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Reconstruction of the Prudential Principle in the Regulation of Cross-Collateral in Indonesian Bank Lending

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Abstract

The use of a single collateral asset to secure multiple credit facilities involving different debtors creates interconnected legal and financial risks that are not fully addressed by Indonesia's existing prudential framework. A default by one debtor may expose the collateral owner and other performing debtors to the loss of the shared asset while also emerging disputes that may impede the bank's recovery of outstanding claims. This study examines the regulatory and practical weaknesses in the application of prudential principle to cross-collateral arrangements and formulates a reconstructed framework aimed at ensuring legal certainty, proportionate risk allocation, and protection for all affected parties. It employs normative legal research using statutory and conceptual approaches, supplemented by structured interviews with business actors, banking practitioners, advocates, and financial authorities. The findings reveal that credit assessment, risk management, Mortgage Rights, creditor priority, restructuring, and enforcement remain governed by fragmented legal regimes without an integrated mechanism for managing a shared collateral asset securing obligations of multiple debtors. The proposed reconstruction combines a performance-based credit and collateral assessment, strengthened credit analysis, internal bank guidelines, the Know Your Partner Principle, debtor consortia, and Mutual Binding Agreements. It establishes continuous risk disclosure and supervision while prioritizing early warning, restructuring, substitute collateral, and voluntary sale before proportionate enforcement is undertaken.

Keywords: Cross-collateral; Legal certainty; Legal protection; Prudential principle; Risk allocation

1. INTRODUCTION

Credit distribution constitutes an implementation of the bank's intermediation function, through which funds collected from the public are redistributed to parties requiring financing. The exercise of this function exposes bank to credit risk because the funds disbursed may not necessarily be repaired in the agreed amount or within the agreed period. Article 2 of Law Number 7 of 1992 concerning Banking, as amended, establishes the prudential principle as a fundamental basis for conducting banking activities. The banking law has been amended, among others, by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector which was subsequently amended by Law Number 4 of 2026. Article 8 of the Banking Law further requires banks to obtain confidence, based on an in-depth analysis, in the debtor's intention and ability to repay its obligation. The prudential principle thus extends beyond the initial approval of credit relationships. In practice, bank generally apply a five-C

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analysis consisting of *character*, *capacity*, *capital*, *collateral*, and *condition of economy,* to assess the legal, financial, and business feasibility of prospective debtors.[1]

Collateral serves as a legal means that provides bank with additional assurance of the repayment of a debtor's obligations, rather than as a substitute for assessing the debtor's repayment capacity. Article 1 number 22 of the Banking Law defines collateral (agunan) as an additional security provided by a debtor customer to a bank in the context of granting credit or financing facilities. The concept operates from Article 1131 and Article 1132 of the Civil Code, under which a debtors' assets generally serve as security for the claims creditors. General security does not provide special rights to certain objects, so credit relationships are usually strengthened through individual guarantees or material guarantees. This study focuses on the Mortgage Rights under Law Number 4 of 1996 because this security right grants the creditors a preferential position, follows the encumbered property, and provides an enforcement mechanism in the event of debtor default.

The use of Mortgage Rights is not limited to securing a single debt. Article 3(2) of Law Number 4 of 1996 permits a single Mortgage Right to secure one or more debts arising from one or several legal relationships, thereby providing a legal basis for cross-collateral arrangements. Cross-collateral links a single collateral object to multiple debts or credit facilities, whereas cross-default concerns the contractual consequences of default under one facility for other related facilities. Accordingly, a default by one debtor does not automatically place another debtor in default. The shared collateral may nevertheless be enforced where the defaulted debt is expressly included within the scope of the secured obligations stated in the Deed of Grant of Mortgage Rights.

Article 3(2) of Law Number 4 of 1996 allows one Mortgage Right to secure one or more debts arising from one or several legal relationships, providing a normative basis for cross-collateral arrangements although the term is not expressly used. Cross-collateral arrangements link a single collateral asset to multiple debts or credit facilities involving one or more debtors. It differs from cross-default, which allows a default under one agreement to affect another related agreement. Accordingly, one debtor's default does not automatically place another debtor in default, although the collateral may still be executed if the unpaid debt falls within the scope of the secured obligations stated in the Deed of Grant of Mortgage Rights.[2]

The legal issue becomes more complex when a single land asset secures facilities granted to different debtors. A default by one debtor may permit enforcement of the Mortgage Right where the relevant debt falls within the secured obligations under Articles 6 and 20 of Law Number 4 of 1996. Because the collateral supports several facilities, such enforcement may also affect the owner and other performing debtors. Cross-collateral arrangements therefore create interdependent risks that cannot be assessed solely on the basis of each debtor's individual repayment performance.

The existing legal framework regulates several elements of risk management, but these provisions remain dispersed across different regulatory regimes. Law Number 4 of 1996 regulates the scope of secured debts, the nature of Mortgage Rights, creditor priority, the content of the Deed of Grant of Mortgage Rights, and the enforcement of

[1]Lastuti Abubakar and Tri Handayani, 'Telaah Yuridis terhadap Implementasi Prinsip Kehati-Hatian Bank dalam Aktivitas Perbankan Indonesia', *DE LEGA LATA: Jurnal Ilmu Hukum* 2, no. 1 (August 2017): 68–91, https://doi.org/10.30596/dll.v2i1.1157.

[2] Sriwati, 'Legal Protection for Creditor under Cross Default and Cross Collateral Clause in a Credit Agreement', *Konfrontasi: Jurnal Kultural, Ekonomi Dan Perubahan Sosial* 8, no. 1 (March 2021): 12–22, https://doi.org/10.33258/konfrontasi2.v8i1.137.

such security rights. Financial Services Authority Regulation Number 18/POJK.03/2016 and Financial Services Authority Circular Letter Number 34/SEOJK.03/2016 require banks to implement risk identification, measurement, monitoring, and control processes. Financial Services Authority Regulation Number 42/POJK.03/2017 requires banks to have a written credit policy that regulates the provision, supervision, documentation, and settlement of credit. The assessment of asset quality and debtor performance is strengthened through Financial Services Authority Regulation Number 40/POJK.03/2019, while governance, internal control, and early warning systems are affirmed through Financial Services Authority Regulation Number 17 of 2023 and Financial Services Authority Circular Letter Number 14/SEOJK.03/2025. The set of provisions has not specifically established a standard of prudence for the use of a single collateral object for the obligations of several debtors who have different financial conditions and payment performance.

The absence of these special standards can be seen in the unclear arrangements regarding the assessment of the relationship between debtors, the allocation of collateral value for each facility, the disclosure of information regarding changes in financial conditions, the handling of risk transmission, and protection for parties who do not commit defaults.[3] Cross-collateral risk arise from the initial credit-assessment stage, when banks assess potential debtors, determine the structure of credit facilities, verify ownership of collateral assets, determine the secured value, and prepare the relevant agreements. These risks continue at the stage of disbursement, performance monitoring, restructuring, replacement or addition of collateral, and execution.[4] An assessment centered solely on legal ownership, market value, and ease of execution of an object is not enough to describe the overall exposure. The prudential principle should encompass each debtor's capacity to maintain its business, the economic and legal relationships among the debtors, the potential impact of one debtor's default on the others, and the available settlement options before the shared collateral asset is sold.

To clarify the legal issues arising from cross-collateral, the configuration of the practice examined in this study involves a piece of land belonging to debtor A that is used to guarantee three separate credit facilities provided by Bank D to debtors A, B, and C. In this relationship, A and B continue to meet their payment obligations in accordance with their respective agreements, while C is in arrears and then declared in default. Provided that debtor's C's obligation is expressly included within the scope of the debt secured by the Deed of Grant of Mortgage Rights, Bank D, as the holder of the Mortgage Rights, may enforce the security to recover the outstanding debt. The problem arises because the Dependent Rights basically burden the object as a whole and cannot be divided, unless the partial release has been agreed in accordance with the provisions of laws and regulations. Thus, an execution triggered by C's default has the potential to cause A to lose its land and B to lose collateral support for a credit facility that remains to be paid smoothly, while Bank D may face objections or disputes that hinder the recovery of receivables. This risk is heightened where the credit agreement, the Deed of Grant of Dependent Rights, and the inter-debtor agreement do not clearly regulate the allocation of collateral value, notification obligations, the replacement or partial release

[3] Henry Adi Pratama, Ermanto Fahamsyah, and I. Gede Widhiana S, 'Kepastian Hukum Akta Cross Default dan Cross Collateral dalam Perjanjian Kredit Sindikasi Perbankan dengan Jaminan Benda Tidak Bergerak', *Global Research and Innovation Journal* 2, no. 2 (May 2026): 45–58.

[4] Suwinto Johan, Amad Sudiro, and Ariawan Gunadi, 'Do Cross-Default and Cross-Collateral Clause Fulfill the Principles of Justice and Equality in Loan Agreement? (The Case of Indonesia)', *Global Business and Finance Review* 27, no. 3 (2022): 1–13, KB_SCHOLAR, https://doi.org/10.17549/gbfr.2022.27.3.1.

of the collateral asset, contribution among debtors, and the stages of settlement before enforcement. This illustration shows that the problem of cross-guarantee does not solely lie in the bank's right to execute the object, but also in the unclear division of risks and protection for landowners and other debtors who continue to fulfill their obligations.

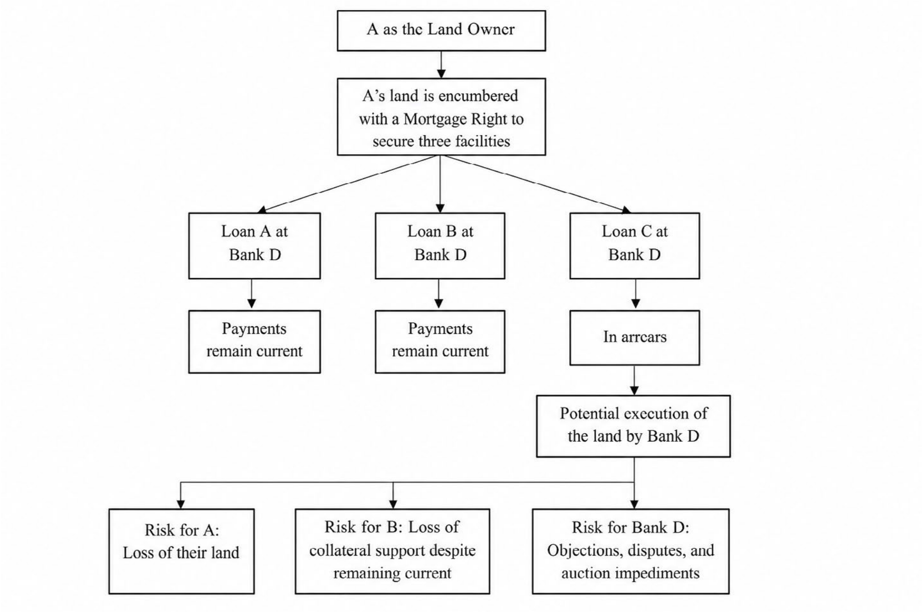

Figure 1. Illustration of Legal Relations in Cross-Bailing

The illustration shows that cross-collateral transforms an originally bilateral credit relationship between the bank and each debtor into an interrelated risk structure, because the default of one debtor may affect the collateral asset, its owner, and the credit facilities of other performing debtors. Law Number 4 of 1996 has regulated the scope of debt that can be secured with the Rights of Dependents, the position that is prioritized for the holder, and the authority of execution when the debtor breaks the promise, but has not specifically regulated the division of risk and responsibility among several debtors who use the same collateral object.

Previous research examines a basis for understanding the relationship among the principle of prudence, credit rating, and collateral functions. Disemadi relates it to risk management and analysis of five C.[5] Novenanty suggests that credit decisions should rest on a thorough assessment of the debtor's willingness and ability to pay, with collateral as additional protection.[6] Setiono discusses the development of the legal and economic functions of collateral objects in credit agreements.[7] A more specific study on *cross-default* and *cross-collateral* was conducted by Ibrahim, Sriwati, and Johan et al. with an emphasis on the settlement of non-performing loans, creditor protection, and contractual justice. Research on the execution of Dependent Rights also noted the

[5] Hari Sutra Disemadi, 'Risk Management In The Provision Of People's Business Credit As Implementation Of Prudential Principles', *Diponegoro Law Review* 4, no. 2 (September 2019): 194–208, https://doi.org/10.14710/dilrev.4.2.2019.194-208.

[6] Wurianalya Maria Novenanty, 'The Legal Aspect Of Credit Without Collateral In Indonesia (Aspek Hukum Kredit Tanpa Agunan Di Indonesia)', *Veritas et Justitia* 4, no. 1 (June 2018): 111–30, https://doi.org/10.25123/vej.v4i1.2838.

[7] Gentur Cahyo Setiono, 'Jaminan Kebendaan Dalam Proses Perjanjian Kredit Perbankan (Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud)', *Transparansi Hukum* 1, no. 1 (June 2018), https://doi.org/10.30737/transph.v1i1.159.

problems of procedural objections, third-party claims, delays, and the need to maintain a balance between the interests of creditors and debtors.[8] These studies have addressed important aspects of credit relationship but have not integrated the risks arising from multiple debtors sharing the same collateral asset across the entire credit cycle, from the establishment of the facility to the enforcement.

The research gap lies in the absence of an integrated prudential principle linking collateral law with inter- debtor credit risk governance. Previous studies have tended to place creditworthiness analysis, cross-guarantee clauses, party protection, restructuring, and execution as separate issues. This fragmentation limits the ability of the legal framework to respond circumstances in which the collateral owner and performing debtor bear the consequences of other debtors' default. A framework that focuses solely on enforcement authority may ignore a proportionate allocation of risk, while a framework that relies solely on freedom of contract may override banks' regulatory obligations to recognize and control interrelated credit risks. Research on the reconstruction of the prudential framework is necessary to bring together the certainty of collateral binding, the effectiveness of receivables recovery, bank governance, and legal protection of the parties in a single regulatory design.

This study reconstructs the prudential principle by treating cross-collateral as an interdependent credit risk that must be managed throughout the credit cycle. The proposed framework integrates debtor performance assessment, risk disclosure, ongoing supervision, contractual coordination, restructuring, and proportionate enforcement. It also introduces the the Know Your Partner Principle, requiring debtors who share collateral to disclose material legal and financial risks that may affect the other credit facilities. The novelty lies in integrating these mechanisms with performance-based assessment, bank governance, and early warning measures within a single prudential framework.

This study employs a normative legal research method using statutory and conceptual approaches with descriptive-analytical specifications. The legal materials consist of laws and regulations, legal literature, and relevant research findings. Structured interviews with business actors, banking practitioners, advocates, and financial authorities are used a supplementary materials to identify relevant banking practices and assess the practical relevance of the proposed normative framework. The materials are analyzed qualitatively and prescriptively to formulate a prudential framework that balances receivables recovery, protection of compliant parties, and the control of interconnected credit risks.

This article focuses on two legal issues. The first examines weaknesses in the regulation and application of the prudential principle to cross-collateral arrangements in bank lending that may create legal uncertainty and losses for banks, collateral owners, and other performing debtors who continue to fulfill their obligations. The second examines the reconstruction of the prudential principle required to ensure certainty in collateral arrangements, proportionate risk allocation, effective supervision, and legal protection for the parties.

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[8] Ayup Suran Ningsih et al., 'Re-Evaluation Of Creditor Protection In Mortgage Enforcement: The Legal Perspectives Of The Auction Enforcement Of Mortgage Objects Under The Indonesian Law', *Masalah-Masalah Hukum* 54, no. 3 (November 2025): 446–61, https://doi.org/10.14710/mmh.54.3.2025.446-461.

2. ANALYSIS AND DISCUSSION

2.1. Weaknesses of Regulation and Application of the Prudential Principle

The use of a single collateral object to guarantee multiple credit facilities presents a more complex legal relationship than a credit relationship involving only one debtor and one collateral object.[9] The complexity arises because each credit facility is governed by separate agreements and repayment obligations, while all facilities are secured by the same collateral asset. The failure of one of the debtors not only affects the relationship between the debtor and the bank, but can also threaten the interests of the owner of the collateral object as well as other debtors who continue to fulfill their obligations. This situation shows that cross-guarantee risks are interconnected and cannot be assessed solely on the ability of each individual debtor to pay.

The applicable legal framework regulates the prudential principle, credit risk management, imposition of Dependent Rights, creditor priority, and enforcement. The existing framework does not specifically integrate all stages of cross-collateral management, including the assessment of prospective debtors, allocation of collateral value, coordination among parties, information exchange, performance monitoring, and the handling of defaults.[10] The separation between banking law and guarantee law causes many operational aspects depending on the bank's internal policies and the content of the parties' agreements. The analysis in this section is directed to outline the legal construction of cross-collateral, the limitations of its regulation and risk governance, and the uncertainty of execution that has the potential to cause disproportionate losses.[11]

2.1.1. Legal Construction of Cross-Guarantee

Cross-collateral is an agreement in which a single collateral asset secures more than one debt or credit facility. The use of cross-collateral can take place in several patterns of legal relationships. A single debtor can obtain multiple credit facilities by using the same collateral object, multiple debtors can obtain collateral from one bank by using a single common object, or multiple creditors can have collateral interests in the same object.[12] This study limits cross-collateral to arrangements in which a single collateral asset secures several credit facilities involving more than one debtor, whether the collateral owner is as one of the debtors or acts solely as a guarantor for the others. Such limitations are necessary because each cross-guarantee pattern results in a different structure of rights, obligations, ratings, and execution risks.[13]

The Dependent Rights Clause opens up the possibility of one object being used to guarantee more than one debt. A single object can be encumbered with more than one Dependent Right, while the order of position of the holders is determined based on the date of registration. The priority ranking of Dependent Rights registered on

[9] Gentur Cahyo Setiono, 'Jaminan Kebendaan Dalam Proses Perjanjian Kredit Perbankan (Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud)', *Transparansi Hukum* 1, no. 1 (June 2018), https://doi.org/10.30737/transph.v1i1.159.

[10] Rainer Haselmann, Katharina Pistor, and Vikrant Vig, 'How Law Affects Lending', *The Review of Financial Studies, Vol. 23, p. 549, 2010; Columbia Law & Economics Working Paper No. 285*, 1 January 2005, https://scholarship.law.columbia.edu/faculty_scholarship/2444.

[11] Dimas Nur Arif Putra Suwandi, 'Perlindungan Hukum Bagi Bank Pemegang Hak Tanggungan Peringkat Kedua Dalam Eksekusi Objek Hak Tanggungan', *Media Iuris* 1, no. 3 (December 2018): 420–38, https://doi.org/10.20473/mi.v1i3.10183.

[12] Geraldo Cerqueiro, Steven Ongena, and Kasper Roszbach, 'Collateralization, Bank Loan Rates, and Monitoring', *The Journal of Finance* 71, no. 3 (2016): 1295–322, https://doi.org/10.1111/jofi.12214.

[13] Yuting Fan, Ha Nguyen, and Rong Qian, 'Collateralized Borrowing around the World: Insights from the World Bank Enterprise Surveys', *International Journal of Finance & Economics* 27, no. 2 (2022): 2420–37, https://doi.org/10.1002/ijfe.2279.

the same date is determined by the date of execution of the Deed of Grant of Mortgage Rights. The Law of Dependents also allows one Dependent Right to guarantee one or more debts arising from one or more legal relationships. The regulatory space is the normative basis for the use of land as cross-collateral, but its implementation still requires clear identification of each debt and the parties bound to it.

The principle of indivisibility attaches the Mortgage Right to the entire collateral until the secured debt is fully repaid, unless partial release is expressly agreed in the Deed of Grant of Mortgage Rights. In cross-collateral arrangements involving a single land certificate and multiple debtors, the absence of clear rules on value allocation, partial release, or substitute collateral means that repayment by one debtor does not automatically release part of the object, since the collateral remains tied to the obligations of the others.[14]

The legal position of the collateral owner affects the scope of protection available in cross-collateral arrangements. An owner who is also a debtor is directly bound by both the credit and collateral agreements, whereas an owner who provides land to secure another debtor's obligation acts as a third-party grantor of the Mortgage Right and therefore requires adequate information regarding the secured debts, related facilities, cross-default provisions, and enforcement risks. Sakti and Silviana emphasize that third parties may receive inadequate protection when they are not fully involved in the contractual relationship. At the same time, the use of a shared collateral asset does not convert separate debts into a collective obligation unless joint liability is expressly agreed by the parties. The agreement must therefore clearly determine the scope of each debtor's responsibility and the consequences of default, including whether enforcement is limited to the allocated collateral value or may extend to the entire object.

2.1.2. Limitations of Risk Regulation and Governance

The prudential principle requires banks to recognize, measure, monitor, and control risks arising from their business activities. Credit risk includes not only a debtor's failure to meet its obligations, but also the failure of other parties connected with the bank's transactions. Commercial banks' risk management frameworks require the implementation of active supervision, adequacy of policies and procedures, risk identification and measurement processes, and internal control systems. Bank governance also requires partnerships in business activities to be carried out based on the principles of prudence, risk management, and sound bank management.[15]

The framework has provided general principles for managing credit risk, but has not yet formulated specific standards regarding the use of a single collateral object by multiple debtors. A reading of the risk management and governance provisions shows that banks have an obligation to set policies based on the scale, characteristics, and complexity of their business activities. The provisions do not specify how the value of the collateral asset should be allocated among facilities, how information should be shared among debtors, the limits of exposure to the shared collateral, or the measures to be taken when only one debtor experiences a deterioration in credit quality. The specificity of specific cross-collateral risk therefore depends largely on each bank's internal policies and contractual arrangements.

[14] Kevin Kogin, Moch Isnaeni, and Endang Prasetyawati, 'Ratio Legis of Using Cross Collateral and Cross Default Clauses in Banking Credit Contract', *Journal of Law, Policy and Globalization* 78, no. 0 (2018): 82.

[15] Rifki Khrisna Mahendra and Bambang Eko Turisno, 'Pelaksanaan Eksekusi Hak Tanggungan Elektronik', *Notarius* 17, no. 2 (August 2024): 1179–98, https://doi.org/10.14710/nts.v17i2.45258.

These limitations can be seen at the initial assessment stage. Credit analysis is generally carried out on the identity, ability to pay, capital, business prospects, and guarantees of each prospective debtor. Cross-collateral requires additional analysis because the creditworthiness of one debtor cannot be fully separated from the circumstances of other debtors sharing the same collateral asset. The assessment must include business relationships, business sector correlation, potential conflicts of interest, sources of payment, and the ability of each party to replace the guarantee if one of the facilities has a problem.[16] The risks involved are not limited to individual debtor risks, but also include contagion risk of arising from dependence on a shared collateral object.[17]

Cross-guarantee risk governance also relies on clarity of documentation. The credit agreement needs to mention the relationship of the facility to the common object, while the Deed of Grant of Dependent Rights must identify the secured debt appropriately. The agreement among debtors should regulate the benefits derived from the use of the collateral, cost sharing, information-disclosure obligation, responsibility for deterioration in credit quality, and settlement procedure if one of the debtor defaults. The absence of integrated documentation results in a relationship that is formally legitimate, but weak in regulating coordination when risks begin to develop.

Supervision of debtor performance still tends to take place bilaterally between banks and each customer. Debtors who continue to fulfill their obligations do not always receive information about the deterioration of other debtors' conditions. The collateral owner may also remain unaware that one of the credit facilities has experienced increased risk until the bank issues a warning or initiates measures to address the non-performing loan. Delays in information reduce the parties' opportunities to provide additional collateral, find investors, make partial repayments, or arrange joint restructurings.

The limitations of regulation do not mean that cross-guarantee has no legal basis at all. The problem lies in the lack of integration between the provisions governing Mortgage Rights and risk-management standards specifically designed for shared collateral assets. The law of guarantees governs encumbrance, registration, rating, and execution. Banking law regulates the principles of prudence and risk management. The relationship between the two frameworks has not resulted in an operational mechanism that explains how banks and debtors manage collective risk from the beginning to the end of the facility.

2.1.3. Execution Uncertainty and Risks of the Parties

The enforcement issue can be explained by a plot of land owned by A that is used as collateral for three credit facilities granted by Bank D to Bank A, B, and C . The credit facilities of A and B remain performing, while C falls into arrears and subsequently defaults. The bank has an interest in obtaining repayment of C's liabilities, but the encumbered object is A's land that supports the entire facility. The position constitutes a conflict between the bank's right to recover receivables and the interest of A and B to retain the object because their obligations are still met.

The right of execution of the holder of the Dependent Rights is the main part of creditor protection. Enforcement may be carried out through a sale based on the authority

[16] Novia Boedi Soebagio and Edith Ratna M.s, 'Perlindungan Hukum bagi Kreditor atas Pembebanan Jaminan Kredit dalam Jaminan Hak Tanggungan', *Notarius* 18, no. 2 (June 2025): 518–34, https://doi.org/10.14710/nts.v18i2.64661.

[17] Edoardo Biyakto Putro and Siti Malikhatun Badriyah, 'Perlindungan Hukum Kreditur Separatis Pemegang Hak Tanggungan dalam Perkara Kepailitan', *Notarius* 17, no. 3 (December 2024): 2207–22, https://doi.org/10.14710/nts.v17i3.44840.

of the first Mortgage Rights holder, an executory title, or a private sale agreed by the parties to obtain the best possible price.[18] Normative clarity regarding these methods has not always resulted in simple implementation. Hirsanuddin and Sudiarto show that there is uncertainty in the practice of *parate execution*, among others related to the need for court fiat, additional costs, and longer settlement times.[19] These procedural issues can reduce the effectiveness of creditors' rights even though the certificate of Dependent Rights has executory power.

The execution of cross-guarantees presents additional problems because the default comes from only one of the facilities. The sale of the entire collateral asset may exceed the amount required to satisfy the defaulting debtors' obligations while simultaneously eliminating collateral support for other performing debtors. A bank may argue that the asset has been lawfully encumbered to secure all relevant facilities, while the owner may question the proportionality of enforcement where the benefit receives is disproportionate to the risk of losing the entire property.

The owner can lose the entire object due to the failure of another debtor, while the compensation or benefit received from the use of the land is not necessarily proportional to the value of the loss. The owner's position becomes more vulnerable if he is not a party to the entire credit agreement and only signs the document granting the Dependent Rights. Sakti and Silviana show that the protection of third parties in the execution of Dependent Rights is greatly influenced by their position in the agreement and the fulfillment of the principle of publicity.[20] The involvement of the owner in the entire documentation is an important requirement so that he knows the scope of the burden and can exercise his rights effectively.

A performing debtor may lose collateral support, be required to provide substitute collateral, or experience deterioration in the status of the credit facility as a result of the sale of the shared land asset. His business can be disrupted even if he does not commit a default. These conditions show a separation between individual compliance and collective consequences. Timely payment does not always protect the debtor from the risks arising from the structure of the collateral object.[21]

The disproportional execution cannot always be solved by the sharing of sales proceeds. The division of revenue only takes place after the object is sold, whereas the loss of the owner and other debtors has occurred when the object loses its economic function. Land can be used as a place of business, a source of income, or a basis for obtaining other facilities. This value is not always reflected in the rest of the auction results. Legal protection needs to be present before a sale through notice, evaluation, opportunity to make repayment, collateral reimbursement, partial release, or restructuring.[22]

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[18] Raden Fidela Raissa Ramadhanti et al., 'Parate Eksekusi Terhadap Objek Hak Tanggungan Dalam Hukum Positif Di Indonesia', *Notaire* 5, no. 3 (October 2022): 435–54, https://doi.org/10.20473/ntr.v5i3.38288.

[19] Syakirah Salsabila and Syaddan Dintara Lubis, 'Pelaksanaan Parate Executie Terhadap Objek Hak Tanggungan Berdasarkan UU No.4 Tahun 1996 Tentang Hak Tanggungan', *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 5 (August 2024): 1944–55, https://doi.org/10.38035/jihhp.v4i5.2489.

[20] Salsabila and Lubis, 'Pelaksanaan Parate Executie Terhadap Objek Hak Tanggungan Berdasarkan UU No.4 Tahun 1996 Tentang Hak Tanggungan'.

[21] Edoardo Biyakto Putro and Siti Malikhatun Badriyah, 'Perlindungan Hukum Kreditur Separatis Pemegang Hak Tanggungan dalam Perkara Kepailitan', *Notarius* 17, no. 3 (December 2024): 2207–22, https://doi.org/10.14710/nts.v17i3.44840.

[22] Soebagio and M.s, 'Perlindungan Hukum bagi Kreditor atas Pembebanan Jaminan Kredit dalam Jaminan Hak Tanggungan'.

2.2. Reconstruction of the Prudential Principle in the Cross-Guarantee Arrangement

The weakness of cross-collateral arrangements requires reforms that extend beyond the addition of provisions governing enforcement. The underlying risks arise from the initial stage, when the bank assesses potential debtors, determines the value of the collateral object, prepares credit documentation, and establishes supervisory mechanism for interconnected facilities. The reconstruction of the prudential principle needs to cover the entire credit relationship cycle so that risks can be recognized and controlled before they develop into non-performing loans. The bank's right to repayment must still be guaranteed, but its implementation needs to be balanced with the protection of the owner of the collateral object and other debtors who continue to carry out their obligations.[23]

2.2.1. Regulatory Framework and Performance-Based Assurance System

The reconstruction offered is not intended to remove the function of the Dependent Rights or limit the bank's right to obtain repayment. The direction of the update lies in expanding the scope of the prudential principle to work from the stage of debtor selection, credit approval, collateral formation, performance monitoring, handling credit quality deterioration, to the implementation of execution. Legal certainty for banks is maintained through clarity of objects, collateral values, ratings, and execution rights. Protection for collateral owners and performing debtors should be ensured through risk allocation, information disclosure, restructuring, and the treatment of enforcement as a measure of the final stage.[24]

Arrangements at the level of the Financial Services Authority are required to set minimum standards applicable to all banks. The regulation does not have to establish a new material guarantee regime because the basis for encumbrance and enforcement still follows the law of Dependent Rights. The material that needs to be formed is a prudential standard for banks that accept one asset to guarantee several credit facilities. The standard can be integrated into regulations regarding credit policy, risk management, asset quality, or outlined in special arrangements regarding cross-guaranteed credit.[25]

The regulation regarding cross-guarantees must at least specify its definition, scope, and limits of use. Definitions need to be distinguished among a single asset that guarantees multiple debts, multiple Dependent Rights over a single asset, *cross-collateral* clauses, *cross-default* clauses, third-party guarantees, and syndicated credits. Conceptual clarity will prevent the use of the same terms for different legal relationships. The scope also needs to determine whether the scheme can only be used on a few facilities within a single bank or can include multiple creditors with separate coordination agreements.

Regulations require an allocation of collateral value for each facility. Such allocation does not require the physical division of the collateral asset, but establishes an economic portion for each facility as a basis for risk measurement, collateralization, contributions between debtors, and the sharing of sales proceeds. The allocation of value also provides a basis for the bank to determine whether the repayment of one

[23] Victoria Ivashina, Luc Laeven, and Enrique Moral-Benito, 'Loan Types and the Bank Lending Channel', *Journal of Monetary Economics* 126, no. C (2022): 171–87.

[24] Simon Lovegrove (UK), 'Basel Committee Final Guidelines for CCR', *Global Regulation Tomorrow*, 12 December 2024, https://www.regulationtomorrow.com/2024/12/basel-committee-final-guidelines-for-ccr/.

[25] Ria Juliana Siregar, 'Analysis of the Restructuring of Bad Credit Agreements in Conventional Banks', *Golden Ratio of Law and Social Policy Review* 5, no. 2 (March 2026): 287–98, https://doi.org/10.52970/grlspr.v5i2.2002.

of the facilities can be followed by the release of part of the burden or the reduction of the value of the guarantee.

Legal documentation should link the entire credit agreement with the guarantee document and the agreement between the object's users. Each document should specify the secured debt, collateral value, beneficiary, consequences of default, relationship with other facilities, notification obligation, opportunities to provide substitute collateral, and procedures before enforcement. Ambiguity at the documentation stage will increase the scope for dispute when one of the facilities experiences problems.[26]

The regulatory framework needs to be equipped with a Performance Based Assurance System. This system is a credit-granting model that places cash-flow generation, governance quality, track record, legal compliance, and business sustainability at the center of the credit assessment. Collateral is retained as an additional risk mitigation instrument but should not substitute for an assessment of the debtors' repayment capacity. This position distinguishes performance-based systems from the idea of credit without protection or the removal of collateral functions.

Performance-based systems can be developed in four levels. The first level is a conventional system that centers on the value and execution of collateral. The second level is a transitional system that assesses collateral and business performance simultaneously, but collateral still holds the dominant position. The third tier is a limited performance-based system that places cash flow and repayment ability as the primary basis, while collateral serves as an additional mitigation. The fourth tier is a full performance-based system that relies on governance, business continuity and intensive supervision with a lower reliance on physical collateral.

Table 1. Levels of a Performance-Based Assurance System

Level	Assessment Orientation	Warranty Position	Risk Handling
Conventional	Object value and executable power	Main sources of repayment	Execution
Transitional	Collateral and business performance	Stay dominant	Restructuring and execution
Limited Performance Based	Cash flow, payment capacity, and governance	Additional risk mitigation	Prevention and restructuring prioritized
Full Performance Based	Governance, business continuity and revenue growth	Limited	Intensive surveillance and early corrective action

Source: Processed by Author, 2026

Limited performance-based tiers are the most realistic option for cross-assurance arrangements. This model still recognizes the bank's need for collateral, but reduces reliance on execution as the only avenue of recovery. Debtors who can use the scheme must have verifiable performance, reliable financial statements, adequate cash flow, and a governance structure that allows for ongoing supervision.

[26] Siregar.

2.2.2. Strengthening Credit Analysis, Bank Guidelines, and the Principle of Knowing Partners

The Performance Based collateral System requires strengthened credit analysis because the use of a single collateral asset by multiple debtors cannot be assessed solely on an individual basis. Banks should assess each debtor separately and test the risk relationship between them. The analysis includes ownership relationships, business relationships, sources of income, business sector correlation, transactions between companies, operational dependencies, and the potential transmission of financial difficulties.

The assessment of collateral should extend beyond its legal status and economic value. The bank needs to determine the portion of value that underpins each facility, the order of rights, the ability of the object to be divided, the possibility of partial release, the cost of sale, and the consequences if the liquidation value is insufficient. The assessment also needs to take into account the function of the object to the business activities of the owner and other debtors. Land used as a production site may have an economic value that is not fully reflected in its market or the selling price.

The analysis needs to be complemented by integrated due diligence. Legal due diligence examines the authority of the parties, the ownership status of the object, the validity of the permit, legal cases, the prohibition of transfers, the existing burden, and the relationship with other facilities. Financial due diligence assesses financial statements, cashflow, contingent liabilities, affiliate transactions, revenue concentration, and ability to meet *financial covenants*. Operational due diligence examines control structure, supplier dependencies, key customers, management competencies, and business continuity.[27]

The results of credit analysis must be incorporated into the bank's internal guidelines that can be applied consistently. The obligation to have a written credit policy provides the basis for banks to draw up specific rules regarding cross-collateral. The guidelines need to regulate the principles of prudence, division of authority, credit approval, documentation, supervision, and settlement of non-performing loans in an integrated manner.[28]

The guidelines also need to establish early warning indicators. Indicators can be in the form of late payments, decreased revenue, violation of financial ratios, change of management, material disputes, loss of major contracts, increased debt, decrease in object value, and refusal to provide information. These indicators should be assessed not only in relation to the debtor concerned but also in terms of their potential impact on other debtors sharing the collateral.

Strengthening credit analysis is not enough if debtors do not obtain information about each other's risks. The cross-collateral arrangements create a need for the proposed Know Your *Partner* Principle. This principle is a contractual and governance obligation that requires each debtor who uses a common object to recognize, disclose, and monitor the debtor's legal, financial, governance, and other payment conditions that may affect the security of the collateral.[29]

[27] *Final Guidelines for Counterparty Credit Risk Management*, 11 December 2024, https://www.bis.org/bcbs/publ/d588.htm.

[28] David Bholat et al., 'Non-Performing Loans: Regulatory and Accounting Treatments of Assets', SSRN Scholarly Paper no. 2776586 (Rochester, NY: Social Science Research Network, 22 April 2016), https://doi.org/10.2139/ssrn.2776586.

[29] 'Press Release: OJK Issues New Regulation on AML-CFT and CPF Program', accessed 5 August 2026, https://ojk.go.id/en/berita-dan-kegiatan/siaran-pers/Pages/OJK-Issues-New-Regulation-on-AML-CFT-and-CPF-Program.

The difference between the two lies in the subject and the purpose. *Know Your Customer* is implemented by banks to customers to handle compliance risks, transactions, and business relationships. *Know Your Partner* principle operates among debtors under bank supervision to manage risks arising from the use of shared collateral assets. KYC is regulatory and has become part of positive law, while KYP is a principle that research proposes to fill the specific needs of cross-collateral.

The implementation of KYP includes partner identification, exchange of financial statements, disclosure of material changes, notification of disputes, monitoring of credit obligations, and periodic evaluations. Members do not have to obtain all confidential company information. The information provided is limited to material data that could affect the security of the guarantee, the ability to pay, or the sustainability of the relationship. Data confidentiality and use arrangements must be included in the agreement.

The bank retains the verification function. Information exchanged between debtors cannot be accepted without examination because each party has economic interests. Banks need to match information with financial statements, credit data, corporate documents, appraisal results, and due diligence findings. Such layered oversight forms the relationship between KYC, KYP, and internal risk management.

2.2.3. Consortium of Debtors, Restructuring, and Proportional Execution

The Know Your Partner principle requires a forum that allows debtors to exchange information, make decisions, and respond to increased risks. The forum can be formed as a consortium of debtors which is positioned as a new business entity that replaces the position of each member. The consortium is a contractual forum for debtors and owners of collateral assets to regulate the use of shared objects, risk supervision, corrective actions, and settlement if one of the facilities experiences problems.

The formation of a consortium needs no change for individual nature of each debt. Each debtor remains liable under its credit agreement, unless the parties expressly agree on certain joint liabilities, guarantees, or contributions. Asset that are used together also do not automatically make all debtors the joint owners. Ownership remains determined by valid evidence of title, while other members derive their rights to use the collateral from the agreement made among the parties.

The Joint Binding Agreement at least contains identity of the parties, ownership status of the object, guaranteed credit facility, allocation of the collateral value, benefits received by each member, sharing of costs, obligation to provide information, decision-making mechanism, early warning indicators, steps to handle non-performing loans, as well as the reimbursement of collateral, contributions, indemnification, voluntary sale, revenue sharing, dispute resolution, and expiration of membership.

The principle of proportionality is necessary to assess the balance of the exchange of rights and obligations among the members. Proportionality does not necessarily mean that each party gets equal shares. The distribution must take into account the benefits received, the size of the facility, the portion of the collateral value, the error rate, the ability to contribute, and the risks incurred. Contractual balance is formed through the distribution of rights and obligations in accordance with the position of each party.

Restructuring in cross-collateral arrangements must consider ts impacts on all related credit facilities. An extension of one debtor's credit term may prolong the

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encumbrance of the shared collateral and consequently affect other debtors whose facilities are secured by the same asset. The granting of additional credit facilities may also increase the debt-to-collateral ratio while changes to repayment schedule might affect the timing of any partial release of collaterals. Any changes require approval and documentation that maintains the position of the bank, owners, and other members.

Substitute collateral may provide an alternative where the deterioration in credit quality relates only to one facility. A debtor experiencing a decline in performance may provide substitute collateral so that its credit facility no longer depends on mutual collateral asset. The release must be approved by the bank and meet the requirements of a valid charge. This option can maintain credit security while protecting owners and debtors who remain smooth.

Voluntary sales can be used when restructuring is inadequate, but there is still a chance of getting a better price than an auction. The owner may be given time to find a buyer with the supervision of the bank and the consent of the parties whose rights are affected. Credit settlement practices show that communication, negotiation, and the opportunity to sell collateral themselves can take precedence before the auction process, especially to maximize prices and reduce disputes.[30]

Execution is still required if the default has been proven, the restructuring fails, unavailable collateral substitution, under expectation voluntary sales results. The placement of enforcement as a last resort does not eliminate the rights of creditors. This sequence actually strengthens the effectiveness of the recovery because the bank has built documentation regarding preventive measures, repair opportunities, notifications, and failure of alternative settlements.

Proportional enforcement needs an assessment of the magnitude of the liability, the value of the object, the payment status of other members, the portion of benefits, and the possible division of the object. Assets consist of multiple planes or may be broken down to be assessed early to apply partial removal. Indivisible objects require arrangements regarding overall sales and transparent revenue sharing.

The distribution of sales proceeds follows the position of the creditor based on the law of guarantees, execution fees, and legal agreements. The internal relationship of the debtors still requires a separate arrangement regarding the remaining proceeds, compensation, and contributions. The debtor who causes the execution may be obliged to compensate the owner or other members as long as there is a basis for the agreement and a provable causal relationship.

A consortium of debtors, restructuring, and proportional execution form a series of settlements that work in stages. The consortium provides communication and supervision. Restructuring provides an opportunity to restore debtor performance, while substitute collateral and voluntary sales offer alternative settlement mechanisms when restructuring is unsuccessful. An execution is used after the other option does not yield results. The series places the precautionary principle as a mechanism for continuous prevention, control, and settlement.

The reconstruction of the prudential principle ultimately depends on the interconnectedness among regulation, bank governance, and the contractual relationship of the parties as well as minimum standards set by regulations. Banks translate it into guidelines and supervisory systems, while the debtors establish a consortium and enter a Joint Binding Agreement. These three layers produce certainty about who should

[30] Betty Ivana Prasetyawati and Paramita Prananingtyas, 'Peran Kode Etik Notaris Dalam Membangun Integritas Notaris Di Era 4.0', *Notarius* 15, no. 1 (April 2022): 310–23, https://doi.org/10.14710/nts.v15i1.46043.

act, what information should be provided, what risks are incurred, and what stages are taken before the object of the guarantee is executed.

3. CONCLUSION

This study concludes that the existing prudential framework has not fully addressed the interconnected risks arising when a single collateral object secures credit facilities involving multiple debtors. Banking and Mortgage Rights regulations govern credit, collateral, risk management, and enforcement, but do not yet integrate debtor assessment, collateral value allocation, information disclosure, monitoring, and protection of performing debtors. The findings show that the 5C assessment should be adapted to cross-collateral arrangements: (1) Character, by assessing transparency and compliance among debtors; (2) Capacity, by examining repayment ability and the impact of other debtors' difficulties; (3) Capital, by assessing the ability to absorb losses or provide additional support; (4) Collateral, by considering value allocation, divisibility, and enforcement risks; and (5) Condition of Economy, by assessing business correlations and shared external risks. This approach treats cross-collateral as an interconnected credit risk rather than merely an instrument for securing repayment.

Based on these findings, the prudential principle should be reconstructed through performance-based assessment, due diligence, strengthened bank governance, the Know Your Partner Principle, debtor coordination, and Mutual Binding Agreements. Prudential regulation should establish clearer standards for risk disclosure, collateral value allocation, early warning, restructuring, and proportionate enforcement. Non-performing loans should first be addressed through restructuring, additional or substitute collateral, agreed contributions, or voluntary sale, with enforcement reserved as a measure of final resort. This model strengthens legal certainty for banks while protecting collateral owners and debtors who continue to fulfill their obligations.

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