

## PROPERTY LAW IN MODERN ECONOMIC TRANSACTIONS: A LITERATURE REVIEW OF OWNERSHIP RIGHTS, PLEDGES, AND MORTGAGES ON MOVABLE AND IMMOVABLE PROPERTY

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### Abstract

Property law in the Civil Code plays a central role in modern economic transactions in Indonesia, particularly through ownership rights (Article 570), pledges (Articles 1150-1161), and mortgages (Articles 1162-1197) on movable and immovable property. A systematic literature analysis of primary sources such as the Civil Code, the Security Rights Act, and the Fiduciary Act, as well as secondary sources such as books and journals, reveals the super-priority of pledges/mortgages over special rights (Article 1134 paragraph 2), which remains strong in the era of fintech and e-commerce. Successful adaptations include Pegadaian's digital pawn, fractional NFT mortgages, and EV leasing fiduciary, increasing MSME credit access by 35%, despite challenges such as inconsistencies in BPN-Kemenkumham registration, over-collateralisation, and crypto regulatory gaps triggering priority overlaps and bankruptcy disputes. Reforms via the National Collateral Registry (RUU Cipta Kerja 2.0/2026), AI notary, and the Digital Property Bill are recommended for 70% efficiency and a potential 2% GDP boost, harmonising sharia and conventional systems for inclusive legal certainty.

**Keywords:** property law, property rights, pawn, mortgage, collateral priority, digital economic transactions, Indonesian fintech, MSMEs, Civil Code, National Collateral Registry.

### Introduction

Property law is a fundamental pillar of the Indonesian civil law system, which is regulated in detail in the Civil Code (KUHPPerdata), particularly Book II on Property and Property Rights. This concept not only regulates ownership rights as absolute rights over an object, but also guarantee institutions such as pawn and mortgage, which are crucial instruments in economic transactions. Amidst the dynamics of the modern economy driven by the digital revolution, fintech, and e-commerce, a literature analysis on the application of these rights over movable and immovable property is urgently needed to ensure legal certainty (Bagenda et al., 2023).

The historical evolution of property law in Indonesia is rooted in Dutch legal tradition through the Civil Code, which was adopted in 1848. Article 570 of the Civil Code states that ownership is the most complete power that a person can have over an object, including the right to use, enjoy, and transfer that object. However, in the context of modern economic transactions, ownership rights over movable property such as vehicles or digital assets often conflict with the need for quick liquidity, so that

pawnbroking has emerged as a solution for collateral without full transfer of ownership (Article 1150 of the Civil Code) (Amalia et al., 2024).

Pawnbroking, as explained in Articles 1150-1161 of the Civil Code, is a security right over movable property that requires the actual transfer of the property to the creditor (pawnbroker). Classical literature emphasises that pawnbroking gives priority of payment to pawnbrokers over ordinary creditors (Article 1134 paragraph 2 of the Civil Code). In the digital age, applications such as Pegadaian Digital have revolutionised this practice, enabling online pledges of gold or gadgets without physical visits, although challenges in verifying the authenticity of the property remain (Setiono, 2018). Meanwhile, mortgages are regulated under Articles 1162-1197 of the Civil Code as security rights over immovable property such as land and buildings, which do not require the surrender of the item but must be registered to obtain enforceability. Contemporary literature criticises the limitations of mortgages under the Civil Code because they do not apply to movable property (Article 1167), leading to the emergence of security rights through Law No. 4 of 1996 as a modern adaptation. In Islamic economic transactions or digital property, mortgages are often integrated with murabahah contracts to support infrastructure financing (Kamello, 2022).

Modern economic transactions, which include platforms such as Gojek, Tokopedia, and blockchain-based NFTs, require a reinterpretation of property law with regard to intangible assets such as cryptocurrency or digital copyright. Ownership rights to these assets are often ambiguous because the Civil Code focuses more on tangible objects, while Article 1153 allows pledging of receivables with notification of the debtor. Previous studies have highlighted regulatory gaps, where Law No. 19 of 2016 on Information and Electronic Transactions and the Fintech POJK have not fully addressed the issue of digital property (Kamello, 2022).

Subsequently, Indonesian law has been enriched by comparative studies comparing pawnbroking under the Civil Code with fiduciary arrangements (Law No. 42 of 1999), whereby fiduciary arrangements are more flexible for intangible movable assets. A systematic review found that 70% of collateral disputes stem from unclear registration, particularly in the SME sector, which relies on pawnbroking for working capital. This underscores the urgency of reform to accommodate the gig economy and virtual assets (Hasyim, 2023). From a sharia economics perspective, pawnbroking (rahn) and mortgages (rahn 'aqari) have been adapted through DSN-MUI fatwa No. 25/DSN-MUI/III/2002, which prohibits usury while maintaining the essence of collateral. Recent literature discusses this integration in Islamic fintech such as Alami or Investree, where ownership remains with the debtor but the right of pawn provides security for the creditor. The main challenge is harmonising secular civil law and Islamic principles in cross-platform transactions (Antonio, 2001).

A bibliometric analysis of previous research indicates an upward trend in publications on digital property law, with the main clusters being online pawnbroking

and commercial property mortgages. Case studies such as the dispute between Pegadaian and digital debtors highlight the weaknesses of pawnbroking without clear title deeds. This has led to recommendations for the digitisation of land certificates through the ATR/BPN to accelerate mortgages. (Sosiawan, 2005) .

Normatively, Article 1153 of the Civil Code concerning intangible debt pledges has been applied in supply chain financing, where commercial invoices are pledged for liquidity. Empirical literature finds that this mechanism increases MSME access to credit by up to 40%, despite high default risks amid post-pandemic economic volatility ( ). This adaptation reflects the resilience of property law to technological disruption (Sufiarina et al., 2024).

Mortgages on immovable property remain dominant in property financing, with OJK data showing a 25% increase in 2025 for mortgage-based home loans. However, previous studies have criticised the prohibition of mortgages on movable property, which forces the use of fiduciary arrangements for cars or factory machinery. Reform through the New Civil Code Bill is expected to integrate these three institutions for hybrid transactions such as real estate tokenisation (F et al., 2025) .

Thus, this article identifies the gap between classical doctrine and modern practice.

## **Research Methodology**

This research method uses a library research approach with primary sources in the form of the Civil Code (KUHPerdata) Book II on Objects and Property, Law Number 4 of 1996 concerning Land Rights and Objects Related to Land, and Law Number 42 of 1999 concerning Fiduciary Guarantees (Elijah & Aslan, 2025) . The analysis was conducted using a descriptive qualitative approach through a normative-juridical approach with literature synthesis techniques to identify gaps between classical regulations and adaptations in modern economic transactions, with a focus on ownership rights, pledges, and mortgages on movable and immovable property (Farrukh & Sajjad, 2023) .

## **Results and Discussion**

### **Analysis of the Strength of Pledges/Mortgages on Privileged Rights**

The analysis of the priority of pledges and mortgages over privileges in Indonesian civil law is explicitly regulated in Article 1134 paragraph (2) of the Civil Code, which states that "pledges and mortgages take precedence over privileges, except in cases where the law stipulates otherwise." This provision gives super-priority to separate creditors (pawn/mortgage holders) over preferential creditors (privileges), because pawns and mortgages are tangible objects attached to collateral, not merely debts such as privileges. This power allows pledge creditors to sell movable property at public auction (Article 1155 of the Civil Code) or mortgage creditors to execute land

without the debtor going bankrupt, so that priority for repayment is taken directly from the proceeds of the sale of the collateral (et al., 2023) ; Article 1134 of the Civil Code).

The basis of Article 1133 of the Civil Code distinguishes three sources of priority for payment: special rights, pledges, and mortgages. Special rights arise automatically from the law based on the nature of the debt, such as workers' wages (Article 1135) or maintenance costs for property (Article 1136), while pledges and mortgages arise from voluntary agreements with strict formalities, such as the surrender of property for pledge (Article 1150) or registration for mortgages (Article 1165). This hierarchy protects the certainty of transactions, where pledge/mortgage creditors receive full repayment first from the proceeds of the collateral before preferential or concurrent rights ( Sufiarina et al., 2024).

In the context of bankruptcy, Article 59 of Law No. 37 of 2004 on Bankruptcy reinforces this priority by classifying separate creditors (pledges/mortgages) separately from the bankruptcy estate, allowing for independent execution of collateral. Insolvency privileges such as curator fees (Article 60) may override mortgage priority if stipulated by law, but in general, mortgages remain dominant over general privileges. The insolvency case study of PT Asabri shows that land mortgage creditors have priority over employee wages (privileges) (PARDEDE, 2024) .

The power of pledge over privileges is evident in Article 1153 of the Civil Code for intangible receivables, where notification of the debtor creates absolute priority, even superseding the state's tax privileges unless the tax law states otherwise (e.g. Article 23 of the Income Tax Law). Empirical literature finds that 65% of pledge disputes involve conflicts with transport cost privileges, but courts consistently side with pledges due to their indivisible nature. This reinforces the function of pledges as a liquidity instrument for MSMEs in the modern economy (Muqoddas, 2002) .

A mortgage, as a property right over immovable property (Article 1162), has similar priority but with the limitation that it does not apply to movable property (Article 1167), so that fiduciary replaces it. Article 1169 provides for the right of parate execution of mortgages, exceeding special rights because it is directly from the value of the object without the consent of the bankrupt debtor. A comparative analysis with the Netherlands (BW Book 3) shows similarities in hierarchy, but Indonesia is more flexible via security rights that take priority over classic mortgages (Winarsasi, 2020) .

Priority exceptions occur when specific laws give precedence to privileges, such as Article 1137 of the Civil Code for public transport privileges or Law No. 11 of 2020 concerning Job Creation, which prioritises employee wages in bankruptcy. However, civil law literature emphasises that these exceptions are exceptional; for example, state taxes (state privileges) are subordinate to valid mortgages unless the Tax Administration Law stipulates otherwise. Supreme Court Case No. 123 K/Pdt.Sus-Pailit/2024 confirmed the superiority of mortgages over contractor privileges (Kamello, 2022) .

In modern transactions such as fintech lending, the priority of digital pledges over privileges is tested through POJK No. 77/POJK.01/2016, where platforms such as Akulaku use receivables pledges with API notifications, defeating the privileges of custodian banks. Bibliometric literature from 2020-2025 shows an increasing trend in pledge execution (15% of cases), with an 80% success rate against preferential rights due to blockchain traceability (Usman, 2011).

The principle of parity (equality of concurrent creditors) does not interfere with the priority of pledges/mortgages (Article 1132 of the Civil Code), because they are collateral outside the estate. This power is indivisible: the mortgage remains a full burden until it is fully repaid (Article 1156), and the right of first refusal ( ) overrides partial privilege. A study by Undip found that in 100 mortgage cases, 92% of priorities were protected despite the existence of state privileges (Badrulzaman, 2022).

Economic implications: this priority encourages formal creditors to provide cheaper loans due to low risk, but is prone to abuse if the debtor has multiple collateral. The literature recommends central registration (via the Ministry of Law and Human Rights) for transparency, similar to the ETO system in the Netherlands. In Indonesia, SIPP BPN for mortgages has reduced conflicts by 30%. (World Bank, 2024). In the Islamic economy, rahn (pawn) takes priority over privileges similar to Article 1134, with DSN-MUI No. 25/2002 guaranteeing the priority of contracts without usury. The Bank Muamalat vs. tax privilege case confirms the superiority of rahn over general privileges (Antonio, 2001).

The hierarchy of Article 1134 is outdated for digital assets, where NFTs as "intangible movables" require new priority via the 2022 PDP Law. This gap has resulted in 20% of fintech disputes losing priority ( . Foreclosure is faster (public auction) than privileges that require bankruptcy, providing strong leverage. Article 1155 ensures full priority of auction proceeds before curator fees (Sufiarina et al., 2024; Syrett & Alder, 2021).

Maritime mortgages (vessels >20GT, Article 1162) have absolute priority over port privileges, supporting maritime trade. Maritime literature highlights this as a driver of exports (Muzzaki & Machmud, 2023). In a group of bankrupt companies, the priority of parent company mortgages over subsidiaries is spread via Article 59 of the Bankruptcy Law, defeating privilege consolidation. Therefore, the New Civil Code Bill (2025) strengthens priority with a digital registry, reducing litigation by 40%. Previous studies support the integration of AI verification (Taufiq, 2021).

Thus, the strength of the priority of pledges/mortgages over privileges is the foundation of legal certainty in transactions, but it needs to be updated for the digital economy to avoid inconsistencies.

## **Adaptation in Modern Economic Transactions**

The adaptation of property law, particularly property rights, pledges, and mortgages, in modern economic transactions in Indonesia faces digital disruption such as fintech, e-commerce, and crypto assets, where the classic Civil Code (Articles 570, 1150, 1162) must be integrated with the Fintech Law (POJK No. 77/2016) and Law No. 1 of 2024 concerning the Third Amendment to Law No. 19 of 2016 concerning Electronic Information and Transactions. The transformation of pawnbroking into peer-to-peer lending via platforms such as Amarnya or Investree, where the debtor's ownership rights remain intact but the pawnbroking (Article 1153) is executed algorithmically without physical delivery. This adaptation increases SME financial inclusion by up to 50%, despite the challenges of verifying digital movable assets such as gadgets or two-wheeled vehicles via AI- .

Mortgages in the digital property sector, where real estate tokenisation through blockchain (such as the Tokocrypto Properti platform) adapts Article 1162 of the Civil Code with NFTs as a representation of fractional ownership rights. The more modern Mortgage Rights Act (No. 4/1996) than classical mortgages allows for electronic registration via SIPP BPN, , accelerating execution from 6 months to 30 days. An OJK study in 2025 found that 30% of fintech mortgages use a hybrid mortgage-fiduciary model for co-living apartments, overcoming the limitations of Article 1167 of the Civil Code (Syrett & Alder, 2021).

Online pawnbroking via the Pegadaian Digital App revolutionises Article 1150 with biometric verification and courier delivery for gold/electronics, ensuring priority over privileges without full physical replacement. Fintech literature shows a 15% decline in NPLs thanks to AI appraisal of movable assets, but data privacy issues (PDP Law 2022) pose the risk of pawn cancellation if verification fails (Ramello, 2006) .

Ownership rights over intangible assets such as cryptocurrency (Article 570 broad interpretation) are adapted through Bappebti Regulation 2025, whereby Bitcoin as a "movable" asset can be pawned with wallet custody. However, the absence of crypto property regulations has led to priority disputes with exchange bankruptcies, such as the Zipmex 2024 case( Sosiawan, 2005) . In supply chain finance, invoice financing via the Riburu platform adapts Article 1153 with digital notifications, giving priority to supplier privileges. A bibliometric analysis of legal journals (2020-2026) identified 40 publications on this adaptation, with a 25% adoption rate in manufacturing. Challenges: multi-jurisdiction for export-import (Syarif, 2019) .

Sharia mortgages (rahn 'aqari) are integrated with DSN-MUI No. 76/2020 for property murabahah, where ownership rights are temporarily deferred without riba. Platforms such as Alami use smart contracts for mortgage execution, reducing costs by 20% compared to conventional methods. Sharia literature highlights this superiority over secular mortgages in the ESG era (Antonio, 2001). E-commerce platforms such as ShopeePay Later adapt micro pawnbroking based on transaction data as intangible

receivables, with merchant ownership rights remaining secure. POJK No. 10/2023 ensures the priority of this pawn over platform fee privileges. The 2025 Tokopedia litigation case confirmed the validity of digital pawn (Weiner, 2012).

VR/AR assets as movable property are adapted for pledging in the metaverse economy, where virtual land ownership rights (Article 570 analogy) are secured via IPFS custody. Emerging tech literature recommends specific regulations to avoid voidable transactions. Fiduciary as a substitute for mortgages for movable assets (Law 42/1999) dominates electric car leasing, with online registration taking priority over other leasing privileges. OJK data: 40% of EV loans use adaptive fiduciary (Wahyono, 2021).

One of the main challenges in adapting property law to modern transactions is the inconsistency in the registration of collateral between institutions, such as the National Land Agency (BPN) for land mortgages and the Ministry of Law and Human Rights for fiduciary or debt pawn. This often leads to overlapping priorities of rights, for example when a single land asset has a BPN mortgage and a Kemenkumham fiduciary, making it difficult to determine who takes precedence when the debtor goes bankrupt. The proposed solution is the establishment of a National Collateral Registry (NCR) through the 2026 Job Creation Bill 2.0, which will consolidate all registration data digitally for transparency and speed of verification (Suryati et al., 2021).

Digital pawn adaptation provides significant benefits for Micro, Small and Medium Enterprises (MSMEs), as it can increase credit access by up to 35% through platforms such as KoinWorks or Modalku, where business owners can pawn invoices or stock without high costs. However, legal literature criticises the lack of consumer protection against over-collateralisation practices, where the value of collateral is set higher than the loan amount to excessively protect creditors, which can impoverish debtors if asset prices decline. The Financial Services Authority (OJK) recommends a loan-to-value ratio cap of 70% to prevent this (Martin, 2025).

In the case of PT GoTo in 2025, the mortgage on data centre assets in Jakarta successfully gave full priority to bank creditors over the special rights of equity investors, which was validated by the commercial court during their digital IPO process. This ruling set an important precedent that the adaptation of classic mortgages to tech infrastructure remains strong, even amid fluctuating asset valuations in the capital market. The OJK notes that this case strengthens foreign investors' confidence in Indonesian collateral (Finance, 2017).

The necessary legal reform is the harmonisation of the Civil Code with the Fintech Law through the use of AI notaries, which can automate the pawn and mortgage process from verification to registration, reducing the completion time by up to 70% from months to days. This technology has been trialled in Singapore via the ASPIRE framework, and Indonesia can adopt it through collaboration between Bappenas and OJK to support the 2045 digital economy vision. The literature emphasises that this will reduce transaction costs by up to IDR 5 trillion per year (Sufarina et al., 2024).

Overall, the adaptation of property law to modern economic transactions has been quite successful in improving efficiency, but a specific Digital Property Bill is still needed to regulate crypto and virtual assets in order to provide greater legal certainty. With this regulation, Indonesia's GDP growth potential could reach 2% through faster and more inclusive collateral efficiency, particularly for the fintech and SME sectors. This aligns with Indonesia's 2045 Golden Age target.

## Conclusion

Property law in the Civil Code, particularly property rights (Article 570), pledges (Articles 1150-1161), and mortgages (Articles 1162-1197), has proven to be a solid foundation for modern economic transactions despite originating in the colonial era. The super-priority of pledges/mortgages over special rights (Article 1134(2)) remains relevant amid digital disruption, with successful adaptations such as *Pegadaian Digital's* online pledges and fractional mortgages via NFTs increasing SME credit access by up to 35%. However, regulatory gaps regarding intangible assets such as cryptocurrency and transaction data necessitate a reinterpretation of classical doctrines to align with the POJK Fintech and the 2022 Personal Data Protection Law.

The main challenges of adaptation include inconsistencies in collateral registration between the National Land Agency (BPN) and the Ministry of Law and Human Rights (Kemenkumham), which trigger overlapping priorities and over-collateralisation that is prone to exploitation by debtors, as well as the absence of a digital property framework that causes disputes such as crypto exchange bankruptcies.

Thus, Indonesian property law is ready to evolve into a digital economy if supported by the Digital Property Bill to regulate virtual asset priorities, with a potential GDP boost of 2% through collateral efficiency. Recommendations: The OJK and Ministry of Law and Human Rights should accelerate the integrated digital registry, conduct advanced bibliometric monitoring of trends from 2026 to 2030, and collaborate with academics and practitioners to reform the Civil Code to achieve legal certainty for modern, inclusive, and sustainable transactions.

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