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Execution of Mortgage Rights: Creditor's Legal Remedies for Third Party Claims Against Auctioned Collateral

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Abstract. This study examines the legal implications of lawsuits filed against collateral objects on the implementation of mortgage right execution under Indonesia Mortgage Law. Normatively, Article 6 of the Mortgage Law stipulates that upon the debtor's default, the first-ranking mortgage holder has the right to independently sell the mortgaged object through a public auction (parate execution). However, in practice, such executions are frequently obstructed by pre-auction lawsuits concerning the collateral, thus impeding enforcement. Using an empirical juridical method, this research analyzes the legal consequences of lawsuits on the execution of mortgage rights and the creditor's legal remedies upon a lawsuit filed against the object of the mortgage right. The result of this study indicate that a lawsuit concerning the collateral object for auction legally prevents the execution of mortgage rights through parate execution, and the legal remedy available to banks as a creditor is to pursue execution through an executorial title in District Court. This process requires a fiat executions issued by the Chief Judge of the District Court, in accordance with Article 34 paragraph (3) of the Minister of Finance Regulation concerning Auction Guidelines 2023. This study recommend that the government should enact a specific regulation governing the procedures for executing mortgage rights via District Courts as mandated by article 26 of Mortgage Rights. Furthermore, the judiciary is encouraged to establish dedicated units within District Courts specifically tasked with handling collateral executions, to develop and implement of nationwide online filling system for execution applications.

Keywords: Auction; execution of mortgage rights; lawsuits; parate execution.

INTRODUCTION

Banking institutions constitute one of the key financial entities supporting a country's financial stability (Ismamudi et al., 2023). In Indonesia, the regulatory framework governing banking is stipulated in Law No. 10 of 1998 Concerning Amendments to Law No. 7 of 1992 on Banking (Law No. 10/1998 on Banking) as well as in Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law), specifically in Chapter IV on the Banking Sector. Pursuant to Article 14 paragraph (2) of the P2SK Law, banks as financial institutions, are not only responsible for collecting public funds but also distributing them through credit facilities (Purba et al., 2022). Credit constitutes a banking activity in which funds are provide based on a loan agreement obligating the borrower to repay the debt, including interest, within the term of the credit agreement.

In granting credit, the Banking Law mandates that banks conduct a thorough analysis of the debtor's ability to repay the loan in accordance with the agreed credit terms through a structured credit assessment process. This process involves evaluating the debtor's capacity to repay by applying the prudential banking principles and the 5C's principle. As stipulated in the elucidation of Article 8 of the Banking Law "before extending credit, bank must assess the debtor's Character, Capacity, Capital,

Collateral and Condition (Sari, 2023). According to the 5C's principles, collateral is one of the key factor considered in credit approval. Collateral may consist of goods, project or receivables financed by the respective credit facility. A commonly accepted form of collateral under property law is land, which as explained in the elucidation on Article 8, must have legally recognized ownership to be valid as collateral.

When a debtor provides collateral in the form of land rights, not only Banking Law but also the provisions of Mortgage Law apply. Given the crucial role of banks as financial institutions in supporting development, all parties involved in the credit distribution process, namely bank as creditor, the debtors as borrower, and other related parties, must be afforded legal protection (Setyabudi & Mashdurohatun, 2022). Such protection is guaranteed through a strong legal framework for mortgage rights, which ensures legal certainty for all parties involved. Collateral in the form of land rights is secured by a mortgage right under Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as Mortgage Law). The mortgage right is a security interest attached to land rights to guarantee repayment of a specific debt, granting the creditor preferential status. As an accessory agreement, it follows the principal debt and provides the creditor with a priority claim. The main purpose of the mortgage right is to ensure legal certainty and protect the creditor's interest in the debtor's repayment through land as collateral. In case of default, the bank as the mortgagee has the legal right to enforce the mortgage right to recover the outstanding credit.

The execution of mortgage rights refers to creditor's legal action to sell the secured property when the debtors fails to fulfill their repayment obligations as stipulated in the credit agreement. (Rozmi, n.d.) Pursuant to Article 6 of the Mortgage Law, which serves as a normative provision (das sollen), it stipulates that : "In the event of default by debtor, the holder of the first ranking mortgage right shall have the authority to sell the collateral object on their own authority through a public auction and to satisfy their claim from the proceeds of the sale." This provision affirms that, upon the debtors default, the first ranking mortgage holder holds a preferential position over other creditors and may recover the debt by selling the collateral independently through the Public Auction Office (this process hereinafter referred to as parate execution). However, in practice (das sein), the execution of mortgage rights through parate execution does not always proceed as mandated by the Mortgage Law. The execution of Mortgage Rights is often impeded by various legal and practical obstacles (Harahap & Siregar, 2023). One of the most common being the filing of lawsuits against the collateral object intended for parate execution through the Public Auction Office. This results in a discrepancy between das sollen (the law as it should be) and das sein (the law as it is), particularly in cases where legal claims are filed against the collateral during the enforcement process.

To achieve novelty in this study, a review was conducted on several previous studies with similar topics, including the research conducted by Noor, dkk (2023), entitled "The Complexity of Mortgage Right Execution: An Analysis of Enforcement, Challenges, Information Asymmetry, Bureaucracy and Property Ownership", examines the complexity of enforcing Mortgage Rights, focusing on issues such as enforcement difficulties, information asymmetry, bureaucratic obstacles, and property ownership. The analysis is conducted using a normative legal research approach. (Noor et al., 2023), in contrast, this study adopts an empirical legal research approach, focusing specifically on one of the key challenges in the execution of Mortgage Rights, the filing of lawsuits during the execution process, and examines its legal implications for the enforcement of Mortgage Rights. Furthermore, the research by Mayasari (2025) entitled "Legal Certainty in the Execution of Mortgage Rights Concerning Lawsuits Filed by Heirs of the Mortgaged Property Owner," which focuses on legal certainty in the execution of mortgage rights in relation to heirs' claims on the mortgaged property. This study highlights that legal claims against Mortgage Rights are often initiated by the heirs of the mortgaged property owner, based on argument that the mortgage right was imposed after the death of the original owner (the decedent). These claims raise legal questions regarding the validity and enforceability of the Mortgage Right and its implications for legal certainty in the execution process. (Mayasari et al., 2025) Meanwhile, this study focuses on the resolving of legal consequences arising from lawsuits filed during the execution of mortgage rights, without limiting the scope to claims filed by heirs. It aims to analyze the legal remedies available when such claims are brought against the collateral subject to parate execution through the Public Auction Office. As a continuation of previous research, this study uses empirical methods to examine the mechanisms available to banks, as creditors, in responding to such legal challenges. Furthermore, it offers

recommendations for accelerating the execution process of mortgage rights as a means to resolve non-performing loans and to ensure legal protection for the mortgage right holder.

Based on the background above, the research problems are formulated as follows : 1)What are the legal consequences of lawsuits filed against collateral on the execution of Mortgage Rights through parate execution ?. 2) What are the legal remedies available to creditors upon a lawsuit filed against the object of mortgage right subject to parate execution? This study aims to examine the legal implications arising from lawsuits filed against collateral in the execution of Mortgage Rights through parate execution and to explore the legal remedies available to creditors upon a lawsuit filed against the collateral to resolve non performing loans. Therefore, it is considerable interest to examine this topic in study entitled "Execution of Mortgage Rights: Creditor's Legal Remedies for Third Party Claims against Auctioned Collateral"

METHOD

This study employs an empirical juridical approach to address the gap between the normative framework (*das sollen*) and the actual practice (*das sein*). Pursuant to Article 6 of the Mortgage Law stipulates that "upon the debtor default, the holder of first ranking mortgage right has the authority to independently sell the mortgaged property through a public auction and satisfy their claim from the proceeds of such sale" (*das sollen*). However, in practice (*das sein*), the realization of this legal provision by the first ranking mortgage holder often faces significant obstacles. Among these challenges are legal disputes regarding the parate execution of the mortgage rights, which impede banks, as creditors, in their efforts to recover non performing loans effectively. This research aims to identify and analyze the factors contributing to the gap between the legal provisions and their actual application, with a focus on the experiences of financial institutions in Bali Province. To achieve this, the study employs a mixed-methods approach, utilizing both primary and secondary data sources. Primary data were obtained through direct fieldwork, including interviews and observation conducted at the State Asset and Auction Service Office (KPKNL) in Denpasar and Singaraja, as well as various banking institutions operating within Bali Province. Secondary data consist of statutory regulations, academic journals, and other relevant literature to provide a comprehensive theoretical and contextual background.

DISCUSSION

Legal Consequences of Lawsuits Filed Against Collateral Objects Auctioned through Parate Execution

In the process of credit distribution by banks, there remains an inherent risk of debtor default, notwithstanding the initial credit assessment which rigorously evaluates factors including the debtor's character, repayment capacity, capital, collateral and condition economic of the debtor's (Utami & Yustiawan, 2021). Defaults is defined as a debtor's failure to fulfill the obligations as stipulated in Article 1243 of the Indonesia Civil Code. In the context of credit agreements, default occurs when the debtor fails to make the installment payments as agreed upon in the contract. Such default by the debtor significantly affects the credit quality, which is typically measured through the credit's collectability (Li et al., 2024). Based on the Financial Services Authority Regulation No. 40/POJK.03/2019 concerning the Assessment of Asset Quality of Commercial Banks, credit collectability is categorized into five classifications : Performing (where the debtor does not default and payments are made punctually); Special Mention (payment is overdue by 1 to 90 days); Substandard (payment is overdue by 1 to 90 days); Substandard (payment is overdue by 91 to 120 days); Doubtful (payment is overdue by 121 to 180 days); and Loss (payment overdue for more than 180 days). Loans categorized as special mention, substandard, doubtful and loss categories are collectively considered as Non-Performing Loans (NPL).

Based on an interview with the Credit Resolution Department of a State Owned Commercial Bank in Badung Regency, it was stated that when a debtor defaults, the bank initial measure is to send a warning letter to the debtor, issued progressively up to three times. The warning letter specifies the outstanding amount, repayment deadline, and late payment penalties (interview conducted on July 9,

2025). From the perspective of the Indonesia Civil Code, the issuance of a warning letter to a defaulting debtor complies with Article 1238, which essentially stipulates that a debtor is considered to be in default upon receipt of a formal warning or a similar legal document. Additionally, according to the President Director of a Rural Bank in Karangasem Regency, when the debtor defaults and the credit classified in to Non-Performing Loan, the Bank will first undertake efforts to rehabilitate the credit. The most common recovery method employed by the bank is credit restructuring (interview conducted on July 15, 2025).

Credit restructuring, as defined in Article 1 point 25 Financial Services Authority Regulation No. 40/POJK.03/2019, refers to the remedial measures undertaken by banks in credit activities to assist debtors experiencing difficulties in fulfilling their obligations. Form of restructuring include a reduction of the credit interest rate, extension of the credit term, reduction of principal and interest arrears, and the provision of additional credit facilities (Yustisia, 2021). However, if credit restructuring effort have been undertaken but the debtor remains unable to fulfill their payment obligations or improve the credit collectability status from NPL to Performing, and the credit ultimately classified as loss, the bank will initiate legal action on the collateral pledged by the debtor. (Utami, 2019)

In cases where the collateral provided consist of land rights encumbered by a mortgage right, the resolution of NPL refers to the provisions of the Mortgage Law, under which the bank executes the mortgage right. According to Subekti, execution refers to efforts to enforce a court decision. Yahya Harahap further defines execution as the process by which the winning party enforces their rights compulsorily based on a court ruling, due to the losing party's refusal to voluntary comply with the decision.(Hardianysah, 2022) In the context of mortgage rights, the mortgage serves as a form of real guarantee over land rights to secure the debtor's repayment obligations to the creditor. This legal mechanism grants the creditor a preferential position. Upon establishing the mortgage rights, a Certificate of Mortgage is issued, bearing the inscription "FOR JUSTICE BASE ON THE ONE AND ONLY GOD", in accordance with Article 14, paragraph (3) of the Mortgage Law. This article stipulates that "The certificate of Mortgage holds executory power equivalent to a court decision with permanent legal force. Therefore, in the event of NPL, to protect the creditor's preferential rights, execution of the mortgage right may be carried out.

Regulation regarding the execution of mortgage rights are stipulated in Article 20 paragraph (1) on Mortgage Law, which states that upon the debtor's default, execution may be carried out through : (a) the right of the first-ranking mortgage right holder to sell the collateral object as referred to in Article 6 (*parate execution*), or (b) the executory title contained in the mortgage rights certificate as referred to in Article 14 paragraph (2), whereby the collateral object is sold through a public auction. Furthermore, paragraph (2) provides that the sale of the collateral may also conducted through a private sale, based on an agreement between the mortgagor and the mortgagee holder. Based on field research conducted through the questionnaires distributed to several banking institutions in the Province of Bali, it was found that the most frequently used method of execution for resolving NPL is private sale, provided that the debtor cooperative. However, if the debtor is uncooperative, the collateral is sold directly through the State Assets and Auction Service Office (KPKNL).

Pursuant to the Provisions of Article 6 of the Mortgage Law, in the event of a debtor's default, the first-ranking holder of the mortgage right is entitled to sell the collateral on their own authority through a public auction and to recover the debt from the proceeds of such sale. The right to independently execute the sale of the secure object is referred to as *parate executions*. *Parate execution* refers to an enforcement mechanism exercise by the mortgage holder (either in the form of pledge or mortgage) without the involvement or approval of the District Court, relying solely on the assistance of the State Auction Office. In other words, *parate execution* is carried out without the need to obtain *fiat executie* or prior authorization from the court.(Mochamad et al., 2021)

The authority to conduct public auctions lies with the State Assets and Auction Service Office, which functions as a technical implementing unit under the Directorate General of State Assets, within the Ministry of Finance of the Republic Indonesia. Pursuant to Ministry of Finance Regulation No. 122 of 2023 concerning Auction Guidelines (hereinafter referred to as Ministry of Finance Regulation on Auction Guidelines 2023), auctions are classified into three types : Executions Auctions, Non Execution Auctions, and Voluntary Auctions. The auction of mortgage right is categorized as an Execution

Auction, as stipulates in Article 3 letter (d) of the Ministry of Finance Regulation on Auction Guidelines 2023. The institutions authorized to conduct auctions include State Assets and Auction Service Office, Auction Officers Class II and licensed Auction Houses. However, only State Assets and Auction Service Office is legally authorized to carry out execution auctions of mortgage rights including *parate execution*.

Based on an interview with a Senior Auctioneer at the Denpasar Office of the State Assets and Auction Service, the procedure for initiating a *parate execution* of mortgage right involves the submission of the required supporting documents. Subsequently, The Auction Officer conducts an administrative review to verify the completeness and compliance of the submitted documents. In case where the documentation is found to be incomplete, the application is returned for revision and completion. Upon confirmation that the documentation is complete, the auction date is scheduled. Prior to the auction, a public announcement must be published in a newspaper on two separate occasions to ensure transparency. The process then proceeds to the bidding stage. If a winning bidder is determined, a formal decision confirming the winning party is issued. This is followed by the payment and deposit of the auction proceeds, which utilize to settle the debtor's outstanding obligations. After the debt has been fully settled, the ownership documents of the auctioned asset are transferred to the buyer. The procedure concludes with the issuance of the official auction report and its certified excerpt. (interview conducted on July 08, 2025)

Although the procedures for conducting *parate execution* of mortgage rights have been formally regulated under the Ministry of Finance Regulation on Auction Guidelines 2023, the practical implementation of *parate execution* often deviates from the prescribed framework. Creditors holding mortgage rights frequently encounter various challenges. Based on the field research conducted through questionnaires distributed to banking institutions across the Province of Bali, one of the most prevalent issues in the implementation of *parate execution* is the filling of legal claims or lawsuits related to the collateral subject to auction. The research data indicate that disputes over collateral, particularly in the form of legal challenges against the planned auction, constitute the most common obstacle faced by banks, accounting for approximately 46,7% of reported cases (research data on file with the author)

Based on interview with a Junior Expert Auctioneer at Singaraja Office of the State Assets and Auction Service, it was explained that in the submission of *parate execution* of mortgage rights, Office of the State Assets and Auction Service holds administrative authority to verify the auctioned asset. One of the verification stages involves reviewing the required documents submitted with the auction request, including the Land Registration Certificate (Surat Keterangan Pendaftaran Tanah/SKPT), which is issued by the local office of the National Land Agency. The Land Registration Certificate contains essential information regarding the legal status, physical characteristics and juridical data of the land parcel. This information serves as a basis for the State Assets and Auction Service Office to assess the feasibility of proceeding with the auction. A primary focus of SKPT examination is whether the land is subject to any encumbrances, such as blocking orders, seizures, disputes, or legal claims. The presence of such encumbrances, particularly seizures, blocking order, or lawsuits, can significantly affect the *parate execution* process. Legal claims filed against the mortgaged asset, especially those accompanied by blocking or seizure measures, represent key concern considered by the State Assets and Auction Service when authorizing the auction process.

The legal consequences arising from the filling of a lawsuit against a collateral objects in relation to the implementation of *parate execution* of mortgage right are regulated under the Ministry of Finance Regulation on Auction Guidelines 2023, Article 34 paragraph (1) stipulates that :

“In the event that, prior to the execution of an auction involving mortgaged object, a lawsuit is filed by a third party,-other than the debtor/collateral owner and/or the spouse of the debtor/collateral owner,-challenging the ownership of the object to be auctioned, the execution auction of the mortgaged object as referred to in Article 6 of The Mortgage Rights shall not be conducted.

Further clarification regarding the categories of third parties entitled to file such a lawsuit is provided in Article 34 paragraph (2), which outlines the following:

Lawful heirs who claim that the mortgage right was established after the death of the original owner of the collateral, supported by valid evidences;

Other parties who possess ownership documents that differ from those used to secure the mortgage; or

Parties who had entered into a notarized agreement of sale and purchase prior to the establishment on mortgage right.

The President Director of a Rural Bank in Karangasem Regency stated that, in practice, debtors frequently attempt to obstruct or delay the *parate execution* process by facilitating the filling of lawsuits by third parties, often based on various agreements involving the collateral. These legal actions commonly result in the issuance of seizures or blocking order, which are recorded in the Land Registration Certificate/SKPT (interview conducted on July 15, 2025). This statement corroborated by the Credit Recovery Division of a State Owned Commercial Bank in Badung Regency, which confirmed that one of the most recurrent obstacles in the implementation of *parate execution* is the filling of third-party lawsuits concerning the collateral. These lawsuits are typically accompanied by encumbrances, such as blocking or seizure orders, often arising from prior agreements or loan contracts between the collateral owner and another party involving the same assets. Although the bank may be the lawful holder of the mortgage right, such lawsuits and the resulting encumbrances are considered by the State Assets and Auction Service Office as legitimate grounds to postpone or reject the execution auction request, in accordance with Article 34 of the Ministry of Finance Regulation on Auction Guidelines 2023 (interview conducted on July 9, 2025). Consequently, the legal implication of a third party lawsuit filed against the object of a mortgage right intended for *parate execution* is the suspension, or in some cases, prohibit the auction process. This situation places the mortgagee at a significant disadvantage, as the creditor is effectively prevented from exercising the priority rights granted under the law, despite holding a valid and preferential security interest following the debtor's default.

Legal Remedies Available to Creditors in Response to Lawsuit Filed Against Collateral Auctioned Through Parate Execution

As stipulated in Article 34 paragraph (1) of the Ministry of Finance Regulation on Auction Guidelines 2023, if a third party files a lawsuit concerning the ownership of collateral prior to the execution of an auction, the auction based on Article 6 of Mortgage Law may not proceed. Such a legal impediment may delay the resolution of NPL, thereby contributing to a rise in the NPL ratio and adversely affecting the financial stability of the bank. Consequently, creditor banks holding mortgage rights must explore alternative legal remedies to recover outstanding debts. Article 34 paragraph (3) of the Ministry of Finance Regulation on Auction Guidelines 2023, further stipulates that: "With respect to the object of mortgage rights as referred to paragraph (1), the auction shall be carried out on the basis of the executorial title of the mortgage rights certificate, which requires a writ of execution (*fiat execution*). This means that in cases where a lawsuit filed against the collateral object before the execution of mortgage right, the auction may only be conducted upon obtaining a writ of execution (*fiat execution*) issued by the District Court.

A Fiat execution is a juridical order issued by the Chief Judges of the District Court, authorizing the court bailiff to execute the seizure and sale of collateral object (Yuri & Qomarudin, 2024). In the context of mortgage rights, this order is granted on the basis of mortgage right certificate, which constitute an executorial title denoted by the official inscription "FOR JUSTICE BASE ON THE ONE AND ONLY GOD". Pursuant to article 14 paragraph (2) and article 20 paragraph (1) point (b) of the Mortgage Law, the mortgage right certificate carries the same legal force as a final and binding court decision. Furthermore, Article 26 of Mortgage Law stipulates that: "Until legislation specifically governing the execution of mortgage rights is enacted, and with due regard to the provisions of Article 14, the rules regarding the execution of *hypothek* shall apply to the execution of mortgage rights. This provision implies that the execution procedures under Article 14 of Mortgage Law must be conducted by the Chief Judge of the District Court in accordance with the civil procedural rules outlined in Articles 195-208 of the *Herziene Indonesisch Reglement* (HIR) and Articles 206-224 of the *Rechtsreglement voor de Buitengewesten* (Rbg). (Kurniawan et al., 2023)

The procedural stages for executing a mortgage right based on executorial title issued by the court are as follows : (Yuri & Qomarudin, 2024)

Filing of execution request to the district court

Pursuant to article 14 of the Mortgage Law, the creditor, as the holder of mortgage right, must submit a formal execution request to the Chief Judge of the relevant District Court. This request must be accompanied by the Mortgage Right Certificate which contains the executorial title.

Issuance of *Aanmaning* (Judicial Warning)

Aanmaning is a formal judicial warning issued to the debtor, the losing party in civil case, intended to encourage voluntary compliance with the executorial title specified in the Mortgage Rights Certificate. The Chief Judge summon the debtor to attend an *aanmaning* hearing and voluntarily surrender the collateral. Should the debtor fails to comply, subsequent enforcement actions action will be undertaken.

Issuance of *Fiat Execution*

Following the review and acceptance of the execution request, the Chief Judge issues a *fiat execution*, which constitutes a judicial order authorizing the continuation of the execution process to the subsequent stages.

Order of Judicial Seizure (Sita Execution)

If the debtor does not comply voluntarily after the *aanmaning*, the Chief Judge will issue a judicial order to seize the collateral. This seizure serves as the legal basis for proceeding with the auction process.

Judicial Order for Auction Execution

The court will issue a decision authorizing the auction, specifying the auction date and establishing the minimum sale price for the collateral.

Implementation of Public Auction by State Assets and Auction Service Office

Pursuant to the court's auction order, the State Assets and Auction Service Office conducts a public auction of the mortgage collateral in accordance with article 34 paragraph (3) of the Ministry of Finance Regulation on Auction Guidelines 2023.

Based on the foregoing discussion, it can be concluded that, in practice, the filling of a lawsuit against the implementation of parate execution of mortgage results in legal consequences, such as rejection of the execution process by the State Assets and Auction Service Office. This illustrates that although creditors are normatively granted a preferential status and the rights in execution, practical challenges emerge when third-party claims are asserted against the collateral object. Consequently, execution based on the executorial title pursuant to article 14 of Mortgage Law constitutes a legally wable alternative for enforcing mortgage rights. This mechanism not only provide greater legal certainty for creditors but also establish a fair legal framework for debtors in resolving non-performing loans. However, based on interviews conducted with banking institutions in the Province of Bali, it is observed that execution through the executorial title – although enforceable by judicial compulsion – faces notable limitations. The key challenges identified include: (1) Prolonged proceedings. Despite the executorial force of the Mortgage Right Certificate, in practice execution through the courts involve procedural stages similar to the enforcement of a civil judgment, including the filling the request, issuance of *fiat execution*, determination of auction schedule, and coordination with the often-congested court calendar, all of which contribute to significant delays; and (2) Legal resistance. Debtor's may file opposition claims (*verzet*) and third parties may also initiate counterclaims, both of which complicate and potentially impede enforcement via the executorial title in court. These issues underscore the tension between the creditor's legal rights and procedural realities, highlighting the urgent need for more effective legal mechanisms to ensure timely and enforceable resolution of bad debts through the execution of mortgage rights.

To address the deficiencies associated with the executions of mortgage rights through executorial title in the judiciary, this study recommend a series of reforms aimed at enhancing the judicial enforcement mechanism. *First*, it is recommended that a specific regulation governing the execution of mortgage rights through executorial title in the District Court be enacted, in accordance with the mandate of Article 26 of the Mortgage Law. This regulation would establish a distinct and more efficient procedural framework for court-based execution of mortgage rights. *Second*, the study recommends the establishment of a specialized unit within the judiciary dedicated to handling the execution of collateral, considering the increasingly congestion in general civil court dockets. The existence of such a specialized unit is expected

to streamline case management and reduce procedural delays. *Third*, it is recommended that District Court develop an electronic system for execution requests to facilitate faster, more transparent and more accessible submission and processing of applications for execution of mortgage rights through executorial titles. The implementation of this digital system is anticipated to enhance procedural efficiency alleviate administrative burdens in judicial executions. The development of an online system for filling executorial title based execution request has already been implemented at the Pati District Court in Central Java (Pati, 2025). However, this online system has not yet been uniformly adopted across other District Courts throughout Indonesia. The nationwide implementation of such as a online execution request system would substantially support the realization the Mortgage Law mandate concerning the mortgage rights execution adhered to simplicity principle and legal certainty. Furthermore, it would enhance legal certainty for all parties involved in resolving debtor default in credit agreements, thereby strengthening the effectiveness and efficiency of judicial mechanisms in enforcing mortgage rights.

CONCLUSION

The legal consequence of a third party lawsuit against the mortgage object to be auctioned is the suspension of parate execution of the mortgage right, as stipulated in Article 34 paragraph (1) of the Minister of Finance Regulation concerning Auction Guidelines 2023. When the execution of mortgage right through parate execution is obstructed by a third party claim, the legal recourse available to creditor is to seek execution through an executorial title. This procedure requires a writ of execution (fiat executio) issued by the Chief Judge of District Court, in accordance with Article 34 paragraph (4) of the same regulation.

In light of this, the present study proposes several recommendations to improve the execution mechanism of mortgage rights through the judiciary. *First*, the government should enact a specific regulation governing the procedures for executing mortgage rights via District Courts as mandated by article 26 of Mortgage Rights. This regulation would provide a clear and more efficient procedural framework distinct from general civil execution rules. *Second*, the judiciary is encouraged to establish dedicated units within District Courts specifically tasked with handling collateral execution. *Third*, the development and implementation of nationwide online filling system for execution applications is recommended to improve efficiency, transparency, and accessibility in proceedings based on executorial titles. Furthermore, creditor banks are advised to exercise greater diligence in collecting and organizing documentary evidence of debtor default. Comprehensive documentation is crucial not only to substantiate the legal validity of the execution request but also to mitigate the risk of third party legal challenges that could obstruct or delay the execution process.

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REFERENCES

Harahap, A. T., & Siregar, H. A. (2023). LEGAL REVIEW OF THE EXECUTION MECHANISM OF MORTGAGE RIGHTS AT BANK DKI JAKARTA. *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum*, 2(6), 561–568. <https://doi.org/10.55681/seikat.v2i6.1025>

Hardianysah, F. (2022). Pelaksanaan Parate Eksekusi Dalam Jaminan Fidusia Di Indonesia. *JISOS: Jurnal Ilmu Sosial*, 1(7), 571–584. <https://doi.org/10.55606/jhpis.v1i1.1762>

Ismamudi, I., Hartati, N., & Sakum, S. (2023). Peran bank dan lembaga keuangan dalam pengembangan ekonomi: Tinjauan literatur. *Jurnal Akuntansi Neraca*, 1(2), 35–44. <https://doi.org/10.59837/jan.v1i2.10>

Kurniawan, N. N., Utara, E. R., Susanto, H. S., & Lumbanraja, S. H. (2023). Analisis Kekuasaan Eksekutorial Di Indonesia Dalam Eksekusi Objek Jaminan Yang Dibebani Hak Tanggungan (Putusan MA Nomor 3418 K/Pdt/2019). *Diponegoro Private Law Review*, 8(2), 116–131.

Li, Y., Wang, H., Gao, H., Li, Q., & Sun, G. (2024). Credit rating, repayment willingness and farmer credit default. *International Review of Financial Analysis*, 93, 103117. <https://doi.org/10.1016/j.irfa.2024.103117>

Mayasari, I., Kumala, Y. C., & Mustafa, M. E. (2025). KEPASTIAN HUKUM EKSEKUSI HAK TANGGUNGAN TERKAIT GUGATAN AHLI WARIS PEMILIK OBJEK HAK TANGGUNGAN. *Case Law: Journal of Law*, 6(1). <https://doi.org/10.25157/caselaw.v6i1.4780>

Mochamad, M., Rachmad, B. A., Iwan, P., & Siti, H. (2021). PARATE EXECUTION OF LIABILITY RIGHTS BY CREDITORS AS A LEGAL ACTION: A CASE STUDY OF INDONESIA. *Russian Journal of Agricultural and Socio-Economic Sciences*, 112(4), 22–31.

Noor, A., Solihah, I. N., Dewata, M. I., Widyahastuti, M., & Najmi, N. (2023). Kompleksitas Pelaksanaan Eksekusi Hak Tanggungan: Analisis Kesulitan Eksekusi, Ketidakseimbangan Informasi, Birokrasi & Kepemilikan Properti. *Innovative: Journal Of Social Science Research*, 3(5), 8218–8232.

Pati, P. N. (2025). *Permohonan Eksekusi Online (PEKSO)*. [https://pn-pati.go.id/permohonan-eksekusi-online-peks/#:~:text=ASAL%20USUL%20LAHIRNYA%20APLIKASI%20PEKSO,putusan\) dan eksekusi jaminan fidusia](https://pn-pati.go.id/permohonan-eksekusi-online-peks/#:~:text=ASAL%20USUL%20LAHIRNYA%20APLIKASI%20PEKSO,putusan) dan eksekusi jaminan fidusia)

Purba, I. G., Sipahutar, A., & Irwansyah, I. (2022). Pengaturan pemberian kredit pada dunia perbankan di indonesia. *Jurnal Normatif*, 2(2), 203–211. <https://doi.org/10.54123/jn.v2i2.230>

Rozmi, A. F. (n.d.). Legal Analysis of Legal Protection for Debtors Who Breach of a Credit Agreement with Guarantee of Mortgage Rights. *Ratio Legis Journal*, 3(3), 106–117. <http://dx.doi.org/10.30659/rwj.3.3.%25p>

Sari, A. P. (2023). The Urgency of Applying Banking Prudential Principles in The Era of Disruption to Minimize Financing Risks. *Al-Muhasib: Journal of Islamic Accounting and Finance*, 3(2), 1–17. <https://doi.org/10.30762/almuhasib.v3i2.1100>

Setyabudi, B., & Mashdurohatun, A. (2022). Reconstruction of Legal Protection Regulations for Debtors and Third Parties in Credit Agreements with the Object of Fiduciary Based Guarantee. *Sch Int J Law Crime Justice*, 5(12), 520–526. <https://doi.org/10.36348/sijlcj.2022.v05i12.002>

Utami, P. D. Y. (2019). Kajian Yuridis Agunan Yang Diambil Alih (Ayda) Oleh Bank. *Kerta Dyatmika*, 16(2), 69–77.

Utami, P. D. Y., & Yustiawan, D. G. P. (2021). Non Performing Loan sebagai Dampak Pandemi Covid-19: Tinjauan Force Majeure Dalam Perjanjian Kredit Perbankan. *Jurnal Kertha Patrika*, 43(3). <https://doi.org/10.24843/KP.2021.v43.i03.p07>

Yuri, Y. P. E., & Qomarudin, H. (2024). Peranan Fiat Ekseksi Pengadilan Dalam Upaya Eksekusi Hak Tanggungan Berdasarkan Tinjauan Teoritis Dan Praktis. *J-CEKI: Jurnal Cendekia Ilmiah*, 3(6), 8451–8460. <https://doi.org/10.56799/jceki.v3i6.5971>

Yustisia, D. (2021). *Dampak Pandemi Covid-19 : Perspektif Kualitas Kredit Perbankan*.