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# Enhancing Legal Certainty in Land Collateral: Bridging Regulatory Gaps, Mitigating Vulnerabilities, and Promoting Credit Access in Indonesia

**Winahyu Erwiningsih**

*Lecturer of Land Law and Agrarian Law, Universitas Islam Indonesia*

## Abstract

### Key words:

Legal Certainty,  
Land Collateral,  
Mortgage Rights,  
Credit Access,  
Land Registration

*There exists a noteworthy incongruence between the regulatory paradigm overseeing the imposition of mortgage rights on uncertified land assets and its pragmatic execution, presenting substantial impediments for landowners in pursuit of credit. This investigation intricately explores the preservation of legal certainty associated with land serving as collateral in credit arrangements, particularly in instances where said land lacks formal certification. The research methodology employed herein comprises qualitative inquiry, amalgamating a normative legal perspective with a conceptual framework. The study contributes innovative perspectives by elucidating the legal provisions governing collateral relations involving land, addressing persistent administrative and juridical obstacles, and proposing practicable remedies. This emphasizes the imperative for the registration of uncertified land, given its susceptibility to legal complexities and heightened susceptibility. Aligning the registration of land rights with Mortgage Rights Law holds the potential to enhance the efficiency of credit provision and accelerate land registration endeavours within the Indonesian context. Policymakers can leverage this study to fine-tune regulations and expedite credit accessibility. Financial institutions, adhering to the 5C principles, can improve their evaluation of credit risk. Simultaneously, landowners stand to gain from heightened awareness regarding the significance of land ownership and the ensuing legal certainty.*

## 1. Introduction

Land rights in Indonesia constitute a complex system marked by a synthesis of formal legal frameworks and traditional practices. The substantial significance of customary land rights is underscored, as indigenous and local communities rely on entrenched traditions to assert their land claims (Notess et al., 2018). Customary rights exhibit regional and ethnic variations and frequently lack formal acknowledgment (Bedner & Arizona, 2019). In contradistinction, the Indonesian government acknowledges individual land ownership through the issuance of land certificates (Hak Milik) and land titles (Hak Guna Bangunan/HGB), conferring upon landholders the entitlement to utilize, transfer, and bequeath land. Furthermore, there exist state-controlled lands administered by the government, designated for distinct purposes like agriculture, industry, or forestry. Land conflicts commonly ensue from indistinct boundaries, conflicting assertions, and incongruent land registration mechanisms, thereby giving rise to social and legal complexities (Larson et al., 2013; Nuhidayah et al., 2020; Sunderlin et al., 2014). The intricate land rights milieu significantly influences land collateral in the banking sector. When borrowers offer land as loan collateral, banks must navigate this complexity by taking into account the nature of land rights, potential disputes arising from ambiguous boundaries and conflicting claims, and the level of formal recognition associated with the land (Dower & Potamites, 2014). This comprehension is pivotal for evaluating the risk and viability of utilizing land as collateral in loan transactions.

Bank resources derive from diverse channels, including internal funds, external loans, savings, and contributions from the general public (Lestari et al., 2022; Lisa, 2016). Significantly, banks predominantly depend on funds acquired from the public as their primary capital source. Beyond conventional third-party deposits, banks also consider various alternative forms of external financing (Dharsana et al., 2018; Lestari et al., 2022). In contemplating the deployment of these funds, banks demonstrate commendable efficiency and effectiveness, allocating a substantial proportion specifically for credit extension, thereby underscoring a pivotal facet of their operational framework (Adrian, 2010; Altunbas et al., 2009; Apanga et al., 2016; Liu et al., 2021). In accordance with Indonesian Law No. 10 of 1998, a statutory amendment to Law No. 7 of 1992 pertaining to Banking, credit is delineated as the disbursal of pecuniary resources or their equivalents, executed through a contractual or loan agreement between the financial institution and a counterparty. This agreement imposes an obligation upon the borrower to reimburse the borrowed principal along with accrued interest within a specified timeframe (Indonesian Law No. 10 of 1998, Article 1, Clause 11).

Banks provide credit to clients in accordance with Article 8 of Law No. 10 of 1998, amending Law No. 7 of 1992 concerning Banking. Before extending a credit facility, the bank conducts legal and economic evaluations to assess the applicant's capacity and willingness to repay the credit as per agreed terms. Approved credit applications are then formalized through a credit agreement, representing the principle of contractual freedom between the creditor and debtor (Butarbutar, 2020; Dwi, 2022). The processes are grounded in the principle of prudence, mandating the consistent and bona fide adherence to all legal stipulations and regulations related to credit provision by the bank (El-Hawary et al., 2007; Goldman, 2014; Hermansyah, 2006). Moreover, the significance of guarantees, coupled with reliance on the debtor's trustworthiness, cannot be overstated (Herlina, 2018; Squire, 2011). Legal intricacies frequently arise in the realm of guarantees, particularly individual guarantees, which lack a specific object for execution, thereby exposing vulnerabilities to creditors' interests. The concept of guarantees is not a novel one, as it has consistently constituted an integral facet of legal relationships, both on a global scale and within the Indonesian jurisdiction. Within the Indonesian context, initiatives to uphold legal certainty for collateral involving uncertified land have been under consideration for an extended period, with historical roots traceable back to the Civil Code (Ade Hari, 2017). Individuals seek these guarantees to address their financial requirements, frequently obtained through bank credit or analogous financial institutions. The extension of credit, particularly when employing land as collateral without adequate certification, introduces inherent risks (Alam, 2022; Meinzen-Dick et al., 2019). The intricate interrelation of legal provisions, credit practices, and guarantees notably configures the financial landscape, emphasizing the necessity for a balanced and prudently administered credit system.

In the realm of land collateral, a seminal instance of legal consolidation transpired in 1996 through the enactment of Law No. 4 of 1996, recognized as the Mortgage Rights over Land and Objects Related to Land Act, abbreviated as UUHT. The General Explanation of the UUHT articulates two fundamental prerequisites for land rights to function as collateral objects. One condition stipulates that these rights, in accordance with extant regulations, must undergo public registration, typically conducted at the National Land Agency (Badan Pertanahan Nasional/BPN) Office. This stipulation emphasizes the elevated status conferred upon creditors possessing encumbrances over their counterparts. As a result, the documentation of encumbrances in both the land book and the land certificate is indispensable to guarantee transparency and compliance with the principle of publicity. In order to qualify as appropriate collateral for land security rights, the subject of mortgage rights must satisfy four criteria: it must exhibit monetary value, be recorded in the general register, possess transferability attributes, and necessitate legal designation (Gawlik, 2021; Kashadi, 2008). Pursuant to Article 4, paragraph (1) of the UUHT, land rights deemed suitable for encumbrance with mortgage rights include ownership rights, business use rights, and building use rights. The elucidation in Article 4, paragraph (1) of the UUHT specifies that these terms align with the definitions of land rights as articulated in the Agrarian Basic Law (Undang-Undang Pokok Agraria/UUPA). This legislative framework represents a pivotal advancement in the harmonization and regulation of land collateral, ensuring conformity with established legal and administrative protocols (Gawlik, 2021; Kashadi, 2008).

Consequently, it is imperative for each encumbered asset to undergo registration and possess a land title certificate. However, uncertified land remains susceptible to mortgage, contingent upon the simultaneous occurrence of the mortgage process and the application for land rights registration for the relevant property. Mortgage rights, functioning as a mechanism to secure land for the repayment of a debtor's obligations to one or multiple creditors, manifest several salient characteristics, including preferential treatment (affording creditors a privileged status), portability (accompanying the land irrespective of its possessor), equitable protection (ensuring equilibrium among debtors, mortgage providers, and third parties), specialization and publicity (conforming to the principles of specialization and publicity, obligating creditors to register them with the national land agency), and efficient and reliable execution (Bahar et al., 2023). Within the framework of the UUHT, an avenue arises for holders of uncertified land rights to formalize their land rights through mortgage rights. Article 10 of the UUHT expressly stipulates that in the event the Mortgage Right is associated with a land right stemming from the conversion of a pre-existing right, fulfilling the registration criteria but lacking registration, the mortgage right may be conferred concurrently with the application for land rights registration (Anggraeny & Pramithasari, 2020; Garcia-Teruel, 2020; Hidayati, 2017). Although legal provisions allow for the imposition of mortgage rights on

uncertified land, in practical terms, proprietors of uncertified land rights frequently face challenges. Creditors generally favour certified land due to its provision of substantial evidence of ownership, thereby presenting obstacles for owners of uncertified land rights in their pursuit of financial support from creditors.

The principal aim of this research is to elucidate the legal frameworks governing land collateral relationships, which represent a persistent societal challenge. Furthermore, the study will explore the administrative and legal obstacles commonly confronted in practical application. Within this framework, the paper aspires to provide analytical perspectives that can function as a guide for addressing concerns related to land security, encompassing both legal and administrative facets. The ultimate objective is to augment understanding among the public and pertinent stakeholders when contending with issues pertaining to land security.

This research primarily concentrates on credit access, signifying a noteworthy impact within the realm of financial inclusion. Consequently, an augmentation of legal certainty in the domain of land collateral holds the potential to incentivize diverse financial institutions to extend loans to a broader demographic, thereby contributing to enhanced economic growth within the country. Furthermore, a lucid and efficacious legal framework pertaining to land collateral can serve to bolster the confidence of both local and foreign investors. Additionally, this study proves efficacious in mitigating various vulnerabilities within the legal system of Indonesia concerning transactions involving land. This contributes to offering a transparent understanding of the associated legal framework to both borrowers and lenders, thereby mitigating potential disputes.

## **2. Literature Review**

Agricultural credit institutions, analogous to banks, hinge upon the steadfast trust of their clientele, predominantly comprised of farmers who rely on these entities to access financial resources for their agricultural requirements. The pivotal nature of this trust extends to the foundational essence of both institutions, underpinning their capacity to cater to the needs of their respective communities by delivering crucial financial services and fostering economic development ([Irawati et al., 2019](#); [van der Crujisen et al., 2021](#)). The foundational underpinning of a bank's viability resides in public trust, rendering the preservation of this trust a matter of paramount significance for the institution and the broader populace alike ([Hwang et al., 2023](#); [Yousafzai et al., 2003](#)). Serving as intermediaries, banks assume a pivotal role in facilitating the transfer of funds from entities with surplus resources to those experiencing a deficit ([Norawati et al., 2022](#); [Rejekiningsih et al., 2022](#)). Specifically, banks fulfill three discrete roles as agents of trust, agents of development, and agents of services. Through the provision of a spectrum of financial services to the public, they enhance their position within the overarching financial landscape ([Lisdiyono, 2017](#); [Triandaru & Budisantoso, 2006](#)). The

agricultural sector depends on land assets as collateral to secure loans and financial support for agricultural activities. This reliance forms the fundamental basis, allowing farmers and agricultural enterprises to obtain capital for essential resources like equipment and seeds. The interconnection between land collateral and the agricultural sector is crucial, sustaining the sector's functionality and playing a pivotal role in ensuring food security and fostering economic stability. Food system transformation and its impact on smallholder farmers' income and food (Qurani & Fawzi, 2022; Toiba et al., 2020).

Financial institutions extend credit to agricultural entities with the expectation that borrowers, often farmers, will adhere to loan repayment terms. The reliance on land collateral is pivotal in agricultural financing, instilling confidence in lenders and facilitating agricultural enterprises to obtain essential capital for diverse farming activities (Gerber, 2013; Soedomo et al., 2022). Agricultural credit constitutes financial assistance extended to farmers and agricultural enterprises, typically facilitated by banks or financial institutions. This form of credit serves to finance various agricultural operations, encompassing the acquisition of seeds, equipment, and land (Sabrie et al., 2022; Siddiqui, 2008; Wiharma et al., 2018). In this contractual arrangement, the lending bank vests its confidence in the landowner, expecting full repayment of the borrowed amount within the stipulated period, delineated over several months or years as specified in the agreement (Rico, 2010). Pursuant to Law No. 5 of 1960, concerning Basic Agrarian Principles Regulations, Article 4, paragraph 1, the state holds the prerogative to designate diverse forms of land rights allocable to individuals, groups, or legal entities. These rights confer the authority to directly utilize and occupy land associated with the property, subject to the constraints outlined in the UUPA (Agrarian Basic Law) and other overarching regulations. Additionally, any rights concomitant with land rights, as specified in Article 4, paragraph 1, maintain an equivalent legal status. The various classifications of land rights delineated in Article 16, in conjunction with Article 53 of the UUPA, categorize into primary types. The first among these is Permanent Land Rights, which endure as long as the UUPA remains in effect and remains unaffected by subsequent legislation. Examples encompass HM (Hak Milik), HGU (Hak Guna Usaha), HGB (Hak Guna Bangunan), HP (Hak Pakai), Rental Rights for Buildings, and Rights to Collect Forest Products. The second category comprises Land Rights Determined by Law, which are legislatively instituted and may possess a finite duration. These rights, often transient in nature, gradually diminish due to their coercive and feudalistic attributes, conflicting with the ethos of the UUPA. Illustrative instances include Lien Rights, Profit Sharing Business Rights, Hitchhiking Rights, and agricultural land rental rights.

Regarding land rights, it is imperative to contextualize them within the parameters set forth by Article 33 paragraphs of the 1945 Constitution. In constitutional terms, the designation "controlled" by the state does not denote absolute state ownership of the land; rather, it signifies the

authority vested in the state as the paramount governing entity of the Indonesian Nation. This authority entails several fundamental facets, encompassing the state's capacity to regulate and administer land for its utilization, provision, and preservation. It includes the ability to delineate and govern the rights pertaining to distinct portions of land, incorporating land, water, and the airspace above it. Additionally, the state possesses the prerogative to institute and regulate legal relationships among individuals and legal actions concerning land, water, and airspace. These measures collectively aim to cultivate the welfare of the populace within the framework of a equitable and flourishing society. It is noteworthy that not all land is subject to these regulations, particularly when individuals already hold surface rights to the land. Furthermore, land rights, as stipulated by the Agrarian Basic Law (UUPA), do not impart ownership of subterranean natural resources (Kartasapoetra, 1992). Harsono (2003) elaborates that, in accordance with the provisions of Article 8 of the UUPA, land rights exclusively concern the Earth's surface. Consequently, the jurisdiction conferred by these rights does not encompass the natural resources located within the Earth's subsurface, water bodies, or airspace. Distinct regulations are requisite to govern the extraction of these resources, serving as the foundational framework for mining and related legislation.

### 3. Method

The present study adopts a qualitative research design, specifically employing the normative legal research methodology. This approach aims to elucidate the legal complexities surrounding land collateral relationships, a prevalent and intricate societal issue. The focal point of inquiry, namely, the preservation of legal certainty associated with land utilized as collateral without adequate certification, is multifaceted, encompassing diverse legal and regulatory dimensions. The adoption of a qualitative approach affords the researcher the opportunity to conduct a thorough exploration of the intricacies inherent in the subject matter, scrutinizing its nuances and details. The employment of a normative legal approach proves apt when the objective of the study involves an examination of legal norms, principles, and values. In this instance, the author likely seeks to comprehend the normative foundations of the legal system concerning land collateral lacking certification.

Moreover, the study seeks to explore prevalent administrative and legal obstacles, aspiring to provide a comprehensive analysis serving as a roadmap for addressing land security issues across legal and administrative realms. The ultimate objective is to augment comprehension among the public and relevant stakeholders in addressing land security matters. Normative legal research is a rigorous scientific investigative process grounded in legal logic, endeavouring to reveal truths from a normative standpoint (Ibrahim, 2006). In alignment with the outlined research objectives, this study employs a dual-

methodological framework, integrating both a statutory and a conceptual approach. The statutory methodology is pivotal for grasping and interpreting the legislative frameworks governing land collateral. It involves a meticulous examination of relevant legal provisions, encompassing the identification and comprehensive analysis of their content. Additionally, this approach involves an exploration of pertinent case studies related to the laws under scrutiny. Through a meticulous examination of case law, this research aims to elucidate the practical application of legal principles, revealing the intricacies and challenges inherent in land collateral regulations. Conversely, the conceptual approach delves into the extant legal concepts associated with land collateral, involving a thorough dissection and analysis of these conceptual frameworks to foster a comprehensive understanding of their underlying principles. Similar to the statutory approach, the conceptual method also encompasses an exploration of case studies pertinent to these legal concepts. This integrated approach ensures the research captures both the theoretical and practical dimensions of land collateral, presenting a comprehensive perspective on the subject (Budianto, 2020). Nonetheless, qualitative research may exhibit a proclivity to favour cases or documents that are more readily accessible, potentially introducing selection bias, wherein the chosen cases might not be representative of the entire relevant case population. Additionally, the in-depth insights derived from this qualitative research on specific land collateral cases in Indonesia may lack generalizability to the broader population or legal context. The findings are context-specific and not readily applicable to other regions or jurisdictions.

## **4. Results and Discussion**

### **4.1. Land Certification Requirements and Procedures**

Concerning the definition of land title certificates, it is articulated in Article 13 of Government Regulation No. 10 of 1961 pertaining to Land Registration. The provision expressly states: "Copies of land books and measuring letters, once bound together with a cover paper whose format is determined by the Minister of Agrarian Affairs, are termed certificates and are issued to those entitled to them." Subsequently, the paragraph clarifies: "The certificate referred to in this paragraph serves as evidence of rights as contemplated in Article 19 of the Agrarian Basic Law (UUPA)." These legal provisions are obligatory, necessitating that every citizen, community, or entity in possession of land rights must undergo the registration process for the land under their control. Upon completion, they will be provided with a copy of the land book, referred to as a "certificate," which serves as conclusive evidence of ownership. Hence, the "certificate" essentially constitutes a duplicate of the land book and holds the highest legal authority.

As a result, an individual, community, or legal entity holding control over land and possessing a land certificate can affirm legal ownership. It is essential to acknowledge, however, that the consideration of additional

evidence beyond the certificate is not precluded, subject to societal conditions, governmental readiness, and financial constraints. Supplementary evidence may still be utilized as an indicator of an individual's or entity's land rights. Within this context, a negative steles system is instituted, signifying that another party or individual with superior rights may potentially contest the rights of an individual or entity (Mustarin, 2017). In a broader context, concerning land lacking formal certification, commonly denoted as customary or ulayat land, there exist two explications. Firstly, it may be categorized as "former customary ownership rights," frequently referred to as girik land in customary terminology. Girik land emanates from customary or other lands that have not undergone conversion into specific land rights classifications, such as ownership rights, building use rights, utilization rights, or cultivation rights. These lands remain unregistered or uncertified at the local land office and may assume various designations contingent upon the region, including girik, petok, cekik ketitirn, among others. Secondly, certain lands are designated as "customary law community lands," manifesting as communal land holdings, irrigation lands, village treasury lands, and similar classifications. Certification for this specific category of customary law community lands is not inherently straightforward. The certification process for these lands may involve release through exchanges (ruislag) or through the preceding relinquishment of land rights by the customary community.

The certification procedure for former customary land, commonly represented by a girik, varies based on specific circumstances. In instances where the party pursuing certification is the original owner delineated in the customary land document, a prior sale and purchase transaction are unnecessary. Conversely, if the rights are acquired through a sale and purchase agreement, adherence to the conventional buying and selling process is requisite.

Certification of customary land, termed as initial land registration in legal terminology, involves the registration of land that has not been previously documented through official channels (Sugianto, 2017). This procedure encompasses two distinct types: systematic land registration, instigated by governmental authorities, and sporadic land registration, initiated by landowners themselves. The latter, sporadic land registration, does not necessitate a preceding sale and purchase transaction. To commence the land certification process, various documents must be compiled, including a recommendation letter from the village or sub-district head concerning the land intended for registration, ensuring the absence of disputes involving the local community.

The landowner or petitioner is required to submit a formal request letter for certification, obtainable from the local land office. In instances of delegation, a Power of Attorney must be meticulously drafted. Moreover, the identification of the applicant and any duly authorized representatives necessitates notarization, inclusive of photocopies of their ID cards, family cards, inheritance certificates, and birth certificates, if applicable.

Substantiating evidence for the sought rights, such as the girik or alternative ownership documentation, constitutes an imperative component of the submission (Handoko & Yubaidi, 2020). The documentation should incorporate a statement affirming the positioning of boundary markers, along with photocopies of the Tax Due Tax Return (SPPT) and the Temporary Receipt Letter (STTS) for the current year (Setiyowati et al., 2019).

Upon the fulfilment and documentation of requisite procedures at the local Land Office, the land registration process commences. This intricate procedure encompasses stages such as site inspections and land measurements. Subsequently, the Land Office issues a situation/measurement letter delineating the land particulars. The registration advances with Committee A's assessment, followed by a public disclosure of the land details. Finally, the announcement is officially validated by the Head of the Land Office. At this juncture, the applicant is obligated to remit the Land and Building Rights Acquisition Fee (BPHTB), calculated based on the area specified in the situation/measurement letter. Subsequent to this financial transaction, the Land Office concludes the process by issuing land certificates. Generally, the entirety of this process spans up to three months for completion, albeit subject to potential variations contingent upon field conditions and other contextual factors. In the context of sporadic land registration, the procedure encompasses several pivotal stages, commencing with the submission of land registration applications to the Head of the Land Office. These applications must be accompanied by the requisite registration fees stipulated in Government Regulation No. 46 of 2002. Following this, a surveying officer from the Land Office conducts measurements of the land, collecting and analysing juridical data pertaining to the land and its boundaries. A public announcement, encompassing both physical and juridical data, is disseminated within a 60-day timeframe. Subsequent to this, the Head of the Land Office validates the announcement, culminating in the establishment of a land book detailing the rights to the land. Ultimately, a certificate of rights to the land is issued subsequent to the completion and endorsement of the land book by the Head of the Land Office.

The procedures for the transfer of land rights, elucidated above, adhere to sporadic land registration regulations stipulated by Government Regulation No. 24 of 1997 on Land Registration. A pivotal phase in this process involves the public announcement of physical and juridical data at the Land Office, spanning a 60-day period, affording third parties an opportunity to raise objections if they possess rights to the land. Absent objections, the Land Office records the physical and juridical data in a Land Book. Upon the establishment of the Land Book, a certificate of land rights is issued, encompassing relevant physical and juridical data and an associated situational diagram. This certificate, bearing the name of the rightful owner, is authenticated with the signature of the Head of the Land Office before being conveyed to the owner.

## 4.2. Credit Requirements and Procedures

In order to formalize a credit agreement, certain prerequisites must be satisfied for the agreement to be legally recognized and binding upon the involved parties. As per Article 1320 of the Criminal Code, four essential conditions are imperative for the validity of an agreement. These conditions entail the mutual consent of the parties involved, signifying that the agreeing parties have concurred or are in concordance concerning the principal aspects of the agreement in question. An agreement is rendered void if it transpires under mistake or duress, or if it is procured through coercion or fraudulent means. The capacity to enter into an agreement necessitates that an individual is of legal age, mentally sound, and not prohibited by statutory regulations from undertaking specific actions. Those deemed legally incompetent to engage in such actions include individuals who have not yet reached adulthood. According to Article 330 of the Criminal Code, individuals not yet adults are defined as those who have not attained the age of 21 or have never been married. Concurrently, Article 47 of Law No. 1 of 1974 regarding Marriage designates minors as individuals under the age of 18 or those who have not entered into marriage. The second category comprises individuals placed under guardianship, as delineated in Article 1330 amended by Article 433 of the Criminal Code. Those under guardianship are adults deemed incompetent due to conditions such as intellectual impairment, insanity, blindness, or profligacy. The third category encompasses individuals legally prohibited from executing specific legal acts, such as those declared bankrupt by a court. In the case of a credit agreement involving a limited liability company (PT), compliance with competency requirements is contingent upon the approval of the PT by the Minister of Law and Human Rights of the Republic of Indonesia, followed by formal announcement in the Supplement to the State Gazette of the Republic of Indonesia.

The essential prerequisites for a credit agreement involve precision, necessitating explicit definition of terms to delineate the rights and obligations of all participating parties. Furthermore, the agreement must be founded on legality, adhering to pertinent legal requisites and authorizations. Mutual consent and the establishment of fundamental terms are requisite among the involved parties. Any agreement stemming from error, coercion, or fraud is deemed void. Prospective debtors, desiring credit, must initially submit a credit application, and the initiation procedures for credit approval should be overseen by the bank ([Suyatno, 1988](#)). The initial phase is designated as the 'Credit Application Stage.' Within this stage, activities encompass novel applications for securing a credit facility, supplementary applications for existing credit arrangements, petitions for the extension or renewal of lapsed credit terms, and submissions from other applicants aspiring to modify the terms of existing credit facilities. The subsequent stage pertains to 'Credit Application Files,' incorporating customer application letters that are both comprehensive and legally executed, a bank-provided checklist

necessitating thorough completion by the customer, and a compilation of additional attachments as specified by the type of credit facility. The third phase is denoted as 'Recording.' Within this phase, each received credit application letter necessitates documentation in the designated register. Subsequently, a scrutiny of completeness and application files ensues, with an application deemed complete if it adheres to the specified criteria. The bank utilizes the 'Credit Application Form' during this process, which the customer is required to complete. This form may encompass balance sheet forms and profit and loss statements.

The credit decision process consists of four stages, as delineated by [Suhardjono \(2003\)](#). These stages involve the initiation and analysis phases of the credit application, encompassing activities such as the initiation of credit applications, credit analysis and evaluation, credit need calculations, credit risk assessment, and credit negotiations. Subsequently, the subsequent stage entails the provision of credit recommendations, enabling recommending officials to solicit additional data and analysis from the credit-initiating officials. The subsequent stage is the credit decision stage, during which credit decisions are exclusively within the purview of authorized credit decision officials. The ultimate stage is the approval phase for credit disbursement, where the disbursement can proceed upon the endorsement of credit disbursement instructions by an authorized official. Prior to disbursing credit, the bank is obligated to ascertain the likelihood of repayment. This assurance stems from a pre-disbursement credit assessment, employing the 5C analysis method ([Firdaus & Ariyanti, 2011](#)). The analysis encompasses the evaluation of the following factors: Character, scrutinizing the prospective borrower's reliability, commitment to debt repayment, and overall ethical conduct. Capacity, appraising the borrower's ability to conduct business and forecasting future income. Capital, examining the borrower's capital structure and financial resources. Collateral, involving the assessment of property used as security in the event of the borrower's failure to adhere to the terms of the credit agreement. Condition, considering prevailing economic conditions that may influence the borrower's business and future prospects.

Credit assessment extends beyond the 5C analysis and may also involve the application of the 7P analysis for a comprehensive evaluation ([Kasmir, 2004](#)). The 7P analysis for credit assessment encompasses diverse elements, including "Personality," evaluating customers based on their demeanour, daily conduct, and historical behaviour. "Party" categorizes customers into specific groups considering factors like capital, loyalty, and character. "Purpose" involves comprehending the customer's motive for seeking credit, encompassing the desired credit type. "Prospect" evaluates the customer's future business outlook, discerning its promise or lack thereof. "Payment" gauges the effectiveness of the customer's credit repayment. "Profitability" scrutinizes the customer's capacity to generate profit. Lastly, "Protection" ensures that the provided credit includes secure safeguards, such as insurance. Credit assessment may be

conducted through the 3R analysis (Firdaus & Ariyanti, 2011), which includes "Returns," an examination of the outcomes anticipated by the prospective debtor company following bank credit assistance; "Repayment," an evaluation of the prospective debtor's capacity to repay the loan based on their ability to meet repayment obligations; and "Risk-bearing ability," necessitating the bank's understanding and evaluation of the prospective debtor company's capability to manage the risk of failure.

#### **4.3. Principles of Credit Analysis and Risk Management in Land Collateral**

In the realm of banking, the 5C Principles, alternatively recognized as The Five C's Principle of Credit Analysis, encapsulate a prudential methodology delineated by Lailiyah (2014) and Andika et al. (2021). These principles mandate the disclosure by banks of information pertaining to potential risks inherent in customer transactions, as prescribed in Article 29 of Banking Law No. 10 of 1998, amending Banking Law No. 7 of 1992. The divulgence of risks associated with customer losses is designed to foster transparency within the banking sector, enhancing accessibility to business operations and the fiscal well-being of banks. The incorporation of this stipulation underscores the bank's dedication to fulfilling its obligations to clientele (Yulia et al., 2023). Prior to extending credit, both banks and non-bank financial institutions are obligated to perform a juridical analysis, with a specific emphasis on principle 5C. This becomes especially critical when the potential debtor proffers unverified land as collateral. An inadequate juridical analysis holds the potential to invalidate all agreements between the debtor and the bank, thereby precipitating challenges in the process of credit recovery (Djarmiko, 2017). In instances involving unauthenticated land collateral, complications frequently arise concerning the Power of Attorney to Encumber Mortgage Rights, a document susceptible to nullification through legal channels. This renders the Power of Attorney to Impose Mortgage Rights ineffectual. The protracted process of acquiring land rights certificates, a procedure extending over several months, further compounds the predicament. As a result, creditors find themselves in a precarious position, lacking the security inherent in a mortgage right. In summary, the 5C Principles underscore the paramount significance of transparency and legal scrutiny in the realm of banking operations, particularly in the evaluation of risks associated with customer transactions and the collateralization of credit involving uncertified land.

The foregoing details underscore the potential hazards inherent in credit agreements incorporating uncertified land as collateral. To alleviate these risks, strict adherence to the principle of prudence is imperative in every credit issuance. The 5C principle, serving as a precautionary measure, necessitates a meticulous alignment of the credit-granting process with these principles. This alignment is crucial for safeguarding against prospective conditions and circumstances that have the potential to substantially impact the profitability of both banking institutions and non-bank financial entities (Cutter et al., 2012; Yahya & Jannah, 2019). Moreover, in practical implementation, the quantum of credit disbursed

should be concomitant with a prioritized focus on the quality of credit (Bromiley et al., 2015; Dionne, 2013). Elevated credit quality and appropriateness for dissemination correlate inversely with the likelihood of encountering deleterious credit scenarios (Hanim Tafri et al., 2011; Santomero, 1997). Credit risk may arise from diverse factors, encompassing customer-related concerns like credit misuse, deficient business management, or lack of good faith. Additionally, bank-related factors, including the proficiency of bank officials, interbank competition, internal dynamics, and insufficient supervision, can influence credit risk (Suparmono, 2009). To mitigate these issues, Bank Indonesia Regulation No. 5/8/PBI/2003 stipulates the mandatory implementation of risk management practices by each bank to augment the efficacy of prudential banking Anita et al. (2023). Integrated risk management aims to offer a swift and succinct evaluation of the comprehensive risks confronting the entire bank. It functions as a pivotal instrument for bank management to discern and oversee diverse risk categories, thereby averting unforeseen losses. In instances of banking challenges, such as problematic credit, banks are mandated to regularly report to the central bank, Bank Indonesia, as delineated in Article 34 of Banking Law. This entails the submission of annual profit/loss balance calculations and other specified periodic reports mandated by Bank Indonesia.

In the event of a threat to its stability, a bank can seek assistance by reporting to Bank Indonesia, the central bank, in accordance with the regulations outlined in Article 37 of Banking Law. Article 37 elucidates that a bank is deemed to be encountering challenges jeopardizing its business continuity when Bank Indonesia's assessment indicates deteriorating business conditions, including a decline in capital, compromised asset quality, reduced liquidity, diminished profitability, and insufficient adherence to prudent banking principles. In such a state, the bank is considered financially unsound, posing a potential hazard to the national economy and the pivotal role of the banking sector in elevating people's living standards. To tackle these challenges, the government institutes a dedicated agency with authority vested in Article 37A. Upon the transfer of a bank's management to this agency, it assumes comprehensive control over the restructuring process, encompassing shareholder rights and responsibilities, and overall bank control throughout the restructuring program. This mechanism guarantees the implementation of essential measures to stabilize distressed banks and forestall adverse economic repercussions.

#### **4.4. Challenges of Land Collateral and Legal Certainty in Society**

A considerable portion of society tends to underestimate the importance of land ownership, particularly when possessing extensive land holdings, resulting in the neglect of securing corresponding land rights. This lack of awareness contributes to the inadvertent oversight of land rights ownership. Additionally, communities frequently exhibit a deficiency in critical knowledge pertaining to legal certainty associated with their land holdings, giving rise to prevalent complications of overlapping land

ownership, characterized by multiple individuals claiming ownership of a single parcel of land. The compounding factor in these challenges is the insufficient dissemination of information by local land agencies concerning the land registration process. As a result, individuals encounter substantial challenges in registering their land, leaving their property devoid of the requisite legal certainty. This predicament gives rise to manifold adverse outcomes, notably numerous land disputes that landowners struggle to resolve due to the lack of authentic evidence of land ownership. Particularly, land possessing significant economic value becomes a focal point for various entities, especially in the absence of established customary ownership. To mitigate these issues, the verification of land certificates is imperative, typically conducted at local BPN offices to ensure congruence with land registry data. In the absence of land certification, individuals must ascertain the land's status through the Village Head's Office or local Subdistrict Office. Upon proper registration of land status and acquisition of ownership proof, individuals can petition for a certificate from the local Village or Sub-district Head to commence the land registration process facilitated by the Land Deed Official. Land certification constitutes tangible proof of land ownership, ensuring legally fortified land rights, as mandated by Article 4 of UUPA, which affirms this right for all land rights holders.

Article 19, Paragraph 2, Letter c of the Agrarian Basic Law (UUPA) emphasizes the crucial role of a land certificate, serving as compelling evidence when its information aligns with the data in the measurement letter and land book, as emphasized by [Murni \(2018\)](#). The certification process guarantees that land transactions, particularly the transfer of land rights through buying and selling, are executed with reduced legal risks when the rights are registered or certified. In these instances, ownership rights and legal entities are distinctly and unequivocally delineated, in accordance with [Hunt \(2004\)](#) and [Holden and Otsuka \(2014\)](#). On the contrary, land transactions entailing uncertified or unregistered land rights give rise to heightened legal risks and vulnerabilities, as highlighted by scholars such as [Alden Wily \(2018\)](#), [Toulmin \(2009\)](#), and [Mitchell et al. \(2017\)](#). In such scenarios, trust assumes a heightened significance, and transactions hinge on adequate evidence to establish ownership, even in the absence of formal legal proof mandated by statutory regulations. Collateral assumes a pivotal role in the credit administration process, closely associated with averting potential losses for banks and financial institutions. When extending credit to clientele, these institutions utilize collateral as a protective measure. In the event of a debtor's default on obligations, this collateral serves as a surrogate for the credit extended by banks and financial entities, ensuring that substantial financial losses are averted. This conceptual framework underscores the pivotal function of collateral in alleviating credit-related risks ([Djatkiko, 2017](#)).

To pre-empt future disappointments, banks and financial institutions must exercise prudence when considering credit guarantees, as underscored by [Honohan \(2010\)](#) and [Andersen and Tarp \(2003\)](#). Land

functions as a credible form of collateral, wherein land certificates serve as robust proof of ownership, fostering increased confidence in banks and financial institutions, as recommended by [Shuaib et al. \(2022\)](#) and [De Mel et al. \(2013\)](#). Uncertified land may serve as collateral if specific conditions are met, including a legalized photocopy of village certification, a land history certificate, a statement of physical control with two witnesses, and testimonial statements, all recognized for credit collateral ([Sihombing & Hamid, 2023](#)). Precision is paramount in applying the 5C Principles to credit agreements, particularly when utilizing uncertified land as collateral, as not all financial institutions may accept it. This precision safeguards the rights of credit providers. In practice, imposing collateral on uncertified land involves creating a Power of Attorney to Impose Mortgage Rights (SKMHT) with a Notary or PPAT (Land Deed Official) in collaboration with the bank, followed by the generation of an APHT (Deed of Mortgage Rights). Researchers note that this practice may deviate from its intended purpose, as SKMHT was primarily designed for situations where the grantor of Mortgage Rights cannot be present during the granting process. Typically, legal actions should be pursued by parties with direct interests, although exceptions exist, permitting individuals or entities to undertake actions on behalf of others ([Harsono, 2003](#)).

Exceptions to the aforementioned principles are explicitly delineated in the Explanation to Article 15, paragraph (1) of the Law of Land Rights (UUHT). This provision specifies that a Power of Attorney to Charge Mortgage Rights (SKMHT) is permissible only under defined circumstances, notably when the mortgagee is unable to personally engage with the PPAT (Land Deed Official). In these instances, the grantor of Mortgage Rights is obliged to appoint another party as their attorney to formulate the SKMHT, which must be executed as an authentic deed and submitted by a Notary or PPAT ([Maria, 2001](#)). For uncertified land rights, the SKMHT holds validity for three months, after which an APHT (Deed of Mortgage Rights) must be created. Failure to proceed with the APHT post-SKMHT expiration renders the SKMHT null, as per Article 15, paragraph (5) of UUHT. However, this timeframe doesn't preclude the possibility of generating a new SKMHT. The 3-month period for SKMHT aims to facilitate the completion of documents for land rights registration, acknowledging the time-intensive nature of the process. Notably, the practice of creating a new SKMHT after obtaining the land title certificate, followed by the APHT, diverges from the provision in Article 10, paragraph (3) of UUHT, which advocates for the simultaneous processing of Mortgage Rights and land rights registration for uncertified lands meeting the registration criteria. Consequently, in the creation of the APHT by the PPAT, simultaneous land rights registration is imperative, obviating the necessity to await the issuance of the land rights certificate. This approach is indispensable for providing expeditious credit accessibility to uncertified landowners while streamlining the Mortgage Rights process.

The APHT (Deed of Mortgage Rights) is produced in quadruplicate, with two copies affixed with stamps. One copy is archived at the PPAT (Land

Deed Official) office, while another is earmarked for the Mortgage Rights registration process at the land office. Two unstamped copies are allocated to creditors and debtors. In the event of an SKMHT (Power of Attorney to Charge Mortgage Rights), the APHT is accompanied by a copy of the SKMHT. Subsequent to the APHT's completion, it undergoes registration at the land office seven days thereafter. The land office conducts a review of document completeness required for mortgage rights registration upon receipt from the PPAT. If the documentation is deemed complete, the head of the Land Office dispatches a cover letter to the PPAT, incorporating the date of receipt. Any shortcomings in the registration documents are communicated to the relevant parties. Upon receipt of the complete registration file, the Head of the Land Office proceeds to register the mortgage right, documenting it in both the land book of mortgage rights and the certificate of title for the pertinent land. The issuance of a Mortgage Rights certificate, incorporating instructions based on divine justice, serves as conclusive evidence of the existence of Mortgage Rights. This certificate possesses equivalent executory authority to a court decision, exhibiting enduring legal force (Rahmadi, 2009). The enactment of the Law of Land Rights (UUHT) underscores the significance of land rights registration, accentuating the legal certainty imperative and promoting land registration endeavours in Indonesia. It carries historical implications for the utilization of customary rights lands as collateral, emphasizing a preference for registered land rights in the context of credit security.

## **5. Conclusion**

In conclusion, this study illuminates the crucial challenge of establishing legal certainty for land utilized as collateral in credit agreements, particularly when the land lacks certification, within the legal framework of Indonesia. A significant disparity exists between the regulations governing the imposition of mortgage rights on uncertified land and their practical implementation in the field, posing considerable hurdles for landowners seeking credit. Key insights highlight the dual objectives of the UUHT regulations, aiming to facilitate credit access for owners of uncertified land while advocating for the certification of land rights. However, the observed practice of registering land rights before obtaining land title certificates often diverges from UUHT provisions mandating simultaneous registration with the creation of APHT by PPAT. Moreover, the conventional practice of crafting an SKMHT prior to an APHT should be reserved for situations where the Mortgagee cannot be present during the imposition of the Mortgage, rather than for uncertified land rights.

## **6. Recommendations**

The ensuing suggestions can be contemplated to augment legal certainty within land collateral, with a focus on addressing regulatory disparities, minimizing vulnerabilities, and fostering credit accessibility within the Indonesian context:

- Significant investments can be directed towards advancing training programs tailored for diverse government officials, financial institutions, and other legal entities. These programs aim to enhance their comprehension of the legal frameworks governing land collateral. Simultaneously, such initiatives can effectively contribute to elevating public awareness regarding their roles in land transactions.
- The establishment of a centralized registry tasked with the administration and dissemination of crucial information pertaining to land collateral is a viable proposal. Such an initiative holds the potential to enhance transparency in land transactions and improve access to credit. Additionally, it can serve as an effective measure in mitigating associated criminal activities, including fraud, illicit investments, and other related issues.
- Documentation plays a pivotal role in land collateral; thus, advocating for a standardized procedure in land transactions is essential to streamline processes and yield effective outcomes.

## **7. Research Implications**

Although the UUHT offers opportunities for uncertified landowners to access credit, effective realization is often lacking. This study emphasizes the pivotal role of the 5C principles and credit analysis in assessing risks associated with non-performing loans. Persistent challenges include limited public awareness of land ownership importance and legal certainty. Therefore, vital measures include enhancing education on certified land ownership and registration procedures. Collaborative efforts involving the government, financial institutions, and stakeholders are essential to expedite land certificate issuance for uncertified landowners, ensuring initial legal certainty for land collateral. Integrating these strategies into banking and property law practices can cultivate a conducive environment for land collateral-based credit, fostering economic growth and improving community access to capital.

Furthermore, this research has the potential to enhance credit accessibility, thereby fostering notable social impacts such as increased job opportunities and elevated living standards. Simultaneously, the study is proficient in identifying crucial solutions within the realm of legal certainty in land collateral, contributing to improved economic outcomes.

## **8. Limitations and Future Research**

This research has limitations, such as relying solely on secondary qualitative data to explore legal regulations governing land collateral, a societal challenge with readily available data. It also solely addresses legal certainty in land collateral within Indonesia due to research bias, narrowing the study's scope.

Subsequent research endeavours may consider gathering primary data pertaining to land transactions and related credits within this context to achieve a more comprehensive comprehension of associated legal issues. This strategy holds potential for enhancing collaboration between

government entities and financial institutions to optimize land transactions. Furthermore, conducting a future comparative analysis between common law and civil law jurisdictions in the designated research area could contribute to the overall efficacy of this study.

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