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Legal Analysis of the Cancellation of the Execution of Collateral in Supreme Court Decision MA 920K/Pdt/2020

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This study aims to analyze the execution of judgments in Indonesian civil law, particularly in relation to security rights and the parate executie mechanism as regulated in Law No. 4 of 1996.

The method used in this study is a normative legal approach with a literature review, analyzing relevant legislation, court decisions, and implementing regulations. The main focus of this study is to explore the challenges and distortions that occur in the implementation of parate executie, which is actually designed to provide convenience, legal certainty, and efficiency for creditors.

The novelty of this study lies in its in-depth assessment of the conflict between the provisions of the UUHT and court decisions and Supreme Court Circular Letters that hinder the implementation of parate executie without court intervention.

The results of this study show that although the UUHT gives creditors the authority to directly execute collateral, in reality, legal uncertainty, complicated bureaucracy, and decisions that contradict the spirit of the UUHT actually slow down the execution process and increase losses for creditors. Therefore, this study recommends improving implementing regulations and revising related regulations, including canceling or revising Supreme Court Circular Letter No. 7 of 2012, so that the objectives of the UUHT to provide fast, inexpensive, and efficient execution can be achieved.

The conclusions of this study are expected to contribute to the development of Indonesian civil law, particularly in strengthening legal certainty in the execution of security rights.

Keywords: Parate Executie; Security Rights; Judgment Enforcement; Legal Certainty; Legal Reform.

Abstrak

Penelitian ini bertujuan untuk menganalisis pelaksanaan eksekusi putusan dalam hukum perdata Indonesia, khususnya terkait dengan hak tanggungan dan mekanisme parate executie yang diatur dalam Undang-Undang Nomor 4 Tahun 1996.

Metode penelitian yang digunakan adalah pendekatan hukum normatif dengan studi kepustakaan, menganalisis peraturan perundang-undangan, putusan pengadilan, serta peraturan pelaksana yang relevan. Fokus utama penelitian ini adalah untuk menggali tantangan dan distorsi yang terjadi dalam implementasi parate executie, yang sejatinya dirancang untuk memberikan kemudahan, kepastian hukum, dan efisiensi bagi kreditur.

Kebaruan penelitian ini terletak pada pengkajian mendalam mengenai konflik antara

ketentuan dalam UUHT dengan keputusan pengadilan dan Surat Edaran Mahkamah Agung yang menghambat pelaksanaan *parate executie* tanpa campur tangan pengadilan.

Hasil penelitian menunjukkan bahwa meskipun UUHT memberikan kewenangan kepada kreditur untuk melaksanakan eksekusi objek jaminan secara langsung, kenyataannya ketidakpastian hukum, birokrasi yang berbelit, dan keputusan yang bertentangan dengan semangat UUHT justru memperlambat proses eksekusi dan menambah kerugian bagi kreditur. Oleh karena itu, penelitian ini merekomendasikan penyempurnaan peraturan pelaksana dan revisi terhadap regulasi terkait, termasuk pembatalan atau revisi Surat Edaran Mahkamah Agung No. 7 Tahun 2012, agar tujuan UUHT untuk memberikan eksekusi yang cepat, murah, dan efisien dapat tercapai.

Kesimpulan penelitian ini diharapkan dapat memberikan kontribusi terhadap pengembangan hukum perdata Indonesia, khususnya dalam memperkuat kepastian hukum dalam eksekusi hak tanggungan.

Kata Kunci: *Parate Executie; Hak Tanggungan; Eksekusi Putusan; Kepastian Hukum, Reformasi Hukum.*

1. INTRODUCTION

Indonesia, as a country based on the rule of law, affirms in its legal foundation that justice is the main principle in social and state life.¹ Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that Indonesia is a state based on the rule of law, which means that all state activities, including dispute resolution, must be carried out in accordance with applicable laws with the aim of achieving justice for all Indonesian people. In this context, the court has a very important role as an institution tasked with resolving disputes based on justice and without favoring either party. Every decision made by the court must be acceptable and applied fairly by all parties to the dispute.² In reality, there are significant challenges in implementing court decisions, particularly with regard to the enforcement of judgments.

The settlement of disputes in Indonesian civil law is clearly regulated through civil procedure law, which provides a legal avenue for parties who feel that their rights have been violated to file a lawsuit.³ Civil procedure law regulates not only how lawsuits are filed, but also how the trial process takes place until the judge makes a decision. The resulting court decision is expected to provide justice and restoration of rights for the aggrieved party. However, in

¹ Ria Ermina Purba, Risa Amalia, and Danugrah Akbar, "Tinjauan Yuridis Tentang Implementasi Prinsip Pancasila Sebagai Landasan Politik Di Indonesia," *Perkara: Jurnal Ilmu Hukum Dan Politik* 2, no. 2 (2024): 178–86, <https://doi.org/10.51903/perkara.v2i2.1867>.

² Dian Maris Rahmah, "MEDIASI DI PENGADILAN Mempunyai Peran Yang Essential Yaitu Sebagai Katup Penekan (Pressure Value) Terhadap Setiap Ke Pengadilan Dengan Cara Mengajukan Surat Permintaan , Dalam Praktik Disebut Surat Gugat Atau Pasal 118 HIR Dan Dapat Juga Diajukan Dengan," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 1–16, <https://doi.org/10.23920/jbmh.v4n1.1>.

³ Arini Audria Sasiras et al., "Peran Hukum Acara Perdata Dalam Penyelesaian Sengketa Di Pengadilan Negeri," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 999–1005, <https://doi.org/10.62976/ijjel.v3i2.1072>.

practice, problems often arise when court decisions cannot be enforced or implemented, one of which is related to the issue of execution of decisions. Enforcement that cannot be carried out or faces technical obstacles often becomes a major problem in the settlement of civil legal disputes. Even if the plaintiff wins the case, sometimes the enforcement of the disputed object encounters obstacles, especially when the defendant attempts to transfer the disputed assets before enforcement is carried out.⁴

This phenomenon creates uncertainty in law enforcement, which ultimately renders court decisions meaningless or even futile. Therefore, it is important to have a thorough understanding of the execution of decisions and the rights involved in the execution process, including the rights of parties related to the object of the dispute.⁵ Enforcement is one of the important instruments used to uphold court decisions. This enforcement can take the form of seizure of disputed objects, which aims to ensure that the decisions issued by the court can be implemented in a lawful and fair manner. In this context, civil law provides provisions regarding seizure and lien as instruments to guarantee the rights of the winning party in a case. However, in practice, there is often resistance from third parties who feel aggrieved by the execution of disputed objects that do not belong to them.

The provisions in Article 207 of the HIR indicate that in the case of executory seizure, the defeated party may file an objection, including third parties who feel that their rights have been harmed by the execution. This shows that even though a court decision has obtained permanent legal force, its implementation still allows for the filing of counterclaims, especially if third parties feel that their rights have been infringed upon. This is one aspect that requires more attention in law enforcement, as it concerns the rights of individuals who may not be directly involved in the original case but feel disturbed by the implementation of the court decision.

Civil law also regulates security interests, which are often the subject of disputes in cases involving the enforcement of judgments. Security interests, as regulated in Law No. 4 of 1996, give certain creditors priority over other creditors. These security interests can be imposed on land rights, and if the object of the dispute is related to security interests, then the execution of the judgment against that object can cause problems, especially if third parties feel that the seized object does not belong to the defendant. Therefore, it is very important to explore further how the law regulates the exercise of security interests in execution cases and how third parties can file objections to the execution.

The case reflected in Supreme Court Decision Number 920 K/Pdt/2020 is very interesting to analyze further in this context. In this decision, there was a dispute regarding the execution of seizure of collateral involving a third party who claimed that the seized object did not belong to the losing party in the case. This case demonstrates the complexity of issues that

⁴ Lia Oktavia, "Pengenalan Proses Gugatan Dalam Hukum Acara Perdata," *Media Hukum Indonesia (MHI)* 2, no. 4 (2024): 801–10, <https://doi.org/10.5281/zenodo.14307286>.

⁵ Fadli Daud Abdullah, Ramdani Wahyu Sururie, and Oyo Sunaryo Mukhlas, "Analisis Putusan Hakim Pengadilan Agama Kabupaten Cirebon Pada Prosedur Eksekusi Sita Jaminan Perkara Murabahah," *Strata Social and Humanities Studies* 1, no. 2 (2023): 71–81, <https://doi.org/10.59631/sshs.v1i2.99>.

can arise in the execution of a decision, and how resistance from third parties can affect the course of the execution. Therefore, it is very important to further examine the legal aspects related to the execution of collateral rights and the resistance raised by third parties.

Research related to the execution of judgments, security interests, and third-party opposition to the execution has had various focuses and approaches. Several previous studies have highlighted the importance of execution in civil law, which is often a critical point in upholding justice after a court decision. Murni's research examines the effectiveness of the execution of judgments in Indonesian courts, particularly in relation to third parties filing opposition.⁶ This study concludes that the execution of judgments is often hampered by the presence of third parties who feel aggrieved, which adds to the complexity of implementing court decisions. This shows that even though court decisions have obtained permanent legal force, the execution process does not always run smoothly.

Another study by Widya discusses security rights in Indonesian civil law and how these rights affect the enforcement of judgments.⁷ This study explains that security rights give creditors priority in the execution of disputed objects. However, this study also reveals an imbalance in the protection of the rights of third parties who are often not directly involved in the dispute but feel aggrieved by the execution. This study emphasizes the need for clearer regulations regarding the rights of third parties in the execution process. In addition, Vania's study examines the procedure for seizing movable property in the execution of civil judgments involving lien rights.⁸ This study found that the execution of seizures of movable property, especially if the disputed object is related to collateral rights, is often unclear and inconsistent with ideal legal practices. This study illustrates that there are still many legal aspects that need to be improved to ensure that the execution of decisions can be carried out more fairly and efficiently.

Although these studies provide significant insights into the execution of judgments, security interests, and third-party opposition, no study has specifically examined how the execution of security interests was canceled based on Supreme Court Decision No. 920 K/Pdt/2020. This study will fill that gap by providing an in-depth analysis of how the cancellation of the execution occurred, as well as its impact on the parties involved.

The main novelty of this research is in terms of the application of civil procedural law in the context of resistance to the execution of collateral rights. This research will analyze in depth how Supreme Court Decision Number 920 K/Pdt/2020 changed the practice of execution and how the law provides protection for third parties who are not involved in the main case but feel aggrieved by the execution. Thus, this study not only provides an analysis of the execution

⁶ Negeri Sungailiat et al., "Almufi Jurnal Sosial Dan Humaniora Analisis Yuridis Terhadap Tindak Pidana Menduduki Lahan Dalam," *Almufi Jurnal Sosial Dan Humaniora* 2, no. 2 (2025).

⁷ Widya Rahmawati, Kristi W Simanjuntak, and A Sakti R S Rakia, "Analisis Yuridis Penyelesaian Kredit Macet Tanpa Jaminan Hak Tanggungan (Studi Putusan Nomor : 11 / PDT . G . S / 2018 / PN SON)," *Judge: Jurnal Hukum* 06, no. 02 (2025): 184–96.

⁸ Vania Nabilah Bani Sonjaya and Atik Winanti, "Pelaksanaan Parate Eksekusi Objek Hak Tanggungan Tanpa Fiat Pengadilan Untuk Menyelesaikan Kredit Bermasalah," *Jurnal Usm Law Review* 6, no. 3 (2023): 1307–20, <https://doi.org/10.26623/julr.v6i3.7901>.

of collateral rights, but also contributes to the development of civil law in Indonesia by providing a new perspective on the legal position of third parties in the execution of decisions.

This study aims to analyze in depth the cancellation of the execution of collateral rights in Supreme Court Decision Number 920 K/Pdt/2020 and its implications for law enforcement. It is hoped that this study can provide new insights into the understanding of enforcement procedures and the rights involved, as well as provide solutions to problems that arise in the execution of judgments involving third parties. Thus, this study will make an important contribution to the development of legal science in Indonesia, particularly in the fields of civil law and civil procedure law.

2. METHOD

This study uses a normative legal approach with a library research method that focuses on analyzing laws and regulations and court decisions related to mortgage disputes, the execution of decisions, and opposition from third parties. The main legal sources used are laws and regulations such as Law Number 4 of 1996 concerning Mortgage Rights, Law Number 5 of 1960 concerning Basic Agrarian Principles, and the Civil Code. In addition, this study also examines Supreme Court Decision Number 920 K/Pdt/2020 and the relevant Sorong District Court Decision to analyze how the execution of judgments and mortgage rights are applied in Indonesian legal practice. The approaches used in this study are the statute approach and the case approach, which allow the author to explore the consistency of regulations and the application of law in judgment enforcement cases.

Data collection techniques were carried out through literature study, namely searching for and collecting relevant primary and secondary legal materials. The collected data was then analyzed using qualitative data analysis methods, by classifying and connecting information to understand the meaning of the data in the context of Indonesian civil law. This analysis process aims to gain a deeper understanding of the execution of judgments and security rights, as well as to provide recommendations for more effective legal practices in handling disputes involving third parties who file objections to such executions.

3. DISCUSSION

3.1. Land as Collateral in Debt Collection Processes

Land as collateral in debt relationships plays a very important role in the Indonesian collateral law system.⁹ In practice, land is often used as collateral by debtors to creditors as a form of debt repayment guarantee. This is very common, given that land values tend to be stable and have high marketability, thus providing a sense of security for creditors. When a debtor fails to fulfill their debt repayment obligations, the land that is the object of the collateral can be executed to cover unpaid obligations. This system underlies the importance of collateral law, which regulates how the relationship between the lending and borrowing parties can be carried out fairly.

⁹ Achmad Fahrur Rozi et al., "Analisis Konsep, Prinsip, Dan Implementasi Hukum Jaminan Dalam Menjamin Kepastian Dan Perlindungan Bagi Kreditur Dan Debitur Di Indonesia," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 3 (2023): 141–46.

The legal basis governing this guarantee can be found in Article 1131 of the Civil Code (KUHPerdata), which states that all of the debtor's assets, both movable and immovable, existing and future, shall be liable for the debtor's debts.¹⁰ However, this provision is general in nature and does not specify the object of collateral, thus giving creditors the freedom to choose the object they deem most suitable as collateral. Nevertheless, this provision also carries risks, because if no specific object is designated as collateral, creditors risk losing their rights if the debtor has a large amount of assets.

As a solution to the weaknesses of such general guarantee systems, Indonesian law has adopted the concept of a more specific guarantee tied to a particular object that can be used as collateral. The guarantee in question is an accessory guarantee, whereby the object used as collateral is explicitly tied to a debt agreement to guarantee the repayment of the debt. Land, as an immovable object, is the most commonly chosen object in these agreements, given that the value of land is relatively stable and tends to increase over time, making it a very valuable guarantee for creditors.¹¹

In this context, Law No. 4 of 1996 concerning Land and Land-Related Objects as Collateral (UUHT) was enacted, providing clearer legal protection for creditors and land used as collateral. The UUHT regulates in detail the rights of lien on land and land-related objects. With the UUHT, land as collateral gains stronger legal certainty, both for debtors who provide collateral and for creditors who receive it.

The lien itself gives priority to the lien holder in terms of debt repayment if the debtor defaults.¹² Thus, if the debtor fails to fulfill their obligations, the holder of the security interest has the right to first settle the debt from the proceeds of the sale of the collateral, before the debt is paid to other creditors. This creates a sense of security for creditors, as they are given priority to obtain debt repayment based on the security interest attached to the land collateral.¹³

The advantage of mortgage rights compared to other forms of collateral is the executory power of mortgage certificates. Article 14 paragraph (3) of the Mortgage Law states that mortgage certificates have the same executory power as court decisions that have permanent legal force. Therefore, if the debtor defaults and fails to repay the debt, the holder of the mortgage right no longer needs to go through a lengthy court process to obtain the right of execution. They simply need to file a petition for execution based on the mortgage certificate, which already contains the phrase "In the name of justice based on the One Almighty God."

¹⁰ Dafa Rizky Pradana, Taufiqurrahman Taufiqurrahman, and Farhan Saleh, "Pertanggungjawaban Perdata Debitur Dalam Perjanjian Kredit Dengan Jaminan Perorangan," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (2023): 103–15, <https://doi.org/10.38156/jihwp.v1i2.123>.

¹¹ Atika Sandra Dewi, "Wanprestasi Terhadap Perjanjian Kredit Dengan Pengikatan Jaminan Benda-Benda Bergerak Pada Bank," *Jurnal Insitusi Politeknik Ganesha Medan* 7, no. 1 (2024): 59–72, <https://polgan.ac.id/jurnal/index.php/juripol/article/view/13503>.

¹² Azra Balqis et al., "Pembebanan Hak Tanggungan Dan Hipotik Kepada Debitur Sebagai Bentuk Perwujudan Perlindungan Hukum Bagi Kreditur," *Diponegoro Private Law Review* 9, no. 1 (2022): 1–17.

¹³ Martinus Al Ibrani Giga Taufano and Wilma Silalahi, "Konsekuensi Hak Tanggungan Perjanjian Kredit Antara Kreditor Dan Debitur," *Unes Law Review* 6, no. 4 (2024): 11201–8.

This convenience provides efficiency in the execution process, as it allows creditors to immediately take execution action against the land that is used as collateral, without having to wait for time-consuming court proceedings. This is in line with the objective of the UUHT, which is to create a fast, efficient, and simple mechanism for resolving collateral disputes, especially in cases where debtors fail to meet their payment obligations. Thus, the UUHT provides a strong and clear legal basis for creditors to execute their rights over land as collateral.

However, even though the UUHT provides clear rights for creditors to execute land as collateral, practice in the field often shows that there are problems that can hinder the execution process. One of the main obstacles that often occurs is ambiguity in the execution of collateral rights, especially in relation to implementing regulations that are often inconsistent or inadequate. The discrepancy between the provisions in the UUHT and its implementation in the field can create legal uncertainty that is detrimental to creditors.

In addition, in some cases, the execution of mortgage rights is hampered by the intervention of third parties who feel aggrieved by the execution. These third parties may have claims on the executed land or feel that their rights to the land have been neglected. This can cause additional problems in the execution process and add to the legal uncertainty for the parties involved. Therefore, it is important to clarify the regulations regarding the rights of third parties in the execution of mortgage rights so that the execution can be carried out in a more transparent and fair manner.

Apart from issues related to third parties, there are still several gaps in the regulations on the execution of mortgage rights that need to be addressed immediately. For example, regarding the obligation of the debtor or the party holding the mortgage to hand over the collateral to the buyer after the auction process is carried out. In this case, the lack of clarity regarding who should control the physical object of the land before execution can cause confusion and delays in the execution process. This also adds to the losses for creditors who should be able to immediately obtain debt repayment through the auction of the collateral.

Therefore, it is necessary to refine the implementing regulations on the execution of collateral rights, including clarification regarding the physical control of the collateralized object, as well as more detailed auction procedures. Clear and firm implementing regulations will help create legal certainty and reduce obstacles that can hinder the execution process, as well as increase the effectiveness of the collateral system in Indonesia. Thus, it is hoped that land as collateral can provide optimal benefits for all parties involved in debt-credit relationships.

3.1.1.Mechanism for Executing Security Interests

The mechanism for enforcing mortgage rights in Indonesia is regulated in detail in Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT). The UUHT provides three alternative enforcement mechanisms that can be used by creditors when debtors default.¹⁴ The first is *parate executie*, which is regulated in Article 20 paragraph (1)

¹⁴ Dwi Nugrohandhini and Etty Mulyati, "Akibat Hukum Gugatan Dan Perlawanan Terhadap Lelang Eksekusi Hak

letter a, which allows creditors to directly sell collateral through public auction without having to go through court proceedings. This mechanism provides convenience and efficiency for creditors, as it does not require lengthy court proceedings and is faster in terms of debt repayment. In addition, this mechanism is in line with the objective of the UUHT to provide a simple and efficient alternative form of execution for creditors.

The legal basis for the implementation of *parate executie* can be found in Article 6 of the UUHT, which gives creditors the right to execute collateral without having to go through the courts. In addition, Article 1178 paragraph (2) of the Civil Code (KUHP_{Perdata}) also regulates the execution of collateral rights that do not require court intervention, but can be carried out directly by the creditor. The term *parate executie*, which comes from Dutch, means execution at hand, which in practical terms allows creditors to immediately carry out execution without waiting for court proceedings. This concept provides flexibility and convenience for creditors, especially when dealing with debtors who are reluctant to fulfill their obligations.

However, even though *parate executie* provides convenience, its implementation cannot be carried out without clear technical rules. Article 26 of the UUHT emphasizes the importance of drafting detailed implementation rules to ensure that enforcement is carried out with procedures that are lawful and in accordance with applicable legal provisions. Without clear implementing regulations, enforcement can give rise to legal issues that are detrimental to the parties concerned, both creditors and debtors. Therefore, even though *parate executie* provides convenience for creditors, its implementation must still be carried out carefully and within the appropriate legal framework to avoid legal uncertainty in the future.

In addition to *parate executie*, the UUHT also provides a second alternative, namely execution based on the executory title contained in the mortgage certificate, as regulated in Article 20 paragraph (1) letter b. In this case, a mortgage certificate that has obtained permanent legal force has the same power of execution as a court decision that has permanent legal force. Creditors can directly file an execution request through the competent authority, such as the court, to carry out the auction of the collateral.¹⁵ Nevertheless, this mechanism still requires formal procedures and supervision from the court to ensure that the execution is carried out fairly and in accordance with applicable legal principles.

The third alternative is the private sale of collateral, as stipulated in Article 20 paragraph (2). This private sale can only be carried out if there is an agreement between the grantor and the holder of the collateral regarding the method of execution. This may be an option if a public auction is deemed unfavorable to both parties. However, this mechanism must be implemented with great care and based on the principle of prudence so as not to cause losses to either party, especially to creditors who expect to obtain debt repayment through a transparent process in accordance with applicable law.¹⁶

Tanggungjan," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 18, <https://doi.org/10.23920/jbmh.v4n1.3>.

¹⁵ Ayup Ningsih, "Kajian Yuridis Efektifitas Penyelesaian Kredit Macet Melalui Lelang Hak Tanggungan," *Arena Hukum* 14, no. 3 (2021): 546–66, <https://doi.org/10.21776/ub.arenahukum.2021.01403.7>.

¹⁶ Bambang Catur PS, "Pengamanan Pemberian Kredit Bank Dengan Jaminan Hak Guna Bangunan," *Jurnal Cita Hukum* 2, no. 2 (2024): 167–84, <https://doi.org/10.15408/jch.v1i2.1468>.

Overall, the enforcement mechanisms stipulated in the UUHT provide creditors with the flexibility to choose the method that best suits their needs and circumstances, whether through parate executie, enforcement based on an executory title, or private sale. However, to ensure that the enforcement process remains in accordance with fair legal provisions and does not disadvantage either party, it is crucial for the government to formulate and update clear and firm implementing regulations. In this way, the enforcement of security rights can be carried out more efficiently, transparently, and fairly, providing legal certainty for all parties involved in debt-credit relationships involving security rights.

3.1.2.Regulations on the Implementation of Parate Executie

To date, the provisions governing parate executie are set out in various Minister of Finance Regulations (PMK), which have been gradually refined from PMK No. 40/PMK.07/2006 to the most recent, PMK No. 213/PMK.06/2020. These PMKs regulate auction mechanisms, including auctions of collateral objects based on Article 6 of the UUHT, as a type of execution auction. However, in practice, there are still several normative gaps that have the potential to cause legal uncertainty.

One crucial issue that has not been explicitly regulated in the PMK is the obligation of the debtor or holder of collateral rights to physically control the collateral object prior to the execution of a parate executie auction.¹⁷ However, Article 13 paragraph (1) letter i of PMK 213/PMK.06/2020 stipulates that the seller (in this case the debtor or holder of the collateral) is obliged to hand over the auctioned goods to the buyer. However, it is not explained whether the seller must first take physical possession of the goods.

This raises issues if the auction has been conducted but the buyer cannot immediately take possession of the auctioned object because it is still controlled by the debtor or a third party. This situation clearly contradicts the principles of ease and legal certainty in the execution of auctions as mandated by the UUHT. This ambiguity creates a legal loophole that can be exploited by debtors to delay the handover of auctioned items or even refuse to hand them over, thereby rendering the execution process ineffective.

3.1.3.The Role of the Supreme Court in Addressing Enforcement Issues

The role of the Supreme Court in resolving issues related to the enforcement of judgments, particularly those concerning the auction of collateral, is crucial in providing legal certainty. One of the steps taken by the Supreme Court was the issuance of Circular Letter No. 4 of 2014, which allows auction buyers to submit a request for the vacating of auctioned objects to the District Court. Although this circular letter provides a solution to the problem of vacating objects that have not been handed over by the debtor or third party controlling the object, this procedure adds considerable costs and time for auction buyers. Thus, the absence of norms that explicitly regulate the physical control of objects by debtors or creditors prior to auction is a problem that reduces the efficiency of parate executie, which should facilitate and

¹⁷ Ardian Yoan Reno Hariawan et al., "Hak Dan Kewajiban Dalam Jaminan Resi Gudang: Kajian Terhadap Aspek Kepastian Hukum Dan Risiko Bagi Kreditur," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 2 (2025): 88–135.

accelerate the execution process.

To overcome these obstacles and restore the essence of the UUHT, which prioritizes ease and efficiency in the execution of collateral rights, more detailed and clear regulatory improvements are needed. These improvements can be made through revisions to the UUHT or the issuance of more comprehensive implementing regulations. This is essential to ensure that enforcement is carried out through simple, fast procedures without obstacles that prolong the process, both in terms of cost and time. In addition, clear provisions regarding physical control of the object by the debtor or creditor, as well as the rights and obligations of the parties involved in the enforcement, need to be included in the regulations.

Certainty regarding the procedure for physical possession of collateral before auction is an important aspect to avoid uncertainty that could hinder the smooth execution of the auction. Therefore, more detailed regulations on how collateral must be surrendered or seized before the auction is held will help reduce potential problems in the field. This will also provide clearer legal protection for creditors who have provided loans with collateral, as well as for debtors who must fulfill their obligations.

It is important for the government and relevant institutions to ensure that the implementing regulations issued provide more explicit provisions regarding the timeframe for execution.¹⁸ With clear time limits, both in the auction process and the process of vacating the property, transparency and legal certainty will be improved for all parties involved in the execution of collateral rights. Uncertainty regarding the timing of execution is often a source of uncertainty that worsens the position of creditors in the execution process.

If these regulatory improvements can be properly formulated, a healthier, fairer, and more transparent credit guarantee system will be created. This will provide greater legal certainty, not only for creditors, but also for debtors who fulfill their obligations in accordance with applicable laws. A healthy and fair credit guarantee ecosystem will contribute to economic progress by reducing the risk of bad credit and creating a more stable and secure investment climate for all parties involved in credit guarantee transactions in Indonesia.¹⁹

3.1.4.Improvements to the Parate Executie Enforcement Regulations

Improving regulations related to parate executie is a crucial step in addressing various legal loopholes that still exist in the enforcement of collateral rights. One important aspect that needs to be clarified is physical control of the collateralized object.²⁰ Uncertainty regarding who has the right to control the collateralized object prior to execution can lead to legal uncertainty, which ultimately harms creditors and prolongs the execution process. Regulations that clearly govern the control of objects by debtors or creditors prior to the auction are

¹⁸ Arin Fitria Novalianing Firdaus et al., "Problematika Eksekusi Hak Tanggungan Dalam Perbankan Syariah Terhadap Efektifitas Pasal 20 Uuht," *Jurnal Media Akademik (Jma)* 3, no. 6 (2025).

¹⁹ Siska Ayu Anggraini, "Reformasi Eksekusi Putusan Mahkamah Agung : Mewujudkan Peradilan Yang Responsif Dan Efisien," *Al Fuadiy Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 25–35, <https://doi.org/10.55606/af.v6i2.1209>.

²⁰ Audry Zefanya and Fransiscus Xaverius Arsin Lukman, "Tolak Ukur Pemenuhan Penguasaan Fisik Atas Tanah Melalui Surat Pernyataan Penguasaan Fisik Bidang Tanah," *Jurnal Usm Law Review* 5, no. 2 (2022): 441–54, <https://doi.org/10.26623/julr.v5i2.4878>.

essential to creating an efficient execution process that is in line with the principle of fairness.²¹

The auction implementation procedure also needs to be further detailed in the implementing regulations.²² This includes clearly determining the steps to be taken in the auction process, who has the right to conduct the auction, and how the rights and obligations of the parties involved, including third parties, are properly regulated. Uncertainty in the auction procedure can trigger potential disputes between creditors, debtors, and third parties who control the object, which ultimately disrupts the smooth execution of the auction. With more detailed and clear regulations, the auction process will be more transparent, fair, and efficient.

The refinement of this regulation will contribute to the creation of a better legal system for regulating the implementation of collateral rights. In the financing system, the existence of clear and quickly executable guarantees is very important to maintain legal certainty and provide a sense of security for creditors. With clarity regarding the rights and obligations of the parties, especially in terms of execution, creditors will feel more protected and debtors will have certainty regarding the obligations that must be fulfilled.²³ This, in turn, will strengthen the legal system that underpins financial and financing relationships in Indonesia.

Furthermore, these improvements will also provide better protection for creditors who have provided financing. In the context of collateral rights, legal certainty regarding the execution of collateral will reduce the risk of bad debt, which can be detrimental to the banking sector and other financial institutions. In addition, with greater certainty in terms of enforcement, debtors will also feel more at ease because the debt settlement process can proceed clearly and without delay.

Improvements in the quality and legal certainty of the execution of collateral rights will have a positive impact on the Indonesian economy as a whole. A safer and more efficient financing process will create a healthier investment climate and attract investors. Therefore, regulatory improvements in the execution of parate executie are not only important for legal certainty for creditors and debtors, but also for supporting sustainable economic progress in Indonesia.

3.2. Legal Certainty in Debt Collection Processes Land as Collateral

Normatively, the UUHT (Mortgage Law) aims to provide clear legal protection for creditors' rights, especially in the execution of collateral in the form of land. Article 6 of the UUHT gives creditors the right to independently sell land collateral through a parate executie mechanism, which aims to accelerate the debt repayment process if the debtor defaults. This is very important because, until now, the enforcement process through the courts has often

²¹ Christin Natalia Tambunan and Atik Winanti, "Perlindungan Hukum Bagi Pemenang Lelang Eksekusi Hak Tanggungan Yang Tidak Dapat Menguasai Objek Lelang (Studi Kasus Putusan No.3/PDT.G/2018/PN.Lgs)," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 821–29, <https://doi.org/10.22225/juinhum.5.1.8528.821-829>.

²² Rodiah Rohmani Ummi Maskanah, Yeti Setiawati, Melliana Wijaya, "Dinamika Hukum Penghapusan Barang Inventaris Pemerintah Dan Implikasi Pelaksanaan Lelang Non Eksekusi Wajib," *Jurnal de Facto* 11, no. 1 (2024): 50–65.

²³ Sungailiat et al., "Almufi Jurnal Sosial Dan Humaniora Analisis Yuridis Terhadap Tindak Pidana Menduduki Lahan Dalam."

been time-consuming, bureaucratic, and costly, which ultimately slows down the settlement of debts.²⁴

Although the UUHT grants creditors the right to conduct *parate executie* without court intervention, in practice this provision is often not consistently implemented.²⁵ This is due to unclear implementing regulations, differences in interpretation of existing regulations, and court decisions that require the intervention of the Chief Justice in the execution process. For example, Supreme Court Decision No. 3021 K/Pdt/1984 and Supreme Court Circular Letter (SEMA) No. 7 of 2012 add a requirement for the execution of judgments, namely that the approval of the Chief Judge of the District Court must be obtained before the execution can take place. This clearly contradicts the original spirit of the UUHT, which intended *parate executie* to be a quick and efficient mechanism without court intervention.

One of the main problems in the practice of *parate executie* is the inconsistency between existing legal provisions and the interpretation of implementing regulations and court decisions. Although the provisions in Article 6 of the UUHT give creditors the right to carry out direct execution through auction without having to go through the courts, in reality there are often obstacles and bureaucracy that hinder the execution process. This is further exacerbated by the existence of Supreme Court Circular Letter (SEMA) No. 7 of 2012, which requires permission from the Chief Judge of the District Court, which clearly contradicts Article 6 of the UUHT, which provides for easy execution without court intervention.²⁶

This ambiguity causes creditors, especially financial institutions, to be reluctant to use the *parate executie* mechanism because they are concerned that the execution process will be hampered and other legal problems will arise. This concern is justified because many provisions in the implementing regulations do not support the effective implementation of *parate executie*. For example, Article 14 paragraphs (2) and (3) of the UUHT stipulate that execution can be carried out based on a certificate of encumbrance that already has permanent legal force. However, in reality, the implementation of this provision does not always run smoothly, making it difficult for creditors to execute land collateral without the intervention of the court.

According to Jeremy Bentham's legal theory, the law must provide the greatest happiness for society by creating justice and prosperity. In this context, the UUHT should serve to provide legal certainty, not only for creditors but also for debtors as parties who have an obligation to fulfill their debts. Therefore, legal certainty must exist in the *parate executie* mechanism so that both parties can exercise their rights and obligations in accordance with applicable law. However, reality shows that in the implementation of *parate executie*, existing

²⁴ Kharisma Ika Nurkhasanah, Dhafina Fazarona, and Cantika Asnanti, "Legal Protection for Creditors Holding Second Rank Collateral That Cannot Be Executed," *Indonesian Journal of Interdisciplinary Research in Science and Technology* 3, no. 2 (2025): 209–24, <https://doi.org/10.55927/marcopolo.v3i2.10>.

²⁵ Eliyana Budiningsih and Ana Silviana, "Perlindungan Hukum Bagi Pihak Ketiga Dalam Penggunaan Hak Tanggungan Sebagai Jaminan," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025): 3490–96, <https://doi.org/10.38035/jihhp.v5i4.4549>.

²⁶ Wahab Aznul Hidayat et al., "Realizing Restitution Justice for Child Victims of Sexual Assault Regulated Child Protection," *Jurnal USM Law Review* 7, no. 2 (2024): 26–37, <https://doi.org/https://doi.org/10.26623/julr.v7i3.9697>.

practices often contradict these basic legal principles.

This occurs because many provisions that should support the execution process, such as the Supreme Court Circular Letter and the Circular Letter from BUPLN, actually add to the administrative burden and prolong the implementation time. This legal uncertainty adds to the losses incurred by creditors who have tried to fulfill their obligations to provide financing but are hampered by overlapping provisions.

One of the main distortions in the implementation of *parate executie* is the existence of conflicting dualism in regulations, namely the provisions in the UUHT that call for a quick and courtless execution process, and court decisions and circular letters that require permission from the Head of the District Court before execution can be carried out. SEMA No. 7 of 2012, which requires permission from the Head of the District Court to carry out execution, contradicts Article 6 of the UUHT, which gives creditors the authority to directly sell collateral without the need for a court.²⁷

These implementing regulations and court decisions should not hinder the implementation of *parate executie*, but instead worsen the situation by adding time, costs, and complexity for creditors. SEMA No. 7 of 2012, although it does not have the same legal force as a law, is often used in practice as a legal basis for enforcement, which ultimately hinders the objective of the UUHT to provide convenience and legal certainty for creditors.

Based on the above description, it is very clear that legal reform is needed in the implementation of *parate executie*. The government and related institutions need to immediately improve and refine existing implementing regulations. One of the steps that must be taken is to revoke or revise SEMA No. 7 of 2012, as well as clarify regulations regarding extrajudicial enforcement so that they are in line with the spirit of the UUHT, which calls for fast, inexpensive, and efficient enforcement. The drafting of more comprehensive and explicit implementing regulations is a must in order for Article 6 of the UUHT to be optimally applied. Provisions related to mediation, the provision of debt restructuring opportunities, and the timely execution of enforcement must be included in these regulations to maintain a balance of rights between creditors and debtors.

Furthermore, clear regulations regarding the rights and obligations of the parties in *parate executie* enforcement are very important to reduce the potential for disputes and legal uncertainty. Detailed regulations regarding the debtor's right to make payments or restructure debts before enforcement is carried out will provide an opportunity for debtors to improve their financial situation. However, on the other hand, clear regulations will ensure that creditors have the right to carry out execution if the debtor fails to fulfill their obligations. Reforms in *parate executie* execution must also pay attention to the aspects of transparency and accountability in the implementation of auctions. Auctions must be conducted openly and fairly, so that both debtors and creditors can feel that the execution process is carried out with high integrity.

²⁷ Sonjaya and Winanti, "Pelaksanaan Parate Eksekusi Objek Hak Tanggungan Tanpa Fiat Pengadilan Untuk Menyelesaikan Kredit Bermasalah."

In addition, strict supervision of the auction process must be carried out by the competent authorities to prevent abuse of authority or fraud in the sale and purchase of collateral. In this context, the Supreme Court, as the highest judicial institution, must also play an active role in providing clarification and guidance on the implementation of the UUHT. One step that can be taken is to issue more specific regulations related to the implementation of parate executie, so as to avoid differences in interpretation between courts. With more explicit and clear rules, the execution can be carried out more efficiently and in accordance with the original objectives of the UUHT.

Furthermore, the role of financial and banking institutions in complying with the provisions of the UUHT must be encouraged by providing training and education regarding their rights and obligations in the collateral execution process. This aims to ensure that these institutions can execute collateral rights in an appropriate manner and not cause legal problems in the future.

The government must also pay attention to the rights of debtors in this process. As stipulated in various regulations, debtors also have the right to be given the opportunity to fulfill their obligations. In some cases, debtors may experience temporary financial difficulties, so arrangements that provide opportunities for restructuring or rescheduling payments can help them settle their debts without having to go through the execution process.

Legal reforms aimed at improving parate executie enforcement will also have a positive impact on the stability of the country's financial system. When enforcement is carried out clearly and efficiently, financial institutions will feel more secure in providing credit. This, in turn, can increase public access to the financing needed for business development and investment, which will ultimately drive economic growth. Thus, improving regulations related to parate executie will provide significant benefits not only for creditors, but also for debtors and the economy as a whole. Legal certainty in debt collection processes involving land as collateral will create a more fair, efficient, and transparent legal system, which will provide long-term benefits for all parties involved.

This reform is also expected to create a better legal culture in Indonesia. With a clearer and more decisive execution system, the public will better understand their rights and obligations in debt transactions involving land. In addition, consistent law enforcement will reduce the potential for abuse of authority and injustice in the execution process. Finally, the success of reforms in the parate executie enforcement process will depend on the commitment of all parties involved, including the government, judicial institutions, financial institutions, and the public. By working together, it is hoped that a better legal system can be created that supports the achievement of sustainable economic development goals in Indonesia.

4. CONCLUSION

Land as collateral in debt collection processes in Indonesia plays a very important role, given its stable value and high marketability, making it the primary choice for creditors. The Land Law provides a strong legal basis for collateral rights, including the right of creditors to

execute through parate executie mechanisms, which aim to provide efficiency in the execution process without involving the courts. However, in practice, the implementation of parate executie still faces challenges such as inconsistencies between legal provisions and their implementation, as well as unclear implementing regulations that prolong the execution process. Therefore, legal reform is needed to clarify regulations related to physical control of collateral, auction procedures, and reduce bureaucratic obstacles that interfere with the execution process. These improvements are expected to create a more efficient, fair, and transparent collateral system, provide better legal certainty for both parties, and support the stability of the country's economy and financial system as a whole.

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