

Development of Law on Housing Collateral in Indonesia

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The development of law on housing collateral in Indonesia forms a key contention with many studies lacking sufficient information on its viability. This study focused on various legal principles, regulations, and articles relating to loan security using housing as collateral. The study design took into account the analysis of secondary data, with the normative research perspective forming the basis for the selection of references. The findings revealed that the majority of studies on topics such as the civil code, the housing flat law, mortgage right, fiduciary guarantee, and housing and settlement regulations offer multifaceted perspectives for understanding the use of collateral in credit acquisition. Despite the strong support, the mortgage right fails to admit housing sufficiently as collateral. The question of guaranteeing a loan with housing as collateral raises the question of issuance of title deed on fiduciary terms. This implies that the housing and the land would act as collateral. Based on the findings, a conclusion can be made that housing flats cannot act as collateral to secure a loan. The Indonesian government should enact policies that will lower the requirements for loan issuance. The citizens should also be encouraged to seeking freehold titles to minimize communal land ownership.

Key words: *Collateral, housing law, mortgage law, fiduciary, lender, borrower, loan.*

Introduction

Housing constitutes a fast-developing sector in the Indonesian economic space. The new housing establishments feature multilevel buildings subdivided to ensure separate ownership but shared amenities. The nature of the land and housing property in Indonesia is through freehold titles, where only the owner has legal claim and entitlement to the property. Relatively, the lands are owned communally (Dewita, Burke, & Yen, 2019). Given the stimulus development of housing in the Indonesian region, the subject of using housing as collateral is increasingly becoming a key issue within the social sphere. Similarly, the massive developments in the housing sector have made the property a key factor in the region's economic development (Karim, Al-Habshi, & Abduh, 2016). Relatively, the development of housing property has provided increased support for the growth of other economic sectors. For instance, the business premises in both the urban and rural centers require housing as a prerequisite for operations (Mulyaningsih, Daly, & Miranti, 2016). Institutions such as banks, schools, and other retail shops have largely benefited from the growth experienced in the housing sector.

Indonesian history is marred with cases of poor housing in both the rural and urban areas. The rural areas featured cases where the structures got erected using wooden frames on the walls and concrete or pounded earth for the floor (Bedner, 2016). The roofing comprises wood, fibre, or tile depending on the socio-economic strength of the individual. The urban areas had bit improvements mainly featuring the use of quality materials in the housing establishments; where the walls were made of plaster or brick, floors made of cement or tile, while the roofing had shingle or tile. The development in the housing sector witnessed an intensive growth in quality establishments, sustainable over long periods (Rahadi, Wiryono, Koesrindartoto, & Syamwil, 2015). Similar to other sectors, housing requires strong financial support for proper establishments. The property owners require access to banking credits to enable them to develop and improve the quality of housing structures in the region (Hartanto, 2017). Banks in the region have proven supportive towards ensuring that small businesses receive financial supports to stimulate growth in both the short and the long-term periods.

The majority of housings in the region have mainly been constructed out of individual and family savings using the local contractors (Hudalah, Rahmat, & Firman, 2016). Similarly, the majority of the housing got constructed on property owned by the landowner. In other cases, the houses lacked building permits and property titles, a factor that limits the knowledge about clear ownership (Sudiro, 2018). The lack of proper planning and following of the land regulations has equally been attributed among the challenges affected the rise in the housing sector (Rukmana, 2018). Thus, as many people are establishing housing flats in the region, the quality and adherence to the housing and property policies seem not to have been strictly followed in some of the housing establishments.

The banking sector operates under various laws regulating the issuance of credit to individuals and businesses. The requirements for issuance of any credit tend to vary, and in most cases highly specific. Indonesian banks have tabled various requirements pertaining to the application of loans. The securities needed during the procedure include real estates, tangible movable properties, and financial instruments, among others (Lubis & Sinaga, 2018). The real estate, in this case, includes assets such as land, building and fixtures, seas vessel, and aircraft. The tangible movable properties include motor vehicles, equipment and machinery, and inventory and stock. Financial instruments, such as shares owned by an individual in other companies, can act as a loan guarantee (Rosser & van Diermen, 2016). The above assets form the basis upon which the banks can issue loans to the individual.

Mortgage facilities are equally available from the banks. Nonetheless, the majority of the residents face certain constraints that limit their abilities to access mortgage funding. One of the key challenges relates to the low employment rates in the informal sector. According to one of the studies, less than 30% of the population has access to permanent employment. Majority of banks, therefore, have become reluctant towards issuing mortgages to the individuals. The loans and mortgages equally come with high-interest rates between 14.5% - 16%, making the costs higher and unaffordable by most people (Salim, 2015, August). The banks further require upfront fees, which in most cases tend to be high and the majority of the population cannot afford. Based on the above factors, the residents have increasingly faced difficulties in accessing loans and mortgages to enable them to establish the premises and improve housing quality (Saputra, 2019). Over the past, the middle and the lower-income households received subsidized loans through the help of the government. Nonetheless, the banking system does not make any provision on subsidy, and therefore limiting the number of people that can gain access to the loans.

Considering the above background, it is evident that whereas banks exhibit the willingness to issue loans, the residents may not have the requirements for mortgages and the loans. The collaterals described by the banks do not explicitly cite housing as a key factor. Contentions, therefore, rise on whether the housing qualifies the collateral specifications prescribed by the banks. The Civil code act article 1131 stipulates that all the property of a debtor can act as collateral for his debt (Hamidah, Bakri, Budiono, & Winarno, 2017). Notably, the civil code states that collaterals could take different forms depending on the nature of property owned by the individual; they can include both tangible and intangible products, which can act as surety for the loans taken (Wulansari, Erlina, & Ariany, 2019). One of the major setbacks in the banking credit system is that not all items can be accepted as collaterals. The banking act defines certain specific attributes that the properties should have to be admitted as collateral in the loan. Some of the factors influencing the admission of a property as collateral often pegs on the value, ease of binding, property maintenance, and ease of having the property

liquidity. While the Civil code act article 1131 permits the use of any property as collateral, banks tend to limit the items that can be used as collateral, especially land and housing property (Tan, 2016). The tangible properties are easy to repossess in case of default and can be easily assessed based on the existing market value.

The housing sector in Indonesia has undergone numerous growth trends despite the scarcity of the land resource. People are increasingly erecting housing structures to accommodate people and businesses. The rapid establishment of housing structures has left the residents with housing facilities as the key structures (Mutuari, Ramadhan, & Irsan, 2019). Loans have become a prerequisite in the development within any economic sector. As the majority of the community members seek access to proper funding, the use of housing as collaterals has not been clearly stipulated. Considering the history of housing in Indonesia, the deplorable state had immensely limited express use of the housing flats as loan collaterals. In a bid to understand the various precepts governing the use of land as collateral, this study offers an in-depth perspective of the collateral law vis-a-vis the housing sector. Similarly, the majority of the population lack adequate knowledge of the procedure for using housing property as collateral. The study delves into the various legal principles that govern the use of the housing property in the acquisition of loan and the pertinent issues that must be understood prior to the acquisition of the loan. It is envisaged that the outcome of this study will provide insights into the procedures followed in the acquisition of loans.

Methods

For decades, the use of research in addressing social issues has been highly documented. Information about various social phenomena has been unveiled and examined through historical, present, and future perspectives. The research approach has been extensively applied in studies relating to law, sciences, history, and technology. The role of research has been undeniably significant in streamlining the various findings and extracting correlations between the selected variables to provide a clear picture of a given social issue (Mandel, Navarrete, Dieckmann, & Nelson, 2019). The field of legal science has equally experienced immense growth through multiple types of research that have improved knowledge of vast legal issues from diverse settings. Journal articles, books, documentaries, and news reports among others have provided vast information on legal matters and the relevance within the current social scene. Similar to other researches, legal science requires systematic and logical approaches to unearth the facts regarding the material issues of the law. Furthermore, various concepts in the legal science have been studied in numerous literature and examining the same would provide a firm basis upon which the current subject is analyzed and understood based on the civil codes of Indonesia.

In the current context, the Indonesian Civil Code lacks an explicit approach through which housing flats can be used as collateral to guarantee loans. Two major research approaches, namely, descriptive and normative studies, suite the context of the analysis. Descriptive research is often considered useful during the collection of data relating to the characteristics of the population or the phenomenon under study (Werhane, 2019). The normative study, on the other hand, takes into account the facts and perspectives through which the study objects can be improved (Larsson & Brandsen, 2016). Comparing the two research approaches, the normative approach strongly fits the study context and can enable a succinct understanding of the data needed to address the research issue (Brearley, 2008). The normative approach entails seeking to solve problems existing within the social spheres and placing them in the right perspectives to enable the proper application of the stipulated legal standards (Larsson & Brandsen, 2016). It further ensures that critical issues within the Indonesian legal structure gets analyzed and properly articulated into the research paper to bring about the desired contextual meaning.

Under the normative approach, the salient elements of the statute pertaining to the history, conceptual, or principles of application, and the statute structure get analyzed and placed within the current social context. The historical perspective delves into the factors leading to the formation of the law, the events or circumstances that compelled its use, and the overall outcome over the years. The legal principles relating to the case will also get analyzed and placed in the right context to suit the current case.

The Indonesian legal system will be carefully scrutinized to find the articles related to the subject of using housing as collateral. Similarly, research will focus on the secondary research materials relating to the subject to enable a multifaceted view of the research problem. The above approach will ensure that the legal structure and precepts are taken into consideration and the issue articulately given the utmost consideration. The Indonesian legislation will form the primary basis upon which the analysis is made. Journal articles, case researches, and other analysis conducted in the field of law related to the concept of using housing as collateral in the Indonesian context.

Results

The analysis of the vast literature revealed multiple findings on the development of law on the use of housing as collaterals to guarantee loans. As aforementioned, Indonesia has experienced exponential growth in the housing sector, triggering further growth in the economy, a factor that necessitates the propagation of the knowledge regarding the legislative processes and procedures pertaining to the application of credit funding from the financial institutions (Mulyaningsih et al., 2016). Multiple results have demonstrated various legal approaches capable of addressing the use of housing as collateral. The statutes and legal

provisions give clear procedures that can be followed. This results section focuses on the legality of the collateral cited in the civil act, the perspectives of housing as collaterals, and then a conclusion made based on the outcome of the findings. The broad perspective of the findings gives a wider approach that reveals the clear image in the use of housing as collateral for loans.

Legality of the Collateral Described in the Civil Code

The Civil Code prescribes a binding agreement between a debtor and a creditor on the items considered collateral. Chapter 19 of the Indonesia civil code focuses on the priority of debts and outlines various provisions that describe the nature of the collateral used in any loan (Karyadi, 2018). The article 1131 of this section states that “All movable and immovable properties of the borrower, either present or future, stands as collateral for the personal agreements.” This legal precept considers any movable property or assets of an individual as qualifying factors for collateral during the acquisition of a loan (Andersen, 2018). It is important to note that the article states that all assets, a factor that brings onboard the various household assets. The article 1132 further states that the debtor’s assets are considered joint collateral for the creditors, and in the event of a default, the proceeds from the assets get divided relative to the proportionality of the loan (Harahap & Hasanah, 2018). The two articles provide the thresholds for admitting assets as collateral.

The above articles provide a blueprint to be used in the determination of assets or properties befitting the profile of collateral. The traditional laws of the land alongside the constitutional and civil laws define the association between lenders and borrowers. The civil code provides a basic perspective of the law and does not delve into the finer details relating to the use of housing or land as collaterals (Harahap & Hasanah, 2018). The mention of all immovable and movable assets places a binding agreement upon the debtor and the creditor, assuring that all the properties used as a guarantee for the loan can get reposessed and shared among the creditors to cater for the loan. In the context of housing, the property fits the description of immovable or movable goods. The concept of using immovable property makes houses or flats eligible for the use as collaterals. The banks should be able to provide a valuation for the assets and determine the amount of loan guaranteed by the same (Busro, Sulistianingsih, & Prabowo, 2019). In the wake of rapid housing development in Indonesia, the two civil code articles can be applied to ensure that the residents gain access to credit from banks. The collaterals can also be viewed through the lens of fiduciary and mortgage rights (Sanusi, 2017). The contention would, however, arise on whether the housing flats would be issued alongside the land title. Communal ownership of land has formed a key point of argument, where the burden of mortgage cannot be applied due to the deed ownership.

The results equally focused on fiduciary as a major component of the collateral law. The concept of a fiduciary can get analyzed through the lens of both mortgage and loans. In its literal terms, fiduciary refers to the agreement between two parties based on trust in cases where assets or property is managed (Ida, Gunarto, & Leviza, 2017). In the context of property management, banks can enter into trust agreements with other parties during the sale of properties. Housing mainly falls under the real estate management and fiduciary features when banks seek to dispose of the property to recover their items. Article 1 of the 1999 fiduciary law considers it as the transfer of asset ownership based on trust and pegged on the notion that the asset transferred remains under the custody of the owner (Hartanto, 2015). Thus, in this context, the fiduciary law No. 42 postulates that the assets guaranteed to a creditor have to remain under the custody of the debtor and the relationship based on trust (Keenlyside, Costenbader, & Parker, 2016). In the current case, the banks in practicing fiduciary are obliged to let the debtors remain with the collateral and establish a trust relationship. In case of using housing or flats as collaterals, the debtors are obliged to enjoy the use of the property while servicing their loans.

The mortgage rights, on the other hand, constitute requisition of funding from the credit institutions to establish housing or real estates. The laws relating to the issuance of mortgage tend to offer explicit terms that regulate the nature of collateral presented in each case. The article 3 law number 4 of 1996 on mortgage states that building premises established on a land and owned by a different person who cannot be burdened by a mortgage can be transformed into an object. This provision gives an allowance that housing can be used as collateral under fiduciary terms (Law of the Republic of Indonesia, 1999). The provision makes housing become possible collateral for loans. The Indonesian banks can offer mortgage loans to enable the residents to engage in economic developments through the housing. Certain laws apply when the parties engage in a mortgage trust association. Mortgage rights remain a critical issue in the association between the debtor and the creditor (Hartanto & Sulaksono, 2019). Credit agreements through mortgages involve contracts where the debtor (customer) and the creditor (bank) enter into a relationship of a borrower and lender. Law number 5 regarding land rights prescribes the components and terms of the credit agreement for each party. The material guarantee is often made in conformity to the rights imposed on the property owner.

Housing as Collateral in Perspective

The influx of housing units in Indonesia has made housing a key asset among the population. Most people owning such properties tend to have an increased need for increasingly developing housing units to meet the needs of the individuals. Banks within the Indonesian industry bear the obligation of providing the populace access to finances in a bid to improve the overall outcome. The key contention addressed in the current study hinge on the use of

housing units as collaterals (Hasanah & Hamzah, 2018). As articulated in the afore paragraphs, the laws regarding the use of collateral in Indonesia lack clarity, and the majority of the population do not have proper access to the credit facilities offered by the banks.

In addressing the issue, various laws and legal principles have been analyzed to offer a clear perspective on the use of housing as surety. Collateral in its simplest term means an asset or item pledged to act as security during loan repayment (Harahap & Hasanah, 2018). In the event of forfeiture, the asset gets seized or reposed by the lending institution and sold in a bid to recover the borrowed amount. The use of land as guarantee has raised contention in the Indonesian context, as the legal precepts do not provide an explicit description of the nature of collateral to be used during the acquisition of loans (Harahap & Hasanah, 2018). Most banking systems, as initially observed, tend to have strict regulations on the items to be presented as surety and the rationale for the same.

The law described in article 1131 provides an in-depth description of the items considered assets for collateral. As mentioned, all the movable and immovable properties owned by the debtor have the capacity to act as loan security. The provision of the law that all items can act as guarantee creates an avenue through which housing can be used as indemnity for access to credit (Muslim, 2018). The members can place the housing property as a guarantee so that the banks can offer loans and other services (Bidabad, 2017). The civil code further stipulates that the freehold title may also be used in the request for loans from financial institutions. Mortgage rights have also emerged among pertinent elements of consideration during loan acquisition in Indonesia (Susilowati & Gunarto, 2018). The banks can finance the establishment of the various housing and have the property titles as the securities. Thus, the mortgage rights can further be transferred to the creditors to act as a guarantee for the loans. The concept of using housing as surety remains a highly significant factor that could enable the residents to gain access to a firm financial base to expand (Arifin & Mashdurohatun, 2017). The laws constituting the use of housing units for the purposes of collaterals prescribe movable and immovable assets. Furthermore, the housing as a property fits the context described in the code and offers quick access to credit.

The banking laws on the nature of guarantee as initially described tend to require assets that can be easily valued, liquidated, maintained, and binding. Such attributes, although applicable in the case of housing, could face certain challenges that, in the long run, may affect the outcome of the valuation (Pamungkas & Djauhari, 2018). Most housing tends to vary in cost and therefore may not suit the value of the loans given. Further, the housing properties are easy to maintain for addition. Banks can engage in activities aimed at adding value to the products and yield good returns to recover the loan (Ali & Mashdurohatun, 2018). Liquidation of the housing property equally features among the factors that could influence the use of housing as collateral. The demand for the housing may affect the process of

liquidation such that the banks or creditors may not find a ready market for liquidation of the property if the demand for housing is low.

Concisely, housing remains a key factor that could act as collateral in the application for loan services. Given the rapid developments experienced over the past years, the demand for housing units still remains high, a factor that influences the lucrativeness in the sector. The owners of the housing units may consider using them as collateral to guarantee further loans (Iriyani, 2018). As the region undergoes further economic expansion, the lending institutions should objectively seek to lower the demands or attributes attached to the assets used in guaranteeing the loans (Jayanti, Arba, & Hirsanuddin, 2017). Furthermore, the Indonesian Civil Code makes numerous provisions that justify the use of land as collateral. Alternative credits such as mortgages also exist and could enable the residents to access funding from the banking institutions (Kusumastuti, 2016). By transferring the mortgage rights to the lenders, the residents can receive loans to establish or revitalize the houses in a bid to improve the overall productivity.

Discussion

The above results demonstrate the presence of legal structures supporting the use of housing flats as collateral in the application of loans. The above results have been considered from two major perspectives, the first set of findings delve into the major concepts relating to loan acquisition and collaterals. The laws regarding the acquisition of loans, as indicated in the article 1131 and 1132, clearly provide a blueprint for procedures to admit assets as collaterals. Collateral refers to an asset pledged by a debtor to act as a security for a loan (Warjiyo, 2017). The use of housing as collateral has faced multiple challenges in Indonesia as no clear law provides an elaboration on the nature of collateral acceptable during the application for a loan. This section disintegrates the findings from the above results to justify the use of housing property as loan security.

The concept of collateral as envisaged in multiple studies peg on the notion of a credit arrangement involving money transfer between two parties. The association between the two groups includes a lender and a borrower. The parties, therefore, engage in an agreement of issuing a credit on certain terms. The two consenting parties must negotiate a contract on the terms for repaying the loan. The collateral acts as a guarantee that the borrower will surely repay the loan.

The land ownership trend in Indonesia mainly involves freehold titles, where the property owners have complete ownership of the lands. This implies that they can exercise full authority in signing the titles as collaterals (Susilaningih, 2018). Given the nature of ownership of the freehold property, the landowners in Indonesia can assess the value of the

assets and make decisions regarding their suitability as collaterals. The virtue of the freehold property makes them usable as collateral and fits the description made regarding the use as a mortgage. The housings in any freehold region can be used as collateral to secure a loan. The steps involved would entail provision of the property title, and an agreement that the loan will be serviced within a specific period. Pursuant to article 47 of the housing law, and article 51 of the UUPA, the use of freehold property remains a legally binding and guaranteeing for property possession. The landowners can impose property ownership on the flats, which will then be examined by the bank or lending institutions to determine the value correlations with the surety. The concept of credit agreement equally features among the core elements of loan acquisition (Wulandari, Putri, Kassim, & Sulung, 2016). Credit agreement refers to the very first document considered proof of the loan issue. The mortgage law provides that the mortgage right must be followed by a pledge to deposit certain guarantee for the repayment of the debt. Thus, the credit agreement must exist prior to the issuance of any collateral or guarantee of the debt.

The results also factored in the concept of fiduciary, where the two parties to a loan come to agreements based on trust. The ownership of the asset used as collateral is fully given to the banks while it remains under the custody of the debtor. This agreement seems viable and provides a good choice for using housing as collateral (Suci, Khoidin, Shubhan, Poesoko, & Harianto, 2018). One of the key notable factors is that the majority of Indonesia residents' lack the qualifying factors that bank use to determine suitability for loans. For instance, with the majority of the population lacking permanent jobs, the banks cannot have sufficient guarantee that the loans would be repaid within the appropriate time (Firmansyah & Gunardi, 2018). Similarly, unlike the government-issued loans that were subsidized, the banks only issue credits using the specified interest rates without any waiver. Given the above conditions, the residents may not only be able to provide the assets but also not make timely payment of the loans.

The object classification of mortgage takes multifaceted perspectives considering the various laws that govern the issuance of loans. The mortgage right brings about ownership of the property, use, and transfer (Putra, Azheri, & Dasman, 2019). This implies that upon entry into the contractual agreement, the lender can engage in any of the above. The mortgage rights provisions seem to limit the use of housing as collateral (Busro, Sulistianingsih, & Adhi, 2018). While the Civil Code describes the assets as qualifying for use as security, the mortgage rights perspective brings in various impositions that could affect the debtor (Wijayanti & Harahap, 2019). For instance, the banks can repossess the property, transfer the ownership, or use it to generate profits. Thus, rather than the housing becoming the collateral, the asset owners would have to give out the land as security.

Various legal deeds have a strong correlation with the issuance of assets as collaterals. Housing properties get established in the building. The legal deeds often provide key information relating to the property, and the information often contained by the National Land Law (Rusby, Hamzah, Karya, & Abdul Kadir, 2016). The provisions of article 27 in the mortgage law consider flats as not guaranteed by mortgage or fiduciary. The enforcement of Article 27 rendered the substance of guarantee with Mortgage and Fiduciary into that of mortgage rights guarantee. Thus, the confusion in the application of the above two makes it impossible to use housing flats as collateral for loans. The right to land ownership in cases of housing flats may lack compatibility with the rights of the mortgage (Neilson, 2016). The mortgage rights guarantee only remains applicable and feasible in cases where it is made during the establishment of the housing flats. In case of Indonesia, the houses have already been established and the owners can only use the titles to apply for the loans (Neilson, 2016). Subject to the fiduciary and the guarantee laws, the use of housing flats as collateral directly links to the guarantee. The property rights attributable in this case include the housing units rather than the land upon which the property stands (Bedner, 2016). The determination of ownership in such cases could bring about controversies as the land could be under a joint ownership venture. The subject of commonality in land ownership limits the use of mortgage rights.

Conclusion

The subject of this analysis dwelt on the development of the law relating to the use of housing as collateral. The law pertaining to collateral makes numerous provisions on the association between the lender and the borrower. As exhibited in the literature reviewed, various Indonesian legislations make distinct provisions that seem to admit and, at the same time, contend the use of housing to guarantee loans. The study has examined the association between lender and debtor through the lens of collateral laws prescribed in the civil code, and the mortgage and the fiduciary laws. Despite having origin in the civil code in the articles 1131 and 1132, the collateral laws have developed over the years leading to the establishment of other related legal precepts that govern the nature of securities used during the application of loan. The key amendments equally exhibit in sectors such as the mortgage laws and the banking laws, a factor that signals spirited efforts to bring about numerous social transformations (Peluso, 2016). The housing law, under article 47 makes provision that freehold titles qualify as collaterals during credit acquisition. The titles from the legal perspective refer to the land whose ownership is fully under the debtor and can transfer ownership to the bank through a fiduciary agreement. The civil code equally states that all assets, both movable and immovable, can stand as a guarantee for loan from the banks. Housing falls under the immovable assets and can be easily evaluated and resold by the bank to recover the original amounts given in credit (Riyadi, 2017). Thus, the two laws justify housing as collaterals. The main contention in the use of housing as surety arises on the

ownership of the land. According to the civil code, the asset, in this case housing, is transferred to the bank through a trust agreement, and the bank reserves full rights of disposal for asset recovery (Bedner, 2016). The key challenge in this context dwells on the ownership of the land. The housing comes with land, and therefore, the lending body will require having possession of the land as well.

On the other hand, housing could act as collateral based on the mortgage terms. The mortgage provisions impose certain rights to the lender, giving more authority to use, transfer ownership, or sell the property (Hidayat, Yogaswara, Herawati, Blazey, et al., 2018). The terms of collateral between mortgage and loans tend to differ slightly but having a substantial impact on the overall outcome. For instance, the law requires the issuance of freehold deeds as collateral for the housing flats during application for a mortgage (Sirait, White, & Pradhan, 2017). In securing loans with housing flats as collateral, the evidence from the literature analysis suggests viability of the option; however, the terms could influence the nature of ownership in case of default (Salim & Hudalah, 2020). For instance, a landowner may not meet the threshold requirements for a guarantee (Widayati, Suryawan, & Riorini, 2017). The provisions in the laws relating to collateral tend to accept the use of housing as collateral. Nonetheless, certain pertinent terms tend to limit the scope of application.

The concepts of fiduciary have also emerged as key in the determination of collateral agreements. Fiduciary applies in both the mortgage and loan terms; it requires the two contracting parties to agree on specific terms that would determine the use of the property. As postulated in the results, the fiduciary agreement entails the transfer of ownership while the object is in custody of the debtor (Hasanah, Suryani, & Putro, 2019). From the perspective of the loan guarantee, the lender would require that the land documents are deposited as a surety that the debt will be paid. Depositing the documents transfers ownership from the debtor to the lender, and although the property is not relocated, the creditor has full rights of ownership in case the contractual terms get breached (Thayers, 2013). The mortgage perspective, on the other hand, relates to the notion that the property titles are delivered to the lender until such a time that the terms prescribed in the contractual agreements are fully met.

Based on the above observations, a conclusion can be made that while the civil code and the fiduciary laws make provision for housing to be used as collateral, the mortgage law presents a contention that limits the use of housing. As articulated in the discussion, the use of housing flat as collateral requires the submission of land deeds to guarantee ownership (Kusumawati, de Wolf, & Brus, 2018). The nature of land ownership in Indonesia features both freehold and communal ownership. The communal perspective, which seems to dominate the social scene, lacks provision for a mortgage since the land deeds must be presented (Sudiro, 2018). Based on this limitation, it can be argued that whereas most laws support the use of land as



collateral, the subject of deed ownership could result in conflicts between the different parties.

Recommendations

The findings provide weak support for housing as collateral. Indonesia currently experiences exponential economic growth, which can only be steered further through the provision of strong support to the financial sector. The lack of clarity in laws for using housing as collateral has limited insights on whether the flats can act as collateral. Based on the factors limiting housing as collateral, the following recommendations can be made to create an atmosphere for residents to benefit from the credit facilities.

- The government should enact new laws, granting house owners ownership deeds, distinct from the land title deeds. This approach will ensure that in cases of communal land ownership, individual households can access funding independent of the opinions from the other members.
- The government should fund campaigns encouraging citizens to acquire title deeds for their land and property to increase access to mortgage
- The legislative body should formulate policies that would minimize the requirements for loan application and enable residents to have increased access to mortgage



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