JURNAL KONSTATERING
published by
Master of Notary Law, Faculty of Law
Sultan Agung Islamic University
ISSN:2828-4836
Volume 5 No. 4, October 2026
ISSN: 2828-4836
https://garuda.kemdiktisaintek.go.id/journal/view/43046

Legal Analysis of the Use of Sealed Land as Collateral by Legal Entities in Balikpapan City

Devinda Dwi Rahmadani Anggraini
Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: devindadra@gmail.com

Abstract. *This research is motivated by the widespread practice of using "sealed land" as collateral for bank loans by legal entities in Balikpapan City, which has the potential to trigger legal vulnerabilities. Based on Law Number 4 of 1996 concerning Mortgage Rights (UUHT), objects that can be burdened with Mortgage Rights are only officially registered land rights, including Ownership Rights, Cultivation Rights, Building Rights, and Use Rights. This research aims to analyze the legal validity and legal implications of the use of sealed land as collateral by legal entities. The approach method used is a juridical-sociological approach with an empirical legal research type. Primary data was obtained directly from primary sources in the field, which were synthesized with primary, secondary, and tertiary legal materials through qualitative analysis techniques to test the conformity between statutory norms and legal practices in the field.The results of the study indicate that sealed land in Balikpapan City does not constitute land rights but merely an indication of physical control, which must be accompanied by a State Land Opening Permit (IMTN) based on Regional Regulation Number 1 of 2014 before being certified. Reviewed from Law Number 4 of 1996 (UUHT), sealed land absolutely does not meet the material requirements as an object of Mortgage Rights. Based on interviews with Bankaltimtara Balikpapan Branch, banks reject sealed land as primary collateral due to high legal risks. The legal implication of using sealed land as collateral is the loss of executorial power and the degrading of the bank's status to a concurrent creditor in the event of default. Legal entities are required to upgrade the status of sealed land to a land title certificate first in order to fulfill the principle of prudence and ensure legal certainty.*

Keywords: *Collateral; Entity; Legal; Mortgage.*

1. Introduction

Land is an important asset whose control is regulated by the state to provide legal certainty for the community.Control in the legal sense is control based on rights, which is protected by law and generally gives the rights holder the authority to physically control the land.[1] Based on Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration in Article 1 paragraph (2) states that: "State land or land directly controlled by the state, is not attached to any land rights, is not waqf land, is not customary land and/or is not an asset belonging to the state or regional property." Land that is included in the qualifications of state land is land stipulated by law or government decree, reclaimed land, emerging land, land originating from the release/transfer of rights, land originating from the release of forest areas, abandoned land, land whose term has expired and has not been requested for extension and/or renewal, land rights whose term has expired due to central government policy cannot be extended and land that originally had the status of state land. State land is managed by the Central Government or Regional Government through the National Land Agency (BPN) and cannot be legally traded without rights from the state.

The types of land rights regulated in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), namely Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, Lease Rights, Rights to Open Land and Collect Forest Products and other rights that are not included in these rights.[2]With the enactment of the UUPA to guarantee legal certainty regarding land rights, the UUPA has regulated land registration. Government Regulation No. 10 of 1961 concerning Land Registration, which was later updated with Government Regulation No. 24 of 1997 concerning Land Registration, therefore, the previous regulation was declared null and void.[3]In the form of a modern update of Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration was issued.

[1]Deby Rezky Amanda Anastasia, Jonathan PA Tumanggor & Reni Apriliyah, (2022), "Legal Protection for Land Rights Owners Whose Seal Ownership Status Has Been Transferred to Another Person Without Good Faith", in Lex Suprema Journal, Volume 4 Number 1 March 2022, p. 1016, urlhttps://jurnal.law.uniba-bpn.ac.id/index.php/lexsuprema/article/view/620/pdf#accessed July 31, 2026

[2]Michael, (2017), Land Rights According to UUPA,http://notarismichael.com/ppat/right-to-land-rights-according-to-laws/ accessed on July 31, 2026.

[3]Ifah Annisa Permatasari, Suhariningsih & Sucipto, (2015), "Legal Protection for Land Rights Holders Based on Land Seal Evidence (In the Context of Implementing Balikpapan City Regional Regulation Number 1 of 2024 Concerning Permits to Open State Land)", in Brawijaya Law Student Journal, p. 4, urlhttps://media.neliti.com/media/publications/35643-ID-legal-protection-for-land-rights-holders-based-on-the-evidence-of-the-tan-seal.pdf?exp=1785468388&kid=1&sig=UmNnihzc0H3CsSTOeeB3eClrYQbhViaG9ZosXzY7iEoaccessed July 31, 2026

In addition, there is also a term used informally in Indonesian society to refer to land controlled by the state that has not been certified but there is already proof of control or administrative ownership which is usually in the form of a Land Control Statement Letter, a Private Sale and Purchase Letter, a Statement from the Village Head or Sub-district Head which is called Sealed Land or Letter C Land. Basically, sealed land is called sealed land because the proof of control of the rights is signed on a stamp which shows control of the land or plot where the process of making the land seal involves witnesses and the Head of the local Neighborhood Association (RT) as well as Village Government Officials for its registration, where the Sub-district or Sub-district is not related to the Land Office. The land seal letter is a Physical Statement of the Land Plot which explains the control of the land or plot by the person concerned, not explained by the Village Government so that the Village Head and the Head of the RT only know about the existence of the land.[4]

Legally, sealed land does not yet have land rights and does not provide strong ownership rights because it has not been officially registered with the National Land Agency (BPN) but can be used as a basis for submitting a land rights application to the National Land Agency (BPN) through legal processes such as the Complete Systematic Land Registration (PTSL) program. One of the efforts of the Balikpapan City government to ensure that the community receives protection and legal certainty in the land sector requires attention to evidence or land ownership documents so that regulations on land seals emerge in land administration activities. However, in fact, evidence in the form of land seals in Balikpapan City has become an overlapping problem that hinders the land registration process, so that the issuance of Balikpapan City Regional Regulation Number 8 of 2006 concerning the Implementation of Land Administration based on Circular Letter Number 591/2060/Perkot-ptnh/2011 issued by the Mayor of Balikpapan, as of January 1, 2012, that seal letters or rights that have not been registered for their rights applications to the land office must be requested for a State Land Opening Permit (IMTN). This IMTN is one of the requirements for registering old land rights, such as land seals, with the National Land Agency (BPN) to upgrade their status to land ownership certificates. In line with developments in Balikpapan City, Balikpapan City Regulation Number 8 of 2006 was amended to Balikpapan City Regulation Number 1 of 2014 concerning Permits to Open State Land.[5] Therefore, sealed land does not yet have legal data and plot maps in the National Land Agency (BPN) system, which is what makes sealed land not provide strong ownership so it is vulnerable to becoming the

[4]Hello JPN, (2025), Land Seal Status,https://halojpn.kejaksaan.go.id/publik/d/permohonan/2025-D9MJaccessed on July 31, 2026

[5]Adinda Putri Jade, Diah Nadia Putri & Sholahuddin Al-Fatih, (2020), "Permits for Opening State Land in Balikpapan City", in Supremacy of Law: Journal of Legal Research, Volume 29 Number 2 August 2020, pp. 103-104, urlhttps://ejournal.unib.ac.id/supremasihukum/article/view/12254/6608accessed July 31, 2026

ISSN: 2828-4836 Volume 5 No. 4, October 2026: 1042-1058

object of land disputes. Land rights are the control over land, where a set of rights, obligations, and/or prohibitions apply to those who have the right to do something on the land. Things that must or must not be done, namely the content of ownership rights, are the criteria or measures for distinguishing land ownership rights as regulated in the Land Law.[6]With the existence of land rights, they have control over the land where a set of rights, obligations and/or prohibitions apply to people who have the right to do something on the land, including making the land an object of collateral at the Bank.

The land title guarantee institution will eventually replace various existing guarantee institutions and be recognized according to applicable Indonesian law, such as mortgages, credit guarantees, pawns, and fiduciaries, known as mortgage rights. These mortgage rights can be used as debt collateral by only being burdened with land rights in the form of ownership rights, business use rights, and building use rights. The enactment of Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects (UUHT) is a response to the mandate stipulated in the 1945 Constitution and the Basic Agrarian Law, namely the unification of guarantee institutions in Indonesia in addition to meeting the increasing need for capital for development purposes.[7] Article 4 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT) explains that land rights that can be burdened with Mortgage Rights are (a) ownership rights; (b) business use rights; (c) building use rights. In addition to these land rights, there are also use rights on state land which according to applicable provisions must be registered and according to their nature can be transferred, especially to individuals and civil legal entities. This is intended to accommodate the needs of the community and provide opportunities for low-income groups who do not have the ability to own land with the status of Ownership Rights or Building Use Rights, so that it becomes possible to obtain the necessary credit with the land owned as collateral. Likewise, the banking world can take advantage of these provisions to accept collateral in the form of buildings that have high economic value that are on land use rights on state land granted to individuals or civil legal entities.[8]

Based on this description,Sealed land is not a land right so it cannot be burdened with a Mortgage Right, if it is still used, the collateral does not have executorial power and is high risk because if there is a default, the Bank will have difficulty executing the collateral. Because on the other hand, there are still many uses of credit with Mortgage Right guarantees that are deviant and not in accordance

[6]Boedi Harsono, (2007), Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Contents and Implementation, Jakarta: Djambatan, p. 283.
[7]Yenny Fitriana Puspitasari, (2012), "Implementation of Credit Agreements with Collateral in the Form of Mortgage at PT. Bank Rakyat Indonesia (Persero) Tbk Sleman Branch Office", Yogyakarta: Islamic University of Indonesia, pp. 5-6.
[8]Ibid, pp. 6-7.

with the UUHT regarding objects that can be burdened with Mortgage Right, causing ongoing credit to experience problems and lack clear legal certainty. Therefore, identification of problems regarding the use of sealed land as collateral by legal entities in Balikpapan CityIt is important to provide conceptual and normative clarity, as well as an effort to strengthen the integrity of the notary profession in the Indonesian legal system. This research aims toanalyzing the law on the use of sealed land as collateral by legal entities in Balikpapan City.

2. Research Methods

The approach used in this research is a juridical-sociological approach, which examines law not only as norms written in laws and regulations, but also as behavior that occurs in society. The research specifications used in this study are descriptive-analytical. The data collection method is carried out through interviews and literature studies of legal materials, including primary legal materials, secondary legal materials, tertiary legal materials, and/or non-legal materials. The data analysis method used in this research is carried out through qualitative analysis that refers to a specific problem and is then linked to the literature or opinions of legal experts as well as based on applicable laws.

3. Results and Discussion

3.1 Legal Status of Sealed Land According to Land Law in Indonesia

The highest constitutional basis regarding land control and utilization in Indonesia is rigidly carved in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that: "The land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This constitutional provision gave birth to the doctrine of the Right to Control from the State (HMN), where the state is given a mandate by the people as the highest power organization to regulate, organize, allocate, and supervise supplies and legal relations between people and the land/land.[9]However, the mandate "for the greatest prosperity of the people" sets a moral-juridical limit that the State's Right to Control (HMN) is not an absolute property right (the principle of colonial domination), but rather a public right of control that aims to guarantee legal certainty, justice, and social welfare for the entire community.[10]

The manifestation of Article 33 paragraph (3) of the 1945 Constitution, was then translated into Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) in order to unify agrarian law and establish the obligation to register land

[9]Urip Santoso, (2017), Agrarian Law: A Comprehensive Study, Jakarta: Kencana Prenadamedia Group, p. 58.
[10]Bagir Manan, (2011), Growth and Development of the Constitution of the Republic of Indonesia, Bandung; Mandar Maju, p. 94.

in order to create legal certainty.[11]Based on this macro-constitutional framework, the dynamics of physical land ownership in society often trigger legal conflicts when confronted with positive law, one of which concerns the existence of land whose rights are still based on old documents from the past that have not yet been certified. The existence of land with rights based on a Sealed Certificate, commonly referred to as "Sealed Land," is a sociological and legal reality that is still frequently encountered in land law traffic in Indonesia.[12]To clearly dissect the legal status of sealed land, the analysis must be drawn from the historical upstream of the unification of agrarian law through the UUPA.

UUPA states that the provisions on land rights are regulated in Article 4 paragraph (1) that "On the basis of the right to control from the state as referred to in Article 2, it is determined that there are various kinds of rights to the surface of the earth called land, which can be given to and owned by people, either alone or together with other people and legal entities." Meanwhile, in paragraph (2) it is stated that: "The rights to land referred to in paragraph (1) of this Article provide the authority to use the land in question, likewise the body of the earth and water and the space above it are only needed for interests directly related to the management of the land within the limits according to this law and higher legal regulations."

The types of land rights regulated in Article 16 of the UUPA are Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, Lease Rights, Rights to Open Land and Collect Forest Products and other rights that are not included in these rights.[13]With the enactment of the UUPA to guarantee legal certainty regarding land rights, the UUPA has regulated land registration. Government Regulation No. 10 of 1961 concerning Land Registration, which was later updated with Government Regulation No. 24 of 1997 concerning Land Registration, therefore, the previous regulation was declared null and void.[14]The enactment of Government Regulation Number 24 of 1997 concerning Land Registration was intended to replace Government Regulation Number 10 of 1961 concerning Land Registration, which was deemed incapable of accommodating the accelerated dynamics of land law in Indonesia. As a modern update to Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration was issued.

Article 23 of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP 24 of 1997) regulates the proof of ownership of land rights, stating that in order to obtain the truth of legal data for

[11]Adrian Sutedi, (2016), Land Rights Certificate, Jakarta: Sinar Grafika, p. 21.
[12]Boedi Harsono, Op.Cit., p. 221.
[13]Michael, Op.Cit.
[14]Ifah Annisa Permatasari, Suhariningsih, Sucipto, Loc.Cit.

new rights and for the purposes of registering rights, the proof is carried out by determining the granting of land rights. the rights of officials who have the authority to grant rights to the person concerned in accordance with the applicable provisions if the granting of rights originates from state land or land with management rights. The determination of authorized officials regarding the granting of rights to state land can be issued individually, collectively or generally.[15]Land registration is carried out by the government and assisted by PPAT. PP 24 of 1997 emphasizes that Indonesia adheres to a negative publication system that contains positive elements (negative system with positive elements).[16]The characteristics of this publication system are reflected in Article 32 paragraph (1) of PP 24 of 1997 which states that a certificate is a strong means of proof of rights. This means that as long as the opposite cannot be proven in court by another party, the physical data and legal data listed in the certificate must be accepted as correct data.[17]For uncertified land such as girik land, ketitir land, or land with a legal basis in the form of a Sealed Letter, PP 24 of 1997 provides a legal corridor for settlement through Article 24. Based on this provision, proof of old rights is based on two main pillars, namely Article 24 paragraph (1) which reads "Regarding registration based on old written evidence that is deemed valid and complete by the Adjudication Committee or Head of the Land Office." While in Article 24 paragraph (2) it reads "Regarding conditions if the written evidence is incomplete or does not exist at all. Recognition of rights can be given if the applicant can prove physical control in a real and continuous manner for 20 (twenty) years or more consecutively, on the condition that such control is carried out in good faith, is not disputed by other parties, and is supported by the testimony of a trustworthy person." Although Government Regulation No. 24 of 1997 remains the main pillar of land registration, following the enactment of Government Regulation No. 18 of 2021 (a derivative regulation of the Job Creation Law), provisions regarding the proof of these old rights have undergone massive tightening, where all old written evidence (such as sealed letters) have their claim space restricted in order to pursue the unification of the digitalization of national land certificates.

The application for the title is submitted to the Minister through the Head of the Land Office whose jurisdiction covers the location of the land in question. After the Head of the Land Office receives the application, he/she then orders the Land Inspection Committee A to examine the title application in the field and the results are recorded in the Land Inspection Report. After considering the opinion of the Head of the Land Rights and Land Registration Section or a designated official or the Land Inspection Committee A, the Head of the Land Office issues a Decree Granting Ownership Rights to the requested Land. If the authority to

[15]Boedi Harsono, Op.Cit., p. 474.
[16]AP Parlindungan, (2011), Land Registration in Indonesia: Based on PP No. 24 of 1997 with Commentary, Bandung: Mandar Maju, p. 84.
[17]Urip Santoso, Op.Cit., p. 73.

grant the title falls under the authority of the BPN Regional Office, the Head of the Land Office submits the application to the Head of the BPN Regional Office along with his/her opinion and considerations.[18]

In this context, a sealed letter which is usually in the form of a private Sale and Purchase Statement, a Physical Control Statement, or a Land Certificate (SKT) made on sealed paper (stamp) is not a "land right" (rechtshebbende).[19]Based on Article 16 in conjunction with Article 20 of the UUPA, land rights can only arise through three official channels: government decree, statutory provisions, or conversion of existing rights. Because the sealed deed was never officially registered for conversion into a certificate within the deadline stipulated by the existing conversion regulations, the land's formal and legal status reverted to direct state control, or it was categorized as State Land.[20]The state, through the principle of the Domini Principle which has been modified to become the Right to Control from the State (HMN) in Article 2 of the UUPA, holds full authority over the land, while the seal holder only has the status of physical controller (de facto), not legal owner (de jure).[21]Although it lacks the executorial power of ownership, land law does not necessarily negate the existence of a sealed deed. Referring to Article 24 of Government Regulation No. 24 of 1997, a sealed deed is classified as prior written evidence or indicative evidence (initial evidence/prima facie evidence). The seal letter functions to prove 2 (two) crucial things in the land registration process, namely as historical evidence of land acquisition (proof of old rights) and as a moral-juridical bond that the physical control carried out by the seal holder is based on good faith (good faith/te goeder trouw) and does not violate the law.[22]The legal status of sealed land experiences significant strengthening if the written document is supported by real and continuous physical control for 20 (twenty) years or more. Based on Article 24 paragraph (2) of PP 24 of 1997, the combination of a sealed letter and physical control without any objection from other parties provides priority rights for the seal holder to apply for rights (granting new rights) to the state through the land registration scheme for the first time.[23]

In this regard, given the widespread unilateral physical control of state land by the public and the high number of disputes over overlapping double seals, Balikpapan City has a unique land regulation that distinguishes it from the

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[18]Tanjung Nugroho, (2014), Akur Nurasa, Problems of Permits to Use State Land as “Legal Basis” in Land Registration in Tarakan City, Center for Research and Community Service, Yogyakarta: National Land College, p. 29.
[19]AP Parlindungan, (2014), Commentary on the Basic Agrarian Law, Bandung: Mandar Maju, p. 118.
[20]Ali Achmad Chomzah, (2012), Indonesian Land Law, Jakarta: Prestasi Pustaka, p. 89.
[21]Mudjiono, (2009), Agrarian Law, Yogyakarta: Liberty, p. 76.
[22]Adrian Sutedi, Op.Cit., pp. 64-66.
[23]Rusmadi Murad, (2013), Land Administration: Implementation of Land Registration in Theory and Practice, Jakarta: Mandar Maju, p. 102.

majority of other local governments in Indonesia, namely the issuance of the State Land Clearing Permit (IMTN) instrument. The Balikpapan City Government intervened in the governance of regional land administration by enacting Balikpapan City Regional Regulation (Perda) Number 1 of 2014 concerning the State Land Clearing Permit. Through this Regional Regulation, the Balikpapan City Government stipulates that every person or legal entity that controls or utilizes land with State Land status (including land sealed from the past that has not been certified) is required to obtain a permit from the Mayor in the form of a State Land Clearing Permit (IMTN). The Balikpapan City Government is attempting to suppress the rate of underhand seal-based land transactions. However, legal conflicts continue to occur in the field. Many legal entities and individuals in Balikpapan still control sealed land but are hampered in converting rights due to incomplete administrative proof of past deeds, or overlapping claims with forest areas or Cultivation Rights (HGU) of other corporations. The limited legal status of sealed land in Balikpapan City has implications for its holders, both individuals and legal entities, in the form of legal vulnerabilities that include three main aspects, namely:

a. Vulnerability to Overlapping Claims, because the sealed land is not recorded in the digital land registration map (Geo-KKP) of the Balikpapan City Land Office, the boundaries of the sealed land in the field are often unclear. This has triggered a surge in civil land boundary disputes in the Balikpapan District Court, where the sealed land often loses its proof against the party holding the Ownership Certificate (SHM) which has strong evidentiary power according to Article 32 of PP 24 of 1997.

b. Legal uncertainty for business permits. For customers or business entities in Balikpapan, land ownership that is still sealed backfires on fulfilling licensing commitments through the Online Single Submission (OSS) system. Legal entities cannot issue Building Use Rights (HGB) on sealed land, so factory, warehouse, or expedition operations on the land are formally deemed administratively flawed.

c. Obstacles to Transfer of Rights After the Implementation of Digitalization, sealed land transfer transactions currently cannot be carried out before the PPAT in Balikpapan City because the PPAT is only authorized to process land that has been registered.[24]As a result, the transfer of sealed land was forced to be done underhand or through a letter of release of rights at the sub-district office, which absolutely placed the buyer in a weak legal position if an ownership dispute arose.[25]

[24]Habib Adjie, (2013), Civil and Administrative Sanctions Against Notaries as Public Officials, Bandung: Refika Aditama, p. 110.
[25]Kartini Muljadi & Gunawan Widjaja, (2008), Mortgage Rights, Jakarta: Kencana, p. 67.

Thus, the Seal Letter/IMTN is not at all a land right as regulated in a limited manner in Article 16 in conjunction with Article 20 of the UUPA. The Seal Letter/IMTN is essentially only a legal basis or a private letter that only confirms physical control (de facto), not proof of legal ownership (de jure). By not fulfilling the qualifications as one of the types of official land rights according to the UUPA, the land with the seal/IMTN formally and legally falls back into the qualifications of State Land. Therefore, the claim of absolute ownership based on the seal is an error in legal construction. The Seal Letter is only positioned as an old written evidence or initial evidence. Its evidentiary character is relative and very fragile. The author emphasizes that true legal certainty in the Indonesian land law system which adheres to a negative publication system with positive elements can only be created through the issuance of a certificate. The certificate is the only strong means of proof according to Article 32 paragraph (1) of PP 24 of 1997, which cannot be compared on an equal footing with the Seal Letter/IMTN.

3.2 Legal Analysis of the Use of Sealed Land as Collateral by Legal Entities in Balikpapan City

Balikpapan City, as the main economic growth center in East Kalimantan Province, has a very high level of land legal traffic dynamics, especially after the establishment of the Indonesian Capital City (IKN) area in its supporting area. Sociological realities in the field show that the use of land assets whose legal status is still capitalized by "Sealed Letters" or similar Land Certificates (SKT) is still commonly used by business actors, both individuals and those who have formed legal entities (rechtspersoon) such as Limited Liability Companies (PT), to be used as collateral to obtain access to working capital financing. The placement of sealed land as collateral by legal entities triggers complex legal issues.

Collateral in banking legal terminology is defined in Article 1 number 23 of Law Number 10 of 1998 concerning Banking as an additional guarantee submitted by the Debtor Customer to the Bank (Creditor) in order to provide credit or financing facilities based on sharia principles. One of its identities related to the existence of collateral, namely the meaning of the bank credit agreement must have confidence in the debtor's ability to repay the credit, where this is formulated in the form of collateral, both material and immaterial.[26]With this interpretation, it can be understood that collateral (credit guarantee) is a type of accessory agreement that follows the main agreement, where this is part of the realization of the credit principle through collateral, and has implications for the creditor's status as a separate creditor, namely a creditor holding a material

[26]Indah Antari Murti, (2010), “Credit Agreement with Fiduciary Guarantee for Motor Vehicles Sold to Third Parties at PT. Bank Danamon (Persero) Tbk Unit DSP Pracimantoro Wonogiri”, Thesis, Master of Notary Study Program, Semarang: Diponogoro University, pp. 46-47.

guarantee.[27] Collateral is a wealth in the form of property owned by the debtor that will be used as collateral if the debtor is unable to repay the debt based on the existing credit agreement. Collateral in the credit agreement must be examined first by the bank. Because of the risks in its implementation, financial institutions, both conventional banks and Islamic banks operating in Balikpapan City, are bound by the principle of prudence (prudent banking principle) mandated by banking laws and regulations and the financial services authority. One manifestation of this principle is the requirement that the collateral object must meet bankable criteria, namely economic value (marketable) and have legal certainty (legally enforceable).

Frequent cases involving collateral under mortgage rights in credit agreements arise from the collateral being a plot of land whose ownership is still in the form of a seal, girik, or petok (land title) in the name of the prospective debtor. As previously discussed, under Government Regulation 24 of 1997, and further strengthened by Government Regulation 18 of 2021, sealed land is not formally a land title but merely evidence of physical control. Consequently, from a national banking legal perspective, sealed land is considered to carry a very high legal risk.[28] The results of an interview with PT. Bank Pembangunan Daerah Kalimantan Timur dan Kalimantan Utara Balikpapan Branch stated that "the use of sealed land as collateral from the perspective of banking institutions, sealed land cannot be used as collateral unless the sealed land can first be upgraded to a certificate. From the bank, only collateral in the form of certificates such as SHM, SHGB, SHP is accepted. One factor is that the authenticity of sealed land is difficult to verify. Because it is difficult to verify the authenticity, this is what makes sealed land very risky."[29]

Similarly, the results of an interview with the Balikpapan City Land Office, Kalimantan Province, stated that:[30]"Regarding sealed land as collateral, the collateral referred to here is more of a mortgage right as recognized in the UUHT, the mortgage right is a security right that is imposed on land rights as regulated in the law. The definition of land rights is as regulated in Article 16 of the UUPA and land rights are anything such as SHM, SHGB, SHP and so on. The point refers to the seal, because the seal is not included in the category of land rights, then the seal cannot be attached to the mortgage right, so the use of the seal for collateral as referred to in the UUHT cannot be charged. Because the Ministry of

[27]Ifa Latifa Fitriani, (2017), "Guarantees and Collateral in Sharia Bank Financing and Conventional Bank Credit", in the Journal of Law and Development, Volume 47 Number 1 March 2017, p. 133, urlhttps://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1248&context=jhpaccessed July 31, 2026
[28]Munir Fuady, (2014), Noble Profession: Ethics of the Legal Profession for Judges, Prosecutors, Advocates, Notaries, Curators, and Police, Bandung: Citra Aditya Bakti, p. 183.
[29]Interview with PT. Regional Development Bank of East Kalimantan and North Kalimantan Balikpapan Branch on May 8, 2026.
[30]Interview with the Balikpapan City Land Office, East Kalimantan Province on May 18, 2026.

ATR/BPN in this case the Balikpapan City Office carries out everything based on the land rights certificate, then the use of sealed land in our case is not implemented because it is outside the jurisdiction or authority of the BPN, because the authority of the BPN is only to attach mortgage rights to land rights certificates, so we do not know the factors that become obstacles in the use of sealed land as collateral because the BPN of Balikpapan City has never attached mortgage rights to sealed land. The factors that become obstacles are "If it falls within our jurisdiction. Since it doesn't fall within our jurisdiction, those constraints automatically disappear, as we can't process it. Our authority is limited to granting mortgages to land title certificates. If such cases are outside our jurisdiction, the attachment of mortgages is carried out outside the authority of the National Land Agency (BPN), such as guarantees from individuals or other parties."

The absence of a certificate such as a Certificate of Ownership (SHM) or a Certificate of Building Use Rights (SHGB) means that the land cannot be encumbered with a strong security right, namely a Mortgage Right based on the UUHT. Considering that Article 4 of the UUHT restrictively stipulates that the object of the Mortgage Right must be a registered Ownership Right, Cultivation Right (HGU), Building Use Rights (HGB), or Use Rights, sealed land absolutely cannot be encumbered with a Mortgage Right. Although sealed land cannot be bound by a perfect Mortgage Right deed, in certain financing practices in Balikpapan City, especially in the Micro, Small, and Medium Enterprises (MSMEs) segment run by local legal entities, sealed land is sometimes still accepted by financial institutions through a supporting/additional guarantee scheme.

The legal binding mechanism used does not use a Deed of Granting of Mortgage Rights (APHT) made by a PPAT, but rather uses the construction of a Private Guarantee Deed which is legalized or recorded (waarmerking) by a Notary, this document acts as a conventional guarantee transfer agreement or Rahn agreement (sharia pawn) which is limited to binding the parties personally (inter partes) or bound by a Trust Ownership Transfer Agreement (Fiducia) with permission for physical control.[31]Because the land is state-owned, the binding is carried out separately based on the principle of horizontal separation (horizontale scheiding), where the building, plants, or priority rights of physical control over the land are registered as fiduciary objects, not the land itself. However, dogmatically, both of these schemes place banks or financial institutions in a very fragile legal position. The creditor only has the status of a concurrent creditor with no prior rights (droit de preference) and does not hold direct executorial title if the legal entity debtor defaults.[32]

[31]Habib Adjie, Op. Cit., p. 94.

[32]J. Satrio, (2007), Law of Guarantee, Property Guarantee Rights: Mortgage Rights, Volume 1, Bandung: Citra Aditya Bakri, p. 94.

Based on the results of interviews with PT. Bank Pembangunan Daerah Kalimantan Timur dan Kalimantan Utara Balikpapan Branch, banking institutions usually provide solutions to customers for land that wants to be secured in the form of a land seal or IMTN so that it can be installed with a mortgage, namely the land seal or IMTN must first be upgraded to a certificate. If a customer wants to guarantee their assets in the form of a certificate and seal, usually the related unit will conduct an appraisal or assessment of the collateral, it is possible that the seal can be used as collateral but in a small portion and cannot be the main collateral but only a supporting collateral. However, the land seal cannot be tied to HT, it can only be tied to a Power of Attorney for Sale (SKJ) and it must also be ensured that there is no overlap or the like, namely by checking with the District Office, but if the related seal that will be used as additional collateral is an old seal (year) it will be difficult to check because the District Office does not have a list of seals unless the IMTN has been processed, if it is like this the bank cannot include the seal as collateral. So, banking institutions prioritize the certificate guarantee. If the collateral is not sufficient for the loan applied for, the bank will negotiate with the customer regarding the collateral.[33]

When viewed from the perspective of Islamic economic law, the use of sealed land that has been equipped with IMTN in Balikpapan City as collateral (marhun) has a fairly strong basis for justification in Islamic law, but is still limited by positive regulations.[34]Based on DSN-MUI Fatwa Number 25/DSN-MUI/III/2002 concerning Rahn, the handover of sealed land as collateral actually fulfills the Marhun element as long as the land is physically controlled by the legal entity customer (al-qabdh) and has real economic value in the local Balikpapan market.[35]However, from a positive legal perspective, this underhand bond places the financial institution or creditor only as a concurrent creditor (creditor without privileges), not as a separatist creditor (preferred creditor).[36]Creditors do not have prior rights (droit de preference) and do not have direct executorial title if the debtor's legal entity experiences a payment failure (default).[37]The use of sealed land as collateral by legal entities in Balikpapan City carries significant potential for future disputes. Based on local land dispute data, land secured by sealed land titles in Balikpapan often faces overlapping claims due to the lack of a robust digital mapping document at the Balikpapan City Land Office.[38]

Therefore, based on an interview with the Balikpapan City Land Office, East Kalimantan Province, the Balikpapan City Land Office firmly stated that if a

[33]Interview with PT. Regional Development Bank of East Kalimantan and North Kalimantan Balikpapan Branch on May 8, 2026.
[34]Mardani, (2019), Sharia Financial System Law in Indonesia, Jakarta: Sinar Grafika, p. 192.
[35]Jaih Mubarok, (2017), Development of Islamic Economic Fatwas in Indonesia, Bandung: Pustaka Setia, p. 145.
[36]Kartini Muljadi & Gunawan Widjaja, Op. Cit., p. 53.
[37]Ibid, p. 55.
[38]Rusmadi Murad, (2014), Resolving Land Disputes Legally, Bandung: Mandar Maju, p. 129.

mortgage is to be placed on land, it must first be upgraded to a land title certificate. Therefore, the solution is to first register the land with the seal, as clearly stated in the Regulation of the Minister of ATR/BPN Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, which explains the procedures for granting land rights and their requirements. Initial land title granting can use two (2) methods: systematic registration and sporadic registration. Systematic registration is a simultaneous registration within a single sub-district, usually with adjacent plots, commonly referred to as PTSL (Complete Systematic Land Registration), formerly known as Prona. The PTSL program is a national program from the Ministry of ATR/BPN to register all land plots in Indonesia simultaneously, en masse, and free of charge, funded by the state. The PTSL program has a target or quota per year. If the quota is insufficient this year, an application can be submitted for the following year's quota. Meanwhile, sporadic registration means that the application is made separately, which is submitted independently and is issued separately.[39] Once the land title certificate is submitted and legally signed by the Head of the Balikpapan City Land Agency (BPN), the land transforms from a "dead capital" to an asset with full legal value. From that moment on, the ownership document meets the formal requirements to be presented to the Land Deed Official (PPAT) for the next stage, namely the installation of a Mortgage Right (HT).

Thus, legal analysis shows that the use of sealed land as collateral by legal entities in Balikpapan City constitutes a weak and imperfect legal position (imperfect security interest). This practice should be avoided whenever possible or only used as additional moral hazard mitigation, while the primary collateral must be transferred to certified assets to ensure legal certainty in corporate and financial institution governance.[40]It can be firmly concluded that sealed land cannot and should not be used as primary collateral. The absence of a land title certificate (such as a SHM or SHGB) absolutely precludes access to mortgage rights, placing financial institutions in a highly fragile legal position (imperfect security interest) and at high risk of triggering non-executable execution.

4. Conclusion

Based on the results of research and discussion, the legal status of sealed land according to land law in Indonesia is not proof of legal ownership of land rights, but rather is limited to conventional written evidence regarding the release of land rights, underhand sale and purchase transactions, or confirmation of historical physical control. Based on Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) which adheres to the principle of conversion and the obligation of land registration, sealed land is categorized as state land that has not been certified. Seal documents only serve as a deed or initial basis of rights

[39]Interview with the Balikpapan City Land Office, East Kalimantan Province on May 18, 2026.
[40]M. Yahya Harahap, (2016), Limited Liability Company Law, Jakarta: Sinar Grafika, p. 244.

(rechtstitel) which is relative in nature, where the evidentiary force is very weak and has not yet given rise to property rights (zakelijk recht). Therefore, in order to obtain absolute legal certainty (indefeasible title) and legal protection from the state, the holder of sealed land is legally obliged to improve his legal status by undergoing the procedure for initial land registration (certification) at the local Land Office. Due to the absence of a Certificate and SKPT from the National Land Agency (BPN), land still holding a Sealed Letter/IMTN status absolutely cannot be used as collateral for Mortgage Rights because it has not met the publicity and specification requirements in the land registration system. Therefore, the certification process (land registration for the first time sporadically or PTSL) at the Balikpapan City Land Office (BPN) is an upstream stage that must be completed first. The practice of binding land collateral with a seal/IMTN underhand places financial institutions in a very fragile legal position as concurrent creditors. In the event of non-performing financing, this condition causes the collateral assets to be legally unexecutable, thus triggering a high risk of financial loss for banks and conflicting with the prudent principle and risk management established by financial authorities. Banking institutions are advised to apply the prudent banking principle and consistently reject the use of Sealed Land/IMTN as primary collateral, unless its status is first upgraded to a certificate (SHM/SHGB). For debtors who control assets based on sealed letters, it is recommended to be proactive in conducting an asset inventory and immediately register their land with the Balikpapan City Land Office before submitting a credit/financing application. This step is important so that the asset does not become dead capital, but rather has high legal certainty so that it can be installed with an Electronic Mortgage Right (HT-el) and has strong bargaining value (bankable) in the eyes of financial institutions. In addition, Notaries/PPAT are advised to be very careful and are required to provide firm legal counseling to creditors regarding the risk of deadlock in auction execution in the future due to the status of uncertified land.

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