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Legal Certainty for Creditors Holding Second-Ranking and Subsequent Mortgage Rights in Execution Auctions

Diah Kusumo Dewi[1*], Amelia Sri Kusuma Dewi[1], Satria Amiputra Amimakmur[1]

[1]Faculty of Law, Brawijaya University Malang, Indonesia

[*]Corresponding Author E-mail diahkusumodewi@student.ub.ac.id

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ABSTRACT

There is a normative gap between the legal recognition of second-ranking mortgage rights as provided under Article 5(1) of the Mortgage Law and the implementation of their execution rights in auction practice, particularly due to the rejection of auction applications submitted by the Office of State Assets and Auction Services (KPKNL) on behalf of creditors holding second-ranking and subsequent mortgage rights. This study aims to analyze the juridical implications of Article 5(1) of the Mortgage Law for the legal position of creditors holding second-ranking and subsequent mortgage rights in the execution auction of mortgaged property, as well as to examine the legal protection afforded to such creditors. This research employs a normative legal research method using both the statutory and conceptual approaches through the analysis of legislation, legal doctrines, and other relevant legal materials. The findings reveal that although Article 5(1) of the Mortgage Law explicitly recognizes the existence of second-ranking and subsequent mortgage rights, it does not adequately regulate the mechanism for exercising execution rights or provide comprehensive legal protection for subordinate mortgage creditors. Consequently, the execution auction process continues to be hindered by divergent interpretations regarding execution authority, resulting in the potential rejection of auction applications filed by creditors holding second-ranking and subsequent mortgage rights. The novelty of this study lies in proposing a harmonized regulatory framework governing execution authority and a legal protection mechanism for creditors holding second-ranking and subsequent mortgage rights, thereby providing a foundation for the reform of Indonesian secured transactions law.

Keywords : Mortgage Right; Legal Certainty; Subordinated Creditors; Execution Auction; Credit Agreement.

1. INTRODUCTION

The development of the banking sector plays a highly strategic role in supporting national economic growth through its intermediation function, namely by mobilizing public funds and channeling them into credit facilities. The effectiveness of this function largely depends on the quality of credit distribution and banks' ability to manage financing risks. In recent years, the increasing Non-Performing Loan (NPL) ratio has indicated that credit risk remains a significant challenge for the Indonesian banking industry. This condition has been driven by economic slowdown, inflationary pressures, rising living costs, global economic uncertainty, and geopolitical dynamics that have adversely affected debtors' capacity to fulfill their financial obligations (Hermansyah, 2009). Accordingly, the implementation of the prudential banking principle and sound risk management has become an essential instrument for maintaining financial system stability while ensuring legal certainty for the parties involved in credit relationships. These developments have also attracted considerable attention in international legal and financial

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literature. The Business Ready Report published by the World Bank emphasizes that the effectiveness of a financing system is determined not only by the availability of secured transactions institutions but also by legal certainty in the enforcement of creditors' rights, particularly during the execution of collateral when a debtor defaults on its obligations (World Bank, 2024). This finding is consistent with the UNCITRAL Legislative Guide on Secured Transactions, which emphasizes that a modern secured transactions regime must provide predictable enforcement mechanisms, ensure transparency, and respect the priority ranking of creditors (UNCITRAL, 2010). Furthermore, the OECD asserts that procedural certainty in collateral enforcement constitutes a critical factor in improving access to finance, reducing credit risk, and maintaining the stability of the financial sector (OECD, 2024). Accordingly, legal certainty regarding the enforcement of creditors' rights has evolved into an internationally recognized standard within modern financing systems.

The legal relationship between a bank as creditor and a customer as debtor fundamentally arises from a credit agreement based on the principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code. A credit agreement not only establishes the rights and obligations of the contracting parties but also forms the legal basis for the provision of collateral as a means of mitigating default risk. In banking practice, credit approval is consistently based on the 5C principles (character, capacity, capital, collateral, and condition) of the economy to assess the debtor's ability to fulfill contractual obligations (Sembiring, 2012). Among these principles, collateral serves a particularly strategic function because it provides legal protection against potential default through the availability of security assets that may be executed if the debtor fails to perform its obligations. The existence of an effective security interest is also recognized as a defining feature of modern financing systems, as it enhances the confidence of financial institutions in extending credit on a sustainable basis.

Within the Indonesian legal system, security rights over land are established through Mortgage Rights as regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (Boedi Harsono, 1996). Mortgage Rights confer a preferential right *(droit de préférence)* upon creditors, entitling them to receive repayment of their claims from the proceeds of the sale of the collateral should the debtor default. In addition to their preferential nature, Mortgage Rights embody the principles of droit de suite, specialty, and publicity, thereby ensuring legal certainty with respect to both the collateral object and third parties. These characteristics make Mortgage Rights a strategic legal instrument in promoting investment and financing by providing balanced legal protection for both creditors and debtors.

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From an international perspective, the effectiveness of secured transactions law is measured not only by the recognition of creditors' preferential rights but also by the legal system's ability to ensure the effective enforcement of those rights. The European Bank for Reconstruction and Development (EBRD, 2023) asserts that an effective secured transactions legal framework constitutes a key component in facilitating access to finance by establishing predictable legal rules, reducing lending costs, and enhancing the protection of creditors' rights within modern financing systems. This approach demonstrates that legal protection for creditors should not be limited to the normative recognition of priority rights but must also be reflected in enforcement procedures that provide legal certainty for each creditor in accordance with their respective legal status.

Nevertheless, developments in financing practices indicate that a single parcel of land is frequently encumbered by multiple Mortgage Rights, resulting in first-ranking, second-ranking, and subsequent-ranking mortgage holders, as permitted under Article 5 paragraph (1) of the Mortgage Rights Law. Legal issues arise because the execution auction of mortgaged property is generally conducted based on the authority of the first-ranking mortgage holder, as reflected in prevailing administrative regulations governing auction procedures. Consequently, the legal position of second-ranking and subsequent-ranking mortgage holders often lacks adequate legal certainty, particularly concerning their authority to initiate execution, the distribution of auction proceeds, and the effectiveness of protecting their preferential rights. This condition reveals a gap between the normative framework established by the Mortgage Rights Law and the prevailing practice of execution auctions, thereby necessitating a more comprehensive legal analysis to establish a security rights system that ensures legal certainty, justice, and proportional legal protection for all creditors. Recent studies further indicate that normative inconsistencies and procedural barriers in auction implementation remain the primary factors reducing the effectiveness of legal protection for creditors within Indonesia's Mortgage Rights system.

Several previous studies have examined legal protection for second-ranking mortgage holders; however, important research gaps remain. Dimas Nur Arif Putra Suwandi (2018) focused on the execution mechanism for second-ranking Mortgage Rights after the first-ranking Mortgage Right had been extinguished through roya (cancellation of mortgage registration). The study concluded that the second-ranking creditor acquires exclusive priority following the extinguishment of the first-ranking Mortgage Right and may pursue various legal remedies when execution by auction cannot be carried out. Subsequently, Yogi Gantika Gandawidura (2019) examined legal protection for second-ranking mortgage holders in cases of non-performing loans, emphasizing settlement through private sales or court-ordered execution. More recently, Nur Hidayati and Ana Silviana (2023) concluded that second-ranking mortgage holders retain legal

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authority to execute their security interests through public auction, private sale, or parate executie. The three previous studies have made significant contributions to explaining both the execution mechanism and the forms of legal protection available to second-ranking mortgage holders. Nevertheless, this study differs from those earlier works in several fundamental respects. All of the previous studies were conducted before, or did not specifically examine, the Minister of Finance Regulation Number 122 of 2023 on Guidelines for Auction Implementation as their primary analytical framework. Consequently, those studies primarily approached the issue of creditor protection from the perspective of the Mortgage Law and dispute resolution practices, without examining the implications of the new administrative regulations governing auction procedures on the effectiveness of enforcing creditors' preferential rights.

Normatively, Article 5 paragraph (1) of the Mortgage Law permits the establishment of more than one mortgage right over the same collateral object based on the order of their registration dates. However, in auction administration practice, the authority to initiate parate executie (summary execution) is still understood as a right exclusively vested in the holder of the first-ranking mortgage pursuant to Article 6 of the Mortgage Law and the applicable technical regulations governing auction procedures. Consequently, holders of second-ranking and subsequent mortgage rights encounter significant obstacles in enforcing their proprietary security rights, despite their juridical status as preferred creditors. This situation reflects a disharmony between substantive legal norms and administrative regulatory norms, which potentially undermines legal protection, legal certainty, and the effectiveness of mortgage rights as a proprietary security institution. Recent studies likewise demonstrate that normative inconsistencies and procedural barriers in the execution of mortgage rights remain among the principal challenges to achieving balanced legal protection for all parties involved.

The enactment of Minister of Finance Regulation No. 122 of 2023 concerning Guidelines for Auction Implementation has transformed the approach previously adopted in auction practice. Prior to the issuance of this regulation, the technical provisions governing auction procedures were dispersed across various implementing regulations, resulting in discussions that primarily focused on the substantive provisions of the Mortgage Law, particularly Article 6, which grants the first-ranking mortgage holder the right to execute collateral through parate executie. Minister of Finance Regulation No. 122 of 2023 subsequently refined the governance of auction implementation by introducing a more comprehensive regulatory framework governing administrative requirements, auction application procedures, the authority of auction officials, and execution mechanisms. Consequently, the effectiveness of the exercise of preferential rights is no longer determined solely by the existence of an in rem security right as stipulated under the Mortgage Law, but also by

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compliance with the administrative requirements governing the auction process. This regulatory shift raises a new legal issue as to whether second-ranking and subsequent mortgage holders continue to enjoy legal certainty in exercising their preferential rights under Article 5(1) of the Mortgage Law following the enactment of Minister of Finance Regulation No. 122 of 2023

From the perspective of the theory of legal certainty, the existence of legal norms is insufficient if they merely recognize the rights of legal subjects without ensuring their effective and predictable implementation. Moh. Fadli and Syofyan Hadi argue that legal certainty requires legal norms that are clear, consistent, unambiguous, and capable of providing predictability for all legal subjects (Moh. Fadli dan Syofyan, 2023). This view is consistent with Gustav Radbruch's conception of legal certainty as one of the fundamental objectives of law and Hans Kelsen's theory, which regards normative consistency within a legal system as a prerequisite for achieving legal certainty (Rahardjo, 2014). In the context of execution auctions involving Mortgage Rights, legal certainty entails not only the existence of legal provisions governing creditors' legal status but also assurance that the preferential rights granted by law can be effectively enforced without administrative impediments or inconsistent interpretations. Accordingly, harmonization between the Mortgage Rights Law and the regulations governing execution auctions has become imperative to establish a financing system that provides proportionate legal protection for all creditors. Contemporary studies further affirm that the effectiveness of proprietary security systems depends substantially on regulatory consistency, procedural certainty, and reliable execution mechanisms.

Based on the foregoing discussion, this study aims to analyze the juridical implicationsof Article 5 paragraph (1) of the Mortgage Rights Law for the legal position of second-ranking and subsequent-ranking mortgage holders, while also examining the extent to which these creditors' rights have obtained legal certainty in the execution auction of mortgaged property. Unlike previous studies, which primarily focused on execution mechanisms or general forms of legal protection, this research offers a more comprehensive analysis of the harmonization between the provisions of the Mortgage Rights Law and the practical implementation of execution auctions under their implementing regulations. Accordingly, this study is expected to make a conceptual contribution to the development of Indonesian security rights law while providing policy recommendations aimed at promoting legal certainty, justice, and legal utility for all creditors in the execution of Mortgage Rights. This contribution also aligns with the growing body of international literature, which identifies legal certainty, regulatory consistency, the protection of creditors' rights, and the effectiveness of collateral enforcement mechanisms as essential

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prerequisites for developing an efficient financing system and promoting a sustainable investment climate.

3. RESEARCH METHODS

This study employs a normative legal research (juridical-normative) method focusing on the examination of legal norms, principles, and rules governing the legal position of creditors holding second-ranking and subsequent Mortgage Rights in the execution auction of mortgaged objects. The research adopts a statutory approach by systematically examining legislation relating to Mortgage Rights, secured transactions, and auction procedures, particularly the provisions of the Indonesian Civil Code, Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, and Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for Auction Implementation. The research was conducted through library research, with the object of the study consisting of legal norms governing the executorial rights of Mortgage Right holders within the Indonesian legal system.

The research data comprise primary, secondary, and tertiary legal materials. The selection of primary legal materials was based on their relevance to the research questions, their binding authority within the hierarchy of Indonesian legislation, and their relationship to the regulation of Mortgage Rights, creditors' preferential rights, and execution auction mechanisms. Secondary legal materials were selected based on the academic authority of the authors, their substantive relevance to the theories of legal certainty and creditor legal protection, and their contribution to explaining and interpreting primary legal materials. These materials include books, scholarly journal articles, theses, and legal doctrines developed by legal scholars. Tertiary legal materials, including legal dictionaries, legal encyclopedias, and legislative indexes, were used to clarify legal terminology and facilitate the identification of relevant legal sources. All legal materials were collected through library research and a review of credible electronic sources.

The legal materials were analyzed using a descriptive-analytical method with a qualitative approach through the processes of identification, classification, synchronization, and interpretation of legal norms. The interpretation process employed three methods of legal interpretation: grammatical interpretation, systematic interpretation, and teleological interpretation. Grammatical interpretation was applied to ascertain the ordinary linguistic meaning of normative provisions concerning the legal position of Mortgage Right holders and the implementation of execution auctions as formulated in the applicable legislation. Systematic interpretation was employed to interpret legal provisions coherently by considering the interrelationship among the Indonesian Civil Code, Law Number 4 of 1996 concerning Mortgage Rights, and Minister of Finance

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Regulation Number 122 of 2023, thereby ensuring normative consistency within the Indonesian secured transactions legal framework. Meanwhile, teleological interpretation was used to identify the legislative objectives underlying these legal provisions, particularly in assessing whether the regulation governing execution auctions provides proportional legal protection and legal certainty for creditors holding second-ranking and subsequent Mortgage Rights. These three interpretative methods were applied complementarily to develop a systematic and coherent legal argument capable of comprehensively addressing the research problems.

4. RESULTS AND DISCUSSION

The juridical implicationsof Article 5(1) of the Mortgage Law for Creditors Holding Second-Ranking and Subsequent Mortgage Rights in the Execution Auction of Mortgaged Property

Article 5(1) of Law Number 4 of 1996 on Mortgage Rights provides the normative basis that a single land right may be encumbered by more than one Mortgage Right to secure the repayment of multiple debts. This provision demonstrates that the legislature recognizes the possibility of multiple creditors holding security interests over the same property through a ranking system determined by the order of Mortgage Right registration. The findings of this study indicate that such a ranking system constitutes a logical consequence of the principle of priority (prior tempore potior jure), under which rights established earlier take precedence over those established subsequently. Accordingly, holders of second-ranking and subsequent Mortgage Rights continue to be recognized as preferred creditors, although their entitlement to repayment may only be exercised after the claims of the first-ranking Mortgage Right holder have been fully satisfied. These findings demonstrate that Article 5(1) of the Mortgage Law not only regulates the order of debt repayment but also provides legal legitimacy for the proprietary rights held by each Mortgage Right holder without diminishing their preferential status. This conclusion is consistent with the findings of Sutrisno and Rahmawati, who argue that the priority system in secured transactions law is intended to preserve certainty in the order of payment while maintaining the rights of creditors holding lower-ranking security interests (Sutrisno dan Rahmawati, 2022).

Furthermore, this study finds that the juridical implicationsof Article 5(1) of the Mortgage Law must be understood in conjunction with the accessory (accessoir) nature of Mortgage Rights as ancillary agreements to the principal credit agreement. This accessory characteristic means that the existence of a Mortgage Right depends entirely upon the existence of the secured debt. Consequently, once the debt secured by the first-ranking Mortgage Right has been fully discharged, an automatic shifting of priority occurs by operation of law, whereby the holder of the second-ranking Mortgage Right automatically assumes the position of the first-ranking Mortgage

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Right holder. Such a shift arises as a direct legal consequence of the extinguishment of the principal obligation and does not depend upon the parties' consent. Based on an analysis of Articles 18 and 22 of the Mortgage Law, this study argues that, following the extinguishment of the higher-ranking Mortgage Right, the second-ranking creditor acquires the legal standing to exercise the executorial rights ordinarily vested in the first-ranking Mortgage Right holder. Accordingly, restricting the creditor's right to execute solely because an administrative discharge has not yet been completed lacks a sufficient legal basis when viewed from the perspective of secured transactions law, which prioritizes the substantive legal relationship over administrative formalities. This interpretation is also supported by van Erp, who emphasizes that a modern system of proprietary security rights should ensure the effective enforcement of security interests once prior-ranking rights have ceased to exist (van Erp, 2021).

Aspect	Article 5(1) of the Mortgage Law	Article 6 of the Mortgage Law	Minister of Finance Regulation (PMK) No. 122 of 2023
Regulatory Substance	Recognizes that a single mortgaged property may be encumbered by more than one mortgage right.	Grants the first-ranking mortgage holder the right to sell the mortgaged property through a public auction if the debtor defaults.	Regulates the administrative requirements for submitting an application for the execution auction of mortgaged property by creditors to the State Assets and Auction Service Office (KPKNL).
Position of the Creditor	All mortgage holders are entitled to preferential rights according to the order of registration.	Explicitly refers only to the "first-ranking mortgage holder."	In administrative practice, requires documentation proving the status of the first-ranking mortgage holder, resulting in applications submitted by second-ranking mortgage holders frequently being unable to proceed until the prior mortgage has been discharged.
Legal Principle	Principle of priority (*prior tempore potior jure*) and the accessory nature of the mortgage right.	Parate executie(extrajudicial execution).	Administrative regulation governing the implementation of execution auctions.
Legal Consequence	Recognizes the existence of all preferential creditors.	Creates ambiguity regarding the authority of creditors following a shift in mortgage ranking.	Imposes administrative limitations on the exercise of execution rights by second-ranking mortgage holders.
Research Findings	No legal issues arise concerning the recognition of	The phrase "first-ranking mortgage holder" does not accommodate the legal	Administrative practice remains inconsistent with the legal framework established by the

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Aspect	Article 5(1) of the Mortgage Law	Article 6 of the Mortgage Law	Minister of Finance Regulation (PMK) No. 122 of 2023
	proprietary rights.	consequences of automatic ranking shifting.	Mortgage Law, thereby creating legal uncertainty.

Table 1. Comparison of the Regulatory Framework under Article 5(1), Article 6 of the Mortgage Law, and Minister of Finance Regulation No. 122 of 2023

Table 1 demonstrates that, from a normative perspective, Article 5(1) of the Mortgage Law recognizes the existence of multiple mortgage holders as preferential creditors based on the principle of priority. In contrast, Article 6 refers exclusively to the "first-ranking mortgage holder" as the party authorized to exercise parate executie, while Minister of Finance Regulation No. 122 of 2023 primarily focuses on the administrative requirements for conducting execution auctions. This divergence reveals an inconsistency between the substantive legal norms established by the Mortgage Law and the administrative norms governing auction procedures, which constitutes the underlying cause of legal uncertainty in the implementation of mortgage execution auctions.

Nevertheless, the findings reveal a fundamental issue arising from the normative inconsistency between Article 5(1) and Article 6 of the Mortgage Law, which creates legal uncertainty in the implementation of Mortgage Right execution auctions. Normatively, Article 5(1) recognizes the validity of second-ranking and subsequent Mortgage Rights as legitimate proprietary security rights, whereas Article 6 provides only that "the holder of the first-ranking Mortgage Right" is entitled to sell the mortgaged property through a public auction on its own authority if the debtor defaults. This wording has resulted in a restrictive interpretation by the State Assets and Auction Service Office (KPKNL), whereby applications for execution auctions submitted by second-ranking Mortgage Right holders are generally rejected until the first-ranking Mortgage Right has been formally discharged through the administrative roya procedure. Consequently, a proprietary right that is normatively recognized loses its practical effectiveness at the enforcement stage. This situation illustrates a conflict between substantive legal norms recognizing the existence of the right and implementing norms that restrict the exercise of that right. The discrepancy between the legal norms stipulated in the Mortgage Law and their implementation in auction administration practices reflects a divergence between law in the books and law in action. According to Marzuki, harmonization between substantive law and public administration is a prerequisite for the effective implementation of legal norms (Marzuki, 2021). Therefore, this regulatory disharmony has resulted in the suboptimal realization of the objectives of the Mortgage Law, particularly in ensuring legal certainty and facilitating the effective execution of mortgage enforcement.

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From a theoretical perspective, this condition reflects a normative antinomy that weakens the quality of legal protection afforded to holders of second-ranking and subsequent Mortgage Rights. According to the theory of legal certainty advanced by Moh. Fadli and Syofyan Hadi, a legal norm must satisfy the requirements of clarity, consistency, predictability, and effective enforceability (Moh. Fadli & Syofyan Hadi, 2023). This study finds that Article 6 of the Mortgage Law fails to satisfy these requirements because it employs the phrase "holder of the first-ranking Mortgage Right" without regulating the legal status of creditors after the extinguishment of higher-ranking Mortgage Rights. This normative gap has subsequently been filled through administrative practice by the State Assets and Auction Service Office (KPKNL), which tends to adopt a strictly textual interpretation. As a result, the legal protection afforded to second-ranking creditors depends not on statutory provisions but rather on administrative interpretation, which may not necessarily align with the legislative objectives of the Mortgage Law. These findings suggest that the principal issue lies not in the concept of Mortgage Rights as a security institution itself, but in the inconsistency between substantive legal norms and their administrative implementation, which prevents creditors' preferential rights from being effectively realized.

Based on the overall analysis, this study argues that the juridical implicationsof Article 5(1) of the Mortgage Law should not be interpreted merely as regulating the order of debt repayment, but rather as guaranteeing the continuity of the proprietary rights of every Mortgage Right holder in accordance with the accessory principle and the principle of priority. Consequently, once the first-ranking Mortgage Right has been extinguished due to the repayment of the secured debt, the second-ranking creditor acquires full legal authority to exercise the executorial rights contemplated under Article 6 of the Mortgage Law. Such an interpretation is more consistent with the principles of legal certainty, legal protection, and legal effectiveness than the prevailing administrative interpretation, which focuses exclusively on the completion of the roya procedure. The original contribution of this study lies in its argument that automatic shifting is not merely an administrative change in ranking but rather a direct legal consequence of the accessory nature of Mortgage Rights, which simultaneously confers executorial authority upon the next-ranking creditor. Accordingly, legislative reform of the Mortgage Law and its implementing regulations governing execution auctions is necessary to harmonize substantive legal norms with administrative practice, thereby ensuring effective legal certainty for holders of second-ranking and subsequent Mortgage Rights.

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The legal certainty afforded to creditors holding second-ranking and subsequent mortgage rights constitutes a fundamental aspect of Indonesia's secured transactions regime. The findings of this study demonstrate that Article 5(1) of Law Number 4 of 1996 on Mortgage Rights expressly recognizes that a single land title may be encumbered by more than one Mortgage Right, each acquiring its legal priority according to the chronological order of its registration. This provision legitimizes the legal status of second-ranking and subsequent mortgage holders as valid holders of proprietary security rights. Thus, once a Mortgage Right has been registered with the Land Office, each creditor acquires a preferential right according to the registered rank and is entitled to receive payment from the proceeds of the sale of the secured property in accordance with the principle of priority. This view is consistent with Sjahdeini (2023), who argues that the ranking system under Mortgage Rights does not eliminate the preferential status of a second-ranking mortgage holder; rather, it merely determines the order in which the creditors' claims are satisfied. Accordingly, each mortgage holder retains a proprietary security right that provides legal certainty regarding the repayment of its claim in accordance with the registered priority ranking (Sjahdeini, 2023). The findings further indicate that, from a normative perspective, there is no uncertainty regarding either the existence or the legal force of second-ranking and subsequent Mortgage Rights. Nevertheless, such legal certainty has not been fully realized in the practice of foreclosure auctions because divergent interpretations persist concerning Article 6 of the Mortgage Law, which grants the right of parate executie (self-executing foreclosure) exclusively to the first-ranking mortgage holder.

Based on the legal certainty theory advanced by Moh. Fadli and Syofyan Hadi, legal certainty is determined not only by the existence of legal norms but also by their quality, which must satisfy the elements of clarity, consistency, predictability, non-retroactivity, promulgation, stability, and effective enforceability. The findings reveal that most of these indicators have, in fact, been fulfilled by the Mortgage Law. The legal position of each mortgage holder is conclusively determined from the date of registration, the order of payment priority is predictable from the outset of the legal relationship, and the respective authorities of the Land Office, the District Court, and the Office of State Assets and Auction Services (KPKNL) have been systematically regulated. These arrangements provide preventive legal protection for creditors, including holders of second-ranking and subsequent Mortgage Rights. Consequently, from the perspective of normative legal construction, the Mortgage Law reflects the principle of legal certainty as formulated by Moh. Fadli and Syofyan Hadi, although its practical implementation continues to face various challenges (Moh. Fadli & Syofyan Hadi, 2023).

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The principal issue identified in this study arises during the enforcement stage of the security right. Normatively, Article 5(1) of the Mortgage Law recognizes second-ranking and subsequent Mortgage Rights as proprietary rights possessing the characteristics of droit de suite and droit de préférence. However, Article 6 expressly refers only to "the first-ranking mortgage holder" as the party authorized to sell the secured property on its own authority through a public auction. This statutory wording has generated divergent interpretations in administrative practice, leading the Office of State Assets and Auction Services (KPKNL) to reject auction applications submitted by second-ranking mortgage holders as long as the first-ranking Mortgage Right has not been discharged. The findings indicate that this situation has created an antinomy between substantive legal norms and administrative enforcement practice. On the one hand, the state recognizes the existence of second-ranking Mortgage Rights through Article 5(1) of the Mortgage Law. On the other hand, the exercise of their enforcement rights is impeded by a restrictive interpretation of Article 6. As a result, the legal certainty guaranteed under the Mortgage Law has not been fully realized for all mortgage holders in accordance with the principle of legal protection. This view is consistent with that of Nur Hidayati and Silviana, who argue that the execution of mortgage rights has not yet provided effective legal protection for second-ranking mortgage holders, as significant obstacles remain in the exercise of their execution rights despite their normative recognition under the Mortgage Law (Nur Hidayati & Silviana, 2023). This condition demonstrates a gap between the normative legal framework and its practical implementation, thereby diminishing the effectiveness of the principles of legal certainty and legal protection for all mortgage holders.

This study further demonstrates that the problem does not stem from any deficiency in the principle of priority embodied in the Mortgage Law but rather from the lack of harmony between the substantive legal norms and the administrative practice governing foreclosure auctions. Juridically, the accessory *(accessoir)* nature of a Mortgage Right means that once the debt secured by the first-ranking Mortgage Right has been fully satisfied, that Mortgage Right is extinguished, thereby automatically elevating the next-ranking mortgage holder to the highest priority position. Accordingly, this study argues that once the debt owed to the first-ranking creditor has been fully discharged and the principal legal relationship has terminated, the second-ranking mortgage holder acquires full legal standing to exercise parate executie under Article 6 of the Mortgage Law without requiring either the debtor's consent or judicial authorization from the Court. This constitutes the original contribution of the present study by affirming that such an automatic shiftingof priority occurs by operation of law as a direct legal consequence of the extinction of the accessory legal relationship. Consequently, the enforcement right of the second-ranking mortgage

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holder arises automatically, notwithstanding the practical obstacles that continue to arise due to differing administrative interpretations adopted by the Office of State Assets and Auction Services (KPKNL).

The transfer of enforcement rights following the extinction of a higher-ranking mortgage occurs automatically as an inherent consequence of the registration system and therefore does not require administrative interpretation that may restrict the rights of subsequent mortgage holders. Such an approach is consistent with the principles of economic efficiency and legal certainty emphasized in contemporary scholarship on secured transactions, namely that a secured transactions regime should provide enforcement mechanisms that are simple, expeditious, and predictable in order to strengthen the confidence of financial institutions and enhance financial sector stability (World Bank, 2021). Accordingly, Indonesian practice demonstrates the need to harmonize the normative provisions of the Mortgage Law with the technical regulations governing foreclosure auctions so as not to undermine the effectiveness of proprietary security rights guaranteed by law.

Based on the findings, the author contends that the legal uncertainty experienced by second-ranking and subsequent mortgage holders does not originate from the weakness of the priority principle itself but rather from the absence of operational legal norms regulating the enforcement mechanism following the transfer of priority caused by the extinction of a higher-ranking Mortgage Right. From the perspective of Moh. Fadli and Syofyan Hadi's theory of legal certainty, this situation indicates that the quality of the legal norms has not yet fully satisfied the requirements of clarity and consistency (Moh. Fadli dan Syofyan Hadi, 2023). While the substantive legal norms recognize the existence of the proprietary security right, the administrative legal framework has yet to provide a corresponding enforcement procedure. Consequently, enforcement authorities tend to adopt a textual interpretation of Article 6 of the Mortgage Law, resulting in the rejection of foreclosure auction applications submitted by second-ranking and subsequent mortgage holders. Ultimately, this condition diminishes the effectiveness of the Mortgage Right as a security institution that is intended to provide convenience, legal certainty, and legal protection for all creditors.

The principal outcome of this research is the development of a legal construction establishing that the automatic shiftingof the priority status of Mortgage Right holders constitutes a legal consequence arising automatically from the accessory nature of the Mortgage Right. Consequently, upon the extinction of the secured debt and the termination of the first-ranking Mortgage Right, the next-ranking creditor acquires full legal standing to exercise parate executie under Article 6 of the Mortgage Law without requiring either the debtor's consent or a

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court order. This legal construction advances the prevailing understanding in practice by positioning roya merely as an administrative act recording the extinguishment of a Mortgage Right rather than as a constitutive requirement for the emergence of enforcement authority. Accordingly, this study offers an original contribution through a systematic reconstruction of the interpretation of Articles 5(1), 6, 18, and 20 of the Mortgage Law, thereby promoting harmonization between substantive law and the administrative framework governing foreclosure auctions. As a practical implication, this study recommends amendments to the Minister of Finance Regulation on Auction Procedures as well as the operational guidelines of the Office of State Assets and Auction Services (KPKNL) to expressly recognize the authority of second-ranking and subsequent mortgage holders to initiate foreclosure auctions once the rights of higher-ranking mortgage holders have been extinguished. Such harmonization is expected to strengthen legal certainty, enhance the effectiveness of non-performing loan resolution, and reinforce the confidence of financial institutions in Indonesia's secured transactions legal framework.

4. CONCLUSION

Based on the findings and discussion concerning legal certainty for creditors holding second-ranking and subsequent mortgage rights in the execution auction of mortgaged property, the following conclusions can be drawn. First, Article 5(1) of Law Number 4 of 1996 on Mortgage Rights normatively recognizes that a single mortgaged property may be encumbered with more than one mortgage right under a ranking system. This provision legally acknowledges the existence of second-ranking and subsequent mortgage holders as preferred creditors in accordance with the order of registration. However, this recognition is not accompanied by a corresponding regulation governing the executorial authority of second-ranking and subsequent mortgage holders. Article 6 of the Mortgage Law grants the right of parate executie exclusively to the first-ranking mortgage holder, while the auction practice implemented by the State Assets and Auction Service Office (Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL), based on Minister of Finance Regulation Number 122 of 2023, likewise restricts applications for execution auctions to first-ranking mortgage holders only. This situation demonstrates a normative inconsistency between the legal recognition of multiple-ranking mortgage rights and the mechanism for their enforcement, resulting in a normative gap concerning the exercise of execution rights by second-ranking and subsequent mortgage holders.

Second, the rights of creditors holding second-ranking and subsequent mortgage rights have not yet fully satisfied the principle of legal certainty. Although these creditors legally possess valid security rights and enjoy preferential status according to the priority ranking of mortgage

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rights, they still lack certainty regarding the mechanism for exercising their executorial rights when the debtor defaults. The inconsistency between the provisions of the Mortgage Law and the administrative practice governing execution auctions has resulted in suboptimal legal protection for second-ranking and subsequent mortgage holders. From the perspective of the legal certainty theory adopted in this study, the existing legal framework has not fulfilled the essential elements of clarity, consistency, and predictability, as it continues to create multiple interpretations, uncertainty regarding executorial authority, and ambiguity in the enforcement of the rights of second-ranking and subsequent mortgage holders.

This study offers an original contribution to the development of Indonesian secured transactions law by demonstrating that the principal issue extends beyond the legal protection of second-ranking and subsequent mortgage holders. The more fundamental problem lies in the normative inconsistency between Article 5(1) and Article 6 of the Mortgage Law, as further reflected in Minister of Finance Regulation Number 122 of 2023 on Guidelines for Auction Implementation. These findings indicate that, although the legal framework formally recognizes the existence of multiple-ranking mortgage rights, it fails to provide a coherent and harmonized regulation governing the authority to exercise execution rights. Consequently, this inconsistency creates legal uncertainty for creditors holding second-ranking and subsequent mortgage rights.

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