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Transition and Harmonization of the Provisions on Hypotheek and Credietverband Regarding the Recognition and Adjustment of the Transitional Provisions of Security Rights[1]

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Abstract
This study explores the legal recognition and transition of property security systems from the Dutch colonial instruments Hypotheek and Credietverband to the national system of Security Rights as regulated under Law No. 4 of 1996 concerning Mortgage Rights. Using a normative juridical approach, the research reveals that legal acknowledgment of the legacy systems is still maintained under Art. 57 of the Basic Agrarian Law (UUPA) and Art. 24 of the Law on Mortgage Rights (UUHT). However, the absence of a clear and systematic conversion mechanism has created disharmony within the legal system, especially regarding

[1] This research is the core part of a doctoral dissertation in legal science, which departs from the existence of mortgage laws which are understood differently or have unclear meanings using personal funds and is supervised by three supervisors who are experts in the fields of civil economic law and civil law.

land registration and enforcement practices. This has led to legal uncertainty, particularly in banking and credit sectors where the execution of collateral is essential. The Supreme Court Decision No. 1947 K/Pdt/2010 serves as a case study highlighting the legal ambiguity and operational challenges that arise from this transitional gap. To ensure legal certainty and economic stability, this study recommends legal harmonization through technical regulations, digital archiving of historical security documents, and capacity building for legal institutions and stakeholders.

Keywords: Hypotheek; Credietverband; Legal Transition; Security Rights.

Перехід та узгодження положень про Hypotheek та Credietverband щодо визнання й коригування перехідних положень забезпечувальних прав

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Анотація
У дослідженні розглянуто правове визнання та перехід систем забезпечення права власності від голландських колоніальних інструментів Hypotheek та Credietverband до національної системи забезпечувальних прав, що регулюються Законом № 4 від 1996 р. про іпотечні права. Використовуючи нормативно-юридичний підхід, автори з'ясували, що правове визнання цих інститутів як законодавча спадщина досі зберігається відповідно до статті 57 Основного аграрного закону (UUPA) та статті 24 Закону про іпотечні права (UUHT). Водночас відсутність чіткого та систематичного механізму перетворення створює дисгармонію у правовій системі, особливо щодо питань реєстрації земель та практики примусового виконання. Це призво-

дить до правової невизначеності, зокрема у банківському та кредитному секторах, де виконання зобов'язань за заставою має важливе значення. Рішення Верховного суду № 1947 K/Pdt/2010 є прикладом, що ілюструє правову двозначність та операційні труднощі, які виникають через цю перехідну прогалину. Для забезпечення правової визначеності та економічної стабільності у роботі пропонується гармонізація законодавства шляхом ухвалення технічних регламентів, створення цифрового архіву історичних документів щодо забезпечення та підвищення спроможності правових інституцій і заінтересованих сторін.

Ключові слова: Hypotheek; Credietverband; юридична трансформація; забезпечувальні права.

Introduction

Banking institutions play a vital and strategic role in driving national economic growth. One of the key indicators of a country's progress is the stability and development of its economic sector, where business activities form the backbone. In this context, banks function as financial institutions that provide funding services to the public, particularly through credit facilities [1]. Bank disbursed credit acts as a driving force for economic activities, both in the productive and consumptive sectors [2]. Hence, a sound and legally protected credit system is a fundamental prerequisite for the creation of a sustainable banking ecosystem.

As creditors, banks naturally expect loan repayments to be made smoothly and on time according to the loan agreements [3]. However, in practice, this expectation is not always met. It is not uncommon for granted credit facilities to default or become non-performing loans (NPLs). To mitigate this risk, banks conduct thorough assessments of prospective debtors, including their creditworthiness, character, financial condition, and business prospects [4]. Additionally, for certain types of credit, banks require collateral as a safeguard against potential default.

This requirement aligns with Art. 8 of Law No. 10 of 1998 amending Law No. 7 of 1992 concerning Banking, which states that all credit provision entails risk and therefore requires collateral. As defined in Art. 1, point 23 of the Banking Law, collateral refers to additional security provided by the debtor to the bank in connection with credit or financing facilities [5]. The primary function of such collateral is to ensure security and guarantee loan recovery in case of debtor default.

In practice, immovable assets such as land and buildings are commonly used as collateral due to their relative safety, high economic value, marketability, and permanence [6]. Furthermore, land and buildings can be encumbered with a Mortgage right (Mortgage Right), which grants a preferential position to creditors in the event of default. Mortgage Rights over land provide creditors with an enforcement mechanism that does not require prior civil litigation [7]. This represents a significant strength of the Mortgage Right system within Indonesia's positive law.

The strategic role of banks and financial institutions in national development requires a balanced legal protection framework not only for debtors but also to ensure legal certainty for creditors in recovering disbursed loans [8]. An effective, reliable, and enforceable collateral law system is essential. Without legal certainty in collateral enforcement, the risk of default can create systemic instability in the financial sector.

Legal issues emerged following the enactment of Law No. 4 of 1996 concerning Mortgage rights (Mortgage Rights Law). This Law was enacted as a mandate from Art. 51 of Law No. 5 of 1960 on the Basic Agrarian Law (UUPA), which provides that land rights can be used as debt collateral through the establishment of a Mortgage right, with further provisions to be regulated by a separate law [9]. Before this, collateral over land was governed by two colonial-era legal frameworks: Hypotheek under Art. 1162 of the Civil Code (KUHPerdata), and Credietverband under Staatsblad 1908 No. 542 jo. Staatsblad 1937 No. 190. Despite their different mechanisms, both systems legally bound land rights as objects of credit security [10].

Article 57 of the UUPA states that in the absence of specific regulations on Mortgage right, the provisions of Hypotheek and Credietverband remain valid. This means that between 1960 and 1996 (36 years), these two colonial security systems coexisted and were legally valid for securing credit over land and buildings [11]. Upon the enactment of the Mortgage Right Law, the provisions regarding the use of Hypotheek and Credietverband for encumbering land and buildings were no longer legally valid. However, legacy security interests established before this law came into force are still recognized and require adjustment [12].

This transition has created practical issues in the enforcement of collateral still encumbered by Hypotheek and Credietverband, especially regarding the legal harmonization mandated by Art. 24 of the Mortgage Right Law. Article 24 states that security interests established before the law's enactment remain valid under prior law until adjustment occurs [13]. However, this provision does not specify any timeline or procedural mechanism for such adjustments, resulting in interpretative gaps and legal uncertainty, particularly in enforcement or dispute resolution contexts.

This research aims to analyze the legal recognition and adjustment mechanisms regarding the validity of Hypotheek and Credietverband provisions during the transition to the Mortgage right system, as outlined in Art. 24. The goal is to formulate a legal harmonization model that ensures legal certainty and balanced protection for all parties, particularly in the banking and finance sector. Harmonization is crucial to prevent normative conflicts and reduce legal risk for creditors and debtors alike.

The novelty of this research lies in its focused analysis of the legal transition and harmonization between the two historical collateral systems, Hypotheek and Credietverband, and their integration into the current Mortgage right regime under the 1996 Law. Article 24 provides for the recognition of pre-existing securities, allowing for their legal adjustment [14]. However, in practice, unresolved issues persist, particularly in the execution of security interests based on colonial-era laws [15]. These challenges are further complicated when disputes arise concerning land status, overlapping ownership, or dual registration at the National Land Agency (BPN). Such uncertainties undermine the role of collateral as a credit security tool and may pose systemic risks to the banking sector [16].

This study offers a comprehensive and contextual perspective by examining both the normative legal transition and its practical implications in banking activities. It aims to clarify the legal standing of pre-1996 collateral instruments and provide concrete recommendations for harmonizing Indonesia's collateral law system to ensure legal certainty for both banks as creditors and the public as debtors.

The harmonization of Hypotheek and Credietverband provisions within the context of the Mortgage Right Law is essential to ensure coherence between legacy and current regulations. In the long term, formulating and implementing guidelines for Art. 24 and disseminating them across financial sectors are critical steps toward closing existing legal gaps [17]. This harmonization is an integral part of agrarian and financing law reform in Indonesia, ensuring justice, efficiency, and economic stability.

Materials and Methods

This study applies a normative legal research method, commonly referred to as doctrinal legal research, which concentrates on analyzing positive legal norms as outlined in statutory regulations, legal doctrines, and foundational legal principles [18]. This approach is deemed suitable given that the central issue addressed in this research concerns the legal recognition, transition, and harmonization of property security mechanisms, particularly Hypotheek and Crediet Verband within the scope of the implementation of Law No. 4 of 1996 on Mortgage Rights over Land and Objects Related to Land (Mortgage right).

To provide a comprehensive analysis, the research adopts a combination of legal approaches: statutory, conceptual, and historical [19]. Each of these is utilized in a complementary manner to construct a full picture of the legal transition from colonial property security systems to the modern mortgage rights system, and the implications this shift has for banking institutions acting as creditors. The statutory approach is used to examine the body of positive law relevant to this issue [20]. This includes the Indonesian Civil Code (KUHPerdata), the Staatsblad regulations from 1908 and 1937 concerning Crediet Verband, the Basic Agrarian Law (UUPA) of 1960, and most notably, Law No. 4 of 1996. Special attention is given to Art. 24 of the Mortgage Rights Law, which contains transitional provisions acknowledging the validity of earlier security instruments while calling for future adjustment, though without clearly defining a process or timeline for such changes.

The conceptual approach allows for a deeper examination of legal concepts such as recognition of rights, normative transitions, and legal harmonization [21]. Through this lens, the study investigates how Hypotheek and Crediet Verband, both colonial legacies, can be interpreted within the context of Indonesian national law, and how these interpretations can guide the development of a harmonized legal model that protects the rights of both creditors and debtors in secured lending practices [22].

In addition, the historical approach is employed to trace the development of these colonial security mechanisms and to understand their continued relevance in Indonesia's legal system before the unification brought by the Mortgage Rights Law [23]. This context is essential for interpreting Art. 24 and for understanding the legal complexities that emerge during the transition period. The data used in this study is exclusively secondary, gathered through library research. It includes primary legal materials such as statutory regulations, secondary materials like legal literature, journal articles, and expert commentaries, and tertiary sources such as legal dictionaries and encyclopedias that help explain legal terms and concepts.

All data is analyzed using a descriptive-analytical method. Legal norms and concepts are first described systematically and then interpreted using legal reasoning and normative interpretive principles [18]. The objective is to critically evaluate the transitional clause in Art. 24 of the Mortgage Rights Law and to propose a framework that ensures legal certainty and fair implementation in banking practices. Through this research methodology, the study aims to offer both theoretical insights and practical solutions for harmonizing Indonesia's property security system, helping to bridge colonial legal structures with a unified national system that supports legal clarity, justice, and economic stability.

Results and Discussions

Legal Recognition of Hypotheek and Crediet Verband

Before the enactment of Law No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT), Indonesia's land security system was governed by two principal forms of security rights inherited from the Dutch colonial legal system: Hypotheek and Crediet Verband. Both mechanisms served as legally recognized instruments for securing debts with land as collateral during the Dutch East Indies era and continued to be acknowledged within Indonesia's legal framework, notably through the juridical recognition stipulated in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA).

Hypotheek, as codified in Art. 1162 of the Indonesian Civil Code (KUHPerdata), is a security right over immovable property that grants the creditor the authority to sell the collateral in the event of debtor default. This mechanism provides the creditor with preferential rights (droit de prйfйrence) and the right to follow the object wherever it is (droit de suite), establishing it as a robust and effective legal security tool under Western civil law tradition. Conversely, Crediet Verband was designed specifically for customary (adat) land, particularly in regions outside Java and Bali, where formal land registration was not yet widespread. This system is regulated under Staatsblad 1908 No. 542 in conjunction with Staatsblad 1937 No. 190. Although differing in their scope and application, both Hypotheek and Crediet Verband functionally served the same legal purpose: to assure creditors by designating land as collateral for a debt [24].

Following Indonesia's independence, there was a growing need to align these colonial legal instruments with national legal principles. The promulgation of the UUPA in 1960 marked a critical milestone in the nationalization and reform of agrarian law, aiming to unify and simplify the fragmented land law systems. Article 57 of the UUPA explicitly states that until the enactment of new legislation concerning mortgage rights (as mandated by Art. 51), the provisions regarding Hypotheek and Crediet Verband shall remain in force, provided they align with the spirit and provisions of the UUPA. This transitional clause demonstrates the legislature's cautious approach in ensuring legal continuity while preparing for a unified mortgage regime.

The temporary recognition of Hypotheek and Crediet Verband during the transitional period served as a legal bridge to avoid a regulatory vacuum concerning land security. Their continued validity was respected until the enactment of UUHT in 1996. However, as temporary measures, these systems required harmonization to align with the principles of national agrarian law, especially concerning social justice, recognition of customary rights, and the protection of small-scale landholders. The national land law, as guided by the UUPA, emphasizes a balanced approach that safeguards the interests of both creditors and debtors, particularly the latter, who often have a weaker bargaining position.

A landmark case illustrating the legal recognition of Crediet Verband is the Supreme Court Decision No. 3832 K/Pdt/1991. In this case, an individual in Kalimantan used customary land as collateral through the Crediet Verband mechanism, formalized before the local subdistrict head and acknowledged by the traditional village leader. Upon the debtor's default, the creditor sought to claim the land. The court, from the District Court to the Supreme Court, upheld the validity of the agreement, recognizing the legal enforceability of Crediet Verband under Art. 57 of the UUPA, given the absence of a replacement legal framework at that time.

This case affirms that despite their colonial origins, the legal force of Crediet Verband (and by extension Hypotheek) persisted during the transitional period and remained enforceable in the absence of newer regulations. It also underscores the judiciary's consistent stance in upholding juridical recognition of transitional legal instruments, thereby ensuring legal certainty during a period of significant legislative reform.

Transition Issues

Despite the enactment of Law No. 4 of 1996 on Mortgage Rights over Land and Objects Related to Land (UUHT), many land-based security agreements in Indonesia remain bound by pre-1996 legal mechanisms—specifically, Hypotheek and Crediet Verband. This continuation has led to legal challenges, particularly concerning the enforcement of collateral under agreements made before the implementation of the UUHT. The central issue lies in the legal disconnect between the legacy security systems and the requirements of the modern legal framework, resulting in uncertainty when executing guarantees, particularly those involving unconverted Crediet Verband agreements that lack the formal structure required under current law.

Under Indonesia's prevailing positive law, the execution of a security right must be based on a registered Sertifikat Mortgage right (SHT), which grants the creditor executorial power akin to a final and binding court judgment. The absence of such certification hinders enforcement efforts when debtors default. Financial institutions, including banks, are frequently confronted with obstacles when attempting to auction collateral secured under the former systems, due to the lack of formal legal authority that the new system mandates.

One illustrative case is that of PT Bank Rakyat Indonesia (Persero), Tbk, Tegal Branch. The bank attempted to enforce collateral in the form of Freehold Title No. 2794/Mejasem, registered in the name of Soetjito Soetanto, who had become a non-performing debtor since 1995. The land had been encumbered with a Hypotheek agreement dated October 13, 1995. Although the collateral documentation remained complete and in possession of the bank, execution had stalled due to conflicting interpretations of Art. 24 of the UUHT between the Tegal Land Office and the Tegal Office of the State Asset and Auction Service (KPKNL).

The SKPT (Land Registration Certificate) issued by the Tegal Land Office confirmed the existence of the Hypotheek, with a recorded loan value of IDR 309 million. However, the KPKNL required that the Hypotheek first be administratively converted to a Mortgage right by Articles 14(1) and 24 of the UUHT before auction could proceed. In contrast, the Tegal Land Office expressed no objection to executing the title transfer to the auction winner, even without such conversion.

The legal vacuum created by this lack of uniformity in interpretation is compounded by the absence of clear, binding transitional procedures. The judiciary has attempted to provide direction in similar disputes. For example, in Supreme Court Decision No. 537 K/Ag/2016, the Court upheld the validity of agreements established before the UUHT, provided they conformed to the legal norms of their time. Although such agreements lacked the structure of the UUHT, they were nonetheless considered binding.

Further, in Supreme Court Decision No. 49/PDT/2020/PT KDI, the Kendari High Court emphasized that security objects bound before the UUHT must be converted into Mortgage right for lawful execution. Without an SHT, execution cannot be carried out, as it does not meet the executive standards stipulated in Articles 14 and 20 of the UUHT.

Though these rulings do not explicitly address the post-default enforcement of Crediet Verband, they reinforce the principle that pre-UUHT security agreements remain legally recognized but require formal conversion to be enforceable under current law. The Supreme Court consistently maintains that while pre-existing agreements are valid, enforcement must follow contemporary procedural norms to ensure legal certainty and uphold the rights of creditors.

This legal dualism, wherein old and new legal systems coexist, has produced tension between the material legality of older agreements and the formal legality required by the modern system. Two fundamental points of contention emerge:

1. Old system legality: Hypotheek and Crediet Verband retain legal recognition under Art. 57 of the UUPA, which allows their continued application in the absence of replacement legislation.
2. New system requirements: The UUHT establishes a new paradigm based on registration, certification, and executive power. The presence of a Mortgage Right Certificate is now a prerequisite for lawful and efficient enforcement.

Problems arise when a security agreement is materially valid but procedurally unenforceable. This misalignment undermines the functional purpose of security rights, namely, to provide certainty and protection for creditors. When enforcement is blocked by a lack of formal compliance, creditors are left vulnerable, despite their legal position being substantively sound. To address this transitional challenge, several strategic measures are recommended:

1. Technical Regulations: The government should issue implementing regulations clarifying the process for converting legacy security instruments into the Mortgage Right system.
2. Institutional Review: Financial institutions should inventory and audit legacy credit documentation, identifying agreements that require conversion, and initiate administrative procedures in compliance with the UUHT.
3. Judicial Guidance: The Supreme Court should issue a Circular Letter (SEMA) to provide uniform judicial guidance, reducing interpretive inconsistencies across cases.
4. Bureaucratic Streamlining: The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) should simplify the conversion process, possibly through one-stop services or expedited certification pathways.

In conclusion, the transition from Hypotheek and Crediet Verband to Mortgage right represents a significant legal evolution with practical consequences. While older systems retain limited legal validity, their continued use without formal adaptation compromises legal certainty and creditor protection. Therefore, administrative conversion is not merely a legal formality—it is a necessary step to align legacy agreements with the structural demands of Indonesia's contemporary mortgage law, ensuring that the modernization of legal frameworks does not come at the expense of enforceability or fairness.

Harmanozation Efforts

The enactment of Law No. 4 of 1996 concerning Mortgage Rights (UUHT), the system of property security law in Indonesia underwent significant changes. This change necessitates adjustments from the old system, which utilized Hypotheek and Crediet Verband, to the new system of Mortgage Rights over land and property related to land. However, this transition is not a simple matter, as it involves historical, administrative, and structural aspects within the national legal system. To ensure that this transition proceeds effectively without creating legal voids or uncertainties for the parties involved, efforts to harmonize the law are required. This can be achieved through two approaches: formal juridical and regulatory approaches.

The formal juridical approach emphasizes the importance of legal administration adjustments for property security that has been bound within the Hypotheek and Crediet Verband system. In practice, this adjustment is carried out through the re-registration or conversion of the security object at the Land Office. The goal is for the security object to obtain a Mortgage Rights Certificate (SHT), which serves as a formal requirement to be executed legally in case of default. Concrete steps involved in this approach include:

1. Submission of a conversion application for security by the creditor or debtor.
2. Examination of old documents such as the Crediet Verband deed or akte van hypotheek.
3. Legal validation of land objects through physical and juridical data by the Land Office.
4. Issuance of the Mortgage Rights Certificate stating that the object is subject to the provisions of the UUHT.

Thus, this approach emphasizes that formal legality must be prioritized so that the security object possesses executive power as regulated in Articles 14 and 20 of the UUHT. In addition to the formal approach, harmonization of the legal system must also be carried out through a regulatory approach, namely through policy interventions by the government and legislative bodies. The goal is to draft implementing regulations or more detailed and applicable transitional provisions so that all parties have technical guidelines in the process of transitioning the security system. Some examples of needed regulations include:

1. Ministerial Regulation from the ATR/BPN on the procedure for converting old securities into Mortgage Rights.
2. Circular Letter of the Supreme Court (SEMA) to provide uniform direction to judges in deciding cases involving Crediet Verband or Hypotheek securities.
3. Technical guidelines from the Financial Services Authority (OJK) for financial institutions to identify and reprocess old security documents.

The regulatory approach is crucial because Indonesia's legal system still inherits structures from colonial law. Without a uniform set of guidelines, the risk of dual interpretations in handling security cases will persist. To ensure that this harmonization process is not only practical but also has a strong theoretical foundation, relevant legal theories are necessary. Three main theories can serve as the basis for explaining and justifying the importance of this adjustment process.

1. Theory of Legal Recognition – Friedrich Carl von Savigny.

Von Savigny, a figure from the historical school of law, emphasized that law is not merely created by the state, but develops organically from the social life of society. In this context, the Hypotheek and Crediet Verband systems are part of a legitimate legal evolution because they have long been used and recognized in the practices of colonial and post-colonial society and banking institutions. Therefore, even though the UUHT has emerged as a new positive law, the state must still provide legal recognition to the old system. This means that the harmonization process should not immediately abolish the previous system, but should accommodate and integrate it gradually into the new national legal system [25].

2. Theory of Legal Certainty – Gustav Radbruch.

Radbruch argues that one of the fundamental values in law is legal certainty (Rechtssicherheit). Legal certainty is necessary for society to plan legal actions calmly without the fear of encountering uncertainty due to changes or inconsistency in the rules. In the context of security transitions, unclear conversion procedures, inconsistent court decisions, and the overlap between old and new laws are obstacles to legal certainty. Therefore, through well-planned juridical and regulatory approaches, the conversion process of securities can provide legal protection for both debtors and creditors, as well as prevent unnecessary disputes [26].

3. Theory of Legal Harmonization – Zweigert & Kцtz.

Zweigert and Kцtz argue that in plural legal systems like Indonesia, legal harmonization is a necessity. Harmonization aims to integrate overlapping legal systems to create a unified and consistent national legal system. The transition from Hypotheek and Crediet Verband to Mortgage Rights is a tangible example of this legal harmonization process. The previously fragmented, colonial, and pluralistic system of security needs to be unified into a modern, structured, and standardized national system, as outlined in the UUHT. This harmonization process must be carried out through an integrative, not destructive, approach. That is, the old law should not be abolished outright, but rather gradually directed to integrate into the new system while maintaining its historical legitimacy [27].

The adjustment from the Hypotheek and Crediet Verband system to the Mortgage Rights system is not merely an administrative issue; it represents a significant effort in building a modern and uniform national property security law. This process requires synergy between juridical and regulatory approaches, alongside theoretical understanding of the values of legal recognition, legal certainty, and legal harmonization. By referring to modern legal theories and considering Indonesia's legal pluralism context, harmonizing property security becomes an essential step in creating a legal order that is not only normatively valid but also practically effective and fair for all involved parties.

Impact of Inharmonious Transition on Banking

The disharmony in the transition of the collateral system from Hypotheek and Crediet Verband to the Mortgage right system not only affects normative legal aspects but also brings tangible consequences for the national banking and financial sectors. This impact is particularly felt in the context of risk management and the execution of problematic loans. In modern banking practice, the prudential principle serves as the foundation for lending. This principle demands that every loan facility be supported by collateral that has full legal power and can be executed in the event of default. However, the reality is that the transition from the colonial-era system to the national legal system has not been fully completed, especially in terms of the recognition and conversion of old collateral into the Mortgage right system as regulated in Law No. 4 of 1996.

One of the main issues arising is the large number of banks that still hold collateral in the form of land or immovable property bound by Crediet Verband or Hypotheek deeds made before 1996, and which have not yet been converted or re-registered into the Mortgage right Certificate. Due to this inconsistency, these collaterals lack the execution power required by Articles 14 and 20 of the Mortgage Right Law. In the Mortgage right system, only collateral that has been registered and possesses the Mortgage right Certificate can be directly executed through the National Auction Office. Without this execution power, the process of collateral execution becomes much more complex and slow, as it must first go through civil litigation in court. This process is time-consuming, costly, and does not provide legal certainty regarding the expected outcome.

This situation creates an additional burden for banks. When a debtor defaults, the bank, as the creditor, lacks sufficient legal tools to quickly and efficiently execute the collateral. As a result, the potential losses borne by the bank increase because the settlement of problematic loans becomes prolonged and risks failure.

On the other hand, the value of the collateral may continue to decline over time, especially if the property is not maintained or is in dispute. This directly impacts the increase in the Non-Performing Loan (NPL) ratio and can affect the bank's overall financial health.

From a risk management perspective, this situation severely weakens the bank's position. Collateral that should serve as a risk mitigation instrument cannot be relied upon under certain conditions. Without adequate legal power, banks struggle to secure their assets and ensure the repayment of loans. This also increases the administrative burden as banks must allocate additional resources to handle the lengthy legal processes. Furthermore, this uncertainty may also affect the confidence of investors and other external parties in the stability and credibility of the bank. In response to this issue, many financial institutions opt to renegotiate with debtors. The goal of this negotiation is to reach an agreement on the conversion of collateral into the Mortgage right system as per the applicable regulations. This process generally involves drafting additional documents such as credit agreement addendums, involving notaries to create Mortgage right deeds, and re-registering at the Land Office to obtain the Mortgage right Certificate with execution power. In many cases, this approach successfully resolves the issue administratively and provides legal certainty for both parties.

However, renegotiation is not a universal or barrier-free solution. Many banks face challenges in this process. Some debtors refuse to convert, arguing that they are not obligated to follow the new system because the collateral was provided before the enactment of the Mortgage Right Law. There are also cases where the collateral has been transferred to third parties or where its legal status is still uncertain, thus preventing registration as a Mortgage right. Furthermore, changes in the debtor's company structure, such as dissolution or ownership transfer, create difficulties in finding the legal entity authorized to sign the conversion documents. This situation creates tension in the contractual relationship between the bank and the debtor, sometimes even leading to legal disputes based on the principle of non-retroactivity or violations of the freedom of contract principle.

Given the complexity and impact of this issue, individual solutions through renegotiation are insufficient. Systemic and regulatory intervention from monetary authorities and national financial institutions is required. In this regard, the role of the Financial Services Authority (OJK) and Bank Indonesia (BI) becomes crucial. OJK, as the supervisory authority of the financial services sector, has the authority to issue national technical guidelines on the conversion of old collateral. These guidelines should cover procedures, deadlines, and mechanisms for dispute resolution in cases of disagreement between banks and debtors. In addition, OJK can require periodic reports on the status of collateral that has not been converted to ensure supervision and measurable efforts for resolution.

Meanwhile, Bank Indonesia, as the monetary authority, can also play an important role by including the legal risks of unregistered collateral as part of the bank's health assessment indicators. This would encourage banks to be more proactive in resolving collateral conversion issues. BI can also cooperate with the Ministry of Agrarian and Spatial Planning (ATR/BPN) to simplify the registration procedures for Mortgage rights in conversion cases from Crediet Verband and Hypotheek. With synergy between these institutions, the process of harmonizing the collateral system is expected to proceed more efficiently and effectively.

This phenomenon can also be analyzed theoretically in the framework of legal studies. The Legal Certainty Theory proposed by Gustav Radbruch is highly relevant for explaining the urgency of this harmonization. According to Radbruch, one of the core values of law is certainty. In banking, the law should provide predictability regarding the legal position of collateral, allowing parties to plan and secure their interests. When the legal system fails to guarantee the execution of collateral rights, it has failed in its role as an instrument of certainty.

Furthermore, the Legal Harmonization Theory developed by Zweigert and Kцtz provides a strong theoretical foundation. This theory emphasizes the importance of integrating old and new legal systems to avoid confusion caused by dualism. In the Indonesian context, the land law and collateral system still carry remnants of colonial law that have not yet been fully integrated into the national legal system. This harmonization is essential not only to provide legal certainty but also to create an efficient, responsive legal system that meets the needs of society and business.

Overall, the legal disharmony in the collateral system brings systemic impacts to the banking sector. Banks, as key institutions in the economy, face serious legal risks when the collateral they hold cannot be executed lawfully. This not only disrupts the process of resolving problematic loans but also affects the bank's performance and reputation. Therefore, concrete steps are needed from all stakeholders, through technical policies, legislation, and institutional approaches, to ensure that all existing collateral complies with the prevailing legal provisions.

The development of a modern and just national economic legal system can only be achieved if all legal instruments, including the collateral system, operate in harmony, consistently, and can be relied upon [12]. Harmonizing the collateral system is not merely an administrative issue, but a key prerequisite for creating a stable, secure, and sustainable financial ecosystem.

Policy Recommendations

In addressing the issue of the inharmonious collateral system transition from Hypotheek and Crediet Verband to Mortgage right, both academics and legal practitioners have provided serious and substantial responses. Experts state that the current problem is a consequence of the absence of a clear and comprehensive transition mechanism within Indonesia's positive legal framework. The lack of operational transition instruments has led to confusion at the implementation level, both on the ground and in the judicial system, particularly regarding the execution of collateral and legal protection for the parties involved.

One of the academic responses frequently referenced comes from Prof. Boedi Harsono, a respected agrarian and land law expert. In several of his works and lectures, Prof. Harsono emphasizes that Art. 24 of Law No. 4 of 1996 on Mortgage right (UUHT) provides room for progressive interpretation in recognizing the binding of old collateral [28]. This Article states that until there are regulations regarding Mortgage rights, the provisions of Hypotheek and Crediet Verband still apply. However, as Prof. Harsono points out, this recognition is transitional and requires adjustment to the new system. Unfortunately, the Mortgage Right Law itself does not provide technical guidance or a normative basis on how this adjustment should be carried out, both procedurally, institutionally, and administratively.

This lack of guidance has led to irregularities in collateral conversion practices. Notaries, PPATs, and banking institutions often work in uncertainty, relying on discretion and personal experience to handle complex legal issues. Some notaries even hesitate to process conversions without strong written legal foundations, while banks, as creditors, feel trapped in old agreements that cannot be executed directly through auctions due to the lack of a Mortgage right Certificate as required in Articles 14 and 20 of the Mortgage right Law.

From the banking perspective, many practitioners call for affirmative action from the state. They believe that the legal burden arising from the old system should not be entirely imposed on businesses or financial institutions. The state, as the creator of the legal system, has a responsibility to establish rules that can accommodate the dynamics of this legal transition. Without clear and operational intervention from the state, financial institutions will continue to be in a vulnerable legal position, particularly in securing assets and resolving problematic loans. In terms of national regulation, this legal harmonization also requires synergy between several related institutions, including the Ministry of Agrarian and Spatial Planning (ATR/BPN), Financial Services Authority (OJK), Bank Indonesia (BI), and the Supreme Court. Each of these institutions plays a strategic role in forming an integrated legal system. The ATR/BPN Ministry is responsible for land and collateral registration. OJK has the authority to supervise banking practices and consumer protection in financial services. BI, as the monetary authority, also has an interest in maintaining the stability of the national financial sector. The Supreme Court, on the other hand, plays a role in guiding consistent legal interpretations through binding jurisprudence.

The essentials for the state to make the collateral conversion process a part of the national legal reform agenda. The transition from the colonial legal system to a sovereign national legal system is not sufficient if it is only done by changing terms or enacting new laws. There must be systemic work that unites field practices, regulations, and policies into one cohesive force. This will ultimately create the legal certainty necessary for a growing economy.

Conclusion

This study shows that although the national legal system, through the Mortgage Law (UU Mortgage right – UUHT), has recognized the existence of Hypotheek and Crediet Verband as forms of collateral before the enactment of the UUHT, the process of transition and adjustment into the Mortgage right system has not been effectively implemented. The lack of a clear technical mechanism has led to legal disharmony, which directly impacts legal certainty and the efficiency of collateral execution, particularly in the banking sector. This inconsistency has created a significant gap in the legal framework, making it difficult for banks to execute collateral when it has not been converted into a legally recognized executable format. Banks, as creditors, are in a vulnerable position when the collateral they hold cannot be executed due to its non-conversion into the Mortgage right system. The absence of a clear and operational legal framework has made it difficult for financial institutions to secure their assets, which increases the risk of non-performing loans and undermines the stability of the banking sector. This situation calls for the establishment of legal harmonization policies that are administrative, regulatory, and substantive, bridging the gap between the old collateral system and the current legal system.

The government must urgently formulate implementing regulations regarding the procedures for collateral conversion and enhance the capacity of notaries and PPATs (Land Deed Officials) to better understand the principles of legal transition. With an integrated and operational legal framework in place, it is expected that this legal transition can support the stability of the banking sector and strengthen trust in the national legal system. The development of clear and efficient conversion processes will ensure a more secure and predictable financial environment, benefiting both financial institutions and the broader economy.

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