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Securing Banking Legal Standing over Former Customary Land Collateral via Mortgage Attorney Power

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ABSTRACT

This study examines the legal protection and certainty of banking institutions accepting former customary land (Letter C) as collateral through a Power of Attorney to Encumber Mortgage Rights (SKMHT) following the enactment of Government Regulation Number 18 of 2021. Employing normative legal research with statutory, conceptual, and case approaches, this study analyzes relevant legislation, legal doctrines, judicial decisions, and scholarly literature through qualitative juridical analysis. The findings reveal three interconnected legal vulnerabilities: the limited evidentiary status of Letter C documents, the statutory expiration of SKMHT instruments, and the absence of preferential creditor rights before mortgage registration. These vulnerabilities expose banking institutions to significant financial and legal risks, particularly when debtors default before mortgage rights are perfected. To address these challenges, this study proposes an Integrated Pre-Conversion Escrow and Covernote Governance model incorporating comprehensive land verification, conditional credit disbursement, strengthened notarial accountability, and supplementary collateral protection. The study concludes that integrating preventive and repressive legal mechanisms is essential to strengthening creditor protection, ensuring legal certainty, and harmonizing banking prudential principles with Indonesia's mortgage and land registration frameworks.

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INTRODUCTION

Banking institutions play a fundamental role in promoting economic development by mobilizing public funds and distributing credit to individuals and businesses. However, lending activities inherently expose banks to the risk of debtor default, particularly when the collateral provided does not offer adequate legal protection or enforceable security rights. Article 8 of Law Number 10 of 1998 concerning Banking requires financial institutions to implement prudential banking principles through comprehensive assessments of debtors' financial capacity, business prospects, and collateral reliability (Aziiz et al., 2024; Salim HS, 2021). Effective credit governance must therefore extend beyond administrative compliance to ensure the legal validity and enforceability of collateral arrangements throughout the financing relationship (Khoirunnisa & Turisno, 2026). Nevertheless, Indonesian banking practices continue to involve uncertified former customary land supported by village administrative documents, including Letter C, Girik, and Petok D, creating significant challenges for creditor protection and legal certainty (Puteri & Ramli, 2025; D. P. Putri et al., 2024).

The legal framework governing land collateral in Indonesia is primarily established by Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, which emphasizes the principles of specialty, publicity, and creditor priority. Article 10 paragraph (3) permits mortgage rights to be granted over eligible former customary land that has not been registered, provided

that the granting of mortgage rights is undertaken simultaneously with the application for registration of the relevant land rights (Jha et al., 2022; Sihombing, 2021). In practice, the Power of Attorney to Encumber Mortgage Rights (*Surat Kuasa Membebankan Hak Tanggungan*, SKMHT) is frequently employed as a transitional instrument before the execution of the Deed of Granting Mortgage Rights (*Akta Pemberian Hak Tanggungan*, APHT). However, Article 15 paragraphs (4) and (6) generally requires an SKMHT concerning unregistered land to be followed by an APHT within three months, subject to statutory exceptions for certain financing categories, otherwise the authorization becomes legally ineffective (Paramita & Purwoatmodjo, 2022; Prakoso & Permana, 2025). This limitation creates substantial risks because an SKMHT does not independently establish a registered mortgage right or confer preferential creditor status, potentially leaving banking institutions as concurrent creditors when debtors default (Dewi et al., 2022; Saputro & Silviana, 2024).

The challenges surrounding uncertified land collateral have intensified following the enactment of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. Article 96 introduced a five-year transitional period for registering written evidence of former customary land rights, after which such documents could no longer function as independent evidence of land rights and would instead serve as preliminary indications in the land registration process (Lubis & Panjaitan, 2026; Winata, 2021). Following the expiration of this transitional period in February 2026, the evidentiary limitations of Letter C documents have become increasingly relevant to banking institutions accepting uncertified land as collateral (Indriyawati et al., 2026; Ratrisnanti, 2025). Furthermore, administrative requirements involving ownership verification, cadastral surveying, public notification, and potential third-party objections may prolong land registration beyond the statutory validity period of an SKMHT (Ardani, Yusriyadi, et al., 2022; Hapsari & Suhadi, 2026). Consequently, banking institutions face overlapping vulnerabilities arising from uncertain land ownership evidence, the expiration of transitional authorization instruments, and the absence of enforceable mortgage rights during the registration process (Mardiana et al., 2026; D. P. Putri et al., 2024).

Existing scholarship has examined the relationship between land registration, mortgage authorization, and creditor protection, although these issues have generally been investigated through separate legal perspectives. Djajakustio (2023), Paramita & Purwoatmodjo (2022), and Tjia & Tan (2022) primarily addressed the validity, formal requirements, and expiration consequences of SKMHT instruments, while Dewi et al. (2022) and Saputro & Silviana (2024) emphasized creditor vulnerability when an SKMHT is not followed by an APHT. Other studies, including those by Lubis & Panjaitan (2026) and Puteri & Ramli (2025), focused on the evidentiary status of former customary land following Government Regulation Number 18 of 2021 without comprehensively examining its implications for banking collateral governance. More recent research by Mardiana et al. (2026) has addressed banking protection concerning uncertified land collateral, while Adiyatma & Nnawulezi (2026) have explored the reconstruction of customary land rights within Indonesia's mortgage system. Nevertheless, limited attention has been directed toward the combined implications of customary land evidentiary limitations, statutory SKMHT expiration, and the absence of registered mortgage rights for banking institutions, particularly in developing an integrated preventive and repressive legal protection framework.

Addressing these interconnected legal issues is essential to strengthening the stability of banking credit transactions while ensuring effective legal protection for creditors accepting former customary land as collateral. Accordingly, this study aims to formulate a comprehensive legal security construction for banking institutions and evaluate the legal certainty of their creditor status when Letter C land is bound through an SKMHT following the implementation of Government Regulation Number 18 of 2021. Specifically, the research examines how preventive and repressive legal protection mechanisms can safeguard banking institutions against collateral-related risks and how the interaction between mortgage law, banking prudential obligations, and land registration regulations influences creditor rights. The principal contribution of this study lies in identifying a framework of *triple legal vulnerability* and introducing an *Integrated Pre-Conversion Escrow and Covernote Governance* model that combines enhanced land due diligence, conditional credit disbursement, notarial accountability, and supplementary collateral protection. Through this integrated normative approach, the study seeks to advance legal scholarship on banking collateral security and provide practical recommendations for harmonizing mortgage enforcement, land registration procedures, and prudential banking governance in Indonesia.

RESEARCH METHODS

This study employs a normative legal research method with a prescriptive-analytical approach to examine the legal protection and certainty of banking institutions accepting former customary land (*Letter C*) as collateral through a Power of Attorney to Encumber Mortgage Rights (*Surat Kuasa Membebankan Hak Tanggungan*, SKMHT). Normative legal research systematically evaluates legal principles, statutory provisions, and legal doctrines to identify regulatory inconsistencies and formulate appropriate legal solutions (Marzuki, 2021). Three complementary approaches are applied: the statutory approach, the conceptual approach, and the case approach. The statutory approach examines the Indonesian Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 4 of 1996 concerning Mortgage Rights, Law Number 10 of 1998 concerning Banking, Government Regulation Number 24 of 1997, Government Regulation Number 18 of 2021, and Ministerial Regulation of ATR/BPN Number 22 of 2017. Meanwhile, the conceptual approach incorporates legal protection theory, legal certainty theory, and proprietary security theory, whereas the case approach examines judicial reasoning concerning mortgage enforcement and collateral disputes, including District Court Decision Number 17/Pdt.Bth/2025/PN Njk.

The research relies on secondary data comprising primary, secondary, and tertiary legal materials collected through systematic library research. Primary legal materials include relevant legislation, implementing regulations, and judicial decisions, while secondary materials consist of scholarly journal articles published between 2020 and 2026, legal textbooks, and academic studies addressing banking law, mortgage rights, notarial responsibilities, and customary land registration. Tertiary legal materials, including legal dictionaries and encyclopedias, are used to clarify relevant legal concepts and terminology. The collected materials are analyzed using qualitative juridical analysis through inventory, classification, systematic interpretation, and deductive legal reasoning, supported by grammatical and teleological interpretations of applicable regulations. This analytical process evaluates the interaction between banking prudential obligations, mortgage registration requirements, and customary land conversion procedures to formulate an integrated legal protection framework and assess the legal certainty of banking institutions under Government Regulation Number 18 of 2021.

RESULTS AND DISCUSSION

Legal Characteristics of Former Customary Land as Banking Collateral

The normative analysis reveals that the use of former customary land evidenced by Letter C as banking collateral creates a complex relationship between customary land administration, national land registration, and mortgage security law. Historically, Letter C originated from village administrative records used to identify landholders, land classifications, and taxation obligations rather than to establish definitive ownership rights. Although these records remain relevant to documenting historical land possession, they do not possess the same evidentiary status as land certificates issued through the national land registration system. Consequently, banking institutions accepting Letter C documents as collateral must distinguish between evidence of historical landholding and legally perfected ownership rights that can support enforceable mortgage security. This distinction is essential because the existence of a financing agreement does not automatically establish the creditor's preferential rights over the collateral object (Puteri & Ramli, 2025; Sumendap & Soerodjo, 2024).

The legal status of uncertified land must be interpreted within the framework of Law Number 5 of 1960 concerning Basic Agrarian Principles and Law Number 4 of 1996 concerning Mortgage Rights. Article 10 paragraph (3) of the Mortgage Law permits the granting of mortgage rights over certain eligible former customary land rights that have not yet been registered, provided that the mortgage arrangement is undertaken simultaneously with the application for registration of the relevant land rights. Therefore, the absence of a land certificate does not necessarily render every mortgage arrangement legally impossible; however, compliance with registration requirements remains essential to the establishment of an enforceable mortgage right. Jha et al. (2022) similarly identified the importance of registration procedures when examining mortgage encumbrance over uncertified land, while Syaiful et al. (2022) emphasized the juridical difficulties associated with land lacking formal certification. These findings indicate that the principal challenge is not merely the absence of a certificate but the potential failure to complete the legally required transformation from customary land evidence into registered collateral security.

In banking transactions, the Power of Attorney to Encumber Mortgage Rights (*Surat Kuasa Membebankan Hak Tanggungan*, SKMHT) serves as an authorization instrument allowing the mortgage-granting process to proceed when the party concerned cannot directly execute the Deed of Granting Mortgage Rights (*Akta Pemberian Hak Tanggungan*, APHT). However, the legal function of an SKMHT is fundamentally different from that of a registered mortgage right. An SKMHT establishes authority to perform a specified legal act, whereas an APHT must be followed by the legally required registration process before the mortgage right obtains its full proprietary effect. As long as mortgage registration remains incomplete, the creditor cannot rely on the SKMHT alone to claim preferential repayment or direct mortgage execution. This distinction is consistent with (Dewi et al., 2022; R. A. Putri & Safitri, 2026; Saputro & Silviana, 2024), who highlight the vulnerability of creditors when mortgage authorization is not effectively transformed into registered security.

From the perspective of proprietary security theory, legal protection in secured financing depends upon the enforceability of rights against third parties, the identification of the collateral object, and the creditor's priority in recovering outstanding obligations. Registered mortgage rights provide these protections through the principles of specialty and publicity, enabling creditors to establish legally recognized claims over specified land. By contrast, financing supported only by Letter C documentation and an SKMHT does not automatically produce equivalent proprietary rights. The bank consequently remains dependent upon the principal financing agreement and the general statutory security framework established under Articles 1131 and 1132 of the Indonesian Civil Code until a valid mortgage right is established. This legal distinction becomes particularly significant when debtors experience financial distress, insolvency, or disputes concerning land ownership (Ginting, 2026; Sartika & Noor, 2024).

Table 1 Comparison of Juridical Characteristics Between Registered Land Collateral (APHT) and Former Customary Land Collateral (SKMHT)

Juridical dimension	Registered land collateral with perfected mortgage rights	Former customary land (Letter C) supported only by SKMHT
Evidentiary status	Registered land certificate providing strong evidence of land rights	Letter C serves as historical administrative evidence and, under Article 96 of PP No. 18/2021, a preliminary indication for registration
Collateral instrument	APHT followed by mortgage registration	SKMHT authorizes mortgage encumbrance but does not independently create mortgage rights
Instrument validity	Registered mortgage generally continues while the secured obligation remains, subject to statutory termination rules	SKMHT concerning unregistered land is generally limited to three months, subject to applicable exemptions
Consequences of expiry	A perfected mortgage is not automatically extinguished merely by the passage of three months	SKMHT becomes null and void if the required APHT is not executed within the applicable statutory period
Creditor standing	Preferred mortgage creditor possessing priority rights	Concurrent creditor when no other valid preferential security right has been established
Enforcement upon default	Mortgage execution mechanisms under Articles 6, 14, and 20 of the Mortgage Law	Ordinary contractual enforcement and judicial remedies; no mortgage-based direct execution from SKMHT alone

The comparison demonstrates that the most significant juridical difference concerns the establishment of enforceable proprietary security rather than the mere existence of collateral documentation. A registered mortgage provides a legal basis for priority repayment and execution, whereas an unperfected SKMHT arrangement primarily reflects an authorization relationship. This difference exposes banks to substantial risks when debtors default before the necessary land registration and mortgage procedures have been completed. Research by Saputro & Silviana (2024) confirms that incomplete mortgage registration may undermine the legal protection expected by creditors, while Putri & Safitri (2026) emphasize the importance of completing the transition from SKMHT to APHT. Accordingly, banking institutions must evaluate collateral quality based not only on the availability of land documents but also on the legal feasibility and progress of establishing registered mortgage rights.

Preventive Legal Protection Through Prudential Banking and Collateral Verification

The findings indicate that preventive legal protection constitutes the primary mechanism for minimizing risks associated with financing secured by former customary land. Article 8 of Law Number 10 of 1998 concerning Banking requires financial institutions to exercise prudence when evaluating prospective borrowers and the adequacy of collateral. In transactions involving Letter C land, conventional assessments of debtor income, repayment capacity, and collateral value are insufficient unless accompanied by rigorous verification of the collateral's legal status. The effectiveness of preventive protection therefore depends upon integrating financial due diligence with land ownership verification, cadastral examination, and procedural monitoring. This interpretation is consistent with Aziiz et al. (2024) and Khoirunnisa & Turisno (2026), who emphasize the relationship between legal compliance, responsible credit governance, and creditor protection.

The first component of preventive protection involves comprehensive verification of the collateral object's physical and juridical characteristics. Banks should examine the authenticity of Letter C records by comparing submitted documentation with village land registers, historical ownership records, and information maintained by the relevant Land Office. Verification should include an assessment of ownership transfers, inheritance arrangements, boundary descriptions, physical possession, and the potential existence of competing claims. Where the legal basis for registration depends upon possession, the requirements established under applicable land registration legislation must also be examined, including relevant evidence of continuous and good-faith possession. Such verification is particularly important because customary land records may contain incomplete ownership histories or outdated administrative information that complicates subsequent certification (Ardani, Yusriyadi, et al., 2022; Firdaus et al., 2024; Yulianto & Pihawiani, 2023).

The second preventive component concerns the formal and substantive validity of the SKMHT instrument. Under Article 15 of the Mortgage Law, an SKMHT must satisfy specific requirements concerning its purpose, scope of authority, identification of the collateral object, and relevant parties. The document cannot be treated as a general authorization permitting unrelated legal transactions, and its preparation must comply with the statutory limitations governing mortgage powers of attorney. Notaries and Land Deed Officials (*Pejabat Pembuat Akta Tanah*, PPAT) must therefore establish the identity and legal authority of the parties, including relevant spousal or inheritance-related consent where required. Paramita & Purwoatmodjo (2022) and Tjia & Tan (2022) emphasize that procedural defects in the preparation of SKMHT instruments can compromise creditor protection. These findings suggest that notarial compliance should function as a substantive legal risk-control mechanism rather than merely a documentation requirement.

The third component concerns the proposed use of conditional financing disbursement through an escrow-based arrangement. Instead of releasing the entire financing amount immediately after executing an SKMHT, banks may establish contractual conditions connecting loan disbursement to verifiable progress in the land registration process. Initial disbursement could be limited until the collateral dossier has undergone preliminary verification, while subsequent releases could depend upon cadastral examination, clarification of ownership status, and progress toward legally valid mortgage registration. Such arrangements would not automatically create mortgage rights or eliminate statutory registration requirements; rather, they would reduce the financial exposure arising before the bank obtains enforceable collateral security. This proposed mechanism extends the principles of preventive creditor protection discussed by Putri et al. (2024) and the collateral governance concerns examined by Putri & Safitri (2026).

The fourth component involves contractual safeguards and institutional coordination between banking institutions and Notaries/PPATs. Financing agreements may include obligations requiring debtors to cooperate with land certification procedures, provide necessary ownership documents, resolve administrative deficiencies, and execute additional legally valid instruments when required. Banks may also establish monitoring procedures to identify approaching SKMHT expiration dates and determine whether further action is legally necessary. Where permitted and supported by the parties' authority, the execution of a new SKMHT may be considered, although renewal cannot be presumed automatic or used to circumvent mandatory statutory requirements. Supplementary personal guarantees, corporate guarantees, or other legally available security mechanisms may also help manage residual credit exposure. These measures support a more structured relationship between lending decisions, land

registration progress, and the maintenance of legally enforceable creditor rights (Djajakustio, 2023; Prakoso & Permana, 2025).

Repressive Legal Protection and Judicial Remedies Following Debtor Default

Repressive legal protection becomes necessary when preventive measures fail and the debtor defaults before the bank successfully establishes registered mortgage rights. Under these circumstances, the legal position of the bank depends on the enforceability of the principal financing agreement and the existence of any other valid security instruments. An SKMHT alone does not provide the executorial authority associated with a registered mortgage certificate, meaning the bank cannot automatically pursue direct mortgage execution under Article 6 of the Mortgage Law. Instead, recovery ordinarily requires the examination of contractual obligations and the use of appropriate judicial remedies. This conclusion corresponds with Dewi et al. (2022) and Saputro & Silviana (2024), who identify diminished creditor protection when mortgage authorization is not followed by the creation of legally enforceable mortgage rights.

The principal judicial remedy available to a bank in such circumstances is a civil claim for breach of contract (*wanprestasi*). Pursuant to Article 1243 of the Indonesian Civil Code, creditors may seek compensation arising from nonperformance when the necessary legal requirements for contractual liability are satisfied. Banking institutions may pursue repayment of outstanding principal, agreed interest, penalties, and other legally recoverable obligations according to the financing agreement and applicable law. However, obtaining a favorable court judgment does not transform an unsecured contractual claim into a registered mortgage right. The creditor's ability to recover the debt remains subject to judicial enforcement procedures, the availability of debtor assets, and the competing claims of other creditors (Putri et al., 2024; Sartika & Noor, 2024).

Another potential mechanism is the application for conservatory attachment (*conservatoir beslag*) to preserve assets that may become relevant to judicial enforcement. This procedure may be requested under applicable civil procedural rules when the factual and legal requirements for attachment are satisfied. In disputes involving Letter C land, conservatory attachment can be particularly important where there is a demonstrable risk that disputed assets may be transferred or otherwise placed beyond effective enforcement. Nevertheless, the granting of attachment remains subject to judicial assessment and does not independently confer the preferential status associated with registered mortgage rights. Consequently, this mechanism should be understood as an instrument for preserving enforceability rather than as a substitute for proper mortgage registration.

Where circumstances indicate fraud, forged land documentation, unlawful transfer, or deliberate concealment of material information, additional civil remedies may become relevant. Claims based on unlawful acts (*perbuatan melawan hukum*) under Article 1365 of the Indonesian Civil Code require proof of the applicable elements of liability, including wrongful conduct, fault, damage, and causation. The legal analysis of such disputes must distinguish ordinary contractual nonperformance from conduct that independently satisfies the requirements of tortious liability. Fathullah (2023) identify land-related fraudulent practices as a significant source of legal vulnerability, while Rinaldi et al. (2025) address creditor protection when mortgage-related land rights become subject to cancellation or dispute. These findings demonstrate that banking institutions require both contractual enforcement strategies and appropriate remedies for unlawful conduct affecting collateral ownership.

The original manuscript also refers to District Court Decision Number 17/Pdt.Bth/2025/PN Njk in examining disputes associated with mortgage execution and collateral validity. Within the research framework, this decision is relevant to the assessment of whether defects in the underlying land title or mortgage documentation can undermine enforcement proceedings. However, the precise ratio decidendi and operative ruling should be established from the authenticated judgment before attributing a specific legal holding to the court. The broader normative conclusion remains that execution based upon mortgage rights requires compliance with the legal conditions governing the creation and registration of those rights. This reinforces the importance of completing collateral security procedures before financial institutions rely on direct enforcement mechanisms (Hutadjulu et al., 2023; Rinaldi et al., 2025).

Taken together, these findings demonstrate that repressive remedies offer an essential but comparatively burdensome pathway for protecting banking interests. Ordinary litigation may involve substantial procedural costs, evidentiary difficulties, and delays before a final enforceable judgment is obtained. Furthermore, a bank lacking perfected mortgage security may have to compete with other

creditors under the general statutory guarantee established by Articles 1131 and 1132 of the Civil Code. These circumstances highlight the limitations of relying on post-default legal remedies to compensate for deficiencies in collateral verification and registration. Accordingly, preventive legal protection should be prioritized, while repressive mechanisms should remain available as complementary instruments for addressing debtor default and unlawful conduct.

Legal Certainty of Banking Institutions Following Government Regulation Number 18 of 2021

The enactment of Government Regulation Number 18 of 2021 introduced significant consequences for the evidentiary status of former customary land within Indonesia's national land registration system. Article 96 requires written evidence of former customary land rights held by individuals to be registered within five years following the regulation's enactment. Upon the expiration of that period in February 2026, the relevant written documents no longer function as independent evidence of land rights and may instead be considered as preliminary indications for land registration. Importantly, this regulatory change should not be interpreted as automatically extinguishing every underlying land right or preventing eligible landholders from pursuing registration through legally recognized procedures. Rather, it changes the evidentiary framework within which ownership claims must be established and verified (Lubis & Panjaitan, 2026; Ratrisnanti, 2025; Winata, 2021).

The consequences of this regulatory transition are particularly important for banking institutions because collateral enforceability depends upon the legal identification of both the landholder and the collateral object. Where ownership is documented primarily through Letter C, discrepancies between historical village records and actual land possession may complicate the determination of legal authority to establish mortgage rights. Such discrepancies can arise from undocumented inheritance distributions, unregistered transfers, changes in physical boundaries, and competing claims from third parties. Research by Hapsari & Suhadi (2026) and Puteri & Ramli (2025) demonstrates the continuing relevance of these administrative challenges, while Indriyawati et al. (2026) highlight the transformation of Letter C into a more limited form of evidentiary documentation. Therefore, legal certainty in banking collateral arrangements requires a coordinated assessment of historical land records, physical possession, and compliance with current registration requirements.

A second source of uncertainty concerns the relationship between the statutory validity period of SKMHT instruments and the administrative requirements of first-time land registration. Article 15 paragraph (4) of the Mortgage Law generally establishes a three-month validity period for an SKMHT concerning unregistered land, while paragraph (6) provides that the authorization becomes null and void when the required APHT is not executed within the applicable period. However, customary land registration may involve several administrative procedures, including verification of ownership history, cadastral examination, assessment of physical possession, and public notification where applicable. When these procedures remain incomplete, banking institutions may encounter difficulties converting a transitional authorization into an effective mortgage arrangement. Djajakustio (2023) and Prakoso & Permana (2025) identify the resulting tension between statutory time limitations and creditor protection, while Wibowo et al. (2026) further discuss the need to reconsider regulatory arrangements governing SKMHT validity in financing transactions.

Nevertheless, the regulatory framework also recognizes exceptions for certain credit categories. Article 15 paragraph (5) of the Mortgage Law provides the basis for special treatment of SKMHT validity in specified financing arrangements, including categories governed by Ministerial Regulation of ATR/BPN Number 22 of 2017. Consequently, the three-month limitation must not be generalized without examining the relevant financing type and applicable regulatory provisions. This distinction is essential for differentiating ordinary commercial financing from qualifying credit facilities that receive particular regulatory treatment. The existence of these exceptions also demonstrates that the legal system recognizes differences between financing arrangements, even though uncertainty may persist concerning the relationship between land registration procedures and security perfection. Recent research examining SKMHT arrangements in micro, small, and medium enterprise financing similarly emphasizes the importance of harmonizing statutory requirements with practical credit administration (Ginting, 2026; Wibowo et al., 2026).

A third vulnerability concerns the legal function of Notary/PPAT covernotes in financing transactions. Banks commonly receive covernotes indicating that land registration, certification, or mortgage documentation is being processed by the responsible professional. Although these documents may provide useful administrative information, they should not be equated with registered mortgage

certificates or instruments conferring proprietary security rights. A covernote does not independently establish creditor priority, validate disputed ownership, or authorize mortgage execution when the substantive and procedural requirements of the Mortgage Law have not been fulfilled. Consequently, reliance on covernotes as substitutes for perfected collateral security can generate a misleading perception of legal protection, particularly when certification is delayed or disputed. This interpretation is consistent with Putri & Safitri (2026), who emphasize that an SKMHT without the subsequent completion of mortgage procedures cannot provide the same legal certainty as a duly registered mortgage.

The combined implications of these vulnerabilities can be conceptualized as *triple legal vulnerability*, consisting of evidentiary uncertainty, transitional authorization limitations, and the absence of perfected executorial security. These dimensions are analytically distinct but mutually reinforcing. Evidentiary uncertainty may delay land registration, such delays may prevent the timely execution of an APHT under an existing SKMHT, and the resulting absence of registered mortgage rights may leave the bank without preferential enforcement mechanisms. Although each risk has been separately discussed in earlier research, their interaction demonstrates why administrative compliance alone cannot guarantee substantive protection for secured banking transactions. Accordingly, legal certainty requires an integrated framework capable of coordinating land verification, mortgage documentation, financing disbursement, and creditor protection throughout the pre-registration period.

Reconstruction of Integrated Pre-Conversion Escrow and Covernote Governance

The synthesis of the foregoing findings identifies a structural imbalance between the legal function of SKMHT instruments and the practical expectations placed upon them in banking financing. This study conceptualizes the imbalance as *Transitional Security Asymmetry*, referring to a situation in which a temporary authorization instrument is treated as though it provides continuing collateral protection during an uncertain land registration process. The problem arises because financing obligations may commence immediately, while the establishment of mortgage rights remains contingent upon subsequent administrative and legal requirements. Consequently, the bank's financial exposure can become effective before the corresponding proprietary security is perfected. This conceptualization extends the concerns identified by Prakoso & Permana (2025), Putri & Safitri (2026), and Saputro & Silviana (2024) regarding incomplete mortgage arrangements and creditor vulnerability.

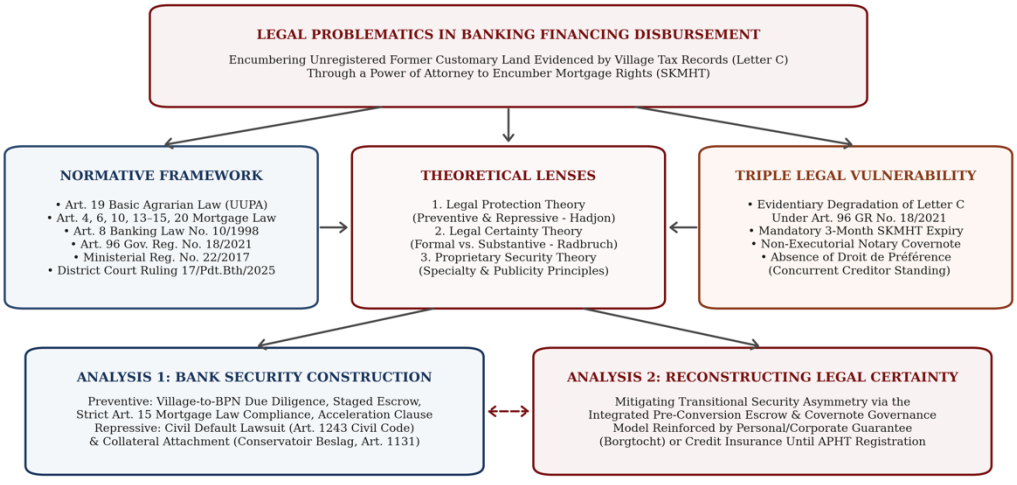


Figure 1 Analytical Architecture of Triple Legal Vulnerability and Banking Security Construction over Letter C Collateral under SKMHT

Figure 1 illustrates the relationship between regulatory frameworks, creditor protection, and vulnerabilities in Letter C collateral secured through SKMHT, demonstrating how weaknesses in one legal dimension can compromise the others. To address these vulnerabilities, the study proposes an *Integrated Pre-Conversion Escrow and Covernote Governance model* that integrates preventive safeguards and repressive remedies. This model combines conditional credit disbursement, verification of land registration progress, and professional accountability within a unified mechanism to minimize the period where banks have substantial exposure without enforceable mortgage protection. Rather than

treating SKMHT or covernotes as substitutes for registered collateral, the model views them as transitional instruments requiring systematic monitoring, consistent with the growing emphasis on strengthening legal protection in transactions involving uncertified land and incomplete mortgage registration (Mardiana et al., 2026; D. P. Putri et al., 2024).

The proposed model comprises four principal elements: staged disbursements conditioned on verifiable land registration milestones to align fund release with collateral security improvements; strengthened institutional coordination where covernotes act as accurate procedural communication tools between banks, Notaries/PPATs, and land authorities; and the use of supplementary security arrangements, such as personal or corporate guarantees, to reduce dependence on uncertified parcels. This supplementary approach specifically addresses creditor exposure when existing security is inadequate during financial distress (Sartika & Noor, 2024). Finally, the framework establishes contractual responses to delays and non-cooperation, including acceleration provisions and protocols for expired SKMHTs, ensuring proactive risk management that balances legitimate financing activities with the protection of banking institutions.

Table 2 Evaluation Matrix of Banking Legal Certainty Vulnerabilities and Risk Mitigation Construction over Letter C Collateral under SKMHT

Legal vulnerability	Normative basis	Legal implications	Proposed mitigation
Evidentiary limitations of Letter C	Article 19 of the Basic Agrarian Law; PP No. 24/1997; Article 96 of PP No. 18/2021	Following the statutory transition, Letter C cannot independently establish land rights and serves as an indication for registration	Layered ownership verification, examination of physical possession, cadastral assessment, and documentary due diligence
Three-month SKMHT validity limitation	Article 15 paragraphs (4)–(6) of the Mortgage Law; Ministerial Regulation of ATR/BPN No. 22/2017	Authorization may expire before the legally required APHT is executed, subject to applicable exceptions	Monitoring statutory deadlines, coordinating registration procedures, and controlling financing exposure during the transitional period
Non-executorial character of covernotes	Article 1868 of the Civil Code; Notary Office Law; Articles 10 and 13 of the Mortgage Law	Covernote documentation does not independently establish registered mortgage security or direct execution rights	Professional reporting standards, verification of registration progress, and strengthened bank–Notary/PPAT coordination
Absence of preferential creditor status	Articles 6, 13, 14, and 20 of the Mortgage Law; Articles 1131–1132 of the Civil Code	Banks without perfected mortgage rights may remain concurrent creditors and cannot rely on mortgage-based execution	Supplementary guarantees, conditional disbursement, contractual safeguards, and appropriate judicial remedies

Table 2 demonstrates that each vulnerability requires a corresponding form of legal and institutional mitigation rather than reliance upon a single administrative solution. The evidentiary limitations of Letter C require careful verification of ownership and possession, whereas the statutory expiration of SKMHT necessitates monitoring and timely execution of legally required instruments. The non-executorial nature of covernotes demands clearer professional communication, while the absence of preferential creditor status requires additional financial and contractual safeguards. These mitigation strategies are complementary because addressing one vulnerability does not necessarily resolve the others. Their integration therefore represents an important element of the proposed legal protection framework for financing transactions involving former customary land.

Discussion: Theoretical Contributions and Implications for Banking Governance

From the perspective of legal protection and certainty theories, effective creditor protection requires combining preventive and repressive mechanisms, which is especially vital for former customary land where litigation recovery is difficult (Apriani & Bur, 2020; Dewi et al., 2022). Protection must be evaluated across the entire collateral lifecycle, distinguishing formal documentary

compliance from substantive enforceability, as instruments like SKMHT do not automatically establish proprietary security without clear land status and registration compliance (Indriyawati et al., 2026; Puteri & Ramli, 2025; Ratrisnanti, 2025). Furthermore, proprietary security theory highlights that while an SKMHT offers limited authorization, only a registered mortgage creates enforceable rights against third parties, a vulnerability compounded by administrative delays and evidentiary limitations (Putri & Safitri, 2026; Saputro & Silviana, 2024).

At the institutional level, the proposed governance model necessitates better coordination among banks, Notaries/PPATs, and land authorities to distinguish perfected collateral from transitional arrangements without conflating their separate statutory competencies. Finally, regulatory harmonization is needed to align SKMHT validity periods with the administrative procedures for registering former customary land under Government Regulation Number 18 of 2021. Any reform must balance legal certainty, creditor protection, and financial inclusion while upholding the principles of specialty and publicity, ultimately providing a prescriptive framework for managing transitional security risks in Indonesia.

CONCLUSION

This study concludes that securing the legal standing of banking institutions over former customary land collateral (*Letter C*) through a Power of Attorney to Encumber Mortgage Rights (SKMHT) requires an integrated framework combining preventive and repressive legal protection. Preventive protection involves comprehensive land ownership verification, compliance with the formal and substantive requirements of SKMHT, conditional financing disbursement, and effective coordination between banking institutions and Notaries/Land Deed Officials (PPATs). Meanwhile, repressive protection includes contractual enforcement, civil litigation, and conservatory attachment when debtors default before mortgage rights are legally perfected. The findings demonstrate that an SKMHT does not independently establish proprietary security rights or confer preferential creditor status without the completion of the required mortgage procedures. Consequently, banking institutions remain exposed to significant legal and financial risks when financing is disbursed before enforceable mortgage security has been established.

Furthermore, the implementation of Government Regulation Number 18 of 2021 has intensified legal uncertainty concerning former customary land collateral through three interconnected vulnerabilities: the limited evidentiary status of Letter C documents, the statutory expiration of SKMHT instruments, and the absence of executorial authority arising from unperfected mortgage rights. To address these challenges, this study proposes an *Integrated Pre-Conversion Escrow and Covernote Governance* model that incorporates staged credit disbursement, systematic monitoring of land registration, strengthened notarial accountability, and supplementary collateral protection. This framework contributes to the development of banking security law by integrating prudential banking principles, mortgage regulations, and customary land registration requirements into a coherent legal protection mechanism. Practically, banking institutions should strengthen collateral risk management, while relevant regulatory authorities should improve coordination between land registration procedures and mortgage security requirements. Future research should empirically evaluate the proposed governance model across banking institutions and land administration offices to assess its effectiveness in reducing collateral-related disputes and strengthening creditor protection in Indonesia.

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