection because enforcement depends upon the collateral itself rather than the debtor's continuing financial capacity.

The UUHT incorporates several fundamental legal principles that collectively establish certainty in secured transactions. First, the principle of speciality requires clear identification of both the secured debt and the collateral object. This requirement minimizes ambiguity concerning the scope of the security interest and prevents disputes regarding the assets subject to execution. Second, the principle of publicity requires registration of Mortgage Rights at the Land Office, thereby making the security interest legally enforceable against third parties and ensuring transparency within land administration. Third, the principle of *droit de préférence*, grants secured creditors priority over unsecured creditors in receiving payment from the proceeds of collateral execution. Finally, the principle of *droit de suite* ensures that Mortgage Rights continue to encumber the collateral even if ownership is transferred to another party. Collectively, these principles provide predictability, transparency, and enforceability, which are central elements of legal certainty within secured lending transactions.<sup>17</sup>

The preferential position granted to mortgage holders constitutes one of the most important legal protections established by the UUHT. In practice, creditors extend financing based on the expectation that they will receive priority repayment if the debtor defaults. Without such preferential status, secured lending would lose much of its commercial value because creditors would compete equally with unsecured claimants during debt recovery. Therefore, the principle of *droit de préférence* not only protects creditors individually but also supports the prudential

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<sup>16</sup> Audilia Hany Azura, and Taupiqurrahman, "Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Pada Lembaga Perbankan Berdasarkan Pasal 6 Uuht," *Jurnal Hukum dan Kenotariatan* 5, no. 4 (2021): 659. See also, Widajatun, "Correlation Floods, Natural Disasters," 33; Kartikasary et al., "Factors affecting the non-performing loans," 101.

<sup>17</sup> Mario Ihutan Jeremia et al., "Urgency, Mechanism, and Efficiency: An Economic Law Framework of Credit Dispute Resolution," *Nurani Hukum* 8, no. 1 (2025): 15. See also, Ningsih et al., "Re-Evaluation Of Creditor Protection," 452; Sriono et al., "Dissenters vs debtors bank promise," 14.

banking principle by reducing credit risk and encouraging greater financial intermediation.<sup>18</sup>

The Mortgage Rights framework also promotes legal certainty through procedural formalization. Security interests become fully enforceable only after proper registration, while instruments such as the Power of Attorney to Impose Mortgage (*Surat Kuasa Membebankan Hak Tanggungan/SKMHT*) provide temporary legal protection pending registration. This procedural structure strengthens certainty because both creditors and debtors clearly understand the legal status of the collateral throughout the lending relationship.<sup>19</sup>

From a broader regulatory perspective, Mortgage Rights also interact with several complementary legal frameworks. Bankruptcy Law recognizes secured creditors as preferential claimants during insolvency proceedings, although coordination problems may arise during asset liquidation.<sup>20</sup> Consumer Protection Law contributes indirectly by requiring fairness in contractual relationships and preventing abusive lending practices.<sup>21</sup> Likewise, proportionality principles in banking contracts require financial institutions to balance creditor protection with debtor rights throughout the lending and execution process.<sup>22</sup> These complementary regulations demonstrate that legal certainty is not created solely by the UUHT but by the interaction of multiple legal regimes supporting secured transactions.

The effectiveness of Mortgage Rights ultimately depends upon the availability of reliable enforcement mechanisms. Legal certainty cannot be achieved merely by recognizing security rights if creditors encounter substantial obstacles when attempting to realize collateral. For this reason, Articles 6 and 20 of the UUHT establish several execution mechanisms intended to provide efficient recovery while preserving procedural fairness.

Article 20 recognizes three principal methods of Mortgage Rights execution. The first is execution based on the executorial title contained in the Mortgage Certificate. Because the certificate carries executorial force comparable to a final court judgment, creditors possess a legally recognized basis for enforcing collateral when debtors default.<sup>23</sup> This mechanism strengthens legal certainty by reducing the

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<sup>18</sup> Sriono et al., “Dissenters vs debtors bank promise,” 14. See also, Ningsih et al., “Re-Evaluation Of Creditor Protection,” 452.

<sup>19</sup> Soraya, “Legal Protection of Disadvantaged Debtor Customers,” 43.

<sup>20</sup> Ningsih, “Creditor Of Fiduciary Facing Bankruptcy,” 32.

<sup>21</sup> Lagioia et al., “AI in search of unfairness,” 507.

<sup>22</sup> Galang Prayogo, and Faisal Arif, “Application of Proportionality Principles on Creditor and Debtor Interests in Banking Credit Agreement,” *European Research Studies* 21, no. 3 (2018): 129. See also, Maria Stephannie Halim, “Perlindungan Hukum Terhadap Pemilik Jaminan Dalam Lelang Eksekusi Hak Tanggungan,” *Jurnal Hukum Bisnis Bonum Commune* 15, no. 4 (2018): 101.

<sup>23</sup> Febrianto, and Ayunda, “The implementation of execution auction,” 111.

need for repetitive judicial examination regarding obligations that have already been contractually established.

The second mechanism is *parate executie*, regulated under Article 6 of the UUHT, which authorizes creditors to sell collateral directly through a public auction without obtaining prior judicial approval. This mechanism represents one of the most significant innovations introduced by the UUHT because it was specifically designed to overcome the lengthy judicial procedures associated with the former *hypothek* system. In principle, *parate executie* reflects legislative recognition that secured creditors require a fast, predictable, and commercially efficient enforcement process. In Islamic banking disputes, similar enforcement objectives may also be supported through arbitration and alternative dispute resolution mechanisms, further demonstrating legislative efforts to improve execution efficiency.<sup>24</sup>

The third mechanism is private sale (*penjualan di bawah tangan*), which allows collateral to be sold directly based on mutual agreement between the creditor and debtor when such a sale is expected to obtain the highest economic value. Compared with compulsory auctions, private sales often reduce transaction costs, shorten settlement time, and maximize the proceeds available for debt repayment. Consequently, this mechanism reflects the legislative objective of balancing efficiency with fairness by encouraging consensual debt resolution before compulsory enforcement becomes necessary.<sup>25</sup>

Among these alternatives, public auction remains the dominant enforcement mechanism in practice. Auctions are conducted through the State Assets and Auction Services Office (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*) and are regulated by the Minister of Finance Regulation No. 27/PMK.06/2016 concerning auction procedures and valuation standards, as well as PMK No. 213/PMK.06/2020, which strengthens procedural protection for debtors during execution.<sup>26</sup> Before auctions proceed, creditors generally attempt negotiation or restructuring to minimize disputes and preserve commercial relationships. Where

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<sup>24</sup> Dewi Nurul Musjtari et al., "Parate Execution in Disputes Settlement of Financing Contract with Mortgage Guaranteed On Islamic Banking Practices," In *IOP Conference Series: Earth and Environmental Science*, (Bristol: IOP Publishing, 2018), 12187. See also, Christopher K. Odinet, "Modernizing Mortgage Law," *North Carolina Law Review* 100, no. 1 (2021): 113; Surya Perdana et al., "Advantages and Disadvantages of Electronic Mortgage Registration Based on the Perspective of Business Administration Law," *International Journal Reglement & Society (IJS)* 3, no. 2 (2022): 182.

<sup>25</sup> Soraya, "Legal Protection of Disadvantaged Debtor Customers," 43.

<sup>26</sup> Ayup Suran Ningsih, "The Legal Protection for Debtors in the Execution of Mortgage at the Semarang State Assets and Auction Service Office," *Jurisdictie* 12, no. 1 (2021): 440348. See also, Soraya, "Legal Protection of Disadvantaged Debtor Customers," 43.

negotiation fails, KPKNL provides a transparent institutional mechanism for converting collateral into repayment while ensuring procedural compliance.<sup>27</sup>

Recent administrative reforms have further strengthened the statutory framework through the introduction of the Electronic Mortgage Rights System. Digital registration improves administrative efficiency, enhances transparency, and accelerates documentation of security interests. Nevertheless, questions concerning the legal responsibilities of land deed officials and the evidentiary status of electronic documentation indicate that digital modernization still requires greater regulatory harmonization before its contribution to legal certainty can be fully realized.<sup>28</sup>

Overall, the existing legal framework demonstrates that Indonesia has established a relatively comprehensive statutory system governing Mortgage Rights. The combination of proprietary security rights, preferential creditor protection, multiple execution mechanisms, formal registration requirements, auction regulations, and digital administration provides a strong normative basis for legal certainty. Comparative studies similarly suggest that these statutory arrangements broadly reflect internationally recognized principles of secured transactions law.<sup>29</sup> Nevertheless, legal certainty under the current framework remains primarily normative rather than practical. Although the legislation clearly defines creditor rights, execution procedures, and institutional responsibilities, their effectiveness ultimately depends on consistent judicial interpretation, efficient institutional coordination, and predictable implementation. Consequently, the existing framework provides a high degree of formal legal certainty, but only moderate practical legal certainty, because procedural delays, inconsistent interpretation, and implementation challenges continue to reduce the predictability originally intended by the UUHT.<sup>30</sup> This finding forms the basis for the next section, which examines the doctrinal, procedural, and institutional obstacles that continue to undermine the effective execution of Mortgage Rights in Indonesia.

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<sup>27</sup> Febrianto, and Ayunda, “The implementation of execution auction,” 111. See also, Soraya, “Legal Protection of Disadvantaged Debtor Customers,” 43.

<sup>28</sup> Nuzul Putri Ramadhani et al., “Inkonsistensi Pengaturan Pelaksanaan Parate Eksekusi Objek Hak Tanggungan Atas Tanah,” *Jurnal Kajian Konstitusi* 1, no. 2 (2021): 177. See also, Raden Fidela Raissa Ramadhanti et al., “Parate eksekusi terhadap objek hak tanggungan dalam hukum positif di Indonesia,” *Notaire* 5, no. 1 (2022): 443; Sinaga et al., “From the standpoint of progressive law,” 5331.

<sup>29</sup> Marbun et al., “The Interplay of Banking Development,” 232.

<sup>30</sup> Febrian Elmadiantini et al., “Legal Consequences of Designating Cultivation Rights as Abandoned Land in the Context of Credit Collateral Objects,” *Srivijaya Law Review* 9, no. 1 (2025): 164. See also, Hakim, “Legal Protection of Secured Creditors,” 1198; Sam et al., “Public Accountability In The Management,” 445; Yusni et al., “Settlement of Problem,” 138.

### 3.2. Doctrinal, Procedural, and Institutional Barriers to Effective Mortgage Rights Execution

Although Indonesia has established a relatively comprehensive legal framework governing Mortgage Rights through Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (*Undang-Undang Tentang Hak Tanggungan/UUHT*), effective execution of collateral remains difficult in practice.<sup>31</sup> The existence of detailed statutory provisions does not automatically produce legal certainty because the implementation of Mortgage Rights is influenced not only by substantive legal norms but also by judicial interpretation, procedural complexity, and institutional coordination. Consequently, creditors frequently encounter delays, litigation, and administrative obstacles despite holding legally valid security interests. These barriers demonstrate that legal certainty in mortgage execution depends not merely on the completeness of legislation but also on the consistency of interpretation and the effectiveness of legal institutions.

The first category of obstacles consists of doctrinal barriers, which originate from inconsistencies in legal interpretation and conflicts among legal norms. The most significant issue concerns Article 6 of the UUHT, which grants the first mortgage holder the authority to sell the collateral through a public auction upon debtor default. Normatively, this provision reflects the principle of *parate executie*, allowing creditors to enforce Mortgage Rights without obtaining a prior court judgment. The provision was intended to ensure a rapid and efficient recovery mechanism while preserving the economic function of secured credit.

In practice, however, Article 6 has generated divergent judicial interpretations. Some courts have interpreted the provision literally, recognizing the creditor's autonomous authority to conduct public auctions through the State Assets and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*). Other courts have adopted a more restrictive interpretation by requiring prior judicial approval or additional judicial supervision before execution may proceed. These inconsistent interpretations have reduced predictability for creditors and encouraged debtors to challenge execution procedures through litigation. Consequently, the efficiency originally intended by the doctrine of *parate executie* has often been undermined by judicial uncertainty.<sup>32</sup>

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<sup>31</sup> Ivan Yosa Ari Ramadita, and Yunanto, "Analisis Pelaksanaan Lelang Sebagai Tindak Lanjut Eksekusi Hak Tanggungan Perspektif Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1315. See also, Rodrico Agustino Renee et al., "Hipotek Sebagai Jaminan Hak Kebendaan Setelah Berlakunya Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan," *Lex Et Societatis* 9, no. 1 (2021): 149.

<sup>32</sup> Ningsih et al., "Re-Evaluation Of Creditor Protection," 452. See also, Febrianto, and Ayunda, "The implementation of execution auction," 111.

The uncertainty is further complicated by judicial precedents issued by the Supreme Court (*Mahkamah Agung*) and the Constitutional Court (*Mahkamah Konstitusi*). Supreme Court decisions have not always adopted a uniform approach regarding the relationship between Article 6 of the UUHT and general civil procedural law. Meanwhile, Constitutional Court decisions emphasizing constitutional protection of property rights and procedural fairness have strengthened debtor protection but simultaneously encouraged more cautious judicial review of mortgage execution. Although these decisions seek to balance creditor and debtor interests, they also contribute to differing interpretations concerning the scope of creditors' execution rights.

Doctrinal uncertainty also arises from the interaction between the UUHT and other statutory instruments. The execution provisions contained in the UUHT frequently intersect with the Indonesian Civil Procedure Code (HIR/RBg), which generally requires judicial involvement for compulsory execution. This overlap creates normative tension because the UUHT promotes simplified execution through *parate executie*, whereas civil procedural law emphasizes judicial supervision over enforcement measures. Similar conflicts arise in insolvency proceedings under the Bankruptcy Law. When collateral belongs to a bankrupt debtor, questions frequently emerge regarding whether secured creditors may immediately exercise their Mortgage Rights or must coordinate with bankruptcy administrators and insolvency courts. Judicial practice increasingly emphasizes coordination in insolvency proceedings to protect competing creditor interests, thereby limiting the practical effectiveness of unilateral execution by secured creditors.<sup>33</sup> These overlapping legal regimes demonstrate that the principal challenge is no longer the absence of regulation but rather the coexistence of multiple legal norms that are not always harmoniously interpreted.

The second category consists of procedural barriers, which significantly affect the practical implementation of Mortgage Rights. Although the UUHT provides several execution mechanisms, the actual execution process remains considerably more complicated than the statutory provisions suggest. Public auction remains the most frequently used mechanism because it enables creditors to recover outstanding debts through the sale of collateral. Auction implementation is regulated through Minister of Finance Regulation No. 27/PMK.06/2016 and subsequently strengthened by Minister of Finance Regulation No. 213/PMK.06/2020 to improve procedural fairness and debtor protection.<sup>34</sup> Nevertheless, compliance with these procedural requirements often increases administrative complexity and extends the overall execution process.

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<sup>33</sup> Hakim, "Legal Protection of Secured Creditors," 1198.

<sup>34</sup> Soraya, "Legal Protection of Disadvantaged Debtor Customers," 43. See also, Ningsih, "The Legal Protection," 440348.

Even after an auction has been completed, litigation frequently continues. Debtors commonly file lawsuits alleging procedural defects, improper declarations of default, or violations of good faith during execution. In many cases, third parties, including heirs or individuals claiming ownership interests in the collateral, also initiate legal proceedings against auction winners or creditors. Such disputes may suspend the transfer of ownership or delay the realization of auction proceeds, despite the auction having been conducted according to formal legal procedures.<sup>35</sup> Consequently, creditors often achieve only formal execution while practical recovery remains delayed by subsequent litigation.

Valuation disputes constitute another significant procedural obstacle. Determining an appropriate auction value is essential to protect both creditor and debtor interests. However, allegations that collateral has been sold below its market value frequently become the basis for legal challenges. Courts may review whether auction procedures complied with valuation standards established under Minister of Finance Regulation No. 27/PMK.06/2016, and significant discrepancies between appraisal values and auction prices may result in the cancellation of auction outcomes.<sup>36</sup> Such disputes illustrate that procedural fairness has become inseparable from the broader objective of ensuring legal certainty.

Execution delays also arise from administrative verification procedures. Verification of land certificates, mortgage registration, debtor documentation, and ownership status frequently requires coordination among multiple government agencies before execution can proceed. These administrative requirements, while necessary to ensure legal validity, often prolong the execution process and reduce the economic value of collateral recovery. Weak verification systems and lengthy administrative procedures have therefore become important contributors to inefficiency in resolving non-performing loans.<sup>37</sup>

Moreover, execution resistance remains a recurring practical problem. Debtors frequently resist the physical surrender of collateral even after valid auction proceedings have been completed. Such resistance may require additional judicial assistance or intervention by law enforcement authorities, resulting in further delays and increased execution costs. Complex litigation initiated by debtors or third parties therefore substantially weakens the effectiveness of Mortgage Rights as a rapid enforcement mechanism.<sup>38</sup>

The third category involves institutional barriers, which concern the performance and coordination of institutions responsible for implementing Mortgage Rights. Effective execution requires close cooperation among courts,

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<sup>35</sup> Rini et al., “Maintaining Legal Certainty,” 399.

<sup>36</sup> Soraya, “Legal Protection of Disadvantaged Debtor Customers,” 43.

<sup>37</sup> Sam et al., “Public Accountability in the Management,” 445.

<sup>38</sup> Ningsih et al., “Re-Evaluation of Creditor Protection,” 452. See also, Soraya, “Legal Protection of Disadvantaged Debtor Customers,” 43.

KPKNL, the Land Office, banks, and Land Deed Officials (*Pejabat Pembuat Akta Tanah/PPAT*). Although each institution performs legally defined functions, weak coordination among these agencies frequently undermines execution efficiency.

Courts continue to play a central role, particularly when execution disputes arise or judicial assistance becomes necessary. While judicial supervision strengthens procedural legitimacy, inconsistent judicial practices often contribute to uncertainty regarding execution timelines and procedural requirements. At the same time, KPKNL serves as the principal institution responsible for organizing public auctions, but auction implementation remains dependent upon the completeness of documentation submitted by creditors and verification conducted by other institutions. Administrative deficiencies or disputes concerning ownership frequently delay auction scheduling and completion.<sup>39</sup>

The Land Office also performs an essential role because ownership transfer following auction cannot be finalized without proper registration of the successful bidder's title. Delays in land administration, document verification, or registration procedures reduce the practical effectiveness of execution even after legally valid auctions have been completed. Similarly, banks must ensure that mortgage documentation, credit agreements, and collateral registration comply fully with statutory requirements before execution begins. Weak documentation or inconsistencies in contractual clauses may later become grounds for litigation, increasing legal uncertainty.<sup>40</sup>

PPATs contribute to legal certainty through the preparation and registration of mortgage deeds. Errors in documentation or procedural irregularities during the establishment of Mortgage Rights may subsequently affect execution validity. Consequently, legal certainty depends not only upon execution procedures but also upon the quality of legal documentation created at the beginning of the lending relationship.

Institutional coordination problems become even more apparent in the implementation of Electronic Mortgage (*Hak Tanggungan Elektronik*). The introduction of electronic registration systems represents an important step toward improving administrative efficiency, transparency, and legal certainty. Digitalization has the potential to reduce processing time, improve document accessibility, and minimize administrative errors. Nevertheless, implementation remains uneven due to technical limitations, inconsistent institutional readiness, and varying levels of digital capacity across government agencies. As a result,

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<sup>39</sup> Sam et al., "Public Accountability in the Management," 445.

<sup>40</sup> Montayana Meher, and Ningrum Natasya Sirait, "Standard contracts in bank credit agreements," In *E3S Web of Conferences*, (Les Ulis: EDP Sciences, 2018), 29.

electronic systems have not yet fully eliminated administrative bottlenecks in mortgage registration and execution.<sup>41</sup>

Overall, these doctrinal, procedural, and institutional barriers demonstrate that legal certainty in Mortgage Rights execution remains only partially achieved despite the existence of a relatively comprehensive statutory framework. The principal challenges no longer arise from legislative incompleteness but from inconsistent judicial interpretation, complex procedural requirements, and fragmented institutional coordination. Legal disputes initiated by debtors and third parties, valuation controversies, administrative delays, and incomplete digital implementation collectively reduce the predictability and efficiency of collateral enforcement.<sup>42</sup> Comparative studies similarly indicate that jurisdictions with simpler enforcement procedures and stronger institutional coordination generally achieve more efficient mortgage execution systems.<sup>43</sup> Accordingly, strengthening legal certainty requires not only regulatory refinement but also harmonization of judicial interpretation, procedural simplification, and greater institutional integration to ensure that Mortgage Rights can effectively fulfill their function as reliable security instruments within Indonesia's credit system.

### **3.3. Strengthening Legal Certainty through Integrated Reform of Mortgage Rights Execution**

The analysis in the previous section demonstrates that the primary challenges in the execution of Mortgage Rights in Indonesia do not stem from the absence of legal regulation but rather from fragmented implementation. Although Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (*Undang-Undang Tentang Hak Tanggungan/UUHT*) establishes comprehensive execution mechanisms through *parate executie*, executorial title, and private sale, legal certainty remains difficult to achieve because substantive rules, procedural regulations, judicial practice, and institutional governance are not yet fully integrated. Consequently, strengthening legal certainty requires a comprehensive reform strategy that addresses regulatory harmonization, judicial consistency, institutional coordination, and digital transformation simultaneously rather than through isolated legal amendments.

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<sup>41</sup> Tommy Leonard, and Niko Demus Simarmata, "Legal dynamics of land digitalization in the electronic land registration system," *Jurnal Hukum* 39, no. 1 (2023): 65. See also, Putu Devi Yustisia Utami et al., "Execution of Mortgage Rights: Creditor's Legal Remedies for Third Party Claims Against Auctioned Collateral," *Journal Equity of Law and Governance* 7, no. 2 (2025): 155; Monica Windiar et al., "The Mortgage Guarantee as the Settlement Effort of Non-Performing Loan and the Resistance In the Execution of Collateral: in," *Unram Law Review* 5, no. 2 (2021): 37.

<sup>42</sup> Ningsih et al., "Re-Evaluation Of Creditor Protection," 452. See also, Soraya, "Legal Protection of Disadvantaged Debtor Customers," 43; Sam et al., "Public Accountability In The Management," 445.

<sup>43</sup> Marbun et al., "The Interplay of Banking Development," 232.

The first reform priority concerns the harmonization of the Mortgage Rights Law and the Bankruptcy Law. The coexistence of these two legal regimes frequently creates uncertainty regarding the position of secured creditors once bankruptcy proceedings commence. While the UUHT grants preferential rights to mortgage holders through Articles 6 and 20, bankruptcy proceedings often require coordination with insolvency administrators and commercial courts before collateral may be executed. This overlap may delay debt recovery and reduce the practical effectiveness of Mortgage Rights. Therefore, future legal reform should expressly clarify the relationship between secured creditor priority under the UUHT and collective insolvency procedures under the Bankruptcy Law. More explicit statutory guidance concerning the timing of execution, creditor priority, and coordination with bankruptcy administrators would significantly reduce interpretative disputes and improve predictability in insolvency cases.<sup>44</sup>

A second priority involves the harmonization of mortgage execution with auction regulations. Public auctions remain the principal mechanism for realizing collateral value in Indonesia and are regulated through Minister of Finance Regulation No. 27/PMK.06/2016 and Minister of Finance Regulation No. 213/PMK.06/2020. These regulations have strengthened procedural safeguards, particularly regarding valuation standards and debtor protection. Nevertheless, practical disputes concerning auction prices, procedural compliance, and post-auction litigation continue to undermine legal certainty.<sup>45</sup> Future reforms should establish more uniform valuation standards, improve transparency during auction preparation, and strengthen the finality of legally completed auctions. Greater protection for auction purchasers is equally important because uncertainty regarding ownership transfer discourages participation in public auctions and ultimately reduces collateral value. Strengthening the legal status of auction outcomes would therefore benefit creditors, debtors, and prospective buyers simultaneously.<sup>46</sup>

Another essential reform concerns judicial consistency. One of the principal causes of legal uncertainty is the inconsistent interpretation of Article 6 of the UUHT regarding *parate executie*. Although the statutory language appears to authorize direct execution by the first mortgage holder, judicial practice has not always interpreted this authority consistently. Some courts continue to require judicial authorization before execution, while others recognize the autonomous

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<sup>44</sup> Eddy Setiawan et al., “Legal protection for preferred creditors following the cancellation of mortgage rights by court decision under Indonesian Law,” *Jurnal Ilmiah Advokasi* 13, no. 2 (2025): 641. See also, Hakim, “Legal Protection of Secured Creditors,” 1198; Ningsih et al., “Re-Evaluation of Creditor Protection,” 452.

<sup>45</sup> Soraya, “Legal Protection of Disadvantaged Debtor Customers,” 43. See also, Ningsih, “The Legal Protection,” 440348.

<sup>46</sup> Rini et al., “Maintaining Legal Certainty,” 399.

nature of parate executie. Such inconsistency increases litigation risk and reduces confidence in the secured lending system. Accordingly, the Supreme Court should strengthen jurisprudential consistency by issuing comprehensive guidelines or circular letters that harmonize judicial interpretation across Indonesian courts. Consistent application of execution principles would reduce procedural uncertainty while preserving judicial oversight in exceptional cases involving fraud, abuse of rights, or genuine ownership disputes. The objective is not to eliminate judicial review but to ensure that judicial intervention remains proportionate and predictable.

Digital transformation also represents an important component of future reform. The implementation of the Electronic Mortgage (*Hak Tanggungan Elektronik*) system under Ministry of Agrarian Affairs Regulation No. 5 of 2020 reflects Indonesia's commitment to modernizing land administration. Digital registration has considerable potential to improve transparency, accelerate document verification, reduce administrative costs, and minimize errors associated with conventional paper-based systems.<sup>47</sup> Nevertheless, implementation remains uneven because of technical limitations, inconsistent institutional readiness, and uncertainty regarding the legal responsibilities of Land Deed Officials (*Pejabat Pembuat Akta Tanah/PPAT*) within electronic registration systems.<sup>48</sup> Moreover, incomplete interoperability among electronic databases maintained by the Land Office, financial institutions, and auction authorities continues to create administrative bottlenecks.<sup>49</sup> Future reform should therefore prioritize full digital integration of mortgage registration, execution documentation, auction administration, and ownership transfer through a unified electronic platform supported by standardized verification procedures.

The effectiveness of legal reform also depends upon stronger institutional coordination. Mortgage execution involves numerous institutions, including banks, courts, the State Assets and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*), the Land Office, PPATs, and law enforcement agencies. Each institution performs legally defined responsibilities, yet insufficient coordination frequently causes delays throughout the execution process. Verification of ownership documents, confirmation of mortgage registration, auction scheduling, and post-auction registration often proceed sequentially rather than simultaneously, thereby increasing administrative complexity.<sup>50</sup> Accordingly,

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<sup>47</sup> Pakpahan, "Problems Of Implementation," 85.

<sup>48</sup> Oksana Shcherbanyuk et al., "Legal nature of the principle of legal certainty as a component element of the rule of law," *Juridical Tribune-Review of Comparative and International Law* 13, no. 1 (2023): 26. See also, Sinaga et al., "From the standpoint of progressive law," 5331.

<sup>49</sup> Leonard, and Simarmata, "Legal dynamics of land digitalization," 65. See also, Zulfikar et al., "Digital Land Registration Transformation," 337.

<sup>50</sup> Sam et al., "Public Accountability in the Management," 445.

institutional reform should establish integrated coordination mechanisms supported by shared digital databases, standardized operating procedures, and clearer allocation of institutional responsibilities. Better coordination would reduce duplication of administrative processes and improve the predictability of execution timelines.

Regulatory reform should likewise extend beyond procedural amendments toward a more coherent legal framework. Existing regulations governing Mortgage Rights, land administration, auctions, civil procedure, and insolvency should be reviewed systematically to eliminate overlapping provisions and conflicting procedural requirements. Regulatory coherence is particularly important because fragmented legislation frequently produces inconsistent implementation despite individually well-designed legal instruments. Comparative research also suggests that mortgage enforcement systems function more effectively where procedural rules are simplified and regulatory overlap is minimized.<sup>51</sup> Therefore, future legislative reform should emphasize legal integration rather than merely adding new procedural requirements.

An effective reform model must also preserve an appropriate balance between creditor protection and debtor protection. Mortgage Rights are designed to secure repayment for creditors while ensuring fairness toward debtors whose property serves as collateral. Excessive procedural barriers reduce the effectiveness of secured lending, whereas insufficient procedural safeguards may expose debtors to arbitrary execution. Consequently, legal certainty should be understood as protecting both parties through transparent, predictable, and proportionate procedures. Creditors require certainty regarding the enforceability of valid security interests, while debtors require assurance that execution will occur only after lawful default and through fair valuation procedures. Existing legal developments already emphasize this balance by strengthening procedural safeguards during auction implementation while preserving creditors' preferential rights.<sup>52</sup>

Preventive mechanisms should also receive greater emphasis within the legal framework. Banks should continue prioritizing restructuring, negotiation, and mediation before initiating execution proceedings, particularly where debtor cooperation remains possible. Expanding alternative dispute resolution mechanisms may reduce dependence on lengthy litigation while preserving commercial relationships between creditors and debtors.<sup>53</sup> At the same time, improvements in credit risk assessment, predictive analytics, and early warning systems can reduce the incidence of non-performing loans, thereby decreasing

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<sup>51</sup> Marbun et al., "The Interplay of Banking Development," 232.

<sup>52</sup> Ningsih et al., "Re-Evaluation Of Creditor Protection," 452. See also, Ningsih, "The Legal Protection," 440348.

<sup>53</sup> Yusni et al., "Settlement of Problem," 138.

reliance on collateral execution as the primary recovery mechanism.<sup>54</sup> These preventive measures complement, rather than replace, improvements in execution procedures.

Comparative experience from other jurisdictions provides valuable guidance for Indonesian legal reform. India, for example, has developed a relatively streamlined non-judicial enforcement mechanism that enables secured creditors to execute collateral with limited court intervention. Although Indonesia cannot directly replicate another country's legal framework because of different constitutional and institutional contexts, the Indian model illustrates the benefits of simplified execution procedures and greater reliance on administrative enforcement mechanisms. Comparative studies indicate that reducing unnecessary judicial intervention may shorten execution time, improve recovery rates, and enhance confidence in secured lending markets.<sup>55</sup> Nevertheless, any comparative adaptation should remain consistent with Indonesian constitutional principles, including due process, proportionality, and judicial protection of legitimate property rights.

**Table 1.** Integrated Legal Certainty Model for Mortgage Rights Execution in Indonesia.

Reform Pillar	Current Problems	Proposed Reform	Expected Contribution to Legal Certainty
Normative Harmonization	Conflicts between the Mortgage Rights Law (UUHT), Bankruptcy Law, HIR/RBg, and Auction Regulations	Harmonize execution provisions, creditor priority rules, and insolvency procedures	Consistent legal basis for mortgage execution
Judicial Harmonization	Divergent interpretations of Article 6 UUHT and inconsistent court decisions	Supreme Court guidelines, standardized jurisprudence, and uniform interpretation of <i>parate executie</i>	Predictable judicial decisions and reduced litigation
Institutional Integration	Weak coordination among courts, KPKNL, Land Office, banks, and PPAT	Integrated standard operating procedures (SOP), shared databases, and inter-agency coordination	Faster and more efficient execution process

<sup>54</sup> Naufal Allaam Aji et al., "Credit scoring through data mining approach: A case study of mortgage loan in Indonesia," In *2019 16th International conference on service systems and service management (ICSSSM)*, (Piscataway: IEEE, 2019), 3. See also, Arlynandhita Felisya Putri Wibowo, and Samuel Ady Sanjaya, "Predicting Potential Non-Performing Loans Collectibility in MSMEs using Ensemble Stacking with SHAP-Boosting Algorithm," In *2024 7th International Seminar on Research of Information Technology and Intelligent Systems (ISRITI)*, (Piscataway: IEEE, 2024), 481.

<sup>55</sup> Marbun et al., "The Interplay of Banking Development," 232.

Reform Pillar	Current Problems	Proposed Reform	Expected Contribution to Legal Certainty	
Digital Integration	Fragmented electronic mortgage and land administration systems	Integrated Mortgage, registration, auction, and databases	Electronic digital land electronic interoperable	Greater transparency, efficiency, and administrative certainty
Balanced Legal Protection	Excessive litigation and inadequate protection of either creditors or debtors	Fair valuation standards, mediation, restructuring, protection of auction buyers, and proportional procedural safeguards		Balanced protection while maintaining execution efficiency

Based on the foregoing analysis, this article proposes an Integrated Legal Certainty Model for Mortgage Rights Execution (Table 1) as its principal conceptual contribution, based on the synthesis of previous studies.<sup>56</sup> The model is built upon five mutually reinforcing pillars. The first pillar is normative harmonization, which integrates the UUHT, Bankruptcy Law, auction regulations, and civil procedural law into a coherent execution framework. The second pillar is judicial harmonization, achieved through consistent Supreme Court jurisprudence and standardized interpretation of Article 6 concerning parate executie. The third pillar is institutional integration, requiring stronger coordination among courts, KPKNL, the Land Office, financial institutions, and PPATs through standardized operational procedures. The fourth pillar is digital integration, involving interoperable electronic mortgage registration, digital auction administration, and electronic land registration supported by reliable data verification. The fifth pillar is balanced legal protection, ensuring that creditors obtain efficient enforcement while debtors receive adequate procedural safeguards, fair valuation, and meaningful opportunities for restructuring or dispute resolution before compulsory execution.

Unlike previous studies that generally recommend isolated improvements in auction procedures, litigation mechanisms, or digital administration, this integrated model recognizes that legal certainty is a multidimensional concept requiring simultaneous reform across legal norms, judicial practice, administrative institutions, and technological infrastructure. Legal certainty cannot be achieved solely through legislative amendment if judicial inconsistency persists, nor can digitalization produce meaningful improvements without regulatory

<sup>56</sup> Ningsih et al., “Re-Evaluation Of Creditor Protection,” 452. See also, Marbun et al., “The Interplay of Banking Development,” 232; Sam et al., “Public Accountability In The Management,” 445; Soraya, “Legal Protection of Disadvantaged Debtor Customers,” 43; Pakpahan, “Problems Of Implementation,” 85; Leonard, and Simarmata, “Legal dynamics of land digitalization,” 65; Rini et al., “Maintaining Legal Certainty,” 399.

harmonization and institutional coordination. Accordingly, the proposed model adopts a holistic approach in which each reform component supports the others within a unified legal governance framework.

In conclusion, strengthening legal certainty in Mortgage Rights execution requires more than improving individual execution procedures. Sustainable reform demands harmonized legislation, consistent judicial interpretation, integrated institutional governance, comprehensive digital transformation, and balanced protection of creditor and debtor interests. Through the proposed Integrated Legal Certainty Model, Indonesia may enhance the predictability, efficiency, and fairness of Mortgage Rights execution while reinforcing the role of secured transactions in maintaining banking stability and supporting sustainable economic development.

#### 4. Conclusion

This study demonstrates that Indonesia's Mortgage Rights framework under Law No. 4 of 1996 (*Undang-Undang Tentang Hak Tanggungan/UUHT*) has established a coherent and comprehensive legal foundation for secured lending by replacing the fragmented colonial system of *hypotheek* and *credietverband*. The UUHT incorporates the fundamental principles of speciality, publicity, *droit de préférence*, and *droit de suite*, while providing three execution mechanisms namely: executorial title, parate executie (Article 6), and private sale (Article 20), to protect creditors, facilitate the resolution of non-performing loans (NPLs), and support financial stability.

However, the study finds that *de jure* legal certainty has not yet translated into *de facto* legal certainty. Despite a relatively comprehensive regulatory framework, the execution of Mortgage Rights continues to face doctrinal, procedural, and institutional barriers. Doctrinal challenges arise from inconsistent judicial interpretations of Article 6 of the UUHT, divergent Supreme Court and Constitutional Court decisions, and normative overlaps with the HIR/RBg and the Bankruptcy Law. Procedural barriers include complex auction requirements, post-auction litigation, third-party claims, valuation disputes, administrative delays, and execution resistance. Institutional barriers are reflected in weak coordination among courts, KPKNL, Land Offices, banks, and PPATs, together with the incomplete implementation of the Electronic Mortgage system.

As the principal contribution of this study, an Integrated Legal Certainty Model is proposed to strengthen Mortgage Rights execution. The model integrates five complementary pillars: (i) normative harmonization of the UUHT, Bankruptcy Law, auction regulations, and civil procedural law; (ii) judicial consistency through Supreme Court guidance; (iii) stronger institutional coordination; (iv) integrated digital mortgage registration and execution systems; and (v) balanced protection of

creditors and debtors through fair and transparent execution procedures. Accordingly, future reforms should prioritize these integrated pillars to improve the predictability, efficiency, and fairness of Mortgage Rights execution, thereby strengthening creditor confidence, accelerating NPL resolution, and supporting a more stable and resilient banking system.

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