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Anomalies In The Registration Of Mortgage Rights On Residential Properties: A Legal Analysis Of Delays In Title Transfers Within The Home Mortgage Ecosystem

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Abstract

This study examines legal issues in Indonesian property transactions arising from the absence of clear regulatory time limits for title transfer (balik nama) from developers to buyers. This legal gap creates a transitional period in which buyers have fulfilled their financial obligations but have not yet obtained legally registered property rights, resulting in legal uncertainty. The study aims to analyze the juridical implications of delayed title transfer on the validity of mortgage rights and the legal position of the parties involved, particularly in the event of developer bankruptcy. This research employs a normative juridical method using statutory and case approaches, focusing on relevant legislation and the Supreme Court Decision No. 2768 K/Pdt/2011. The findings reveal that delays in title transfer directly affect the registration of mortgage rights, which is constitutive in nature. Failure to comply with procedural requirements, particularly the statutory time limit for registration, may render the Mortgage Certificate legally defective and eliminate the creditor's preferential rights. Consequently, creditors may be downgraded to concurrent status, while buyers face the risk of losing legal protection over the property, especially in bankruptcy proceedings. The study concludes that the absence of clear regulatory timelines creates systemic legal uncertainty affecting both consumers and financial institutions. Therefore, it is recommended that the government establish strict and enforceable deadlines for title transfer processes, accompanied by administrative sanctions for non-compliance, in order to ensure legal certainty, enhance consumer protection, and strengthen the integrity of the property and banking sectors.

Keywords: Title Transfer, Mortgage Rights, Bankruptcy, Legal Certainty.

A. Introduction

The transfer of land rights in Indonesian housing transactions is not solely determined by contractual agreement between parties but is fundamentally dependent on administrative processes, particularly registration before the Land Office. Within the Indonesian legal system, the principle of publicity requires that ownership rights over land must be formally recorded to obtain full legal recognition. In practice, however, especially within housing credit schemes (KPR) and developer-based property transactions, delays in the title transfer (balik nama) process from developers to buyers frequently occur. These delays create a critical legal gap in which buyers, despite having fulfilled their financial obligations, do not yet possess formally registered ownership rights. As a result, legal certainty is undermined, since the land remains administratively registered under the developer's

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name, thereby exposing buyers to significant legal risks, particularly in cases involving disputes or insolvency.[1]

This issue becomes increasingly complex when analyzed within the framework of mortgage law (Hak Tanggungan). The delay in title transfer directly affects the ability of creditors, particularly banks, to register mortgage rights as collateral. Under Indonesian law, mortgage registration is constitutive, meaning that legal protection and preferential status arise only upon proper registration. Consequently, any delay or procedural defect in registration may invalidate the mortgage certificate, stripping creditors of their priority rights and weakening their legal position. Empirical and doctrinal studies have demonstrated that inefficiencies in land administration not only affect individual transactions but also undermine the broader legal infrastructure governing property and credit systems.[2] This reflects a systemic issue where administrative shortcomings translate into substantive legal vulnerabilities.

A number of previous studies have examined aspects of land registration, mortgage law, and bankruptcy in Indonesia. For example, emphasizes the persistence of legal uncertainty in land administration, highlighting the absence of effective regulatory enforcement mechanisms.[3] Analyze the hierarchy of creditors in bankruptcy proceedings, demonstrating how the distinction between secured and unsecured creditors determines the distribution of assets.[4] Further explores the legal consequences of delayed mortgage registration, particularly in banking practices.[5] While these studies provide valuable insights, they tend to approach the issues in a fragmented manner, focusing on isolated legal domains without sufficiently addressing the interconnectedness between land law, security law, and bankruptcy law.

The primary limitation of prior research lies in the absence of an integrated analytical framework capable of explaining how delays in administrative processes can generate cascading legal consequences across multiple legal regimes. Specifically, there is insufficient analysis linking delays in title transfer to the potential invalidity of mortgage rights and the resulting downgrading of creditor status in bankruptcy proceedings. Moreover, existing studies often overlook the position of property buyers, who occupy a particularly vulnerable position due to their reliance on administrative processes beyond their control. This study seeks to address these limitations by offering a comprehensive juridical analysis that connects these issues into a single, coherent framework, thereby providing a more holistic understanding of the legal risks involved.

The scientific merit and novelty of this research lie in its conceptualization of delayed title transfer as a central legal risk factor with systemic implications. Rather than treating administrative delay as a purely technical issue, this study demonstrates how such delays affect the validity of mortgage rights, alter creditor hierarchy in bankruptcy, and weaken consumer protection. By incorporating statutory analysis and case law, particularly Supreme Court Decision No. 2768 K/Pdt/2011, this research highlights the constitutive nature of procedural compliance in Indonesian security law. Furthermore, the study

[1] Widiyono, T., dan M. Z. K. Khan, 2023, Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law, Law Reform: Jurnal Pembaharuan Hukum, Vol. 19, No. 1, Page 128

[2] Utomo, W., dan L. Hanim, 2026, Implementation Of Mortgage Rights That Are Not Registered At The Land Office, Ratio Legis Journal (RLJ), Vol. 5, No. 1, Page 625

[3] *Op. Cit.*, Widiyono dan Khan, Page 627

[4] Yuhelson, dan N. Hakim, 2025, Legal Protection of Secured Creditors in Contemporary Bankruptcy: A Comparative Study of Positive Law and Islamic Law, MILRev: Metro Islamic Law Review, Vol. 4, No. 2, Page 167

[5] Arif, A., 2025, Juridical Review Of Mortgage Execution In Bad Credit Cases: A Civil Procedure Law Perspective, Equality: Journal of Law and Justice, Vol. 2, No. 2, Page 200

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introduces a critical perspective on the interaction between formal legality and substantive justice, arguing that excessive reliance on procedural formalism may produce inequitable outcomes for good-faith buyers.

Based on these considerations, this study aims to analyze the juridical implications of delayed title transfer on the validity of mortgage rights and to examine the legal position of buyers and creditors in the event of developer bankruptcy. The research is guided by the following questions: how does the delay in title transfer affect the legal validity of mortgage rights, and what are the consequences for the parties involved when bankruptcy occurs before the completion of registration? To answer these questions, this article is structured as follows. The first section introduces the research background and problem formulation, the second section outlines the research methodology, the third section presents the results and discussion, and the final section provides conclusions and recommendations.

B. Research Method

This study employs a normative juridical research method, which focuses on analyzing legal norms, principles, and doctrines as the primary basis for examining legal issues.[6] The approach used in this research consists of a statutory approach and a case approach. The statutory approach is applied to examine relevant legal frameworks, including the Law on Mortgage Rights, Bankruptcy Law, and Consumer Protection Law, in order to identify normative inconsistencies and gaps in regulating title transfer and mortgage registration. Meanwhile, the case approach is centered on the analysis of Supreme Court Decision No. 2768 K/Pdt/2011, which serves as a key reference in understanding the legal consequences of delayed mortgage registration.

The research specification is analytical-descriptive, aiming to provide a systematic explanation of the legal issues and their implications for the parties involved. The types of legal materials used include primary, secondary, and tertiary legal sources. Primary legal materials consist of statutory regulations and court decisions, while secondary materials are derived from recent scholarly publications, particularly journal articles published within the last five years to ensure the relevance and contemporaneity of the analysis. Tertiary materials include legal dictionaries and supporting references.

Data collection is conducted through a literature study, while the data analysis method is, emphasizing legal reasoning and systematic interpretation.[7] The analysis focuses on assessing the consistency between legal norms and their implementation in practice, as well as identifying the juridical implications arising from delays in title transfer and mortgage registration. This approach enables the study to provide a comprehensive understanding of the legal risks and to formulate normative recommendations for improving legal certainty.

C. Results and Discussion

1. Normative Vacuum in the Title Transfer Process

The absence of a clear regulatory time limit governing the process of title transfer (balik nama) creates significant legal uncertainty within Indonesia's land administration system.[8] In practice, this uncertainty places buyers in a vulnerable legal

[6] Wiraguna, S. A., 2024, Metode Normatif dan Empiris dalam Penelitian Hukum: Studi Eksploratif di Indonesia, Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum, Vol. 3, No. 3

[7] Bowen, G. A., 2009, Document Analysis as a Qualitative Research Method, Qualitative Research Journal, Vol. 9, No. 2, Page 27

[8] Fua'di, Nurdin, Z., dan Delfiyanti, 2025, REGISTRATION OF LAND OWNERSHIP TRANSFER BY PRIVATE

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position, as they are unable to fully acquire proprietary rights despite having fulfilled their payment obligations. From the perspective of property law, ownership rights are not merely derived from contractual agreements but require formal registration to achieve full legal recognition. Consequently, delays in the title transfer process prevent the transition from obligatoir rights (contractual rights) to zakelijke rights (real rights), thereby undermining the principle of legal certainty.

Recent studies indicate that the lack of temporal certainty in land administration is a major contributing factor to property disputes and consumer losses.[9] This situation reflects a structural weakness in the regulatory framework, where administrative inefficiencies intersect with legal ambiguity. Moreover, the absence of a binding obligation requiring developers to promptly process title transfers highlights a clear normative vacuum (rechtvacuum). Such a vacuum signifies not merely a gap in legislation but also a systemic failure to ensure effective legal protection for buyers.[10]

From a theoretical standpoint, this condition contradicts the principle of legal certainty (rechtszekerheid), which requires that laws be clear, predictable, and enforceable. Without a defined timeframe or enforceable sanctions, the legal system fails to provide adequate guidance for parties involved in property transactions. As a result, developers may exploit this regulatory gap, delaying the transfer process without facing significant legal consequences. This imbalance ultimately shifts the burden of risk onto buyers, who lack both legal leverage and institutional protection.

2. Validity of Mortgage Rights and Delays in Registration

Under Article 13 of the Indonesian Mortgage Law (Undang-Undang Hak Tanggungan), registration constitutes an absolute requirement for the establishment of mortgage rights. This provision reflects the constitutive nature of registration, meaning that the legal existence of a mortgage right depends entirely on its formal registration. Therefore, any delay in the registration process directly affects the validity and enforceability of the security right.

Empirical findings suggest that non-compliance with administrative procedures in the establishment of security rights can lead to the loss of preferential rights for creditors.[11] In this context, registration is not merely procedural but fundamentally determines the legal status of the mortgage. Without proper registration, the creditor cannot claim priority over other creditors, thereby weakening their legal position in the event of default or insolvency.

Judicial practice further reinforces this principle. The Supreme Court Decision Number 2768 K/Pdt/2011 confirms that delays in registration may render a Mortgage Certificate legally defective. This decision underscores the formalistic character of security law in Indonesia, where procedural compliance is essential for the creation of legal rights. Argues that such formal requirements are inherently constitutive and cannot be disregarded without undermining the integrity of the legal system.[12]

From a broader legal perspective, this issue illustrates the tension between substantive justice and procedural formalism. While the creditor may have a

SALE AND PURCHASE DEED, Andalas Notary Journal, Vol. 2, No. 1, Page 95

[9] *Op. Cit.*, Widiyono dan Khan, Page 628

[10] *Op. Cit.*, Yuhelson dan Hakim, Page 168

[11] *Op. Cit.*, Utomo dan Hanim, Page 626

[12] Triwanto, T., P. Puspaningrum, dan D. P. Sari, 2025, Legal Review of the Execution of Mortgage Rights on Land (Study of Constitutional Court Decision Number 10/PUU-XIX/2021), Customary Law Journal, Vol. 2, No. 4, Page 1

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legitimate economic interest, the failure to comply with formal requirements negates their legal protection. This reflects a rigid legal framework that prioritizes formal legality over equitable considerations. However, such rigidity is justified within the context of property and security law, where certainty and publicity are paramount.

3. **Implications in Developer Bankruptcy**

The legal consequences of delayed title transfer become particularly severe in cases where the developer is declared bankrupt before the transfer process is completed. In such situations, assets that have not yet been registered under the buyer's name may be included in the bankruptcy estate (boedel pailit). This classification significantly disadvantages buyers, as they are treated as concurrent creditors rather than secured or preferred creditors.

Recent research highlights that concurrent creditors generally experience very low recovery rates compared to secured creditors.[13] This disparity reflects the hierarchical structure of creditor claims in bankruptcy law, where secured creditors (kreditor separatis) enjoy priority due to their collateral rights. In contrast, buyers who have not completed the title transfer process lack such protection, despite having fulfilled their financial obligations.

This condition reveals a fundamental imbalance in legal protection between parties holding real security rights and those relying solely on contractual relationships. From a doctrinal perspective, the distinction between obligatoir and zakelijke rights becomes critically important. While obligatoir rights establish a legal relationship between parties, they do not provide protection against third parties, particularly in insolvency proceedings.[14] Consequently, buyers are exposed to significant legal risks due to delays in administrative processes beyond their control.

Furthermore, this issue raises concerns regarding fairness and justice within the legal system. Buyers, who act in good faith and fulfill their contractual obligations, are placed in a weaker position compared to financial institutions that hold registered security rights. This outcome contradicts the principle of equitable protection and highlights the need for legal reform to address systemic vulnerabilities in property transactions.

4. **Legal Protection for Buyers**

This study indicate that legal protection for buyers remains inadequate due to overlapping and inconsistent regulations across land law, bankruptcy law, and consumer protection law. This regulatory fragmentation creates ambiguity and weakens the bargaining position of consumers in property transactions. Emphasizes that regulatory inconsistency is a key factor contributing to consumer vulnerability in the real estate sector.[15]

From a regulatory perspective, the lack of harmonization between different legal regimes results in gaps and conflicts that undermine legal certainty. For instance, while land law emphasizes formal registration, consumer protection law focuses on fairness and transparency. However, the absence of integration between these frameworks leads to ineffective enforcement and limited protection for buyers.

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[13] *Op. Cit.*, Yuhelson & Hakim, Page 168

[14] Luwinanda, A. M., dan O. Handayani, 2025, Legal Protection for Third Parties Against Actio Pauliana Lawsuits in Bankruptcy Cases in Indonesia, Publication of the International Journal and Academic Research, Vol. 1, No. 2, Page 64

[15] Wibowo, M. A., dan S. Syafrida, 2026, Analysis of Consumer Protection Against Standard Contract Clauses in Credit Insurance Agreements, Journal of Social Research, Vol. 5, No. 4, Page 1582

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To address these challenges, several measures are necessary,[16] First, regulatory harmonization is essential to ensure consistency across legal frameworks. This includes aligning land administration procedures with consumer protection principles and bankruptcy regulations. Second, stronger administrative obligations should be imposed on developers to ensure timely completion of the title transfer process. Such obligations must be accompanied by clear sanctions to ensure compliance. Third, enhanced oversight by land authorities is required to monitor and enforce administrative procedures effectively.

From a theoretical standpoint, strengthening legal protection for buyers aligns with the concept of responsive law, which emphasizes the role of law in addressing social needs and promoting justice.[17] By adopting a more integrated and proactive regulatory approach, the legal system can better protect vulnerable parties and ensure a more equitable distribution of risks.

Overall, the findings demonstrate that delays in the title transfer process have far-reaching legal implications, affecting not only administrative efficiency but also the substantive rights of buyers and creditors. The existence of a normative vacuum, combined with rigid formal requirements and regulatory fragmentation, creates a legal environment characterized by uncertainty and imbalance.

This study highlights the need for a more coherent and integrated legal framework that prioritizes legal certainty, fairness, and consumer protection. In particular, the transition from obligatoir rights to zakelijke rights must be facilitated through efficient administrative procedures and clear regulatory guidelines. Without such reforms, buyers will continue to face significant legal risks, particularly in cases involving developer insolvency.

In conclusion, the issues identified in this study are not merely technical or administrative but reflect deeper structural problems within Indonesia's legal system. Addressing these challenges requires a comprehensive approach that combines legislative reform, institutional strengthening, and theoretical reorientation toward a more responsive and equitable legal order.

5. Application of the Piercing the Corporate Veil Doctrine to Directors' Personal Liability

The doctrine of piercing the corporate veil becomes highly relevant as a mechanism to ensure substantive justice. This doctrine, which literally means "lifting the corporate veil," allows courts to disregard the separate legal personality of a corporation and impose liability directly on its controllers, including directors and shareholders. In principle, a limited liability company (Perseroan Terbatas) is recognized as an independent legal entity with a clear separation between corporate assets and personal assets of its management. However, this protection is not absolute. It may be lifted when there is evidence of bad faith, abuse of corporate form, or gross negligence in corporate management.[18]

Normatively, Article 104(2) of Law No. 40 of 2007 concerning Limited Liability Companies provides that if bankruptcy occurs due to fault or negligence of the board

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[16] Wulandari, B. T., Arif Awaludin, dan E. Indriasari, 2025, The Urgency of Harmonizing Consumer Protection Law in the Era of Digital Economy and Market Globalization, Journal of Law, Politic and Humanities, Vol. 6, No. 1, Page 180

[17] Haryanti, T., 2025, Reconstruction of Consumer Protection Law in the Digital Era: A Legal Responsiveness Perspective, Pena Justisia: Media Komunikasi Dan Kajian Hukum, Vol. 24, No. 1, Page 7152

[18] Daniel P. Sitorus, A., 2022, Mengenal Istilah Hukum Piercing The Corporate Veil, IndonesiaRe, https://www.indonesiare.co.id//id/article/mengenal-istilah-hukum-piercing-the-corporate-veil

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of directors and the bankruptcy estate is insufficient to cover corporate liabilities, each director shall be jointly and severally liable for the remaining obligations.[19] This provision confirms that limited liability protection collapses when fiduciary duties are violated.

In the property sector, this issue is particularly significant. Empirical patterns indicate that developers often misuse consumer funds or engage in cross-project financing practices ("gali lubang tutup lubang"), leading to systemic financial failure. In such circumstances, bankruptcy is not merely a result of business risk but may reflect managerial misconduct or bad governance.

From a legal standpoint, creditors or curators may initiate claims to establish that directors have breached their fiduciary duty, particularly the duties of care and good faith. Once such a breach is proven, the corporate veil can be pierced, allowing the seizure of directors' personal assets to compensate creditors, including homebuyers who have not obtained legal ownership.

Furthermore, this liability may extend into the realm of criminal law. Directors who engage in fraudulent acts such as concealing assets or providing false financial information may be prosecuted under Articles 396–399 of the Indonesian Criminal Code relating to bankruptcy crimes. Thus, the application of this doctrine serves as an essential corrective mechanism to prevent abuse of corporate structures and to ensure accountability.[20]

6. Legal Position and Protection of Property Buyers in Mortgage, Cash, and Installment Schemes

The legal position of property buyers varies significantly depending on the contractual instruments held at the time of bankruptcy. In mortgage (KPR) schemes, buyers occupy a dual legal position: (1) as debtors to the bank, and (2) as creditors to the developer, having paid the purchase price through financing facilities.

From a juridical perspective, the execution of the Sale and Purchase Deed (AJB) constitutes a valid transfer of ownership under the doctrine of levering. As an authentic deed executed before a land deed official (PPAT), the AJB provides strong evidentiary value that ownership has been transferred. Therefore, if the AJB is signed prior to the declaration of bankruptcy, the property should no longer be considered part of the developer's bankruptcy estate.[21]

However, significant legal problems arise in cases where transactions remain at the stage of the Sale and Purchase Binding Agreement (PPJB), particularly in installment (cash bertahap) schemes. Under bankruptcy law, PPJB is generally interpreted as an obligatoir agreement rather than a transfer of ownership. Consequently, even if buyers have made substantial payments, the property remains legally registered under the developer's name.[22]

[19] Laksana, A., F. Margaret, Y. Y. Pradigdo, dan I. C. L. Wuwung, 2025, Legal Liability for the Bankruptcy of a Limited Liability Company Resulting from Unlawful Conduct, Journal of Law, Politic and Humanities, Vol. 6, No. 1, Page 287

[20] Karyose, H., dan Suparno, 2024, Legal Consequences of Execution of Land on Which There is a Building of Another Person Based on a Review of the Mortgage Rights Provisions, JCS - Journal of Comprehensive Science, Vol. 3, No. 11

[21] Ghifar, M. A., Solikhah, dan B. Harahap, 2026, LEGAL ISSUES OF TRANSFER OF LAND RIGHTS THROUGH SALE AND PURCHASE THAT DOES NOT ACCORD TO THE PROCEDURE FOR MAKING A DEED OF SALE AND PURCHASE (Study of Supreme Court Decision Number 1196 K / Pdt / 2020), Multidiciplinary Output Research For Actual and International Issue (MORFAI), Vol. 6, No. 4, Page 4612

[22] Azzahra, S., 2025, Legal Implications and Challenges of Informal Sale and Purchase Binding Agreements (PPJB): The Role of Notaries in Ensuring Legal Validity and Protection, Al-Qanun: Jurnal Kajian Sosial Dan Hukum

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This situation places buyers in the position of concurrent creditors, ranked last in the distribution of bankruptcy assets after secured and preferred creditors. Such a position significantly reduces their chances of recovering their investment.

Ideally, the involvement of banks in mortgage schemes should provide stronger legal protection, as financial institutions are expected to apply prudential principles. However, this protection is only effective when the legal process, particularly the execution of AJB and registration is completed.

Therefore, the study emphasizes that AJB must be treated as a point of no return, marking the definitive separation between developer assets and buyer assets. Without AJB, buyers remain exposed to legal uncertainty and risk losing both the property and their financial investment.

7. Legal Construction of Tort (PMH) in Delays of Title Transfer and Mortgage Registration

The findings establish that delays in the title transfer process and mortgage registration may constitute not only breach of contract but also tortious liability (perbuatan melawan hukum/PMH) under Article 1365 of the Civil Code.

a. Elements of Tort

To establish liability, four essential elements must be fulfilled:

1) Act (Perbuatan): The developer intentionally delays or refuses to submit required documents for title transfer.
2) Unlawfulness (Melawan Hukum): The act violates legal obligations, infringes upon buyers' rights, and contradicts principles of fairness and propriety.
3) Fault (Kesalahan): The delay is attributable to negligence or intentional misconduct, often linked to financial incapacity or double encumbrance practices.
4) Damage and Causality: Buyers suffer legal and economic losses, including loss of ownership protection and exposure to bankruptcy risks, while banks lose their secured creditor status.

b. Constitutive Legal Obligations

The obligation to register mortgage rights is governed by Law No. 4 of 1996 on Mortgage Rights, which requires that the Deed of Granting Mortgage (APHT) be registered within seven working days. This requirement is constitutive, meaning that the mortgage right only exists upon registration.

The Supreme Court decision No. 2768 K/Pdt/2011 reinforces this principle by declaring that delayed registration renders the Mortgage Certificate legally defective. As a result, creditors lose their execution rights and preferential status.

Although the obligation to register lies formally with the PPAT, substantively it depends on the developer's cooperation in providing the necessary documents. Therefore, the developer's failure to facilitate this process constitutes a violation of both property law and consumer protection obligations.[23]

8. Analysis of Supreme Court Decision No. 2768 K/Pdt/2011

The study identifies Supreme Court Decision No. 2768 K/Pdt/2011 as a landmark

Islam, Vol. 6, No. 1, Page 9

[23] Dwiputranto, A., dan Tjempaka, 2024, The Legality of Land Transactions with Certificates Encumbered by Mortgage Rights, Jurnal Cakrawala Hukum, Vol. 15, No. 2, Page 110

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ruling that fundamentally reshapes the legal understanding of mortgage validity in Indonesia.

a. Legal Reasoning

In its legal considerations, the Supreme Court stated as follows:

"*Considering the grounds of cassation, the Supreme Court is of the opinion that, with respect to the first through the third grounds, such arguments are justified, as the High Court of Medan (Judex Facti) misapplied the law based on the following considerations:*

Although the Respondent, as the holder of a mortgage right, should in principle be entitled to legal protection, the validity of such mortgage right must first be examined;

Pursuant to Article 13 paragraphs (1) and (2) of Law No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, it is stipulated that:

1) The granting of a Mortgage Right must be registered at the Land Office;
2) No later than seven (7) working days after the signing of the Deed of Granting Mortgage (APHT) as referred to in Article 10 paragraph (2), the Land Deed Official (PPAT) must submit the relevant APHT and other required documents to the Land Office;

In the present case (a quo), it is evident that the registration of the mortgage right did not comply with these provisions. The APHT was executed on 29 August 2008, whereas the registration was only carried out on 14 May 2009. Accordingly, the deed should have been registered no later than September 2008. Therefore, Mortgage Certificate No. 537/2009 (Exhibit P.3) is declared legally defective.

From the excerpt above, it is evident that the Supreme Court places strict compliance with registration procedures as an absolute requirement for the validity of a Mortgage Certificate (SHT). The critical element lies in the seven (7) working day deadline imposed on the PPAT to submit the APHT to the Land Office. The legal consequence of significant delay in registration as occurred in this case, from August 2008 to May 2009 is severe: the resulting Mortgage Certificate is deemed legally defective and lacks binding legal force.

b. Legal Implications and the Urgency of Procedural Compliance in Mortgage Rights

The legal consequences of a defective Mortgage Certificate (SHT) are profound and far-reaching, significantly altering the position of creditors within the legal framework. When a mortgage certificate is declared legally defective due to procedural non-compliance, creditors lose their right to execute collateral directly through *parate executie* and are ins[24] tead compelled to pursue lengthy and costly court proceedings. In addition, secured creditors who would ordinarily enjoy preferential status are downgraded to concurrent creditors, thereby losing their

[24] Hirwansyah, H., D. Rusmana, dan M. A. Syaifudin, 2025, The Validity of Authentic Deeds for Mortgage Loan Agreements in Banks When the Signing of the Contract Is Not Conducted Before a Notary/Ppat, Krtha Bhayangkara, Vol. 19, No. 3, Page 853

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priority in the distribution of assets.[25] This degradation of status exposes creditors to greater financial risk, particularly in insolvency situations. Furthermore, the invalidity of the mortgage opens the possibility for debtors or third parties to challenge or even annul foreclosure processes in court. At the same time, failure to comply with registration obligations may also expose Land Deed Officials (PPAT) to civil liability on the basis of professional negligence. These consequences collectively demonstrate that procedural compliance is not merely administrative in nature but constitutes the very substance of legal validity in security law.

In this context, the urgency of procedural compliance in the registration of mortgage rights (*Hak Tanggungan*) becomes evident. The findings of this study confirm that compliance with formal-administrative requirements, particularly those stipulated under Article 13 paragraph (2) of the Mortgage Law, is a *conditio sine qua non* for the existence of a valid security right. The requirement that the Deed of Granting Mortgage (APHT) must be registered within seven working days is not a mere procedural guideline but a determinative condition for the validity of the Mortgage Certificate.[26] Any delay in registration renders the certificate legally defective and results in the automatic loss of executorial rights. This reflects a doctrinal development in Indonesian security law in which procedure is elevated to the level of substance, meaning that legal validity is contingent not only upon the existence of an agreement but also upon strict adherence to procedural requirements.

The implications of such procedural defects extend beyond individual transactions and give rise to systemic risks within the broader credit system. A defective mortgage fundamentally weakens the legal protection afforded to creditors by eliminating their preferential status, restricting their ability to execute collateral efficiently, and increasing their exposure to legal disputes. These conditions undermine the reliability of secured transactions and may affect the stability of financial institutions that rely on mortgage-based lending. Accordingly, procedural non-compliance should be understood not merely as a technical failure but as a source of structural legal risk with wider economic implications.[27]

In response to these risks, the study identifies a necessary paradigm shift from passive reliance on formal documentation toward active compliance monitoring. Financial institutions can no longer assume that the execution of APHT alone guarantees legal protection. Instead, they must ensure that the entire registration process is completed in accordance with statutory requirements. This includes continuous verification of registration timelines and administrative compliance to safeguard the enforceability of security rights. Such an approach aligns with the principle of prudential risk management in financial law, where

[25] Silalahi, U., dan Claudia, 2020, Kedudukan Kreditor Separatis Atas Hak Jaminan Dalam Proses Kepailitan, Masalah-Masalah Hukum, Vol. 49, No. 1, Page 35
[26] *Op. Cit.*, Hirwansyah, Rusmana dan Syaifudin, Page 854
[27] *Op. Cit.*, Silalahi dan Claudia, Page 36

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legal compliance is integrated into broader risk mitigation strategies.[28]

Table 1. Summary of Risks Arising from Supreme Court Decision No. 2768 K/Pdt/2011 on Auction Execution

Aspect	Valid Mortgage Certificate (SHT)	Defective Mortgage Certificate (SHT) (Decision No. 2768)
Enforcement Power	Direct execution through public auction via KPKNL is permissible.	Execution must proceed through lengthy civil litigation in the District Court.
Priority of Payment	Holds first priority as a secured (preferred) creditor.	Downgraded to concurrent creditor status, equal to other unsecured claims.
Asset Security	Fully protected under the Mortgage Law (UUHT).	Vulnerable to claims, seizure, or competing interests from third parties.
Auction Status	Legally strong and enforceable.	Highly susceptible to annulment or legal challenge in court.

From a doctrinal perspective, it is widely accepted that the Sale and Purchase Deed (AJB) and Credit Agreement possess final and binding legal force in a material sense, particularly in evidencing the transfer of rights and obligations between the parties. Therefore, if a developer continues to record the property as part of its corporate assets especially in the context of bankruptcy despite the existence of a valid AJB, such conduct may constitute a form of fictitious accounting or unlawful retention of immovable property rights.

In legal terms, this practice may be interpreted as an unlawful act involving the misrepresentation of ownership status. From a criminal law perspective, such conduct may fall within the scope of Article 385 of the Indonesian Criminal Code (KUHP) concerning *stellionaat*, which criminalizes fraudulent acts related to the transfer or encumbrance of land rights.

This reinforces the argument that once the AJB has been validly executed, the developer no longer has legitimate legal standing over the property, and any contrary claim may give rise not only to civil liability but also potential criminal consequences.

9. The Essence of Legal Certainty in Mortgage Law

Mortgage rights are fundamentally designed to ensure legal certainty and publicity, thereby enabling creditors to enforce their rights effectively against third parties.

[28] Daniel P. Sitorus, A., 2022, Mengenal Istilah Hukum Piercing The Corporate Veil, IndonesiaRe, https://www.indonesiare.co.id//id/article/mengenal-istilah-hukum-piercing-the-corporate-veil

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These principles, however, are critically dependent on strict compliance with procedural requirements. Failure to adhere to such requirements, particularly those governing registration undermines the very foundation upon which mortgage rights are constructed. In this regard, the study identifies a crucial legal construction, namely that a procedural defect results in the loss of executorial rights. When the registration of a mortgage right exceeds the statutory deadline, the resulting Mortgage Certificate (SHT) becomes legally defective.[29] The implications of this defect are substantial: creditors lose their right to immediate execution, the security right becomes unenforceable, and the legal relationship between the parties is reduced to a purely obligatoir claim. This demonstrates a direct and inseparable link between administrative compliance and substantive legal protection.

The consequences of such procedural defects also extend to the legal position of buyers. In situations where the title transfer (*balik nama*) has been properly completed but the registration of the mortgage is defective, a unique legal configuration emerges.[30] The buyer may hold a certificate that is formally registered in their name, thereby establishing ownership, while the mortgage encumbrance lacks legal validity due to procedural non-compliance. This condition creates a reversal in the balance of legal power, where the buyer attains a stronger legal position, and the creditor loses the capacity to enforce the security. Such circumstances underscore the critical importance of procedural discipline in maintaining equilibrium between the rights and obligations of the parties involved.

Furthermore, the study identifies the phenomenon of what may be termed "procedural default" (*wanprestasi prosedural*), involving developers, financial institutions, and Land Deed Officials (PPAT). Delays in registration are often not incidental but may arise from administrative negligence or even implicit coordination among these actors. This form of procedural breach has significant legal consequences, as it may render subsequent legal acts voidable or, in certain cases, null and void when they contradict mandatory statutory provisions. Although the underlying debt relationship between creditor and debtor remains valid, the associated security right may collapse entirely due to procedural defects. This illustrates that procedural compliance is not merely a formal obligation but a substantive requirement that determines the effectiveness and enforceability of legal rights within the Indonesian mortgage system.

10. Strengthening Escrow Systems and Rigid Regulatory Timelines

The findings of this study highlight the urgent need for institutional and regulatory reform to address the structural weaknesses inherent in the title transfer and mortgage registration processes in Indonesia. These weaknesses, as demonstrated throughout the analysis, are not merely technical deficiencies but reflect deeper systemic issues that compromise legal certainty and the protection of parties involved in property transactions. Accordingly, a more robust and enforceable regulatory framework is required to ensure that administrative processes operate efficiently and in alignment with the fundamental principles of property and security law.

A central aspect of such reform lies in the establishment of mandatory and clearly defined regulatory timelines. The absence of enforceable deadlines in the title

[29] Noor, A., D. Anita, A. T. Wijaya, dan R. S. P. Adiwijaya, 2024, Registration of Mortgage Rights that Exceed the Time Limit at the Agrarian and Spatial Planning Office/National Land Agency Based on Law Number 4 of 1996 in Tasikmalaya City, Journal of Law, Politic and Humanities, Vol. 4, No. 6, Page 1872

[30] Hamzah, Y. A., dan A. A. Mangarengi, 2023, The Authority of PPAT in Making AJB Related to Heritage Land Owned by a Minor, SIGn Jurnal Hukum, Vol. 4, No. 2, Page 364

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transfer process has created a legal environment characterized by uncertainty and delay. Therefore, it is essential to introduce a rigid framework that requires the formal registration of title transfer within a specified period following the execution of the Sale and Purchase Deed (AJB) or the credit agreement. By ensuring that ownership transitions are promptly recorded within the land administration system, such regulation would eliminate the legal limbo that currently exposes buyers to significant risks, particularly the possibility that their property may still be classified as part of the developer's bankruptcy estate.[31]

In addition to regulatory timelines, the imposition of administrative sanctions and enhanced accountability mechanisms is necessary to ensure compliance. Developers who fail to process title transfers within a reasonable timeframe should be subject to strict sanctions, including the suspension or revocation of business licenses and inclusion in financial blacklisting systems. These measures would create a deterrent effect and encourage greater adherence to legal obligations. Furthermore, accountability should not be limited to developers alone but must also extend to Land Deed Officials (PPAT) and financial institutions. As key actors in the registration process, their compliance with procedural requirements is essential to maintaining the integrity of the legal system. Strengthening oversight and enforcement mechanisms would therefore contribute significantly to reducing administrative negligence and preventing procedural violations.

Another important reform proposed in this study is the implementation of an escrow-based certificate system. Under this mechanism, land certificates would be held by an independent third party, such as a custodian bank or a state-appointed notary, rather than remaining under the control of developers. This approach would prevent developers from retaining physical control over certificates and engaging in practices such as double pledging or delaying the transfer process for strategic purposes. From a legal perspective, the adoption of an escrow system would enhance transparency, reduce information asymmetry, and strengthen trust in property transactions. Moreover, it aligns with contemporary governance principles that emphasize accountability, risk management, and the protection of stakeholders in complex financial and property transactions.

Taken together, the inclusion of these reform measures reinforces the broader conclusion that delays in title transfer and mortgage registration are not isolated administrative issues but part of a wider structural problem within Indonesia's legal system. The analysis throughout this study demonstrates that such delays are closely linked to normative gaps in land law, rigid procedural requirements in security law, imbalances in bankruptcy protection, weak consumer safeguards, and insufficient mechanisms for corporate accountability. These interconnected issues reveal a legal framework that, while emphasizing formal legality, often falls short in achieving substantive justice.

Therefore, comprehensive reform is imperative. Such reform must involve not only regulatory harmonization across different legal regimes but also the strengthening of procedural enforcement and the introduction of institutional innovations such as escrow systems. By adopting a more integrated and responsive approach, the legal system can better ensure legal certainty, fairness, and effective protection for all stakeholders involved in property transactions in Indonesia.

Table 2. Strategic Recommendations for Buyers

[31] *Op. Cit.*, Noor, Anita, Wijaya, dan Adiwijaya, Page 1873

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Buyer's Situation	Recommended Action
Ongoing Mortgage (KPR)	Request copies of the Mortgage Certificate (SHT) and the Deed of Granting Mortgage (APHT). If a delay in registration is identified, retain this as a strategic legal safeguard in the event of future financial difficulties.
Installment Purchase (Cash in Stages)	Ensure that the Land Deed Official (PPAT) promptly processes the title transfer (*balik nama*). Avoid signing the APHT if the status of the title transfer remains unclear, in order to prevent potential misuse of documents by the developer.
Facing Auction Risk	Immediately file a legal objection (*gugatan perlawanan*) on the grounds that the Mortgage Certificate is legally defective due to late registration (beyond the 7-day statutory period). This may effectively suspend the auction process at the State Assets and Auction Service Office (KPKNL).

D. Conclusion and Recommendations

This study has examined the legal implications of delays in the title transfer (balik nama) process within Indonesia's property law system, focusing on four main issues: (1) the existence of a normative vacuum, (2) the validity of mortgage rights in the event of delayed registration, (3) the legal consequences in cases of developer bankruptcy, and (4) the adequacy of legal protection for buyers. Based on the findings and discussion, several key conclusions can be drawn.

First, the study confirms the existence of a normative vacuum (rechtvacuum) in the regulation of title transfer, particularly concerning the absence of a clear time limit and enforceable obligations for developers. This condition creates legal uncertainty and prevents buyers from acquiring full proprietary rights despite having fulfilled their contractual obligations. As a result, the principle of legal certainty (rechtszekerheid) is not adequately realized in practice. Second, the study finds that the validity of mortgage rights is strictly dependent on compliance with formal registration requirements, as mandated by Article 13 of the Mortgage Law. Delays in registration directly affect the legal existence of mortgage rights and may result in the loss of creditors' preferential status. This confirms the constitutive nature of registration in Indonesian security law, where procedural compliance is essential for the creation and protection of legal rights. Third, in the context of developer bankruptcy, delays in the title transfer process place buyers in a highly vulnerable legal position. Assets that have not yet been registered under the buyer's name may be included in the bankruptcy estate, thereby classifying buyers as concurrent creditors with limited recovery prospects. This demonstrates a significant imbalance in legal protection between holders of real security rights and parties relying solely on contractual relationships. Fourth, the study concludes that legal protection for buyers remains weak due to overlapping and inconsistent regulations across land law, bankruptcy law, and consumer protection law. This lack of harmonization reduces legal certainty and weakens the bargaining position of consumers in property transactions.

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Overall, this study demonstrates that the research objectives have been achieved, particularly in identifying the structural weaknesses within the legal framework governing property transactions and in analyzing their implications for legal certainty and justice. The findings highlight the urgent need for regulatory reform, including: (1) the establishment of clear time limits and obligations for title transfer; (2) stricter enforcement of registration requirements; and (3) harmonization of relevant legal frameworks to ensure comprehensive legal protection for buyers. In conclusion, without significant legal and institutional improvements, delays in the title transfer process will continue to generate legal uncertainty, economic risk, and systemic injustice. Therefore, a more integrated and responsive legal approach is required to ensure fairness, certainty, and protection for all parties involved in property transactions in Indonesia.

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