



Execution of Deed of Guarantee of Dependent Rights Due to Bad Loans

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ABSTRAK

The implementation of the execution of mortgage rights as collateral for a credit is still as contained in Article 26 UUHT which states that there is no statutory regulation that regulates it and there are still many obstacles faced in the process which trigger delays in protecting the interests of creditors for said mortgage rights. because the debtor as the one who gave the mortgage questioned or questioned the amount and the debt guaranteed by the mortgage, based on this it was what resulted in delays in the execution of the mortgage and the existence of legal incompetence in the execution. The formulation of the problem in this article is whether the creditor can immediately execute the Mortgage Guarantee Deed in the event of bad credit. The research method used is normative juridical research (Legal Research). The results of the study show that the execution of the mortgage deed cannot be carried out directly by the creditor when bad credit occurs due to the inconsistency of Article 224 HIR with Article 6 UUHT which results in execution having to be based on a court request.

1. Introduction

The more advanced a country's economy is, the more people are encouraged to grow and develop more in developing their businesses. In practice, business actors develop their businesses to increase sufficient capital by making loans or credit with banks. Currently, credit that is growing a lot in society is credit with Dependent Rights. The right of dependency itself is a right of guarantee for the repayment of the debtor's debt, where the guarantee must be about a certain debt.

According to the provisions of Article 1 paragraph (1) of Law Number 4 of 1996 concerning the Right of Dependency which is hereinafter referred to as the Law is: "The Right of Dependency on land and objects related to land, hereinafter referred to as the Right of Dependency is the right of guarantee imposed on the land as referred to by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the following or not the following other objects which are an unity with the land, for the repayment of certain debts, which give priority to certain creditors over other creditors".

According to the provisions of Article 1 paragraph (1) of Law Number 4 of 1996 concerning the Right of Dependency which is hereinafter referred to as the Law is: "The Right of Dependency on land and objects related to land, hereinafter referred to as the Right of Dependency is the right of guarantee imposed on the land as referred to by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the following or not the following other objects which are an unity with the land, for the repayment of certain debts, which give priority to certain creditors over other creditors".

Based on the above provisions, the right of dependency is a material right, so in that case the object is one of the objects of collateral and is the most important condition in a debt guarantee. The Law also expressly states that a right of dependency will follow the object of the guarantee even though the object of the guarantee has been transferred. The object of the right of dependency according to Article (4) Paragraph (1) of the Law, namely an object or right that can be used as security in the right of dependency, is:

1. Land ownership;
2. Right of use;
3. Building use rights;
4. The right to use a State's land, existing plants and works that will exist and have a transferable nature;
5. Land use rights of ownership;
6. Land rights in the form of existing or existing plant buildings and works that are one with the land;
7. Flats and property rights over flats;
8. Underground, as long as it is physically related to buildings that are above ground.

The Law has been regulated regarding the provisions of guarantees and how to implement them, but its application in society sometimes does not run smoothly because there are debtors in repaying the debt who are injured in promises. Promise injuries are generally associated with the presence of one of the parties who defaults which usually occurs due to bad credit. Bad credit is a credit whose principal and interest installments cannot be repaid for more than (2) installment periods plus 21 (twenty-one) months or credit settlement has been advised to the Court/State Receivables and Auction Agency or has been submitted for

compensation to the credit insurance company.¹

According to Veithzal Rivai, bad loans are the difficulty of customers in repaying their obligations to banks/non-bank financial institutions, both in the form of principal repayment, interest payments, and payment of bank fees that are a burden for the customer concerned.² When a bad credit occurs, the ownership rights to the land follow the credit, the existing consequence is to repay the credit by the debtor by cashing out what has been a credit guarantee that has been approved according to the agreement, namely the land that has been used as collateral.

At the time of bad credit caused by the debtor by defaulting, the bank as the debtor certainly does not want to be harmed and will take a step to get debt repayment by executing the guarantee. Regarding debt repayment, the debtor executes the guarantee by selling it through auction so that the debtor does not feel disadvantaged. The execution of the Right of Dependency through a public auction that has been regulated in Article 20 paragraph (1) of the UUHT is:

"The object of the Right of Dependency is sold through a public auction according to the procedures required in the laws and regulations for the repayment of the receivables of the holder of the Right of Dependency with the right of precedence over other Creditors.

Execution is a form of effort to fulfill achievements for parties who break their promises and lose in the case process in

Court. Meanwhile, the execution law is the law that regulates the implementation of the judge's decision. The execution of the Right of Dependency (Guarantee) is not a real execution, but an execution that refers to the basis of the right of execution which is based on the words "For Justice Based on the One Godhead". This kind of execution of course cannot be carried out if there was no credit agreement and guarantee agreement made in *a notarill* manner before.³

The implementation of the execution of the right of dependency as collateral for a credit is still as contained in Article 26 of the UUHT which states that there is no law or regulation regulating it and there are still many obstacles faced in the process that trigger the inhibition of the protection of the interests of the creditor for the right of dependency, Often there are debtors who object and do not voluntarily accept the execution or sale of the object of the right dependents that have been previously agreed upon in the agreement. There are also debtors who file a lawsuit against the execution of the right of dependency to the District Court which aims to delay or cancel the process of executing the right of dependency. Therefore, the execution of the right of dependency is based on the provisions of the civil procedure law that are still in force. The general explanation in number 9 and the explanation of Article 26 of the UUHT more concretely point to Article 224 of the HIR (*Het Indonesisch Reglement*) stating that only mortgage deeds and debt recognition deeds can be

¹ Syahrul Ramadhan, Herowati Poesoko, dan Ermanto Fahamsyah, "Karakteristik Perjanjian Pembiayaan oleh Perusahaan Pembiayaan Multiguna," *JURNAL RECHTENS* 9, no. 2 (30 Desember 2020): 107–26, <https://doi.org/10.36835/rechtens.v9i2.789>.

² Nailu Vina Amalia, Alifia Soraya Qurbani, dan Salvian Kumara, "Analisis Ketentuan Hak Tanggungan Elektronik pada Peraturan menteri

Agraria dan Tata Ruang Nomor 9 Tahun 2019 tentang Pelayanan Hak Tanggungan," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 5, no. 2 (31 Desember 2020): 332, <https://doi.org/10.17977/um019v5i2p332-339>.

³ Yustiana Yustiana, "Eksekusi Hak Tanggungan terhadap Kredit Macet Bank," *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (17 Mei 2020): 77–97, <https://doi.org/10.56087/aijih.v23i1.38>.

granted irah-irah of executory titles ("For the sake of justice based on the One Godhead"), while the inclusion of executory titles is carried out by the national land agency, namely in the form of a certificate of dependent rights issued by the land agency. As happened in the implementation of the execution of the right of dependency submitted in the Court (Case Number: 40/Pdt.GS/2021/PN. JMR dated September 07, 2021, juncto Number: 19/Pdt.Eks.Gt/2021/PN.Jmr. dated February 09, 2022). In decision Number: 40/Pdt.GS/2021/PN. JMR between the plaintiff and Defendant I and Defendant II.

2. Result and Discussion

A. Executory Strength of the Certificate of Dependent Rights by the Court

Dependent Rights which aim to guarantee debts given by the holder of dependent rights to the debtor. If the debtor defaults on the promise, the land (land rights) that are encumbered with the dependent rights are entitled to be sold by the holder of the dependent rights. One of the characteristics of the right of dependency as a strong land security right institution is easy and certain in the implementation of its execution. Because the execution of the object of the guarantee of the right of dependency is in the hands of the creditor (holder of the right of dependency). Article 20 paragraph (1) of the Law states that if the debtor defaults on a promise, it is based on:⁴

1. The right of the first holder of the right of dependency to sell the object

of the right of dependency as intended in Article 6;

2. The executive title contained in the Certificate of Dependent Rights as referred to in Article 14 paragraph (2), the object of the dependent rights is sold through a public auction according to the procedures specified in the laws and regulations for the repayment of the receivables of the holder of the right of dependency by giving priority to other creditors. Based on the provisions in Article 20 paragraph (1) of the UUHT, it can be known that there are 2 (two) ways or bases for the execution of the object of dependent rights, namely:

1. Based on the execution *parate (parate executie)* as referred to in Article 6 of the UUHT;
2. Based on the executive title contained in the certificate of dependent rights as referred to in Article 14 paragraph (2) of the UUHT. Article 14 of the UUHT states that, as proof of the existence of dependent rights, the Land Office issues a Certificate of Dependent Rights. The certificate contains irahs with the words "For Justice Based on the One Godhead", which has the same executory force as a court decision that has permanent legal force and applies as a substitute for *the grosse* of the mortgage deed as far as land rights are concerned. Article 26 of the Law emphasizes that as long as there are no laws and regulations regulating it, taking into account the provisions in Article 14 mentioned above, the regulations regarding the execution of mortgages that exist at the beginning of the entry into force of this Law, also apply to the execution of dependent rights, the regulations in

⁴ Shinta Pangesti dan Prilly Priscilia Sahetapy, "Pendaftaran hak tanggungan sebelum dan setelah berlakunya Peraturan Menteri Agraria/Kepala BPN

Nomor 5 Tahun 2020," *Tunas Agraria* 6, no. 2 (11 Mei 2023): 71–92, <https://doi.org/10.31292/jta.v6i2.216>.

question regarding the execution of mortgages listed in this Article, are the provisions regulated in Article 224 of the *HIR* and Article 258 of the *Regulations* Legal Proceedings for Areas Outside Java and Madura.

The Law has clearly and firmly stipulated that legally the status of the Certificate of Dependent Rights is as a substitute for *the grosse* of the mortgage deed and in the implementation of its execution refers to the provisions of Article 224 of the *Criminal Code* and Article 258 of the *Revised Code*, which stipulates that *the grosse* deed has executory force as a judge's decision with permanent legal force. Based on Herowati Poesoko's view, *grosse* in a simple sense is a copy of an authentic deed that can be executed. Article 224 of the *HIR* says, among others, that the *grosse* deed has the redaction "For the sake of justice based on the One Godhead", meaning that its implementation can be requested from the judge, because *such grosse* has the same force as the judge's decision which has permanent legal force. The creditor also has the authority to sell the collateral because the deed has executory power.⁵

The existence of these *irahs* is explained in the UUHT that it is intended to provide an affirmation that the certificate of dependent rights has executory power so that if it turns out that in the future the debtor is injured in the promise, the guarantee of land rights can be confiscated and executed directly through the *parate* procedure execution without the need for a court decision. The UUHT has given authority to those who have receivables and has been guaranteed by the guarantee of the right of dependency to execute directly without having to file a lawsuit first with the court. This can be seen from the reading of

Article 6 of the Law itself, namely "the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency over his own power through a public auction", where Article 6 gives the authority to the first holder of the Right of Dependency to sell on his own power. The main position of the holder of the right of dependency has been clear in the reading of Article 6 where it is written "sell on its own power" without the need to ask for approval from the debtor.

Thus, it can be seen that Article 6 of the UUHT has given the authority to the first holder of the Right of Dependency 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 if the debtor commits an injury to the promise or default. And the first holder of the Right of Dependency does not need to ask for approval from the grantor of the Right of Dependency and does not need to ask for The determination of the Chairman of the local District Court to carry out the execution. It is sufficient if the holder of the first Dependent Right submits an application to the Head of the local State Auction Office for the implementation of a public auction in the context of the execution of the object of the Dependent Right.

The inclusion of the executive title on the Certificate of Dependent Rights deviates from the provisions of Article 224 of the *HIR*, because the certificate in Indonesia is proof of ownership of land rights obtained by a person after going through the land registration process, as stipulated in Article 19 paragraph (2) letter c of the UUPA. Meanwhile, Article 32 paragraph (2) of Government Regulation

⁵ Ferdiansyah Putra Manggala, "Dinamika Pembebanan Jaminan Fidusia Terkait Dengan Prinsip Spesialitas," t.t.

Number 24 of 1997 emphasizes that a certificate is proof of strong ownership of land rights. Both rules show that certificates are proof of ownership of land rights. Thus, legally, a land certificate is not a copy of an authentic deed that can be issued *by a grosse* and has executory force.

However, according to the UUHT, the Certificate of Dependent Rights is a substitute for *the gross* of the mortgage deed (Article 14 of the Law jo Article 26 of the Law of the Law), thus all procedures and procedures of the *execution of the gross* of the mortgage deed in the past are the same as the Certificate of Liability Rights. To clarify this, according to the author, it is very important to trace it historically, legally, and to present the development of mortgages, especially those related to land in Indonesia. Historically, the replacement of *the gross* of the mortgage deed as mentioned in Article 224 of the HIR with a mortgage certificate began with the issuance of PMA Number 15 of 1961 on September 23, 1961. Furthermore, in Article 7 paragraph (2) of PMA Number 15 of 1961, it is stated that the *hypothek* and *credietverband certificates*, which are accompanied by a copy of the deed, have the function of *grosse* mortgage deed and *credietverband* and have executory power as intended in Article 224 of the HIR and Article 258 as well as Articles 18 and 19 of the Regulation on *credietverband*.

The inclusion of executive titles on mortgage certificates and *credietverband* was emphasized by the issuance of the SE of the Head of BPN No. 620.1-1555 (May 2, 1989). The SE Head of BPN again stated that there is no need for an executory title in the mortgage deed and *credietverband*, but it is enough to be listed on the mortgage certificate/*credietverband*. Therefore, in the

blank of the new Mortgage Deed/*credietverband*, there is no need to include the executory title (point 1). Meanwhile, the blank mortgage deed and *the old printed credietverband* with the executory title are declared invalid, and then the new printed mortgage deed and *credietverband* blanks are used that are not equipped with the executory title (points 2 and 3).

According to Herowati Poesoko, point 4 of the SE of the Head of BPN has exceeded his authority and ordered PPAT to cross out the executive title contained in the old printed mortgage deed / *credietverband* blank if it is to be used. The crossing was carried out by paraphrasing by the PPAT concerned. The granting of an order to PPAT to cross out the executory title on the mortgage deed/*credietverband* is clearly in violation of the law. Because, the authority to include an executive title on a deed is based on the order of the Law. Therefore, the order to cross out the executive title must also be based on the Law, not by a circular letter of a minister or a ministerial-level official whose position is far below the Law.⁶

Based on the above description, Article 14 jo 26 of the UUHT only takes over the provisions and procedures for the inclusion of the executory title of the mortgage deed related to land after the enactment of PP. No. 10 of 1961 concerning Land Registration. Thus, the UUHT actually in this case does not bring fundamental changes in the process of including the executive title which is the basis for the execution of the Right of Dependency. Referring to Article 224 of the HIR, the author agrees with most legal experts that the placement of the executive

⁶ Vinka Kurnia Dewi dan Ferdiansyah Putra Manggala, "URGENSIPEMBEBANANJAMINANFIDUSIA

PADAKONTENYOUTUBEYANGTELAH MEMILIKI IKLAN(ADSENSE)," t.t.

title in the Certificate of Dependent Rights is inappropriate because the certificate is not an authentic copy of the deed but a proof of ownership of land rights. Meanwhile, a mortgage deed is an authentic deed that should be made by an authorized public official, in this case a notary (Article 1171 BW). And if you look at the Supreme Court Decision No. 1520 K/Pdt/1984, it is very clear that the Supreme Court's stance that what is meant by *the grosse* of the deed in Article 224 HIR/258 Rbg is the *grosse* of the mortgage deed and *the grosse* of the debt recognition deed. In this case, the Supreme Court's decision is restrictive, so there is no room for further interpretation of the existence of other deed grosses other than mortgage deed grosses and debt recognition deed grosses. Therefore, according to the author, there has been confusion and overlap in the legal arrangements regarding grosse deeds that contain executory power.

Considering the provision that states that the Certificate of Dependent Rights has the executive power to carry out the execution of the Dependent Rights is expressly regulated in Article 14 jo 20 jo 26 of the UUHT, according to the author, the consequence is that the Certificate of Dependent Rights has strong legal force as the basis for the implementation of the execution, because the Dependent Rights are the only land rights guarantee institution in Indonesia regulated in the UUHT and is still valid today. In addition to this, to carry out the execution of the right of dependency based on Article 20 jo 14 of the Law, it is necessary to first determine/*fiat* the court,

⁷ Hirsanuddin Hirsanuddin dan Sudiarto Sudiarto, "Perlindungan Hukum Bagi Para Pihak (Kreditur Dan Debitur) Melalui Parate Executie Obyek Hak Tanggungan," *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 1 (26 April 2021): 253–67, <https://doi.org/10.29303/ius.v9i1.890>.

thus the judge has the authority to assess the legal force of the Certificate of Right of Dependency which is used as the basis for execution.

B. Execution of Deed of Guarantee of Dependent Rights Directly Carried Out by Creditors in the Event Bad Loans

Talking about execution at the guarantee institution, if the debtor is injured in the promise, it cannot be separated from *the parate executie*. Basically, what is called *parate executie* according to the language is direct execution. Scientifically, the meaning of *parate executie* is the right to sell in one's own power the Object that is used as collateral in a debt and receivables agreement if the debtor defaults.⁷ In BW, it has actually been regulated regarding *the parate executie*. In *the BW* there are several Articles that regulate *the parate executie*, because basically *the parate executie* is intended for debt-receivables agreements that have a certain guarantee that makes the creditor's position a *preverent* creditor where his rights take precedence compared to the creditor without being followed by a Material Guarantee. In pawn institutions, *the parate executie* is regulated in Article 1155 BW which states as follows.⁸

"If the parties have not agreed otherwise, then the debtor is entitled if the debtor or the pawnbroker breaks the promise, after the grace period specified in advance, or if a grace period has not been determined, after a warning to pay, order the sale of the goods to be pawned in public according to local

⁸ Lydia Kurnia Putri Rosari, Imam Nur Koeswahyono, dan Diah Aju Wisnuwardhani, "Implikasi yuridis parate eksekusi obyek hak tanggungan," *Jurnal Cakrawala Hukum* 13, no. 1 (22 April 2022): 68–77, <https://doi.org/10.26905/idjch.v13i1.5189>.

customs and the conditions that are commonly applicable with the intention of taking the repayment of the amount of the receivable together with interest and the cost of the sales revenue."

In this guarantee through the mortgage institution, BW has also regulated the *parate executie*, namely through Article 1178 paragraph (2) which states that:⁹

"But it is permissible for the first mortgage debtor to, at the time of the mortgage being granted, expressly request an agreement that, if the principal is not properly paid, or if the interest payable is not paid, he will be absolutely authorized to sell the persil that is bound in public, to take the repayment of the principal, as well as the interest and expenses, from the proceeds of the sale. The promise must be made in the manner provided for in Article 1211."

Article 6 of the UUHT also does not explicitly mention the right to perform a *parate executie* granted by the UUHT to the debtor, but in the Article there is a clause that mentions "selling on one's own power" and this is a *parate executie*. In Article 1178 paragraph (2) the right to sell one's own power or *parate executie* is born because of an agreement, but it is different in Article 6 of the UUHT which states that the right to sell one's own power is not born because it is agreed but given *ex lege*, so that all problems of *parate executie* that arise due to the characteristics/characteristics of power will not reappear in the UUHT.

Based on Article 6 of the UUHT, it is stated that "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 Guarantee of the Right of Dependency on his own power through a public auction and take the repayment of his receivables from the proceeds of the sale." The elements contained in Article 6 of the UUHT, according to Herowati Poesoko, detail these elements into 6 parts, namely:

1. Debtor injury promise;
2. The creditor holder of the first Dependent Right is given the right;
3. The right to sell the object of the Dependent Rights over one's own power;
4. Terms of sale through public auction;
5. The creditor's right to take repayment from the sale; and
6. The creditor's right to take the repayment of his receivables is limited to the right to collect

The term *parate executie* is implicitly explicit and implicit, especially regulated in the general explanation number 9 of the UUHT, which states:¹⁰

"One of the characteristics of the right of dependency is that it is easy and certain in the implementation of the 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*

⁹ Triamita Rahmawati, "Hak Tanggungan Sebagai Jaminan Perlindungan Hukum Bagi Para Pihak Dalam Pembiayaan di Perbankan Syariah," *Jurnal Officium Notarium* 1, no. 2 (1 Agustus 2021): 380–92, <https://doi.org/10.20885/JON.vol1.iss2.art18>.

¹⁰ Abidatul Ulfah, "KEDUDUKAN HUKUM KREDITUR PEMEGANG HAK TANGGUNGAN PERJANJIAN KREDIT KAJIAN YURIDIS BERDASARKAN UNDANG-UNDANG No. 4 TAHUN 1996 TENTANG HAK TANGGUNGAN" 13, no. 2 (2021).

the parate executie as referred to in Article 224 of the *HIR* and Article 258 of the *RBg*."

In the UUHT, the basis for the execution of the Right of Dependency is regulated in Article 20 paragraph (1) letter (a) of the UUHT. So in Article 20 paragraph (1) letter (a) of the UUHT, it is stated that if the debtor is injured, then the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency as referred to in Article 6 of the Law.¹¹ Meanwhile, Article 6 of the UUHT explains that if the debtor defaults on the promise, the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency over his own power through a public auction and take the repayment from the proceeds of the sale. The elements contained in Article 6 of the Law show that there are 2 (two) important rights when the debtor defaults, namely the rights and the exercise of rights for the creditor who holds the First Dependent Right.

The authority to sell on one's own power is in Article 6 of the Law as in Article 1151 *BW*. The one that regulates the *parate executie* on the pawn object has been given *ex lege*. This is clearly different from mortgages, the creditor of the first mortgage holder has the right *of separatist executie* if it has been agreed between the creditor and the debtor as the guarantor.

One of the characteristics given by the UUHT is that if the debtor is injured in the promise, then the execution is easy and certain, it can be carried out if the grantor of the right of dependency (debtor) does not fulfill the obligations as agreed, as stated in

the explanation of number 9 of the UUHT. The rights of the first holder of the Right of Dependency as referred to above, have also been reaffirmed in Article 20 paragraph (1) of the UUHT. The provisions stipulated in Article 6 and Article 20 paragraph (1) of this Law are actually not only in line with and sharpen what has been regulated in Article 11 paragraph (2) or what was previously regulated in Article 1178 paragraph (2) of the *BW* concerning *beding van eigennachtige verkoop* at the *credietverband mortgage institution*, but also mean that Article 6 and Article 20 paragraph (1) letter a of this Law require the authority of the creditor to sell the object of the Dependent Rights over his own power It can be interpreted not only because it is agreed, but the rights or authority of the creditor belong to him because indeed the Law itself also gives it or stipulates it as such (*ex lege*).

Paying attention to the substance of Article 6 of the UUHT similar to Article 1178 paragraph (2) *BW* in addition to the similarity there are also differences, the similarity is that both regulate "selling" collateral in public, but the difference, in Article 6 of the UUHT regulates "selling on one's own power", while Article 1178 paragraph (2) *BW* regulates "authorized to sell", so that in Article 6 of the UUHT, the right of creditors in ha1 debtor of the breach of promise, to sell the object of the right of dependency through auction, has been granted by the Law itself to the creditor holder of the first right of dependency.¹² The authority to sell on one's own power in Article 6 of the Law as in Article 1155 *BW*

¹¹ Humaira dan T. Hafliyah, "OBJEK SYIRKAH MENJADI JAMINAN HAK TANGGUNGAN PADA PEMBIAYAAN PERUMAHAN MELALUI AKAD MUSYARAKAH MUTANAQISHAH," *Jurnal Hukum Samudra Keadilan* 18, no. 1 (13 April 2023): 121–30, <https://doi.org/10.33059/jhsk.v18i1.7575>.

¹² Siti Jamilah, Endang Purwaningsih, dan Chandra Yusuf, "PEMBEBANAN JAMINAN HAK TANGGUNGAN PADA AKAD MURABAHAH," *ADIL: Jurnal Hukum* 12, no. 1 (22 Juli 2021), <https://doi.org/10.33476/ajl.v12i1.1915>.

which regulates the parate of execution on the object of pawn has been given *ex lege*. This is clearly different from a mortgage, the creditor of the first mortgage holder has the right of execution parate if it has been agreed between the creditor and the debtor as the guarantor. This means that if the debtor defaults, the creditor who holds the first right of dependency has the right to sell the object of the guarantee through auction, not obtained from the grantor of the right of dependency, but the right itself belongs to him, because the Law itself gives it to him.

If you simply read Article 6 of the UUHT, it is expressly understood that the authority to sell over one's own power is given to the first holder of the right of dependency, even though there is a promise contained in the deed of encumbrance of the right of dependency. This shows the unification of an authority that was originally born from an agreement (promise) into a binding norm because it is given by the Law (*ex lege*), it is a development that leads to a progress compared to the provisions in Article 1178 paragraph (2) BW when the mortgage is in effect.

According to the Explanation of Article 6 of the UUHT provides at least 2 (two) understandings, the right of the creditor to sell the object of the right of dependency over one's own power is based on a promise if the debtor is indebted to the promise, and second, the right to sell the object of the right of dependency over one's own power is one of the manifestations and the position of the holder of the right of dependency is one of the manifestations and the position of the holder of the right of dependency.

Regarding the right to sell on one's own power, according to the Explanation of Article 6 of the UUHT is based on promises. This is very different from Article 6 of the UUHT which provides rights according to the Law (*ex lege*). The difference in meaning to the birth of the creditor's right to sell the object of the right of dependency over one's own power shows that the framers of the UUHT have an inconsistent attitude, which causes confusion and disappointment for creditors in particular. This must be overcome immediately to reflect certainty for the parties, especially the rights of creditors.

There is an inconsistent arrangement of creditor rights regulated in Article 6 of the Law with the Explanation in Article 6, so for the sake and for legal protection and legal certainty for the creditor, it is necessary to have a foothold to find a solution to the confusion of the regulation. Based on the Decree of the President of the Republic of Indonesia No. 44 of 1999 concerning the Drafting of Laws and Regulations and the Form of Draft Laws, Draft Government Regulations and Draft Presidential Decrees, dated May 19, 1999, Statute Book of the Republic of Indonesia No. 70 of 1999, in 11, concerning Special Matters, 11 A, number 117 Explanation states:¹³

"Basically, the formulation of explanations of laws and regulations cannot be used as a basis for the subject matter regulated in the body. Therefore, the formulation of norms in the body must be clear and not cause doubt."

¹³ Nur Asmidah Nasution dan Dikko Ammar, "Tinjauan Yuridis terhadap Pengaruh Penerapan Hak Tanggungan terhadap Lembaga Jaminan Hak

Atas Tanah," *Jurnal Smart Hukum (JSH)* 1, no. 2 (30 Januari 2023): 244–352, <https://doi.org/10.55299/jsh.v1i2.288>.

Based on the aforementioned regulation associated with the Explanation of Article 6 of the UUHT, the Explanation of Article 6 of the UUHT cannot be used as a basis for the subject matter regulated in the body which is Article 6 of the UUHT. The explanation of a norm must not contradict the content (substance) of the norm, and the explanation of the norm is not binding, because the explanation of a norm is not a norm. Regarding the Explanation of Article 6 of the UUHT is not the norm when a dispute occurs, the position of the Explanation of Article 6 of the UUHT does not have binding force. So based on this reason, it is clear that the right of the creditor holder of the first dependent right to sell the object of the dependent right is on the basis of the law, not on the basis of an agreement.¹⁴

In the explanation of Article 6 of the UUHT, the parate executie has been mixed with the position of preferred creditors. To see this, we must look at the types of rights covered by the UUHT. Actually, dependent rights are a type of right that arises as a result of an agreement made by the parties. This lien is created by a guarantee agreement made by the parties to complement the principal agreement, which is usually in the form of a credit agreement or debt receivables. In connection with the agreement that the guarantee given by the creditor is land (immovable object), it means that the parties will make a guarantee agreement for the Right of Dependency.

This agreement is qualified as a material agreement, so that the Dependent Rights that are born are classified as material (zakelijk). As is known, material rights have superior characteristics or characteristics such as absolute, preferential, droit de suit, and priority. As a result, banks or creditors that have Dependent Rights are considered preferred creditors rather than concurrent creditors.¹⁵

The confusion of the explanation of Article 6 of the UUHT is unclear and confusing the guarantor holders, especially the creditors who hold the first Dependent Right. Although the birth of the parate executie can basically be agreed upon and will bind both parties, usually the explanation must be clear and firm so that there is no double understanding that causes unclear meanings and raises the possibility of different interpretations that cause the main purpose of the establishment of Article 6 of the Constitution to be forgotten.

As in the general explanation number 9, it is further strengthened by the provisions of Article 26 of Law Number 4 of 1996 concerning the Right of Dependency on Land and Objects Related to Land, which reads:¹⁶ "As long as there are no laws and regulations regulating it, by paying attention to the provisions in Article 14, the regulations regarding the execution of Hypotheek that exist at the beginning of the entry into force of this Law, apply to the execution of the Right of Dependency" Implementation of Parate Execution, as a

¹⁴ Tria Agustia, Yulia Mirwati, dan Busyra Azheri, "KEPASTIAN HUKUM OBJEK HAK TANGGUNGAN BELUM TERDAFTAR SEBAGAI JAMINAN HAK TANGGUNGAN" 14 (2019).

¹⁵ Dafa Rizky Pradana, Taufiqurrahman Taufiqurrahman, dan Farhan Saleh, "PERTANGGUNGJAWABAN PERDATA DEBITUR DALAM PERJANJIAN KREDIT DENGAN JAMINAN PERORANGAN," *Jurnal Ilmu Hukum Wijaya Putra* 1,

no. 2 (15 Agustus 2023): 103–15, <https://doi.org/10.38156/jihwp.v1i2.123>.

¹⁶ Fadillah Hanum dan Ayu Trisna Dewi, "PERLINDUNGAN HUKUM TERHADAP PEMBERI FIDUSIA DALAM PELAKSANAAN EKSEKUSI JAMINAN FIDUSIA KENDARAAN BERMOTOR RODA EMPAT (Studi Di BCA Multifinance Ringroad Medan)," *Law Jurnal* 3, no. 1 (30 Agustus 2022): 27–41, <https://doi.org/10.46576/lj.v3i1.2295>.

result, always causes problems because on the one hand the implementation of the Execution Parate according to Article 6 of Law Number 4 of 1996 concerning Dependent Rights on Land and Land-Related Objects no longer requires fiat or court intervention but on the one hand the implementation of the Execution Parate based on the provisions of Article 224 HIR requires to ask for permission/fiat from the court. This is what causes the implementation of the Execution Parate to not run as desired by the purpose of establishing the provisions of Article 6 of Law Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to the Land. The existence of a conflict of norms regarding the Execution Parate can cause legal uncertainty due to the absence of legal certainty due to confusion and conflict of norms regarding the Execution Parate. This can also cause many civil lawsuits from the Debtor who are dissatisfied with the implementation of the Execution Parate of the object of their dependents' rights to be executed by the creditor who uses the Execution Parate efforts, due to the conflict of norms in the arrangement of the Execution Parate as discussed above, the debtor can postulate that the execution carried out by the creditor according to the provisions of Article 6 of the UUHT has been contrary to the provisions of Article 224 of the HIR.¹⁷

In addition, due to the conflict of norms between Article 6 of Law Number 4 of 1996 concerning the Right of Dependency on Land and Objects Related to Land contrary to the provisions of Article 224 of the HIR, there is still a dualism of opinion among judges regarding the execution of the right

of dependency, the judge who is given the numbness to decide the dispute of the Execution Parate according to his beliefs, and there are judges who are of the opinion that the implementation of the Execution Parate must still ask for permission/fiat from the District Court but there are also judges who are of another opinion that the implementation of the Execution Parate no longer requires permission/fiat from the court so that legal certainty is not achieved.

3. Conclusion

The executory force for the execution of the right of dependency is expressly regulated in article 14 jo 20 jo 26 of the UUHT, which has the consequence that the SHT has strong legal force as the basis for the execution and the execution of the deed of guarantee of the right of deed cannot be directly carried out when there is a bad credit, because even though article 224 of the HIR has accommodated the execution, but in Article 6 of the Law it is contrary to these provisions which finally causing inconsistencies in the implementation of execution. This causes the execution to be based on the application for a court determination, not solely carried out directly when the accused is proven to have committed a default.

The conflict of norms between Article 6 of Law Number 4 of 1996 concerning the Right of Dependency on Land and Land-Related Objects is contrary to the provisions of Article 224 of the HIR, there is still a dualism of opinion among judges regarding the execution of the right of dependency, judges who are given numbness to decide the dispute of the Execution Parate

¹⁷ I Made Dedy Priyanto, Dewa Ayu Dian Sawitri, dan Ni Putu Purwanti, "Pelaksanaan Penghapusan

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according to their beliefs, and there are judges who are of the opinion that the implementation of the Execution Parate must still ask for permission/fiat from the District Court but there are also judges who Another opinion is that the implementation of the Execution Parate no longer requires permission/fiat from the court so that legal certainty is not achieved.

To the makers of laws and regulations, especially legislative institutions and executive institutions in the future, they should be more careful in making legal norms. So that there is no conflict of norms or rules between one regulation and another. Later, between various rules that have the same object, they can harmonize with each other, not overlapping rules, conflict of rules, and so on.

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