

## RE-EVALUATION OF CREDITOR PROTECTION IN MORTGAGE ENFORCEMENT: THE LEGAL PERSPECTIVES OF THE AUCTION ENFORCEMENT OF MORTGAGE OBJECTS UNDER THE INDONESIAN LAW

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### Abstract

This paper discusses the usage and application of mortgage rights in Indonesia, especially Law No. 4 of 1996, which is intended to offer legal protection to the creditors and debtors in credit agreements. The collateralized debt agreements are frequently used in business financing, and land is usually the security since it is not prone to fluctuations. With the introduction of the Mortgage Rights Act, a more established framework of such agreements has been made, and legal certainty of creditors has been increased through giving them the power to make claims against collateral in the event of default of the debtor. Nevertheless, the application of mortgage rights, especially in the implementation process, is not without problems, though it has its benefits. Creditors can also challenge laws: a third party can claim them, or a debtor can challenge their efforts, and legal challenges by creditors are not always straightforward to execute due to procedural hold-ups. The law offers preventative legal security in the form of clear agreements and valid collateral instruments. Yet, it is full of repressive provisions, given that creditors are also granted legal action in the event of default. The paper puts a lot of emphasis on the need to balance the interests of the creditors and the interests of the debtors and emphasizes the necessity of having a lean and efficient process. Although the decision of the creditors to buy the mortgage rights presents substantial benefits, the mechanism of overcoming the process of the auction and the ability to guarantee the best outcomes to all participants can be improved. In general, the paper highlights the necessity to develop such legal frameworks further in order to make the goals of the Mortgage Rights Act to the fullest extent, to provide a more stable and reliable financial environment.

**Keywords:** Mortgage Rights; Legal Protection; Credit Agreements; Collateral; Indonesia.

### A. Introduction

Humans are social creatures in life, as Aristotle explained it by the term *zoon politicon* which holds that human beings are natural creatures; they live and socialize in society. (Agustino, 2020). Meeting of the economic needs is observed as one form of social interaction because debtors require money and creditors require loans in the form of debt-to-debt relationships. CDA is not a new phenomenon, and business financing is growing. Nonetheless, credit agreements facilitation also initiated an increase in bad loans due to both internal and external factors on the part of creditors and debtors. According to Article 1320 *Burgerlijk Wetboek* (Indonesian Civil Code), credit agreements are legally enforceable in case they comply with legal requirements, whereas

debtors whose performances would attract payment of compensation in accordance with Article 1243 BW (Siregar & Putra, 2022). In order to reduce the risk of default, the creditors often insist on guarantees that offer legal assurance to them in the process of loaning money.

The first collateral is the land because it is very valuable, and it is said to be a relatively safe collateral since it cannot be easily devalued. Banks view land burdened with Liability as a good tool of guarantee in quickening repayment of debtors, as well as increasing the stance of creditors based on the occurrence of priority rights in debt repayment. In the place of the mortgage system and Kreditverband, which provided a less transparent and organized collateral binding and execution mechanism, the Act No. 4 of 1996 on Mortgage Rights was adopted, providing a more structured and transparent mechanism. (Ningsih, 2023).

Along with the relatively stable economic value, the land, being an object of the Mortgage rights, also has strong juridical features since its existence is administratively registered in the national land registration system. This registration system makes it easy to identify the subject and object of rights clearly, and in the future, there is minimal dispute over the ownership (Ningsih, 2025). Under the presence of a certificate of land rights, creditors had a guarantee of the juridical position of the object of guarantee at the start of the contract of credit. This is what reinforces the role of the Mortgage rights as an institution of guarantee, which satisfies the principle of publicity and speciality, which is the primary factor in the appearance of a right, which grants a special position to creditors (Sumanto et al., 2024).

Mortgage rights, in theory, are classed as a right to collateral security and entitle creditors of the debt directly to the object of collateral without recourse to the existence of the debtor. Subekti asserts that the right of matter possesses absolute characteristics since it is upholdable against all and ever adheres to its object (*droit de suite*). This character is what separates mortgage rights and individual guarantees, which cause only compulsory relationships. Thus, the presence of Mortgage rights offers a greater degree of legal assurance to creditors during the resolution of debts, particularly when the debtor is a good performer (Masturi et al., 2025).

As a matter of fact, banking is critical in gathering and sharing the common funds in the form of savings and credit, and it is intended to enhance the economic good not only to the individual but also to society. Law No. 10 of 1998 on Amendments to Law No. 7 of 1992 on Banking has the effect of regulating the banking sector; it is the legal foundation of the bank operations in Indonesia (Ningsih et al., 2024). On the other hand, as bankers strive to amass credit in order to make money, they disregard the value of caution and healthy competition, which are two valuable aspects of the banking world. In the meantime, the policy on credit remains a draft law, and thus, there are no developed rules to thoroughly regulate the more complex side of credit and ensure delivery, and this is a significant problem faced by the banking world to keep the financial balance and a sustainable business (Hantzsche, 2022).

The foundation of the principle of prudence of the lending, which is governed by the banking law regime, can not be normatively separated from the Bill of Rights. The two legal regimes are complementary to each other, with the Banking Act focusing on managerial and risk monitoring factors. Meanwhile, the Rights Act is concerned with the dimension of legal insurance on repayment of credit. It is important to harmonize these two regulations so that credit-giving policies cannot be oriented only on the economic profit but rather on the significant legal certainty of cases of problematic credit settlement (Chen et al., 2024).

The bank cannot provide the debtor with credit facilities as stipulated in a credit agreement without being linked to several forms of risks, which may complicate the process of lending and repaying them. A significant reason that leads to this risk is that debtors do not have to pay off their debts at the same time or directly. Rather, the debtor is accorded by the law in the credit contract to make payment of his debt in small bits or pay in installments within a given duration of time. Though it offers flexibility to the debtors, it in fact increases the risk that the creditors might face. Some of the common risks in this debt-to-debt relationship are default or default credit,

which is also referred to as credit risk, where the debtor fails to meet their responsibilities according to the agreements they entered into (Ezechi et al., 2025).

Moreover, there are market risks that may influence the possibility of paying off the debt, as discussed in some other threats, including a fall in asset prices or a shift in the profound economic conditions. That is not the only risk, and the other factor that may hamper the unproblematic process of debt repayment is the liquidity risk, when banks fail to meet their obligations at the time they become due. It may have an effect on the financial stability of the bank (Tahir et al., 2024). Lastly, the legal risks are also related to the possibility of lawsuits against banks or debtors, and the absence of a law to aid in solving disputes over debts. All these kinds of risks prove the significance of the attentive risk regulation in the banking and credit system, so that the process of loan issuance can be conducted safely and in relation to the relevant laws and regulations (Lailiyah, 2014).

Prospective debtors need to fulfill the requirements of banks, such as the provision of credit guarantees, before getting credit. This assurance gives the bank the authority to claim debt through the secured goods in case the debtor is unable to pay the debt within the specified time. Main agreements, such as credit agreements, are joined with collateral agreements, which are supplementary and cannot exist without the main agreements. Article 1 Numbers (1) and Article 20 paragraph (1) of Law No. 4 of 1996 on Mortgage Rights give a shield and facilitation of the execution of the collateral objects to some creditors. Nevertheless, it cannot ensure that the process of debt repayment will be executed without problems. In case the debtor is in good standing, the creditor can auction the collateral goods (Saraswati, 2015). Both internal and external factors may be the cause of credit default/credit failure. Article 6 of the Mortgage law provides a right to the creditors holding a priority position to sell collateral objects by public auction and utilize the funds to cover the receivables.

In light of the statement given above, there are a number of issues concerning the supply of credit facilities and the enforcement of the liability rights. *First*, despite the ease of execution of collateral objects offered by Law No. 4 of 1996 on Mortgage Right, there are still problems in its implementation, in particular, the procedures and restrictions that may hamper the smooth settlement of the debt (Goel et al., 2024). *Second*, even though the law provides creditors with a right to conduct the auction of the object of the guarantee, there is no assurance of the proper legal protection of creditors during the auction procedure, particularly, in how to take possible risks related to the fulfillment of the guarantee by the debtor (Halim & Setyawan, 2024). These issues suggest that additional work or assessment of the efficiency of legislation in safeguarding the rights of creditors, and a seamless process of executing the rights of liability, could be conducted.

The sustainability of the right is closely tied to the application of the principles of speciality and publicity, which are fundamental in the law of property guarantees. The principle of speciality requires that the object of the guarantee be clearly and distinctly identified, as stated by Badruzaman (1981). On the other hand, the principle of publicity aims to ensure that third parties are made aware of the guarantee burden on an object. Both principles are fulfilled in the context of mortgage rights through the deed transferring the mortgage rights and their registration with the land office (Abas et al., 2025). The implementation of these principles strengthens the validity of the mortgage rights, as the creditors' rights have been publicly and legally recognized.

Practically, the mortgage rights tend to be confronted with non-normative impediments, including the debtor's protest of having the limit of auction value, physical possession of the collateral by a third party, and legal obstruction in the form of civil suits filed to postpone the implementation process (Katta, 2025). These situations indicate that, despite the fact that creditors have received a sufficient level of legal protection that is normative, the sociological and administrative factors continue to play a significant role in determining the effectiveness of implementation (Hardiyansyah & Tjempaka, 2025). Thus, the research of legal protection against creditors will not only be of interest concerning legislation, but also in connection with the

dynamics of their practice in terms of implementation in the field.

However, a gap in the literature exists since the majority of the prior studies have solely highlighted the factors of the procedure due to the execution of liabilities or collateral binding, but not a comprehensive review of the success of legal protection of creditors in the liability auction practice, particularly in case of procedural limitations, objection of third parties, or likely litigation that may postpone the execution (Dhobe et al., 2020). The art of this work is an effort to judge by the court the validity of a liability auction implementation in the environment of legal protection of creditors through the method of the object guarantee theory, the theory of legal protection, and the principle of legal certainty. In this way, it adds to the comprehension of the exercise of dependency rights in Indonesia (Triwibowo & Arifulloh, 2025).

The urgency of the study is that the vagueness of the law in implementing liabilities can erode the confidence of work, reduce the confidence of the financial institutions in guarantee instruments, and affect the stability of the national financial system. As such, liability rights implementation and a certain legal safeguard on creditors should be studied in detail to make sure that the aim of the Mortgage Rights Act is achieved.

With regard to the statement above, the Author develops the problem, i.e., 1) What about the implementation/ execution of the liability rights in Indonesia in accordance with Law number 4 of 1996 on Mortgage Rights? 2) What is the legal protection of the process of auctioning the liability insurance of the debtor of the performance debtors against the name of the creditor under Law No. 4 of 1996 on Mortgage Rights?

It is projected that this research will have both theoretical and practical implications on the development of the law science, especially in civil law and guarantee law. Theoretically, this study aims to add to the treasure in the legal science by offering a holistic juridical research on the implementation of the Rights and legal safeguarding of creditors. It is hoped that the findings of the research study will enhance the knowledge of the effect of Law No. 4 of 1996 on Mortgage Right, especially on the efficiency of parallel execution mechanisms, executive titles, and underhanded sales in the auction of collateral objects. Therefore, the study can be a scholarly source used to formulate the legal protection theory and the principle of legal certainty in the use of object guarantee in Indonesia.

In practice, this research will have a benefit to practitioners of the law, banking institutions, and other financial institutions, as it can help them understand and apply the regulations of mortgage rights in a proper and legal manner. The results of the present research can be used by creditors as a factor to consider in implementing effective and safe legal precautions in dealing with debtors, particularly in the auctioning of Rights objects. Also, this research can present insights into the possible legal challenges that could be encountered in the process of execution, so that creditors could reduce the risks at the very beginning of loan provision.

In addition, the study will be of value to policymakers and other law enforcement officials as a reference in reviewing how the Rights Act has been put into practice. Findings of this research can be used as a guideline to be considered in formulating better regulations and policies which are more responsive to the demand of certainty and legal security of the creditors, whilst not neglecting the principle of fairness to the debtor and the third party. Having better legal protection and proper execution systems, this study is likely to eventually facilitate the establishment of a healthy financing environment, financial system stability, and business predictability in Indonesia.

The research is a doctrinal legal research that will explore and review the application of mortgage rights and legal protection of creditors discussed in the existing legislation, especially Law No. 4 of 1996 on Rights (Widiarty, 2024). The data employed are secondary data, which are acquired using library research, which covers primary legal data in the form of laws to deal with Mortgage rights and Banking secondary legal data in the form of books, scientific journals, and opinions of legal experts, and tertiary legal data in the form of support. The theories of legal protection, legal certainty, and the theory of guarantee of objects are used as analytical tools to

conduct an analysis of problems. The data are all qualitatively analyzed in terms of legal reasoning, that is, using the grammatical, systematic, and teleological interpretation to derive the conclusions, answering the research issues. In this paper, all the references and quotes are written in footnotes as per the rules of writing scientific papers.

## **B. Discussion**

### **1. Implementation of Mortgage Rights in Indonesia Based on Law Number 4 of 1996 on Mortgage Rights**

The Mortgage Rights Act offers different facilities to safeguard the interests of both parties to guarantee agreements between creditors and debtors. The comfort and certainty of performing the object of liability is one of the primary facilities to be regulated within this law, as it gives an effective and clear solution in cases where a debtor's performance or failure to deliver the performance within the agreement (Muhammad, 2018). This is especially notable where the debtor does not meet their obligation as agreed. These are further elaborated in the General Explanation of Section 9 of the Mortgage Rights Act, which gives a solid legal foundation of actions that creditors can undertake, particularly actions about execution in case the debtor defaults on the promise (Ningsih, 2021).

The principle of legal certainty becomes the main basis of the implementation of mortgage rights because the enforcement of mortgage rights is a legal action that has a direct influence on the rights of a person to property. The Mortgage Rights Act aims at making sure that every step of the execution is undertaken in a manner that is in compliance with clear, measurable, and predictable procedures by the parties involved. Legal certainty, thus, does not only contribute to protecting the creditors in order to collect their debts but also protects the debtors against arbitrary executions. The practice of this principle is an important aspect during the evaluation of the validity and equity of the implementation of mortgage rights (Ningsih et al., 2025).

In addition, the steps to follow in carrying out a liability object are clearly outlined in the Mortgage Right Act of Article 20, giving clear and specific instructions to follow when carrying out the liability object. The article describes the procedures to be followed to make sure that the execution is done within the relevant procedures and it does not violate the rights of the parties (Dameria and Djajaputra, 2024). By this simple structure, the implementation process can be lower and higher in terms of the organization of law. The proceedings of the performance of the object of liability provided in these laws are as follows:

#### ***a. Parate Executie***

The parate execution idea allows the creditors to sell the collateral object separately without the complex court procedure, thus simplifying the process, which is less costly, efficient, and faster than the court system. (Rumawi et al., 2022). Under circumstances where a debtor becomes insolvent or even fails to meet their obligations on debt, the creditor does not have to wait until the goods are seized or collected by the bailiff. On the contrary, creditors can directly enforce the guarantees as stipulated in the agreement, giving them the mandate to directly repossess the collateral assets without undergoing the litigation process. This is explicitly provided to be regulated by the Mortgage Law, and it offers a legal framework in which creditors are entitled to implement parate executions, including the ability to sell collateral objects via auction (Res, 2021). In the instance, the Mortgage Law, specifically article 6 and article 20 paragraph (1) of the Mortgage Law, specifically describe the execution mechanism, and the Certificate of Rights is evidence that has executive power and make it easy to execute the guarantee.

The concept of parate execution, as provided in the sixth article of the Bill of Mortgage Rights, is a kind of deviation from the general principle of the execution of court decisions, which is doctrinal. By the decision of the judge, in principle, execution has to be performed

according to the title of the executive issued by the judge (Ningsih, 2020). There are, however, a few cases where the law can provide the creditors with a direct power to execute the object of the guarantee in the name of efficiency and legal certainty. The clauses on the mortgage rights are also aimed at hastening the settlement of problematic credit without legal protection of the debtors.

The Mortgage Rights objects auction is performed in line with the existing regulations, and the proceeds of this auction will be allocated to pay off the debts of creditors with the preference to the sale proceeds (Schulze, 2005). It was expressly stated in Letters of Auction Affairs Agency (SE-BUPLN) No. SE-21/PN/1998 states that the sale of collateral goods by this auction was not an act of coercion but an implementation of an agreement between creditors and debtors, and therefore, it implied that all actions were followed in the agreement of both sides. Second, SE-BUPN No. 1 in the United States. SE-23/PN/2000 clarified that the debtor has to consent to the auction process, and this is a safeguard to the debtor and a certainty in law to the creditor in the process of the execution. To further facilitate ease and transparency, the Minister of Finance Regulation No. 213/PMK.06/2020 of 2020 on Auction Implementation Instructions governs the appropriate execution of auction implementation procedures, which ensures that all processes are executed in a structured, transparent, and accountable way, to ensure that the execution parates can be effectively and efficiently executed without attracting undesirable legal issues (Utomo, 2011).

#### ***b. Title Executorial***

The Mortgage Rights Act helps to make the guarantees easier to enforce with the title executive mechanism, where creditors can easily make forced executions with the help of the state, without the use of protracted court proceedings. This is a system that provides a lot of legal power to some documents, including the Grosse Act of Hypothesis and the Grosse Act of Recognition of Debt, both of which are notarized and act as official copies with the executive powers. (Heriawanto, 2019). The only recognized documents with such power are the rulings of certain courts and the genuine actions. The copy of the document, known as the gross, bears the “*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*” (For the Righteousness of Justice on God Almighty), which acts as a guide to the legitimacy of the document and the implementation of the document immediately, with the permission of the Chief Justice pursuant to Article 225 of the HIR. The Chief Justice oversees this execution process and makes sure that the entire process is done in accordance with the legal regulations and provisions, therefore, making sure that their implementation is done in compliance and in a transparent way (Wibisono, 2022).

This gross grants such power to creditors who are allowed to collect debts in the event of debtor default and have a priority in marketing the debt repayment over other creditors who lack such rights (Heriawanto, 2019). This is of great benefit to the creditors in receiving debt payments faster and more efficiently. Article 14(2) and (3) of the Mortgage Rights Act plainly indicate that gross documents can be executed in real time without undergoing the long and winding court proceedings, which are time-consuming and costly. Moreover, Article 20 paragraph (1) letter b also regulates the execution mechanism, gives legal certainty to the creditor, and allows the execution process to be performed more efficiently, without any obstacles or legal challenges. This is also a credit protection procedure against creditors' performance to deal with debtor performance so that they are able to get settlements in a reasonable and in a manner that is in line with the regulations that are in place.

In light of the theory of justice, the implementation of the Mortgage rights should be aware of the principle of proportionality in order not to lead to inequality in the legal protection of creditors and debtors. Based on the distributive theory of justice, which was advanced by Aristotle, justice is realized when every party receives its rights in a balanced way based on

its position. Here, the executive authority of the creditors should be weighed against the safeguarding of the rights of the debtors, such as transparency of the auction and granting of the remaining proceeds of the sale of the collateral objects. According to this approach, the performance of the mortgage rights is not focused only on the economic interests, but also on the value of substantive justice.

### *c. Sales Under Hand*

Mortgage rights are usually executed in the form of a public auction, and this is aimed at attracting the maximum price that will create maximum advantage to all parties involved, such as creditors and debtors (Sindra, 2023). This auction allows the realization of secured assets at their fair market value, and the debtors are able to discharge their debt obligations totally. Nevertheless, there are certain situations when the public auction cannot lead to the optimum price or when the price suggested is not enough to reflect the value of the debt payable. Paragraphs (2) and (3) of the Mortgage Law offer an alternative solution to underhand sales. Such a sale may only be made by mutual consent between the creditor and the debtor, to the better price, which will be more effective than an unsuccessful sale by auction. The sales process may be deemed as the more practical one since it may facilitate the clearing of the debtor's liabilities, particularly in instances when the public auction does not go as high as it should (Wijaya & Sahrudin, 2023).

Even though they are performed in a less rigid way, the provisions of the Government Regulation No. 24 of 1997 on Land Registration, according to which formal procedures in the process of land and property transactions are elaborated, remain in effect for underhand sales. This is carried out by the Land Certificate Making Officer, whose duty is to prepare a valid official deed, and he ought to be registered with the Land Office to confirm the validity of the transactions (Aprilia, 2021). The sale by deed is not the same as the sale by hand since the sale is executed by a direct agreement between the companies involved in the sale and entails an actual deed done by the parties themselves. Moreover, this purchase can be directly sold to the buyer, who has made the appropriate agreement or the official auction, which remains until the presence of the person authorized to carry out this action. Although it is a more flexible and efficient process, the underhand sales offer legal protection to all parties involved, the legal certainty of the rights and obligations existing now, and the fact that all the procedures are conducted according to the relevant provisions.

Practically, the most frequently employed mechanism of public auction implementation is due to the fact that it is viewed as more open and offers legal protection. The auction was carried out in compliance with the terms of the legislation on the auction industry in the State Wealth and Auction Service Office in accordance with the Minister of Finance Regulation Number 213/PMK.06/2020 on Instructions for Auction Implementation. Creditors use an application by providing a certificate of Liability, a credit agreement, and evidence of the debtor's performance. In addition, the State Wealth and Auction Service Office had an auction stage, where the limit value was being determined, the auction was publicly announced, and the auction was implemented with the determination of the auction winners (Lestari and Waluyo, 2024). The auction money is utilized to settle the debts of the creditors as holders of the Mortgage rights. Conversely, all the remaining proceeds of the auction, should there be any, have to be refunded to the debtor under Article 20 paragraph (1) of the Mortgage Rights Act. In this way, the process of implementing the Rights by auction not only brings ease to the creditors but also ensures the safeguards of the rights of debtors as well as the principles of certainty, equity, and transparency in implementing guarantees.

## **2. The Legal Protection of Creditors for the Auction of Mortgage Rights on Debtor Wanperformance is reviewed in Law Number 4 of 1996 on Mortgage Rights**

The theory of legal protection suggested by Hadjon (1987) can be applied to the legal protection of creditors in relation to the implementation of the Mortgage Right. This author identifies two types of legal protection: preventive and repressive. Preventive protection is manifested in the normative environment where creditors are entitled to get a preferential right and title of executives. On the contrary, repressive protection is achieved by dispute resolution in case of objections to enforcement (Yuhelson & Hakim, 2025). This is one kind of theoretical approach that postulates that legal protection is repressive once a dispute has taken place, but also constructed in the first place by means of legislation.

The protection of creditors in performing the Mortgage Right, which is legally guaranteed, may be broadly categorized into two types: preventive legal protection and repressive legal protection. Prevention of legal protection is to prevent conflicts and reduce the risk of losing creditors in the first phase of legal relations, particularly before the default of the debtor (Djatkiko, 2021). This urgent protection is incorporated in the normative regulation of Law No. 4 of 1996 on Mortgage Right in which it is required that a valid credit agreement is created and that a Liability Granting Act should be created by the Land Certificate-Making Officer and the Right to Liability should then be registered which in turn made way to the Certificate of Right to Liability as an authentic evidence that has executive powers (Martokusumo, 2009). Moreover, the use of the principle of caution by the creditors, by examining the eligibility of the debtor and the transparency of the execution clause within the credit agreement, also falls under the preventive legal protection that is used to avoid issues when the guarantee is actually executed.

Even though the Mortgage Rights Act grants creditors a powerful stance, the principle of balance between the interests of creditors and debtors is still present in its structure. This is in the presence of the existence of an underhanded sales mechanism, which needs the parties' agreement and the provisions of refunding the remaining auction proceeds to the debtor. Legal protection against creditors, therefore, is not meant to deny the debtor rights, but to establish the fair and proportional legal relationship in the settlement of the debt. This is a governance principle that is very important in ensuring the validity of the Right of Reliability institution in the Indonesian civil law.

In the meantime, repressive legal security is a means of settling debts in case default has taken place, and prophylactic measures are no longer possible. The effect of this repressive protection is achieved by the right of the creditor in Articles 6 and 20 of the Mortgage Right Act, to execute the object of the Right of Liability by separate execution, execution by execution title, or by sale under hand. Moreover, repressive protection is also granted to creditors because they can use the judicial mechanism against them in case of resistance, litigation, or debtors and third parties to prevent the realization of their claims (Syamsiah & Nurviana, 2022). Under this repressive mechanism, the law provides the creditors with effective reclaiming rights mechanisms to ensure that their debts are repaid in cases of default by the debtors. Therefore, the laws of preventive and repressive legal protection in the Rights of Liability Act exemplify a law-making attempt to establish the balance between the interests of creditors, to obtain repayment, and the protection of the rights of the debtors in the process of covering the won achievements (Imanda, 2020).

The provision of guarantees by debtors is not only an administrative process but also has important legal implications that affect the rights and responsibilities of both parties. These guarantees give rise to two kinds of guaranteed rights, broadly established in legal practice, that have their own characteristics and applications within the legal system. The two kinds of collateral rights have significant implications for the relationship between debtors and creditors and for the enforcement of the rights of both parties in the event of default.

An explicit comprehension of the two characteristics of collateral rights is essential to the involved parties because it will play a big role in determining the way in which the said collateral

rights may be applied in the future when it comes to dispute resolution or claims in terms of claims. This right of guarantee is a valid ground to enforce the creditor's rights, along with the security of the debtors in their obligation to the rights (Ningsih, 2025). The two characteristics of the right to collateral security are the following:

- a. **Common collateral rights** – This right is a type of collateral given by the debtor to the creditor in order to grant the creditor the privilege of priority in relation to the debt repayment. The general guarantee right, in this case, gives creditors a higher priority than other creditors, especially in their quest to recover payments through the assets of debtors (Putra, 2014). Agreeing creditors with the right to collateral security have a superior standing since they are able to jump queues as opposed to other creditors as far as the assets of the debtor are concerned. Items or properties that can be sold as collateral in a general guarantee scheme have to satisfy certain tough requirements.

These include that it has to be of economic value that is measurable or can be assessed using money, and this implies that it has to be capable of coming up with a clear and acceptable return to the creditor (Keisya et al., 2024). Besides that, it has to possess properties which enable it to be transferred or transferred to another party in case of need, to enable creditors to easily access or transfer it to other parties to clear debtors in case of default.

- b. **Specific collateral rights** – Special collateral rights, unlike the general collateral rights, are a narrower and more focused form of collateral, whereby the debtor transfers distinct goods or assets to a particular creditor as collateral for the debt (Ulhad & Amelia, 2023). The guarantees made in this case are not a guarantee on all assets of the debtor, but only to particular items or assets that have been agreed upon by the debtor. This assurance provides the creditor with priority over the collateral security of the goods or assets, i.e., the creditor having special collateral rights has a better standing and precedence amongst the debt repayment as compared to other creditors who lack the same rights. The creditors can claim to recover the unpaid debts by requesting the payment or sale of the guaranteed object with the special guarantee right in place.

The special guarantee right can come in two forms, namely material guarantees and individual guarantees, the forms and conditions of which are governed by an agreement between the debtor and the creditor. This is the legal framework of the issuance of guarantees, where the debtor expressly assures to part with some of their own assets as security, whose legality binds the attachment of a creditor to such assets, in case of default of the debt (Ahmad, 2021). This special guarantee right comes not simply, but through a procedure of negotiation and agreement between the two parties, and this is contained in a written agreement between the two. This contract is used to ensure that some of these debts are repaid as per the initial agreement.

Adequate legal safeguards are required in every process of financing implementation, whether it is the presence of a creditor as a lender, the presence of a debtor as a borrower, or the participation of a third party to the transaction. This security is brought about by the presence of the guarantee agency that offers a legal surety and a feeling of security to all the parties involved. Guarantee institutions are valuable tools that not only create assurance for the creditors or banking institutions to channel the funds of loans, but also help to reduce the risks that are experienced during the lending process (Ningsih & Disemadi, 2019).

Securities institutions are important to the creditors and banks to minimize the risk of losses that may be incurred by default of debtors. In banking, the credit giving decisions are made not only on the goodwill, but also on a good faith that the money availed will be returned on time, as well as on the interest agreed upon previously, in a legally binding credit agreement. To reduce the high credit risk, banks implement the principle of caution, which is also referred to as the 5C

term that includes five main areas of creditworthiness testing. *First*, Character, through which the nature of debtors is checked in terms of integrity, reputation, and history of payment of previous financial liabilities. *Second*, Capacity, which is the capability of the debtor to earn sufficient income to repay their debt, can be obtained via business or employment.

*Third*, Capital that evaluates the degree of capital strength of the debtor, either through personal savings or investments it owns, can facilitate its financial capacities in the long term. *Fourth*, Collateral, which is defined as assets that may be sold in case the debtor does not address their debt repayment requirement as agreed (Mulyati, 2018). This assurance will assure creditors that, should there be a default, the asset will be sold to pay the unpaid debts. Lastly, the Economic Condition, which evaluates the current economic realities and projections of the business of the debtors, can influence the seamless income and power of the debtors to pay off debts. This 5C principle has been applied, whereby credit giving is made safer and more measured, so that the credit risk that may arise can be reduced to benefit the banks as well as debtors.

To the creditors, the presence of guarantee agreements in each loan-giving procedure is critical towards giving them a feeling of security and safety against the capital that has been extended to the debtor. Through such an agreement, creditors have the confidence that debtors will not fail to repay the loans, including the promised interests. These guarantees are some form of the responsibility of the debtor; hence, in the event that in the future the debtor is unable to pay the principal and interest in accordance with the terms agreed, the creditor, in this case, the bank or the financial institution, can execute collateral objects that the debtor has surrendered (Permana & Nurudin, 2023).

On further analysis, it is apparent that collateral goods are used to provide creditors (mainly banks) with the authority to recover their debts by means of execution in case debtors meet their obligations. This implementation helps to make sure that the creditor is able to reclaim the loan so that the chances of losing it are minimized. The debtor's debt may be secured by a special guarantee right to give preferential rights, i.e., priority of repayment, should the proceedings of a guarantee execution take place to reinforce the creditor's position. This right provides the creditors with legal certainty and a higher likelihood of getting the receivables even when the debtors are in financial distress or are in bankruptcy (Tambunan et al., 2025).

Articles 1,6,7,14 and 20 have the Mortgage right Act, where the creditors are accorded the legal protection of the creditors. Article 1 paragraph (1) alone mentions that the Mortgage Rights is a right to guarantee land that provides creditors with a priority to recover their debts (Bisyir, 2023). Liability holders enjoy a privileged status in that they are preferred creditors, hence in case of default, they are ranked higher in priority to receive their debt payments above the concurrent creditors. Liability credit contracts offer security and protection of the law to creditors, such that security can be ensured through collateral assets.

The Mortgage Rights Act, especially article 6, is believed to be very instrumental in safeguarding the rights of the creditors, especially when debtors run the risk of default. Through this article, creditors can dispose of collateral objects without undergoing lengthy court proceedings. Therefore, they will make the debt repayment quicker and decrease the chances of suffering loss when the debtors fail to comply. This is in line with Article 1178 paragraph (2) of the Civil Code, which entitles the creditors to the right to sell the object of liability in case the debtor is in default (Nugrohandhini & Mulyati, 2019). In case the Certificate of Granting Liability is agreed, the creditors are able to instantly dispose the liabilities object via an auctioning held by the State Wealth and Auction Service Office without the debtors approval.

The legal implications of this provision include the fact that the creditors do not have to file a lawsuit in court in order to execute the collateral object. It is a process that offers efficiency and legal security, hastens the process of debt recovery, and secures the lien holder's rights as the creditor. Therefore, this not only safeguards the interests of creditors but also fosters a good and stable business environment, where creditors get a feeling of security in offering loans, hence

sustainable economic growth (Hendrawan et al., 2025).

The issuance of a certificate of liabilities as genuine evidence, which possesses ultimate and indestructible legal capabilities, is conscientiously governed by the provisions of the Mortgage Right Act, Article 14 (1), (2), and (3) to provide legal protection of creditors. This Certificate of Liability is a formal document that reinforces the status of the creditor of a credit agreement and, therefore, gives the creditor certainty and protection of his/her rights against the collateral object burdened by the liability. The certificate offers a legal legitimacy to the creditor to assert their rights should the debtor default on their obligation under the agreement.

Moreover, the Bill of Rights in Article 20 offers creditors some legal security in the sense that they are viewed as preferred creditors who have precedence in repaying their debts by auctioning collateral objects that have a liability attached to them (Ariningsih & Julianti, 2022). The article will enable the creditors to seek execution and auction the debtor's property in good faith, hence leading to the creditor receiving reimbursement without the complicated court proceedings. Under such provisions, the Bill of Mortgage Rights not only offers the legal guarantees against the inevitability of the creditor rights but also enhances the mechanism of the legal protection, which is easier and more efficient in ensuring successful and efficient access to their rights by creditors.

Articles 1131 and 1132 of the Civil Code are legal security of creditors against collateral claims by third parties, according to which all the property of debtors is secured against debt, and creditors have the right to claim the amount of compensation proportionally. To provide additional security, creditors usually bring an action to the court on the basis of the default of the debtors, to be able to secure their right to collateral assets according to the terms and conditions of the agreement (Jufri et al., 2020). Despite the protection offered under the Banking and Rights Act, creditors must still exercise the provisions of the Civil Code and the litigation route in addressing third-party claims on collateral objects.

### **C. Conclusion**

Implementation of mortgage rights in Indonesia, as established in Law No. 4 of 1996, gives legal confidence and effectiveness in the settlement of delinquent loans. There are multiple ways in which creditors can implement executive titles and off-balance sheet sales through parallel mechanisms of execution as a way of executing guarantees when the debtors are performing well. This order does not negatively affect the position of creditors, and the ethos of fairness is usually not threatened, as in certain instances, the agreement of the debtor is taken into consideration. Creditor safeguarding through the law during the auctioning of the liability insurance on the debtor on a solid foundation within the Act No. 4 of 1996 on Mortgage Right. Holders of liability (creditors) are entitled to a priority to execute the object of guarantee without involving a long judicial process, as spelled out under Articles 6 and 20. Nonetheless, this safeguard expressly does not extend to any conflict with a third party having a claim against the object of guarantee, and therefore, the regulations should be enhanced. The results of this research indicate that the efficiency of legal protection of creditors is not a one-sided factor depending on the degree to which the norm of the Mortgage Rights Act is strong, but also on its stability in the performance of the implementing apparatus and other associated institutions. This provides a chance to study further the relationship between immunity law and the civil event law as far as execution is concerned. In practice, the detailed knowledge of the procedures and dangers of implementing Mortgage Rights turns into a pressing necessity for financial institutions to develop long-term credit policies.

According to the research that indicates that Law No. 4 of 1996 on Mortgage Rights in principle has offered legal certainty and efficiency in problematic settlement of credit use of guarantee execution mechanism, then the proposal that can be made is the necessity to reinforce and maximize the enforcement procedure of the provisions of the Rights Act in practice, particularly in the face of obstacles to execution and possible conflicts with debtors and third

parties. The government and policymakers must not only look at the contents of the Mortgage Rights Act. Still, they can also enhance technical regulations and implementing regulations, particularly those that relate to the auction processes, resistance or litigation to execution, and coordination among the involved agencies to enable them give creditors greater protection under the law without compromising the principle of fairness to the debtors. Besides, creditors are encouraged to be more prudent in the pre-credit period by undertaking due diligence and juridical checks of the object of guarantee, and by making sure that the execution clause is properly drafted in the credit agreement. This is an important measure in ensuring that the chances of conflicts are reduced and the legal protection under the Mortgage Rights Act is made more effective.

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