



Debtor's Responsibility For Land Certificate Owned By Third Party As Substitute Collateral In Bank

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Abstract

The purpose of writing this journal is to examine and analyze the responsibility of debtors toward the owners of land title certificates that are used as replacement collateral in bank credit agreements. The central problem discussed in this paper is the extent to which debtors are legally accountable to third-party landowners whose property has been pledged as collateral. This issue is crucial because, in practice, many debtors lack sufficient assets to secure loans and therefore rely on third parties who voluntarily provide their land ownership certificates to support the debtor's credit application. In conducting this research, the method employed is a normative juridical approach, which relies on the study of positive law applicable in Indonesia. The analysis is based on primary sources such as the 1945 Constitution of the Republic of Indonesia, the Civil Code, relevant statutory regulations, and specifically the Mortgage Law (Undang-Undang Hak Tanggungan). In addition, the research is supported by secondary sources, including expert legal opinions, academic literature, and jurisprudence, which provide interpretation and context for the application of these legal provisions. This study places emphasis on the importance of legal protection for third-party owners who provide collateral. The findings conclude that debtors are obligated to assume full responsibility for third-party property pledged as collateral. If the debtor fails to meet contractual obligations, the debtor may face sanctions or penalties, as such violations constitute a breach of contract under Indonesian law.

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Introduction

Money functions as a medium of exchange and a means of payment for goods and services essential to human life. In practice, money can originate from personal savings or from loans provided by financial institutions that facilitate financing. Financial institutions thus play an integral role in society, not only by managing capital but also by ensuring that individuals and businesses have access to the resources needed for survival and productivity. Access to credit allows individuals to sustain their livelihoods, while simultaneously enabling businesses to utilize working capital more effectively, thereby boosting productivity and overall economic growth (Ginting & Hutapea, 2018).

In the modern economy, banks operate as financing centers that manage financial systems and payment structures within a country. According to the Big Indonesian Dictionary (KBBI), a bank is defined as an institution that handles the receipt and issuance of means of payment (money) in society, particularly through lending, while simultaneously regulating the flow of payment traffic. Regulations governing banking institutions in Indonesia are stipulated in Law No. 10 of 1998 on Banking, which sets out the roles, responsibilities, and restrictions applicable to financial institutions (Sari, 2019).

Financial institutions in Indonesia are generally divided into bank financial institutions and non-bank financial institutions. Bank financial institutions are considered more comprehensive since they collect and distribute funds, extend loans, and provide financial services such as payment traffic management. Non-bank financial institutions, by contrast, focus primarily on distributing funds without collecting deposits. Examples include leasing companies, which provide capital goods financing, and pawnshops, which provide loans secured by movable property for a fixed duration (Susetyasi & Herdiansyah, 2010). Both institutions are vital for expanding credit access, yet banks remain central to the financial system because of their regulatory and systemic importance.

In the process of extending credit, banks usually require collateral as a guarantee of repayment. Collateral serves as a safeguard to ensure that creditors can recover their funds if the debtor defaults. Collateral thus provides security for creditors and incentivizes debtors to fulfill their obligations. According to Mitia (2017), the Agreement for Granting Mortgage Rights (Akta Pemberian Hak Tanggungan, APHT) forms an integral part of credit arrangements. A mortgage right constitutes an additional agreement to secure debt repayment, positioning the bank as a preferred creditor (*droit de preference*). This means that creditors holding mortgage rights are entitled to repayment priority over other creditors if the debtor fails to perform.

The principle of *droit de preference* provides creditors with a privileged position in debt repayment, reflecting the principle of priority within material law (Khisni, 2014). This principle ensures legal certainty for creditors while strengthening trust in lending systems. However, the rigid prioritization of creditor rights also creates challenges for third parties whose property may be pledged as collateral.

Before the enactment of the Mortgage Rights Law (Law No. 4 of 1996), collateral arrangements were primarily regulated under Article 25 of Law No. 5 of 1960 on Basic Agrarian Principles. However, this provision lacked clear procedures for granting mortgage rights. To address this gap, the 1996 Mortgage Rights Law was promulgated, providing legal certainty and procedural clarity for the granting, registration, and enforcement of mortgage rights (Ananda et al., 2023). This law introduced formal mechanisms to ensure that mortgage rights are properly recorded in the National Land Agency (Badan Pertanahan Nasional, BPN) registry, enabling their enforceability in the event of default.

Nevertheless, while the law clarified procedures for creditors, it left certain areas ambiguous, particularly regarding the use of third-party land as collateral. In many cases, debtors secure loans using property that does not belong to them but rather to a third party. The third party, often a family member or business associate, holds the land certificate and permits its use as collateral. While this arrangement provides debtors with access to much-needed credit, it raises legal questions concerning responsibility, ownership, and protection for third parties.

Conflicts frequently emerge in credit agreements secured by mortgage rights when third-party collateral is involved. A key issue arises when collateral pledged by a third party does not correspond with the collateral originally agreed in the credit contract. This discrepancy creates legal loopholes that leave third parties

vulnerable. As noted by Handayani (2021), Article 20 of the Mortgage Rights Law primarily emphasizes creditor protection, while offering little explicit protection for third parties who pledge their assets. Consequently, disputes often center on the extent of debtor responsibility toward third-party landowners.

These disputes highlight a broader concern: the lack of explicit regulation concerning third-party collateral. While the Mortgage Rights Law addresses the procedural aspects of collateral registration and enforcement, it fails to establish a comprehensive framework for protecting the rights of third-party guarantors. The result is a legal imbalance, where creditors enjoy robust protection, while third parties assume significant risks without corresponding safeguards (Ananda et al., 2023).

A critical question in legal scholarship is the extent of debtor responsibility to third parties who pledge their land as collateral. From a contractual perspective, debtors are obligated to honor agreements not only with creditors but also with third parties who provide collateral. If debtors default, the collateral may be executed through auction, leading to potential loss for third parties. Scholars argue that debtors must provide legal protection and compensation to third parties in such cases (Mustamu, 2014).

Furthermore, under civil law principles, if a debtor dies before fulfilling their obligations, the responsibility to third parties transfers to their heirs in accordance with Article 833 of the Indonesian Civil Code. This provision ensures continuity of responsibility and provides third parties with legal recourse to recover their rights from the debtor's heirs (Kelsen, 2014). Thus, responsibility extends beyond the immediate debtor to their legal successors, reinforcing the principle of accountability in contractual relationships.

Ensuring adequate legal protection for third parties remains a pressing challenge in Indonesian credit law. While third parties willingly pledge their assets, they should not be left entirely exposed to the consequences of debtor default. As highlighted by Widjaja and Yani (2003), third parties are entitled to receive clear information about the risks involved and should have access to protective clauses in credit agreements that limit their liability. One such protection could be ensuring that third parties are not liable beyond the value of the pledged land and that any surplus from the auction of collateral is returned to them, as mandated by Article 6 of the Mortgage Rights Law.

Legal scholars suggest that reforms are necessary to strike a balance between creditor security and third-party rights. Strengthening contractual clauses, improving transparency, and enhancing dispute resolution mechanisms would help minimize risks for third parties while preserving the integrity of the credit system (Prasetyo, 2020).

Disputes involving third-party collateral are typically resolved through mediation, arbitration, or litigation. Mediation offers the advantage of amicable resolution, reducing the financial and emotional burden on all parties. Arbitration provides a binding yet private forum for resolving disputes, often favored in commercial contexts. Litigation, while time-consuming, remains necessary when disputes involve fraud, misrepresentation, or questions of legal validity. Courts play a critical role in clarifying ambiguities and ensuring that justice is served in cases involving conflicting rights (Syahrani, 2012).

Methods

The research methodology employed in this article adopts a normative legal approach, which is particularly relevant for examining legal aspects of third-party land collateral in credit agreements. A normative legal study focuses on the analysis of legal norms, rules, and principles that regulate a specific issue, rather than relying on empirical data or fieldwork. In this context, the references and materials analyzed are primarily drawn from Indonesian legal provisions that form the foundation of the national legal system.

The main sources include the 1945 Constitution of the Republic of Indonesia, which provides the highest legal basis for the protection of property rights, as well as the Civil Code, which governs contractual relationships and obligations between parties. Additionally, special legislation such as the Mortgage Law (Undang-Undang Hak Tanggungan) is central to this study, as it directly regulates the use of land as collateral. Other relevant statutory regulations, government regulations, and ministerial decrees are also examined to ensure a comprehensive understanding of the legal framework.

In addition to primary sources of law, this research also incorporates secondary sources such as expert legal opinions, scientific journals, academic theses, and other scholarly works. These references provide critical

perspectives and interpretations that help contextualize and analyze the implementation of legal provisions. Thus, this methodology ensures a rigorous and systematic examination of the legal issues under discussion.

Results and Discussions

The use of third-party land collateral in credit agreements represents a complex intersection of property law, contract law, and financial regulation. In many credit transactions, not all debtors possess sufficient assets to be pledged as collateral. Consequently, third parties, such as family members or business partners, may step in to provide land as collateral to secure the debtor's obligations. While this practice creates opportunities for debtors who would otherwise lack access to credit, it also raises significant legal questions concerning the legality of security agreements, ownership, transfer of rights, and the distribution of responsibilities among debtors, creditors, and third parties. The discussion below examines the key legal aspects and implications of such arrangements, including issues of legality, ownership verification, dispute resolution, and responsibility in the event of default.

The first issue to address concerns the legality of the security agreement. According to the Mortgage Rights Law, a security agreement over land can only be established if the guarantor is the lawful owner of the property. Third parties who pledge their land must therefore hold valid ownership certificates, such as Hak Milik (ownership rights), Hak Guna Usaha (business use rights), or Hak Guna Bangunan (building use rights), as explicitly provided in Article 4(1) of the Mortgage Rights Law. The guarantor's consent is also essential, and this consent must be expressed in writing to avoid disputes regarding the voluntariness of the pledge. Furthermore, the security must be formalized in the form of a Deed of Granting Mortgage Rights, drafted by a notary, and subsequently registered with the National Land Agency (Badan Pertanahan Nasional/BPN). This process ensures that the mortgage has binding legal force and can be executed without further judicial intervention if the debtor defaults. The existence of a valid encumbrance deed also strengthens the legal enforceability of the mortgage, granting creditors the right to auction the land automatically if the debtor fails to perform. Without compliance with these requirements, the security arrangement may be deemed invalid, exposing both creditor and debtor to legal uncertainty.

The second dimension concerns the role of third-party land collateral in credit agreements. While debtors remain the primary parties obligated to repay the loan, the involvement of third parties introduces additional legal relationships. Importantly, the third party is not personally liable for repayment but faces the risk of losing the pledged land if the debtor defaults. This creates a situation where the third party's property rights are directly tied to the debtor's contractual obligations. As a result, credit agreements often include protective provisions to safeguard third-party interests. For example, such agreements may stipulate that third parties cannot be held liable beyond the value of the pledged property. These provisions prevent creditors from pursuing third parties' other assets, thereby limiting their exposure. Moreover, third parties are entitled to be fully informed of the terms and conditions of the credit agreement, ensuring transparency and fairness. Nevertheless, risks remain significant for third parties, as they may face the execution of their property for debts they did not incur. This underscores the importance of cautious decision-making and the need for legal advice before entering such arrangements.

The third critical area involves land ownership and transfer of rights. Valid collateral can only be pledged by a lawful owner whose rights are recognized by the National Land Agency. Thus, before land can be used as collateral, creditors must verify the authenticity of land ownership certificates and ensure that the land is free from disputes. Verification not only protects creditors but also ensures that third parties genuinely own the pledged property. Registration of the mortgage with the BPN provides creditors with enforceable legal rights and ensures that the mortgage is recorded in the land book. Importantly, the use of land as collateral does not transfer ownership to the creditor. The third party remains the rightful owner unless and until the debtor defaults, at which point the land may be executed through a public auction. This principle preserves the third party's ownership rights while also safeguarding the creditor's security interest. Execution only becomes possible if the debtor fails to perform, ensuring that the collateral serves its purpose as a last resort rather than an automatic transfer of ownership.

In terms of responsibilities, the obligations of debtors, creditors, and third parties are clearly delineated. Debtors remain primarily responsible for repaying their debts, even if they use third-party collateral. Their failure to pay directly triggers the execution of the third party's land. Creditors, on the other hand, possess the

right to enforce security interests but must comply with legal procedures, such as providing notice of execution and conducting auctions according to statutory requirements. They cannot simply seize the land without due process. Third parties, meanwhile, are entitled to accurate information regarding their rights and obligations. They must also ensure that the land is free from disputes before pledging it, as undisclosed problems may compromise the validity of the collateral. This tripartite arrangement emphasizes the need for mutual awareness and responsibility among all parties.

Despite these legal safeguards, disputes frequently arise, often related to the validity of agreements or execution rights. When disputes occur, resolution can be sought through mediation, arbitration, or the courts. Mediation is often preferred as it provides an opportunity for amicable settlement without lengthy litigation. Arbitration may also be selected if specified in the agreement, offering a binding resolution outside the court system. However, litigation remains available if other methods fail, particularly in cases involving fraud, misrepresentation, or conflicting claims of ownership. The availability of multiple dispute resolution mechanisms highlights the importance of structuring agreements carefully and anticipating possible conflicts from the outset.

The implications of debtor default further complicate the legal landscape. A third party who has pledged land as collateral retains certain rights under the Mortgage Rights Law. For instance, they may continue to control and use the collateral as long as the debtor is not in default. If the land is eventually auctioned, the third party is entitled to any surplus proceeds after the creditor has been fully repaid, as stipulated in Article 6 of the Mortgage Rights Law. This principle ensures that third parties are not unfairly deprived of the economic value of their property. Nevertheless, the execution of land remains a severe consequence, often leading to social and familial conflicts, particularly when family-owned land is involved. This underlines the need for preventive measures, such as comprehensive risk assessment and clear contractual safeguards.

The final issue relates to debtor and third-party responsibilities in replacement guarantee cases, particularly when default and death complicate the situation. From a legal perspective, responsibility is tied to the principle of accountability for one's actions or contractual obligations. If a debtor fails to return a third party's land certificate or defaults on obligations, the debtor is liable to compensate the third party. Hans Kelsen's theory of legal responsibility supports the notion that violations of contractual obligations trigger sanctions or penalties. Thus, if a debtor fails to return the land certificate, they must provide compensation to the third party. If the debtor dies before fulfilling their obligations, civil law provides that their responsibilities transfer to their heirs, as stipulated in Article 833 of the Civil Code. Consequently, third parties may claim their rights directly from the heirs, who inherit both the rights and obligations of the deceased. This mechanism ensures continuity of responsibility and prevents third parties from being left without remedy.

The transfer of responsibility to heirs, however, can create practical challenges, as heirs may lack the financial capacity to honor obligations. In such cases, negotiation and communication become essential to finding equitable solutions. Third parties may seek to negotiate partial settlements, repayment schedules, or other arrangements with heirs to mitigate their losses. Where amicable solutions prove impossible, legal action remains a last resort. This framework reflects the broader principle that responsibility extends beyond the individual debtor to their legal successors, thereby reinforcing the sanctity of contractual obligations in credit transactions.

Overall, the discussion demonstrates that the use of third-party land collateral in credit agreements introduces both opportunities and risks. On one hand, it provides debtors with access to credit they might not otherwise secure, thereby facilitating economic activity. On the other hand, it exposes third parties to significant risks, including the loss of property, strained personal relationships, and complex legal disputes. The legal framework, through mortgage registration, ownership verification, and dispute resolution mechanisms, seeks to balance these competing interests by protecting creditors' rights while also safeguarding third-party interests. Yet, practical challenges remain, particularly in cases of debtor default or death, where the enforcement of rights can be fraught with difficulty. This underscores the importance of cautious participation by third parties, careful drafting of credit agreements, and adherence to legal formalities to minimize risks.

In conclusion, the results of this analysis reveal that third-party land collateral arrangements must be approached with careful legal consideration. Their validity depends on strict compliance with legal requirements concerning ownership, consent, and registration. While creditors gain security for repayment, third parties must be fully informed and adequately protected against risks. Debtors, as the principal obligors,

bear the ultimate responsibility for repayment, with their heirs inheriting obligations in the event of death. Disputes are inevitable, but legal mechanisms exist to resolve them fairly. Ultimately, the practice of using third-party land collateral highlights the delicate balance between facilitating credit access and protecting property rights, requiring vigilant legal oversight and responsible conduct from all parties involved.

Conclusion

Legally, a person is obliged to behave in accordance with existing norms, otherwise subject to coercive action. However, this coercive action does not have to be directed at individuals who are required to be "offenders", but can be directed at other individuals who are related to the initial individual.

Therefore, if it is related to a problem, the second party will receive punishment or sanctions, which means being responsible for the violation committed. From the obligations violated by the second party to the third party contained in the contents of the contract in the agreement, namely the non-return of the object in the form of a Land Ownership Certificate to the third party as the owner which can give rise to responsibility, then the form of responsibility that must be carried out and obtained by the third party is the second party is compensation.

However, if something or an undesirable event occurs, for example the second party does not compensate for the loss of goods borrowed from a third party but dies during the journey, then in settlement the third party can sue the heirs (heirs) of the second party.

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