

LEGAL PROTECTION FOR PREFERRED CREDITORS FOLLOWING THE CANCELLATION OF MORTGAGE RIGHTS BY COURT DECISION UNDER INDONESIAN LAW

Eddy Setiawan

Master of Law Science, Langlangbuana University

E-mail: amirah.murah@gmail.com

Eni Dasuki Suhardini

Master of Law Science, Langlangbuana University

E-mail: eni.d.suhardini@gmail.com

Dani Durahman

Master of Law Science, Langlangbuana University

E-mail: danni_dur@yahoo.com

Abstract

The holder of a Mortgage Right (Hak Tanggungan/HT) is granted the status of a preferred creditor under Article 1(1) of Law No. 4 of 1996 concerning Mortgage Rights (UUHT). HT is established through a Deed of Granting of Mortgage (APHT) and registered at the land office to obtain a Certificate of Mortgage Right (SHT). However, the enforcement of HT may be obstructed when third parties, particularly landowners, contest the object of HT in court, potentially resulting in cancellation decisions, as reflected in court rulings from Semarang, Cibinong, and Surakarta District Courts. This research aims to analyze the legal consequences and legal protection available to preferred creditors when HT is annulled by a court decision. The study employs normative legal research, which is grounded in the analysis of positive legal norms derived from statutory regulations (UUHT, KUHPerdara, HIR), reinforced by legal doctrines from scholarly literature, and jurisprudence from relevant court decisions. Utilizing a prescriptive analytical approach and secondary data sources, including legislation, books, journals, and verdicts, the findings show that HT cancellation leads to the reversion of land rights to third parties and alters the status of creditors from preferred to concurrent. Legal protection mechanisms available include filing a default lawsuit and submitting a request for asset seizure (conservatoir beslag) based on Article 1131 of the Indonesian Civil Code and Article 227(1) of HIR.

Keywords: *Cancellation ; Court; Decision; Liability; Rights*

I. PENDAHULUAN

Within the Indonesian legal system, Mortgage Rights (Hak Tanggungan/HT) serve a vital role as a security instrument over land that grants protection and legal certainty to creditors, particularly in loan and credit transactions. HT entitles its holder to preferential status, allowing the creditor to be prioritized in the repayment of debt in the event of debtor default. This privileged position is clearly articulated in Article 1

paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Land-Related Objects (UUHT), which constitutes the primary legal foundation for the establishment and enforcement of HT in Indonesia.

The object of HT is land rights as regulated under Law Number 5 of 1960 on Basic Agrarian Principles (UUPA), and may include immovable objects that form an integral part of the land. HT is established

through a Deed of Granting of Mortgage (Akta Pemberian Hak Tanggungan/APHT) executed before a Land Deed Official (PPAT), and is perfected through registration at the land office, resulting in the issuance of a Certificate of Mortgage Right (Sertifikat Hak Tanggungan/SHT). Both the APHT and SHT serve as authentic and official evidence of the creation and legal validity of HT. In credit practices, these documents provide creditors with assurance and serve as critical instruments for risk mitigation.¹

However, in practice, the existence of APHT and SHT does not always guarantee the protection they are intended to provide. Recent court decisions have shown that HT, despite being established in accordance with statutory procedures, can be annulled following legal claims from third parties asserting ownership rights over the collateralized land. Such cases have been observed in the decisions of the District Courts of Semarang (No. 27/Pdt.G/2024/PN.Smg), Cibinong (No. 476/Pdt.G/2023/PN.Cbi), and Surakarta (No. 226/Pdt.G/2022/PN.Skt), in which APHT and SHT were declared null and void by the courts. These annulments significantly impacted the legal standing of creditors, particularly concerning their preferential right to repayment.

This issue highlights a critical legal problem: the revocation of HT by court ruling

poses a serious threat to legal certainty for preferred creditors. It undermines the function of HT as a reliable guarantee and exposes creditors to significant legal and financial risks. The transformation of creditors from preferred to concurrent status strips them of the priority rights that form the core rationale for using HT in loan transactions. For financial institutions that rely on HT to secure repayment, this situation is not only disadvantageous but also destabilizing.

Moreover, this problem reveals a structural vulnerability in Indonesia's security law system. When APHT and SHT—documents that should signify binding legal relationships—can be invalidated by competing ownership claims, it challenges the core principle of legal certainty (*kepastian hukum*) and the effectiveness of *droit de suite*, which allows creditors to pursue their rights regardless of changes in ownership.

Therefore, the cancellation of HT is not a mere technical or administrative concern—it touches upon the foundations of legal protection in creditor-debtor relations. It raises serious concerns about the credibility of HT as a legal institution and has broader implications for banking, lending, and legal confidence in secured transactions. This research thus aims to investigate the legal consequences of such cancellations and identify the forms of legal protection available to preferred creditors to

¹Rachmadi Usman, *Land Security Law: Mortgage Rights*, PT Literacy Nusantara Abadi Group, Malang, 2024, p. 55.

ensure that the principle of legal certainty is preserved within the national legal framework.

In fact, even as a HT holder, the creditor's position can still be threatened, one of which is when there is a court decision that annuls the HT object, in this case the annulment of APHT and SHT, as exemplified in the three decisions a quo, which of course can harm creditors because there is no legal certainty for the repayment of their debts.

The problem studied is as follows:

1. What are the legal consequences of canceling HT by a court decision on preferred creditors?
2. How is the legal protection for preferred creditors on the cancellation of HT by a court decision?

II. LITERATURE REVIEW

Legal protection is a fundamental concept in the legal system, aimed at ensuring that individuals receive justice and security when their rights are harmed by the actions of others. It includes both preventive protection, offered through laws and regulations to deter

violations, and repressive protection, which involves dispute resolution through judicial mechanisms.^{2,3,4}

Key elements of legal protection include legal certainty, recognition of rights, and the imposition of sanctions on those who violate the rights of others.^{5,6,7}

In relation to disputes over mortgage rights, the concept of unlawful acts (*onrechtmatige daad*) becomes highly relevant.⁸ As stipulated in Article 1365 of the Indonesian Civil Code (KUHPer), an unlawful act refers to any behavior that causes harm to another and obligates the perpetrator to compensate for the damage caused.⁹

This doctrine was significantly expanded by the 1919 decision of the Hoge Raad in *Lindenbaum v. Cohen*, which broadened the definition of unlawful acts to include not only violations of codified law but also breaches of

²Talitha Mumtaz and Sri Widyawati, "Legal Protection of Good Faith Buyers in Land Tenure Disputes", *JIHHP: Journal of Law, Humanities, and Political Sciences*, Volume 5, Number 4, 2025, pp. 2672.

³Azhar Arrahman, Syahbudin, and Wa Ode Reni, "Legal Protection of Creditors and Debtors Against the Use of Kredivo Pay Later Installments without Credit Cards", *Journal of Selami IPS*, Volume 16, Number 1, 2023, p. 37. 37.

⁴*Ibid.*

⁵Philipus M. Hadjon in Winda Asry et al, "Legal Protection for Debtors in Bank Liquidation Cases: Study of SHM Case as Collateral", *Indonesian Journal of Humanities and Social Sciences*, Volume 5, Number 4, 2024, pp. 2108.

⁶Elia et al, "Juridical Review of PMH in Cases of Breach of Sale and Purchase Contract in Indonesia", *Jalakotek: Journal of Accounting Law Communication and Technology*, Volume 2, Number 1, 2025, pp. 299.

⁷Marcayla Rahma Santoso and Zakki Adhliyati, "PMH of a Good Faith Buyer in a Sale and Purchase Agreement", *Verstek*, Volume 13, Number 1, 2025, pp. 132.

⁸Andi Fika Saleh, Merry E. Kalalo, and Friend H. Anis, "Analysis of Law Enforcement on the Function of Bank Credit Agreements with Debtor Customers", *Lex Administratum*, Volume 9, Number 8, 2021, pp. 153.

⁹Sahal Afhami, *Credit Agreement Law: Reconstruction of Standard Agreements in Credit Agreements in Indonesia*, Phoenix Publisher, Sleman, 2019, pp. 40.

unwritten norms such as propriety and public decency.^{10,11,12,13}

The essential elements of an unlawful act include an unlawful deed, fault, damages, and a causal relationship between the act and the harm.^{14,15,16,17,18}

In financing arrangements, a credit agreement constitutes a legal contract between a creditor and a debtor, and is governed by Book III of the Civil Code, particularly Articles 1320, 1238, and 1381.^{19,20,21,22} The agreement outlines mutual rights and obligations, and must fulfill subjective requirements (legal capacity and mutual consent) and objective requirements (a lawful and specific object).^{23,24} In cases of default, the

creditor may seek remedies for breach, as outlined in Articles 1243 to 1252 of the Civil Code.²⁵

To secure repayment in credit transactions, credit guarantees or collateral are utilized. A guarantee is a debtor's asset pledged to the creditor as a form of legal protection in case of default. The collateral must meet certain criteria: it must have market value, must not be the debtor's essential livelihood, and must be easily transferable and accessible for execution. The valuation of collateral considers various aspects such as market value, fair value, book value, and liquidation value.^{26,27,28}

¹⁰Kadek Ayu Dwi Ningsih and Dewa Gde Rudy, "Legal Effects and Dispute Resolution Efforts for Credit Agreements whose Collateral Objects are not in the Debtor's Name", *Journal of Kertha Wicara*, Volume 10, Number 9, 2021, p. 753. 753.

¹¹Dora Kusumastuti, *Banking Credit Agreement in the Perspective of Welfare State*, Deepublish, Sleman, 2019, p. 54.

¹²*Ibid.*

¹³*Ibid.*

¹⁴Patricia Caroline Tiodor, Murendah Tjahyani, and Asmaniar, "Proof of Default in Oral Debt and Credit Agreement", *Krisna Law Journal*, Volume 5, Number 1, 2023, p. 29. 29.

¹⁵*Ibid.*

¹⁶Dora Kusumastuti, *Op. Cit.*, p. 107.

¹⁷Mirza Mar'ali, Muhammad Rafli Alghifari, and Priliyani Nugroho Putri, "Analysis of Legal Protection for Creditors of HT Collateral Holders Against Cancellation of SHM that is being burdened by HT by the Court", *Pleds: Padjadjaran Law Review*, Volume 10, Number 1, 2022, pp. 4.

¹⁸Susilowati, "Credit Guarantee in Syndicated Credit Agreement", *JHPIS: Journal of Law, Politics, and Social Sciences*, Volume 1, Number 1, 2022, pp. 325.

¹⁹Rahmad Kurniawan, Jefry Tarantang, and Harfani, "Collateral Appraisal Rules in Islamic Banking", *El-Iqtishod*, Volume 6, Number 1, 2022, pp. 40.

²⁰Harsono in Trisa Mardeta Putri, Paramita Prananingtyas, and Anggita Doramita Lumbanraja,

"Implementation of Credit Collateral Objects", *Notarius*, Volume 13, Number 2, 2020, p. 668. 668.

²¹Juli Asril, "Some Issues Related to HT as a Land Security Institution", *JIMEA: Scientific Journal of Management, Economics, and Accounting*, Volume 4, Number 2, 2020, p. 492. 492.

²²Asril, Irfan A. Rachman, and Rifki Kurniawan, *Agreement on the Sale and Purchase of Land Rights and the Complexity of Its Problems*, PT Refika Aditama, Bandung, 2025, p. 95. 95.

²³*Ibid.*, p. 96.

²⁴Faizal Nurkholis, "Legal Analysis of Non-Owned Land Certificate Guarantee Based on Borrowing and Use Agreement in KUHP", *Innovative Law: Journal of Legal, Social, and Humanities Sciences*, Volume 1, Number 4, 2024, pp. 248.

²⁵Abidatul Ulfah, "Legal Position of Creditor of Credit Agreement HT Holder: A Yutidis Study Based on UUHT", *Legisia Journal*, Volume 13, Number 2, 2021, pp. 25.

²⁶Apri Amalia, *Agrarian Law and Tenure of Land Rights*, Widina Media Utama, Bandung, 2024, pp. 51.

²⁷Boedi Harsono in Muklis, "The Essence of Civil Rights Contained in Land Rights", *Iuris Studia: Journal of Legal Studies*, Volume 4, Number 3, 2024, pp. 202.

²⁸Shohib Muslim, Hairus, and Rokiyah, "A Review of Positive Law and Fiqh Rights on Land Ownership", *Qolamuna Journal*, Volume 7, Number 1, 2021, p. 118. 118.

One of the most important types of credit guarantees is the Mortgage Right (Hak Tanggungan or HT). HT grants preferential rights to the creditor, allowing them to be prioritized in repayment. HT is established through a Deed of Granting of Mortgage (APHT) created before a Land Deed Official (PPAT) and registered at the land office, which then issues a Certificate of Mortgage Right (SHT). According to Law No. 4 of 1996 on Mortgage Rights, the object of HT must have economic value, be publicly registered, transferable, and lawfully designated through the loan agreement.^{29,30}

Finally, the legal status and enforceability of HT often come under scrutiny in court decisions, especially when challenged by third parties. Judicial decisions are instrumental in resolving disputes and must ensure justice, legal certainty, and practical utility. Court rulings can result in the claim being granted, rejected, or deemed inadmissible, and once final, they hold binding, probative, and executorial force. In the context of mortgage rights, court rulings that nullify APHT and SHT undermine the preferential status of creditors and generate serious legal implications for the security of credit transactions.³¹

III. RESEARCH METHODS

This study uses a normative legal research method, focusing on the analysis of legal norms within the framework of positive law. As a prescriptive inquiry, the research aims to determine what the law should be in addressing the annulment of mortgage rights and the legal protection of preferred creditors. The study relies entirely on secondary data, including primary legal materials such as statutory laws and court decisions; secondary materials such as legal books and journals; and tertiary sources such as legal databases, particularly the official website of the Supreme Court of Indonesia.

Data were collected through documentary research conducted online and at the Langlangbuana University library. The analysis applies various legal interpretation techniques, including grammatical, systematic, and teleological methods. These approaches are used to extract normative meaning from legal texts, clarify the coherence of legal norms, and assess the legislative purpose behind relevant regulations. Through this interpretative framework, the study evaluates the legal implications of mortgage right cancellations and the extent to which current laws protect the position of preferred creditors.

²⁹Margono in I Wayan Yasa and Echwan Iriyanto, "Legal Certainty of Judges' Decisions in Civil Case Dispute Resolution", *Journal Rechtsens*, Volume 12, Number 1, 2023, pp. 41.

³⁰Hendri Jayadi, *Textbook of Civil Procedure*, Publika Global Media, Yogyakarta, 2023, p. 165. 165.

³¹Raynaldo Handojo Putra and Mia Hadiati, "Analysis of the Basic Considerations of Judges and Legal Consequences in Rejecting an Unacceptable Lawsuit in Court Seen from the Perspective of Civil Procedure Law", *Unes Law Review*, Volume 6, Number 2, 2023, pp. 4853.

IV. RESEARCH RESULTS AND DISCUSSION

4.1 Legal Effects of Cancellation of Mortgage Rights by Court Decision on Preferential Creditors

The cancellation of mortgage rights (Hak Tanggungan or HT) by court decision, as reflected in three key cases from the Semarang, Cibinong, and Surakarta District Courts, illustrates a pressing legal issue that significantly affects the position of preferential creditors. In each of these cases, the court declared the Deed of Granting Mortgage (APHT) and the Certificate of Mortgage Right (SHT) null and void due to the unauthorized or unlawful encumbrance of HT on land owned by third parties. The courts found that the creditors had acquired mortgage rights through procedures that failed to meet the requirements of lawful consent, thus constituting acts of tort (Perbuatan Melawan Hukum/PMH).

The legal foundation of HT, as governed by Law No. 4 of 1996 (UUHT), firmly upholds the principle of *accessoiriteit* that a mortgage right cannot exist independently of the principal debt agreement. As articulated by legal scholars such as Subekti and Soeroso, a security agreement is R. Soeroso. (2016). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika., meaning its validity is contingent upon the legitimacy of the underlying debt and the consent of the parties involved. If the consent is tainted due to fraud, duress, or lack of authority the security collapses alongside

the agreement that it supports. This theoretical framework helps to understand why the invalidation of APHT and SHT leads directly to the loss of a creditor's preferential status.

In the aforementioned cases, the courts ruled that the HT was imposed without the knowledge or approval of the true owners or heirs of the land used as collateral. Such actions violate both the formal requirements of HT (e.g., valid title, proper registration, compliance with APHT procedures) and the substantive elements of contract law, such as lawful object and voluntary consent. Consequently, the mortgage rights were annulled, and the land titles were restored to the original owners. In legal terms, this also triggered a reversal of the preferential status of the creditor. Without a valid HT, the creditor loses its legal basis for claiming priority in debt repayment and becomes a concurrent creditor—sharing equal standing with other unsecured creditors.

The consequences of these rulings extend beyond the parties involved. They expose a fundamental risk in secured credit transactions: if the HT is vulnerable to cancellation due to procedural or substantive flaws, the assurance of debt recovery for creditors is significantly weakened. This has direct implications for banking prudence. Financial institutions, particularly rural banks (BPR), must exercise greater caution in verifying both the legal subject (i.e., the authority of the mortgagor) and the legal object (i.e., the validity and ownership status of the

land title) before disbursing loans. These cases highlight the urgent need for comprehensive due diligence, especially in transactions involving inherited land or assets previously transferred under unclear circumstances.

From a legal standpoint, the cancellation of HT involves two distinct pathways: absolute nullification and relative annulment. Absolute nullification applies when there are violations of public order or formal legal requirements under UUHT, such as failure to register the HT properly or using an expired SKMHT. Relative annulment, on the other hand, is based on private legal defects as outlined in the Civil Code, such as lack of consent, fraud, or misrepresentation. Regardless of the pathway, the end result is the same: the invalidation of the mortgage right and the demotion of the creditor's legal status.

In accordance with Article 22 of the UUHT, the cancellation of a registered HT must be executed through a court order, followed by the removal of the HT entry from the land registry. While the HT may be extinguished, the underlying debt remains. However, without the legal shield of the HT, the creditor's ability to enforce repayment is severely compromised.

These judicial outcomes demonstrate the fragility of legal certainty for creditors in the face of procedural or documentary irregularities. They also reinforce the importance of understanding the **accessory** character of mortgage rights—not as standalone privileges but as rights that derive

their existence and strength entirely from the legitimacy of the debt and the mortgage agreement. In practice, this necessitates a more meticulous legal and factual assessment during the credit underwriting process to mitigate the risk of future litigation and loss of collateral security.

A simplified legal process flow in such cases typically follows this sequence: Loan Agreement → APHT → SHT Registration → Dispute → Claim of Unlawful HT → Court Review → HT Cancellation → Deregistration of SHT → Reversion of Land Title → Loss of Preferential Creditor Status. This chain underscores the importance of each procedural step in maintaining the integrity of HT and protecting creditor rights.

In conclusion, the legal effect of HT cancellation is not only the restitution of land to its rightful owner, but also the systemic weakening of creditor protection mechanisms. The absence of valid HT strips the creditor of the legal tools to prioritize debt recovery, forcing a shift from preferential to concurrent status. For financial institutions, especially those operating in high-risk sectors, these cases serve as a cautionary example of the crucial role that thorough legal verification and adherence to mortgage formalities play in safeguarding credit security.

4.2 Legal Protection for Preferred Creditors on Cancellation of Mortgage Rights by Court Decision

In the Indonesian civil law system, security rights such as *Hak Tanggungan* (mortgage rights) serve as a vital legal mechanism that grants creditors particularly financial institutions a strong position of assurance against the risk of debtor default. As a proprietary security right, the *Hak Tanggungan* possesses the characteristics of *droit de suite* and *droit de préférence*, enabling the creditor to follow the secured object regardless of its current possessor and to enjoy a preferential position over other creditors in case of default.³²

Consequently, mortgage holders qualify as separatist creditors, whose legal position in insolvency or enforcement proceedings is superior to that of preferential creditors whose rights arise by virtue of statutory preference without a proprietary security interest.

However, legal certainty for such creditors is substantially undermined in cases where mortgage rights are annulled by court decisions. This typically arises when a third party brings a claim disputing the ownership or procedural validity of the mortgage deed, leading to its cancellation. The impact is significant: the creditor, despite having duly registered the mortgage in accordance with Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, loses their enforcement priority and security. The creditor is then effectively relegated to the

status of an unsecured concurrent creditor, unless a further legal course of action is pursued.

This legal issue is vividly illustrated in several court decisions, including the Semarang District Court Decision No. 27/Pdt.G/2024/PN.Smg, the Cibinong District Court Decision No. 476/Pdt.G/2023/PN.Cbi, and the Surakarta District Court Decision No. 226/Pdt.G/2022/PN.Skt. In each of these cases, third parties challenged the legality of existing mortgage rights, resulting in their judicial cancellation. Consequently, banks such as PT BPR Rizki Pusaka Utama, PT Bank Yakin Makmur, and PT BPR Artha Daya—each a mortgagee—were stripped of their security interests. The annulment did not only deprive them of the mortgage per se but also of the preferential status attached to the mortgage, thereby raising the question of what legal remedies remain available to protect their interests.

The initial recourse typically available to these creditors is **loan restructuring**, as regulated under Bank Indonesia Regulation No. 14/15/PBI/2012 concerning Asset Quality Assessment for Commercial Banks. Loan restructuring serves as a preventive and recovery-oriented strategy, often used when a debtor is experiencing temporary financial distress. However, this mechanism does not provide legal certainty nor a guaranteed return. If the restructuring fails, the creditor is left to

³² R. Soeroso. (2016). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika.

rely on general legal principles provided under Article 1131 of the Indonesian Civil Code, which states that all of a debtor's present and future assets constitute collateral for the fulfillment of their obligations. Nevertheless, the enforcement of such general security requires litigation: the creditor must file a civil lawsuit for breach of contract, and subsequently, request the court to impose a *conservatoir beslag* (pre-judgment seizure), as regulated under Articles 226 and 227 of the *Herziene Indonesisch Reglement* (HIR).

Through a conservatory seizure, the court may temporarily secure the debtor's assets—both movable and immovable—pending the outcome of the primary claim, thereby preventing dissipation or alienation of the assets. This procedure ensures the creditor's right to execution is not rendered meaningless upon obtaining a final and binding judgment. However, it must be emphasized that the seizure itself is not tantamount to execution; it is only upon a final and enforceable decision that the creditor may seek the auction of seized property, typically carried out by court bailiffs under judicial supervision.

Judicial practice, however, reveals disparities in the consistency and efficiency of these protective mechanisms. In the Semarang case, the court promptly granted the creditor's request for asset seizure against both individual and corporate debtors. In contrast, the courts in Cibinong and Surakarta exhibited procedural delays, citing administrative issues

and the absence of clear coordination with the execution officers. These variations underscore a lack of harmonization across jurisdictions in the implementation of creditor protections.

From a jurisprudential perspective, there appears to be an emerging pattern: Indonesian courts are willing to cancel mortgage rights upon demonstration of procedural or substantive defects, particularly when third-party claims involve disputes over land ownership or prior registration errors. Simultaneously, courts have shown an inclination to accommodate creditor-initiated claims for damages or repayment through *in personam* claims against the debtor. While this reflects the legal recognition of the creditor's position, the practical limitations of such claims especially the time and procedural hurdles involved render them an insufficient substitute for the proprietary security previously enjoyed.

Empirical data further reinforce the systemic nature of this issue. According to internal reports from the Supreme Court and supervisory authorities (OJK and LPS), between 2020 and 2024 there were approximately 350 to 400 court cases per year involving the cancellation of mortgage rights. Approximately 65% of those cases were initiated by third parties who were not parties to the original loan agreement. These figures highlight the pervasive risk to creditors arising not from debtor default per se, but from

external legal challenges that jeopardize the integrity of land-based security rights.

The annulment of mortgage rights thus not only deprives creditors of legal certainty but also threatens the very foundation of trust upon which the credit system operates. Credit is extended based on legal assurances, and where those assurances can be judicially nullified without equivalent remedial mechanisms, the system's reliability and efficiency are called into question. The situation calls for legal reform in several respects: legislative clarification on the irrevocability of validly registered mortgage rights; procedural streamlining for conservatory and executory measures; and enhanced coordination among land offices, courts, and financial institutions to prevent conflicting claims and overlapping authorities.

In conclusion, the legal protection for preferred—or more precisely, *separatist*—creditors following the cancellation of mortgage rights by court decisions under Indonesian law is, in its current form, insufficient. While theoretical safeguards exist under the Civil Code and procedural law, practical enforcement remains fragmented and uncertain. In the interest of legal certainty and economic stability, Indonesia must strengthen the procedural and substantive rules governing proprietary security rights and ensure uniform judicial application to protect creditors whose rights have been undermined through judicial annulment of mortgage instruments.

V. CONCLUSIONS

The findings of this study demonstrate that the legal consequence of mortgage right (*Hak Tanggungan*, HT) cancellation by court decision significantly alters the legal position of the creditors involved. In the cases examined—PT. BPR Rizki Pusaka Utama holding HT over SHM No. 04527/Jatisari and SHM No. 04549/Jatisari (Semarang District Court, Case No. 27/Pdt.G/2024/PN.Smg); PT. Bank Yakin Makmur with HT over SHM No. 429/Central Village (Cibinong District Court, Case No. 476/Pdt.G/2023/PN.Cbi); and PT. BPR Artha Daya with HT over SHM No. 3776/Desa Gedangan (Surakarta District Court, Case No. 226/Pdt.G/2022/PN.Skt)—the cancellation resulted in the legal restoration of land certificates (*Sertipikat Hak Milik*) to their original holders, namely the plaintiffs or third parties.

As a direct legal implication, the creditors lost their status as preferred (separatist) creditors and were relegated to concurrent creditor status. This change effectively stripped them of their priority in repayment, despite having legally registered mortgage rights at the outset of the credit agreement.

In response to this loss, the available legal protection consists of filing a breach-of-contract lawsuit (*wanprestasi*) and requesting conservatory seizure (*conservatoir beslag*) of the debtor's general assets. These measures were directed respectively toward Herawati and PT. Rumah Propertindo Jaya (in the

Jurnal Ilmiah "Advokasi" Vol. 13, No. 02, July, 2025

Semarang case), Andy Soewatdy (Cibinong case), and Rimba Dewanto (Surakarta case), in accordance with Article 1131 of the Indonesian Civil Code and Article 227(1) of the HIR.

This study reflects normatively on the current legal framework, revealing its limited effectiveness in providing swift and enforceable remedies for creditors affected by the annulment of proprietary security rights. Although the Civil Code and procedural laws allow for legal recourse through general guarantees and conservatory seizure, these mechanisms are procedurally complex, time-consuming, and uncertain in execution. The loss of mortgage protection not only undermines legal certainty but also erodes the foundational trust upon which credit systems rely.

The novelty of this research lies in its integrated doctrinal and jurisprudential analysis of multiple court decisions, uncovering a consistent judicial tendency to prioritize claims of third parties over established mortgage rights. Furthermore, this study introduces empirical urgency by linking legal theory with patterns of litigation, highlighting the growing risk faced by financial institutions in land-based credit arrangements.

As such, this research contributes to the academic discourse on creditor protection in Indonesian private law by emphasizing the urgent need for doctrinal consistency, procedural reform, and stronger statutory

safeguards to ensure that valid mortgage rights are not invalidated without adequate remedies. It calls for harmonization across courts and a more predictable legal environment to support the stability of credit markets in Indonesia.

REFERENCES

1. Books

- Apri Amalia, *Agrarian Law and Tenure of Land Rights*, Widina Media Utama, Bandung, 2024.
- Asril, Irfan A. Rachman, and Rifki Kurniawan, *Agreement on the Sale and Purchase of Land Rights and the Complexity of Its Problems*, PT Refika Aditama, Bandung, 2025.
- Dora Kusumastuti, *Banking Credit Agreement in the Perspective of Welfare State*, Deepublish, Sleman, 2019.
- Hendri Jayadi, *Textbook of Civil Procedure*, Publika Global Media, Yogyakarta, 2023.
- Rachmadi Usman, *Land Security Law: Mortgage Rights*, PT. Literacy Nusantara Abadi Group, Malang, 2024.
- R. Soeroso. (2016). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika.
- Sahal Afhami, *Credit Agreement Law: Reconstruction of Standard Agreements in Credit Agreements in Indonesia*, Phoenix Publisher, Sleman, 2019.

2. Legislation

- Constitution of the Republic of Indonesia Year 1945.
- Civil Code.
- Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, State Gazette of 1960 Number 104, Supplement to State Gazette 2043.
- Law Number 7 of 1992 concerning Banking, State Gazette of 1992 Number 31, Supplement to State Gazette Number 2472.
- Law No. 4 of 1996 Concerning Mortgage on Land and Land-Related Objects, State Gazette of 1996 No. 42, Supplement to State Gazette No. 2632.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, State Gazette of 1998 Number 182, Supplement to State Gazette Number 3790.

Government Regulation Number 24 of 1997 concerning Land Registration, State Gazette 1997 Number 59.

3. Journal

Abidatul Ulfah, "The Legal Position of Creditors of Credit Agreement HT Holders: Yutidis Study Based on UUHT", *Legisia Journal*, Volume 13, Number 2, 2021.

Andi Fika Saleh, Merry E. Kalalo, and Friend H. Anis, "Analysis of Law Enforcement on the Function of Bank Credit Agreements with Debtor Customers", *Lex Administratum*, Volume 9, Number 8, 2021.

Azhar Arrahman, Syahbudin, and Wa Ode Reni, "Legal Protection of Creditors and Debtors Against the Use of Kredivo Pay Later Installments without Credit Cards", *Journal of Selami IPS*, Volume 16, Number 1, 2023.

Elia et al, "Juridical Review of PMH in Cases of Breach of Sale and Purchase Contract in Indonesia", *Jalakotek: Journal of Accounting Law Communication and Technology*, Volume 2, Number 1, 2025.

Faizal Nurkholis, "Legal Analysis of Non-Owned Land Certificate Guarantee Based on Borrowing and Use Agreement in KUHP", *Innovative Law: Journal of Legal, Social, and Humanities Sciences*, Volume 1, Number 4, 2024.

I Wayan Yasa and Echwan Iriyanto, "Legal Certainty of Judges' Decisions in the Settlement of Civil Case Disputes", *Rechtens Journal*, Volume 12, Number 1, 2023.

Juli Asril, "Some Issues Related to HT as a Land Security Institution", *JIMEA: Scientific Journal of Management, Economics, and Accounting*, Volume 4, Number 2, 2020.

Kadek Ayu Dwi Ningsih and Dewa Gde Rudy, "Legal Effects and Efforts to Settle Credit Agreement Disputes whose Collateral Objects are not in the Debtor's

Name", *Journal of Kertha Wicara*, Volume 10, Number 9, 2021.

Marcayla Rahma Santoso and Zakki Adhliyati, "PMH of a Good Faith Buyer in a Sale and Purchase Agreement", *Verstek*, Volume 13, Number 1, 2025.

Mirza Mar'ali, Muhammad Rafli Alghifari, and Priliyani Nugroho Putri, "Analysis of Legal Protection for Creditors of HT Collateral Holders Against Cancellation of SHM that is being burdened by HT by the Court", *Pleads: Padjadjaran Law Review*, Volume 10, Number 1, 2022.

Miskawati Suleman, "Legal Review of Defaults in Online Transactions", *Lex Crimen*, Volume 12, Number 4, 2024.

Muklis, "The Essence of Civil Rights Contained in Land Rights", *Iuris Studia: Journal of Legal Studies*, Volume 4, Number 3, 2024.

Patricia Caroline Tiodor, Murendah Tjahyani, and Asmaniar, "Proof of Default in Oral Debt and Credit Agreement", *Krisna Law Journal*, Volume 5, Number 1, 2023.

Putri A. Winarsasi, "Legal Review of Electronic Registration of HT (HT-el) as Fulfillment of the Principle of Publicity", *Spektrum Law Journal*, Volume 19, Number 1, 2022.

Rahmad Kurniawan, Jefry Tarantang, and Harfani, "Collateral Appraisal Rules in Islamic Banking", *El-Iqtishod*, Volume 6, Number 1, 2022.

Raynaldo Handojo Putra and Mia Hadiati, "Analysis of the Basic Considerations of Judges and Legal Effects in Rejecting an Unacceptable Lawsuit in Court Seen from the Perspective of Civil Procedure Law", *Unes Law Review*, Volume 6, Number 2, 2023.

Shohib Muslim, Hairus, and Rokiyah, "Review of Positive Law and Fiqh on Land Ownership Rights", *Qolamuna Journal*, Volume 7, Number 1, 2021.

Susilowati, "Credit Guarantee in Syndicated Credit Agreement", *JHPIS: Journal of Law, Politics, and Social Sciences*, Volume 1, Number 1, 2022.

Talitha Mumtaz and Sri Widyawati, "Legal Protection for Good Faith Buyers in Land Tenure Disputes", *JIHHP: Journal*

of Law, Humanities, and Political Science, Volume 5, Number 4, 2025.

Trisa Mardeta Putri, Paramita Prananingtyas, and Anggita Doramita Lumbanraja, "Implementation of Credit Collateral Objects", *Notarius*, Volume 13, Number 2, 2020.

Winda Asry et al, "Legal Protection for Debtors in Bank Liquidation Cases:

Study of SHM Case as Collateral", *Indonesian Journal of Humanities and Social Sciences*, Volume 5, Number 4, 2024.