A Legal Review of The Principle of Legal Certainty in The Use of Certificates of Ownership As Collateral For Loans in Conventional Banking

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Abstract

This study aims to examine the principle of legal certainty, particularly as it relates to Certificates of Ownership (SHM) as collateral for loans in conventional banking. This study falls under the category of normative legal research and employs two main approaches: the conceptual approach and the statutory approach. The findings of this study indicate that the legal conception of the principle of legal certainty regarding SHM as credit collateral in conventional banking is robust and guaranteed through the integration of the land registration system, as mandated by the Land Law (UUPA), and the system of real property collateral, as mandated by the Law on Real Property (UUHT). In practice, the use of SHM as credit collateral often encounters various normative obstacles that have the potential to hinder the hierarchical application of the principle of legal certainty. The normative obstacles in question include: (1) inconsistencies between the UUHT No. 4 of 1996 and Government Regulation No. 24 of 1997; (2) regulatory inconsistencies regarding the droit de suite (right of follow-up) and the procedures for the transfer of rights; and (3) normative obstacles arising from the dualism of enforcement mechanisms under the UUHT versus the HIR/RBg in civil procedure law.

I. Introduction

In Indonesia, the Certificate of Ownership (SHM) is the strongest and most comprehensive proof of land ownership, as mandated by Law No. 5 of 1960 on the Basic Provisions of Agrarian Law (UUPA). According to Article 20(1) of the UUPA, the Right of Ownership is a hereditary right the strongest and most comprehensive that a person may hold over land, subject to certain provisions (Christiana Sri Murni & Sumirahayu Sulaiman, 2022). "Perpetual" in this context means having an unlimited duration (passed down from generation to generation), as long as the rights holder remains eligible as the subject of the right. "Full" means that the rights holder has the authority to use the land, including the right to fully utilize it as long as such use does not conflict with the law or the public interest. Thus, it can be understood that the Certificate of Ownership (SHM) is the highest right recognized in Indonesia's agrarian legal system. This right provides legal certainty and full authority to Indonesian citizens or certain legal entities to possess and use the land; however, its use remains limited by social functions in the interest of the nation and the state (Christina Tri Budhayati, 2018).

The legal force of the Certificate of Ownership makes land the most ideal and sought-after asset to be used as collateral in credit agreements, particularly through the mechanism of a mortgage (Sendy Salsabila Saifuddin & Yulia Qamariyanti, 2022). A mortgage itself is a key term in Indonesian real property security law, particularly for loans that use property, such as land and buildings as collateral. Specifically, the mortgage mechanism consists of a series of legal processes that provide specific security to the creditor the party lending the money regarding the repayment of the debt by the debtor the party borrowing the money. In the context of credit agreements, a lien is recognized as security encumbering land rights such as a Certificate of Ownership (SHM), a Right to Use for Business Purposes (HGU), or a Right to Use for Building Purposes (HGB) for the

repayment of specific debts, thereby granting the creditor priority status (Klaudius Ilkam Hulu, 2021).

The Certificate of Ownership (SHM) is the most sought-after form of collateral for several fundamental reasons directly related to its legal validity, duration, and economic value (Abdul Aziz et al., 2023). First, SHM holders have full rights to the land and the buildings on it, which are guaranteed by law; thus, these rights possess full legal validity and are recognized by the state. In the case of a loan agreement, the creditor can sell the entire collateralized property in the event of default, ensuring that its liquidation value is clear and maximized. An SHM is valid indefinitely, as long as the holder is an Indonesian citizen or a designated legal entity (Sabio Astroman Saragih et al., 2025). This allows for a time-unlimited collateral arrangement that provides long-term certainty for the bank. Consequently, the bank need not worry about potential loss or depreciation in value simply because the loan term has expired.

The second reason is that SHM properties tend to have higher economic and liquidation values. Properties with SHM status naturally have higher resale and investment values in the real estate market (Khalimi et al., 2025). These stable and higher values allow the Bank to extend larger loans with a lower risk of loss. This also strengthens the Loan-to-Value (LTV) ratio. In the event of default by the borrower, the bank has the right to sell the collateral to settle the debt. Given that SHM titles possess strong legal standing, the process of selling (liquidation or foreclosure) the property tends to be easier and attracts more buyers, making it easier for the bank to recover its capital (Murni Haddina & Adlin Budhiawan, 2023). From the creditor's perspective, a SHM is the safest option because it provides the highest level of legal certainty and the best resale value (liquidity). These two reasons are key factors, particularly for creditors, in minimizing credit risk.

Legal certainty, or rechtszekerheid, is one of the main pillars of a modern rule-of-law state, serving to ensure that every individual can clearly and precisely know and understand their rights and obligations as citizens (Fibri Amilio, 2025). In the context of the economy and banking, the guarantee of legal certainty is a fundamental factor that drives investment and lending activities in general. As the backbone of Indonesia's economy, the banking sector relies heavily on robust guarantee schemes to mitigate potential credit risks. Pursuant to Law No. 4 of 1996 on Mortgages on Land and Related Assets (UUHT), it is stipulated that creditors (in this case, banks) are granted a preferential status (preferential rights) to be prioritized in the repayment of their claims compared to other creditors (Rodrico Agustino Renee, 2021). This mechanism is designed from a formal legal perspective to ensure legal certainty, both for the debtor receiving the loan and for the bank as the creditor holding the collateral.

Although the legal framework both the UUPA and the UUHT explicitly establishes the status of SHM as a strong collateral asset, the reality on the ground often faces various challenges that can erode the very essence of the principle of legal certainty. These challenges stem from various aspects, including dualism or overlapping ownership documents, a mortgage enforcement process that tends to be convoluted, and land administration issues related to data validity (Aurelia Andrapradeshtya Nur et al., 2024). This phenomenon indicates a potential disparity or gap between legal norms, which are supposed to guarantee legal certainty and the realities on the ground, creating potential uncertainty in the utilization and enforcement of collateral. In fact, the practice of implementing legal certainty particularly as it relates to SHM is one of the hallmarks of the success of Indonesia's agrarian system (Rifara Urfi Ikuano Yusri, 2025)

. Legal certainty is the guarantee that the rights and obligations of landowners are recognized, protected, and cannot be challenged by other parties in accordance with laws and regulations. Given the importance of the principle of legal certainty in the context of

credit agreements in banking, this legal research is both relevant and important to conduct. This study focuses on an in-depth analysis of the principle of legal certainty inherent in the Certificate of Ownership (SHM) as the subject of a mortgage. Based on this background, the research questions to be examined in this study are formulated as follows.

1. What is the legal conception of the principle of legal certainty as set forth in the law regarding land liens, particularly with regard to Certificates of Ownership (SHM) used as collateral for loans in conventional banking?
2. What are the potential regulatory obstacles that could hinder the application of the principle of legal certainty in the process of registering and encumbering a mortgage on a Certificate of Ownership (SHM)?

2. Research Method

This study is classified as a type of normative legal research, which is legal research that examines legal norms or materials in the form of legislation, court decisions, legal theories, and other literature derived from relevant secondary data. The primary objective of normative legal research is to discover correspondence truth and coherence truth in law (Amiruddin & Zainal Asikin, 2018). The approaches used in this study are the conceptual approach and the statutory approach. The conceptual approach is applied to conduct an in-depth examination of the legal doctrines and principles related to the legal topic under study. The conceptual approach in this study was used to examine the principle of legal certainty, or rechtszekerheid, in general, and to correlate the concepts within the principle of legal certainty with the use of SHM as collateral in credit agreements in conventional banking. The statutory approach was applied to analyze the hierarchy of laws and regulations relevant to the legal topic under study (Bachtiar, 2021). In this study, a legal approach was used to analyze various relevant regulations, such as the Basic Agrarian

Law (UUPA), the Law on Mortgages (UUHT), and implementing regulations such as Government Regulations.

3. Results and Discussion

Legal Concept of the Principle of Legal Certainty Regarding Certificates of Ownership (SHM) as Collateral for Loans in Conventional Banking

In Indonesia, there are two main categories of banking systems: Islamic banking and conventional banking. These two categories play a crucial role in the functioning of the business sector in Indonesia. In general, banks serve as financial institutions that provide loans to support business development and the economy for the broader public. Specifically, in the realm of conventional banking, banks act as providers of loan funds that accept various forms of collateral in the form of tangible assets from debtors or borrowers. This is intended to ensure legal certainty and protect banks from credit risk in a loan agreement. The most commonly used form of collateral in loan applications at conventional banks is the Certificate of Ownership (SHM). In this context, the Certificate of Ownership (SHM) serves as collateral that provides legal certainty for the bank (creditor) during the loan origination and repayment process. Legally, the legal certainty of the SHM as loan collateral is based on two main pillars: the National Land Law and the Law on Security Interests. The legal concept of the principle of legal certainty regarding the SHM as loan collateral in conventional banking is robust and guaranteed through the integration of the land registration system as mandated by the Basic Agrarian Law (UUPA) and the system of real property security, as mandated by the Law on Real Property (UUHT). The SHM serves as the primary evidence of ownership certainty, while a Mortgage Right is the instrument ensuring debt repayment.

The legal force of the SHM essentially stems from its status as a product of national land law. Article 19 of Law No. 5 of 1960 on the Basic Provisions of Agrarian Law (UUPA) states that land registration aims to ensure legal certainty (Sudariyanto et al., 2020). An SHM issued by the National Land Agency (BPN) is a strong and valid certificate of title. The SHM contains physical data such as location, boundaries, and area, as well as legal data including the holder and type of right. Furthermore, Article 20 of the UUPA also explains that the SHM represents the strongest and most comprehensive form of land rights that an individual can hold. This provision distinguishes the SHM from other rights, such as the Right to Build (HGB) or the Right to Cultivate (HGU), which are time-limited. The fact that the SHM has no time limit provides banks with maximum long-term security (Sugeng Riyadi, 2025). For creditors (in this case, conventional banks), this legal certainty means that the bank can be confident that the party pledging the asset is the lawful owner and that the asset has been clearly identified both physically and legally.

One of the prerequisites for a Certificate of Ownership (SHM) to serve as strong collateral for a loan is that it must be encumbered with a Mortgage. A Mortgage (HT) is a security interest imposed on a land title to secure the repayment of a debt. Law No. 4 of 1996 on Mortgage Rights (UUHT) specifically grants enforcement authority to banks. A Mortgage Right is established through a Deed of Mortgage Grant (APHT) drawn up by a Land Deed Officer (PPAT) and must be registered with the National Land Agency (BPN) to produce a Mortgage Right Certificate. This registration mechanism determines the bank's priority ranking. This means that the bank holding the first Mortgage Right (Rank I) has the highest priority. The registration and issuance of the Mortgage Certificate are formal prerequisites that confer legal validity (I. Ketut Oka Setiawan, 2025).

The combination of the characteristics of the SHM and the establishment of a Mortgage provides three main legal advantages, namely: (a) the right of preference or *Droit de Préférence*; (b) the right of pursuit (*Droit de Suite*); and (c) absolute certainty

regarding the collateral. The right of preference allows the Bank, as the holder of the Mortgage, to be given priority in repayment over other creditors. The right of preference protects the Bank from having to share the proceeds from the sale of the collateral with unsecured creditors. The right of pursuit means that the Mortgage will remain attached to the land even if ownership is transferred to another party (through sale). The right of pursuit ensures that the debt remains tied to the collateral itself, rather than solely to the debtor's person. Absolute certainty regarding the collateral enables the land to be registered with clear and official boundaries, area, and physical data at the National Land Agency (BPN), thereby minimizing the risk of disputes over the collateral and facilitating its identification during foreclosure. Overall, for conventional banks, a Certificate of Freehold (SHM) encumbered with a Mortgage is a form of collateral that provides the highest level of legal certainty and liquidity.

Normative Obstacles That Could Hinder the Application of the Principle of Legal Certainty

The principle of legal certainty, or rechtszekerheid, is one of the main pillars of the legal system, particularly in the realm of land law and real property security. In the context of a Mortgage (HT) on a Certificate of Ownership (SHM), legal certainty is absolutely necessary to protect the interests of creditors and debtors, as well as to ensure the smooth flow of land-related legal proceedings. However, this legal certainty is relative in the context of litigation and enforcement in the field (M. Arba & Diman Ade Mulada, 2021). Therefore, for the banking sector, the legal certainty of an SHM depends not only on the existence of the certificate but also on compliance with procedures in the creation of security interests, thoroughness in due diligence, and the effectiveness of law enforcement during the execution process.

The land registration system in Indonesia adheres to the principle of negative publicity with a positive tendency. This means that although a certificate (SHM) constitutes strong evidence, it is not always conclusive. In light of this, a party who feels their rights have been infringed upon may still challenge the validity of the certificate in question. In banking practice, a registered SHM that is not subject to a de facto dispute provides banks with a very high degree of legal certainty and assurance (Bambang Purwanto, 2022). However, there are several obstacles rooted in positive legal norms that have the potential to hinder the optimal realization of the principle of legal certainty. In this study, these obstacles are further defined as normative obstacles. This study focuses on identifying potential conflicts between legal norms or regulations that are sources of uncertainty, as well as examining inconsistencies in the relevant regulations.

Normative obstacles in this study refer to all forms of barriers stemming from provisions in laws, Government Regulations, or other implementing regulations governing the registration and encumbrance of mortgage rights. The principle of legal certainty essentially requires that a rule be clear, consistent, and applicable in a consistent manner. In the process of registering and encumbering a mortgage, the most serious normative obstacles often stem not from a lack of regulations, but rather from contradictions between one regulation and another or inconsistencies in their application at the level of implementing regulations. This analysis will dissect and identify these points of conflict within the Indonesian legal framework. One of the normative obstacles in question is, first, the frequent conflict between the nature of a mortgage (property law) and the nature of land registration (administrative law). This occurs due to inconsistencies between Law No. 4 of 1996 on Mortgage Rights, which contradicts Government Regulation No. 24 of 1997 on Land Registration. In practice, these two regulations are often the subject of debate in agrarian law studies. Both regulations govern the same legal context regarding the registration of rights, yet their underlying philosophies and

mechanisms are sometimes out of sync. Hierarchically, the Mortgage Rights Law holds a higher legal standing (Lex Superior), while Government Regulation No. 24 of 1997 is more technically operational in matters of land registration (Irfan Dwiyano, 2023).

Article 13 of the Land Rights Act (UUHT) requires Land Deed Officers (PPAT) to submit the Deed of Mortgage (APHT) to the Land Office no later than 7 business days after signing. On the other hand, Article 40 of Government Regulation No. 24 of 1997 states that for the registration of the transfer or encumbrance of rights, the deed must be submitted no later than 7 days (without the specific term "working days") from the date of signing. The difference in interpretation regarding "calendar days" versus "business days" in these two regulations has the potential to create administrative uncertainty in determining the deadline for sanctions against PPATs. The Land Rights Act (UUHT) considers that rights are already issued and recognized on the date of entry in the land registry, whereas Government Regulation No. 24 of 1997 includes administrative review procedures that can take a relatively long time, thereby creating a "gray period" in creditor protection.

In practice, a mortgage is absolutely binding once it has been registered with the Land Office (Agus Suwarjono et al., 2023). A mortgage is based on the principle of legal certainty, which provides certainty for creditors. A Mortgage is not merely a promise to pay, but a tangible encumbrance on the land serving as collateral for the debt. Unlike an ordinary promise, a Mortgage is only considered binding on third parties once it is recorded in the Land Register. Although substantively a Mortgage is binding, delays in the issuance of the Mortgage certificate by the Land Office can create a gap of uncertainty. Creditors who rely on the mortgage certificate are typically faced with a time lag between the moment the right is established under the Land Mortgage Law and the moment they obtain the formal document guaranteed by administrative regulations (Futri Situmorang, 2022). This gap creates the potential for disputes regarding the validity and enforceability

of the mortgage during this transitional period. Conflicts arising from inconsistencies between these two regulations can generally be resolved through the principle of "Lex Specialis Derogat Legi Generali." Given that the Land Mortgage Law is a special law concerning land mortgages, its provisions should take precedence over Government Regulation No. 24/1997 in the event of a conflict regarding mortgage rights.

Second, there is an inconsistency between regulations regarding the droit de suite (right of follow-on) and procedures for the transfer of rights. This inconsistency arises because, administratively, it is possible for a PPAT to draw up a Deed of Sale (AJB) for land that is still encumbered by a right of follow-on, and the Land Office processes the registration of that transfer of rights, provided that the former creditor does not file an objection. Although legally, under the Land Mortgage Law (UUHT), the mortgage remains in effect, administratively, the Certificate of Ownership (SHM) can be transferred to a new name without the accompanying cancellation (roya) of the mortgage (Galih Kurnia Sakti & Ana Silviana, 2024). Article 7 of the Land Mortgage Law explicitly stipulates that the mortgage remains attached to the property even if the property is transferred to another party for example, through sale, gift, etc. This provision in the UUHT ensures legal certainty for creditors. Although the provisions of the UUHT are very clear, in practice they often conflict with the principle of good faith in civil law. If the new owner (the purchaser of the collateral) can prove that they are a "bona fide purchaser" who was unaware of the encumbrance due to negligence in checking the certificate at the National Land Agency (BPN), then under certain conditions the court may rule in favor of the purchaser. This phenomenon certainly weakens the creditor's ability to enforce their rights, even though, in theory, the *Droit de Suite* should be absolute.

Third, normative obstacles arising from the dualism of enforcement mechanisms under the UUHT versus the HIR/RBg. Normatively, there is a conflict between the "autonomy" of the UUHT and the "formalities" of civil procedure law as regulated in the

Herziene Inlandsch Reglement (HIR) or the Rechtreglement voor de Buitengewesten (RBg). The provisions in Articles 6 and 14 of the UUHT clearly grant creditors the right to sell collateral on their own authority through a public auction without the need for court intervention a process subsequently known as "Parate Execution." A Mortgage Certificate bearing the phrase "In the Name of Justice Based on the One and Only God" carries the same legal weight as a court decision that has become final and binding (inkracht). On the other hand, from the perspective of Civil Procedure Law, Article 224 of the HIR / 258 of the RBg stipulates that enforcement against an authentic deed bearing such a preamble must be carried out through a fiat or order from the Chief Judge of the District Court. This conflict ultimately creates uncertainty regarding the enforcement mechanism: whether ex officio enforcement is truly independent or must still go through the court's warning and ruling procedures.

4. Conclusion

Based on the analysis and discussion outlined in the previous section, this study draws the following conclusions, among others.

1. The legal certainty of SHM as collateral for loans is based on two main pillars: National Land Law and Security Interest Law. The legal concept of the principle of legal certainty regarding SHM as collateral for loans in conventional banking is robust and guaranteed through the integration of the land registration system, as mandated by the UUPA, and the system of security interests in property, as mandated by the UUHT.
2. Potential regulatory obstacles that could hinder the application of the principle of legal certainty regarding the use of SHM as collateral for loans in conventional banking include: (a) inconsistencies between the UUHT No. 4 of 1996 and Government Regulation No. 24 of 1997; (b) inconsistencies in regulations regarding the droit de suite (right of follow-on) and the procedures for the transfer of rights; and (c) normative

obstacles arising from the dualism of enforcement mechanisms under the Land Law versus the HIR/RBg in civil procedure law.

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