

IMPLEMENTATION OF PARATE EXECUTIE BASED ON ARTICLE 6 OF LAW NUMBER 4 OF 1996 CONCERNING GUARANTEE OF DEPENDENT RIGHTS TO THE AUCTION OF OBJECTS OF DEPENDENT RIGHTS.**Sunita Caroline Pontoh, M. Sudirman**

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Abstract

In general, there are laws that provide protection to banks as lenders to obtain repayment of their debts when the debtor is in default, this is stated in Article 1131 of the Civil Code which reads: "All assets of the Debtor, whether movable or immovable, whether existing ones or those that will be in the future become dependents/guarantees. Debtor's assets, both movable and immovable, both present and future will become dependents/guarantee for their debts". Then Law Number 4 of 1996 was born which specifically regulates the implementation of Mortgage (UUHT). One of the characteristics of the UUHT is that it is easy and certain to execute, which means executing the mortgage certificate. must be carried out but can still provide legal certainty for interested parties, in this case, the auction seller, auction buyer and auctioneer. Therefore, in carrying out executions based on parate execution, it must be able to provide convenience and legal certainty for all interested parties

Keywords: Parate Executie, Auction, Mortgage, Legal Certainty.

INTRODUCTION

The community, both individually and in the form of business entities that strive to increase their consumptive or productive needs, urgently needs loan facilities by banks in the form of credit, which is very important for the improvement of their business (Simon & Samosir, 2022). Loans made by creditors to debtors are always stated in the form of an agreement as a bond that contains an agreement on rights and obligations between creditors and debtors, basically an agreement is a written document that contains the purpose and how the parties benefit, are protected and limited in their responsibilities in reaching the agreement (Wardani & Afriansyah, 2020).

Credit agreements between creditors and debtors often do not run smoothly because the loaned funds are problematic or cannot be returned by the debtor to the bank as a creditor or even become bad credit (Djumhana, Di Indonesia, & Penerbit, 2008). To prevent this risk, banks as creditors take steps from the beginning by requiring a guarantee for debt repayment in the event of bad loans by the debtor (Bastian & Junaidi, 2019). In general, there is a law that provides protection to banks as lenders to get repayment of

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| How to cite: | Sunita Caroline Pontoh, M. Sudirman (2024) Implementation of Parate Executie Based on Article 6 of Law Number 4 of 1996 concerning Guarantee of Dependent Rights to the Auction of Objects of Dependent Rights (06) 07. |
| E-ISSN: | 2684-883X |
| Published by: | Ridwan Institute |

their receivables when the debtor experiences default, it is stated in Article 1131 of the Civil Code which contains: "All assets of the Debtor, both movable and immovable, both those that exist now and those that will be in the future become dependents/guarantees for their debts".

In particular, the Government made Law Number 4 of 1996 concerning Dependent Rights on Land and Land-related Objects (UUHT) in order to provide special protection to each creditor. The UUHT has the privilege of providing guarantees to creditors to be able to quickly obtain repayment of their receivables when the debtor defaults. So that if the debtor defaults, the creditor does not need to file a lawsuit in Court but can directly apply for execution based on the certificate of dependent rights.

The convenience obtained from the birth of the UUHT is in the form of execution if the debtor is injured in the promise, in Article 20 of the UUHT provides 3 (three) options in carrying out the execution of the certificate of dependent rights, namely (Lutfiya et al., 2020):

- a. Article 20 paragraph (1) letter a, based on the right of the First Dependent Right Holder to sell the object of the Dependent Right over its own power through a public auction as referred to in the provisions of Article 6 of the Law (*Parate Executie*);
- b. Article 20 paragraph (1) letter b, the execution is carried out on the basis of the executory title contained in the Certificate of Dependent Rights, as referred to in Article 14 paragraph (2) of the UUHT. In this case, based on the irahs listed in the Certificate of Dependent Rights which contain the words "FOR JUSTICE BASED ON THE ONE GOD". The object of the dependent rights is sold through a public auction according to the procedures determined by the laws and regulations (*Title Executorial*); and
- c. Article 20 paragraph (2), agreement between the grantor and the holder of the Right of Dependency, the sale of the object of the Right of Dependency can be carried out under the hands if thereby it will be possible to obtain the highest price that benefits all parties (Sale under the hands).

Parate Executie which is regulated in the UUHT is ambiguous, this is because there are multiple interpretations between Article 6 of the UUHT and General Explanation number 9 of the UUHT and Explanation of Article 14 paragraphs (2) and (3) of the UUHT which states that the implementation of *Parate Executie* is carried out based on Article 224 H.I.R and Article 258 R.Bg (Poesoko, 2013). This condition finally makes the principle of ease and certainty of the law of *parate executie* The right of dependency is not achieved, because in the end the creditor in this case the holder of the right of dependency cannot carry out the execution of the right of dependency easily in accordance with the ideals of the establishment of the Law on the Right of Dependency as stated in the General Explanation of the Law on the Right of Dependency (Harahap & Minin, 2017).

In the implementation of the auction sale of the execution of the object of the right of dependency using *the parate executie mechanism* in Article 6 of the UUHT, the creditor or holder of the right of dependency as the seller of the object of the right of

dependency is obliged to the delivery of movable goods and/or immovable goods, this is expressly regulated in Article 12 paragraph (1) letter j of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions. However, in the Minister of Finance Regulation Number 122 of 2023, it is not regulated regarding the obligation of creditors as auction sellers to control physically first so that even though the auction has been completed, the execution process of the object of dependent rights using *the Parate Executie mechanism* cannot be said to have been completed because the auction of the execution of dependent rights can be said to have been completed when the auction buyer has mastered the object of the execution of the right Dependents (Retnaningsih, Nasution, Velentina, & Manthovani, 2020).

Based on the description above, where there is a legal problem regarding the non-regulation of the obligation for creditors as auction sellers to first control the object of physical execution of dependent rights for the convenience and legal certainty in the implementation of execution based on Article 6 of the UUHT. So in this case, the author is interested in studying and analyzing in a scientific paper with the title "Implementation of *Parate Executie* based on Article 6 of Law Number 4 of 1996 concerning the Guarantee of Dependent Rights to the Auction of Objects of Dependent Rights

RESEARCH METHOD

This research method uses a doctrinal research method, namely legal research is studied from various aspects such as theoretical aspects, principles, philosophy, comparison, structure/composition, consistency, general explanation and explanation of articles, formality and binding force of a law as well as the language used either legal language or translation language. As it can provide a wide range of descriptions (Taekema, 2018). The analysis was carried out in a qualitative descriptive manner using the deductive method. Conclusions are drawn prescriptively (Ali, 2021).

RESULT AND DISCUSSION

Implementation of *Parate Executie* on the Auction of Objects of Dependent Rights based on Article 6 of Law Number 4 of 1996 concerning Dependent Rights

Article 6 of the UUHT says "if the debtor is injured in the promise, the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency on its own power through a public auction and take the repayment of its receivables from the proceeds of the sale" . The term in Article 1178 paragraph (2) of the Civil Code is known as *parate executie*. The term "*parate executie*" etymologically comes from the word "paraat" meaning ready to be handed, so *parate executie* is said to be a means of execution that is ready in hand (Lutfiya et al., 2020). According to the legal dictionary, *parate executie* means direct implementation without going through the process (Court or Judge's determination). "Parate execution is an execution carried out when a creditor sells certain goods belonging to the debtor without having to obtain an executory title" (Fajarwati, 2017).

Of the three ways of executing the certificate of dependency, *parate executie* is the easiest and simplest way for creditors to recover their receivables, when the debtor is injured in a promise compared to the execution through the assistance and intervention of the District Court (Lutfiya et al., 2020).

In practice, the process of implementing *parate executie* has undergone a shift in meaning and not all State Property and Auction Service Offices (KPKNL) are willing to carry out auction sales of objects of dependent rights based on Article 6 of the Law (*parate executie*) on the grounds that every public sale (auction) of the object of dependent rights must go through the fiat of the Chief Court. This is motivated by the mistake of the framers of the Law and the Judiciary in understanding the two execution institutions, namely between *the parate executie* and the execution based on the executory title (Wibowo, 2023).

If *the parate executie* still has to go through the fiat of the chief justice, then the position of the *parate* (ready to be handed over) as the right to sell over one's own power is lost. Meanwhile, *parate executie* is in principle a simplified execution without involving the court. If in *the parate executie* it is required to obtain an order based on the determination/fiat of the Chief Justice of the District Court, then the sale is no different from the execution on the basis of the executory title in the Certificate of Dependent Rights and the execution of a court decision that has permanent legal force (Wibowo, 2023).

This is reviewed from the General Explanation number 9 of the UUHT stating "One of the characteristics of a strong dependent right is that it is easy and certain in the implementation of its execution, if the debtor is injured in the promise. Although in general the provisions on execution have been regulated in the applicable civil procedure law, it is considered necessary to include specifically provisions on the execution of dependent rights in this law, namely those that regulate *the institution of the parate executie* as referred to in Article 224 of the Updated Indonesian Regulations (*Het Herziene Indonesisch Reglement*) and Article 258 of the Regulations Legal Procedures for Areas Outside Java and Madura (*Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura*)." and Explanation of Article 14 paragraphs (2) and (3) of the UUHT which states "The Irah-irah stated in the certificate of dependent rights and in the provisions of this paragraph, is intended to affirm the existence of executory force in the Certificate of Dependent Rights, so that if the debtor defaults on the promise, it is ready to be executed as well as a court decision that has obtained permanent legal force, through procedures and by using *the institution of parate executie* in accordance with the provisions of the Civil Procedure Law." The two explanations above explain that the implementation of *the parate executie* refers to the provisions of Article 224 H.I.R. and 258 R.Bg and the Civil Code (Arifin, 2016).

If Article 14 paragraph (2) and paragraph (3) and General Explanation number 9 of the Law are related to Article 224 of the HIR, it can be interpreted that the Law does not specifically regulate the procedure for the execution of the object of dependent rights, but still uses the provisions in the Civil Procedure Law as a provision for the

implementation of execution. This is strengthened by the provision in Article 26 of the Law which stipulates that "as long as there are no laws and regulations regulating it, the regulations regarding the execution of hypotheks that exist at the beginning of the entry into force of this Law apply to the execution of the Right of Dependency" (Bunga, 2022).

From this explanation, the interpretation based on the law regarding *the procedure for parate executie* is the same as the procedure for the execution of the certificate of Dependent Rights, namely using procedures in accordance with the Civil Procedure Law (Gunawan, Anggraeni, & Fitri, 2023). Therefore, if the debtor is really injured in the promise (default) of *the parate executie* must go through permission and on the order of the Chief of the District Court, to be able to carry out the promise to sell under his own power, by selling the object of the Right of Dependency, but the sale is based on Article 224 HIR/258 RBg. Here the implementation of *the parate executie* experiencing a double meaning, on the one hand the implementation is directly through a public auction (Article 6 of the UUHT) but on the other hand must obtain fiat from the Chief of the District Court (based on Article 224 HIR/258 RBg) (Bunga, 2022).

In order not to lose its meaning as the general explanation of the Law number 3 letter d. regarding the ease and certainty in the implementation of its execution, the Government through the Minister of Finance of the Republic of Indonesia issued a Regulation of the Minister of Finance of the Republic of Indonesia which has been amended several times and the last amendment is the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions (Permenkeu Number 122 of 2023). The implementation of the auction sale of the execution of the object of the right of dependency using *the parate executie mechanism* in Article 6 of the UUHT, the creditor or holder of the right of dependency as the seller of the object of the right of dependency is obliged to the delivery of movable goods and/or immovable goods, this is expressly regulated in Article 12 paragraph (1) letter j of the Minister of Finance Regulation Number 122 of 2023.

However, in the Minister of Finance Regulation Number 122 of 2023, there is no regulation that requires creditors to first master the object of the guarantee of dependent rights which will be executed using *the parate executie mechanism*. With no regulation regarding the control of auction objects by creditors in the Minister of Finance Regulation Number 122 of 2023, it can raise various problems in carrying out *the parate executie*. This can be seen by the existence of SEMA No. 7 of 2012 in number XIII of the General Civil Sub-Chamber, which states "The auction of Dependent Rights carried out by the creditors themselves through the Auction Office, if the auctioneer does not want to vacate the auctioned object, cannot be emptied based on Article 200 paragraph (11) of the HIR but must file a lawsuit. Because the auction mentioned above is not an execution auction but a voluntary auction" (Bunga, 2022). Which will eliminate the easy and definite feature in the implementation of the execution of the right of dependency as stated in the General Explanation number 3 letter d of the UUHT.

CONCLUSSION

The implementation of parate executie of the Right of Dependency on land in practice is very difficult to carry out because there is a distortion of meaning where the parate executie is equated with the execution of the grosse deed, namely the fiat of the Court. In terms of norms, it is actually very clear the context of the substance in Article 6, but it is as if Article 6 stands alone and has no legitimacy. This has given rise to various different interpretations in carrying out the implementation of the parate executie, whether it can be carried out as stipulated in Article 6 itself, or whether it must be interpreted in accordance with the understanding of the execution of the grosse deed (executive title).

BIBLIOGRAFI

- Ali, Zainuddin. (2021). *Metode penelitian hukum*. Sinar Grafika.
- Arifin, Zaenal. (2016). Rekonstruksi Parate Eksekusi Hak Tanggungan Atas Tanah Yang Berbasis Nilai Keadilan. *Jurnal Pembaharuan Hukum*, 3(2), 191–199.
- Bastian, Adolf, & Junaidi, Nurhikmah Sasna. (2019). The influence of using gadgets for character's development (PAUD). *The 3rd International Conference on Islamic Epistemology*, 167–176. UAI Press.
- Bunga, Santi. (2022). *Rekonstruksi Regulasi Wanprestasi Perjanjian Dengan Jaminan Hak Tanggungan Berbasis Nilai Keadilan Pancasila*. UNIVERSITAS ISLAM SULTAN AGUNG.
- Djumhana, Muhammad, Di Indonesia, Hukum Perbankan, & Penerbit, P. T. (2008). *Citra Aditya Bakti*. Bandung.
- Fajarwati, Meirina. (2017). Validitas Surat Edaran Mahkamah Agung (Sema) Nomor 7 Tahun 2014 Tentang Pengajuan Peninjauan Kembali Dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan. *Jurnal Legislasi Indonesia*, 14(2), 145–162.
- Gunawan, Gunawan, Anggraeni, Happy Yulia, & Fitri, Rani Lailatul. (2023). Permasalahan Substansi Hukum Acara Perdata di Peradilan Umum dan Penyelesaiannya. *Wajah Hukum*, 7(2), 389–395.
- Harahap, Hakim Tua, & Minin, Darwinsyah. (2017). Reconstruction of land used right eigendom values based on justice and legal certainty. *The 2nd Proceeding A€E Indonesia Clean of Corruption in 2020"*.
- Lutfiya, Indah, Ibad, Mursyidul, Kurniawan, Afif, Amalia, Nuke, Herowati, Diyah, Salim, Lutfi Agus, Sari, Diah Puspita, & Murniati, Chairunnisa. (2020). What Factors that Cause the High Numbers of Unwanted Pregnancy in Indonesia? *Systematic Reviews in Pharmacy*, 11(11).
- Poesoko, Herowati. (2013). *Dinamika hukum parate executive obyek hak tanggungan*. Aswaja Pressindo.
- Retnaningsih, Sonyendah, Nasution, Disriani Latifah Soroinda, Velentina, Rouli Anita, & Manthovani, Kelly. (2020). Pelaksanaan E-Court Menurut Perma Nomor 3 Tahun 2018 Tentang Administrasi Perkara Di Pengadilan Secara Elektronik Dan E-Litigation Menurut Perma Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik (Studi Di Pengadilan Negeri Di Indonesia). *Jurnal Hukum & Pembangunan*, 50(1), 124–144.
- Simon, Joe Frank, & Samosir, Franky. (2022). Execution Of Court Decisions Against Land Cases. *International Asia Of Law and Money Laundering (IAML)*, 1(1), 39–46.

- Taekema, Sanne. (2018). Theoretical and normative frameworks for legal research: Putting theory into practice. *Law and Method*.
- Wardani, Nizia Kusuma, & Afriansyah, Arie. (2020). Indonesian legal challenges regarding electronic contracts in international trade. *3rd International Conference on Law and Governance (ICLAVE 2019)*, 23–30. Atlantis Press.
- Wibowo, Fitri Mustikaning. (2023). Legal Analysis of the Enforcement of Two Mortgage Rights on One Land Certificate as a Credit Collateral Object. *Proceedings Series on Social Sciences & Humanities*, 14, 342–347.

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