



## Legal mechanism of cross collateral guarantee execution in credit agreements in Indonesia

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### ARTICLE INFO

#### Keywords:

Civil Law;  
Cross Collateral;  
Execution of Guarantee;  
Fiduciary;  
Mortgage Rights.

#### Article history:

Received Sep 30, 2024;  
Revised Oct 2, 2024;  
Accepted Oct 10, 2024;  
Online Oct 30, 2024.

### ABSTRACT

The purpose of this research is to examine and contrast the two methods of conventional and cross-collateral execution in Indonesian credit agreements. Using a descriptive-analytical methodology grounded on normative law, this paper examines pertinent rules including the Mortgage Law and the Fiduciary Guarantee Law. According to this study's findings, even though the legislative framework has laid the groundwork for creditor protection, cross-collateral execution often encounters difficulties due to the inadequate execution methods and priority order of creditor claims. The most pressing issue is the possibility for conflicts to arise due to the lack of clarity about the relative importance of creditors' rights. Here, a less complicated method of execution is required to reduce the likelihood of disputes. Among the many suggestions made by this research are changes to the legislation to make priority rights of creditors more clear, improvements to the collateral registration system, and the use of blockchain technology to make the collateral registration and execution process more transparent. As a result, this research adds to the body of knowledge on Indonesian collateral law and provides useful guidance for resolving issues with cross-collateral collateral execution.

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### 1. Introduction

Individual rights and social connections in Indonesia are governed by civil law. From domestic relations to business dealings, this body of legislation regulates a wide range of activities with the overarching goal of making the law clear to everyone (Harahap et al., 2023).

Indonesian banks use legal cross-collateralization differently than other businesses. Different legal frameworks, institutional processes, and sector transactions explain these differences. The Financial Services Authority and Bank Indonesia (BI) closely control cross-collateralization in banking. Banks must meet strict prudential rules to safeguard creditors and financial stability. Fiduciary or mortgage-based collateral is examined in highly regulated bank cross-collateralization lending agreements. In default, banks execute collateral via legal actions or public auctions, although the agreement may provide other dispute resolution methods. For

compliance and transparency, banking cross-collateral guarantees need rigorous debtor financial assessments and collateral registration.

Non-bank financial institutions and private firms use cross-collateralization more freely. These businesses are less regulated by financial authorities like the OJK, hence cross-collateral agreement terms and enforcement differ. Without institutional oversight like banks, negotiated agreements may cross-collateralize private company transactions. Banks may employ private arbitration or other informal dispute resolution instead of judicial protection. In sectors lacking clear regulations, cross-collateral guarantee enforcement is flexible yet risky.

Another key difference between banking and other sectors is risk management. Banks utilise more complicated cross-collateralization risk management measures such as periodic financial reviews and loan compliance. Non-bank financial businesses or commercial organisations may lack resources or regulatory requirements to conduct detailed inspections. Thus, corporate cross-collateralization problems can involve more involved negotiations or litigation than bank disagreements.

Finally, industries use different collateral. In case of default, banks prefer property or buildings, which are easier to value and sell. Non-banking businesses may utilise mobile assets or receivables as security, complicating evaluation and execution.

Cross-collateralization secures several obligations with one asset in banking and non-banking companies, although legal procedures vary. Other business areas are more flexible yet less regulated than banking.

The parties' free determination of their rights and responsibilities under an agreement is a crucial component of civil law. In addition to serving as a means of satisfying business requirements, the contract or agreement between the parties also serves to keep competing interests in check and head off any legal conflicts (Bakung et al., 2022).

Credit agreements are ubiquitous in the banking industry and other commercial contexts as a standard kind of economic contract. The borrower is legally bound to repay the loan or debt as specified in the credit agreement, and the lender is legally entitled to collect the money. Creditors have the legal right to use collateral or security to safeguard their interests. Creditors may rest easy knowing they can recoup their losses if debtors don't pay up as agreed upon thanks to guarantees (Andriyani, 2020).

In Indonesian civil law, collateral may take several forms, including pawns, fiduciaries, mortgages, and more. The law governs and specifies the features of each kind of collateral. For instance, in the event of a default, creditors have the legal right to seize collateralised assets as outlined in mortgages and other such documents. All parties must have a thorough understanding of collateral execution in this situation (Afifah, 2017).

Cross collateral is one kind of collateral that is being utilised more and more in practice. When an item or assets are used as security for several loan agreements, this practice is called cross collateral. While cross collateral can provide some leeway for borrowers with several credit commitments, it also creates certain legal complications that might arise in the case of a default (Sinaga & Dyastuti, 2023). The regulation of the creditor's rights, particularly with regard to priority and execution protocols, is the primary obstacle to the implementation of cross collateral guarantees.

Special care is needed while executing cross collateral in Indonesia because of the intricacy involved with several creditors and agreements. After a default has occurred, creditors need to know what the law says about them and how to follow it. Although the process for executing this collateral is governed by Indonesian law, there are often concerns about the priority rights of creditors and how to execute it without leading to drawn-out litigation.

Compliance with relevant legal requirements and the explicitness of the original agreement between the creditor and the debtor are crucial to the successful execution of cross collateral.

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This execution, if not controlled appropriately, may cause disputes amongst the parties involved, particularly in cases when many creditors have stakes in the same asset. (Godlewski & Weill, 2011).

The Mortgage Law and the Fiduciary Guarantee Law are two of the primary laws in Indonesia that govern material collateral and, by extension, the execution of collateral (including cross collateral). These two statutes provide up the groundwork for safeguarding the rights of creditors to debtors' collateral. Problems emerge, however, when dealing with cross collateral because of the intricacy of the execution involving many creditor and agreements. One possible source of conflict of interest is the fact that all creditors have equal claim to the assets (Nursantih & Sanusi, 2021).

Indonesian law governs the precedence of creditors' interests in the case of default, which is an essential part of cross-collateral execution. In reality, it is not always clear which creditor has the greatest claim on the collateral. A creditor may get into trouble if they don't know about other creditors or don't register their rights correctly, even if collateral law has broad rules like the concept of preference that provides precedence to the first creditor to register their collateral (Andriyani, 2020). Although the goal of the collateral registration rule is to provide clarity and openness, there are often still loopholes when it comes to cross collateral.

The execution technique is another cross-collateral issue. Jakartan civil law requires public auctions or court-approved collateral execution. Many creditors may execute the same asset simultaneously, complicating cross-collateral asset execution. Court disputes may delay execution and devalue assets.

Debtor rights complicate collateral execution. Debtors need fair execution notwithstanding their inferiority to creditors. Debtors may contest execution. This is especially true if the debtor thinks their rights were violated or the execution was wrong. Many creditors want the same asset, but the debtor wants to retain it, complicating execution.

Complex cross-collateral assurances need litigation. Current laws provide a framework for addressing this issue, but numerous challenges remain. All parties benefit from openness, creditor rights precedence, and fair execution.

How does Indonesian law handle multi-loan credit agreement cross-collateral guarantees? How do Indonesian cross collateral and normal guarantees differ?

"Legal Mechanism of Cross Collateral Guarantee Execution in Credit Agreements in Indonesia" addresses Indonesian law. The study investigates cross collateral—using one asset to secure several loans or credit agreements. This method creates several bank loans.

The research concluded that Indonesia's Fiduciary Security Law, Agrarian Law, and banking limitations inhibit cross collateral use. This study explores cross collateral execution with judicial or auction limitations if a debtor fails.

Research suggests balancing creditors' and borrowers' legal safeguards during collateral execution. Finally, the study may explore Indonesian cross collateral systems such bank credit agreements and non-bank financial organisations. This study should be read by lawyers, researchers, and anybody concerned about Indonesia's banking sector's cross collateral guarantees.

## 2. Method

This study used the normative legal research approach to examine the literature on cross collateral guarantees and their application in Indonesian civil law. The research primarily focused on this topic. Primary legal elements, such as the theories supporting the execution of guarantees and applicable laws and regulations (such as the Mortgage Rights Law and the Fiduciary Guarantee), are analyzed in this method. To provide a more theoretical understanding of material guarantees, including cross collateral, this research also makes use of

secondary legal resources such scholarly publications, books, and journals (Mahmud Marzuki, 2005).

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### **3. Analysis and Results**

#### **3.1. Legal framework in Indonesia regulating execution of cross collateral guarantee in case of credit agreement involving multiple loans**

There has been an evolution in Indonesian law concerning the execution of collateral, especially with respect to cross collateral in credit agreements, to accommodate the growing complexity of financial transactions involving many loans and relevant parties (Koto & Faisal, 2021). In multi-facility credit arrangements, a technique known as cross collateral execution is used to enable the simultaneous use of one or more assets as collateral for several loans. In order to safeguard creditors' interests and provide clarity to all parties concerned, particularly in the event of default, this phenomena necessitates legislation that are both explicit and specific (Sims, 1989).

Multiple interconnected laws in Indonesia govern the collateral structure, including the Mortgage Law and the Fiduciary Guarantee Law. In the event that the debtor is unable to meet their financial commitments, these rules provide creditors the legal right to seize collateral. The difficulty with cross-collateral arises from the fact that many parties may have claims on the same asset, making it difficult to manage and control the rights of creditors. Because of this, regulations governing the order of priority for creditors and a system for efficient and equitable execution are required (Arifin, 2020).

The legal framework also governs collateral registration to clarify collateralised asset status. Collateral registration may clarify cross-collateral creditors' asset priority rights. However, if the registration method is incorrect or creditors are not told about other creditors' claims on the same assets, problems may arise. Priority rights disputes may delay execution.

This legal framework must cover implementation technicalities and procedures. Courts or auctions may execute collateral, but both must be regulated to minimise debtor-creditor problems. Rule of law ensures cross-collateral execution is done effectively and according to the norms, which helps achieve justice (Usman, 2021).

Law 4 of 1996 on Mortgage Rights on Land and Objects Related to Land (Mortgage Law) and Law 42 of 1999 on Fiduciary Guarantees are the primary statutes that govern the legal framework in Indonesia pertaining to the execution of cross collateral guarantees. The regulation of material guarantees, including the procedure for executing the guarantee in the event that the debtor fails to meet the agreed upon responsibilities, is strongly supported by these two laws.

Mortgage rights granted as collateral for land and land-related items are governed by the Mortgage Law in the context of cross collateral. Creditors with mortgage rights may seize assets at public auction under Article 6 of the Mortgage Law in the event that the debtor defaults on his obligations. Without resorting to litigation or any other kind of legal action, this article affirms the creditor's authority to execute in accordance with applicable laws and regulations (Renee, 2021).

At the same time, creditors can execute fiduciary guarantees outside of court proceedings according to the provisions of Article 29 paragraph (1), which states that fiduciary creditors can sell fiduciary guarantee objects through public auction or other mutually agreed upon methods. The clause facilitates the execution of guarantees by creditors in the case of default; this is especially important when dealing with cross collateral, since many creditors may have claims on the same assets (Bhakti, 2018).

Nevertheless, the rule governing the sequence of precedence for creditors' claims becomes crucial when dealing with cross collateral. Article 1 paragraph (2) of the Mortgage Rights Law specifies that mortgage rights provide the creditor the "droit de preference" or precedence over other creditors, and that the creditor whose rights are registered first would have priority under the law (Zailani & Hanun, 2020). The Fiduciary Guarantee Law follows the same logic, giving precedence to the creditor whose guarantee is initially recorded when it comes time to execute the promised assets.

In cross collateral execution, this part of collateral registration is critical as disagreements among creditors over who gets to execute assets first are possible in the absence of explicit registration. Financial institutions are required to register all creditor rights in a clear and organized way according to Law Number 10 of 1998, which regulates banking operations and plays a significant role in regulating procedures linked to loans with cross collateral.

In contrast, civil procedural law establishes a judicial system for the settlement of disputes that may arise throughout the execution process. If the collateral execution cannot be performed via the regular means, an application to the district court may be made in accordance with Article 224 Rv (Civil Procedure Law Regulation). Creditors may use this to settle disputes that emerge when many creditors or overlapping claims are involved in the execution of a cross-collateral guarantee.

Legal considerations surrounding the execution of cross-collateral guarantees are intricate and multi-faceted, touching on topics such as the prioritization of claims in the case of default, the processes for execution, and the control of creditor rights. Claims that emerge from using the same asset as collateral for many loans tend to overlap, which is a major problem (LIGHT, 2020). Concerns with the regulation of creditors' rights, particularly on the order of priority for the execution of assets, arise from this. Despite the fact that the Mortgage Law and the Fiduciary Guarantee Law outline the sequence of registration for creditors' rights under Indonesian law, there are frequently many challenges when it comes to putting this into practice.

One common issue in practice is that creditors don't always know about other creditors who have claims on the same assets. Because of this opaque structure, the "droit de preference" principle—which grants precedence to creditors who register their rights first—is not always efficiently applied, and the collateral registration process remains opaque. The execution procedure is slowed down or rendered impossible due to the possibility for disagreement amongst creditors caused by this uncertainty.

The procedural component of implementing collateral presents an additional hurdle on top of the priority problem. Direct execution of collateral by creditors outside of judicial proceedings is authorized under Article 6 of the Mortgage Law (Nugrohandini & Mulyati, 2019). However, bureaucratic hurdles can impede implementation, especially when dealing with high-value assets or cross-collateralized assets entrusted to several creditors. Creditors may face procedural difficulties like the time-consuming and expensive public auction while having the legal right to execute the collateral. Other creditors or the debtor may seek to delay execution, lengthening the procedure.

Cross collateral cases are more hard to execute since utilising the same asset as collateral for many loans increases the likelihood of overlapping claims. Since all creditors have a claim to the asset, collateral execution procedures must be clear and consistent. However, disagreements originating from inadequate rule application might lead to lengthy litigation, reducing execution efficiency. This shows that although Indonesia's collateral legislation has prepared for instances requiring actual collateral, practical concerns must be addressed by filling exclusions (Fauziah, 2021).

Cross-collateral execution disputes may raise doubts regarding the court's role. The court can decide on collateral execution, although creditors seldom like the outcomes. The court must balance creditor interests and debtor rights since debtors might protest or sue to postpone execution. Creditors may demand collateralised assets under the law, but they cannot act until the legal process is complete. This may cost and take time for everyone.

The legal framework for cross-collateral execution must be altered because to these issues. One way to avoid creditor disputes is to simplify execution and make collateral registration more clear. An effective and transparent collateral registration system would notify creditors about other asset claims, reducing the probability of overlapping claims (Zulfirman, 2017). To avoid costly and time-consuming litigation, it is necessary to establish clearer rules for execution processes involving several creditors. This will allow for execution to be carried out swiftly, equitably, and efficiently.

Despite Indonesian law governing cross-collateral execution, there are still several challenges. Current regulations cannot manage complex scenarios with several creditors and collateral. The legislation must be changed to handle realistic collateral execution concerns such registration, precedence of rights, and multi-party execution.

Strategic steps including revising laws and reinforcing legal requirements are needed to overcome cross collateral guarantee concerns in Indonesia. One approach may be reforming Law 4 of 1996, which governs mortgage rights, and Law 42 of 1999, which governs fiduciary assurances. This amendment improves and clarifies creditor rights order of priority and cross collateral guarantee execution legislation to simplify execution and reduce creditor disputes.

The Mortgage Law revision must clarify the priority concept based on collateral registration order. More extensive collateral registration verification articles or rules may increase creditors' knowledge of registered claims on the same asset (Isfardiyana, 2016). Avoiding conflicts by avoiding comparable claims is a smart idea. Cross-collateral guarantees involving numerous creditors must be executed using standardised standards. This might entail starting mediation or arbitration before legal action to speed up conflict settlement.

Change the Fiduciary Guarantee Law to enable cross-collateral guarantee execution. By having a single fiduciary purpose for several credit agreements, creditors may have clearer legal rights.

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If one fiduciary object is utilised for many loans, remuneration or guarantee execution revenue distribution must be managed. All creditors must get their due without compromising others.

Update and clarify cross-collateral guarantee civil procedural law requirements. Courts may handle execution concerns faster and more reliably for many creditors using operational norms. We may let courts prioritise executions by registration order, collateral value, and guaranteed loan amount. This approach allows the court resolve creditor disputes and ensure fair executions (Bhakti, 2018).

Consider legislative changes and collateral registration transparency initiatives. An integrated and automated collateral registration system may speed up asset claim information for creditors. In collateral registration, IT will increase data accuracy and eliminate administrative mistakes. Creditors and debtors learn about the cross-collateral system and the need of publicly reporting collateral.

Forensics and document digitisation may expedite cross collateral execution. Electronic document verification and validation technology speeds execution by removing onerous and expensive human tasks. This system may decrease mistakes and power abuse by ensuring collateral execution fulfils legal standards (Anshori, 2006).

Financial, creditor, and legal entities could help enhance regulations by changing laws and establishing new policies. This alliance will provide theoretically sound and practical credit market dynamics regulations. Open communication between the public and private sectors may help establish cross-collateral guarantees. This will broaden their viewpoints and generate long-term solutions.

To resolve legal issues in Indonesia's cross-collateral guarantees, the approach involves rewriting legislation, clarifying standards, enhancing transparency, employing technology, and working with stakeholders. We expect the Indonesian civil law system to better understand and apply cross collateral guarantees, making lending safer, fairer, and more efficient for everyone.

### **3.3. Differences and similarities between cross collateral guarantee execution and traditional guarantee execution in Indonesia law**

The execution of cross collateral, normal collateral, and material collateral under Indonesian law has some intriguing similarities and variances. Traditional collateral arrangements like mortgages and fiduciaries use one collateral object per loan or creditor. Limiting execution power to creditors who register their rights simplifies creditor-debtor relations. However, cross collateral execution employs the same collateral item to obtain several loans from many creditors. This makes determining which creditors' rights matter most in a default more difficult. Although the Mortgage Law and Fiduciary Guarantee have a legal base, the two forms of collateral may have quite different practical applicability and implementation. The biggest differences are in execution and creditor priority rights. Conventional collateral execution defines and organises creditors' rights, especially in relation to collateral registration's priority order. Cross collateral execution complicates claim orders since multiple parties want the same thing (Lambin & Meyfroidt, 2011).

Cross collateral executions are more complicated than conventional collateral killings. This is especially significant when determining creditor rights priority. The principle of "droit de preference." gives first-registered creditors clear precedence in traditional collateral execution. This clarifies and organises collateral asset rights. The creditor whose collateral was initially registered has precedence for execution if the debtor defaults. However, cross-collateral arrangements might be difficult.

Cross collateral complicates claims sequencing since the same collateral is used for many credit agreements or creditors. Creditors fighting for an asset after a debtor fails clash over precedence. Things become complicated when creditors don't know each other's asset claims or

collateral registration is erroneous. Such conflicts may be resolved by Indonesian law, but these scenarios need more particular procedures for ranking parties' claims in associated litigation.

Cross collateral assurances are problematic for a number of reasons, including priority and execution processes. Because of the need to handle several claims from other parties, the procedure for creditors who sign guarantees is often lengthier than expected. The collateralized assets may be directly executed by creditors via the classic guarantee execution method, which involves an auction or other mutually agreed upon arrangements (Martono, 2020). The debt collection procedure could be slowed down in cross-collateral execution because creditors may have to wait for all disagreements between creditors to be resolved. The resolution becomes more complicated, takes longer, and costs more when the court becomes engaged in this process (Hadi et al., 2017).

Technological issues like collateral registration may also hamper cross collateral execution. If either party fails to register or records inaccurately, a creditor's asset claim may be at risk. With one creditor, traditional collateral registration is simpler and more clear. To protect their rights, cross-collateral creditors must verify collateral registration carefully and transparently. Registration mismatches and information secrecy lead more implementation disputes. Cross-collateral assurance difficulties may be addressed by modifying the law and improving field implementation. The Mortgage and Fiduciary Guarantee Law's modification needs to clarify the cross-collateral scheme's creditor precedence. The regulation should clarify the rights of creditors whose collateral is registered first and penalise those who fail to register their collateral. All creditors must know where their claims stand, and the collateral registration system must be transparent and accessible.

In addition, parties may try mediation or arbitration, two forms of alternative dispute resolution, before taking their case to court. Creditor disputes may be resolved more quickly, litigation expenses can be reduced, and execution can be accelerated with the use of these tools. Stricter rules governing the equitable distribution of execution funds are also required in cases of collateral execution involving several creditors, to ensure that those with greater claims or who register first are given precedence in accordance with their rights (Marafwansyah et al., 2018).

An integrated digital collateral registration system is one of the main technical solutions. Creditors may now check their collateral's status at any time, reducing administrative errors and clarifying their rights. Blockchain might help with collateral registration. This layer of openness and security would provide everyone quicker and more accurate collateral status information.

This research has many novelties. This paper initially addresses cross collateral assurance concerns to fill a vacuum in Indonesian legal literature. Most legal studies focus on mortgage or fiduciary rights, ignoring the complexity of executing guarantees involving several creditors. This paper proposes a novel approach to cross collateral scheme issues and emphasises the need for regulatory change and guarantee registration system technology. Another novel approach is to examine mediation and arbitration as alternative dispute resolution methods within cross-collateral assurances. Traditional execution techniques, which rely on courts, seldom address this. Blockchain, a technology not widely employed in Indonesian guarantee law, is also explored in the study. This is a big step towards modernising cross-collateral assurances law. This study addresses cross-collateral assurance challenges with innovative, up-to-date methods that meet legislative and technological standards.

#### **4. Conclusion**

Researchers have observed that despite the presence of regulatory frameworks in Indonesia's Law on Mortgage Rights and Fiduciary Guarantees, the implementation of cross-collateralization continues to face practical challenges that often lead to conflicts between

creditors. When a single asset is used as security for multiple loans, the primary issue that arises is determining the priority of creditors' claims. This uncertainty over which creditor has the right to the asset in the event of default often complicates the execution process, particularly when several creditors are involved, leading to delays and inefficiency.

The study suggests that the most effective solution to these issues would be to make the collateral registration system more transparent and to revise the existing regulations to clearly define the precedence of creditor rights in cross-collateral arrangements. A modernized collateral registration system, accessible to creditors in real time through technological innovations such as blockchain, would help reduce the risk of disputes over claim priority. Such a system would provide all involved parties with greater legal certainty, simplify the process, and ensure fairer outcomes in the execution of cross-collateral guarantees.

Additionally, as international lenders may also participate in cross-collateralization agreements, the research highlights the potential benefits of expanding the analysis to include cross-border legal considerations or drawing comparisons with countries that have more advanced systems for registering collateral. This broader perspective could offer valuable insights into best practices and further improve the efficiency and fairness of cross-collateral schemes in Indonesia.

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