

Disparity of Court Decisions in Disputes Involving Indonesian Mortgage Rights (Hak Tanggungan) with Executorial Force

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ABSTRACT: Mortgage Rights (Hak Tanggungan) grant creditors executorial power, allowing enforcement through parate execution without prior court judgment. In practice, however, disputes still arise when parties file civil claims despite the existence of such executorial titles. This situation has led to differing judicial responses: some courts reject claims to uphold legal certainty, while others proceed to examine them on the grounds of legal protection. This study aims to analyze the disparity of judicial decisions and the reasoning behind courts in either accepting or rejecting such claims. It employs a normative juridical method using statutory, case, and conceptual approaches, focusing on relevant legal provisions and court decisions that reflect divergent interpretations. The findings show that this disparity stems from the absence of clear legal boundaries governing the relationship between executorial enforcement and civil litigation. Courts that reject claims tend to emphasize legal certainty and procedural efficiency, whereas those that accept them highlight the need for judicial oversight in certain circumstances. This reflects an underlying tension between legal certainty and legal protection. This study concludes that the executorial nature of Mortgage Rights should not be understood as absolutely precluding access to civil claims, but rather as a mechanism that operates within certain limits. Greater legal clarity is therefore needed to ensure consistency in judicial decisions.

KEYWORDS: Mortgage Rights, Parate Execution, Civil Claims, Legal Certainty, Judicial Disparity

I. INTRODUCTION

The development of modern economic activity is inextricably linked to the role of financing through banking institutions practices that rely heavily on the existence of real security (collateral) to ensure debt repayment for creditors (Soeikromo, 2016). The Hak Tanggungan (Security Right over Land) serves as a land based security instrument that grants creditors a preferential position and ensures legal certainty regarding the satisfaction of claims in the event of debtor default (Rosari et al., 2022).

A key characteristic of the Hak Tanggungan is the executory power inherent in the Hak Tanggungan Certificate, which enables creditors to execute the security without undergoing judicial proceedings a process known as parate executie (direct execution) (Raissa Ramadhanti et al., 2022). This mechanism was designed to provide a swift, simple, and legally certain resolution, thereby sparing creditors the need for lengthy and costly litigation (Soeikromo, 2016).

However, in practice, the implementation of parate executie has not unfolded as envisioned by the lawmakers. Various obstacles ranging from normative to implementation related issues have arisen, meaning creditors do not always enjoy the intended ease and legal certainty during the execution process (Arifin, 2016). Indeed, execution efforts frequently encounter resistance from debtors or third parties, as well as difficulties in vacating the collateral property (Rosari et al., 2022).

These issues are further complicated by regulatory inconsistencies between the Hak Tanggungan Law and civil procedural law, particularly regarding the requirement for a court order (fiat executie) to carry out the execution. On one hand, Article 6 of the Hak Tanggungan Law empowers creditors to execute the collateral directly; on the other, Article 224 of the Herziene Inlandsch Reglement (HIR) mandates a court order for the execution to proceed (Cahyono, 2016). This conflict of norms gives rise to multiple interpretations and results in legal uncertainty in practice.

The lack of clarity in these regulations ultimately creates an opening for debtors to file lawsuits or objections against the enforcement of Hak Tanggungan (security rights over land and related objects). In practice, civil lawsuits challenging Hak Tanggungan execution auctions are not merely isolated incidents but constitute a significant and recurring phenomenon capable of delaying or even nullifying the enforcement process (Nugrohandhini & Mulyati, 2019). This situation demonstrates that the executory power of Hak Tanggungan is not absolute, contrary to its normative conceptualization.

Furthermore, lawsuits challenging the exercise of parate executie (direct enforcement) give rise to diverse legal implications, depending on how the presiding judge assesses the case. In some rulings, judges tend to dismiss lawsuits on the grounds that the creditor possesses a robust legal basis via the Hak Tanggungan Certificate, thereby rendering court intervention unnecessary.

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Conversely, in other rulings, judges accept and hear the case, prioritizing the aspect of legal protection for the debtor (Aji & Kurniawan, 2025).

These divergent approaches reveal a disparity in court rulings concerning disputes involving Hak Tanggungan with executory power. This disparity reflects not only differing interpretations of legal norms but also a tension between the principle of legal certainty embodied by the executory power of Hak Tanggungan and the principle of legal protection, which affords parties the right to initiate litigation (Budi, 2021).

In judicial practice, issues surrounding the implementation of *parate executie* (summary execution) for Mortgage Rights (Hak Tanggungan) extend beyond the normative level; they are tangibly reflected in court rulings that reveal differing judicial approaches when assessing lawsuits challenging such executions. This disparity is concretely illustrated by comparing two court rulings involving disputes with similar characteristics that nonetheless resulted in divergent legal reasoning.

In the Kupang District Court Ruling Number 107/Pdt.G/2022/PN Kpg, the dispute arose from a credit relationship between a debtor and a creditor that had existed since 2010, involving a substantial credit facility secured by various assets including fiduciary guarantees and Mortgage Rights over several parcels of land (Kupang District Court Ruling, 2022). In this case, the debtor filed a lawsuit arguing that the debt calculation performed by the creditor was unilateral, lacked transparency, and violated the principle of fairness, thereby rendering the execution auction of the Mortgage Rights an unlawful act.

More specifically, the plaintiff argued that there was an imbalance of bargaining power between the debtor and the creditor within the credit agreement. The plaintiff also highlighted that the value of the collateral to be auctioned far exceeded the outstanding debt obligation, contending that this disparity demonstrated unfairness in the execution process (Kupang District Court Ruling, 2022). Furthermore, the plaintiff sought to suspend the auction until a final, legally binding judgment was reached an action indicating an active attempt to impede the implementation of the *parate executie*.

On the other hand, the creditor in the case asserted that the debtor was in default under the credit agreement and that the debt amount had been calculated in accordance with the parties' agreement, which expressly authorized the bank to determine the debtor's liability based on its internal records (Judgment Number 107/Pdt.G/2022/PN Kpg, 2022). Furthermore, the creditor emphasized that all collateral assets have been legally encumbered with a Hak Mortgage (Security Right), thereby providing a strong legal basis for execution via the auction mechanism.

This case highlights a fundamental conflict between two legal interests: the creditor's interest in recovering the debt through the execution of collateral, and the debtor's interest in obtaining legal protection against actions deemed detrimental. A crucial aspect is how the judge assesses this conflict specifically, whether to prioritize the executive power of the Hundred Rights or to allow room for judicial review through a civil lawsuit.

A comparison with the Wonosari District Court Order Number 28/Pdt.G.S/2023/PN Wno reveals a significant difference in approach. In that case, PT BPR Nusamba Banguntapan (Wonosari Branch), acting as the plaintiff, filed a lawsuit for breach of contract against the debtors regarding a credit facility of IDR 350,000,000.00. This facility was secured by Freehold Title Certificate (Ownership Certificate) Number 11056, which was encumbered by Hak Mortgage Certificates Number 01538/2020 (first rank), Number 01720/2021 (second rank), and Number 02592/2021 (third rank), all held by the plaintiff (Judgment Number 28/Pdt.G.S/2023/PN Wno, 2023). However, the judge took the view that the existence of the three Mortgage Rights Certificates meant the dispute between the parties essentially already possessed its own mechanism for resolution, given that such certificates carry the same execution force as a court judgment that has attained final and binding legal status. On this basis, the judge deemed the filing of a lawsuit to be an excessive measure one that potentially conflicted with the execution force inherent in the Mortgage Rights Certificates and accordingly ruled that the claim did not qualify as a "simple lawsuit" and ordered its removal from the case register.

Conversely, in Kupang District Court Decision Number 107/Pdt.G/2022/PN Kpg, PT Piala Jaya (as the plaintiff) filed a lawsuit against PT Bank Mandiri (Persero) Tbk. (specifically its Commercial Banking Center in Kupang) and the Head of KPKNL Kupang regarding a planned execution auction of collateral assets encumbered by Hak Tanggungan (security rights over land and related objects) and fiduciary security. In this case, the plaintiff did not dispute the existence of the debt relationship or the Hak Tanggungan itself; rather, it challenged the creditor's method of calculating the debt amount arguing that the calculation was performed unilaterally, lacked clear itemization, violated principles of propriety, and was therefore an unsuitable basis for requesting an execution auction. Thus, the crux of the dispute shifted from the mere existence of the Hak Tanggungan to whether the creditor's actions in exercising that right were conducted properly, fairly, and lawfully.

The divergence between these two rulings illustrates contrasting perspectives. The Wonosari District Court Decision (Number 28/Pdt.G.S/2023/PN Wno) treats the Hak Tanggungan Certificate as an executory instrument essentially sufficient to resolve the dispute without further judicial intervention whereas the Kupang District Court Decision (Number 107/Pdt.G/2022/PN Kpg) demonstrates that, despite the executory power of the Hak Tanggungan, its enforcement remains subject to challenge via civil litigation if there are allegations of unfairness, unclear debt calculations, or unlawful acts.

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This discrepancy cannot be viewed as a mere routine variation; rather, it reflects a lack of uniformity in understanding the boundary between the authority for direct execution based on Hak Tanggungan and the right of an aggrieved party to file a civil lawsuit. It is at this juncture that the executory power of the Hak Tanggungan (security right over land and associated objects) is seen, in practice, not always to function as a closed and final mechanism; rather, it remains open to dispute and judicial scrutiny.

This divergence cannot be dismissed as a mere ordinary variation; instead, it reflects a lack of uniformity in understanding the boundary between the authority for direct execution based on the Hak Tanggungan and the right to file a civil lawsuit. Thus, it becomes evident that the executory power of the Hak Tanggungan is not absolute in practice but remains subject to challenge and judicial review.

Thus, the primary issue lies not merely in the existence of lawsuits challenging Security Rights (Hak Tanggungan), but rather in the lack of clear boundaries between the use of direct execution mechanisms and the right to file a lawsuit in court. This ambiguity has ultimately led to a variety of rulings some even contradictory in the handling of similar disputes.

Such disparities in rulings have serious implications for legal certainty. For creditors, this uncertainty potentially hinders the effectiveness of execution proceedings, as there is always a possibility of lawsuits delaying the auction process. Conversely, for debtors, this situation creates an opportunity to use litigation as a strategy to delay or even derail execution, regardless of whether the lawsuit has a strong legal basis.

Given this context, this research is crucial for analyzing the disparities in court rulings regarding disputes over Security Rights with executory force, and for examining the legal reasoning employed by judges in either accepting or rejecting such lawsuits. Ultimately, this research aims to contribute to clarifying the legal framework governing the relationship between Security Rights execution mechanisms and civil litigation, while also fostering greater consistency in judicial practice.

II. RESEARCH METHOD

This study is a normative legal research project focusing on the analysis of legal norms, principles, doctrines, and court rulings regarding the enforcement of Security Rights (Hak Tanggungan) that possess executory force. The research examines how the law regulates the relationship between the authority for direct execution based on Security Rights and the potential filing of civil lawsuits challenging such execution. The study employs statutory, case, and conceptual approaches. The statutory approach is used to examine provisions within Law Number 4 of 1996 concerning Security Rights, civil procedural law regarding execution, and other regulations relevant to the conduct of execution auctions. The case approach is utilized to analyze court rulings that demonstrate disparities in judicial reasoning specifically, the Wonosari District Court Order Number 28/Pdt.G.S/2023/PN Wno and the Kupang District Court Judgment Number 107/Pdt.G/2022/PN Kpg. Meanwhile, the conceptual approach is applied to examine concepts such as executory force, *parate executie* (direct execution), legal certainty, legal protection, and access to justice.

The legal materials utilized in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials comprise legislation and court rulings relevant to the subject of study. Secondary legal materials include books, journal articles, and prior research findings addressing Hak Tanggungan (security rights over land and associated objects), *parate executie* (summary execution/direct enforcement), lawsuits challenging execution auctions, and judicial decision disparities. Tertiary legal materials serve as supplementary resources such as legal dictionaries and other reference materials that assist in clarifying specific legal terms or concepts. Data collection was conducted through a literature review, involving the identification, cataloging, and examination of various regulations, court rulings, and scholarly literature pertinent to the research topic. All collected legal materials were subsequently analyzed qualitatively using methods of legal interpretation and prescriptive analysis. The analysis involved identifying the legal framework governing Hak Tanggungan, comparing the judicial reasoning in the two rulings under study, and evaluating the consistency of norm application in relation to the principles of legal certainty and legal protection.

III. RESULT AND DISCUSSION

The Existence of a Mortgage Certificate with Executory Force Eliminates the Need or Right to File a Civil Lawsuit.

The existence of a Mortgage Certificate possessing executorial force is fundamentally designed to provide a swift, simple, and effective resolution for creditors in the event of a debtor's default. In principle, the Mortgage functions as a security right in rem that grants a preferential position to a specific creditor, thereby ensuring that debt repayment does not rely entirely on ordinary court litigation. Within this framework, the Mortgage Certificate bearing an executorial clause must be understood not merely as evidentiary material, but as an instrument for debt recovery specifically created to avoid protracted litigation proceedings. This perspective aligns with the views of Sjahdeini (1999), who emphasized that a Mortgage holder may request the auction of the collateral without first obtaining the consent of the Mortgage grantor, as well as with the views of Satrio (2002), who regarded *parate executie* (direct execution) as an enforcement right readily available to the first ranking Mortgage holder.

Based on this legal construction, it is normatively understandable why the Mortgage Certificate is often viewed as diminishing or even eliminating the practical need to file a civil lawsuit. If a creditor already possesses an executorial title that the

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law equates to a final and binding court judgment, then suing the debtor for breach of contract regarding the same matter appears redundant. In this sense, a lawsuit ceases to be the primary means of enforcing rights, as that function has essentially been superseded by the execution mechanism inherent in the Mortgage Certificate. Soeikromo (2016) further affirmed that the purpose of *parate executie* is to facilitate the sale of the mortgaged property without recourse to the judicial system, specifically so that creditors need not sue the debtor in court when a default occurs (Subekti, 1989).

The need to file a lawsuit is not synonymous with the right to file one. The "need" relates to functional or practical considerations specifically, whether a creditor still requires a lawsuit to secure repayment. The "right" relates to procedural aspects specifically, whether the parties remain entitled to sue if they perceive unlawful conduct regarding the execution process or its underlying basis. These two concepts are distinct. An executory title provides a mechanism for execution but does not automatically preclude the emergence of new disputes concerning the method, basis, or legitimacy of exercising that title. This aligns with Anggoro's (2007) view that *parate executie* (summary execution) is a creditor's right that essentially derogates from standard procedural law; yet, precisely because of its extraordinary nature, its exercise inherently carries the potential for conflict with the need for judicial oversight.

The distinction between these two perspectives is clearly illustrated in the Wonosari District Court Order Number 28/Pdt.G.S/2023/PN Wno. In this case, PT BPR Nusamba Banguntapan (Wonosari Branch) sued the debtors for breach of contract regarding a loan facility of IDR 350,000,000.00. The debt was secured by a Freehold Title Certificate (SHM) No. 11056, which was encumbered by three Mortgage Rights Certificates (Sertipikat Hak Tanggungan) ranked first (No. 01538/2020), second (No. 01720/2021), and third (No. 02592/2021) all held by the plaintiff. The judge reasoned that since the collateral was already encumbered by Mortgage Rights Certificates possessing executory force equivalent to a court judgment, the dispute between the parties effectively had its own built in resolution mechanism, rendering a formal lawsuit unnecessary. In fact, the judge noted that filing a lawsuit under such circumstances could create a conflict between the court's ruling and the existing Mortgage Rights Certificate, thereby undermining the principle of legal certainty; consequently, the lawsuit was ruled not to qualify as a "simple lawsuit" and was struck from the register.

Upon closer examination, the approach taken by the Wonosari District Court is premised on the assumption that once a Mortgage Right Certificate (Sertipikat Hak Tanggungan) is issued, the necessity of pursuing a lawsuit is, in principle, eliminated. While this assumption is robust regarding the creditor's legal certainty, it becomes problematic if extended too far to argue that the avenue of litigation is categorically no longer available. This is because the issues raised in a lawsuit do not necessarily concern merely the existence of the debt and its collateral; a lawsuit may target actions accompanying the exercise of the Mortgage Right such as disputes over the precise debt amount, abuse of rights, or auction procedures. In other words, the Wonosari District Court treats the Mortgage Right Certificate as effectively foreclosing litigation, whereas, theoretically, possessing an executory title (*titel eksekutorial*) is not synonymous with a total bar on access to the courts. In this context, Arifin's (2016) critique regarding the ambiguity surrounding the implementation of *parate executie* (direct execution) becomes relevant; in practice, *parate executie* is often conflated with execution based on a *grosse acte hypotheek* or a standard executory title, causing a special right intended to be straightforward to become a source of conflicting interpretations. In contrast to the Wonosari District Court's ruling, the Kupang District Court's decision in Case No. 107/Pdt.G/2022/PN Kpg demonstrates an approach that leaves more room for litigation. PT Piala Jaya, the debtor, did not deny the existence of a credit relationship with PT Bank Mandiri, nor did it dispute the existence of the collateral specifically, assets under fiduciary security and several plots of land encumbered by Mortgage Rights. However, the plaintiff challenged the basis for calculating the debt amount, arguing that it was determined unilaterally, lacked clear itemization, violated principles of fairness, and was therefore an invalid basis for requesting an execution auction. The Kupang District Court accepted this line of reasoning. The ruling at the first instance declared that the bank's act of determining the debt amount constituted an unlawful act, that said calculation could not serve as the basis for initiating the execution of the Mortgage Right, and that the application for an execution auction via the KPKNL was invalid; it further ordered the suspension of the auction proceedings until the judgment becomes final and binding.

However, the position taken by the Kupang District Court did not hold. At the cassation stage, the Supreme Court via Decision Number 3830 K/Pdt/2023 overturned both the Kupang District Court's ruling and the appellate decision that had upheld it. The Supreme Court found that the debtor had demonstrably failed to settle obligations upon maturity; that the creditor had issued warning letters and offered opportunities for restructuring; that the debtor had failed to provide the documents required for such restructuring; and that the lawsuit filed actually obstructed efforts to resolve the credit through the auction of the Hak Tanggungan (Security Right). The Supreme Court further affirmed that the auction process for the Hak Tanggungan had been conducted correctly in accordance with statutory regulations; consequently, the debtor's lawsuit was dismissed in its entirety. This series of Kupang rulings is significant because it demonstrates that, while a civil lawsuit can indeed be filed and even accepted at the court of first instance, this does not mean the Hak Tanggungan Certificate loses its executory power. More accurately, the existence of an executory title does not preclude the possibility of a lawsuit arising; however, such a lawsuit must be rigorously scrutinized to ensure

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it does not become a mere tool to obstruct execution. In this context, the Hak Tanggungan Certificate does not negate the right to sue but rather narrows the grounds for lawsuits aimed solely at delaying the exercise of the creditor's rights. Budi's (2021) insights regarding the distinction between *parate executie* (summary execution) and *executory titles* also help clarify this matter: while rapid extrajudicial execution is designed to ensure the effectiveness of real security, that effectiveness must not be conflated with the assumption that all associated disputes are automatically barred from judicial forums.

Thus, the existence of a Mortgage Certificate possessing executorial force is best understood as a circumstance that eliminates the creditor's practical need to file a lawsuit to obtain repayment, without, however, extinguishing the parties' right to initiate civil litigation under specific conditions. What is restricted is not the right to sue itself, but rather the scope for justifying such a suit. If a lawsuit merely reiterates issues regarding default that are already normatively addressed by the Mortgage Certificate, the suit tends to lose its urgency as reflected in the Wonosari District Court ruling. Conversely, if the lawsuit targets alleged defects in the grounds for or the manner of executing the enforcement, the avenue for judicial review remains open in principle; the suit may ultimately be dismissed, however, if it is proven that the enforcement was carried out in accordance with the law, as affirmed by the Supreme Court in the case of *PT Piala Jaya v. PT Bank Mandiri*.

Summary Execution under the Security Rights Regime: Towards a Balance between Creditor Legal Certainty and Debtor Judicial Protection

Within the Hak Tanggungan (security right over land and related objects) regime, *parate executie* (summary execution) should be viewed as an instrument offering operational convenience to the creditor, rather than as an isolated, self contained mechanism that precludes the use of other legal avenues. Its distinctive feature lies in the right of the first ranking security holder to sell the collateral on their own authority via public auction in the event of debtor default. This right was established to expedite debt recovery, reduce reliance on protracted judicial proceedings, and preserve the economic value of the collateral against erosion over time. In this sense, *parate executie* is a key characteristic distinguishing Hak Tanggungan from the general security provided under Article 1131 of the Indonesian Civil Code. However, the existence of *parate executie* within the Hak Tanggungan system does not automatically make it the sole mechanism that must be employed. The Hak Tanggungan Law itself demonstrates that debt settlement via collateral can be pursued through various channels. In addition to sale on one's own authority, the law recognizes the enforcement of the *executory title* inherent in the Hak Tanggungan Certificate and, under specific circumstances, private sales (*penjualan di bawah tangan*). This diversity indicates that the Hak Tanggungan system is not built upon a single, monolithic procedure but rather on multiple instruments aimed at the same objective: satisfying the creditor's rights while upholding legal certainty and propriety. Consequently, *parate executie* is best understood systematically as an available legal facility rather than an exclusive pathway that forecloses other procedural options. This description of multiple execution models is also reflected in the work of Rosari, Koeswahyono, and Wisnuwardhani, who categorize *parate executie*, the *executory title*, and private sales as distinct methods of enforcing Hak Tanggungan, each with its own unique procedure (Rosari et al., 2022).

The understanding that *parate executie* (summary execution) is facultative aligns better with the realities of its implementation. Normatively, *parate executie* is designed to ensure ease and certainty; however, in practice, the mechanism does not always operate exactly as envisioned by its normative design. Soekromo (2016) points out that a fundamental issue lies in the fact that creditors often cannot fully utilize *parate executie* due to regulatory ambiguities within the Law on Security Rights (*Undang Undang Hak Tanggungan*). Arifin (2016) similarly observes that the practical implementation of *parate executie* often deviates from its original intent, meaning creditors do not always secure the ease, legal certainty, and fairness the mechanism was meant to provide.

This ambiguity is particularly evident in the relationship between Article 6 of the Law on Security Rights and the provisions of civil procedural law. On one hand, Article 6 empowers the holder of a first ranking security right to sell the collateral on their own authority via public auction. On the other hand, there remains an interpretation linking the execution process to the mechanism under Article 224 of the *Herziene Inlandsch Reglement* (HIR), which requires an order from the Head of the District Court for documents possessing *executory force*. This tension has long caused practical difficulties; if the execution of *parate executie* remains dependent on court authorization (*fiat*), its distinct advantage as a swift and independent remedy is substantially diminished. Cahyono (2016) explicitly identifies the conflict between Article 6 of the Law on Security Rights and Article 224 of the HIR as a source of the dualistic views regarding the validity of *parate executie* conducted without court intervention. This aligns with Arifin's (2016) assessment that conflating the concept of *parate executie* with execution based on a *grosse acte hypotheek* (mortgage deed with *executory force*) has obscured the inherent nature of the right to sell on one's own authority a right that ought to be intrinsic to the security right itself.

Beyond issues regarding the harmonization of legal norms, obstacles to the implementation of *parate executie* (summary execution) also arise from factual conditions on the ground. Raissa Ramadhanti et al. (2022) note that the challenges faced stem not only from the debtor manifesting as legal challenges and difficulties in vacating the collateral property but also from the creditor; for instance, difficulties in finding auction buyers can lead to the failure to execute the sale of specific assets via this summary process. A broader perspective is offered by Nugrohandhini & Mulyati (2019), who demonstrate that lawsuits and objections filed

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against Hak Tanggungan (security right) execution auctions have become significant impediments in practice. These actions create uncertainty for security right holders, auction buyers, and other related parties, and can even result in the postponement or cancellation of the auction.

Under these circumstances, treating parate executie as an exclusive mechanism conflicts with the reality that the enforcement of security rights operates at the intersection of legal norms, procedures, and factual conditions. While creditors are indeed granted the privilege of rapid execution, the exercise of this right does not occur in a vacuum. Disputes may arise regarding default, the outstanding debt amount, auction procedures, the validity of the auction official's actions, or third party interests in the collateral. Therefore, if parate executie is interpreted too absolutely as a pathway shielded from all forms of oversight it not only oversimplifies the security right system but also risks compromising the principles of prudence and propriety in its implementation. Conversely, if parate executie is viewed as a discretionary right, the system becomes more balanced: creditors retain a primary, rapid, and effective instrument while remaining able to utilize alternative mechanisms when concrete situations demand a different approach.

From this perspective, a more balanced legal framework is not one that undermines parate executie (summary execution), but rather one that correctly situates it within the overall system of legal protection. Parate executie must be maintained as the primary means for a first ranking Security Right holder to satisfy a claim, as without effective execution, real security loses its utility. Budi (2021) asserts that parate executie is essentially a swift, extrajudicial execution mechanism created precisely to avoid the procedural complexities inherent in executions based on court judgments. Therefore, the potency of parate executie should not be diminished to the point where it loses its function of expediting recovery.

However, strengthening parate executie does not imply that all issues surrounding its implementation are resolved simply because the security certificate has been issued. Instead, a framework is required that clearly distinguishes between, first, the exercise of parate executie as a creditor's right to obtain repayment, and second, the scope for judicial oversight regarding actions accompanying the exercise of that right. This distinction ensures the protection of the creditor's legal certainty as their right to execute cannot be easily undermined while simultaneously preserving judicial protection for the debtor or related parties in cases where the dispute concerns not the existence of the security itself, but rather the grounds or manner of its enforcement. Such a framework better aligns with systemic needs; it neither renders parate executie immune to scrutiny nor allows objections to be used as instruments to disproportionately obstruct debt repayment.

Thus, within the Security Right regime, parate executie should be understood as a mechanism that is optional and holds functional priority, rather than one that is absolutely exclusive. It remains a primary instrument reflecting the efficiency inherent in the Hak Tanggungan (security right over land) mechanism; however, its effectiveness must be viewed alongside the need to balance legal certainty with judicial protection. The objective here is not to diminish the enforcement power of the Hak Tanggungan, but rather to situate the parate executie (summary execution) within a more orderly legal framework one that is robust enough to safeguard the creditor's rights, yet remains subject to legal oversight whenever its implementation gives rise to issues warranting judicial review.

CONCLUSIONS

The existence of a Mortgage Certificate with executory force does not, in principle, preclude the parties from filing a civil lawsuit; rather, it merely reduces the practical necessity for the creditor to pursue that avenue to recover the debt. Within the Mortgage regime, parate executie (summary execution) is best understood as a discretionary right an instrument prioritized for its efficiency, yet not an exclusive one that bars the use of other legal mechanisms. Disparities in court rulings as evidenced by the Wonosari District Court Order and the Kupang District Court Judgment (subsequently overturned by the Supreme Court) demonstrate a lack of uniform understanding regarding the boundary between carrying out execution and filing a lawsuit. Consequently, the prevailing legal framework positions parate executie as the primary means for satisfying the creditor's rights, while still allowing for limited judicial review concerning aspects of its validity, propriety, and execution procedures.

RECOMMENDATION

Clearer normative clarification is required regarding the relationship between the parate executie (summary execution) mechanism under the Mortgage Rights Law and civil procedural law provisions specifically concerning whether or not court intervention is necessary for execution to avoid divergent interpretations that lead to inconsistent judicial rulings. Furthermore, courts need to develop consistent guidelines for assessing lawsuits related to the enforcement of Mortgage Rights, enabling a clear distinction between claims with a valid legal basis and those intended solely to obstruct execution. In this way, a proportionate balance between legal certainty for creditors and judicial protection for debtors can be maintained in practice.

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REFERENCES

- 1) Aji, I. P., & Kurniawan, I. D. (2025). Implikasi Ditolaknya Gugatan terhadap Pelaksanaan Parate Eksekusi Objek Hak Tanggungan (Studi Putusan Nomor 46/PDT.G/2023/PN.SKT). *Verstek*, 13(1).
- 2) Anggoro, T. (2007). Parate Eksekusi: Hak Kreditur yang Menderogasi Hukum Formiil (Suatu Pemahaman Dasar dan Mendalam). *Jurnal Hukum Dan Pembangunan*, 3(4).
- 3) Arifin, Z. (2016). Rekonstruksi Parate Eksekusi Hak Tanggungan Atas Tanah Yang Berbasis Nilai Keadilan. *Jurnal Pembaharuan Hukum*, 3(2).
- 4) Budi, A. (2021). Hapusnya Lembaga Parate Eksekusi Sebagai Akibat Hukum Putusan Mahkamah Konstitusi Nomor 18/PUU XVII/2019. *Jurnal Hukum & Pembangunan*, 51, 6–25. <https://doi.org/10.21143/jhp.vol51.no2.3053>
- 5) Cahyono, Y. T. (2016). Eksekusi Hak Tanggungan yang Menggunakan Upaya Parate Eksekusi (Studi Kasus Putusan Nomor 26/PDT.G/2013/ PN.Psp.Sbh). Universitas Brawijaya.
- 6) Nugrohandhini, D., & Mulyati, E. (2019). Akibat Hukum Gugatan dan Perlawanan terhadap Lelang Eksekusi Hak Tanggungan. *Jurnal Bina Mulia Hukum*, 4(1). <https://doi.org/10.23920/jbmh.v4n1.3>
- 7) Putusan Nomor 28/Pdt.G.S/2023/PN Wno. (2023).
- 8) Putusan Nomor 107/Pdt.G/2022/PN Kpg. (2022).
- 9) Raissa Ramadhanti, R. F., Rahmadayanti, A., Marchelia Yusa, I. G. A., & Rafli, M. A. (2022). Parate Eksekusi Terhadap Objek Hak Tanggungan Dalam Hukum Positif di Indonesia. *Notaire*, 5(3), 435–454. <https://doi.org/10.20473/ntr.v5i3.38288>
- 10) Rosari, L. K. P., Koeswahyono, I. N., & Wisnuwardhani, D. A. (2022). Implikasi yuridis parate eksekusi obyek hak tanggungan. *Jurnal Cakrawala Hukum*, 13(1), 68–77. <https://doi.org/10.26905/idjch.v13i1.5189>
- 11) Satrio, J. (2002). Hukum jaminan, hak hak jaminan kebendaan. Citra Aditya Bakti.
- 12) Sjahdeini, S. R. (1999). Hak tanggungan : asas asas ketentuan ketentuan pokok dan masalah yang dihadapi oleh perbankan (suatu kajian mengenai undang undang hak tanggungan). Alumni.
- 13) Soeikromo, D. (2016). Kepastian Hukum Pemenuhan Hak Kreditor dalam Eksekusi Objek Jaminan Hak Tanggungan Melalui Parate Eksekusi. *De Lega Lata*, I(1).
- 14) Subekti. (1989). Jaminan jaminan untuk pemberian kredit menurut hukum Indonesia. Citra Aditya Bakti.



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