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Analysis of Legal Protection Reconstruction for Debtors in Auction Execution of Mortgage Matters Based on Justice

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Abstract. The execution of collateral foreclosure often results in both material and immaterial losses for debtors. The process of auctioning collateralized assets frequently leads to disagreements when debtors resist the auction's outcome, creating legal issues for the auction winners. Many disagreements arise when creditors conduct foreclosure auctions through the State Asset Management and Auction Service Office (without going through the courts, as regulated by Law No. 4 of 1996 on Mortgage Rights. This often leads to lawsuits for unlawful acts. The research aims to analyse the legal risks in credit transactions that lack justice-based principles, identify the weaknesses in legal protections for debtors and auction winners, and explore the reconstruction of legal protection regulations for debtors experiencing defaults. This study uses the constructivist paradigm, focusing on the legal rules governing foreclosure, utilizing a social-legal research approach. The research method involves normative legal studies, focusing on legal documents and literature. The findings reveal that current legal regulations, particularly Law No. 4 of 1996 on Mortgage Rights and related banking laws, fail to provide adequate legal protection for debtors in default, who often suffer losses due to the lack of balance between the rights and obligations of creditors and debtors. The study highlights the need for reconstructing legal norms to ensure fairness, emphasizing the imbalance in legal protections for debtors, including issues in the legal structure, substance, and culture. The research concludes that reconstructing justice-based legal protections is essential to create a balance between the rights of debtors and creditors, and this can be achieved through the revision of current legal frameworks to better address issues in cases of default.

Keywords: Debtor, Foreclosure, Mortgage, Protection, Reconstruction.

1. INTRODUCTION

National economic development requires significant support from the banking sector, particularly in providing funds to finance various economic activities. Credit, as one of the banking instruments serves as the main foundation for many sectors to gain business capital, which ultimately contributes to the growth of economic productivity.[1] As an institution functioning as financial intermediaries, banks mobilise funds from the public in the form of deposits and channel them back through credit provision. This process is regulated under Law No. 10 of 1998 on Banking, where banks are given a crucial role in improving the standard of living by managing these funds. However, there are significant risks in credit provision by banks, particularly the risk of default, where the debtor fails to meet their payment obligations as outlined in the credit agreement. To reduce this risk, banks usually ask for collateral or guarantees from the debtors. This collateral does not only provide a sense of security for the bank but also serves as an essential requirement in credit transactions, particularly for large amounts.[2] The most commonly used collateral in the banking sector is a Mortgage Right over land and buildings, as regulated by Law No. 4 of 1996 on Law on Mortgage Rights.[3] The Law on Mortgage Rights provides legal protection to creditors by allowing them to execute the collateral if the debtor fails to fulfil the payment obligations. In this context, the execution of the Law on Mortgage Rights is the final step taken by creditors to settle their receivables through a public auction of the collateral subject to the mortgage right. Article 6 of the Law on Mortgage Rights stipulates those creditors have the right to execute the mortgage without needing court approval. This matter speeds up the resolution of problematic credit disagreements.[4] However, this court-free execution process often sparks debate, particularly because debtors frequently feel they are being treated unfairly. A common issue in the execution of the Mortgage Rights is the lack of adequate legal protection for the debtors. Many debtors feel that the execution enforcement, especially the auction, is always being held without adequate notice, or even without the participation of the debtors in the process.[5] This creates potential injustice, where the rights of debtors as parties involved in the credit agreement are often overlooked. One of the cases happened in Kendal District, where a debtor filed a lawsuit on the execution of an auction that was done by the creditor. In this case, the debtor claimed that the auction process was held without any proper notice or demand letter, causing legal uncertainty.[6] This case reflects a discrepancy in the regulation that

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stipulates the execution of the Mortgage Rights.[7] Although Law on Mortgage Rights grants the power to the creditor to do the execution, there is not enough balance in protecting the rights of debtors. According to the principles of justice, both parties involved in a credit agreement, namely creditors and debtors, should receive equal legal protection. Balancing the creditor's right to execute collateral with the debtor's right to adequate legal protection should be the goal of reconstructing regulations to ensure better justice. Reconstructing the legal protection for debtors in the execution of Mortgage Rights is crucial. The Mortgage Rights is very important, given the increasing number of default cases that lead to the auctioning of collateral.[8] On one hand, creditors have the right to recover their debts through the execution of collateral. But on the other hand, debtors are also entitled to fair treatment and due process during the execution process. Without adequate notice or lack of transparency, the execution process is potentially violating the principles of justice that should be upheld in the civil law system in Indonesia.[9] This article aims to deeply analyse how legal protection for debtors in the process of executing the execution auction of the Mortgage Rights matters is currently regulated. Other than that, this article will explore the approach of regulatory reconstruction based on the value of justice to create a balance between the rights of creditors and debtors. This approach is hoped to improve the existing loopholes in the regulation at this point. It is also to ensure the rights of both parties are well protected in the execution auction process of the mortgage.

2. RESEARCH METHODS

This research employs a constructivist paradigm that views laws as not just merely a collection of form rules but also highlights the importance of justice value for society.[10] The approach used in the research is a non-doctrinal legal approach or social legal research that combines doctrinal normative studies with field research to understand the application of law more comprehensively. The source of data used in the research consists of primary and secondary data. The primary data is gained through observation and interviews from a few parties, such as judges at the Kendal District Court and the Kendal Religious Court, as well as officials at the Office of State Assets and Auction Services Batang and National Land Agency Kendal.[11] The secondary data is collected through library research that covers legal primary sources such as related laws, research findings, and jurisprudence.[12] The data collection method is done systematically through legal document studies and field observation. The data analysis is done using a few techniques including description to illustrate the available legal conditions and facts. The techniques of argumentation and evaluation to assess the validity and fairness of the application of law in mortgage execution cases are also implemented. The systemisation technique is applied to find relations between legal norms and relevant legislation. While interpretation techniques help to interpret various legal aspects grammatically, historically, and systematically.[13] The purpose of this research is to formulate a more just regulatory reconstruction in the Mortgage Rights auction execution process, provide a balance between the rights of creditors and legal protection for debtors, and offer theoretical and practical contributions to the development of civil law in Indonesia.

3. RESULTS AND DISCUSSION

3.1. Comparison of Regulations on Execution Auction of Object Under Security Rights in Other Countries

The execution of mortgage collateral is a vital mechanism in the settlement of problematic credits, where creditors have the right to auction the collateral of a defaulting debtor. Every country has different regulations related to this process, which reflects the legal system and principles of justice upheld. The regulation comparison in various countries such as Indonesia, the United State, Korea, and Singapore provide insights into how this execution auction is regulated, beginning from the reversal of the burden of proof and the court's role in the process. This difference shows how legal protection for debtors and creditors significantly varied in each country, depending on the proof model and legal basis used.[14] In the United States, the legal system follows the common law system, where the auction execution matters are strictly regulated by the courts. A debtor in default has the right to sue the creditor to stop the auction. The creditors also have the right to sell the mortgage matters directly, although this process has to go through a public auction under the court's supervision.[15] Apart from the

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United States, other countries such as Korea and Singapore also implement the reverse burden of proof system in the execution of auction collateral matters, where the creditor needs to prove their right before the court. This system, implemented in some countries, shows the significant influence of jurisprudence in shaping the regulations governing execution auctions. As a comparison, in Indonesia, Article 6 Law on Mortgage Rights gives right to the creditors to sell the mortgage right matters directly without going through the court.[16] This matter often creates law uncertainty and potentially harm the debtors, especially regarding the ownership status of the collateral items that are auctioned, which is not always "clear and clean."[17] The provisions for *parate executie* in Indonesia also face potential disharmony with agrarian law and other execution regulations, such as those outlined in Article 224 of the Revised Indonesian Regulation, which requires execution to be carried out through the courts. This comparison shows that although many countries grant the right to creditors to execute collateral, the legal process in some countries is stricter in providing legal protection for debtors.

3.2. Comparison of Regulations on Execution Auction of Object Under Security Rights with Court Decision Execution

The execution auction of mortgage matters is one of the methods used to settle the problematic credits, where the creditors are able to execute collateral owned by a debtor who has defaulted or failed to meet payment requirement. In Indonesia, the implementation of this auction is regulated by Article 6 of Law Number 4 on Year 1966 on the Law on Mortgage Rights. It grants creditors the right to sell collateral matters directly through *parate executie* mechanism. However, this execution method often creates uncertainty and confusion in practice, particularly when compared with the execution based on the court decision or executory title, which has stricter rules and procedures. Article 6 The Dutch East Indies Army Law allows creditors to implement execution without going through the court process. The certificate of the mortgage itself has executorial power, as stated in the preamble "In the Name of Justice Based on the One and Only God", and thus can be treated as a court decision. However, confusion arises because of mixed-up understanding *between parate executie*, which does not need the court, and execution based on executorial title, which involves an active role of the court in the process. This confusion is worsened by the difference in interpretation of several articles of the Law on Mortgage Rights, particularly Article 6 and Article 224 The Dutch East Indies Army Law, and Article 258 Regulation for the Outer Regions, which regulates execution through court orders.[18] In practice, this confusion often creates problems for the auction executor, including Office of State Assets and Auction Services, because they have to ensure that the auction process is conducted following the law. The creditors are always in doubt in choosing between two provided execution methods, which is *parate executie* or execution through the court. Each of the methods has its own advantages and disadvantages. Nevertheless, Law on Mortgage Rights actually gives three execution mechanisms that can be chosen by the creditors.[19] First, an execution based on the *grosse acte hypotheek* in accordance with Article 224 of the Revised Indonesian Regulation and Article 258 of the Regulation for the Outer Regions. Second, execution through an executory title on the Mortgage Rights Certificate in accordance with Article 6 and Article 20 of the Law on Mortgage Rights, Third, execution by mutual agreement between the debtors and creditors. These three mechanisms allow for flexibility in the execution of mortgage rights but can also create confusion in their application. Finally, the comparison between execution auction of the mortgage rights and execution based on the court's order shows that although *parate executie* offers a faster and simpler process, the execution through court order provides stronger legal protection for debtors and creditors. Therefore, every party needs to comprehend the difference between these two methods so legal uncertainty will not occur in the implementation of the execution of mortgage matters.

3.3. Reconstruction of Legal Protection Regulations for Debtors in Execution Auction of Object Under Security Rights Based on Justice Values

The execution auction of mortgage matters is a method frequently used by creditors to resolve problematic loans. This process allows creditors to auction off assets pledged by the debtor as collateral for unpaid debts.[20] However, in practice, many debtors feel disadvantaged by this execution auction process, especially when the auction limit is set significantly below market value. The imbalance in setting the auction limit often harms the debtors, who may end up losing their assets at a value that does not reflect their true worth. This creates injustice and undermines the principles of justice in the execution of mortgage matters auctions. Article 6 of the Law on Mortgage Rights does grant creditors the right to execute on collateral matters directly through an auction mechanism.[21] However, problems occur when this process is not properly regulated, especially in setting of the

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auction limit for collateral matters, which often does not align with market value. When the set limit is too low, the debtor, as the asset owner, risks significant losses because the auction proceeds do not reflect the true value of the asset. In this context, legal protection for the debtor is a crucial matter to be prioritised. The debtor has the right to file lawsuits based on Article 1365 of the Indonesian Civil Code**,** which regulates unlawful acts.[22] This article can be used by the debtor as a legal basis to seek the cancellation of an auction if it is proven that setting the auction limit too low has caused significant losses. In this case, the debtor can request the court to annul the auction and uphold justice for the injured party. In addition, the Office of State Assets and Auction Services, which is authorised to conduct auctions, must adhere to applicable regulations, including those set by the Minister of Finance and other related rules. It is to ensure that the auction process aligns with principles of justice.[23] Office of State Assets and Auction Services should also involve an independent appraisal team to determine a just and reasonable auction limit, consistent with the market value of the asset. This will help minimise potential losses for the debtor and prevent abuse of authority in the auction process. The reconstruction of regulation aims to create stronger legal protection for the debtors until they are not disadvantaged in the process of executing the auction of mortgage matters. By integrating the value of justice in the auction regulation and ensuring compliance with applicable regulations, it is hoped that the execution auction process can proceed more transparently and fairly, benefiting both creditors and debtors. Regulations that are clear and equitable not only protect the rights of debtors but also provide legal certainty for creditors in the execution of mortgage rights.

3.4. Analysis of the Justice-Based Execution Auction Request for Security Rights in Kendal District (Case Number: 3/Pdt.Eks.HT/2022/PN.Kdl)

In the case of the execution auction request for mortgage rights in Kendal Regency (Case Number: 3/Pdt.Eks.HT/2022/PN.Kdl), issues have arisen regarding the winning bidder's right to control and occupy the auctioned object. According to the auction minutes No. 374/40/2021, the execution auction was conducted in accordance with Article 6 of the Mortgage Rights Law at the Office of State Assets and Auction Services in Pekalongan.[24] The auction involved a plot of land and a building located in Pojoksari Village, Rowosari District, Kendal Regency, with the winning bidder being Bagas Wahyu Aji. However, despite being declared the winner, until this moment, Bagas Wahyu Aji has yet to occupy the auctioned object as it is still occupied by the previous owner, the respondent. In this situation, the winner of the auction suffered losses because of his inability to take possession of the object that had been legally purchased through the auction process. The request for eviction of the auctioned property was submitted by the petitioner based on the principles of justice and law outlined in Article 200, Paragraph (11) of the *Herzien Inlandsch Reglement* (Revised Indonesian Regulation) and Article 218, Paragraph (2) of the *Rechtsreglement Voor De Buitengewesten* (Regulation for the Outer Regions).[25] These provisions grant the local District Court Chair the authority to order the bailiff to evict the auctioned property if the respondent does not voluntarily vacate the property that has been auctioned. However, the respondent refused to vacate the auctioned object and has even filed a lawsuit or petition to contest the execution of mortgage rights. This lawsuit illustrates an unresolved legal dispute between the petitioner, as the winning bidder, and the respondent, as the previous owner. This conflict highlights the legal uncertainty in the execution auction process, where the legitimate rights of the winning bidder have not been fully enforced due to opposition from the respondent.[26] In the context of justice, this case highlights the importance of clearer legal enforcement of the winning bidder's rights, which should be protected by the court and applicable regulations.[27] On the other hand, the respondent also has the right to file an objection if there are certain aspects of the execution deemed harmful or unfair. Therefore, a fair and transparent court process is needed to balance the interests of both parties. The concept of justice in the execution auctions of mortgage matters emphasises the importance of strong legal protection, both for the applicant as the auction winner and for the respondent still in possession of the auctioned object. The execution and eviction process must be carried out carefully to avoid injustice, and related regulations must be able to provide legal certainty for all parties involved.

3.5. Legal Considerations on Article 6 of the Security Rights Law in Relation to Civil Procedure Law

Article 6 of the Law on Mortgage Rights grants the creditor holding the mortgage right the authority to independently sell the mortgage object through a public auction if the debtor defaults.[28] This mechanism is

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known as *parate executie*, where the creditor can exercise their rights without having to go through court proceedings. However, there is a debate over whether this execution should still follow the procedures outlined in Civil Procedural Law, particularly Article 224 of the Revised Indonesian Regulation and Article 258 of the Regulation for the Outer Regions, which state that executions must be carried out with an order from the Chief Judge of the District Court. This matter creates conflict and confusion in legal implementation. On one side, *parate executie* is designed to ease and provide legal certainty to the creditors. Article 6 Law on Mortgage Rights clearly states that creditors have the right to sell mortgage matters without having to go through court proceedings. But, on the other hand, a condition made by Civil Procedural Law that execution has to be implemented through court proceedings with the permission from Chief Judge of the District Court. The inconsistency between Article 6 of the Law on Mortgage Rights and Civil Procedural Law creates legal uncertainty, especially when the debtor files an objection against the execution.[29] In practice, many creditors face obstacles in carrying out *parate executie* because they have to deal with the rules of Civil Procedure Law. Creditors often need to request *fiat* or permission from the court, which in turn slows down the execution process. This contradicts the main goal of *parate executie*, which is designed to facilitate a fast and efficient execution process. The conflict between Article 6 of the Law on Mortgage Rights and Article 224 of the Civil Procedure Code (Revised Indonesian Regulation) creates uncertainty for creditors, which ultimately affects the debt resolution process.[30] In this context, legal protection for the debtors should be observed. Although the creditors have the right to execute collateral, the debtors still have to be protected from the abuse of the execution process. For instance, the auction has to be consistent with the market value, and the debtors have to be granted a chance to settle obligations before the execution takes place. Otherwise, the debtor can file a lawsuit based on an unlawful act as regulated in Article 1365 of the Indonesian Civil Code.[31] Hence, legal reconstruction is needed to clarify the relationship between Article 6 Law on Mortgage Rights and Civil Procedure Law. A clearer regulation can prevent uncertainty and legal conflicts in the execution of mortgage rights. This ensures that both creditors and debtors receive fair and balanced legal certainty in the process of executing mortgage matters.

3.6. Analysis of Court Decisions in the Execution Auction of Object Under Security Rights

A court ruling that can be enforced must be of a condemnatory nature, meaning it contains an order to perform a specific action, such as handing over property, vacating land or buildings, carrying out a certain act, stopping a particular behavior, or paying an amount of money.[32] In the context of the execution auction of mortgage matters, a condemnatory ruling is crucial as it provides the legal basis for execution, especially in cases where the losing party (defendant) does not voluntarily comply with the judgment. If the losing party is willing to carry out the ruling voluntarily, execution is not necessary. However, if the defendant refuses or neglects the ruling, execution becomes the last resort to compel the losing party to fulfil their obligations. Execution is carried out by the District Court, which has the authority to implement judgments based on the provisions in Article 195 (1) Revised Indonesian Regulation or Article 206 (1) Regulation for the Outer Regions. The Chief of the District Court has the *ex officio* authority to lead the execution process, including the determination, seizure, and eviction or transfer of the auctioned object. The execution must be carried out strictly in accordance with the judgment. If the execution deviates from the judgment, the executed party has the right to refuse its implementation. Therefore, the success of the execution relies heavily on the clarity and completeness of the judgment, as well as the accuracy of the legal considerations provided by the judge in the ruling. A thorough examination of evidence, witnesses, and arguments from the involved parties is crucial to ensure that the judgment is properly enforced. In practice, there are several types of execution, such as execution for the payment of a sum of money, which is regulated under Article 196 Revised Indonesian Regulation. Next is the real execution for the eviction of fixed matters, such as land or buildings, which is regulated under Article 225 Revised Indonesian Regulation. Real execution also applies to the transfer of auction matters to the auction winner.[33] In addition, there is *parate executie*, which is direct execution without court intervention, commonly used in cases of mortgage rights. The execution of mortgage rights is often carried out through auctions because the debtors' default or fail to meet their obligations.[34] This process ensures that the creditors can recover their debt through the sale of the collateral asset. Nevertheless, execution does not always take place smoothly, as sometimes the debtors or third parties may file objections. In such situations, the court must resolve the dispute

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and ensure that the rights of all parties are protected. The judge's ruling in cases of auction execution of collateral matters must be clear, decisive, and based on strong legal reasoning. A detailed and lawful execution process provides legal certainty for both creditors and debtors while upholding the principles of justice in the enforcement of judgments.

4. CONCLUSION

Based on the discussion that has been outlined, it can be concluded that the regulation of foreclosure auctions for collateralized assets, specifically governed by Article 6 of the Law on Mortgage Rights, does not fully reflect the principles of justice, particularly for debtors. The *parate executie* process, which allows creditors to execute their rights without going through court, simplifies the process for creditors but often leaves debtors vulnerable to legal uncertainty, especially regarding their protection. Several challenges in this regulation include the risk of crime during cash payments, technical issues in bank transactions, and lawsuits from debtors that delay the auction process. Additionally, matters of the auction are often difficult to sell due to a lack of market interest, fear of future legal complications, and concerns over disagreements with debtors. These factors contribute to the perception that the foreclosure process does not provide adequate justice for all parties. Therefore, a reconstruction of the foreclosure auction regulation is necessary to ensure a fair balance between the rights of creditors and debtors. Such a reconstruction should aim to enhance legal protection for debtors while maintaining the efficiency and effectiveness of resolving non-performing loans through *parate executie*. This includes providing clearer legal guidelines and safeguarding the rights of all involved parties in order to prevent misuse of the auction process and ensure that it aligns with the values of justice embedded in Pancasila.

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