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Mortgage Rights over Property Involving Foreign Nationals: Legal Risks and Reform in Indonesia

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Abstract. *This study aims to analyze the legal position of mortgage rights (Hak Tanggungan) over land or property owned or controlled by foreign nationals in the Indonesian secured transactions system, as well as to identify the legal risks faced by creditors and the corresponding mitigation measures. This research employs a normative juridical method with statutory, conceptual, and case approaches, analyzed using a prescriptive-analytical framework. The findings indicate that mortgage rights related to foreign nationals are legally valid only when imposed on the Right of Use (Hak Pakai) in accordance with Article 4 paragraph (2) of the Mortgage Law. Conversely, the imposition of mortgage rights over freehold land (Hak Milik) that is de facto controlled by foreign nationals through nominee arrangements is potentially null and void, as it violates the nationality principle in Indonesian agrarian law. Furthermore, creditors face multidimensional legal risks, including invalidity of security, unenforceability of execution, regulatory risks, and potential criminal liability. The study also reveals that effective risk mitigation requires a comprehensive approach, including rigorous legal due diligence, and appropriate structuring of collateral. Therefore, regulatory harmonization and strengthened supervisory mechanisms are necessary to enhance legal certainty and protection in mortgage practices involving foreign nationals.*

Keywords: *Foreign Nationals; Legal Risk; Mortgage Rights; Nominee Arrangement; Secured Transactions.*

1. Introduction

The increasing flow of foreign investment and the mobility of foreign nationals in Indonesia in recent years have shown a significant upward trend, particularly following the enactment of Law Number 6 of 2023 on Job Creation (Nugroho & Azizy, 2023). Normatively, this legislation aims to create a more conducive investment climate by simplifying regulations and facilitating business activities, including in the property sector. As a consequence, the involvement of foreign nationals in property transactions in Indonesia has increased, both through legally recognized ownership schemes, such as the Right to Use (*Hak Pakai*), and through legally problematic practices, such as nominee arrangements (Hariadi et al., 2023; Rambe & Dasnawati, 2023). This development reflects a new dynamic in agrarian legal relations, which are no longer purely domestic in nature but are increasingly influenced by cross-border interests (Izzati, 2024). Furthermore, economic liberalization, coupled with the growing need for legal certainty, has positioned the agrarian sector as a critical element in fostering foreign investor confidence (Boedi Harsono, 2008). In this context, the state faces a fundamental dilemma between expanding opportunities for foreign investment and preserving the principle of nationality in land tenure.

In practice, these developments extend beyond issues of ownership and increasingly affect the financing and banking sectors. In the course of extending credit, financial institutions frequently accept property as collateral that is *de facto* controlled by foreign nationals, although it is *de jure* registered under the name of an Indonesian citizen (Chayadi, 2020). This situation gives rise to significant legal issues, considering that the Basic Agrarian Law (Law Number 5 of 1960) expressly prohibits foreign nationals from holding land under Freehold Title (*Hak Milik*), as stipulated in Article 21 paragraph (1) (Hasanah, 2013; Abon et al., 2022). In this context, a fundamental legal question arises regarding the validity of a Mortgage Right (*Hak Tanggungan*) imposed on land that is substantively controlled by a party who does not qualify as a lawful holder of Hak Milik (Hasanah, 2013; Purwa et al., 2023). This issue is particularly significant because it concerns the legitimacy of proprietary security rights within the Indonesian legal system. Furthermore, such practices have the potential to create conflicts between the principle of formal legality and the reality of factual control over land. This condition highlights the gap between the legal framework and the evolving practices of the business sector (Adrian Sutedi, 2010).

The lack of regulatory clarity and the evolving practices in the field have direct implications for the emergence of multiple layers of legal risk, particularly for lending institutions (Rosmayanti & Apriani, 2023). First, there is a risk that a Mortgage Right (*Hak Tanggungan*) may be declared invalid if the collateral is deemed not to satisfy the legal requirements of a valid security object. Second, creditors face the risk of being unable to enforce the security interest in the event of default, particularly where *de facto* control of the property by a foreign national becomes the subject of legal dispute (Permatadani & Irawan, 2021). Third, the use of nominee arrangements may also give rise to criminal liability for both the parties directly involved and those who indirectly facilitate such practices. In addition, the potential reputational and financial risks faced by financial institutions cannot be overlooked (Fuad et al., 2024). The resulting legal uncertainty may undermine the function of proprietary security rights as an effective risk mitigation instrument within Indonesia's credit financing system (Sutan Remy, 1999). Nevertheless, academic studies specifically examining the relationship between land ownership status involving foreign nationals and the validity of Mortgage Rights (*Hak Tanggungan*) from the perspective of legal risk remain limited and lack comprehensive analysis (Sjahdeini, 1999).

Previous studies have generally examined the issue of land ownership by foreign nationals within the broader framework of agrarian law or have analyzed Mortgage Rights (*Hak Tanggungan*) as a proprietary security institution in isolation (Permatadani & Irawan, 2021; Kusumadara & Hardiyantina, 2025). Such a fragmented approach has not been able to comprehensively explain the legal complexities that arise when these two issues intersect in banking practice. Moreover, most existing studies have primarily focused on normative legal analysis without adequately addressing the practical implications for lending institutions (Ardani, 2017; Pebriyana et al., 2020). In fact, integrating normative legal analysis with practical perspectives is essential to produce findings that are both academically rigorous and practically applicable (Sumardjono, 2007). Consequently, there remains a significant research gap concerning the relationship between land ownership involving foreign nationals and the validity of Mortgage Rights (*Hak Tanggungan*) from the perspective of legal risk faced by creditors. This gap highlights the need for a more comprehensive and interdisciplinary approach (Paulinah et al., 2022; Pramudya & Dharsana, 2023; Arsensius, 2023). Therefore, this study is expected to provide both an academic contribution and practical solutions to the legal issues arising from the acceptance of property owned by foreign nationals as credit collateral in Indonesia.

This study aims to analyze the legal status of Mortgage Rights (Hak Tanggungan) imposed on land or property owned or controlled by foreign nationals within Indonesia's proprietary security law system. Furthermore, it seeks to identify and examine the legal risks faced by creditors in accepting such property as loan collateral, while formulating appropriate juridical risk mitigation measures to enhance legal certainty and strengthen creditor protection within the Indonesian banking and secured transactions framework.

1. What is the legal status of Mortgage Rights (*Hak Tanggungan*) imposed on land or property owned or controlled by foreign nationals within Indonesia's proprietary security law system?
2. What legal risks do creditors face in accepting credit collateral associated with property owned or controlled by foreign nationals, and what mitigation measures can be adopted?
3. How should Indonesia's regulatory framework be reformed to improve legal certainty and the effectiveness of Mortgage Rights involving foreign nationals?

Theoretically, this study contributes to the development of proprietary security law by clarifying the legal status of Mortgage Rights (*Hak Tanggungan*) involving foreign nationals and strengthening the integration of agrarian law with banking and financial law. Practically, it provides guidance for lending institutions in conducting legal due diligence on collateral involving foreign nationals and offers policy recommendations for the Financial Services Authority (OJK) and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) to enhance legal certainty and improve Indonesia's credit financing regulatory framework.

2. Research Methods

This study employs a normative juridical research method, which focuses on the analysis of legal norms embodied in the prevailing statutory framework. This approach is undertaken by examining legal provisions governing land rights, Mortgage Rights (*Hak Tanggungan*), and the involvement of foreign nationals in the ownership and control of agrarian property. A normative juridical approach is considered appropriate because the issues examined are closely related to the legality, validity, and interpretation of legal norms governing practices that have developed within society.

This study adopts three complementary approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach involves the examination of relevant legislation, including the Basic Agrarian Law, the Mortgage Law, and their implementing regulations.

The conceptual approach is employed to analyze legal doctrines, principles, and concepts relating to Mortgage Rights (*Hak Tanggungan*), legal subjects, and proprietary security rights. Meanwhile, the case approach is used to examine legal practices and emerging issues in society, particularly those involving nominee arrangements and their implications for the validity of credit collateral under Indonesian law.

The legal materials used in this study consist of primary and secondary legal materials. The primary legal materials comprise statutory regulations relevant to the research, including Law Number 5 of 1960 concerning the Basic Agrarian Principles (Basic Agrarian Law/UUPA), Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (Mortgage Law), Law Number 10 of 1998 concerning Banking, Law Number 6 of 2023 concerning Job Creation, Land Rights, Apartment Unit Ownership Rights, and Land Registration, and Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration

Secondary legal materials include textbooks on agrarian law and proprietary security law, scholarly journal articles, legal doctrines developed by experts, and previous

Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
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Volume 8 No. 2, June 2026

studies relevant to the legal issues examined. The tertiary legal materials include legal dictionaries and legal encyclopedias, which are used to clarify legal terminology and concepts employed throughout this study.

The legal materials collected in this study are analyzed using a prescriptive-analytical method. Under this approach, the legal materials are systematically and logically examined to identify the relationships among legal norms, detect potential conflicts or gaps in the law, and formulate relevant legal propositions.

3. Result and Discussion

3.1 Legal Status of Mortgage Rights over Property Owned or Controlled by Foreign Nationals

From a normative perspective, the legal capacity of foreign nationals in relation to the creation of Mortgage Rights (*Hak Tanggungan*) must be assessed according to the type of land right they hold. Mortgage Rights (*Hak Tanggungan*) constitute a proprietary security right specifically designed to secure the performance of debt obligations through land rights recognized under Indonesian agrarian law. As an accessory right, a Mortgage Right depends on the existence of a valid principal credit agreement and provides creditors with priority rights to execute the collateral in the event of debtor default (Purwa et al., 2023). The effectiveness of this security institution is closely linked to the legality of both the land right serving as collateral and the legal capacity of the grantor. Consequently, the creation of Mortgage Rights is not merely an administrative procedure but also requires compliance with substantive legal requirements governing land ownership and proprietary rights. These characteristics make Mortgage Rights an essential legal instrument in ensuring legal certainty, creditor protection, and the stability of secured lending transactions, particularly where the collateral involves land owned or controlled by foreign nationals.

The legal status of land ownership in Indonesia is fundamentally governed by the principle of nationality, under which full ownership rights (Hak Milik) are reserved exclusively for Indonesian citizens (Wulan et al., 2022). This principle reflects the constitutional objective of ensuring that land, as a strategic national resource, remains under national control while limiting the proprietary rights that may be exercised by foreign nationals. Consequently, foreign nationals may only acquire limited land rights, such as the Right to Use (Hak Pakai), subject to statutory conditions and administrative requirements. This distinction is particularly significant in the context of proprietary security because the nature of the underlying land right directly determines the legal capacity of the grantor and the validity of the Mortgage Right (Hak Tanggungan). Therefore, understanding the classification of land rights is essential for assessing the legality and enforceability of secured transactions involving foreign nationals (Putra, 2022).

The legal status of Mortgage Rights over property involving foreign nationals cannot be assessed solely on the basis of a single statutory provision but must be interpreted through an integrated regulatory framework governing land rights, proprietary security, and banking activities. The Basic Agrarian Law establishes the nationality principle as the foundation of land ownership, while the Mortgage Law regulates the creation and enforcement of security rights over eligible land rights (Purwa et al., 2023). These provisions are further complemented by the Banking Law, Government Regulation Number 18 of 2021 concerning land rights, and other implementing regulations that collectively determine the legal validity of collateral involving foreign nationals (Dharsana et al., 2021). Accordingly, the legal analysis requires a systematic interpretation of these interrelated regulations to evaluate the validity, enforceability, and legal consequences of Mortgage Rights established over such property.

Pursuant to Article 4 paragraph (2) of Law Number 4 of 1996 on Mortgage Rights, both Rights to Use (*Hak Pakai*) over state land and Rights to Use established over Freehold Title (*Hak Milik*) may be encumbered with Mortgage Rights (Bisyir, 2023). Within this legal framework, a foreign national who lawfully holds a Right to Use is legally entitled to create a Mortgage Right over that interest. Nevertheless, because a Right to Use is limited in both duration and scope of authority, its legal status does not provide the same degree of security as Freehold Title (*Hak Milik*) or the Right to Build (*Hak Guna Bangunan*) in the context of proprietary security rights. Accordingly, although foreign nationals are normatively permitted to grant Mortgage Rights over eligible land rights, their legal capacity remains subject to strict statutory limitations and cannot be equated with that of Indonesian citizens (Manuaba et al., 2024).

The legal issues become more complex when viewed in light of the limited duration of Rights to Use (*Hak Pakai*), which are granted for a maximum period of 30 years, with the possibility of a 20-year extension, as provided under Government Regulation Number 18 of 2021. This limitation may create a mismatch with the tenor of credit facilities, which in banking practice often exceeds the validity period of the underlying land right (Putri et al., 2025). Furthermore, in the context of nominee arrangements, where land under Freehold Title (*Hak Milik*) is formally registered in the name of an Indonesian citizen but is *de facto* controlled by a foreign national, significant legal issues arise regarding the validity of the Mortgage Right. Under the principle of *nemo plus iuris transferre potest quam ipse habet*, no person may transfer rights exceeding those he or she lawfully possesses. Consequently, where the legal title of the grantor of the Mortgage Right is legally defective, the Mortgage Right itself may be declared null and void. This demonstrates that the legal capacity of the subject granting the security right constitutes a fundamental determinant in assessing the validity of proprietary security rights under Indonesian law (Rahmawan & Djaja, 2026). The legal issues arising from the limited legal capacity of foreign nationals and the potential invalidity of Mortgage Rights must also be assessed through the principle of legal certainty. Legal certainty requires that every legal relationship concerning land rights and proprietary security be governed by clear, consistent, and predictable legal norms, thereby ensuring the protection of the rights and obligations of all parties involved (Mertokusumo, 2007; Rahardjo, 2006). In the context of Mortgage Rights, legal certainty extends beyond compliance with formal registration requirements to include the legality of the underlying land rights and the legal capacity of the grantor. Consequently, where land ownership structures involve nominee arrangements or other mechanisms inconsistent with agrarian law, the enforceability of Mortgage Rights becomes uncertain, potentially undermining creditor protection and the reliability of Indonesia's proprietary security system.

Regulatory developments following the enactment of Law Number 6 of 2023 on Job Creation demonstrate the government's efforts to provide broader opportunities for foreign nationals to acquire property rights in Indonesia, particularly through the expansion of provisions governing Rights to Use (*Hak Pakai*) (Putra, 2021; Nugroho & Azizy, 2023). Nevertheless, these reforms have not fundamentally altered the principle of nationality embedded in Indonesian agrarian law, under which foreign nationals remain prohibited from holding Freehold Title (*Hak Milik*). Accordingly, the reforms have not substantially changed the legal capacity of foreign nationals as subjects capable of granting Mortgage Rights (*Hak Tanggungan*); rather, they have primarily introduced administrative simplification and investment facilitation measures (Izzati, 2024). This situation reflects a continuing dualism between the government's objective of promoting economic liberalization and the protective character of Indonesia's agrarian legal framework.

In practice, the National Land Agency (*Badan Pertanahan Nasional/BPN*) plays a central role in the registration of Mortgage Rights (*Hak Tanggungan*), including verifying the legal status of both the subject and the object of the security right. However, such verification is generally limited to formal administrative requirements and therefore may not be sufficient to detect *de facto* control of land by foreign nationals through nominee arrangements. Several cases have demonstrated that a Mortgage Right may be declared invalid where defects exist in the legal status of the grantor or where the ownership structure constitutes an attempt to circumvent mandatory provisions of agrarian law (Subekti, 2005). These findings reveal a gap between the normative legal framework and its practical implementation, resulting in legal uncertainty for creditors. Accordingly, this comparative analysis demonstrates that, although an adequate regulatory framework exists, its implementation continues to face significant challenges in ensuring the substantive validity and enforceability of Mortgage Rights under Indonesian law (Syarifuddin, 2021).

Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 2, June 2026

2. Legal Risks Faced by Creditors and Risk Mitigation

In credit transactions involving collateral associated with foreign nationals, creditors are exposed to various multidimensional legal risks. One of the principal risks is the potential invalidity of a Mortgage Right (*Hak Tanggungan*) where the collateral does not satisfy the legal requirements prescribed under Article 4 of Law Number 4 of 1996 on Mortgage Rights, or where the grantor lacks the legal authority to establish the security right (Bisyir, 2023). From the perspective of Indonesian civil law, such circumstances may constitute a failure to satisfy the essential validity requirements of a contract under Article 1320 of the Indonesian Civil Code, thereby rendering the security agreement invalid in its entirety. Furthermore, creditors may encounter difficulties in enforcing the collateral, particularly through parate execution, if the Mortgage Certificate is affected by legal defects, thereby preventing the effective realization of the creditor's security rights.

Legal risk constitutes one of the principal risks in secured lending, particularly where the validity and enforceability of collateral depend upon compliance with mandatory legal requirements. In the banking sector, legal risk generally arises from defects in legal documentation, the invalidity of legal acts, inconsistencies in statutory regulations, or disputes concerning the legal status of collateral (Hadad, 2004; Fuady, 2013). Within the context of Mortgage Rights (Hak Tanggungan) involving land owned or controlled by foreign nationals, legal risk extends beyond contractual issues to encompass restrictions under agrarian law, the legality of nominee arrangements, and uncertainties surrounding the execution of security rights. Consequently, creditors must conduct comprehensive legal due diligence to ensure that both the grantor and the collateral fully satisfy the applicable legal requirements, thereby minimizing potential losses arising from defective security rights.

In addition, the practice of nominee arrangements gives rise to significant legal risks because it contravenes Article 21 of the Basic Agrarian Law, which prohibits foreign nationals from holding freehold land rights (Hak Milik). Agreements containing nominee arrangements may be declared null and void due to their inconsistency with statutory provisions, thereby depriving creditors of a valid legal basis for enforcing the collateral (Subekti, 2005). Other legal risks include regulatory risk arising from changes in agrarian policies that may affect the legal status and value of the collateral, as well as potential criminal liability if creditors are found to have knowingly participated in or facilitated unlawful nominee arrangements, as stipulated in Articles 55 and 56 of the Indonesian Criminal Code (KUHP). Accordingly, the legal risks associated with nominee arrangements extend beyond civil law and may also encompass administrative and criminal consequences, requiring particular attention within banking and secured lending practices (Rahmawan & Djaja, 2026).

The legal risks arising from the acceptance of property owned or controlled by foreign nationals as collateral must also be examined through the perspective of legal protection. Legal protection aims to ensure that legal norms provide certainty, fairness, and effective safeguards for parties acting in good faith within a legal relationship (Rahardjo, 2006; Hadjon, 1987). In the context of secured lending, creditors are entitled to legal protection not only through the registration of Mortgage Rights (*Hak Tanggungan*), but also through a legal framework that guarantees the validity, enforceability, and executability of the collateral. Consequently, where the legal status of the collateral is affected by nominee arrangements or other violations of agrarian law, creditors may face significant legal uncertainty despite having complied with formal registration requirements. This condition demonstrates the importance of strengthening preventive legal protection through comprehensive legal due diligence and consistent regulatory implementation.

To minimize these legal risks, creditors should implement comprehensive risk mitigation measures based on the prudential principle. A key risk mitigation measure involves undertaking comprehensive legal due diligence, including verification of the grantor's citizenship status, examination of the chain of title through a land title search, and confirmation of both the juridical and physical records maintained by the National Land Agency (*Badan Pertanahan Nasional*/BPN). These procedures are essential to ensure that the collateral is free from legal defects and complies with the applicable statutory requirements. In addition, creditors may strengthen their legal position by requiring supplementary security arrangements, such as personal guarantees, corporate guarantees, or credit insurance, to mitigate the risk of default that cannot be adequately covered by proprietary security rights alone.

Furthermore, legal risk mitigation may also be achieved by adjusting the structure of the credit agreement, particularly by aligning the credit tenor with the remaining validity period of the Right to Use (*Hak Pakai*) held by the foreign national (Sutanto & Widyanti, 2025). This approach is intended to prevent situations in which the land right expires before the underlying credit obligation has been fully discharged. In addition, incorporating specific provisions into the Deed of Granting Mortgage Rights (*Akta Pemberian Hak Tanggungan/APHT*), such as requiring the extension of the Right to Use as a condition for maintaining the validity of the credit agreement, may provide additional legal protection for creditors. Accordingly, legal risk mitigation should not be limited to administrative verification alone but should also be integrated into the contractual framework and legal oversight mechanisms. Such an integrated approach is essential to providing optimal legal protection for creditors in addressing the complexities of secured lending transactions involving foreign nationals.

Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 2, June 2026

3. Critical Analysis of the Regulatory Framework and Legal Reform for Mortgage Rights Involving Foreign Nationals

From the perspective of proprietary security law, the acceptance of collateral associated with foreign nationals must be assessed in light of the fundamental principles governing Mortgage Rights (*Hak Tanggungan*), particularly the principles of speciality and publicity (Khasanah, 2022). The principle of speciality requires that the collateral be clearly identified in terms of the type of land right, area, location, and legal status. In practice, where the collateral consists of land that is *de jure* registered in the name of an Indonesian citizen but is *de facto* controlled by a foreign national through a nominee arrangement, the principle of speciality is not substantively fulfilled (Wulan et al., 2022). This is because a discrepancy exists between the formal legal subject and the actual control of the property, thereby creating uncertainty regarding the legal status of the collateral. Consequently, the Mortgage Right imposed over such property may be affected by legal defects, as it fails to satisfy the requirement that the secured object be clearly and lawfully identified.

Furthermore, the principle of publicity, which is implemented through the registration of Mortgage Rights (*Hak Tanggungan*) with the National Land Agency (*Badan Pertanahan Nasional/BPN*), also encounters significant challenges in this context. From a formal perspective, registration provides legal certainty to third parties regarding the existence of a registered security interest. However, where the registered information fails to reflect the actual legal and factual circumstances, the principle of publicity is satisfied only in an administrative sense rather than in a substantive one (Manuaba et al., 2024). As a result, creditors may be given an illusion of legal certainty, while in reality the collateral remains vulnerable to future legal disputes arising from discrepancies between the registered title and the actual control of the property.

From the perspective of banking law, the acceptance of collateral associated with foreign nationals should also be evaluated in light of the prudential principle. This principle requires lending institutions to conduct comprehensive legal and financial risk assessments before extending credit (Chayadi, 2020). In practice, however, the acceptance of collateral involving significant legal risks, such as property subject to nominee arrangements, demonstrates an inconsistent application of this principle. Creditors often place greater emphasis on the economic value of the collateral than on its legal validity. Such an approach may weaken the function of collateral as a risk mitigation instrument and instead increase exposure to potential legal and financial losses.

Accordingly, it may be concluded that the acceptance of collateral associated with foreign nationals has not been fully aligned with the fundamental principles of proprietary security law or the prudential principle governing banking activities. This

Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 2, June 2026

inconsistency reveals a gap between the ideal legal framework and actual commercial practice, ultimately undermining legal certainty and the level of legal protection afforded to creditors.

An analysis of the existing regulatory framework reveals several regulatory gaps that contribute to legal uncertainty in the creation of Mortgage Rights (*Hak Tanggungan*) involving foreign nationals. One of the principal gaps lies in Government Regulation Number 18 of 2021, which provides a legal basis for foreign nationals to hold Rights to Use (*Hak Pakai*) but does not explicitly regulate the creation of Mortgage Rights over such land rights (Dharsana et al., 2021; Putri et al., 2025). The absence of specific provisions creates ambiguity in practice, particularly with respect to the applicable procedures, legal requirements, and legal consequences where the Right to Use expires or is not renewed.

Furthermore, the regulatory framework is weakened by the absence of an integrated citizenship verification system among relevant government institutions, including the National Land Agency (*Badan Pertanahan Nasional/BPN*), the Directorate General of Immigration, and the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*). In practice, the registration of Mortgage Rights relies primarily on existing administrative records without any cross-institutional verification mechanism. This regulatory deficiency creates opportunities for circumvention of the law through nominee arrangements, which are difficult to detect through formal administrative procedures. Consequently, Indonesia's land administration system is unable to effectively ensure the legal validity of the parties involved in transactions concerning property associated with foreign nationals.

Another significant regulatory gap is the absence of explicit and specific statutory provisions imposing sanctions on nominee arrangements, either under the Basic Agrarian Law (Law Number 5 of 1960) or the Mortgage Law (Law Number 4 of 1996) (Hasanah, 2013; Abon et al., 2022). Although such arrangements are generally regarded in legal doctrine as unlawful and may be declared null and void, the lack of express legal provisions weakens the effectiveness of law enforcement. As a consequence, legal uncertainty arises for all parties involved, including creditors, because there is no clear legal standard for determining the validity of transactions involving nominee arrangements.

Overall, these regulatory weaknesses demonstrate that the existing legal framework has not fully adapted to the increasingly complex realities of modern economic and commercial practices. The lack of harmonization among relevant regulations, together with normative gaps in key areas, constitutes a major factor contributing to heightened legal risks in the creation and enforcement of Mortgage Rights (Hak Tanggungan) involving foreign nationals.

To address the legal issues and regulatory gaps identified in this study, comprehensive and integrated legal reforms are required. First, the legislature and the government should formulate implementing regulations that explicitly govern the creation of Mortgage Rights (*Hak Tanggungan*) over Rights to Use (*Hak Pakai*) held by foreign nationals. Such regulations should clearly specify the applicable procedures, administrative requirements, and mechanisms for maintaining or renewing the security interest when the underlying Right to Use is extended (Ardani, 2017). The establishment of a clear regulatory framework is expected to enhance legal certainty and provide greater protection for creditors accepting property held by foreign nationals as credit collateral.

Second, the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*) should strengthen the banking risk management framework by expressly recognizing legal risks associated with collateral involving foreign nationals as a distinct category of risk. Such a reform would provide lending institutions with clearer guidance for identifying, assessing, and managing these legal risks (Fuad et al., 2024). In addition, OJK should promote the implementation of more rigorous risk assessment standards for credit facilities involving foreign elements.

Third, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (*ATR/BPN*) should develop an integrated verification system in cooperation with other relevant institutions, including the Directorate General of Immigration and the Financial Services Authority (OJK), to ensure the legal validity of the parties involved in every land transaction. Such a system could utilize digital technologies to more effectively detect potential nominee arrangements and other forms of legal circumvention. Consequently, the registration of Mortgage Rights (*Hak Tanggungan*) would not merely satisfy formal administrative requirements but would also provide stronger substantive legal validity and greater legal certainty (Butar-Butar & Turisno, 2022).

Fourth, lending institutions should develop Standard Operating Procedures (SOPs) specifically governing the conduct of legal due diligence for collateral involving foreign nationals. These procedures should include comprehensive verification of the legal status of both the collateral and the parties involved, long-term legal risk assessment, and the use of additional risk mitigation instruments where necessary (Syarifuddin, 2021). By adopting a systematic and risk-based approach, creditors will be better positioned to minimize potential legal and financial losses while improving the quality of their credit portfolios. Accordingly, the proposed legal reforms should extend beyond normative regulatory changes to encompass institutional strengthening and improvements in implementation practices. Such a holistic approach is expected to establish a more responsive, adaptive, and coherent legal framework capable of providing optimal legal protection and greater legal certainty for all parties involved in secured lending transactions involving foreign nationals.

4. Conclusion

This study demonstrates that, under Indonesia's proprietary security law system, Mortgage Rights (*Hak Tanggungan*) involving property owned or controlled by foreign nationals are legally valid only when established over a Right to Use (*Hak Pakai*) that satisfies the requirements prescribed by Law Number 4 of 1996 on Mortgage Rights. Since foreign nationals are prohibited from holding Freehold Title (*Hak Milik*), any Mortgage Right associated with land substantively controlled through nominee arrangements lacks a valid legal foundation and may be declared null and void. These findings confirm that the legal status of the underlying land right and the legal capacity of the grantor are fundamental prerequisites for the validity and enforceability of Mortgage Rights, reinforcing the central role of legal certainty in Indonesia's proprietary security framework.

The study finds that creditors accepting collateral linked to foreign nationals face legal risks, including invalid security rights, execution barriers, and liability under Indonesian agrarian law. Effective risk mitigation therefore requires comprehensive legal due diligence, ownership verification, and contractual safeguards beyond mere administrative compliance.

These findings also highlight the need for a more coherent and integrated regulatory framework governing Mortgage Rights involving foreign nationals. Greater harmonization among the Basic Agrarian Law, the Mortgage Law, and Government Regulation Number 18 of 2021 is necessary to eliminate normative inconsistencies and provide clearer legal guidance regarding the use of *Hak Pakai* as collateral. At the institutional level, lending institutions should strengthen legal risk assessment through enhanced legal expertise, more rigorous Standard Operating Procedures, and digital verification mechanisms. Future research is encouraged to undertake comparative studies of proprietary security systems and foreign land ownership regulations across ASEAN jurisdictions to support the development of a more adaptive, consistent, and internationally responsive legal framework in Indonesia.

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