ISNU Nine-Star Multidisciplinary Journal (INS9MJ)
(eISSN: 3063-8984)
Volume 2, Number 3, December 2025 (408-414)

Legal Certainty Aspects of Securities as Debt Collateral in Lawsuit Processes

[1]Dinda Seplinar Batubara, [2]Keisyah Yuvi Amanda, [3]Devani Agustia, [4]M. Farhan Maulana, [5]Fitra Ardiansyah
[1,2,3,4,5]Universitas Islam Negeri Sumatera Utara
E-mail: [1]dindaseplinar@gmail.com, [2]keisyahamanda0@gmail.com, [3]devaniagustia22@gmail.com, [4]maulanasutionaja20@gmail.com, [5]fitraardiansyah181@gmail.com

Info Articles

Article History
Received: 2025-11-22
Revised: 2025-12-14
Published: 2025-12-30

Keywords:
Securities; legal certainty; debt guarantee; lawsuit; civil law.

Abstract

Securities play a strategic role in financial transactions as instruments that can be used as collateral for debt. However, in practice, issues arise regarding the legal certainty of securities in lawsuits, particularly when disputes arise between creditors and debtors. This study aims to examine the extent to which securities provide legal certainty in the process of enforcing creditors' rights through litigation. The research method used is a normative-juridical approach with an analysis of laws and regulations, jurisprudence, and legal doctrine. The results show that although securities such as checks and giro bills have the power to serve as evidence and collateral, their application in judicial practice still faces procedural obstacles and varying legal interpretations. Therefore, strengthening regulations and consistent legal application are needed to ensure legal certainty for the parties.

I. INTRODUCTION

The development of modern economic and financial activities has given rise to various legal instruments that serve as both payment instruments and guarantees in debt-to-credit relationships. In business practice, securities such as bills of exchange, checks, and promissory notes occupy a crucial position due to their practical nature, economic value, and ease of use in commercial transactions. Securities not only serve as legal tender but are also frequently used as instruments to guarantee the fulfillment of debt obligations by debtors to creditors.(Law (UU) No. 19 of 2008 State Sharia Securities, 2008)Therefore, the existence of securities plays a strategic role in supporting smooth trade flows and fostering trust among business actors.

Legally, securities have special characteristics that differentiate them from debt agreements in general.(Irawan & SH, 2016)These characteristics include their transferability, their specific nominal value, and their inclusion of a promise or payment order that is abstract and independent of the underlying legal relationship. These characteristics make securities an instrument that provides convenience and certainty in business transactions. However, when securities are used as collateral for debt and subsequently become the subject of a court dispute due to the debtor's default, complex legal issues arise.

In civil court practice, the use of securities as collateral for debt often gives rise to debate regarding their evidentiary power, their position as collateral, and the execution mechanisms that can be taken by creditors.(Evi, 2021). It is not uncommon for lawsuits filed by holders of securities to encounter obstacles due to differing interpretations by judges regarding the legal nature of the securities, whether they are merely evidence of a debt or can be positioned as collateral granting preferential rights to the creditor. This situation demonstrates that although securities are recognized normatively in the legal system, their application in the context of debt collateral does not yet provide complete legal certainty.

The principle of legal certainty is one of the fundamental principles in a state based on the rule of law which aims to guarantee the protection of the rights and obligations of legal subjects fairly and consistently.(Calvin & Azizah, 2024)In the context of using securities as collateral for debt, legal certainty is crucial, especially for creditors who rely on these instruments for the fulfillment of their rights. However, the lack of comprehensive regulations and clear procedures regarding the position of securities as collateral for debt in lawsuits often creates uncertainty, both during the evidentiary stage and in the implementation of court decisions.

In addition, the legal guarantee system in Indonesia basically recognizes various material guarantee institutions that provide certainty and legal protection for creditors, such as pawns, mortgages, mortgages and fiduciaries.(Susilo et al., 2021)Within this framework, the position of securities as debt collateral becomes problematic because they are not explicitly regulated as a material security institution that grants executorial rights. Consequently, when default occurs and disputes proceed to court, security holders often must go through a lengthy civil lawsuit process to obtain their rights, which can ultimately diminish the effectiveness of the securities themselves.

Based on these issues, a study of the legal certainty of securities as collateral for debt in lawsuits is highly relevant and urgent. This research aims not only to examine the legal norms governing securities and collateral law, but also to analyze their practical application in civil dispute resolution in court.

By examining the obstacles faced by creditors, debtors, and law enforcement officials, this research is expected to identify legal loopholes that create uncertainty. Through a normative legal approach supported by an analysis of court decisions and evolving legal practices, this research seeks to provide a deeper understanding of the legal status of securities as debt collateral. Ultimately, the results of this research are expected to provide theoretical contributions to the development of civil law, while also providing practical considerations for policymakers in formulating clearer and more comprehensive regulations to ensure legal certainty and protect the rights of parties in the use of securities as debt collateral.

II. RESEARCH METHODS

This research uses a normative legal research method, namely legal research that aims to study and analyze applicable legal norms and their application in practice.(Jonaedi Efendi et al., 2018)This approach was chosen because the focus of the research lies in examining the legal certainty aspects of securities as debt collateral in lawsuits, which requires analysis of written legal principles, legal doctrine, and court decisions as the primary sources.

The approaches used in this research include a statute approach and a case approach. The statute approach is carried out by systematically examining various laws and regulations related to securities, contract law, evidence law, and guarantee law, to determine the consistency, gaps, and disharmony of norms that have the potential to create legal uncertainty. Meanwhile, the case approach is carried out by examining relevant court decisions to understand how judges interpret and apply legal provisions related to securities in civil disputes, particularly those related to default and the use of securities as debt collateral.

The data sources used in this research include primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions that have final and binding legal force. Secondary legal materials consist of legal literature in the form of textbooks, scientific journals, previous research results, and the opinions of legal experts related to securities and guarantee law. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that serve to assist in understanding the legal terms and concepts used in the research.

Data collection was conducted through library research, which involved inventorying, classifying, and critically reviewing all relevant legal materials. The collected data were then analyzed qualitatively using legal reasoning methods, including legal interpretation, legal construction, and legal argumentation. This analysis aimed to uncover the meaning of legal norms, assess their suitability to judicial practice, and formulate conclusions regarding the level of legal certainty of securities as collateral for debt in lawsuits.

III. RESULTS AND DISCUSSION

A. Legal Position of Securities

Securities have a very important position in civil law traffic and modern business activities, especially in debt and receivable relations and commercial transactions.(Ardiansyah, 2024)The existence of securities arose from the need in economic practice for instruments that could guarantee payment certainty, facilitate transactions, and provide legal protection for the parties involved. Therefore, securities are not viewed merely as administrative documents, but as legal instruments containing rights and obligations protected by law.

Doctrinally, HMN Purwosutjipto defines securities as evidence of a debt demand which is a bearer of rights and easy to buy and sell.(Apriani, 2023). This definition emphasizes that securities contain legal value inherent in the physical document itself, so that anyone who legally possesses the document is in principle entitled to demand the performance stated therein. The element as evidence of a debt demand shows that securities are a concrete manifestation of a legal relationship of obligation, while their nature as bearers of rights and easy to buy and sell reflects their function in supporting the dynamics of economic transactions.

This view is enriched by Emmy Pangaribuan Simanjuntak who stated that a letter can be categorized as a valuable letter if the value stated in the letter is the same as the value of the basic agreement.(Faisal, 2025)In other words, securities not only represent the underlying legal relationship but also incorporate those rights into the document itself. The primary purpose of securities is to allow them to be easily traded or transferred, thus providing flexibility and efficiency in business activities. This view emphasizes the abstract nature of securities, namely that the validity of the rights contained therein does not depend directly on the underlying legal relationship.

In the civil law system, securities are recognized as valid written evidence of the existence of certain collection rights or property rights.(Irawan & SH, 2016)This recognition makes securities strong in evidentiary power in court proceedings. In principle, holders of securities are not required to prove the underlying legal relationship that gave rise to the securities, as long as they can demonstrate legitimate control over them. This aligns with the principle of legitimacy, which assumes that the holder of a security is the party entitled to the performance stated therein.

Furthermore, the legal status of securities is also apparent from their function as a means of payment in various transactions.(Apriani, 2023)In practice, securities are often used as a substitute for cash, particularly in large-value transactions or transactions requiring guaranteed payment. This function makes securities an instrument with both economic and legal value. Furthermore, securities also serve as a means of transferring rights, as their transferability allows for the rapid and efficient circulation of collection rights among business actors.

The legal standing of securities is strengthened by their nature as legitimate documents. This means that legitimate possession of securities is sufficient to create rights for the holder, without the need for additional proof of origin or prior legal relationship. This principle provides legal certainty and protection for good-faith third parties, while also fostering trust in trade transactions. However, this principle of legitimacy also requires great caution, as the loss or misuse of securities can have serious legal consequences.

In legal practice, the issuance of securities is almost always based on an underlying agreement, such as a debt agreement or a sale and purchase agreement. Nevertheless, securities have their own legal force and are not entirely dependent on the underlying agreement. This characteristic places securities in a unique position in civil law, as they function simultaneously as evidence, a means of payment, and the object of the agreement. This uniqueness then gives rise to legal issues when securities are used as collateral for debt in lawsuits, particularly regarding enforcement power and the certainty of fulfilling creditor rights.

The legal status of securities has important implications for various parties. For business actors, understanding the legal status of securities provides the basis for managing risk and ensuring certainty in business transactions. For banks and financial institutions, securities are important instruments for financing and guarantees, making a proper understanding of their legal aspects crucial. For consumers, especially those using modern payment instruments, understanding the rights and obligations inherent in securities provides a form of legal protection. Meanwhile, for legal practitioners and academics, studying the legal status of securities provides a crucial foundation for providing appropriate analysis and recommendations in resolving civil disputes.

Thus, the legal status of securities cannot be separated from their function and characteristics as legal instruments supporting economic activity. A comprehensive understanding of this legal status is a crucial prerequisite for assessing the extent to which securities can provide legal certainty, particularly when used as collateral for debt and as the subject of disputes in civil lawsuits. This section provides a conceptual foundation for further discussion of the legal issues and challenges of securities in Indonesian judicial practice.

B. Legal Certainty of Securities as Debt Collateral

Legal certainty is one of the fundamental pillars in a state of law, because through legal certainty every legal subject obtains the guarantee that their rights and obligations are regulated clearly, consistently and their implementation can be predicted.(Tama et al., 2023). Normatively, legal certainty is understood as a condition in which legal norms are formulated and enacted firmly, are not open to multiple interpretations, and can be applied logically and consistently in practice. Asikin emphasized that legal certainty arises from clearly formulated legislation so as not to give rise to normative conflicts or doubts in their application. This view is reinforced by Putro, who emphasized that legal certainty is not certainty regarding the outcome of an action, but rather certainty regarding the legal rules governing that action.

In the practical dimension, legal certainty is reflected through the implementation and enforcement of law that is objective and non-discriminatory.(Arifuddin Muda Harahap, 2020)Through legal certainty, everyone can predict the legal consequences of their actions. Thus, legal certainty serves not only as a normative guideline but also as an instrument of legal protection that creates a sense of security and trust in legal relationships, including debt-to-credit relationships.

The legal certainty of securities as collateral for debt cannot be separated from the legal character of the securities themselves.(Irawan & SH, 2016)Abdulkadir Muhammad defines securities as documents intentionally issued by the issuer to fulfill a certain obligation, such as the payment of a sum of money. This definition emphasizes that securities are legal instruments designed from the outset to guarantee the fulfillment of certain financial obligations. Therefore, when securities are used as collateral for debt, they serve a dual function: as a means of payment and as a means of securing the interests of creditors.

In the context of contract law, legal certainty is closely related to the principle of pacta sunt servanda as regulated in Article 1338 paragraph (1) of the Civil Code which states that every legally made agreement applies as law for the parties who made it. This provision provides normative legitimacy for the use of collateral in debt agreements, including collateral in the form of securities. The agreement is the main instrument that binds the parties and provides certainty regarding their respective rights and obligations, so that if one party defaults, the other party has a strong legal basis to demand fulfillment of performance through a lawsuit mechanism.

In credit agreement practice, the existence of collateral is an important element to mitigate risk.(Wahyuni & Purwanto, 2024)Collateral serves as a safeguard for creditors, ensuring that debtors' obligations can still be met even if a default occurs. Collateral can take the form of tangible collateral such as land or vehicles, cash collateral, or non-tangible collateral in the form of securities. Using securities as collateral for debt offers advantages in terms of liquidity and ease of transfer, but also presents challenges related to legal certainty, particularly in terms of proof and enforcement in court.

Theoretically, one of the main characteristics of securities is their transferable nature.(Yunus, 2020)The ability to be transferred, traded, or traded makes securities effective as a means of payment and collateral. However, this characteristic also raises legal issues when securities are used as collateral for debt, due to the potential conflict of interest between the creditor holding the collateral and the third party who acquired the securities in good faith. This is where legal certainty plays a crucial role in determining which party should be protected by law.

From a regulatory perspective, the legal certainty of securities as collateral for debt is scattered throughout various laws and regulations. Law Number 10 of 1998 concerning Banking does not provide an explicit definition of securities, but it does provide the basis for banks' authority to conduct activities related to the issuance, trading, and storage of securities. This demonstrates that securities are implicitly recognized as financial instruments with legal and economic value. In the context of capital markets, Minister of Finance Decree Number 1548/KMK.013/1990 provides a broad definition of securities as various forms of debt acknowledgment letters and other financial instruments, further affirming the legal legitimacy of securities in the national financial system.

Legal certainty regarding securities as collateral for debt is crucial in the process of settling civil lawsuits. Therefore, several fundamental principles must be met to ensure that the use of securities as collateral truly provides legal protection for the parties. The principles of recording and publication are crucial to ensure that the securities' status as collateral is known to third parties and can be easily proven in court. Without clear records, the creditor's position in disputes can be weakened.

Furthermore, the principle of transfer procedures requires a legal and clearly documented mechanism. The transfer of rights to securities used as collateral must be accompanied by adequate legal documentation to provide optimal evidentiary strength in a lawsuit. The principle of the creditor's right of execution is also a central element, as legal certainty extends beyond the recognition of rights, but also to the ability to enforce those rights through a legal and fair enforcement mechanism.

The principle of legal protection for all parties emphasizes that legal certainty should not be interpreted unilaterally to benefit only creditors. Debtors must still be protected from arbitrary action, particularly during the execution process. Therefore, the principle of dispute resolution, which provides both litigation and non-litigation mechanisms, is an integral part of the legal certainty system for securities as debt collateral.

Normatively, the legal certainty of securities is also supported by regulations in the Commercial Code (KUHD) and regulations outside the KUHD. Regulations regarding bills of exchange, checks, promissory notes, and promissory notes in the KUHD provide the classical legal basis for the validity of securities, while regulations outside the KUHD, such as the Banking Law, the Capital Market Law, and the Fiduciary Guarantee Law, expand the scope of regulations in accordance with developments in modern financial transactions. The existence of Law Number 24 of 2002 concerning Government Securities further emphasizes the position of securities as instruments that have strong legal guarantees, even guaranteed directly by the state.

In the context of a credit agreement, the legal certainty of securities as collateral for debt is also closely related to the fulfillment of the valid conditions of the agreement as stipulated in Article 1320 of the Civil Code. Without a valid agreement, collateral lacks a strong legal basis. Therefore, the relationship between securities, credit agreements, and the lawsuit mechanism forms a unified, interconnected legal system.

Judicial practice shows that the use of securities as debt collateral is often challenged in bankruptcy cases or PKPU (Deferred Payment for Debt), such as in PKPU Case No. 340/Pdt.Sus-PKPU/2023/PN Niaga Central Jakarta. Such cases emphasize that the legal certainty of securities as debt collateral depends not only on written norms but also on the consistency of their interpretation and application by judges in resolving disputes.

Thus, the legal certainty of securities as debt collateral is a multidimensional concept encompassing normative, contractual, and judicial aspects. Without adequate legal certainty, securities have the potential to lose their function as effective collateral in lawsuits. Therefore, strengthening regulations, harmonizing norms, and consistent judicial practices are key to ensuring that securities truly provide legal certainty and protection for parties in debt relationships.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on normative legal analysis and case studies, it can be concluded that securities have a strategic position as debt collateral instruments, because in addition to functioning as a means of payment and proof of the right to collect, securities also allow for flexible transfer of rights. Legal certainty is a key factor in ensuring the effectiveness of securities as collateral, as it provides a normative basis and protection for both creditors and debtors. This legal certainty is reflected in registration, rights transfer procedures, execution rights, legal protection for all parties, and clear dispute resolution mechanisms. Regulations governing securities, both in the Commercial Code (KUHD) and regulations outside the KUHD, including the Capital Markets, Banking, and Fiduciary Guarantees Laws, as well as the Government Securities Law, provide a strong legal basis. However, judicial practice shows that there are still challenges in implementing legal certainty, such as inconsistent execution procedures, multiple legal interpretations, and regulatory fragmentation. Therefore, strengthening legal certainty requires not only clear regulations, but also consistent law enforcement, transparency of credit agreements, and protection of the rights of the parties involved so that securities truly function as effective collateral instruments.

B. Suggestion

To increase the legal certainty of securities as debt collateral, several steps need to be taken. First, creditors and debtors must ensure that securities collateral is structured in a valid written agreement, recorded, and officially published. Second, the Financial Services Authority (OJK) and the judiciary need to enforce consistent, fair, and transparent execution procedures. Third, harmonization of regulations related to securities in the Commercial Code (KUHD) and sectoral regulations must be implemented to avoid multiple interpretations. Fourth, alternative dispute resolution mechanisms such as arbitration and mediation need to be optimized to expedite lawsuit resolution and provide legal certainty for all parties.

REFERENCE LISTAN

Apriani, R. (2023). Banking and Securities Law. Deepublish.

Ardiansyah, NAN (2024). Legal Certainty Regarding Securities as Debt Collateral in Fulfilling Lawsuits. Das Sollen: Journal of Contemporary Studies of Law and Society, 2(02).

Arifuddin Muda Harahap. (2020). Introduction to Employment Law. Nusantara Literacy.

Calvin, C., & Azizah, N. (2024). A Review of Islamic Criminal Law on the Parameters of the Death Penalty in the National Criminal Code. Mutawasith: Journal of Islamic Law, Vol. 7 (No. 1), pp. 17-39.

Evi, EE (2021). The Evidential Power of a Stamped Statement in Civil Disputes in Court. Morality: Journal of Legal Studies, 7(1), 95–109.

Faisal, A. (2025). Securities Law and Its Development: Graflit. Graflit.

Irawan, JJ, & Sh, MH (2016). Securities: A Legal and Practical Review. Kencana.

Jonaedi Efendi, SHI, Johnny Ibrahim, SH, & Se, MM (2018). Legal Research Methods: Normative and Empirical. Prenada Media.

Law (Uu) no. 19 of 2008 State Sharia Securities, (2008). Https://Peraturan.Bpk.Go.Id/Details/39650 /Uu-No-19- Tahun-2008

Susilo, L., Apriani, R., & Zubaedah, R. (2021). The

Position of Fiduciary Guarantees and Legal Protection for Consumer Financing Institutions. Journal of Thought and Research on Social Sciences, Law, and Their Teaching.

Tama, AA, Saing, CN, Bahri, S., Calvin, C., & Darmayanti, N. (2023). One State Two System: The Position and Authority of the Bah Butong 1 Village Government in the Middle of Hgu Land in Terms of Achieving Community Welfare. Community Development Journal: Journal of Community Service, 4(4), 6933–6939.

Wahyuni, HH, & Purwanto, P. (2024). Legal Analysis of Credit Guarantees from the Perspective of Preventing Bad Debts. Binamulia Hukum, 13(2), 297–311.

Yunus, A. (2020). Legal Review of the Use of Securities in Banking Operations. Maleo Law Journal, 4(2), 112–125.