

The Role of Land Deed Official and Legal Certainty of Mortgage on Uncertified Land Objects

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ABSTRACT

The creation of a mortgage on uncertified land gives rise to legal uncertainty, as registration is a prerequisite for the creation of property rights. This study analyses the validity of creating a mortgage on unregistered land formerly subject to customary rights, the registration procedure, the requirements for legal certainty regarding the subject matter, as well as the role of the Public Notary (PPAT) and the legal risks involved. The method employed is a normative legal approach, utilising statutory and conceptual frameworks. The findings indicate that the creation of a mortgage on uncertified land is permitted concurrently with an application for registration of the right; however, the certification process is frequently hindered, meaning that the mortgage does not come into existence. PPATs face difficulties in verifying the validity of customary land documents, and creditors lose their preferential rights if the certificate is not issued. This risk is particularly high for large-value loans. The study recommends that banks avoid accepting uncertified land as collateral and that the government expedite land registration.

INTRODUCTION

Land constitutes a primary economic asset that serves as the foundation for various community business and consumption activities. Banking institutions utilize land as credit collateral because land value tends to be stable and increases over time. Certainty regarding land ownership status constitutes an important foundation for credit provision. When land ownership status is unclear, banks face difficulties in executing collateral when debtors default. The ideal condition in the credit system requires every land collateral to possess strong rights evidence and be officially registered (Husodo & Saptanti, 2024).

Most land in Indonesia has not been fully registered in the national land registration system. Land formerly held under customary rights, which still relies on old proof such as *girik* or *petuk*, is often used as loan collateral. This practice arises from urgent financing needs and limited public access to land certification (Rahman, 2024). Land policies that are not seen as fair or trusted by residents make certification hard to reach for landowners in remote areas (Mohammad, 2023). Programs that do not fit local values and habits are also often poorly accepted (Mardikaningsih et al., 2021). Banks often accept such

collateral in the hope that certification can be completed alongside the credit agreement. This hope does not always materialize because land administration takes a long time and faces various obstacles.

The gap between the rule requiring land to be registered and the practice of accepting uncertified land as collateral creates legal uncertainty for creditors. A bank as a security holder loses its preferred position if the Security Right cannot be registered (Hardyansah et al., 2022). The preferential right that should protect creditors arises only after registration at the land office. Without registration, creditors stand in the same position as ordinary creditors and have no priority right. This condition creates a loophole that can harm banks and disrupt the stability of the credit system. Certain legal protection is a requirement for credit relationships to run safely for all parties (Sulistiono et al., 2024). Uncertain security can also reduce trust in banks (Hardyansah et al., 2021).

The authority of the Land Deed Official (PPAT) in making security deeds often faces limited verification of unregistered objects. The official is required to check the validity of ownership documents, but for customary land the available evidence is not always complete. Incomplete

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documents make it difficult for the official to determine whether the applicant is truly the lawful owner of the pledged land (Ilham et al., 2024). Making deeds without adequate examination can lead to disputes later on. Such disputes not only harm the borrower and the bank but also burden the court system. Deeds made without a valid basis of ownership can cause legal consequences that harm the parties (Putri et al., 2026).

The procedure for imposing and registering a Security Right consists of two interrelated stages. The first stage is the making of the Security Right deed by the authorized official. The second stage is registration at the land office, which is the moment the real right comes into being. For uncertified land, these two stages cannot run smoothly because registration requires a land title certificate. Dependence on an uncertain certification process means the Security Right does not immediately have binding legal force. As a result, creditors bear the risk of imperfect security for an unpredictable period. Low public understanding of legal rights and procedures makes this problem hard to anticipate from the start (Hardyansah et al., 2022).

A valid object of a Security Right is a land right that is registered and can be transferred under the law. This limitation aims to guarantee legal certainty for right holders and for parties receiving the security. In practice, however, many banks accept uncertified former customary land as collateral through an exception mechanism. This exception allows the Security Right to be imposed together with the application for first-time land registration (Widjayanti, 2023). This provision offers an opportunity but does not guarantee that a certificate will be issued. If the certificate is not issued because of a third-party claim or technical obstacles, the Security Right never comes into existence. Exception rules like this need to be assessed for their impact on parties who use financing services (Rahman et al., 2024).

The Land Deed Official plays a central role in ensuring the validity of every deed made. The principle of prudence requires the official to check the conformity of documents and land records before signing a deed. For uncertified land, the examination becomes more complicated because there is no land book or certificate to refer to (Zaelani, 2024). The official must rely on village head statements and old proof of ownership, which are often inadequate. Weak verification makes the risk of ownership disputes high. This risk multiplies if the loan has a large ceiling and a long term. Accumulated risks are usually borne most heavily by the weaker party (Mardikaningsih et al., 2025). Consistent application of prudence also

reflects the ethical responsibility of financial institutions in extending financing (Putra et al., 2022).

This research aims to analyze the validity of encumbering Mortgage Rights (Hak Tanggungan) on former customary land (tanah bekas hak adat) that has not been certified. The research also aims to examine the Mortgage Rights registration procedures and the obstacles encountered in their implementation. Another objective is to assess the requirement for legal certainty regarding the Mortgage Rights object and to evaluate the role of deed-making officials and the legal risks that arise. The contribution of this research is to provide guidance for banking institutions and deed-making officials in managing the risks of uncertified land collateral. The second contribution is to contribute thoughts toward improving land registration policies and the regulation of customary land securities.

RESEARCH METHOD

This research uses a normative juridical approach that focuses on the study of primary and secondary legal materials. Primary legal materials encompass laws and regulations in the fields of land law, banking, and the office of land deed officials. Secondary legal materials consist of textbooks, scientific articles, court decisions, and doctrines relevant to Mortgage Rights and land registration. Data collection techniques are conducted through literature studies by tracing physical or electronic literature related to the issues. The collected data are subsequently classified based on subject matters to facilitate analysis.

Data analysis is carried out qualitatively using interpretive and systematic methods. Conclusion drawing is conducted through deductive reasoning starting from general legal norms and subsequently applied to the concrete case of uncertified land. The analysis results are presented in a descriptive-analytical form describing the prevailing legal conditions and discrepancies in practice. Each finding is connected with the principles of land law and the theory of legal certainty. This approach enables researchers to identify legal gaps and formulate practical recommendations. The entire analysis process is conducted by paying attention to the consistency of argumentation and the accuracy of legal materials.

RESULT AND DISCUSSION

Normative Basis of PPAT Authority and Mortgage Rights

Economic development requires the active role of the government based on law for the sake of the people's

interests. The implementation of development in the economic field demands serious attention from the state through the role of the government, and its execution must be guided by prevailing provisions (Gunena et al., 2024). Within the framework of national land law, the existence of the Land Deed Official (PPAT) constitutes an important instrument to guarantee legal certainty over every legal act concerning land rights. Article 1 paragraph (1) of Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Officials affirms that a PPAT is a public official given the authority to make authentic deeds regarding certain legal acts concerning land rights or Ownership Rights over Condominium Units (Ilham et al., 2024). Such authority is attributive in nature and inherent to the position of a PPAT as a public official appointed and inaugurated based on the provisions of prevailing laws and regulations.

The Land Deed Official (PPAT) is authorized to make deeds of transfer of land rights and other deeds related to the encumbrance of land rights, the form of which is set as proof that a certain legal act has been carried out (Aliyah & Evendi, 2023). Deeds made by a PPAT are authentic deeds, as referred to in Article 1868 of the Indonesian Civil Code (KUHPerdata). Article 1868 of the Civil Code provides that an authentic deed is a deed made in the form determined by law, by or before a public official authorized for that purpose at the place where the deed is made (Wahid et al., 2024). The qualification as an authentic deed gives perfect evidentiary force that binds the parties who make it. A deed made by a PPAT serves as authentic proof of legal acts in the land sector in accordance with applicable provisions. Clear communication between the official and the parties helps ensure the contents of the deed are properly understood (Gardi et al., 2021).

The validity of a PPAT deed is determined not only by the formal requirements of making the deed but also by the material authority of the official concerned. A PPAT's authority is limited to their respective working area, so a deed made outside that area has no valid legal force. This legal dimension shows that legal certainty in land transactions depends heavily on compliance with the procedures and limits of authority set out in legislation (Hermawaty et al., 2024). The diversity of legal rules and customs in society means that compliance with formal provisions must be continually reaffirmed (Futriyah et al., 2023).

A Security Right (*Hak Tanggungan*) over land as security for debt is expressly regulated in Article 1

point 1 of Law Number 4 of 1996 on Security Rights over Land and Objects Related to Land (UUHT). Article 1 point 1 of the UUHT provides that when a debtor gives a land right as security to a creditor, a Security Right is imposed on that land right. This security is used to repay the debtor's debt to the creditor and gives the creditor holding the Security Right a priority (preferent) position over other creditors. This preferent position gives strong legal protection to the creditor in the event of default, because the right to be paid before other creditors is guaranteed by law (Poetra & Yunanto, 2024). This preferential right applies when the debtor defaults, and if the debtor has not defaulted, the creditor cannot immediately execute the security, either directly or through auction. Legal certainty in credit relationships also affects trust in banks (Darmawan, 2022).

Banking institutions as creditors gain a significant bargaining position through the binding of a Security Right. Banking institutions are financial entities that play an important role in providing financial services, especially in collecting and channeling funds. A Security Right makes banks parties with strong, effective, and safe legal security for the repayment of the debtor's debt (Manurung & Hendrawan, 2023). In carrying out their function of collecting funds and extending credit facilities, banks must follow the applicable rules. Article 1 paragraph (13) of Law Number 10 of 1998 on Banking (Banking Law) states: "Credit is the provision of money or claims between a bank and another party based on a loan agreement, which must be repaid within a certain period, and for which the bank charges a certain interest to be paid by the borrower." This provision confirms that credit has the elements of an agreement, a time period, and an obligation to pay interest, which characterize the legal relationship between the bank and the debtor customer. Customers' understanding of bank terms and products affects their decision to use credit services (Hardyansah et al., 2023). Banks also need to protect customers' rights, including personal data protection, in credit relationships (Hardyansah et al., 2024).

The implementation of credit must be guided by laws and regulations to guarantee certainty and legal protection for the parties involved (Jamiluddin et al., 2024). Article 1 number 11 of the Banking Law explains that banking provides funds or claims that can be conducted based on agreements or mutual consent between the bank and related parties, by obligating the party making the loan to repay their debt after a predetermined period by providing interest (Yasin et al., 2022). The provision of credit requires collateral from the debtor in the form of movable or immovable goods, and this is executed

by the bank to provide security against the debtor's debt. Credit collateral constitutes an important instrument for banks to ensure the repayment of debtor debts, particularly when default occurs.

Procedures for Encumbering and Registering Mortgage Rights

The Mortgagor must possess legal authority over the object being collateralized in accordance with statutory provisions. Such authority constitutes an absolute requirement that must be fulfilled prior to the encumbrance of Mortgage Rights. The Mortgagor is an individual or legal entity possessing the authority to perform legal actions regarding the respective Mortgage Rights object, where such authority must reside in the Mortgagor at the time the registration of Mortgage Rights is conducted. The registration of Mortgage Rights is only valid if the guarantor possesses full rights over the object at the time registration is carried out (Hidayat et al., 2023). Such a provision aligns with the principle of *nemo plus iuris*, which states that a person cannot transfer rights exceeding the rights they possess.

The imposition of a Security Right (*Hak Tanggungan*) is carried out through a legal procedure consisting of two main stages. The first stage is the granting of the Security Right through the making of the Deed of Granting Security Right (APHT) by the PPAT, preceded by a debt agreement that is secured (Nasution & Ammar, 2023). The second stage is registration at the Land Office, which is the moment the imposed Security Right comes into being. A Security Right has binding legal force only after it has gone through registration at the Land Office (Ratnawati et al., 2024). This legal construction confirms that registration is a constitutive requirement for the birth of a Security Right as a perfect real right. Slow and uncertain procedures can lead customers to switch to other service providers (Darmawan, 2022). The parties' compliance with each legal stage also determines whether the resulting right is valid (Fitrotinisak et al., 2023).

A Security Right is accessory in nature, so its existence depends on the principal agreement that creates the debt relationship (Kurniawan et al., 2024). This accessory nature means a Security Right cannot stand alone, separate from the principal agreement that secures repayment of the debt. The granting of a Security Right follows from the principal agreement, namely the agreement that creates the legal debt relationship whose repayment is secured. The agreement that creates this debt relationship may be made by a private deed or must be made by an authentic deed (Hudallah et al., 2022). Where the debt

relationship arises from a debt agreement or credit agreement, the agreement may be made by the parties concerned, whether individuals or legal entities. Thus, the debt agreement serving as the basis of a Security Right may be made by individuals or legal entities, whether through a private deed or an authentic deed. The habit of making agreements in simple form remains strong in society, so formal rules need to be explained to be understood (Amri & Khayru, 2022).

A credit agreement is the legal basis that creates the debt relationship between the grantor and the recipient of credit (Santoso et al., 2024). A credit agreement for granting a security right has an important position because, from the words "within and constitutes part of" the principal agreement as referred to in Article 10 paragraph (1) of the UUHT, it is not possible for the promise to grant a Security Right to be made in a separate deed, even when using a Power of Attorney to Impose a Security Right (SKMHT). The "promise" to grant a security right must first be set out in the debt agreement as the principal agreement. The granting of the APHT must be based on a debt agreement that previously promised that a Security Right would be granted (Arifardhani et al., 2024). An APHT can be considered valid only if it is based on a principal agreement that clearly states the promise to provide security. An agreement that is not performed according to its terms can create legal consequences for the party at fault (Aryanto et al., 2023). Banks also need to ensure that the identities of parties in a credit agreement are correct to prevent misuse (Firmanto et al., 2024).

The implementation of the provisions of Article 10 of the Mortgage Rights Law (UUHT) in banking practice is evident from the content of the credit agreement as the principal agreement which consistently includes a clause regarding collateral. One of the important points regulated in this clause is that to properly guarantee the repayment of the debtor's debt to the bank, whether principal loans, interest, fines, and other costs, the debtor submits collateral in the form of land and buildings, plants and works existing thereon which constitute a unity with such land and belong to the holder of the land rights. Upon such submission, an SKMHT and/or Mortgage Rights will be made. The submission of collateral by the debtor functions as the legal basis for making the SKMHT and/or APHT to guarantee the settlement of debt obligations.

Object of Mortgage Rights and Legal Certainty Requirements

The types of land rights that can be made objects of Mortgage Rights have been limitedly regulated in

Article 4 paragraph (1) and (2) of the Mortgage Rights Law (UUHT). Article 4 paragraph (1) of the UUHT determines that Mortgage Rights can be encumbered on Ownership Rights (Hak Milik), Right to Cultivate (Hak Guna Usaha), and Right to Build (Hak Guna Bangunan). Article 4 paragraph (2) of the UUHT adds that Right of Use (Hak Pakai) over State land which, according to prevailing provisions, must be registered and by its nature can be transferred may also be encumbered with Mortgage Rights (Aziz et al., 2023). This limitation indicates that only land rights which are transferable and mandatory to be registered can be encumbered with Mortgage Rights in accordance with prevailing legal provisions. Land rights that are untransferable or not mandatory to be registered do not fulfill the requirements as objects of Mortgage Rights.

The implementation of a Security Right (Hak Tanggungan) requires absolute elements for the security over land to have effective legal force. First, the right must comply with Article 4 paragraph (2) of the UUHT, which requires the land to be registered in the public register at the Land Office. This element relates to the preferent position given to the creditor holding the Security Right over other creditors, so there must be a record of the Security Right in the land book and in the certificate of the land right it encumbers. Anyone can learn of this as an implementation of the principle of publicity (Sulistiyawati et al., 2022). Second, the right must be transferable so that, if the creditor needs it, it can be promptly realized to repay the debt whose repayment is secured. Registration and the transferability of the land right are essential requirements to ensure legal certainty and protection for creditors. An orderly and well-planned recording system allows the rules to be applied sustainably (Mardikaningsih & Nuraini, 2022).

The basic principle of the Security Right confirms that the object of security must be land that has been registered in accordance with land law provisions. The above provision reaffirms the principle that a Security Right can be imposed only on land registered under Law Number 5 of 1960 on Basic Agrarian Principles (UUPA) and Government Regulation Number 24 of 1997 on Land Registration. The imposition of a Security Right is valid only if made on land registered under the UUPA and Government Regulation Number 24 of 1997 on Land Registration. A land certificate is strong and perfect evidence of ownership of the land right that serves as the object of security (Aziz et al., 2023). Registration rules need to be enforced through prevention and sanctions so that order is maintained (Suwito et al., 2023). Citizens' level of compliance is also influenced by their respective conditions and backgrounds (Khayru et al., 2025).

Although Article 4 paragraphs (1) and (2) of the

UUHT stipulate that a Security Right can be imposed only on registered land, there are exceptions under certain conditions. The provisions of Article 4 paragraphs (1) and (2) of the UUHT may be waived if the object of the Security Right is a land right derived from the conversion of an old right, or is not yet certified but already meets the requirements for registration, though registration has not yet been carried out. The granting of a Security Right over such land is done together with the application for registration of the land right concerned, as explicitly regulated in Article 10 paragraph (3) of the UUHT. An old right is land ownership still under existing customary law, for which the administrative process of conversion has not yet been carried out. Imposing a Security Right on uncertified land cannot be done by itself, but a Security Right over that land can be imposed together with the application for registration of the land right. Imposing a Security Right on uncertified land remains possible if done together with the application for registration of the land right, in accordance with Article 10 paragraph (3) of the UUHT. Land administration readiness is not the same between urban and rural areas (Amri & Khayru, 2021). Legal processes that are obstructed also often make right holders reluctant to use formal channels (Hardyansah et al., 2021).

Provisions concerning the exception of Mortgage Rights objects aim to expand financing access for holders of land rights that have not been certified. The aforementioned provisions are intended to provide an opportunity for holders of uncertified land rights to obtain credit. These provisions are also intended to encourage the public as holders of land rights to carry out the certification of land rights in general. These provisions are also intended to encourage the public as holders of land rights to carry out the certification of land rights in general in order to obtain legal protection and certainty (Rizky & Darmawan 2021).

The Role of PPAT, Prudence Principle, and Legal Risks of Uncertified Land

The encumbrance of Mortgage Rights on land still in the process of conversion to ownership rights remains possible through specific legal mechanisms regulated in the UUHT. The encumbrance of Mortgage Rights on collateral objects still in the process of conversion to ownership rights can be conducted before a PPAT by using an SKMHT which must be made with an authentic deed and followed by the making of an APHT at the latest 3 (three) months thereafter. The time limit of the SKMHT on unregistered land is determined to be longer than that on already registered land, considering that the making of the APHT coincides with the application for land rights registration and

needs to complete the requirements, as regulated in Article 15 paragraph (1) and paragraph (4) of the UUHT. The process of encumbering Mortgage Rights on collateral objects still in the conversion process can be carried out through the stages: making the principal agreement (credit agreement), making the SKMHT, granting power of attorney by the land owner to the bank to carry out land registration, processing land registration through the PPAT appointed by the bank, and the first-time land registration process based on conversion (Dewi, 2023). Although the certificate has not been issued, the process of encumbering Mortgage Rights can still be carried out gradually and validly, as long as it fulfills the prevailing administrative and procedural provisions. This procedure provides certainty for the creditor that the collateral can still be encumbered even though its object is not yet certified, provided that all stages are executed in accordance with the provisions.

The registration of Security Rights is now carried out electronically under Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 on Electronically Integrated Security Right Services. Through this system, the PPAT is no longer required to come in person and queue at the Land Office counter. The registration application and the submission of supporting land records (*warkah*) are done digitally. Registration of the Security Right is processed by the Land Office by creating an electronic Security Right land book and recording it in the land registration system. Article 14 paragraph (1) of the UUHT provides that, as proof that a Security Right exists, the Security Right holder is given a Security Right Certificate issued by the Land Office. The Security Right Certificate (now issued electronically) is proof of the existence of the Security Right, so the certificate proves something that already existed at the time it was made (Nasution & Ammar, 2023). The issued Security Right Certificate becomes authentic evidence of the existence of that right from the moment of its recording. Fast and easy services increase users' trust in the institution that serves them (Hardyansah & Jahroni, 2023).

Registration of a Security Right is an important stage in granting real security over land. Article 13 of the UUHT provides that the granting of a Security Right must be registered at the Land Office no later than 7 (seven) working days after the APHT is signed. The PPAT must send the relevant APHT and other required land records to the Land Office. The provision of Article 13 of the UUHT confirms the PPAT's obligation to ensure registration is done on time to guarantee the validity and legal certainty of the

Security Right. Late registration can cause the Security Right not to come into being as a real right and to lose its preferential power (Saputro & Silviana, 2024). Legal certainty and good supervision make legal obligations easier to comply with (Rizaldi et al., 2024).

The PPAT carries great responsibility for ensuring that every deed made complies with applicable law. In carrying out their duties and office, a PPAT must apply the principle of prudence as provided in Article 54 paragraph (1) of Head of the National Land Agency Regulation Number 1 of 2006 on Implementing Provisions of Government Regulation Number 37 of 1998 on the Regulation of the Office of Land Deed Officials, which states: "Before making a deed, the PPAT must examine the conformity/validity of the certificate and other records at the local Land Office by explaining the purpose and objective." This provision exists to give legal certainty and protection to the appearing parties regarding the object to be transacted, particularly regarding the authenticity of evidence of ownership of the land right. The application of the principle of prudence as regulated in Perkaban Number 1 of 2006 is an important foundation for the PPAT in guaranteeing the authenticity of data and providing legal protection for the transacting parties. Consistent law enforcement keeps rules from remaining mere written text (Nuraini et al., 2021).

As a public official authorized to make authentic deeds, the PPAT bears legal responsibility inherent in every performance of their office. The PPAT's responsibility in making an APHT also entails sanctions if the obligation is not carried out properly. The PPAT's obligations as provided above are part of carrying out the office, aimed at ensuring the formal accuracy of the data on the transaction object submitted by the appearing parties and at giving legal certainty to the parties who request a deed before the PPAT. This obligation is generally known as "checking." Carrying out the "checking" obligation is a concrete form of the PPAT's responsibility in guaranteeing the validity of data and giving legal protection to the parties in making an APHT. This checking obligation is preventive in nature, to avoid disputes in the future (Puspoyudo & Handoko, 2022). Clear rules on the limits of conduct and on sanctions make officials more careful (Rakhmawan et al., 2025).

In the process of imposing a Security Right on uncertified land, the PPAT must apply the principle of prudence in accordance with applicable law. Article 39 paragraph (1) letter b of Government Regulation Number 24 of 1997 states that the PPAT must refuse to make a deed concerning an unregistered land parcel if they are not given proof

of the old right, or a statement from the Village Head/Sub-district Head that the person concerned has controlled the land parcel for 20 years, together with a statement from the Land Office that the land parcel is not yet certified. Without valid supporting documents, the PPAT is obliged to refuse to make a deed for unregistered land as regulated in Article 39 paragraph (1) letter b of Government Regulation Number 24 of 1997. This provision gives the PPAT a legal basis to act selectively and not to make a deed automatically on request without adequate documents (Afrianti et al., 2022). The parties' legal awareness affects their readiness to complete the documents requested (Hardyansah et al., 2022).

The application of the principle of prudence by the PPAT in imposing a Security Right on uncertified land plays an important role in maintaining land administration order. Applying the principle of prudence is a form of dispute prevention in the land sector, particularly in imposing Security Right collateral on uncertified land (Ningrum & Lukman, 2023). This principle works as a preventive effort to avoid potential legal disputes over collateral objects that do not yet have a certificate. Such dispute prevention is very important considering that uncertified land has a higher level of dispute vulnerability than registered land. Imbalance of position between parties can increase the chance of conflict (Mardikaningsih, 2021).

Article 10 paragraph (3) of the UUHT allows a Security Right to be imposed on uncertified customary land. The provision of Article 10 paragraph (3) of the UUHT regulates that imposing a Security Right on uncertified land can be done, including customary land whose proof of ownership is still in the form of *girik*, *petuk*, and other similar documents. However, legislation has not explained in further detail how the Security Right registration mechanism works for uncertified land, given that the time limit under Article 13 of the UUHT is not feasible because such land does not yet have a land book and certificate (Noor et al., 2024). The moment a Security Right comes into being on uncertified land cannot be determined as it can for certified land, and this is also tied to the time needed to complete the land certificate. A Security Right over former customary-law land depends heavily on the certification process, so in this case there is no strong legal certainty. The certification process meets obstacles if, during the 60 (sixty)-day announcement period to satisfy the principle of publicity in land registration, a third party files a claim so that the certificate cannot be issued. If the land certificate cannot be issued, the Security Right registration process cannot be carried out. Without a

certificate, Security Right registration cannot be carried out if the certification process is blocked by a third-party claim. Creditors whose security is not yet perfect find it hard to obtain adequate protection of their rights (Prabowo et al., 2024).

The legal analysis conducted indicates that the encumbrance of Mortgage Rights on former Customary Ownership Rights (Hak Milik Adat) land that has not been registered creates legal vulnerability and high risks for the creditor party. The making of the APHT whose object is former Customary Ownership Rights land that has not been registered for credit with a substantial ceiling entails high risks for the bank. It is advisable to avoid accepting collateral in the form of uncertified former Customary Ownership Rights land, even though the law permits such an action. If the credit binding has been executed and in the future it turns out that the land certificate cannot be issued, the creditor is in a weak position because they are not a preferred creditor possessing preferential rights based on Mortgage Rights. The registration of Mortgage Rights requires that the Mortgage Rights object already possesses a certificate, whereas the making of the SKMHT will encounter obstacles when linked to the length of the land registration process. To protect the interests of creditors and maintain legal certainty, there needs to be stricter provisions regarding the encumbrance of Mortgage Rights on uncertified land (Kusuma et al., 2024). This uncertainty constitutes a legal loophole that can harm creditors and weaken the function of Mortgage Rights as a strong guarantee institution.

CONCLUSION

The encumbrance of Mortgage Rights on former customary land that has not been certified is permitted by law on the condition that it is conducted simultaneously with the application for rights registration. However, this practice contains high risks because the issuance of the certificate cannot always be guaranteed. The PPAT is obliged to apply the principle of prudence in examining the completeness of documents, but the limitations of old ownership evidence complicate verification. The registration of Mortgage Rights cannot be conducted if the certification process is hindered, causing the creditor to lose preferential rights. The implication of these findings is that banking institutions should reject uncertified land collateral for large-ceiling credits. The government needs to accelerate the land registration program and provide certainty regarding the certificate completion time. The PPAT needs to increase vigilance and refuse the making of deeds if

the supporting documents do not fulfill requirements.

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