

REAL RIGHTS AND PERSONAL RIGHTS IN SECURED TRANSACTIONS: A FUNCTIONAL ANALYSIS UNDER VIETNAMESE CIVIL LAW

DIREITOS REAIS E DIREITOS PESSOAIS EM TRANSAÇÕES GARANTIDAS: UMA ANÁLISE FUNCIONAL SOB O DIREITO CIVIL VIETNAMITA

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Abstract

This article examines the conceptual and legal distinction between real rights and personal rights in secured transactions under Vietnam's Civil Code 2015. Based on doctrinal and comparative analysis, it classifies nine security mechanisms into three groups: real security rights (e.g., pledge, mortgage, possessory lien), personal security rights (e.g., guarantee, social credit, retention of title), and hybrid forms (e.g., deposit, security deposit, escrow). The study highlights how real rights grant enforceable claims over specific assets, including rights of pursuit and priority, while personal rights confer only contractual claims. It assesses the legal and practical implications of this dichotomy for enforcement, third-party effects, and creditor protection. Drawing on case law and legal scholarship, the article reveals interpretive uncertainties and proposes a clearer conceptual framework and legislative reforms to improve predictability, reduce transaction costs, and enhance creditor confidence in Vietnam's secured lending environment.

Keywords: Real Rights. Personal Rights. Secured Transactions. Civil Law. Vietnam.

Abstract

This article examines the conceptual and legal distinction between real rights and personal rights in secured transactions under Vietnam's Civil Code 2015. Based on doctrinal and comparative analysis, it classifies nine security mechanisms into three groups: real security rights (e.g., pledge, mortgage, possessory lien), personal security rights (e.g., guarantee, social credit, retention of title), and hybrid forms (e.g., deposit, security deposit, escrow). The study highlights how real rights grant enforceable claims over specific assets, including rights of pursuit and priority, while personal rights confer only contractual claims. It assesses the legal and practical implications of this dichotomy for enforcement, third-party effects, and creditor protection. Drawing on case law and legal scholarship, the article reveals interpretive uncertainties and proposes a clearer conceptual framework and legislative reforms to improve predictability, reduce transaction costs, and enhance creditor confidence in Vietnam's secured lending environment.

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1 INTRODUCTION

The distinction between real rights (*droit réel*) and personal rights (*droit personnel*) has long served as a cornerstone of civil law systems (Terré & Simler, 1992; Malaurie & Aynès, 1998; Dien, 2000; Cuong, 2013), shaping legal doctrines in property, obligations, and notably, in secured transactions (Dien, 2001; Dai, 2015). This conceptual



dichotomy bears profound implications not only in legal theory but also in the practical governance of creditor-debtor relations, asset prioritization, and enforcement mechanisms (Merryman & Pérez-Perdomo, 2007). As Vietnam continues to reform its legal framework to accommodate the demands of a modern credit economy, the Civil Code 2015 introduces a systematized structure of nine types of security interests (Phuong, 2018; Thuy, 2019; Hai, 2019). However, the extent to which these instruments instantiate real rights or merely establish personal claims remains under-theorized in Vietnamese legal scholarship (Feder & Feeny, 1991; Kim, 2004; Huy, 2011; Trang, 2018; Oanh, 2018).

While scholars in the civil law tradition (Aubry & Rau, 1869–1877; Zimmerman, 1996) have long emphasized the *erga omnes* nature of real rights - granting immediate legal power over things - and contrasted them with the *inter partes* obligations found in personal rights, Vietnamese law has not consistently reflected this conceptual clarity in statutory language or judicial interpretation (Nghia, n.d.; Lien, 2011). The dichotomy is especially salient in the context of secured obligations, where enforcement priorities, third-party effectiveness, and debtor default consequences differ dramatically depending on the classification of the security interest (Thomas & Anthony, 1979; Dien, 2001; Trang, 2018).

This article addresses the following research questions:

How does Vietnamese law classify and regulate real and personal rights in secured transactions?

What are the functional differences in enforcement, third-party effects, and creditor priority between the two categories?

How does the Vietnamese approach compare with that of mature civil law and common law systems such as France, Germany, England, and the United States, and what lessons can be drawn?

Methodologically, the article adopts a doctrinal approach combined with functional comparative analysis (Zweigert & Kötz, 1998), drawing from statutory interpretation, case law, and scholarly commentary. It analyzes how each of the nine security devices recognized under the Civil Code 2015 aligns with the theoretical model of real or personal rights and assesses their practical impact in Vietnamese legal and commercial practice.

The contribution of this article is threefold. First, it offers a structured and theory-grounded classification of Vietnam's security interests along the axis of real and personal rights, helping to close a major gap in Vietnamese legal scholarship. Second, it elucidates the functional implications of this classification in enforcement, debtor-creditor relations, and priority regimes. Third, it places Vietnamese law in a comparative perspective, identifying lessons from established civil law jurisdictions and suggesting reforms to enhance transparency, predictability, and creditor protection.

2 LITERATURE REVIEW: COMPARATIVE DOCTRINES OF REAL AND PERSONAL RIGHTS IN SECURED TRANSACTIONS

2.1 Civil law traditions: France and Germany

In continental civil law systems, the distinction between real and personal rights (*droits réels* and *droits personnels*) is both fundamental and strictly enforced. In French law, real rights (*droits réels*) refer to legal entitlements that grant the holder immediate authority over a thing (*la chose*) and are enforceable against all (Aubry & Rau 1869–1877; Malaurie & Aynès, 1998, 2015). The French Civil Code recognizes real security rights such as the *gage* (pledge), *nantissement* (non-possessory pledge), and *hypothèque* (mortgage), all of which establish direct rights over a specific asset with erga omnes effect (Carbonnier, 1992, 2004).

The key characteristic of real rights under French law is their opposability to third parties. According to Article 2419 of the French Civil Code, creditors with a real security interest enjoy a *droit de suite* (right to follow the asset) and a *droit de préférence* (priority in payment), both of which are unavailable to holders of mere personal claims. Formalities such as registration (*publicité*) are essential to trigger third-party effectiveness (Terré & Théry, 1992; Zimmerman, 1996; Dien, 2001; Oanh, 2018).

German law takes a similarly structured but conceptually more rigorous approach. The German Civil Code (*Bürgerliches Gesetzbuch* – BGB) maintains a *numerus clausus* of real rights (*dingliche Rechte*) and distinguishes them from obligations (*schuldrechtliche Rechte*) based on their object and mode of enforcement. Real security interests such as *Pfandrecht* (pledge) and *Hypothek* (mortgage) confer a *dingliche*

Sicherungsrecht (real security right), allowing the creditor to enforce against the asset regardless of its current possessor (Wolf & Wellenhofer, 2008).

German legal scholars emphasize the importance of *Publizität* (publicity) and *Abstraktionsprinzip* (principle of separation between obligation and conveyance) to maintain legal certainty in real rights (Zimmermann, 1996). Furthermore, §1191–1198 BGB outlines the framework for real security interests, granting creditors strong enforcement tools that mirror those found in French law.

In both systems, the distinction between real and personal rights is not merely academic but determinative of enforcement priority and creditor protection, especially in insolvency contexts.

2.2 Common law jurisdictions: England and the United States

Common law systems, such as those of England and the United States, lack a formal classification of real vs. personal rights in the same terms as civil law systems, yet functionally similar distinctions are made between *in rem* and *in personam* claims. Security interests in these systems often operate through equitable doctrines or statutory frameworks.

In English law, the distinction manifests through the separation of *legal title* and *equitable interest*. A legal mortgage conveys title to the creditor, while an equitable mortgage or floating charge grants a right enforceable in equity, typically upon default (Bridge, 2015). The *right to possession* and *right to sell* upon default give mortgagees functional control over the asset, akin to real rights in civil law. However, the equitable nature of some interests means they may be subordinated to prior claims or bona fide purchasers without notice, unless registered (Goode & McKendrick, 2021).

In the United States, Article 9 of the Uniform Commercial Code (UCC) governs secured transactions and distinguishes between *secured claims* (enforceable against specific collateral) and *unsecured obligations*. However, the UCC does not use the language of real vs. personal rights; the perfection of a security interest through filing (UCC §9-310) and the priority rules (UCC §9-322) serve similar functions to *publicité* and *droit de préférence* in civil law (Gilmore, 1965; LoPucki, 1997).

American scholars have argued that the UCC creates a “functional equivalent” of property rights, albeit with more flexibility and contractual freedom than in civil law

systems (Baird, 2001; Beale et al., 2012). Enforcement is facilitated by self-help remedies (UCC §9-609), reinforcing the creditor's ability to reclaim or dispose of collateral without court proceedings.

2.3 International standards: UNIDROIT principles and model laws

The UNIDROIT organization has developed internationally harmonized standards that bridge the divide between civil and common law approaches. The UNIDROIT Convention on International Interests in Mobile Equipment (2001), also known as the Cape Town Convention, introduced a unified framework for registering international security interests over high-value mobile assets such as aircraft and railway equipment. It defines security interests as rights in rem, enforceable against third parties and effective upon registration in a centralized registry (UNIDROIT, 2001).

Furthermore, the UNIDROIT Model Law on Secured Transactions (2016) presents a comprehensive system of security rights that are functionally equivalent to real rights. It emphasizes the importance of a unified publicity system, third-party effectiveness, and priority rules that favor predictability and commercial efficiency (UNIDROIT, 2016). The model law distinguishes between *rights in a specific asset* and general obligations, implicitly maintaining the real/personal rights dichotomy in functional terms.

UNIDROIT's approach has influenced reforms in multiple jurisdictions, including Eastern European and Asian civil law systems, and is increasingly cited in legal modernization efforts (Drobnig, 2005; Bridge, 2015).

3 METHODOLOGY

This study employs a hybrid methodological framework that combines doctrinal legal analysis with functional comparative law, aiming to clarify the legal nature of security interests under Vietnamese civil law and situate them within a broader transnational context.

3.1 Doctrinal Legal analysis

Doctrinal or “black letter” legal research remains the primary method for analyzing the structure, function, and interpretation of legal rules in civil law systems (Hutchinson & Duncan, 2012). This study applies doctrinal analysis to systematically examine the provisions of the Vietnamese Civil Code 2015 (VCC 2015), with a particular focus on:

Article 292: Enumeration of nine types of security devices

Article 297: Legal effects and enforceability of security rights

Article 308: Priority and payment in case of enforcement

Articles 335–343: Rules on guarantees and personal security

Judicial interpretations and case law from the Supreme People's Court

The analysis focuses on identifying legal indicators that determine whether a security instrument gives rise to a real right (e.g., direct enforceability against a thing with *erga omnes* effect) or merely a personal right (e.g., a claim against a person). Emphasis is placed on the legal consequences of such classification in terms of enforceability, third-party effectiveness, and priority.

3.2 Functional comparative law

In addition to doctrinal methods, the study adopts a functional comparative approach, as developed by Zweigert and Kötz (1998) and reinforced by the European legal harmonization movement (Graziadei, 2003). The functional method seeks to compare how different legal systems address the same practical problems - in this case, how to structure and enforce secured obligations efficiently and fairly.

This research examines how selected jurisdictions - including France, Germany, England, the United States, and international models such as UNIDROIT - conceptualize and operationalize the distinction between real and personal security rights. Rather than comparing legal terminology alone, the analysis focuses on: (1) The legal effects of security rights on third parties; (2) Enforcement procedures in case of debtor default; (3) Priority rules in insolvency or execution contexts; (4) Publicity and registration mechanisms; (5) The role of possession and formalities in right creation.

The comparative analysis aims to evaluate the functional equivalence of legal mechanisms across systems, identifying best practices and potential transplantable principles for Vietnamese law.

3.3 Selection criteria and sources

Vietnamese statutory law, especially the Civil Code 2015, forms the core reference point. Supplementary sources include: Guiding resolutions from the Supreme People's Court (e.g., Resolution No. 01/2021/NQ-HĐTP); publicly available decisions from the National Database on Court Judgments; Vietnamese academic commentary and official commentaries from the Ministry of Justice

Foreign legal sources: the French *Code civil*, the German *Bürgerliches Gesetzbuch* (BGB), the UK Law Commission reports on secured transactions, the U.S. Uniform Commercial Code, and the UNIDROIT Model Law on Secured Transactions.

All non-English materials (e.g., French, German, and Vietnamese) have been translated or paraphrased for comparative purposes, with citations to original sources provided where appropriate.

3.4 Limitations

While the analysis benefits from multi-system comparison, it remains doctrinal and desk-based. No empirical data (e.g., court statistics, stakeholder interviews) is included. The study is limited to general security rights and does not cover sector-specific arrangements (e.g., bank guarantees under financial law, maritime liens under admiralty law). Furthermore, judicial practice in Vietnam remains inconsistent, and the limited availability of authoritative case law restricts the empirical depth of domestic legal conclusions.

4 FINDINGS AND CLASSIFICATION OF SECURITY DEVICES UNDER VIETNAMESE LAW

The Vietnamese Civil Code 2015 recognizes nine distinct types of security mechanisms in Article 292. While the Code does not explicitly classify these instruments

according to whether they establish real or personal rights, such classification is crucial for determining the legal effects of each device, especially in enforcement and insolvency contexts.

Building on doctrinal interpretation and comparative functional benchmarks, this study classifies the security devices into three analytical categories:

4.1 Group A – Real Rights Security Devices: Mortgage, Pledge, and Possessory Lien

This group includes security instruments that clearly establish rights *in rem* over specific property. These instruments confer on the secured creditor powers of direct enforcement, pursuit, and preferential payment, consistent with the characteristics of real rights in both civil and functional terms.

4.1.1 Mortgage (thế chấp)

Governed by Articles 317–327 VCC, a mortgage involves a debtor retaining possession of the asset while granting the creditor a security interest that becomes effective upon registration. Upon default, the mortgagee may seize, sell, or appropriate the asset (subject to conditions), and is entitled to priority in proceeds (VCC Art. 308). The mortgage clearly satisfies the hallmarks of real security rights: it is effective against third parties, attached to a specific asset, and grants preference upon enforcement, comparable to *hypothèque* in French law and *Hypothek* in German law (Marquette & Watté 1999; Schäper, 2004; Wolf & Wellenhofer, 2008).

4.1.2 Pledge (cầm cố)

A possessory security right, the pledge requires the debtor to deliver the asset to the secured party or a third party under the secured party's control (VCC Arts. 309–316). Possession operates as a substitute for registration, ensuring publicity and immediate enforceability. As in French *gage* and German *Pfandrecht*, the pledge creates a right of retention, preference, and disposition, and can be enforced without court intervention under certain conditions (Aubry & Rau, 1869–1877; Zimmerman, 1996; Schäper, 2004).

4.1.3 Possessory lien (*cầm giữ tài sản*)

Recognized under Articles 346–350 VCC, this device arises *ex lege* when the creditor is already in possession of a debtor’s asset and the debtor defaults on payment. While less formalized, the lien allows the creditor to retain the asset until payment is made and grants enforcement priority upon sale. It closely resembles civil law retention rights (*droit de rétention, Zurückbehaltungsrecht*), which are classified as limited real rights (Drobnig, 2005).

These three instruments meet the cumulative conditions of a real security right: asset specificity, third-party effectiveness (via possession or registration), direct enforceability, and priority in insolvency.

4.2 Group B – personal rights security devices: guarantee, social credit, retention of title

This group comprises security mechanisms that do not create enforceable rights over specific property, but rather impose obligations on third parties or depend on legal fictions of conditional transfer. These devices are purely *in personam* and lack real right attributes such as pursuit or preference.

4.2.1 Guarantee (*bảo lãnh*)

Defined in Articles 335–343 VCC, a guarantee is a personal undertaking by a third party to perform the debtor’s obligation if the debtor fails to do so. It creates no interest in specific assets of the guarantor and does not confer priority in insolvency. The right of the secured party is limited to a claim for performance against the guarantor, similar to personal guarantees under English law or suretyship in French and German systems (Wolf & Wellenhofer, 2008; Goode & McKendrick, 2021). Notably, VCC 2015 removed provisions from previous codes that allowed enforcement against the guarantor’s property without litigation, reinforcing its personal character.

4.2.2 Social Credit (*tín chấp*)

This is a Vietnamese-specific device where a social or political organization guarantees the performance of obligations by individuals (typically in microfinance). The organization does not pledge assets or assume liability in a proprietary sense. Instead, it commits to overseeing and ensuring compliance. The device lacks direct enforceability and third-party effectiveness, and is best understood as a moral or reputational guarantee, without real security implications (Dien, 2001; Cuong, 2013; Binh & Huyen, 2023).

4.2.3 Retention of Title (*bảo lưu quyền sở hữu*)

Under Article 331 VCC, a seller may retain ownership of a delivered asset until full payment is made. While this resembles a real right, its enforceability depends on registration and is often interpreted as a conditional transfer of ownership, not as a true real security right. In comparative law, retention of title is highly debated: while some civil law systems treat it as creating a *sui generis* real right (Kozioł, 2020), others, including England (under *Romalpa clauses*), see it as a contractual reservation subject to priority rules Goode & McKendrick, 2021. In Vietnam, the lack of clear third-party enforceability mechanisms and weak publicity undermine its status as a real right (Binh & Huyen, 2023).

Thus, devices in this group lack the essential features of *in rem* rights and should be classified as personal security in both doctrinal and functional terms.

4.3 Group C – hybrid or ambiguous devices: deposit, security deposit, and escrow

These three mechanisms - *đặt cọc* (deposit), *ký cược* (security deposit), and *ký quỹ* (escrow) - are asset-based, but their classification depends heavily on context and interpretation (Dien, 2001). They merit deeper functional analysis.

4.3.1 Deposit (*đặt cọc*)

Article 328 VCC defines deposit as the transfer of a valuable item or money to ensure the conclusion or performance of a contract. If the depositor breaches, the deposit

is forfeited; if the receiver breaches, double the deposit must be returned. While involving a specific asset, deposit lacks a formal structure for pursuit or priority over the asset. It resembles liquidated damages more than a real security right. Case law (e.g., Supreme Court *Án lệ 25/2018/AL*) reinforces its personal and conditional nature.

4.3.2 Security Deposit (*ký cược*) and Escrow (*ký quỹ*)

These instruments involve holding money or property with a third party or financial institution as performance assurance. Under Vietnamese practice, they are often used in lease, employment, or construction contracts. While they involve the creditor holding specific property, their enforceability and priority depend on registration or contractual stipulations (Thuy, 2019).

Comparative systems treat similar devices differently: In Germany, deposits held in separate escrow accounts may be treated as *Treuhand* arrangements - creating fiduciary but not necessarily real rights (Helmholz & Zimmermann (eds), 1998). In England, escrow accounts are governed by trust law, with the beneficiary holding an equitable right (Gretton, 2000). Under the UNIDROIT Model Law (2016), a security right in cash requires registration to bind third parties.

In Vietnam, the lack of formal publicity mechanisms for these devices means that third-party enforceability is uncertain, and their classification remains contested (Dien, 2000). Depending on whether the creditor obtains direct control, they may lean toward either real or personal rights (Oanh, 2018).

5 COMPARATIVE DISCUSSION

The tripartite classification of Vietnamese security instruments into real rights (Group A), personal rights (Group B), and functionally ambiguous mechanisms (Group C) reveals not only internal inconsistencies in Vietnamese law but also important points of convergence and divergence with foreign legal systems. This section discusses those patterns in light of comparative doctrine and functional effectiveness.

5.1 Real security rights: functional alignment with civil law models

The devices classified under Group A - mortgage, pledge, and possessory lien - correspond closely in structure and function to real security rights in civil law systems. Both French and German law explicitly characterize these instruments as *droits réels de garantie* or *dingliche Sicherungsrechte*, accompanied by core attributes such as: (1) Erga omnes enforceability: Creditors may pursue the asset regardless of third-party possession. (2) Preferential payment: Secured creditors are prioritized in enforcement proceedings. (3) Publicity through possession or registration: Enhancing transparency and legal certainty.

In Vietnam, Article 297 of the Civil Code 2015 introduces these features, marking a departure from earlier legal regimes where such powers were less clearly defined. The recognition of third-party effects and creditor priority indicates Vietnam's gradual alignment with the civil law tradition, particularly with German-styled registration and French-styled classification (Zimmermann, 1996; Dien, 2001; Dai, 2015).

By contrast, in common law jurisdictions, *real rights per se* are not the organizing legal concept. However, functional equivalents exist. For example, in the U.S., Article 9 UCC allows secured creditors to perfect a security interest in movable property, granting them enforcement and priority rights that closely mirror the effects of real security under civil law (LoPucki, 1997; Baird, 2001). Similarly, in English law, legal mortgages convey enforceable rights over land, while equitable charges, though less secure, may still grant limited control and priority upon registration (Goode & McKendrick, 2021). Thus, the Vietnamese devices in Group A are functionally compatible with both traditions.

5.2 Personal security devices: divergences in theory and enforcement

Vietnam's personal security instruments - particularly guarantee (*bảo lãnh*) and social credit (*tín chấp*) - fit squarely within the doctrinal framework of obligational rights. This matches the treatment in most comparative systems, where guarantees are construed as accessory personal obligations, not conferring rights over specific assets.

However, Vietnamese law departs in one critical respect: enforcement is entirely judicial. Unlike the self-help remedies available in U.S. law (e.g., UCC §9-609), Vietnamese creditors must sue the guarantor to obtain payment. Furthermore, VCC 2015

removed the previous ability to enforce directly against the guarantor's property, underscoring its in personam nature.

In common law, personal guarantees are also enforceable only via court action but may be reinforced by contractually agreed remedies or by equitable doctrines such as subrogation. In French and German law, suretyship (*cautionnement*, *Bürgschaft*) requires formal expression and is strictly construed, particularly in consumer contexts (Wolf & Wellenhofer, 2008).

Vietnam's social credit model is a local innovation with no exact foreign counterpart. While it resembles informal group lending models in microfinance literature (Armendáriz & Morduch, 2010), its legal enforceability remains uncertain. Comparative systems provide no strong analogues, although *community guarantees* exist in certain jurisdictions (e.g., mutual credit cooperatives in Japan), often backed by statutory schemes.

The retention of title clause in Vietnamese law is particularly ambiguous. While it seems to create a conditional real right, the lack of a centralized registration system and inconsistent judicial interpretations diminish its functional effectiveness. In France and Germany, retention of title (*clause de réserve de propriété*, *Eigentumsvorbehalt*) is well-established but subject to strict formality and third-party rights. In England, so-called *Romalpa clauses* are interpreted under the rules of trusts and may be subordinated to prior security holders (Bridge, 2015).

Vietnam's failure to codify a clear legal effect for retention of title results in doctrinal uncertainty and practical enforcement risks. Unless clarified, this instrument risks remaining ineffective compared to its civil law counterparts.

5.3 Hybrid devices and the need for functional clarification

The devices in Group C (deposit, security deposit, and escrow) reveal the blurred line between real and personal rights, especially in transactional practice. These instruments are widely used but lack formal legal classification, creating uncertainty in enforcement and risk allocation.

In comparative systems, such devices are usually governed by contract law or trust/fiduciary law, with their enforceability contingent on proper structure. In Germany, money held in escrow may fall under the *Treuhand* regime, creating a fiduciary duty but

not necessarily a security right unless registered (Drobnig, 2005). In England, escrow accounts often create equitable proprietary rights over the funds, enforceable under trust principles. Under UNIDROIT's Model Law, any functional security interest, including deposits or control agreements, must be registered to have priority and third-party effectiveness (UNIDROIT, 2016).

Vietnamese law lacks these precision mechanisms. For example, there is no unified registry for escrow or deposit-based security, and the treatment of such funds in insolvency is unclear. As a result, creditors relying on such devices may find themselves subordinated to other claimants or entirely unsecured in practice.

5.4 The role of publicity and *numerus clausus* in comparative systems

A key insight from comparative law is the importance of publicity (transparency) and *numerus clausus* (closed list of real rights) in maintaining legal certainty in secured transactions. French and German law both adhere to a *numerus clausus* of real rights, strictly limiting their creation to statutorily defined categories and requiring formal registration or possession to render them effective against third parties (Zimmermann, 1996).

UNIDROIT similarly emphasizes the importance of a public registry to ensure predictability and protect third-party purchasers. The absence of such a unified registry in Vietnam - apart from scattered provisions for land, vehicles, and movable property - undermines the *erga omnes* function of security rights, especially for Group C instruments.

In common law, while *numerus clausus* is less formal, priority rules are tied to registration or notice systems, such as the UCC's filing framework or England's Companies House register. These mechanisms offer both public transparency and enforceability safeguards, features still underdeveloped in Vietnamese practice.

6 CONCLUSION AND POLICY RECOMMENDATIONS

This article has undertaken a comprehensive doctrinal and comparative analysis of the legal distinction between real and personal rights in the context of secured transactions under Vietnamese civil law. Through the classification of nine statutory

security devices into three functional categories (i) real security rights (mortgage, pledge, possessory lien), (ii) personal security rights (guarantee, social credit, retention of title), and (iii) hybrid or ambiguous devices (deposit, security deposit, escrow) - the study illuminates how Vietnamese law both aligns with and diverges from comparative models in civil law and common law jurisdictions.

The findings demonstrate that Group A devices conform closely to civil law doctrines of real rights, offering creditors *erga omnes* enforceability, priority in insolvency, and predictable enforcement tools. In contrast, Group B devices lack proprietary characteristics and function purely as personal obligations, providing weaker creditor protection and requiring judicial enforcement. Group C devices reveal systemic ambiguities in Vietnamese law, where the absence of unified registration, inconsistent judicial interpretation, and lack of legal precision dilute their effectiveness.

From a comparative perspective, Vietnam's approach to real security rights shows promising convergence with French and German models, especially with respect to mortgages and pledges. However, its treatment of retention of title and deposit-based security remains doctrinally underdeveloped, and functional uncertainty persists in the absence of a unified publicity regime. Unlike common law systems, Vietnam does not yet afford secured parties the same flexibility in structuring non-possessory security or the same access to self-help remedies.

6.1 Theoretical and practical contributions

Theoretically, this study contributes to the understanding of Vietnamese civil law by clarifying the legal nature and enforceability of security rights and by situating them within the broader real/personal rights dichotomy - a fundamental conceptual distinction in private law. It also demonstrates the value of functional comparative analysis in identifying doctrinal gaps and reform priorities.

Practically, the article assists legislators, judges, legal practitioners, and commercial actors in better understanding the legal effects and risks associated with each type of security interest. This is particularly urgent in a jurisdiction where commercial lending and asset-based credit are expanding rapidly, but the legal infrastructure remains fragmented and uncertain.

6.2 Policy recommendations

To align Vietnam's secured transactions regime with international best practices and improve the effectiveness of security instruments, the following reforms are proposed:

(1) Codify a Functional Typology of Security Rights

The Civil Code should formally distinguish between real security rights (enforceable against specific assets with third-party effect) and personal security rights (enforceable only against a person), with clear legal consequences for registration, enforcement, and priority. This would harmonize Vietnamese law with civil law doctrine and enhance legal certainty.

(2) Establish a Unified Security Interests Registry

Vietnam should develop a centralized, electronic registry for all types of movable and immovable security interests, including those arising from deposits, escrow, or retention of title. Such a registry would promote transparency, protect third parties, and facilitate notice-based priority, as advocated in the UNIDROIT Model Law (2016).

(3) Clarify the Legal Status of Ambiguous Devices

The legal framework for deposit, security deposit, and escrow arrangements should be clarified through legislation or interpretative guidance. Criteria for determining whether these instruments create real or personal rights should be codified, with provisions for publicity and enforcement.

(4) Reform the Law on Retention of Title

Vietnam should adopt rules similar to those in France or Germany to define retention of title as a conditional real right, subject to registration. This would prevent disputes and ensure its effectiveness in insolvency.

(5) Enhance Judicial Capacity and Uniform Interpretation

Training programs and interpretive guidelines should be provided to judges and practitioners to ensure consistent classification and enforcement of security rights. This is essential for legal predictability and creditor confidence.

(6) Incorporate Comparative and International Models

Vietnam's legislators and reformers should draw systematically on international standards - such as the UNIDROIT Model Law and European secured transactions frameworks - to develop a coherent and modernized secured credit system.

In conclusion, the distinction between real and personal rights in secured transactions is not merely conceptual - it is operationally decisive. Vietnam's current legal architecture partially reflects this distinction but leaves critical gaps. Bridging these gaps through legislative clarification, systematization of rights, and integration with international best practices will enhance legal certainty, reduce transaction costs, and strengthen Vietnam's financial and commercial infrastructure in a globalized economy.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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