



Juridical Review Of Mortgage Execution In Bad Credit Cases: A Civil Procedure Law Perspective

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ABSTRACT

This study critically examines the effectiveness of mortgage right execution under Indonesian civil procedural law in addressing non-performing loans. Employing a normative juridical approach through literature review, it analyzes statutory provisions and legal doctrines, particularly Law No. 4 of 1996 on Mortgage Rights. The findings reveal that despite the availability of mechanisms such as *parate executie*, executorial titles, and private sales, practical implementation remains hindered by complex bureaucracy, debtor objections, and procedural inefficiencies. The study highlights the potential role of digitalization, particularly blockchain technology, in enhancing transparency and legal certainty. It recommends regulatory harmonization, development of digital infrastructure, and a rights-based legal framework to strengthen protection for creditors, debtors, and third parties.

Keywords: *Mortgage Rights, Non-Performing Loans, Collateral Execution, Regulatory Reform, Legal Digitalization.*

Introduction

In the Indonesian civil law system, the mortgage rights have a vital position as an instrument of collateral in credit relationships. Mortgage rights, which are exclusively regulated in Law Number 4 of 1996 on Mortgage Rights (stated as UUHT), are a legal construction to give loan debtors with their property assets (harta benda) as securities to guarantee the reimbursement of creditors' debt. The existence of mortgage rights not only provides guarantees to creditors but also provides debtors with access to financing through the management of their assets¹. Therefore, mortgage rights constitute a crucial force to safeguard the stability of the national economic system.

A key component of the UUHT for the analytic approach is the significance of the legal formalism in creating mortgage rights, where the deed is the act in which the notary is present. According to the law articles of the Mortgage Law, mortgage deeds must be made in writing and notarised to have legal effects. This adds to the legal certainty of rights and responsibilities between the parties and minimises

¹ Fera Puspita Rianto, Toto Tohir Suriaatmadja, and Lina Jamilah, "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission," *Journal La Sociale* 5, no. 4 (June 13, 2024): 1072-81, <https://doi.org/10.37899/journal-la-sociale.v5i4.1241>; Bayu Setiawan Hendri Putra and Arief Suryono, "Kedudukan Sertifikat Hak Atas Tanah Sebagai Jaminan Kebendaan Berdasarkan Undang-Undang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah," *Jurnal Privat Law* 8, no. 1 (February 2, 2020): 57, <https://doi.org/10.20961/privat.v8i1.40367>.

possible disputes that may arise in the future². The involvement of a notary provides greater legal protection for creditors and debtors, as well as a trust relationship in providing credit transactions³.

However, implementing mortgage rights faces challenges, especially in bad debts, often the leading cause of execution. The Mortgage Law regulates this process through an auction supervised by the State Asset Service Office and the KPKNL Auction, where creditors have the right to execute collateral to obtain their receivables. Yet the efficacy of implementation is frequently hindered by administrative and technical challenges, including overly complicated documentation and pressure to respect legal procedures⁴.

On the other hand, debtors receive legal protection when executing mortgage rights. This protection aims to ensure that the debtor's rights are respected, even when they are in a position of default. One form of such protection is the obligation for creditors to provide warnings and opportunities for debtors to correct defaults before the execution process is carried out⁵. In the meantime, the equilibrium between the interests of the creditors and the debtor's security is an issue that often reaches a head and needs serious consideration in our legal system⁶.

In the framework of the Indonesian civil law system, the validity of the execution of mortgage rights is not only determined by what was already provided from legal norms as a legal regulation, but also by its impact on the effectiveness of its implementation. The research finds that despite a strong legal basis for the Mortgage Law, the execution of the provision of the mortgage is hampered by many factors, such as the extension of the external factor in the economic situation, or

² Muh Husein Ahmadi, Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Validity of Mortgage Rights Based on Credit Agreement Aspects," *KnE Social Sciences*, October 4, 2022, <https://doi.org/10.18502/kss.v7i15.12141>.

³ Rianto, Suriaatmadja, and Jamilah, "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission"; Husein Ahmadi, Ayu Ketut Rachmi Handayani, and Karjoko, "Validity of Mortgage Rights Based on Credit Agreement Aspects."

⁴ 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 (March 24, 2021): 37-48, <https://doi.org/10.25041/iplr.v2i1.2224>; Yulia Sekar Nada, "The Legal Protection for Debtors in the Implementation of Bad Credit Settlement with Guaranteed Objects of Mortgage," *Sultan Agung Notary Law Review* 4, no. 2 (September 4, 2022): 697, <https://doi.org/10.30659/sanlar.4.2.697-715>.

⁵ Aan Rizalni Kurniawan, Faisal Santiago, and Evita Isretno Israhadi, "Legal Consequences of Bankruptcy for Creditors Holding Mortgage Rights and Execution Parate," *Jurnal Indonesia Sosial Sains* 4, no. 06 (June 4, 2023): 509-15, <https://doi.org/10.59141/jiss.v4i06.817>; Nada, "The Legal Protection for Debtors in the Implementation of Bad Credit Settlement with Guaranteed Objects of Mortgage."

⁶ Muhammad Adam Furqon, Sulistyandari Sulistyandari, and Tri Lisiani Prihatinah, "Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia," *Problems of Legality* 1, no. 164 (May 10, 2024): 266-84, <https://doi.org/10.21564/2414-990X.164.287692>.

limited understanding of the parties on their rights and obligations⁷. This indicates the need to strengthen the legal and procedural framework to support more efficient and fair execution.

This study examines mortgage right enforcement in Indonesian civil law, focusing on non-performing loans. It evaluates legal instrument effectiveness, implementation challenges, and fair protection for all parties. Moving beyond theory, the research fills an empirical gap by analyzing how legal and institutional factors influence enforcement outcomes⁸. The findings offer data-driven recommendations to enhance procedural efficiency and fairness, contributing both to academic discourse and practical legal reform in the enforcement of secured credit.

As a formulation of the problem, given the legal and administrative challenges in enforcing mortgage rights in non-performing loan cases, it is essential to reassess the effectiveness of existing legal mechanisms. This study addresses a key question: to what extent is the execution of mortgage rights effective under Indonesian civil procedure law, and how is legal protection ensured for creditors, debtors, and third parties in settling problematic credit disputes?

Based on that question, this research aims to analyze the effectiveness of mortgage execution under Law No. 4 of 1996, identify legal and structural barriers, and propose legal reform strategies, including digital technology integration. The study seeks to support the development of a more adaptive, efficient, and justice-oriented civil legal system in enforcing secured transactions.

Research methods

This study applies a qualitative approach through normative legal analysis and library research⁹. Designed as descriptive-analytical, it explores the provisions of Law No. 4 of 1996 on Mortgage Rights to assess their practical application.

⁷ Rania Rania, Benny Djaja, and Maman Sudirman, "Electronic Legal Certainty of The Roya Deed of Encumbrance," *POLICY LAW NOTARY AND REGULATORY ISSUES (POLRI)* 3, no. 1 (November 14, 2023): 18-27, <https://doi.org/10.55047/polri.v3i1.902>; Furqon, Sulistyandari, and Prihatinah, "Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia."

⁸ Rianto, Suriaatmadja, and Jamilah, "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission"; Soraya, "Legal Protection of Disadvantaged Debtor Customers in The Implementation of Object Execution Auction Procedures in Bank Credit Agreements."

⁹ Pranee Liamputtong, "Qualitative Research in the Social Sciences: Setting the Scene," *How to Conduct Qualitative Research in Social Science*, 2023, 1-13, <https://doi.org/10.4337/9781800376199.00007>.

Library research involves collecting primary and secondary legal materials, including statutes, legal commentaries, and academic journals, focusing on the legal framework for executing mortgage rights in bad credit cases. Documentation techniques are used to extract and organize legal information as the basis for normative analysis¹⁰.

The legal data is examined by identifying relevant norms, assessing their implementation, and evaluating the consistency between written law and practical enforcement. Although no empirical fieldwork is conducted, this normative analysis seeks to uncover gaps between legal ideals and operational realities. It also draws insights from scholarly interpretations and legal doctrines to provide recommendations. The study ultimately aims to promote a more just, transparent, and effective system of mortgage execution within Indonesia's civil procedural framework¹¹.

The analysis was conducted using qualitative legal norm analysis, including identifying relevant norms, systematically interpreting legal texts, and evaluating their effectiveness and consistency. A deductive legal reasoning approach was applied to conclude general norms from specific cases. The analysis also adopted conceptual and comparative approaches by examining legal systems in Canada and Vietnam. These methods were employed to construct legal arguments, identify implementation issues, and formulate policy recommendations grounded in justice principles and regulatory reform.

Results and Discussion

1.1. Effectiveness of Mortgage Execution Mechanism in Indonesian Civil Law

The process of executing mortgage rights in Indonesia is regulated by Law No. 4 of 1996, which provides a legal basis for creditors to execute collateral in cases of debtor default. The three main mechanisms in executing mortgage rights are: First, execution based on parate executie, based on article 6 of the UUHT (Law, 1996): "If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object under his authority through a public auction and take payment of his receivables from the proceeds of the sale". This article emphasizes that the creditor carries out execution / sells directly through a public auction without going through the courts.

Second, execution based on the executorial titles, based on article 14 paragraph (2) of the UUHT (Law, 1996): "The Mortgage Certificate as referred to in paragraph

¹⁰ Kendra Lowery, "Critical Development of Courage Within Social Justice School Leaders: Silence, Tempered Radicals, and Revolutionaries," 2020, 355-73, https://doi.org/10.1007/978-3-030-14625-2_150.

¹¹ Kahryn Tarrant, "Qualitative Data Re-Use and Secondary Analysis: Researching in and About a Crisis," 2021, 156-71, <https://doi.org/10.1332/policypress/9781447363798.003.0011>.

(1) contains the words' FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD'. This article confirms the existence of executive power, which can be implemented or executed as with a court decision with permanent legal force.

Third, execution through underhanded sales. The private sale of a mortgaged object is permissible if agreed upon by both the grantor and the mortgage holder. It may proceed after a one-month notice to interested parties via at least two local media outlets, provided no objections are raised. Provisions on private sales typically apply to the creditor, who holds the authority to set the selling price. However, such action requires a prior agreement with the debtor. Based on Article 20, paragraph 1 of the UUHT ¹²:

- 1) If the debtor defaults, then based on:
 - a. The right of the first Mortgage Right holder to sell the Mortgage Right object as referred to in Article 6, or
 - b. The executive title contained in the Mortgage Right certificate, as referred to in Article 14, paragraph (2), the Mortgage Right object is sold through a public auction according to the procedures determined in the laws and regulations for the settlement of the Mortgage Right holder's receivables with priority rights over other creditors.

The mechanism of execution of mortgage rights involves an administrative process involving the court and related institutions. The District Court is a supervisor to ensure that legal procedures are conducted for the execution. However, administrative obstacles and debtor objections often hamper this process¹³. Technical challenges in KPKNL, such as legal objections from third parties claiming rights to collateral objects, extend the duration and reduce the efficiency of execution¹⁴.

Complicated legal and administrative procedures are also a significant obstacle. A default in credit agreements often complicates the legal process due to legal disputes between creditors and debtors¹⁵. The lack of coordination between agencies, such as the KPKNL and the courts exacerbates this¹⁶. Therefore, Efforts to harmonize regulations and improve procedural efficiency are crucial for effective

¹² Undang-Undang, "Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan," 1996.

¹³ Yustiana Yustiana, "Eksekusi Hak Tanggungan Terhadap Kredit Macet Bank," *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (May 17, 2020): 77-97, <https://doi.org/10.56087/aijih.v23i1.38>.

¹⁴ Windy Putri Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)," *Jurnal Privat Law* 9, no. 1 (2021): 202-9, <https://doi.org/https://doi.org/10.20961/privat.v9i1.28744>.

¹⁵ Verianti C and Saptanti N, "Wanprestasi Dalam Perjanjian Kredit Pemilikan Rumah (KPR) Pada Bank Tabungan Negara Kantor Cabang Solo," *Perkara: Jurnal Ilmu Hukum Dan Politik* 2, no. 1 (February 26, 2024): 398-414, <https://doi.org/10.51903/perkara.v2i1.1788>.

¹⁶ Burhan Sidabariba et al., "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review," *RUSSIAN LAW JOURNAL* XI, no. 5 (2023): 2910-20, <https://www.russianlawjournal.org/index.php/journal/article/view/3184/1981>.

mortgage execution in Indonesia. Legal certainty and justice for all parties remain key indicators. Digitalisation via electronic mortgage rights can streamline the process, but significant obstacles persist, including inadequate digital infrastructure and a lack of supporting regulations, which hinder full implementation and procedural effectiveness¹⁷.

Blockchain technology can increase transparency in the economic and financial sectors by reducing transaction costs and accelerating legal processes and mortgage transactions. Blockchain provides an immutable distributed ledger, allowing for faster and easier verification of information¹⁸. Highlights the potential of blockchain in supporting digitalisation in the Industry 4.0 era by combining the Internet of Things (IoT) to create an efficient and transparent system. The application of blockchain in mortgage execution allows automation through smart contracts, which speeds up decisions and reduces legal uncertainty¹⁹.

Blockchain and smart contracts enhance logistics and supply chains, and can be applied to mortgages to ensure asset data clarity and security. This technology builds trust, reduces disputes, and supports legal transparency and verification. It ensures mortgage execution aligns with regulations without harmful interference, strengthening the legal system.²⁰.

Bureaucratic hurdles remain a significant concern, such as lengthy court processes that delay execution, particularly in disputes between creditors and debtors²¹. Constitutional Court Decision No. 18/PUU-XVII/2019 has further prolonged procedures by requiring court approval for fiduciary guarantee execution²². Legal objections from debtors are also often a significant obstacle. Legal objections from debtors often lead to extended litigation, reducing overall

¹⁷ Widyadhana Muhammad Nazwan and Waluyo, "Tanggungannya Elektronik Di BPR UMKM Jawa Timur," *Kabilah: Journal of Social Community* 9, no. 14 (2024): 360–69, <https://doi.org/10.35127/kabilah.v9i1>.

¹⁸ Hany Ayaad, Autumn Bizon, and Nermin Gohar, "The Effect of Applied Blockchain on Economic Sustainability," *International Business Logistics* 4, no. 1 (2024): 21, <https://doi.org/10.21622/ibl.2024.04.1.773>.

¹⁹ Amit Kumar Tyagi et al., "Blockchain—Internet of Things Applications: Opportunities and Challenges for Industry 4.0 and Society 5.0," *Sensors* 23, no. 2 (January 13, 2023): 947, <https://doi.org/10.3390/s23020947>.

²⁰ Mohammed Ali Alqarni et al., "Use of Blockchain-Based Smart Contracts in Logistics and Supply Chains," *Electronics* 12, no. 6 (March 11, 2023): 1340, <https://doi.org/10.3390/electronics12061340>.

²¹ B Christina, "Upaya Hukum Penyelesaian Sengketa Aset Kredit Akibat (Cessie) Setelah Pelelangan Oleh Badan Penyehatan Perbankan Nasional Yang Berkeadilan," *Lex Jurnalica* 18, no. 3 (2021): 233–45, <https://doi.org/10.47007/lj.v18i3.4809>.

²² Meliza, "Pengaruh Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019 Terhadap Eksekusi Jaminan Fidusia (Studi Pada PT. Adira Dinamika Multifinance TBK Cabang Bengkulu)," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 7, no. 2 (2023): 1287–94, <https://doi.org/10.58258/jisip.v7i1.4869/http>.

efficiency²³. Consequently, traditional regulations must be adapted to green economy principles to ensure the execution process remains efficient and sustainable.

However, several solutions have been proposed to improve the effectiveness of this mechanism, recommending implementing a digital platform to facilitate the execution process²⁴, while proposing harmonising positive law and Sharia principles to overcome legal conflicts in the execution of Islamic financial institutions²⁵. This approach can reduce procedural obstacles and improve execution efficiency.

In conventional law, collateral rights allow execution if a debtor defaults. In contrast, *mudharabah* and *musyarakah* contracts are based on shared risk, making collateral execution inconsistent with Sharia principles. Sharia banking in Indonesia still relies on conventional documents that do not reflect genuine Sharia cooperation²⁶. Conventional mortgages involve debt-based relations with court-enforced execution, conflicting with Sharia's trust-based foundation. This legal disharmony creates uncertainty, potential conflict, and misunderstanding of legal relations in Sharia-compliant financing²⁷.

Several bad debt cases involving mortgage execution highlight the limitations of current mechanisms. Execution via KPKNL often has a low success rate due to objections from debtors and third parties. Empirical data shows that only around 60% of cases are resolved through auction, with many facing administrative hurdles²⁸. Legal protection for auction participants remains weak, as many report losses due to a lack of transparency. This study underscores the need for stronger regulations to safeguard auction participants' rights²⁹. This indicates the need for increased regulation to protect the rights of auction participants.

²³ Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

²⁴ Nazwan and Waluyo, "Tanggungans Elektronik Di BPR UMKM Jawa Timur."

²⁵ Muhammad Fadhli et al., "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia," *The Journal of Management Theory and Practice (JMTP)* 2, no. 1 (April 8, 2021): 88–93, <https://doi.org/10.37231/jmtp.2021.2.1.95>.

²⁶ Ah Azharuddin Lathif and Diana Mutia Habibaty, "Harmonization of DSN-MUI Fatwa with Positive Law Study of Legal Bonding of Mortgage Right in Contract for *Mudharabah* & *Musyarakah* Agreement," in *Proceeding International Conference on Law, Economy, Social and Sharia (ICLESS)*, vol. 1, 2022, 290–306, <https://proceeding.icless.net/index.php/icless22/article/view/25>.

²⁷ Sudirman Sudirman, "Harmonisasi Akad Pembiayaan Syariah Terhadap Jaminan Hak Tanggungan," *Media Iuris* 6, no. 1 (February 28, 2023): 151–74, <https://doi.org/10.20473/mi.v6i1.40113>.

²⁸ Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

²⁹ Nur Laily et al., "Analisis Perlindungan Hukum Terhadap Peserta Lelang Dalam Pelaksanaan Eksekusi Hak Tanggungan Oleh Pihak Bank," *Reformasi Hukum* 24, no. 2 (December 7, 2020): 209–28, <https://doi.org/10.46257/jrh.v24i2.140>.

Regulatory and governance weaknesses have contributed to Ghana's high Non-Performing Loan (NPL) levels. This study is relevant for Indonesia in reforming mortgage execution regulations, as delays and legal uncertainty remain major obstacles. Simplifying procedures, enhancing judicial transparency, and adopting international best practices can improve credit settlement effectiveness and significantly reduce NPLs³⁰. Mortgage execution regulations in Vietnam and Canada differ substantially: Vietnam employs immovable asset collateral with strong administrative oversight involving notaries and registries, ensuring legal certainty, while Canada uses foreclosure and power of sale, enabling asset execution without court proceedings. These reflect varying approaches to creditor protection and collateral enforcement³¹.

The following table presents the main findings of the research relevant to the mechanism and explanations related to the effectiveness of the mortgage execution mechanism. This table facilitates analysis and provides a basis for comprehensive policy recommendations.

Table 1: Research Findings Related to Mortgage Rights Execution Mechanisms

Key Findings	Key Barriers	Relevance	Proposed Solutions
Mortgage execution is hindered by administrative delays, debtor objections, and weak legal protection for bidders.	Complex procedures, slow bureaucracy, and many legal objections from debtors and third parties.	Hindering legal certainty and efficiency in resolving debt disputes. Third-party law.	Digitalization of execution administration, simplification of bureaucracy, and legal protection for auction participants.
Default by creditors and debtors causes lengthy disputes, and a lack of coordination between agencies worsens the execution of mortgage rights.	Legal disagreements between institutions (KPKNL, courts) and lengthy litigation procedures.	Burdening the justice system and prolonging the resolution of bad debts.	Synchronisation of regulations and increasing coordination between legal and financial institutions.
Digitalization and blockchain can enhance transparency and accelerate collateral execution,	Inadequate technological infrastructure, resistance to change,	Improve execution efficiency, but requires adequate	Strengthening regulations, building digital infrastructure, education, and

³⁰ Charles Adusei and Jacob Bannerman, "A Retrospective Study of Non-Performing Loans of the Ghana Banking Sector between 1998 and 2019," *Theoretical Economics Letters* 12, no. 02 (2022): 498–517, <https://doi.org/10.4236/tel.2022.122028>.

³¹ Huynh V A N Chu, "Understanding Home Mortgage Regulations : A Cross- Cultural Comparison of Canadian and Vietnamese Legal," *Russian Law Journal* XI, no. 4 (2023): 279–88, <https://www.russianlawjournal.org/index.php/journal/article/view/2366>.

but regulation remains unprepared.	and no specific regulations.	regulation and infrastructure.	technology adoption.
Lengthy litigation due to legal uncertainty in sharia-based financing and the green economy.	There is an inconsistency between traditional regulations and green and Sharia economic principles.	Improving legal certainty for sharia financing and the green economy.	Harmonisation of the green economy and Sharia regulations to clarify execution mechanisms.
Comparative studies with Vietnam and Canada show more efficient execution systems with different approaches.	Indonesia's execution procedures are too bureaucratic compared to other systems like Canada.	Providing new perspectives for the reform of mortgage execution in Indonesia.	Adopting best practices from other countries' legal systems to improve execution efficiency.

Source: self-processed data from various secondary sources.

Based on Table 1, the effectiveness of mortgage execution under Indonesian Civil Law refers to Law No. 4 of 1996, which includes: (1) *parate executie*, (2) *executorial title*, and (3) *underhand sales*. While normatively grounded in legal certainty, administrative hurdles, legal objections, and weak governance often impede implementation. The enforcement rate remains low, averaging only around 60%³². The gap between legal norms (*das sollen*) and reality (*das sein*) reveals key bottlenecks in institutional coordination and transparency in the auction process, hindering timely and fair execution.

The discussion on digitalisation of civil procedural law, including making use of blockchain technology as well as smart contracts, as discussed by³³ It presents a novelty in the procedural law reform. The potential application of electronic systems to auctioning, confirming ownership, and electronic notification can streamline bureaucratic processes that have been deterrents. Nonetheless, as indicated by ³⁴The deployment of such technology needs infrastructure readiness and a dynamic and synergistic regulatory umbrella across institutions. The combination of traditional legal theory and emerging ideas of legal technology may be one way to provide a new conceptual set for a flexible and future-oriented system of mortgage execution.

The inference is that there is a need for regulatory harmonisation, institutional capacity development, and a gradual approach to technology

³² Yustiana, "Eksekusi Hak Tanggungan Terhadap Kredit Macet Bank"; Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

³³ Ayaad, Bizon, and Gohar, "The Effect of Applied Blockchain on Economic Sustainability"; Tyagi et al., "Blockchain—Internet of Things Applications: Opportunities and Challenges for Industry 4.0 and Society 5.0"; Alqarni et al., "Use of Blockchain-Based Smart Contracts in Logistics and Supply Chains."

³⁴ Nazwan and Waluyo, "Tanggungan Elektronik Di BPR UMKM Jawa Timur."

application. Procedural reform has to have a technocratic and managerialist dimension, then, because we cannot allow law to stand in the way of resolving credit disputes, but as an instrument of justice capable of engaging with the demands of the complexity of a modern economy.

1.2. Legal Protection for Creditors, Debtors, and Third Parties in Cases of Bad Debts

Legal protection for creditors in executing mortgage rights is a fundamental element in maintaining legal certainty and stability of the financial system. Based on Law No. 4 of 1996 concerning Mortgage Rights, creditors have priority rights (*droit de préférence*) over the results of executing collateral objects. This principle guarantees that creditors have the right to receive payment first, compared to other creditors who do not have mortgage rights. This is confirmed by research³⁵, which found that mortgage certificates have strong legal force to protect the interests of creditors as long as the debtor does not fulfill their obligations.

In practice, multiple obstacles often hinder the implementation of creditor rights. Auctions frequently yield prices below market value, which is insufficient to cover the debtor's remaining debt. Administrative delays and legal objections from third parties also slow down enforcement³⁶. This aligns with findings that legal system inefficiencies often disadvantage creditors³⁷. Proposed solutions include digitalisation of the execution process to accelerate auctions and enhance transparency, reducing third-party objections³⁸. Additionally, harmonising regulations with green economic principles is recommended to ensure sustainability in the enforcement of mortgage rights³⁹. It can provide a guarantee of sustainability in the implementation of mortgage rights.

The main challenge in using blockchain to digitise mortgage execution lies in integrating it into the existing legal framework. While blockchain offers efficiency, security, and transparency, technical and regulatory barriers must be addressed. Institutional culture shifts and proper infrastructure are also required. Blockchain has the potential to enhance legal certainty, reduce costs, and expedite dispute resolution, but it requires collaboration between government, legal institutions, and the technology sector to create an efficient, integrated system.

³⁵ Putra and Suryono, "Kedudukan Sertifikat Hak Atas Tanah Sebagai Jaminan Kebendaan Berdasarkan Undang-Undang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah."

³⁶ Sidabariba et al., "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review."

³⁷ Verianti C and Saptanti N, "Wanprestasi Dalam Perjanjian Kredit Pemilikan Rumah (KPR) Pada Bank Tabungan Negara Kantor Cabang Solo."

³⁸ Nazwan and Waluyo, "Tanggungan Elektronik Di BPR UMKM Jawa Timur."

³⁹ Sukardi and Hertanto, "A Review of the Law and Practice Relating to the Collateralization of Carbon Assets: A Comparison of Indonesia and England."

Debtor protection is equally important to ensure their rights are respected during execution. The Mortgage Law allows debtors to object or delay execution in the presence of a valid dispute over the collateral. Most objections stem from lack of transparency or low auction values, often becoming key obstacles in resolving bad debts⁴⁰. Constitutional Court Decision No. 18/PUU-XVII/2019 grants greater protection by requiring court approval for fiduciary executions, but it also prolongs the process and reduces the efficiency of bad debt resolution⁴¹. To enhance debtor protection, auction transparency regulations should include estimated collateral values and debtor participation. Protection for third parties remains weak, as unclear regulations often lead to disputes between auction participants and interested parties, despite legal safeguards under the Mortgage Law⁴².

In addition, the conflict between positive law and Sharia principles is also a challenge in protecting third parties. In the context of Sharia banking, there is often disharmony between applicable legal norms and the principle of *maslahah*, thus creating legal uncertainty for third parties. This is exacerbated by the lack of coordination between judicial institutions and financial authorities in resolving disputes involving third parties⁴³. Solutions to improve legal protection for third parties include the application of the principle of transparency in the auction process⁴⁴. In addition, harmonisation between positive and Sharia law can help create a more inclusive and fair legal system for all parties⁴⁵. This highlights the need for balanced legal protection for creditors, debtors, and third parties. Digitalisation, transparency, and legal harmonisation are key to enhancing fairness and efficiency in the legal system.

Legal protections for creditors and debtors in Canada and Vietnam differ. Canada enforces strict rules, including cooling-off periods and limits on prepayment penalties to reduce debtor burdens. Vietnam favors creditors with flexible collateral rights execution but faces transparency and dispute resolution

⁴⁰ Daniati, "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)."

⁴¹ Meliza, "Pengaruh Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019 Terhadap Eksekusi Jaminan Fidusia (Studi Pada PT. Adira Dinamika Multifinance TBK Cabang Bengkulu)."

⁴² Laily et al., "Analisis Perlindungan Hukum Terhadap Peserta Lelang Dalam Pelaksanaan Eksekusi Hak Tanggungan Oleh Pihak Bank."

⁴³ Muhammad Fadhli et al., "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia."

⁴⁴ Sidabariba et al., "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review."

⁴⁵ Muhammad Fadhli et al., "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia."

challenges, stressing debtor notification and fair asset valuation before execution⁴⁶. The UNCITRAL Legislative Guide and Model Law principles emphasise transparency and fairness in collateral law to maintain economic and business stability.

Table 2: Research Findings Related to Legal Protection in Bad Credit Cases

Protected Parties	Key Findings	Key Barriers	Relevance	Proposed Solutions
Creditors	Priority rights to execution of collateral (Law No. 4 of 1996). The collateral certificate is legally strong.	Auctions are often below market prices, bureaucracy is slow, and legal objections from third parties.	Ensuring legal certainty and stability of the financial system.	Digitalisation of execution, harmonisation of regulations, and blockchain for transparency.
Debtors	The right to protection in executing mortgage rights, including auction transparency.	Low auction prices, lack of access to information, and unfair execution.	Balancing the rights of creditors and debtors in the execution of collateral.	Auction transparency, judicial oversight, and broad access to information.
Third parties	Role as auction buyer or legal interest owner. Legal protection exists, but it is less than optimal.	Auction participant disputes, positive law vs. sharia conflict. Maintaining trust in legal and banking transactions.	Reducing legal uncertainty and third-party disputes in the mortgage execution process.	Harmonisation of regulations and adoption of international best practices.

Source: self-processed data from various secondary sources.

Based on Table 2, the evaluation of legal protection for (1) bad debt creditors, (2) bad debtors, and (3) affected third parties shows that mortgage execution in Indonesia is still impractical. Although Law No. 4 of 1996 offers a strong legal foundation, its implementation faces delays due to bureaucracy, low auction values, and objections from liability holders and third parties. The Constitutional Court Decision No. 18/PUU-XVII/2019 improves protection through court oversight, but extends the process. This imbalance reveals weak substantive justice despite formal legal certainty, rendering the system ineffective.

In this context, blockchain and digital execution are potential solutions to improve transparency and efficiency, despite institutional challenges. This paper addresses an academic gap by emphasizing the need for restructuring, harmonizing positive and Sharia law, and protecting third parties. It recommends that

⁴⁶ Thomas Keijser, "Enforcement of Security Interests in Transnational Commercial Law: Current State and Future Trends," *Transnational Commercial Law Review*, no. 2 (2022): 1-14, <https://doi.org/10.26494/tclr220222>.

policymakers integrate digital auction systems, train court personnel, and issue adaptive legal instruments. With a comprehensive and human rights-based approach, the realisation of mortgage rights can become a flexible and effective legal enforcement mechanism.

Conclusion

This study finds that, while Law No. 4 of 1996 on Mortgage Rights offers a robust normative foundation for secured credit enforcement, its application remains constrained by procedural complexity, inconsistent institutional coordination, and insufficient stakeholder protection. The existing mechanisms – *parate executie*, executorial titles, and private sales – frequently encounter operational inefficiencies that undermine their effectiveness. These implementation gaps illustrate a disconnect between legal norms and actual practice, limiting the law's ability to serve as an efficient and equitable instrument in addressing non-performing loans. This disconnect calls for systemic legal and institutional reform.

Suggestion

To address existing challenges, this study proposes several strategic recommendations. First, regulatory harmonization between conventional and Sharia-based mortgage systems is necessary to ensure normative coherence. Second, adopting digital technologies such as blockchain and smart contracts can improve transparency, traceability, and procedural efficiency. Third, strengthening legal safeguards is crucial to protect the interests of creditors, debtors, and third-party bidders. Lastly, better institutional coordination among courts, notaries, and auction offices is essential to ensure legal certainty and operational consistency in mortgage enforcement, aligning Indonesia's framework with global standards.

Bibliography

- Adusei, Charles, and Jacob Bannerman. "A Retrospective Study of Non-Performing Loans of the Ghana Banking Sector between 1998 and 2019." *Theoretical Economics Letters* 12, no. 02 (2022): 498–517. <https://doi.org/10.4236/tel.2022.122028>.
- Alqarni, Mohammed Ali, Mohammed Saeed Alkatheiri, Sajjad Hussain Chauhdary, and Sajid Saleem. "Use of Blockchain-Based Smart Contracts in Logistics and Supply Chains." *Electronics* 12, no. 6 (2023): 1340. <https://doi.org/10.3390/electronics12061340>.
- Ayaad, Hany, Autumn Bizon, and Nermin Gohar. "The Effect of Applied Blockchain on Economic Sustainability." *International Business Logistics* 4, no. 1 (2024): 21. <https://doi.org/10.21622/ibl.2024.04.1.773>.
- Christina, B. "Upaya Hukum Penyelesaian Sengketa Aset Kredit Akibat (Cessie) Setelah Pelelangan Oleh Badan Penyehatan Perbankan Nasional Yang Berkeadilan." *Lex Jurnalica* 18, no. 3 (2021): 233–45. <https://doi.org/10.47007/lj.v18i3.4809>.
- Chu, Huynh V A N. "Understanding Home Mortgage Regulations: A Cross-

- Cultural Comparison of Canadian and Vietnamese Legal." *Russian Law Journal* XI, no. 4 (2023): 279–88. <https://www.russianlawjournal.org/index.php/journal/article/view/2366>.
- Daniati, Windy Putri. "Eksekusi Hak Tanggungan Dalam Kredit Macet Melalui Jalur Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL)." *Jurnal Privat Law* 9, no. 1 (2021): 202–9. <https://doi.org/https://doi.org/10.20961/privat.v9i1.28744>.
- Furqon, Muhammad Adam, Sulistyandari Sulistyandari, and Tri Lisiani Prihatinah. "Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia." *Problems of Legality* 1, no. 164 (2024): 266–84. <https://doi.org/10.21564/2414-990X.164.287692>.
- Husein Ahmadi, Muh, Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko. "Validity of Mortgage Rights Based on Credit Agreement Aspects." *KnE Social Sciences*, (2022). <https://doi.org/10.18502/kss.v7i15.12141>.
- Keijser, Thomas. "Enforcement of Security Interests in Transnational Commercial Law: Current State and Future Trends." *Transnational Commercial Law Review*, no. 2 (2022): 1–14. <https://doi.org/10.26494/tclr220222>.
- Laily, Nur, Triana Dewi Seroja, Winda Fitri, and Zaiqui Arviveronica Fimos. "Analisis Perlindungan Hukum Terhadap Peserta Lelang Dalam Pelaksanaan Eksekusi Hak Tanggungan Oleh Pihak Bank." *Reformasi Hukum* 24, no. 2 (2020): 209–28. <https://doi.org/10.46257/jrh.v24i2.140>.
- Lathif, Ah Azharuddin, and Diana Mutia Habibaty. "Harmonization of DSN-MUI Fatwa with Positive Law Study of Legal Bonding of Mortgage Right in Contract for Mudharabah & Musyarakah Agreement." In *Proceeding International Conference on Law, Economy, Social and Sharia (ICLESS)*, 1:290–306, (2022). <https://proceeding.icless.net/index.php/icless22/article/view/25>.
- Liamputtong, Pranee. "Qualitative Research in the Social Sciences: Setting the Scene." *How to Conduct Qualitative Research in Social Science*, (2023), 1–13. <https://doi.org/10.4337/9781800376199.00007>.
- Lowery, Kendra. "Critical Development of Courage Within Social Justice School Leaders: Silence, Tempered Radicals, and Revolutionaries," (2020), 355–73. https://doi.org/10.1007/978-3-030-14625-2_150.
- Meliza. "Pengaruh Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019 Terhadap Eksekusi Jaminan Fidusia (Studi Pada PT. Adira Dinamika Multifinance TBK Cabang Bengkulu)." *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 7, no. 2 (2023): 1287–94. <https://doi.org/10.58258/jisip.v7i1.4869>.
- Muhammad Fadhli, Sadad Mahmud, Ahmad Azrin Adnan, Abd Jamal, and Ibraheem Alani AbdulKareem. "Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia." *The Journal of Management Theory and Practice (JMTP)* 2, no. 1 (2021): 88–93. <https://doi.org/10.37231/jmtp.2021.2.1.95>.
- Nada, Yulia Sekar. "The Legal Protection for Debtors in the Implementation of Bad Credit Settlement with Guaranteed Objects of Mortgage." *Sultan Agung Notary Law Review* 4, no. 2 (2022): 697. <https://doi.org/10.30659/sanlar.4.2.697-715>.
- Nazwan, Widyadhana Muhammad, and Waluyo. "Tanggungan Elektronik Di BPR UMKM Jawa Timur." *Kabilah: Journal of Social Community* 9, no. 14 (2024): 360–

69. <https://doi.org/https://doi.org/10.35127/kabillah.v9i1>.
Putra, Bayu Setiawan Hendri, and Arief Suryono. "Kedudukan Sertifikat Hak Atas Tanah Sebagai Jaminan Kebendaan Berdasarkan Undang-Undang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah." *Jurnal Privat Law* 8, no. 1 (2020): 57. <https://doi.org/10.20961/privat.v8i1.40367>.
- Rania, Rania, Benny Djaja, and Maman Sudirman. "Electronic Legal Certainty of The Roya Deed of Encumbrance." *POLICY LAW NOTARY AND REGULATORY ISSUES (POLRI)* 3, no. 1 (2023): 18-27. <https://doi.org/10.55047/polri.v3i1.902>.
- Rianto, Fera Puspita, Toto Tohir Suriaatmadja, and Lina Jamilah. "Implementation of Mortgage Rights on the Position of Creditors of Second Mortgage Holders in the Application for Auction Submission." *Journal La Sociale* 5, no. 4 (2024): 1072-81. <https://doi.org/10.37899/journal-la-sociale.v5i4.1241>.
- Rizalni Kurniawan, Aan, Faisal Santiago, and Evita Isretno Israhadi. "Legal Consequences of Bankruptcy for Creditors Holding Mortgage Rights and Execution Parate." *Jurnal Indonesia Sosial Sains* 4, no. 06 (2023): 509-15. <https://doi.org/10.59141/jiss.v4i06.817>.
- Sidabariba, Burhan, Ellieka Sari, Faculty Law, and Universitas Sumatera Utara. "Fulfilling the Rights of the Parties in the Auction Execution in Indonesia : A Review." *RUSSIAN LAW JOURNAL* XI, no. 5 (2023): 2910-20. <https://www.russianlawjournal.org/index.php/journal/article/view/3184/1981>.
- Soraya, Disa. "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): 37-48. <https://doi.org/10.25041/iplr.v2i1.2224>.
- Sudirman, S. "Harmonisasi Akad Pembiayaan Syariah Terhadap Jaminan Hak Tanggungan." *Media Iuris* 6, no. 1 (2023): 151-74. <https://doi.org/10.20473/mi.v6i1.40113>.
- Sukardi, Albertus Jonathan, and Ari Wahyudi Hertanto. "A Review of the Law and Practice Relating to the Collateralization of Carbon Assets: A Comparison of Indonesia and England." *The International Journal of Politics and Sociology Research* 11, no. 2 (2023): 395-404. www.ijobsor.pelnus.ac.id.
- Tarrant, Kahryn. "Qualitative Data Re-Use and Secondary Analysis: Researching in and About a Crisis," (2021), 156-71. <https://doi.org/10.1332/policypress/9781447363798.003.0011>.
- Tyagi, Amit Kumar, Sathian Dananjayan, Deepshikha Agarwal, and Hasmath Farhana Thariq Ahmed. "Blockchain—Internet of Things Applications: Opportunities and Challenges for Industry 4.0 and Society 5.0." *Sensors* 23, no. 2 (2023): 947. <https://doi.org/10.3390/s23020947>.
- Undang-Undang. "Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan," 1996.
- Verianti C, and Saptanti N. "Wanprestasi Dalam Perjanjian Kredit Pemilikan Rumah (KPR) Pada Bank Tabungan Negara Kantor Cabang Solo." *Perkara :*

Jurnal Ilmu Hukum Dan Politik 2, no. 1 (2024): 398–414.
<https://doi.org/10.51903/perkara.v2i1.1788>.
Yustiana, Yustiana. “Eksekusi Hak Tanggungan Terhadap Kredit Macet Bank.” *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (2020): 77–97.
<https://doi.org/10.56087/aijih.v23i1.38>.

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