



## International Conference on Law and Social Science

Editorial Office: Faculty of Law, Universitas Islam Riau, Pekanbaru, Indonesia.

Phone:

E-mail:

Website

### **The Effect of Land Scarcity on Capital Distribution Under Mortgage Law in Indonesia**

#### **I. Introduction**

Bank as a business entity, which has products in the form of credit loans, requires collateral from the debtor for the return of the outstanding credit loan paid off. Of course, the debtor's collateral is acceptable by law. The debtor's collateral provided will not change in value when due later. It is expected that the bank will easily sell the collateral when the debtor is unable to repay the credit loan. For this reason, banks are required to have a fixed value in selling the debtor's collateral. The proceeds from the sale of the collateral can cover the shortfall in repayment of the credit loan.<sup>1</sup> The proceeds from the sale of the collateral can cover the shortage of credit loan repayments as soon as possible. If the debtor is injured promise, then the bank as the holder of the mortgage has the right to sell the object on its power through a public auction, take the object on its power through a public auction, and take the repayment of its debts according to the repayment of the debt

under the remaining amount. The remainder of the payment to the bank will be returned to the debtor.

Bank money lent to debtors almost entirely comes from the public in the form of savings, deposits, stocks and bonds, and others. Debtors who have problems with repaying credit loans will reduce the bank's income, which of course the bank will have problems in providing interest and returning the promised public money. Credit loans from delinquent debtors can be resolved as soon as possible by selling the collateral provided by the debtor.

In returning the debtor's credit loan, the bank can auction the debtor's collateral. The auction institution is a fixed procedure in returning debtor credit that has defaulted. This strengthens the sale of land as bank collateral through an auction institution. The auction conducted can directly transfer the debtor's land rights to a good faith buyer through the Agrarian Office.<sup>2</sup> If the collateral cannot be sold, either privately

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<sup>1</sup> Ika Atikah, " The Urgency of Mortgage Agreement As An Effort to Realize The Trust by Bank As Creditor, *Jurnal Hukum dan Peradilan*, 10 no: (2021): 35 doi: 10.25216/jhp.10.1.2021.31-63

<sup>2</sup> Yosia Hetharie, Legal Status of Execution of Liability Auction Winner through Parate Executie, *Damhil Law Journal*, 3 no: 1 (2023): 164-177, 10.56591/dlj.v3i2.1939

or at auction, the bank can buy the collateral.

Land is the only collateral in Mortgage Law based on the third paragraph of point 5 of the General Elucidation, Law Number: 4 of 1996 concerning Land Mortgage and Objects Related to Land (UU HT), which states that Mortgage Law is the only institution of security rights over land. Article 16 of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (Agrarian Law) mentions land rights. The role of land rights as collateral for banks is very important. The bank does not physically confiscate the debtor's land, but the bank confiscates the land certificate. This shows that the ownership of the debtor's land rights is in the land certificate. The applicable legal provisions in the mortgage can change the land title of the debtor in the land certificate to a good faith land buyer as a third party through an auction institution. The bank is given the right to auction the debtor's collateral so that the bank can recover the debtor's outstanding debt.

DKI Jakarta Province has a land area of 661.52 km<sup>2</sup> and an ocean area of 6,977.5 km<sup>2</sup> and there are ± 110 islands spread across the thousand islands.<sup>3</sup> Land with limited resources will become a very scarce item, while banks can only accept land as collateral. The land will become a very exclusive collateral

because of its increasing price. The increase in population and the number of individuals doing business will increase. Therefore, additional capital from banks can only be provided to individuals and companies that have the capital to purchase land rights and have land as collateral for bank loans.

## **II. Legal Materials and Methods**

This research analyzes the scarcity of land in Indonesia, especially in the DKI Jakarta area, which is used as collateral for banks to borrow capital to be used for business. The issues to be researched are: 1. How can land, which has a legal encoding in bank liens, be converted into capital? 2. How can the government distribute scarce land in society so that the prosperity of the people is achieved under the 1945 Constitution?

### **Research Objective**

The objectives of the study can be divided into two parts: 1. To analyze how land, which has legal encoding in bank liens, can be turned into capital, and 2. To analyze how the government distributes scarce land so that the prosperity of the people is achieved based on the 1945 Constitution.

### **Research Methods**

The method used in this research is normative legal research, which can be divided into two<sup>4</sup>, namely primary sources and secondary sources, which are described: while primary sources are

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<sup>3</sup> Edmund Edmund, "Klub Olahraga di Kawasan Kapuk, Jakarta", *Jurnal Stupa*, 2, no: 1 (2020): 987-998, <https://doi.org/10.24912/stupa.v2i1.6783>.

<sup>4</sup> Healey, *Primary Resources: A Research Guide*, <https://umb.libguides.com/PrimarySources/secondary>, diakses pada tanggal 12 Januari 2022.

the texts of laws themselves, secondary sources are documents that interpret or discuss the primary sources. These might include legal journals, newspaper articles, online posts, and so forth. Research with primary sources will emphasize the explanation or interpretation of the texts in legal regulations. The method used in this research is normative legal research, which can be divided into two, namely primary sources and secondary sources, which are described: while primary sources are the texts of laws themselves, secondary sources are documents that interpret or discuss the primary sources. These might include legal journals, newspaper articles, online posts, and so forth. Research with primary sources will emphasize the explanation or interpretation of the texts in legal regulations.

Secondary resource research can be very useful when researchers need the following circumstances: <sup>5</sup>

1. Researching an unfamiliar area of law;
2. Searching for non-binding judicial decisions but do not know how to narrow down the jurisdiction to have useful information;
3. Researching an undeveloped area of law;

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<sup>5</sup> Amy E. Sloan, *Basic Legal Research: Tools and Strategies*, Seventh Edition, New York: Wolters Kluwer, 2018, hal.59-60.

4. Conducting an initial search of primary sources that do not require authority or too much authority.

Secondary resource research in law is obtained from literature studies, online on the internet by analyzing a legal problem based on laws and regulations, literature, and other reference materials related to the research title as an analytical material, which is descriptively used to describe the symptoms that occur in society against the object under study to find answers to problems.

### **III. Result and Discussion**

#### **IV. Research Results and Discussion Circular Flow Model**

The circular flow model can be used as an explanation of income activity in the economic system. The definition of the circular flow model is: An economic model that presents how money, goods, and services move between sectors in the economic system. The flow of money between sectors is also tracked to measure a country's national income or Gross Domestic Product (GDP), so this model is also known as the circular flow of income. <sup>6</sup> In the circular flow of income picture, the government initially requires high economic growth. Economic growth is an increase in the production of goods and services over some time. Economic growth starts with

<sup>6</sup>CorporateFinance Institute, "Circular Flow Model", <https://corporatefinanceinstitute.com/resources/economics/circular-flow-model/>, diakses pada tanggal 19 Februari 2023.

a movement that creates an increase in demand for the amount of goods and services offered by individuals in the population.<sup>7</sup>

Under the market mechanism, an increase in demand for goods and services will increase the price of goods and services in the population.<sup>8</sup> This is related to the scarcity of these goods and services. Companies will try to meet the demand for goods and services by increasing the production of goods and services. The greater the demand for goods and services, the greater the production of goods and services that must be made. Overproduction of goods and services will lower the price of goods and services because supply is greater than demand.<sup>9</sup> The scarcity of goods and services is the basis for the increase in the price of goods and services in the market.

To create more goods and services, firms will need more labor than the population to increase the increase in the number of goods and services. The need for more labor will also be linked to the market mechanism of greater demand for labor. The problem is that the amount of labor available in the population is very limited. The scarcer the labor in the population, the higher the price of the labor. To reduce the high price of labor, firms will open job vacancies as widely

as possible for individuals in the population.

However, the recruitment of labor each year requires companies to produce a larger amount of goods and services each year. Job vacancies will increase in size due to the increase in the production of goods and services required. The increase in labor demand will increase the income distribution of individuals in the population. The income of individuals in the population will be well distributed within the population. If labor is scarce in the population, individuals will work more to create goods and services. As a result, the income of individuals in the population will increase in value. Consequently, individuals will spend more on goods and services. The remaining income of individuals that is not spent on goods and services will be invested in corporate securities or savings in banks.

In addition to companies and individuals, the government also takes part of the economic turnover between companies and individuals. The government receives tax payments from companies and individuals. The government will get a percentage of the income of companies and individuals. The revenue is part of the State Budget (APBN). To spend the state budget to return the income of firms and individuals, the government will spend

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<sup>7</sup> IGCSEaid, "Economic Growth" <https://igcseaid.com/notes/economics-0455/4-6-economic-growth/>, diakses pada tanggal 19 Februari 2023

<sup>8</sup> Michael Parkin, "Economics", Harlow: Pearson Education Limited, (2023), hal.134

<sup>9</sup> *Ibid*, hal., 40.

its income to purchase goods and services of firms and individuals in the population. Government revenues also go back into the economic cyclicity of individuals and firms.

This flow of circulation will lead to a continuous increase in value. It is like a snowball rolling into a bigger snowball (snowball effect) which is positive. The income of individuals in the population will increase if the increase in income is not followed by an increase in the number of individuals in the population. If the increase in income per capita of individuals in the population is not matched by the increase in individuals in the population, then the intended economic growth will not be achieved. The fact is that Indonesia's population is increasing in number. To fulfill the production of goods and services, the country needs more efficient management of the production factors of capital and land.

#### **V. Land as an increasingly scarce factor of production**

In the circular model of economics above, land is a very important factor of production. According to the statement of David Ricardo (1773-1823), land is a factor of production, then land (Land), which refers to the era of Napoleon Bonaparte, is different from the land production factor that refers to modern life. Land and corn became the object of thought of David Ricardo (1773-1823). In

the Theory of Rent, Ricardo stated that economic rent on land is the value of the difference in productivity between a given piece of land and the poorest (and/or most distant), most costly piece of land producing the same goods (e.g. bushel of wheat) under the same conditions (of labor, capital, technology, etc). Land rent can be differentiated in value by its more expensive rent. Land that is planted with wheat has different costs due to its distance from the city center or the wheat trade. The productivity cost of creating the product is higher. Land and grain products directly produce goods that can be sold in the market. Land is attached to the grain that will be transacted in the market.<sup>10</sup>

Today land is associated with buildings in industry, which are not made for farming. Such land has a higher value due to its location in the city center. The value of land is not linked to the cost of the distance between the place of production and the market, but the valuation is linked to the city center with increasingly scarce land. Even though the land is not used as a factor of production to grow crops. Land becomes a place to make goods and services. Land on which buildings are built is used as a factory or office to conduct business to create products in search of profit.

In this case, land is a factor of production that is not used directly by

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<sup>10</sup> Ngu Yen The Chinh, etc., "Factors that affect land values and the development of land value maps for the strengthening policy-making in Vietnam: the Case

Study of non-agriculture land in Quang Ninh province, Vietnam", *EQA – International Journal of Environmental Quality*, 36 (2020): 23-35.

individuals and companies to produce, individuals and companies will buy it as an investment. In industries that no longer rely on agriculture, land can become another factor of production, namely capital. This is because land can be used as collateral for loans from banks, individuals, or other institutions. To create goods and services, companies need production factors. The production factors consist of Land, Labor, Capital, and Entrepreneurship. The land is one of the factors of production in the industry based on David Ricardo's Distribution Theory, which is stated as follows: the systematic attempt to account for the sharing of the national income among the owners of the factors of production land, labor, and capital. The land factor of production is related to the company that will use it as an investment and at the same time make it a productive land. Land as a factor of production is needed by companies to create goods and services.

Article 1 paragraph (2) of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (Basic Agrarian Law) states that the land, water, and airspace are national wealth. Article 1 paragraph (3) of the Basic Agrarian Law states: The relationship between Indonesian citizens and the earth and space is eternal. Article 2 of the Basic Agrarian Law regulates the state's right to control the earth, water and space. Article 9 paragraph (1) of the Basic Agrarian Law states that only Indonesian citizens can have a relationship with the earth, water and

space within the limits of the provisions of articles 1 and 2. The state's right to control the land is given a right to individuals in the population, which is used under its designation. Article 16 paragraph (1) of the Basic Agrarian Law states that the land rights granted by the state are mili rights, business use rights, building use rights, use rights, rental rights, land clearing rights, rights to collect forest products, other rights not included in the aforementioned rights which will be determined by law and temporary rights. Land owned by individuals can be leased and can be sold to companies if the location of the land is under the economic value of the company.

The place and period of use of the land are important. The strategic location of the land and the period of use of the land. The limitation of the period makes its use during a certain period have a very high value. Of course, the scarcity of land with a strategic place and a period that can still be used as the basis of collateral in the bank. Individuals and companies that need money will transact their valid land rights. Land rights are very valuable in society, so the need for money can be met through bank loans. This is a solution to maintain land rights. The use of the land will still be given to the debtor, but the land rights pledged to the bank can change hands if the debtor cannot repay his credit debt.

Land sale and purchase transactions in the community will make land have price volatility. Land becomes

a very valuable asset, hence other individuals and companies will be willing to pay higher prices. The price of land will increase further when individuals and companies in the community conduct the same land transaction. Some individuals and companies dare to pay higher land prices than the previous land prices. This makes the price of land increase in the community. Land in the city center will become increasingly scarce for buyers, as the price of land increases.

## **VI. Supply and Demand of Land Rights**

The supply and demand for land and buildings in society shapes land into a commercial asset. From its scarcity, land needs to be maximized for the prosperity of society as a whole. Within the scope of the commercial banking industry, land as a valuable asset can be pledged. The distribution of land is based on land rights. The state should emphasize land arrangements made for the prosperity of the people. Land arrangements should provide opportunities for all Indonesians. If land prices are left to the market, then people will compete for more valuable land. People with low incomes will not be able to afford it.

Individuals in society have high purchasing power if they have high incomes. The increase in value due to economic growth that affects per capita income must be distributed in society equally. Therefore, the government must encourage firms in industry to produce

goods and services in large quantities. The sale of goods and services by firms in large quantities will create income distribution to individuals in the population. Of course, companies will try to increase the production of goods and services to make a profit. The company will need the factors of production, namely capital, labor, and land.

Land is a strategic production factor in the company. Although land is a standardized factor of production, it can transform itself into liquid capital. This is related to land rights as collateral in banks. In this case, the state grants land rights to Indonesian citizens. Land rights are granted by the Indonesian state to Indonesian citizens. The state regulates and organizes the allocation, use, supply and maintenance of the earth, water and space for its citizens. Meanwhile, legal entities that are considered as legal subjects can also have land rights. Companies that are legal entities can own land, but land that does not have the status of land ownership rights. If the land owned by the individual is to be used, the company can only lease it. Land rights can be owned by companies except for land rights purchased by companies, which only consist of Cultivation Rights, Building Rights, Use Rights, Lease to Use Rights, and Management Rights.

For companies that are not incorporated, hak guna usaha can be used as collateral for a loan. Hak Milik can only be used as collateral for bank

loans by individuals. Then the company can only rent land and buildings. The company can use it as an office or factory. The land and buildings become a permanent place of business. In the pursuit of profit, land and buildings become production factors of the company's goods and services. This can increase the value of the company's assets in its financial statements, because the company does not need to pay rent. Company founders who wish to own an office or factory with the status of freehold land, which is not limited in time, can do so through the deposit of inbreng capital. However, the company receives the inbreng in the form of the use of land rights for a certain period of time, e.g. Article 35 paragraph (1), Hak Guna Bangunan has a maximum period of 30 years. This period can be extended by the owner of the land rights.

Therefore, an individual who owns an asset that increases in value in society will have a higher income compared to another individual who does not own it. The individual will have higher purchasing power when he or she cashes it in or the right holder leases the land to a company. Land rights as an individual asset have an increasing value, due to the scarcity of land itself. Land tenure in the city center from the beginning will become an increasingly scarce good. Individuals and companies will buy it at a high price. For example, land in DKI Jakarta, land in the Central Jakarta area will have a higher price than land in other areas of Jakarta.

These individuals and companies will buy land at a higher price for land that is needed and scarce. Higher land purchases are known as willingness to pay. This is what raises the value of land. The willingness to pay due to land scarcity makes land more expensive. The market mechanism will drive the price due to the scarcity of land. The market price will be reached at the intersection of the price of land and the amount of land available. Land prices adjust based on the scarcity of land. Land located in the city center area will become more expensive compared to land located outside the city center. This will be related to individuals and companies being able to purchase scarce land with the land rights that can be granted.

Unlike goods and services that can be created indefinitely, land has a finite amount. Scarcity of land supply will make land expensive. Therefore, land as bank collateral will be very valuable. The bank is expected to easily sell it through an auction. The bank will get the repayment of the debtor's unpaid credit debt. Of course, land as an asset of individuals and companies that can be executed by the bank based on established procedures will be an acceptable collateral. Land will have a position that can be offered to banks as collateral for credit loans.

## **VII. Company Liquidity Needs and Land Scarcity**

Cash is King! That's not a far-fetched term. Cash is indispensable. Lack of cash or liquidity to pay for the

company's operations will have various negative impacts, including a bankruptcy petition in the commercial court. To avoid this, the company must be able to organize its cash. Money converted into shares must provide a large profit so that investors can return the money used to buy shares to reach the break event. Money borrowed from the bank can be returned with company profits obtained in a short period. Company profits are a rational basis for investors to cover the sacrifices used to buy shares.

Capital in the form of cash becomes a liquid medium of exchange. Cash can be used to buy or pay for anything of economic value. In financial markets, liquidity refers to how quickly an investment can be sold without negatively impacting its price. In finance and accounting, the most common measures of liquidity are: Current Ratio is Current Assets minus Current Liabilities, Quick Ratio is the ratio of only the most liquid assets (cash, receivables, etc.) compared to Current Liabilities, Cash Ratio- Cash on hand relative to Current Liabilities. Therefore, the most liquid asset is Cash, which is listed in the Balance Sheet.

Individual and corporate cash will be deposited in banks. The bank will channel it back to other individuals and companies for profit. The difference between the interest on loans and the interest offered to the public becomes the bank's profit. The bank's income can

come from individuals and firms' savings, which are then channeled through loan agreements. All the income of individuals and firms remaining after taxes in the population will return to individuals and firms. Firms that get credit loans will use them to produce more goods and services by creating jobs. In industries that no longer rely on agriculture, land can become another factor of production, namely capital. This is because land can be used as collateral for loans from banks, individuals or other institutions.

Credit loans will give the company a large capital to produce. This will affect the amount of company profits. The company's profits after deducting taxes will be shared with the shares purchased by investors. The sacrifice of investors to get profit sharing (dividends) can be seen from the ratio. Price Earning Ratio, abbreviated as P/E Ratio, in financial management is an important measure in the company. The P/E Ratio is: the relationship between a company's stock price and earnings per share (EPS). It is a popular ratio that gives investors a better sense of the value of the company. The P/E ratio shows the expectations of the market and is the price you must pay per unit of current earnings (or future earnings, as the case may be). The price of a public company's shares in the capital market divided by net income shows the sacrifice investors make to get the company's profits in the form of dividends. If the stock price in the capital market is higher, the cost of getting the

same profit is more expensive. The opposite is also true, the greater the profit given by the company to investors, the smaller the investor's sacrifice to get the company's dividend profit.

Of course, the company must obtain capital at a low cost. Selling shares in the capital market does not guarantee that the cost of dividends from selling the company's shares in the capital market will be lower than the interest on the company's credit loan at the bank. When the company has an unprofitable business, the company still has to pay a fixed percentage of interest. On the other hand, credit loans will also avoid control of the company through the General Meeting of Shareholders (GMS). Control of shares also has control of votes in the (GMS). Investors who are the majority of shareholders will control the company's policies. In the capital market, bad stock issues will reduce the value to below the nominal value of the shares. The company's cash reserves must have sufficient value, when the shares are liquidated by investors. Of course, the company must have enough cash outside of the shares. Bank loans are a solution to have cash that can support the disbursement of shares by investors.

However, companies must balance between cash and fixed assets that need to be owned. Land as an asset is not easy to become a liquid asset, but land as collateral in the bank can overcome the problem of fixed assets that are easily disbursed. The company can borrow credit from the bank with fixed assets in

the form of land as collateral. The company will have cash from the loan. The use of cash from credit loans should be used in urgent circumstances or to finance operations that generate profits in the short term. Fixed asset purchases must be able to be disbursed, when the company needs cash. This will facilitate the return of investors' money. Land that is used as collateral for credit loans is a fixed asset that has legal coding contained in a mortgage so that the bank can accept the debtor's guarantee.

### **VIII. Mortgage as Code of Capital**

To create profits, individuals need a company whose assets can be separated from personal assets. To separate these assets, individuals deposit personal capital into the company. The capital deposit is made in the form of money (Cash). The money deposited will be recorded in the value of Capital (Owner's Equity) in the company's financial statements, namely the Balance Sheet. The capital converted into shares is recorded in the Balance Sheet in the Capital section. As paid-in capital, the money is placed at the bottom right in the Liability column. The value of the money will be converted into the company's share capital. This share capital contains the capital paid in by the founders and then converted into share value. The type of capital of the company based on Law Number: 40 of 2007 concerning Limited Liability Companies (UU PT) consists of Authorized Capital, Issued Capital, and Paid Up Capital. Share capital can be deposited in other

forms based on Article 34 paragraph (1) of the Company Law, which states that: Deposit of share capital can be made in the form of money and/or in other forms. The other forms, whether in the form of tangible or intangible objects must be valued in money. Deposit of share capital that is not money is called *inbreng*. The entire value of the *inbreng* will be converted into share capital.

While the value of paid-up capital in the form of money will be juxtaposed with the Cash account on the top left in the Asset column of the Balance Sheet. This is done in double entry bookkeeping. This Cash account will be very important as the company's capital to balance debt payments in the form of cash that has matured. Debt payments in the form of cash, both in short-term and long-term loans. Cash is not only needed to pay bank loans, bonds but also the company's shares that are liquidated as well as the company's operational costs, such as employee salaries, material purchases, tax payments, and others. All of these require payment in cash.

But the company will need a place to produce, both goods and services. Of course, land and buildings are places that can accommodate machines to produce goods or offices to provide services to clients. Company cash can be converted into land and buildings through sale and purchase transactions. Of course, the company's cash will

decrease, but fixed assets will increase in value in the Asset column of the Balance Sheet. To keep getting assets and also have cash, the land and buildings can be converted back into money as collateral for a bank loan. The bank loan will appear on the right-hand side of the Balance Sheet in the Debt column, which is offset by an increase in the cash account in the Asset column on the upper left-hand side.

Fixed assets can be converted into Cash through legal encoding of mortgage rights that validate land rights as payment for the remaining outstanding credit agreement. The change from the use of land that is only used as a fixed asset in the company to a place to build buildings for production to land that is used as collateral in banks, individuals or other institutions. The process of changing from land whose value increases based on supply and demand in society to land used as collateral in credit loans. Khatarina Pistor, in her book *Code of Capital*, describes the change from land to capital through code. What is meant by code is the law of ties and the law of collateral..<sup>11</sup>

Cash owned will decrease by itself. In doing business for profit, companies need cash. The capital comes from the capital paid up by the founders of the company. While additional capital does not only come from the capital of the founders but also from money borrowed

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<sup>11</sup> Khatarina Pistor, *The Code of Capital : How The Law Creates Wealth and Inequality*, New Jersey: Princeton University Press, 2019, hlm. 23.

from banks. The loan or credit from the bank both in short-term and long-term debt will require collateral. Of course, the company uses land and buildings as fixed assets that have been purchased and used as collateral for credit loans at the bank.

Katharina Pistor, who wrote a book entitled: "The Code of Capital: How the Law Creates Wealth and Equality", argues that law can transform non-commercial goods into commercial ones. She argues that the law selectively encodes certain assets by giving them the capacity to protect and generate private wealth. With proper legal coding, any object, claim or idea can be transformed into capital.<sup>12</sup> As for what is meant by the legal coding that converts from land to capital or cash is the regulation of mortgage rights. Banks have the legitimacy to own land and building collateral that can be disbursed in lieu of unpaid credit loans by debtors. The sales process has been established by the law of auction through the sale of collateral to third parties who are interested in buying it. Although the debtor can file a lawsuit against the auction process which is considered unfair. As long as the buyer is in good faith, the third party who wins the auction will be protected by law. The administration of the name change of the land and building that is auctioned can be directly reversed and taken care of at the agrarian office based on the Minutes of the Auction.

## **IX. Injustice in Unequal Distribution of Land**

The state has the goal of prospering the people as a whole. Individuals have the same rights and obligations in the state. This has been stated in the 1945 Constitution (UUD 1945). Article 33 paragraph (3) of the 1945 Constitution states: The land, water, and natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people. In achieving its goals, the state uses an economic system that can create prosperity for the people. To run the economic system, the state does not only rely on prosperity that is valued in money, but also maintains the values and norms that live in society. The state needs rules that have validity and are recognized by the people. These rules will be followed by all the people. To comply, the state can enforce the orders in the regulations with sanctions, either confinement or fines. Regulations will be made in accordance with the country's economic policies, which can regulate the behavior of citizens. Citizens will comply with regulations made under the legal system.

In article 1 paragraph (3) of the 1945 Constitution, which states: Indonesia is a state of law. The definition of a state of law can be interpreted as a state based on law (rule of law). A state based on law can be defined as a mechanism, process, institution, practice or norm that

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<sup>12</sup> Ibid, hlm.1-234.

supports the equality of all citizens before the law, ensures a non-arbitrary form of government, and more generally prevents the use of arbitrary power. The rules that are made refer to policies taken in various fields, including the economic field. The rules made by the state are based on the behavior that needs to be maintained in its economic system. Economic policymaking will direct the behavior of citizens to perform actions that lead to the achievement of prosperity.

Land has a limited supply which creates scarcity. Scarcity of land makes the price of land have a high value. Land is only owned by the state and can be given land ownership status to citizens. However, cash for companies has a more dynamic function as a means of payment than fixed assets in the form of land which must be sold first to become a means of payment. Payment of company expenses that are due requires cash. Then the state makes regulations on mortgage rights as a legal encoding that turns land assets into cash capital to finance the company. The problem of the effects of using land controlled by companies with large capital, whose land can be converted into capital, can cause injustice in society. Land scarcity will lead to an increase in land prices based on market mechanisms. Companies with large capital have high purchasing power for land compared to capital from individuals.

The Mortgage Regulation provides injustice to society. Encoding land

through mortgage rights provides an increase in capital value for the company. Land provides additional liquid capital for the company. Meanwhile, the price of land will increase due to its scarcity. This makes individuals and entrepreneurs controlling landlords, who can borrow cash from banks. They have large capital because of the land they own. This makes the cash spent at once an investment for individuals and companies and also a cash return. With the business, the installment fees and interest in the credit agreement are paid off. In the course of time, individuals and companies will acquire new fixed assets without individuals and companies buying back the land and buildings.

Injustice is created when individuals and companies buy land and buildings with cash and the land is used to borrow cash back from the bank, even though the cash is not fully returned. However, individuals and companies will get rent from land and buildings. Individuals and companies will also get capital to run a business while reducing operational costs for renting land and buildings. Mortgage rights have created injustice for people who do not own land. Land that should be used to be suitable for planting and building buildings. Currently, land is also used as collateral to obtain company cash. Rare land that should be used by the wider community to survive becomes land controlled by individuals and companies as business capital to increase individual wealth and prosperity and injustice is created when

individuals and companies buy land and buildings with cash and the land is used to borrow the cash back. at the bank, even though the cash refund is not fully returned. However, individuals and companies will get rent from land and buildings. Individuals and companies will also get capital to run a business while reducing operational costs for renting land and buildings. Mortgage rights have created injustice for people who do not own land. Land that should be used to be suitable for planting and

## **X. Conclusion and Suggestion**

Land as the only collateral in applying for bank loans based on mortgage rights can create injustice. The control of scarce land by individuals and companies will serve as capital for profit-making endeavors as well as for investments that increase in value. Land ownership by individuals and companies must of course be limited. This is related to the limited supply of land. The demand for land will make the price of land soar. Individuals who need it to survive will have difficulties, whether the land is for farming or for living. The cost of renting land is getting more expensive with land becoming collateral in banks. Land transactions will have a very high exchange of ownership so that the period of use of the land becomes very valuable. Land rights determine the period of land use. This land right is then pledged to the bank for cash capital. Meanwhile, individuals and companies can continue to use the land.

building buildings. Currently, land is also used as collateral to obtain company cash. Rare land that should be used by the wider community to survive becomes land controlled by individuals and companies as business capital to increase the wealth and welfare of individuals and companies.

Limiting the ownership of land rights is necessary so that the use of land can be distributed to a wider range of people. Every individual has the right to use land that is not only classified as capital, but also as social lan

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Undang-Undang Nomor: 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria



# The Effect of Land Scarcity on Capital Distribution Under Mortgage Law in Indonesia.docx

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**Submission date:** 26-May-2024 04:31AM (UTC-0400)

**Submission ID:** 2388251046

**File name:** The\_Effect\_of\_Land\_Scarcity\_on\_Capital\_Distribution\_Under\_Mortgage\_Law\_in\_Indonesia.docx  
(584K)

**Word count:** 6971

**Character count:** 35522



## International Conference on Law and Social Science

**Editorial Office:** postgraduate at Riau Islamic University, Universitas Islam Riau, Pekanbaru, Indonesia.

Phone: +62 85234073707, +62 85329106484

E-mail: [law\\_s3@uir.ac.id](mailto:law_s3@uir.ac.id)

Website : <https://pps.uir.ac.id/ficls2024/>

### The Effect of Land Scarcity on Capital Distribution Under Mortgage Law in Indonesia

Chandra Yusuf<sup>a\*</sup>

<sup>a</sup>Universitas YARSI

[Chandra.yusuf@yarsi.ac.id](mailto:Chandra.yusuf@yarsi.ac.id)

#### Abstract

The company as a Bank Debtor requires capital to develop its business. Land as a production factor in industry is also used as collateral in the Credit Agreement. The debtor will pledge the land fixed assets based on Law Number: 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Mortgage Rights Law). The Bank and the Debtor will make a Deed of Granting Mortgage Rights (APHT). When the debtor is unable to repay the loan, the bank can sell the debtor's collateral to recover it. The sale of the collateral can be done through an auction so that the Debtor gets a market price. This auction is intended to repay the Debtor's remaining loan. The Mortgage Law as a legal coding legalizes the transfer of rights to the debtor's land to the third-party winner of the auction. The problem is that land is a rare good that is increasing in value. Control of land rights has limitations in its concrete physical form. Demand for land as collateral is scarce. Companies that need capital will be constrained by having to own land as collateral. This will lead to injustice in owning capital in society. A company that already has large capital and owns land at a high price can borrow funds from the bank. The researcher uses a normative approach to legal regulations and analyzes from the angle of economic analysis that can explain the scarcity of land. Land scarcity makes land prices soar. Land encoding through the Mortgage Law.

**Keywords:** Bank Credit; Capital Distribution; Land Scarcity, Mortgage Law,

#### I. Introduction

A bank as a business entity, that has products in the form of credit loans, requires collateral from the debtor for the return of the outstanding credit loan paid off. Of course, the debtor's collateral is acceptable by law. The debtor's collateral provided will not change in value when due later. It is expected that the bank will easily sell the collateral when the debtor is unable to repay the credit

loan. For this reason, banks are required to have a fixed value in selling the debtor's collateral. The proceeds from the sale of the collateral can cover the shortfall in repayment of the credit loan.<sup>1</sup> The proceeds from the sale of the collateral can cover the shortage of credit loan repayments as soon as possible. If the debtor is injured promise, then the bank as the holder of the mortgage has the right to sell the object on its power through a public auction, take the object on

<sup>1</sup> Ika Atikah, "The Urgency of Mortgage Agreement As An Effort to Realize The Trust by Bank As

Creditor, *Jurnal Hukum dan Peradilan*, 10 no: (2021): 35, DOI: 10.25216/jhp.10.1.2021.31-63

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its power through a public auction, and take the repayment of its debts according to the repayment of the debt under the remaining amount. The remainder of the payment to the bank will be returned to the debtor.

Bank money lent to debtors almost entirely comes from the public in the form of savings, deposits, stocks and bonds, and others. Debtors who have problems with repaying credit loans will reduce the bank's income, which of course the bank will have problems in providing interest and returning the promised public money. Credit loans from delinquent debtors can be resolved as soon as possible by selling the collateral provided by the debtor.

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In returning the debtor's credit loan, the bank can auction the debtor's collateral. The auction institution is a fixed procedure in returning debtor credit that has defaulted. This strengthens the sale of land as bank collateral through an auction institution. The auction conducted can directly transfer the debtor's land rights to a good faith buyer through the Agrarian Office.<sup>2</sup> If the collateral cannot be sold, either privately or at auction, the bank can buy the collateral.<sup>7</sup>

Land is the only collateral in Mortgage Law based on the third paragraph of point 5 of the General Elucidation, Law Number: 4 of 1996 concerning Land Mortgage and Objects Related to Land (UU HT), which states that Mortgage Law is the only institution<sup>19</sup> of security rights over land. Article 16 of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (Agrarian Law) mentions land rights. The role of land rights as collateral for banks is very important. The bank does not physically confiscate the

debtor's land, but the bank confiscates the land certificate. This shows that the ownership of the debtor's land rights is in the land certificate. The applicable legal provisions in the mortgage can change the land title of the debtor in the land certificate to a good faith land buyer as a third party through an auction institution. The bank is given the right to auction the debtor's collateral so that the bank can recover the debtor's outstanding debt.<sup>3</sup>

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DKI Jakarta Province has a land area of 661.52 km<sup>2</sup> and an ocean area of 6,977.5 km<sup>2</sup> and there are ± 110 islands spread across the thousand islands.<sup>4</sup> Land with limited resources will become a very scarce item, while banks can only accept land as collateral. The land will become a very exclusive collateral because of its increasing price. The increase in population and the number of individuals doing business will increase. Therefore, additional capital from banks can only be provided to individuals and companies that have the capital to purchase land rights and have land as collateral for bank loans.

## II. Legal Materials and Methods

This research analyzes the scarcity of land in Indonesia, especially in the DKI Jakarta area, which is used as collateral for banks to borrow capital to be used for business. The issues to be researched are: 1. How can land, which has a legal encoding in bank liens, be converted into capital? 2. How can the government distribute scarce land in society so that the prosperity of the people is achieved under the 1945 Constitution?

### Research Objective

2 Yosia Hetharie, "Legal Status of Execution of Liability Auction Winner through Parate Executie", *Damhil Law Journal*, 3 no: 1 (2023): 164-177, DOI: <http://dx.doi.org/10.56591/dlj.v3i2.1939>

3 Rizky Melani Dian Pratiwi, etc, "Legal Protection for Buyers of Mortgage Rights Execution in the Case of Blocking the Certificate of Ownership which

4 becomes the Object of the Auction", *Batulis Civil Law Review*, 4 no. 2, (November 2023): 120-142. DOI : [10.47268/ballrev.v4i2.1713](https://doi.org/10.47268/ballrev.v4i2.1713)

4 Edmund Edmund, "Klub Olahraga di Kawasan Kapuk, Jakarta", *Jurnal Stupa*, 2, no: 1 (2020): 987-998, <https://doi.org/10.24912/stupa.v2i1.6783>.

The objectives of the study can be divided into two parts: 1. To analyze how land, which has legal encoding in bank liens, can be turned into capital, and 2. To analyze how the government distributes scarce land so that the prosperity of the people is achieved based on the 1945 Constitution.

### Research Methods

The method used in this research is normative legal research, which can be divided into two<sup>5</sup>, namely primary sources and secondary sources, which are described: while primary sources are the texts of laws themselves, secondary sources are documents that interpret or discuss the primary sources. These might include legal journals, newspaper articles, online posts, and so forth. Research with primary sources will emphasize the explanation or interpretation of the texts in legal regulations. The method used in this research is normative legal research, which can be divided into two, namely primary sources and secondary sources, which are described: while primary sources are the texts of laws themselves, secondary sources are documents that interpret or discuss the primary sources. These might include legal journals, newspaper articles, online posts, and so forth. Research with primary sources will emphasize the explanation or interpretation of the texts in legal regulations.

Secondary resource research can be very useful when researchers need the following circumstances:<sup>6</sup>

1. Researching an unfamiliar area of law;
2. Searching for non-binding judicial decisions but do not know how to narrow

down the jurisdiction to have useful information;

3. Researching an undeveloped area of law;
4. Conducting an initial search of primary sources that do not require authority or too much authority.

Secondary resource research in law is obtained from literature studies, online on the internet by analyzing a legal problem based on laws and regulations, literature, and other reference materials related to the research title as an analytical material, which is descriptively used to describe the symptoms that occur in society against the object under study to find answers to problems.

## III. Result and Discussion

### Research Results and Discussion Circular Flow Model

The circular flow model can be used as an explanation of income activity in the economic system. The definition of the circular flow model is An economic model that presents how money, goods, and services move between sectors in the economic system.<sup>7</sup> The flow of money between sectors is also tracked to measure a country's national income or Gross Domestic Product (GDP), so this model is also known as the circular flow of income.<sup>8</sup> In the circular flow of income picture, the government initially requires high economic growth. Economic growth is an increase in the production of goods and services over some time. Economic growth starts with a movement that creates an increase in demand for the amount of goods and services offered by individuals in the population.<sup>9</sup>

<sup>5</sup> Healey, *Primary Resources: A Research Guide*, <https://umb.libguides.com/PrimarySources/secondary>, diakses pada tanggal 12 Januari 2022.

<sup>6</sup> Amy E. Sloan, *Basic Legal Research: Tools and Strategies*, Seventh Edition, New York: Wolters Kluwer, 2018, 59-60.

<sup>7</sup> Julian Kirzherr, etc., "Conceptualizing the Circular Economy (Revisited): An Analysis of 221 Definitions", *Resources, Conservation and Recycling*,

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<sup>8</sup> CorporateFinance Institute, "Circular Flow Model", <https://corporatefinanceinstitute.com/resources/economics/circular-flow-model/>, diakses pada tanggal 19 Februari 2023.

<sup>9</sup> IGCSEaid, "Economic Growth" <https://igcseaid.com/notes/economics-0455/4-6->

52 Under the market mechanism, an increase in demand for goods and services will increase the price of goods and services in the population.<sup>10</sup> This is related to the scarcity of these goods and services. Companies will try to meet the demand for goods and services by increasing the production of goods and services. The greater the demand for goods and services, the greater the production of goods and services that must be made. Overproduction of goods and services will lower the price of goods and services because supply is greater than demand.<sup>11</sup> The scarcity of goods and services is the basis for the increase in the price of goods and services in the market.<sup>12</sup>

To create more goods and services, firms will need more labor than the population to increase the increase in the number of goods and services. The need for more labor will also be linked to the market mechanism of greater demand for labor. The problem is that the amount of labor available in the population is very limited. The scarcer the labor in the population, the higher the price of the labor. To reduce the high price of labor, firms will open job vacancies as widely as possible for individuals in the population.

However, the recruitment of labor each year requires companies to produce a larger amount of goods and services each year. Job vacancies will increase in size due to the increase in the production of goods and services required. The increase in labor demand will increase the income distribution of individuals in the population. The income of individuals in the population will be well distributed within the population. If labor is scarce in the population, individuals will work more to create goods and services. As a result, the income of individuals in the

population will increase in value. Consequently, individuals will spend more on goods and services. The remaining income of individuals that is not spent on goods and services will be invested in corporate securities or savings in banks.

In addition to companies and individuals, the government also takes part of the economic turnover between companies and individuals. The government receives tax payments from companies and individuals. The government will get a percentage of the income of companies and individuals. The revenue is part of the State Budget (APBN). To spend the state budget to return the income of firms and individuals, the government will spend its income to purchase goods and services of firms and individuals in the population. Government revenues also go back into the economic cyclicity of individuals and firms.

This flow of circulation will lead to a continuous increase in value. It is like a snowball rolling into a bigger snowball (snowball effect) which is positive. The income of individuals in the population will increase if the increase in income is not followed by an increase in the number of individuals in the population. If the increase in income per capita of individuals in the population is not matched by the increase in individuals in the population, then the intended economic growth will not be achieved. The fact is that Indonesia's population is increasing in number. To fulfill the production of goods and services, the country needs more efficient management of the production factors of capital and land.

#### **Land as an increasingly scarce factor of production**

economic-growth/, diakses pada tanggal 19 Februari 2023

<sup>10</sup> Michael Parkin, "Economics", Harlow: Pearson Education Limited, (2023), hal.134

<sup>11</sup> *Ibid*, 40.

<sup>12</sup> Khoirun Nisak, "The Relevance of IBN Khaldun's Economic Thought on the Prices Mechanism in Modern Economy", *Journal Sharia and Economic Law*, 2 no. 2, (2022): 126-138, DOI: 10.21154/invest.v2i2.5092

In the circular model of economics above, land is a very important factor of production. According to the statement of David Ricardo (1773-1823), land is a factor of production, and then land (Land), which refers to the era of Napoleon Bonaparte, is different from the land production factor that refers to modern life. Land and corn became the object of thought of David Ricardo (1773-1823). In the Theory of Rent, Ricardo stated that economic rent on land is the value of the difference in productivity between a given piece of land and the poorest (and/or most distant), most costly piece of land producing the same goods (e.g. bushel of wheat) under the same conditions (of labor, capital, technology, etc). Land rent can be differentiated in value by its more expensive rent. Land that is planted with wheat has different costs due to its distance from the city center or the wheat trade. The productivity cost of creating the product is higher. Land and grain products directly produce goods that can be sold in the market. Land is attached to the grain that will be transacted in the market.<sup>13</sup>

Today land is associated with buildings in industry, which are not made for farming. Such land has a higher value due to its location in the city center. The value of land is not linked to the cost of the distance between the place of production and the market, but the valuation is linked to the city center with increasingly scarce land. Even though the land is not used as a factor of production to grow crops. Land becomes a place to make goods and services. The land on which buildings are built is used as a factory or office to conduct business to create products in search of profit.

In this case, land is a factor of production that is not used directly by

<sup>13</sup> Ngu Yen The Chinh, etc., "Factors that affect land values and the development of land value maps for the strengthening policy-making in Vietnam: the Case Study of non-agriculture land in Quang Ninh province,

individuals and companies to produce, individuals and companies will buy it as an investment. In industries that no longer rely on agriculture, land can become another factor of production, namely capital. This is because land can be used as collateral for loans from banks, individuals, or other institutions. To create goods and services, companies need production factors. The production factors consist of Land, Labor, Capital, and Entrepreneurship. Land is one of the factors of production in the industry based on David Ricardo's Distribution Theory, which is stated as follows: the systematic attempt to account for the sharing of the national income among the owners of the factors of production land, labor, and capital. The land factor of production is related to the company that will use it as an investment and at the same time make it a productive land. Land as a factor of production is needed by companies to create goods and services.

Article 1 paragraph (2) of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (Basic Agrarian Law) states that the land, water, and airspace are national wealth. Article 1 paragraph (3) of the Basic Agrarian Law states: The relationship between Indonesian citizens and the earth and space is eternal. Article 2 of the Basic Agrarian Law regulates the state's right to control the earth, water, and space. Article 9 paragraph (1) of the Basic Agrarian Law states that only Indonesian citizens can have a relationship with the earth, water, and space within the limits of the provisions of articles 1 and 2. The state's right to control the land is given a right to individuals in the population, which is used under its designation. Article 16 paragraph (1) of the Basic Agrarian Law states that the land rights

Vietnam", *EQA - International Journal of Environmental Quality*, 36 (2020): 23-35. DOI: <https://doi.org/10.6092/issn.2281-4485/9771>.

granted by the state are mili rights, business use rights, building use rights, use rights, rental rights, land clearing rights, rights to collect forest products, other rights not included in the aforementioned rights which will be determined by law and temporary rights. Land owned by individuals can be leased and sold to companies if the location of the land is under the economic value of the company.

The place and period of use of the land are important. The strategic location of the land and the period of use of the land. The limitation of the period makes its use during a certain period have a very high value. Of course, the scarcity of land with a strategic place and a period that can still be used as the basis of collateral in the bank. Individuals and companies that need money will transact their valid land rights. Land rights are very valuable in society, so the need for money can be met through bank loans. This is a solution to maintain land rights. The use of the land will still be given to the debtor, but the land rights pledged to the bank can change hands if the debtor cannot repay his credit debt.

Land sale and purchase transactions in the community will make land have price volatility. Land becomes a very valuable asset, hence other individuals and companies will be willing to pay higher prices. The price of land will increase further when individuals and companies in the community conduct the same land transaction. Some individuals and companies dare to pay higher land prices than the previous land prices. This makes the price of land increase in the community. Land in the city center will become increasingly scarce for buyers, as the price of land increases.

### **Supply and Demand of Land Rights**

The supply and demand for land and buildings in society shapes land into a commercial asset. From its scarcity, land needs to be maximized for the prosperity of

society as a whole. Within the scope of the commercial banking industry, land as a valuable asset can be pledged. The distribution of land is based on land rights. The state should emphasize land arrangements made for the prosperity of the people. Land arrangements should provide opportunities for all Indonesians. If land prices are left to the market, then people will compete for more valuable land. People with low incomes will not be able to afford it.

Individuals in society have high purchasing power if they have high incomes. The increase in value due to economic growth that affects per capita income must be distributed in society equally. Therefore, the government must encourage firms in industry to produce goods and services in large quantities. The sale of goods and services by firms in large quantities will create income distribution to individuals in the population. Of course, companies will try to increase the production of goods and services to make a profit. The company will need the factors of production, namely capital, labor, and land.

Land is a strategic production factor in the company. Although land is a standardized factor of production, it can transform itself into liquid capital. This is related to land rights as collateral in banks. In this case, the state grants land rights to Indonesian citizens. Land rights are granted by the Indonesian state to Indonesian citizens. The state regulates and organizes the allocation, use, supply and maintenance of the earth, water and space for its citizens. Meanwhile, legal entities that are considered as legal subjects can also have land rights. Companies that are legal entities can own land, but land that does not have the status of land ownership rights. If the land owned by the individual is to be used, the company can only lease it. Land rights can be owned by companies except for land rights purchased by companies, which only consist of Cultivation Rights, Building

Rights, Use Rights, Lease to Use Rights, and Management Rights.

For companies that are not incorporated, hak guna usaha can be used as collateral for a loan. Hak Milik can only be used as collateral for bank loans by individuals. Then the company can only rent land and buildings. The company can use it as an office or factory. The land and buildings become a permanent place of business. In the pursuit of profit, land and buildings become production factors of the company's goods and services. This can increase the value of the company's assets in its financial statements, because the company does not need to pay rent. Company founders who wish to own an office or factory with the status of freehold land, which is not limited in time, can do so through the deposit of inbreng capital. However, the company receives the inbreng in the form of the use of land rights for a certain period, e.g. Article 35 paragraph (1), Hak Guna Bangunan has a maximum period of 30 years. This period can be extended by the owner of the land rights.

Therefore, an individual who owns an asset that increases in value in society will have a higher income compared to another individual who does not own it. The individual will have higher purchasing power when he or she cashes it in or the right holder leases the land to a company. Land rights as an individual asset have an increasing value, due to the scarcity of land itself. Land tenure in the city center from the beginning will become an increasingly scarce good. Individuals and companies will buy it at a high price. For example, land in DKI Jakarta, land in the Central Jakarta area will have a higher price than land in other areas of Jakarta.

These individuals and companies will buy land at a higher price for land that is needed and scarce. Higher land purchases are known as willingness to pay. This is what raises the value of land. The willingness to

pay due to land scarcity makes land more expensive. The market mechanism will drive the price due to the scarcity of land. The market price will be reached at the intersection of the price of land and the amount of land available. Land prices adjust based on the scarcity of land. Land located in the city center area will become more expensive compared to land located outside the city center. This will be related to individuals and companies being able to purchase scarce land with the land rights that can be granted.

Unlike goods and services that can be created indefinitely, land has a finite amount. Scarcity of land supply will make land expensive. Therefore, land as bank collateral will be very valuable. The bank is expected to easily sell it through an auction. The bank will get the repayment of the debtor's unpaid credit debt. Of course, land as an asset of individuals and companies that can be executed by the bank based on established procedures will be an acceptable collateral. Land will have a position that can be offered to banks as collateral for credit loans.

### **Company Liquidity Needs and Land Scarcity**

Cash is King! That's not a far-fetched term. Cash is indispensable. Lack of cash or liquidity to pay for the company's operations will have various negative impacts, including a bankruptcy petition in the commercial court. To avoid this, the company must be able to organize its cash. Money converted into shares must provide a large profit so that investors can return the money used to buy shares to reach the break event. Money borrowed from the bank can be returned with company profits obtained in a short period. Company profits are a rational basis for investors to cover the sacrifices used to buy shares.

Capital in the form of cash becomes a liquid medium of exchange. Cash can be used to buy or pay for anything of economic value.

In financial markets, liquidity refers to how quickly an investment can be sold without negatively impacting its price. In finance and accounting, the most common measures of liquidity are: Current Ratio is Current Assets minus Current Liabilities, Quick Ratio is the ratio of only the most liquid assets (cash, receivables, etc.) compared to Current Liabilities, Cash Ratio- Cash on hand relative to Current Liabilities. Therefore, the most liquid asset is Cash, which is listed in the Balance Sheet.

Individual and corporate cash will be deposited in banks. The bank will channel it back to other individuals and companies for profit. The difference between the interest on loans and the interest offered to the public becomes the bank's profit. The bank's income can come from individuals' and firms' savings, which are then channeled through loan agreements. All the income of individuals and firms remaining after taxes in the population will return to individuals and firms. Firms that get credit loans will use them to produce more goods and services by creating jobs. In industries that no longer rely on agriculture, land can become another factor of production, namely capital. This is because land can be used as collateral for loans from banks, individuals or other institutions.

Credit loans will give the company a large capital to produce. This will affect the amount of company profits. The company's profits after deducting taxes will be shared with the shares purchased by investors. The sacrifice of investors to get profit sharing (dividends) can be seen from the ratio. Price Earning Ratio, abbreviated as P/E Ratio, in financial management, is an important measure in the company. The P/E Ratio is the relationship between a company's stock price and earnings per share (EPS). It is a popular ratio that gives investors a better sense of the value of the company. The P/E ratio shows

the expectations of the market and is the price you must pay per unit of current earnings (or future earnings, as the case may be). The price of a public company's shares in the capital market divided by net income shows the sacrifice investors make to get the company's profits in the form of dividends. If the stock price in the capital market is higher, the cost of getting the same profit is more expensive. The opposite is also true, the greater the profit given by the company to investors, the smaller the investor's sacrifice to get the company's dividend profit.

Of course, the company must obtain capital at a low cost. Selling shares in the capital market does not guarantee that the cost of dividends from selling the company's shares in the capital market will be lower than the interest on the company's credit loan at the bank. When the company has an unprofitable business, the company still has to pay a fixed percentage of interest. On the other hand, credit loans will also avoid control of the company through the General Meeting of Shareholders (GMS). Control of shares also has control of votes in the GMS). Investors who are the majority of shareholders will control the company's policies. In the capital market, bad stock issues will reduce the value to below the nominal value of the shares. The company's cash reserves must have sufficient value when the shares are liquidated by investors. Of course, the company must have enough cash outside of the shares. Bank loans are a solution to have cash that can support the disbursement of shares by investors.

However, companies must balance between cash and fixed assets that need to be owned. Land as an asset is not easy to become a liquid asset, but land as collateral in the bank can overcome the problem of fixed assets that are easily disbursed. The company can borrow credit from the bank with fixed assets in the form of land as collateral. The company will have cash from

the loan. The use of cash from credit loans should be used in urgent circumstances or to finance operations that generate profits in the short term. Fixed asset purchases must be able to be disbursed, when the company needs cash. This will facilitate the return of investors' money. Land that is used as collateral for credit loans is a fixed asset that has legal coding contained in a mortgage so that the bank can accept the debtor's guarantee.

### **Mortgage as Code of Capital**

To create profits, individuals need a company whose assets can be separated from personal assets. To separate these assets, individuals deposit personal capital into the company. The capital deposit is made in the form of money (Cash). The money deposited will be recorded in the value of Capital (Owner's Equity) in the company's financial statements, namely the Balance Sheet. The capital converted into shares is recorded in the Balance Sheet in the Capital section. As paid-in capital, the money is placed at the bottom right in the Liability column. The value of the money will be converted into the company's share capital. This share capital contains the capital paid in by the founders and then converted into share value. The type of capital of the company based on Law Number: 40 of 2007 concerning Limited Liability Companies (UU PT) consists of Authorized Capital, Issued Capital, and Paid Up Capital. Share capital can be deposited in other forms based on Article 34 paragraph (1) of the Company Law, which states that: Deposit of share capital can be made in the form of money and/or in other forms. The other forms, whether in the form of tangible or intangible objects must be valued in money. A deposit of share capital that is not money is called inbreng. The entire value of the inbreng will be converted into share capital.

The value of paid-up capital in the form of money will be juxtaposed with the Cash

account on the top left in the Asset column of the Balance Sheet. This is done in double entry bookkeeping. This Cash account will be very important as the company's capital to balance debt payments in the form of cash that has matured. Debt payments in the form of cash, both in short-term and long-term loans. Cash is not only needed to pay bank loans, bonds but also the company's shares that are liquidated as well as the company's operational costs, such as employee salaries, material purchases, tax payments, and others. All of these require payment in cash.

But the company will need a place to produce, both goods and services. Of course, land and buildings are places that can accommodate machines to produce goods or offices to provide services to clients. Company cash can be converted into land and buildings through sale and purchase transactions. Of course, the company's cash will decrease, but fixed assets will increase in value in the Asset column of the Balance Sheet. To keep getting assets and also have cash, the land and buildings can be converted back into money as collateral for a bank loan. The bank loan will appear on the right-hand side of the Balance Sheet in the Debt column, which is offset by an increase in the cash account in the Asset column on the upper left-hand side.

Fixed assets can be converted into Cash through legal encoding of mortgage rights that validate land rights as payment for the remaining outstanding credit agreement. The change from the use of land that is only used as a fixed asset in the company to a place to build buildings for production to land that is used as collateral in banks, individuals or other institutions. The process of changing from land whose value increases based on supply and demand in society to land used as collateral in credit loans. Khatarina Pistor, in her book Code of Capital, describes the change from land to capital through code.

What is meant by code is the law of ties and the law of collateral.<sup>14</sup>

Cash owned will decrease by itself. In doing business for profit, companies need cash. The capital comes from the capital paid up by the founders of the company. While additional capital does not only come from the capital of the founders but also from money borrowed from banks. The loan or credit from the bank both in short-term and long-term debt will require collateral. Of course, the company uses land and buildings as fixed assets that have been purchased and used as collateral for credit loans at the bank.

Katharina Pistor, who wrote a book entitled: "The Code of Capital: How the Law Creates Wealth and Equality", argues that law can transform non-commercial goods into commercial ones. She argues that the law selectively encodes certain assets by giving them the capacity to protect and generate private wealth. With proper legal coding, any object, claim, or idea can be transformed into capital.<sup>15</sup> As for what is meant by the legal coding that converts from land to capital or cash is the regulation of mortgage rights. Banks have the legitimacy to own land and build collateral that can be disbursed instead of unpaid credit loans by debtors. The sales process has been established by the law of auction through the sale of collateral to third parties who are interested in buying it. However the debtor can file a lawsuit against the auction process which is considered unfair. As long as the buyer is in good faith, the third party who wins the auction will be protected by law. The administration of the name change of the land and building that is auctioned can be directly reversed and taken care of at the agrarian office based on the Minutes of the Auction.

### **Injustice in Unequal Distribution of Land**

<sup>14</sup> Katharina Pistor, *The Code of Capital : How The Law Creates Wealth and Inequality*, New Jersey: Princeton University Press, 2019, hlm. 23.

The state has the goal of prospering the people as a whole. Individuals have the same rights and obligations in the state. This has been stated in the 1945 Constitution (UUD 1945). Article 33 paragraph (3) of the 1945 Constitution states: The land, water, and natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people. In achieving its goals, the state uses an economic system that can create prosperity for the people. To run the economic system, the state does not only rely on prosperity that is valued in money but also maintains the values and norms that live in society. The state needs rules that have validity and are recognized by the people. These rules will be followed by all the people. To comply, the state can enforce the orders in the regulations with sanctions, either confinement or fines. Regulations will be made by the country's economic policies, which can regulate the behavior of citizens. Citizens will comply with regulations made under the legal system.

Article 1 paragraph (3) of the 1945 Constitution, states: Indonesia is a state of law. The definition of a state of law can be interpreted as a state based on law (rule of law). A state based on law can be defined as a mechanism, process, institution, practice or norm that supports the equality of all citizens before the law, ensures a non-arbitrary form of government, and more generally prevents the use of arbitrary power. The rules that are made refer to policies taken in various fields, including the economic field. The rules made by the state are based on the behavior that needs to be maintained in its economic system. Economic policymaking will direct the behavior of citizens to perform actions that lead to the achievement of prosperity.

<sup>15</sup> Ibid, 1-234.

Land has a limited supply which creates scarcity. Scarcity of land makes the price of land have a high value. Land is only owned by the state and can be given land ownership status to citizens. However, cash for companies has a more dynamic function as a means of payment than fixed assets in the form of land which must be sold first to become a means of payment. Payment of company expenses that are due requires cash. Then the state makes regulations on mortgage rights as a legal encoding that turns land assets into cash capital to finance the company. The problem of the effects of using land controlled by companies with large capital, whose land can be converted into capital, can cause injustice in society. Land scarcity will lead to an increase in land prices based on market mechanisms. Companies with large capital have high purchasing power for land compared to capital from individuals.

The Mortgage Regulation provides injustice to society. Encoding land through mortgage rights provides an increase in capital value for the company. Land provides additional liquid capital for the company. Meanwhile, the price of land will increase due to its scarcity. This makes individuals and entrepreneurs controlling landlords, who can borrow cash from banks. They have large capital because of the land they own. This makes the cash spent at once an investment for individuals and companies and also a cash return. With the business, the installment fees and interest in the credit agreement are paid off. Over time, individuals and companies will acquire new fixed assets without individuals and companies buying back the land and buildings.

Injustice is created when individuals and companies buy land and buildings with

cash and the land is used to borrow cash back from the bank, even though the cash is not fully returned. However, individuals and companies will get rent from land and buildings. Individuals and companies will also get capital to run a business while reducing operational costs for renting land and buildings. Mortgage rights have created injustice for people who do not own land. Land that should be used to be suitable for planting and building buildings. Currently, land is also used as collateral to obtain company cash. Rare land that should be used by the wider community to survive becomes land controlled by individuals and companies as business capital to increase individual wealth and prosperity and injustice is created when individuals and companies buy land and buildings with cash and the land is used to borrow the cash back. at the bank, even though the cash refund is not fully returned. However, individuals and companies will get rent from land and buildings. Individuals and companies will also get capital to run a business while reducing operational costs for renting land and buildings. Mortgage rights have created injustice for people who do not own land. Land that should be used to be suitable for planting and building buildings. Currently, the land is also used as collateral to obtain company cash. Rare land that should be used by the wider community to survive becomes land controlled by individuals and companies as business capital to increase the wealth and welfare of individuals and companies.

#### IV. Conclusion and Suggestion

Land as the only collateral in applying for bank loans based on mortgage rights can create injustice. The control of scarce land by individuals and companies will serve as capital for profit-making endeavors as well as for investments that increase in value. Land ownership by individuals and companies must of course be limited. This is related to the limited supply of land. The demand for land will make the price of land soar. Individuals who need it to survive will have difficulties, whether the land is for farming or for living. The cost of renting land is getting more expensive with land becoming collateral in banks. Land transactions will have a very high exchange of ownership so that the period of use of the land becomes very valuable. Land rights determine the period of land use. This land right is then pledged to the bank for cash capital. Meanwhile, individuals and companies can continue to use the land. Limiting the ownership of land rights is necessary so that the use of land can be distributed to a wider range of people. Every individual has the right to use land that is not only classified as capital but also as social land.

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