Legal Governance of Collateral Assets in Vietnamese Commercial Banks: A Recommendation from Real Rights Theory

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Abstract: This paper analyzes the legal framework governing collateral management in Vietnamese commercial banks through the lens of Real Rights Theory. Collateral plays a central role in credit transactions by securing repayment obligations and mitigating systemic risk. While Vietnam has made commendable legislative strides, significant legal gaps remain in defining, registering, supervising, and enforcing security interests, particularly regarding circulating assets and future-formed properties. Although Vietnamese law incorporates certain core principles of real rights, such as enforceability, traceability, and priority, the lack of direct repossession rights, vague definitions for movable collateral, and fragmented enforcement mechanisms hinder practical application. These deficiencies result in high transaction costs, protracted non-performing loan resolutions, and reduced lending confidence among financial institutions. Drawing on comparative insights from civil law jurisdictions such as France, Germany, South Korea, and Japan, this study proposes comprehensive reforms. These include clarifying legal definitions, codifying repossession rights, centralizing collateral registries, and promoting broader application of Real Rights Theory to ensure security, enforceability, and economic efficiency.

Keywords: real rights theory, credit transactions, security interests, collateral assets, property rights, codifying repossession rights.

1 Introduction

In the context of Vietnam's dynamic economic development, the credit extension activities of commercial banks play a key role, providing essential capital for production, business, and investment. To minimize credit risk and ensure debt recovery, collateral becomes an indispensable factor in most loan transactions. Collateral is the primary basis for credit institutions to make lending decisions, determine credit limits, and manage risks. Effective management of collateral is not only important for each bank but also vital to the stability and safety of the entire national financial system [1]. The ability to effectively manage and handle collateral has a direct impact on the bank's lending capacity, ability to resolve bad debts, and overall financial health. In a

© The Author(s) 2026
R. Hurriyati et al. (eds.), *Proceedings of the 10th Global Conference on Business, Management, and Entrepreneurship (GCBME 2025)*, Advances in Economics, Business and Management Research 407,
https://doi.org/10.2991/978-94-6239-819-1_11

developing economy like Vietnam, where collateral-based credit accounts for a significant proportion, optimizing the collateral management process is a pressing requirement [2]. Bad debts, which often come with collateral, pose a significant challenge for commercial banks, necessitating a robust regulatory framework and efficient recovery processes to recoup capital and maintain liquidity. Therefore, researching and perfecting legal regulations on collateral management is a top priority [3], [4].

2 Real Rights Theory

Real rights theory (jus in re) is a fundamental doctrine in civil law systems, particularly prominent in the continental European legal tradition (Civil Law). Real rights are understood as a person's direct right to an object/property, which is exercised instantly without the intermediary or cooperation of any other subject. This makes a fundamental difference from the right (in personam), which is an individual right to another person, which requires the cooperation of the obligor to exercise the right. The absolute nature of real rights (erga omnes) means that this right is valid for everyone, and all other subjects must respect the power of the person who has the legally established real rights [5].

The history of the theory of real rights dates back to ancient Roman law, where jurists made a clear distinction between rights to objects (jura in re) and rights to persons (in personam). Although Roman jurists did not explicitly define real rights, they formulated a set of principles that established a subject's direct and regular authority over part or all of property. This idea was later inherited and developed by the legal systems of continental Europe, especially France and Germany, through works such as [6], [7]. The Corpus Juris Civilis of Justinian and the 1804 Civil Code of Napoleon. This adoption and codification have established a solid legal framework for the development of legal regimes on property, in accordance with countries influenced by the Civil Law system [8].

The theory of real rights is built on three core principles, which have profound implications for secured transactions:

2.1 Direct Effect on the Property

This principle affirms the ability of real rights subjects to exercise their powers (possession, enjoyment, disposition) directly over property, independent of the will or behavior of others. For example, the owner of a home is free to use, rent, or sell it without the permission of any third party [6], [9], [10], [7].

2.2 Right to Follow / Droit de Suite

This principle allows the subject of the right to trace and reclaim the property to exercise his rights, regardless of who is in possession of the property. The right of recourse ensures that the creditor’s rights “follow” the property, even if the property has been transferred to a third party [6], [9], [11], [7].

2.3 Right of Priority (Right of Preference / Droit de Préférence)

This principle allows the subject of real rights (especially secured property rights) to be paid from the proceeds of the collateral before unsecured creditors, and even before creditors with later-established real rights. The right of priority is most clearly expressed in the case where the collateral is disposed of for debt recovery [6], [9], [7].
In European legal doctrine, real rights are generally classified into two main groups:
Main Real Rights: These are rights that enable the subject not only to control and possess the property materially but also to derive economic benefits and enjoy the profits arising from the property's exploitation. [6], [8], [7]
Security Property Rights / Accessory Real Rights: Rights that object to the monetary value of a particular asset are tied to a creditor's right in order to enhance its effectiveness. Instead of relying on the debtor's active role to perform obligations, the subject of the security right can affect the monetary value of the asset. [6], [8], [7]

3 Current legal framework on collateral in Vietnam

The legal framework on collateral in Vietnam is built on the basis of many legal documents, forming a relatively comprehensive but no less complex system. The Civil Code 2015 is a fundamental legal document that outlines general regulations on property, ownership, and measures to secure the performance of obligations, including mortgages. The Law on Credit Institutions 2024 regulates the activities of commercial banks, including lending activities and management of collateral.
Decree No. 21, issued in 2021, elaborates on the implementation of the Civil Code regarding the performance of obligations. This decree clarifies the mortgagee's right to examine and inspect collateral as a preventive measure against asset dispersion. Article 8 of the decree outlines the types of collateral, including both existing assets and those to be formed in the future. Decree No. 99, issued in 2022, governs the registration of security interests, replacing Decree No. 102, issued in 2017. It specifies the cases in which mortgages, pledges, or reservations of ownership must be registered, along with procedures for modifying registered content or deleting registrations. The application process can be carried out online, in person, or by mail or email, with a typical processing time of one working day. Designated registration authorities include the Secured Transaction Registration Department for movable property, the Land Registration Office for land use rights and land-attached assets, the Civil Aviation Authority for aircraft, the Vietnam Maritime Administration for ships, and the Vietnam Securities Depository for securities.

Additionally, the State Bank of Vietnam has issued several circulars that regulate collateral and credit activities. Circular No. 39, issued in 2016, as amended by Circulars No. 12, issued in 2024, and No. 06, issued in 2023, governs the lending activities of credit institutions and foreign bank branches. Circular No. 41, issued in 2016 and amended by Circular No. 22, issued in 2023, regulates capital adequacy ratios and defines types of collateral used to mitigate credit risk. Circular No. 31, issued in 2024, provides rules for asset classification applicable to commercial banks, non-bank credit institutions, and foreign bank branches. Circular No. 08, issued in 2022, sets out the procedures for banking supervision, covering both microprudential and

macroprudential frameworks. Finally, Circular No. 61, issued in 2024, provides comprehensive regulations on bank guarantees.

4 Comparative Perspectives

Comparison with the laws of other countries in the Civil Law system can provide valuable lessons for Vietnam:
Extrajudicial Enforcement:
Some civil legal systems aim for or have a mechanism to allow the handling of collateral outside the judiciary, thereby speeding up the recovery of bad debts. For example, the European Union is pushing for plans to harmonize the enforcement of extrajudicial collateral in order to reduce bad debts and increase the value of these debts on the secondary market [12].
However, not all Civil Law countries allow for widespread direct seizures. In Germany, the direct seizure or sale of property to a third party usually requires the consent of the security provider or is conducted through court proceedings. French law also has detailed regulations governing procedures for enforcing civil judgments through the courts [13]. This illustrates the diversity in legal policies among countries in terms of striking a balance between the protection of creditors' rights and debtors' rights [14].
Circulating goods and assets formed in the future:
In Korea, mortgages of movable assets are common, and the law allows the registration of security for multiple movable assets (including those that will become available in the future) if the type, location, and quantity can be determined. This indicates a more flexible and detailed registration mechanism for current assets, which enhances publicity and recourse [15].
Japan has also implemented regulations that facilitate the mortgage and securitization of future-formed assets more clearly, with registration and publicity mechanisms in place to ensure the validity of transactions [16].

5 Policy Recommendations

Firstly, completing the legal framework on collateral [7].
Second, improving the efficiency of the collateral management and handling process [17].
Third, a proposal for more extensive application of the principles of the Theory of Real Rights [18], [19].
Fourth, solutions for specific types of collateral and bad debts.

6 Conclusion

Legal governance of collateral plays a crucial role in the performance of Vietnamese commercial banks, directly influencing credit efficiency, debt recovery, and financial stability. Despite efforts to incorporate core principles of the theory of real rights, such as direct action, recourse, and priority, into the legal framework, practical implementation remains limited. Key issues include banks’ lack of direct rights to seize

assets, unclear rules regarding circulating and future assets, and challenges in resolving disputes and valuing collateral. These shortcomings hinder the debt recovery process, increase risks and costs for banks, and limit business access to credit, particularly for dynamic and high-risk assets. Addressing these problems requires a comprehensive reform strategy that includes clearer definitions of asset types, improved enforcement procedures, and enhanced mechanisms for valuation, supervision, and registration. Strengthening the legal enforceability of collateral rights, guided by international best practices and broader application of the theory of real rights, is essential for reducing credit risks, improving banking performance, and fostering a more supportive environment for investment and economic development.

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