

## RESEARCH ARTICLE

# Implementation of Parate Executie Object of Liability

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## ABSTRACT

Parate executive is the primary purpose of establishing Law Number 4 of 1996 concerning Mortgage Rights to provide solid legal protection for creditors holding mortgage objects. The easy and inexpensive execution process should make the parate executive the leading choice for creditors in auctioning mortgage objects if the debtor defaults. However, in reality, the parate execution could not be carried out properly because of the Supreme Court Decision No. 3210 K/Pdt/1984, in which one of the ratio decidendi in it that the public auction conducted by the Bandung KPKNL is invalid, and this is also supported by book II of the Supreme Court's guidelines which requires fiat execution from the District Court. This paper will explain how the two conflicting legal bases will impact the implementation of parate executives in the field.

**Keywords:** Parate Executie; Mortgage; Land.

## INTRODUCTION

As part of national development, economic development is one of the efforts to realize just and prosperous people's welfare based on Pancasila and the 1945 Constitution. Individuals or business entities seeking to increase their consumptive or productive needs are in dire need of funding, and banks as one of the sources of funds, including in the form of credit, in order to be able to be sufficient to support business expansion. Given the importance of the position of credit funds in the process of economic development, it is appropriate that credit givers and recipients and other related parties receive protection through a vital guarantee rights institution in order to provide legal certainty for all interested parties as an effort to anticipate the emergence of risks for creditors in the future, which will come. For this business, you can use banking services.<sup>1</sup> For providers of funds/credit (creditors) and recipients of loans or debtors. The legal solution referred to here is the procedure regarding the implementation of performance fulfillment if the debtor is in default. Indeed, currently, there are many alternatives regarding the execution (implementation) of the guarantee object when the debtor defaults. However, of course, execution is the most straightforward procedure to accelerate the repayment of his receivables to support national economic development.

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<sup>1</sup>Herowati Poesoko, *Dinamika Hukum Parate Executie Obyek Hak Tanggungan*, (Yogyakarta: Aswaja Pressindo, 2013), P. 1

Initially, the guarantee agency for land was mortgages and creditverbands. Mortgage guarantee institutions are regulated in Book II of Burgerlijk Wetboek, which is the same as the Civil Code and starting now abbreviated as B.W, precisely regulated in Articles 1162-1232 B.W; while creditverband is regulated in the Staatsblaad of 1908 Number 542 as amended by Stb. 1937-190. Nevertheless, since the enactment of Law no. 5 of 1960 concerning Basic Agrarian Basic Regulations (UUPA), Forming Law no. 5 of 1960 following Article 51 of Law no. 5 of 1960, to make a set of rules regarding Mortgage which had just been realized and promulgated on April 9, 1996, Law no. 4 of 1996 concerning Mortgage on Land and Objects Related to Land (UUHT), from now on referred to as Mortgage Rights. Since the UUHT has been declared effective, the mortgage and creditverband guarantee institutions, as long as they are related to land, have ended their term of service and role.<sup>2</sup>

Parate execution contained in Article 6 UUHT is the legal basis for legal protection to creditors holding Mortgage objects. The implementation of parate execution that occurred in the period since the enactment of Law no. 5 of 1960 until the enactment of Law no. 4 of 1996, concerning Mortgage on Land and Objects Related to Land (abbreviated UUHT), could not be implemented as expected by the Bank as creditor due to the Supreme Court of the Republic of Indonesia (MARI) Decision. 3210 K/Pdt/1984 dated January 30, 1986, which is one of the ratio decidendi of the Supreme Court's decision in this case, if the auction is carried out by the Head of the Bandung State Auction Office on the orders of the original Defendant I (Bank-Kteditor) and not by order of the Chairman of the Court In Bandung, according to MARI, the public auction is contrary to Article 224 HIR, so the auction is invalid. It turns out that MARI's decision is also supported by Book II of the Guidelines for the Agung Court of the Republic of Indonesia, which requires fiat execution from the District Court.<sup>3</sup> So here there is a clash of two conflicting laws, where the UUHT mandates that the Mortgage which is used as collateral to be executed by direct execution (Parate Executie) if the debtor defaults or breaks a promise, but on the other hand, the Supreme Court does not recognize the direct execution without a decision. from the previous District Court.

## DISCUSSION

### *Juridical Overview of Mortgage*

Mortgage rights, according to the provisions of Article 1 point 1 of Law no. 4 of 1996 concerning Mortgage on Land and Objects Related to Land, is mortgage on land and objects related to land in the future referred to as Mortgage Rights are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, whether or not the following other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.

From the formulation of Article 1 paragraph (1) of Law no. 04 of 1996 concerning Mortgage Rights, it can be seen that basically, a Mortgage is a form of guarantee for debt repayment, with pre-emptive rights, with the object (collateral) in the form of land rights as regulated in Law no. 05 of 1960 concerning Basic Agrarian Regulations (UUPA). If we read the provisions stipulated in Law no. 05 of 1960 concerning the basic agrarian regulations (UUPA), we can see Article 51,

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<sup>2</sup>*Ibid.*, P. 2-3.

<sup>3</sup>*Ibid.*, P. 5.

which states that mortgage rights that can be imposed on property rights, cultivation rights, and building use rights in articles 25, 33, and 39 are regulated by law.

Furthermore, in the formulation of Article 57 of the LoGA, it states as long as the Law on Mortgage mentioned in Article 51 has not yet been formed, the provisions regarding the mortgage in the Indonesian Civil Code and the Credit Verband in S. 1908-542 shall apply as amended by S. 1937- 190. Thus, it is clear that the UUHT was formed as the implementer of Article 51 of the UUPA, which replaces the enactment of the provisions regarding mortgages regulated in the Civil Code and *credietverband* regulated in *Staatsblad* 1908 No. 542 as amended by *staatsblad* 1937 No. 190. Matters regarding the revocation or declaration of invalidity of the provisions regarding hypotheses regulated in the Indonesian Civil Code and *Credit Verband* regulated in *staatsblad* 1937 No. 542 as amended by *Staatsblad* 1937 No. 190 can be found in the formulation of Article 29 of the Mortgage Law (UUHT) which states:<sup>4</sup>

In mortgage Law, objects that can be encumbered with Mortgage Rights are land rights and objects related to land. In Article 4 of the UUHT, it is explained that land rights that can be encumbered with Mortgage Rights are as follows:

- a) Ownership
- b) Right to Cultivate
- c) Building Use Rights
- d) Right of Use on State Land, which according to applicable regulations must be registered and according to its nature can be transferred
- e) Rights to land rights including buildings, plants, and works that already exist or will exist which are an integral part of the land, and which belong to the holder of the land rights.

In this case, the burden must be expressly stated in the Deed of Granting the Mortgage concerned.<sup>5</sup> Especially the right of Use, in reality, not all land rights of Use on state land can be used as objects of mortgage rights. Land Right to Use on State Land, although registered, because of their non-transferable nature, such as Right to Use on behalf of the Government, Right to Use on behalf of religious and social bodies. Right to Use on behalf of Foreign Country Representatives, the validity period of which is not determined and given as long as the land is used for specific (unique) purposes, is not an object of Mortgage Rights. The land-use rights that can be transferred include the use rights granted to individuals or legal entities for a certain period as determined in the decision to grant them, which can be used as objects of mortgage rights. One of the Rights of Use subjects is a foreigner, but not all foreigners can be appointed as the Right of Use. Only foreigners who are domiciled in Indonesia can be subject to the Right to Use. The definition of domicile in Indonesia, when interpreted narrowly, is to have permanent residence in Indonesia and not just to be in Indonesia at certain times. Permanent residence does not mean he has to stay in Indonesia all the time. However, the residence must be in Indonesia, not in another country. The primary purpose of the issuance of Government Regulation Number 41 of 1996 is not to increase national development but to allow foreigners to get/own a house in Indonesia. Of course, the term "beneficial for national development" must be interpreted broadly. The definition of "domiciled in Indonesia" does not have to mean permanent or temporary residence in Indonesia as long as the foreigner's presence in Indonesia can benefit national development.

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<sup>4</sup>*Ibid.*, P. 14.

<sup>5</sup>Adrian Sutedi, *Hukum Hak Tanggungan*, (Jakarta: Sinar Grafika, 2010), P.51

If the buildings, plants, and works that form one unit with the land are not owned by the holder of the right to land, the encumbrance of the Mortgage on the objects can only be done by signing and on the Deed of Granting the Mortgage concerned by the owner or the authorized person. For that by him with an authentic deed. In principle, the object of Mortgage is land rights that meet two requirements, namely that they must be registered (to fulfill publicity requirements) and can be transferred to facilitate the implementation of debt payments that are guaranteed to be paid off. Following the mandate of Article 51 of the LoGA, the land rights designated as objects of Mortgage Rights are Ownership Rights, Cultivation Rights, and Building Use Rights. In later developments, namely according to the Regulation of the Minister of Agrarian Affairs No. 1 of 1966 dated January 5, 1966, the Right of Use on State Land must also be registered to be transferred. Therefore, in addition to meeting the community's needs, specific State Land Use Rights that meet these two conditions can also be used as objects of Mortgage Rights. In addition to the Right of Use on State Land, there is also the possibility that the Right of Use will occur on land with Hak Milik, which is currently not regulated, but the Mortgage Law opens the possibility that it can be used as an object of Mortgage if it has fulfilled the two conditions mentioned above. Regarding this matter, it will be regulated in a Government Regulation (Article 4 paragraph (3) of Law No. 4 of 1996).

In the explanation of Article 4 paragraph (1) of Law no. 4 of 1996 (Law on Mortgage Rights), it is affirmed that land with Hak Milik that has been waqf and lands used for worship and other sacred purposes, even though they fulfill these two requirements, due to the specific nature and purpose of their use, cannot be used as objects. Mortgage right. In the explanation of Article 4 paragraph (2) of Law no. 4 of 1996, it is also explained that the Right of Use over State Land granted to individuals and civil legal entities, because it fulfills the two conditions mentioned above, can be used as the object of Mortgage Rights. Use of Land Rights on State Land granted to Government agencies, Religious and Social Agencies, and Foreign Country Representatives, even though they must be registered, are still because their nature cannot transfer them. They are not objects of Mortgage Rights.<sup>6</sup>

- 1) As the only institution for guaranteeing land rights for the settlement of certain debts, mortgage rights have four principles, namely as follows.
- 2) Give a preferred position to the creditor. This means that the creditor holding the Mortgage has the right to obtain repayment of his receivables than other creditors for the proceeds of the sale of the object burdened with the Mortgage.
- 3) Always follow the object in the hands of whomever the object is. This means that the objects used as the Mortgage object are still burdened with the Mortgage, even though in the hands of whomever the object is. So even though the land rights, which are the Mortgage object, have been transferred or moved to other people, the existing Mortgage rights are still attached to the object and still have binding power.
- 4) Meet the principles of specialty and publicity. The principle of specialty means that the object that is burdened with the Mortgage must be specifically designated. In the Deed of Granting Mortgage, it must be stated explicitly and clearly regarding what the object being encumbered is in the form of, where it is located, how wide it is, what the boundaries are, and the evidence of the owner. The principle of publicity means that the Mortgage encumbrance must be known by the public, for that the Deed of Granting the Mortgage must be registered.

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<sup>6</sup>*Ibid.*, P. 53.

- 5) Easy and solid execution, meaning that it can be executed like a judge's decision with permanent and definite legal force. The encumbrance of Mortgage Rights is:

In the General Elucidation, number 7 and the explanation of Article 15 paragraph (1) UUHT, it is stated that the granting of Mortgage Rights must be carried out by the Mortgage Provider himself by being present before the PPAT. As a proxy, with a Power of Attorney to impose Mortgage Rights (SKMHT) in the form of an authentic deed. The making of SKMHT other than by a Notary is also assigned to PPAT because this PPAT reaches the District area in the context of equal distribution of services in the land sector. The contents of the SKMHT must meet the following requirements.

- a) Does not contain the power to carry out other legal actions and impose Mortgage Rights.
- b) Does not contain the power of substitution.
- c) State the object of the Mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the provider of the Mortgage.

PPAT's authority to make SKMHT, in addition to being stated in Article 15 paragraph (1), is also based on the general explanation number 7, which among other things, states that:

- a) PPAT is a public official who is authorized to make a deed of transfer of land rights and other deeds in the context of imposing land rights, the form of which is determined as evidence that specific legal actions have been carried out regarding land located within their respective working areas. As a public official, the deeds made by PPAT are authentic.
- b) Making a Power of Attorney for Imposing Mortgage Rights in addition to a Notary, also assigned to PPAT whose existence reaches the sub-district area to facilitate services to parties who need it.
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Thus, if a Notary is authorized to make SKMHT for lands throughout Indonesia, then the PPAT may only make SKMHT for lands within his/her area of an office, especially in places where there is no Notary on duty. A power of attorney must be given directly by the Mortgage Provider and must meet the requirements regarding the content as stipulated in Article 15 paragraph (1). If the SKMHT is not made by the Mortgage Provider himself or does not meet the requirements mentioned above, then the Power of Attorney concerned is null and void, meaning that the Power of Attorney cannot be used as the basis for making the Deed of Granting Mortgage.<sup>7</sup> In addition, in the Deed of Granting Mortgage, the parties can also include facultative promises, which aim to protect the creditor's interests as the holder of the Mortgage. Although the promises are facultative, they are always included in the Deed of Granting Mortgage.

The Deed of Granting Mortgage (APHT) stipulates the terms and conditions regarding the granting of Mortgage from the debtor to the creditor in connection with the mortgage guaranteed by the Mortgage. Other (concurrent creditors) as stated in Article 11 UUHT. So, the granting of Mortgage Rights as collateral for the repayment of debt or debts to creditors in connection with the loan or credit agreement in question. Land as an object of Mortgage may include objects that are an integral part of the land. This is possible because of its physical nature to become one unit with the land, both existing and future, in the form of permanent buildings, perennials, and handiwork, provided that these objects belong to the right holder or to other parties (if the object is -the object belongs to the other party concerned/the owner must also sign the APHT).<sup>8</sup> executie from the word paraat, which means the right is ready in the creditor's hands to sell the collateral object in public based on the earliest power as if selling his property. Parate executive arrangements have been in place at the time the mortgage institution is in effect, as regulated in Article 1178 paragraph (2) B.W, which contains:<sup>9</sup>

*"However, it is permissible for the person who owes the first mortgage to, at the time of granting the mortgage, expressly ask for an agreement that, if the principal is not repaid correctly, or if the interest owed is not paid, he will be empowered to sell the parcels which are bound in public, to take the payment of principal, as well as interest and fees, from the sales income, the promise must be made according to the method as regulated in Article 1211 BW."*

The meaning of parate executie given by the doctrine is "the authority to sell on its power or parate executie, given the meaning, that if the debtor is in default, the creditor can execute the object of collateral, without having to ask for fiat from the Chief Justice, without having to follow the rules of the game in the law. The event-for that there are rules of the game-no need for confiscation in advance, no need to involve a bailiff, and therefore the procedure is more manageable and costs less.

Parate executie, according to Subekti, is: "to carry out themselves or take what they are entitled to, in the sense that without the mediation of a judge, which is aimed at something as collateral for further selling the goods themselves." Meanwhile, Tartib believes that parate execution is an execution carried out by the holders of collateral rights (pawns and mortgages) without the assistance or intervention of the District Court but only based on the assistance of the State Auction Office. From these two opinions, it can be understood that the implementation

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<sup>7</sup>*Ibid.*, P. 60-61.

<sup>8</sup>*Ibid.*, P. 72.

<sup>9</sup>Herowati Poesoko, *Dinamika Hukum Parate Executie Obyek Hak Tanggungan*, (Yogyakarta: Aswaja Pressindo, 2013), P. 9.

of parate execution is the easiest and simplest way for creditors to recover their receivables when the debtor is in default compared to executions through the assistance or intervention of the District Court.<sup>10</sup>

As an illustration, for the convenience of the creditor's right to execute parate executie at the time the mortgage is valid, the promise to sell on its power as the first creditor's right when the debtor is in breach of contract has received support from several legal experts. As the opinion of Stein said that the promise cx Article 1178 paragraph (2) B.W. is an effort or facility that is intentionally made for debtors so that they can get their money back more effortlessly and cheaply. Article 1178 paragraph (2) B.W. is deliberately intended to break through the formalities of the procedural law, which, if it is not contained in that article, the creditor holding the mortgage should have complied. Scholten views the sale on its own power as a simple and inexpensive exercise of creditor rights.<sup>11</sup>

We can see the legal basis for parate execution in Article 20 UUHT, which reads:

*Article 20*

*(1) If the debtor defaults, then based on:*

- a. the right of the first Mortgage holder to sell the object of the Mortgage as referred to in Article 6, or*
- b. the executorial title contained in the Mortgage certificate as referred to in Article 14 paragraph (2), the Mortgage object is sold through a public auction according to the procedure specified in the legislation for the settlement of the mortgage holder's receivables with prior rights over other creditors.*

*(2) Under the agreement of the grantor and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hands if, in this way, the highest price can be obtained that benefits all parties.*

The convenience provided by UUHT for creditors holding Mortgage Rights when the debtor defaults, according to Article 20 paragraph (1) letters a and b of UUHT, the execution of Mortgage Guaranteed objects can be reached in 3 ways, namely:<sup>12</sup>

- 1) *Parate executie*
- 2) *Title executorial*
- 3) Underhand sales

The three forms of execution are a form of legal protection for a creditor against the Mortgage that has been guaranteed against him. As long as one of the forms of execution is obtained by the creditor holding the Mortgage, the creditor can still be called getting legal protection, namely the right of a preferred creditor. The three executions of the Mortgage Rights mentioned above each have differences in their implementation procedures. For executions using executorial titles based on Mortgage certificates (previously using Grosse Acte Mortgages), the implementation of the sale of collateral objects is subject to and complies with civil procedural law as specified in Article 224 H.I.R. / 258 RBg, which reads:

*Original letters from mortgages and debt securities, which are made before a notary in Indonesia and use the words: "in the name of justice" in his head, have the same power as a judge's decision. In the case of*

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<sup>10</sup> *Ibid.*, P. 4.

<sup>11</sup> *Ibid.*, P. 10

<sup>12</sup> *Ibid.*

*carrying out such a letter, if it is not fulfilled by peaceful means, then the regulations in this section can be treated, but with the understanding that physical coercion may only be carried out after being permitted by the judge's decision. If implementing the decision must be carried out entirely or partially outside the district court's jurisdiction, whose chairman orders it to be carried out, then the regulations in article 195 paragraph two and subsequent ones are complied with."*

The implementation procedure takes a long time. Meanwhile, underhand execution implementation must meet several requirements, including an agreement between the mortgagee (the debtor) and the mortgage holder (the creditor). According to Susan Remy Sjahdeini, in the context of underhand sales, the problem that needs to be solved is regarding the validity of the sale. An object of Mortgage by the bank, based on a power of attorney to sell under the hands of the giver of Mortgage. For creditors and debtors to sell under the hands is a new development as a form of execution in the UUHT for legal protection for the parties because it has not been regulated at the time of enactment of mortgages on land.<sup>13</sup>

Although Article 20 of the UUHT provides an opportunity for the execution of mortgage rights by way of executorial title in the sense of execution through the fiat of the chairman of the District Court, it does not mean that the execution of mortgage rights utilizing parate execution is ruled out because parate execution is regulated separately in one article, namely Article 6 UUHT, This illustrates how parate executies are very important in UUHT, and by looking at the order of articles concerning parate executies which precede the article title executorial, it also emphasizes that parate executies are one of the main objectives of the establishment of UUHT.

### ***Parate Executie Implementation of Mortgage Objects After the Enactment of Law no. 4 of 1996 concerning Mortgage Rights***

In a debt relationship where there is an obligation to achieve from the debtor and the right to achievement from the creditor, the legal relationship will run smoothly if each party fulfills its obligations. However, in a debt relationship that can be billed (opeisbaar), if the debtor does not fulfill the performance voluntarily, the creditor has the right to demand the fulfillment of his receivables (verhaal rights; execution rights) against the debtor's assets which are used as collateral. The fulfillment right of the creditor is carried out by selling/disbursing collateral from the creditor, where the result is for the fulfillment of the debtor's debt. The sale of these objects can occur through public sales because of a promise/bed in advance (parate execution) of particular objects used as collateral.<sup>14</sup> Direct execution (Parate Executie), which is the primary purpose of the establishment of UUHT, to provide legal protection to creditors holding mortgage rights, can be seen in the following articles:

#### **1) Based on the provisions of Article 6 UUHT**

The debtor is in default, the holder of the first Mortgage has the right to sell the Mortgage object on his power through a public auction and take repayment of his receivables from the proceeds of the sale. The right of the mortgage holder to exercise his rights under the provisions of Article 6 of the UUHT is a right that is solely granted by law. However, this does not mean that these rights exist by law but must be agreed upon in

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<sup>13</sup>*Ibid.*, P. 4

<sup>14</sup>Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan di Indonesia Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan*, (Yogyakarta: Liberty Offset Yogyakarta, 2011), P. 31

advance by the parties in the Deed of Assignment of Mortgage Rights on land rights. The provisions contained in the Elucidation of Article 6 UUHT state that:

*The right to sell the Mortgage object on its power is one of the manifestations and the priority position held by the Mortgage holder or the holder of the first Mortgage if there is more than one holder of the Mortgage. This right is based on the promise given by the mortgage giver that if the debtor is in breach of contract, the mortgage holder has the right to sell the mortgage object through a public auction without requiring further approval from the mortgage provider and then take the repayment of his receivables and the proceeds of the sale first than before. Other creditors. The remaining proceeds from the sale remain the rights of the mortgagee.*

The possibility of giving the promise to sell yourself through a public auction, as well as taking the repayment in advance and other creditors, is further regulated in the provisions of Article 11 paragraph (2) point e of the UUHT.<sup>15</sup>

## 2) Based on the provisions stipulated in Article 14 UUHT

### Article 14

- (1) As proof of the existence of a Mortgage Right, the Land Office issues a Mortgage Certificate following the prevailing laws and regulations.
- (2) The Mortgage Certificate, as referred to in paragraph (1), contains statements with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD."
- (3) The Mortgage Certificate, as referred to in paragraph (2), has the same executive power as a court decision that has obtained permanent legal force and is valid as a substitute for gross after hypothesis as long as it concerns land rights.
- (4) Unless agreed otherwise, the certificate of land rights that has been affixed with a note on the imposition of Mortgage Rights as referred to in Article 13 paragraph (3) is returned to the holder of the land rights concerned.
- (5) The Mortgage Certificate shall be submitted to the Mortgage Holder.

The formulation of Article 14 paragraph (2) of the UUHT clearly states that the Mortgage Certificate has executorial power and a court decision that has permanent legal force. In the provisions of Article 14 paragraph (2) UUHT, it is even confirmed that the Mortgage Certificate is the Grosse Deed of the Hypotheek. The enactment of the Mortgage Certificate as a Grosse Deed of Hypotheek, as explained above, is a consequence of the Registration of Titles system adopted by the LoGA, which is different from the Registration of Deeds system adopted in the Overshrijvings Ordonantie 1934. In the registration of deeds, the Grosse deed is the deed issued by the overshrijving official, which at the time it was made was also directly registered by the official. This gross deed issued by an overshrijving official has an executorial title, which contains an irah-Irah "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD," which has the same executive power as a court decision that has permanent legal force.

Article 14 paragraph (1) UUHT reformulates, as a result of the registration of titles, proof of the existence or existence of Mortgage, evidenced by a Mortgage Certificate issued by the Land Registration Office following applicable laws and regulations (Government Regulation No. 24 1997). Furthermore, in line with the provisions of Article 7 paragraph (2) of the Minister of Agrarian Regulation No. 15 of 1961; then the provisions of Article 14 paragraph (2) and paragraph (3) of the UUHT reaffirm that this Mortgage Certificate contains instructions in the

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<sup>15</sup>Kartini Muljadi & Gunawan widjaja, *Seri Hukum Harta Kekayaan: Hak Tanggungan*, (Jakarta: Prenada Media Group, 2006), P. 248-249

form of the words " FOR JUSTICE BASED ON THE ONE MAFIA GOD, "which has the same executive power as the court decision that has been made. obtain permanent legal force and apply as a substitute for the Grosse deed of the Hypotheek as long as it concerns land rights.<sup>16</sup>

It clearly shows us that the Mortgage Certificate has an executorial title, agreed or not, in the agreement or the Mortgage Deed. The Mortgage Certificate is a mortgage deed gross "for the sake of JUSTICE BASED ON THE ALMIGHTY GOD" And the explanation given above shows that the Mortgage's execution can be carried out firstly in public, through an auction, and the second voluntarily.<sup>17</sup> The two forms of execution above are forms of Parate Executie. Only the difference is that the first is through the assistance of the State Auction Agency, and the second is auctioned by themselves by mutual agreement.

However, it turns out that the implementation of parate execution that occurred in the period since the enactment of Law no. 5 of 1960 until the enactment of Law no. 4 of 1996, concerning Mortgage on Land and Objects Related to Land (abbreviated UUHT), cannot be implemented as expected by the Bank as the creditor, due to the Supreme Court of the Republic of Indonesia (MARI) Decision MARI No. 3210 K/Pdt/1984 dated January 30, 1986, which is one of the ratio decidendi of the Supreme Court's decision in this case, if the auction is carried out by the Head of the Bandung State Auction Office on the orders of the original Defendant I (Bank-Kteditor) and not by order of the Chairman of the Court In Bandung, according to MARI, the public auction is contrary to Article 224 HIR, so the auction is invalid.

It turns out that MARI's decision is also supported by Book II of the Guidelines for the Agung Court of the Republic of Indonesia, which requires fiat execution from the District Court. So, according to M. Yahya Harahap, the MARI Decision No. 3210 K/Pdt/1984, dated January 30, 1986, has often been debated by various legal studies because, according to people, this decision has killed the eigenmachtige verkoop principle which was given in Article 1178 paragraph (2) B.W. Therefore, it is time for the MARI decision to be straightened out. In contrast to the opinion of Boedi Harsono, who stated that the MARI decision no. 3210 K/ Pdt/1984, dated January 30, 1986, is one of the facilities that cannot be utilized. Boedi Harsono intends that the Supreme Court decides that the parate executive must first obtain the fiat of the Head of the District Court.<sup>18</sup>

After the enactment of Law no. 4 of 1996, the bank as the creditor rarely applies to auction to the State Auction Office based on Article 6 UUHT because the application will be rejected by the State Auction Office because there is MARI Decision No. 3210 K/Pdt G/1984, and Book II of the Guidelines for the Supreme Court of the Republic of Indonesia which requires fiat executions and a District Court. In addition, there is a lack of interested parties who want to buy because there will be problems at the time of emptying. After all, the court refuses to issue an order to vacate. After all, the execution has not gone through the court. The same research on parate executives in 2003 by M. Khoidin, and the results of his research on the existence of parate executives after the enactment of Law No. 4 of 1996 also could not be implemented effectively, for the same reason as the results of research by Retnowulan Sutantio.

In the subsequent development, the implementation of parate executive in the Jakarta IV area as stated in the Announcement of the Second Execution Auction requested by PT. Bank Internasional Indonesia Tbk, which in this ballot appointed PT Triagung Lumintu as the

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<sup>16</sup> *Ibid.*, P. 252-254

<sup>17</sup> *Ibid.*, P. 256-257

<sup>18</sup> *Ibid.*, P. 5

executor of the pre-auction service, conducted a public sale (auction) of execution according to Article 6 of the Mortgage Rights Act through an intermediary at the State Receivables and Auction Service Office (KP2LN) Jakarta IV. In KP2LN in Bandung, the execution of Mortgage Rights following Article 6 UUHT by the State Receivable and Auction Service Office (KP2LN) Region II is included. The same applies to the announcement of the execution auction based on the provisions of Article 6 of Law no. 4 of 1996 ( Mortgage Rights ) through KP2LN Bandung II. The announcement of the auction based on Article 6 of the UUHT is also found in the Semarang area, as stated in the Announcement of the First Execution Auction that PT requested. International Bank Executive Tbk, which in this case appointed PT. It was triaging Lumintu as the executor of pre-auction services through the State Receivables and Auction Service Office (KP2LN) Semarang.

Although some mass media read that there were announcements of auctions based on Article 6 UUHT, it turned out that not all KP2LNs (now changed to KPKNL) received applications from creditors (banks) to carry out auction sales based on Article 6 UUHT. As with the Jakarta KPKNL Region II, the procedure still has to obtain the fiat of the chairman of the District Court. The reason is that KPKNL has had a bitter experience with the debtor or a third party looking for excuses, giving rise to new cases.<sup>19</sup> This is also the same as the results of research that the author did at the Yogyakarta City District Court previously, wherefrom the results of the author's interview with Mrs. Bahtera Yeni Warita, S.H., M.Hum. As a judge at the Yogyakarta City District Court, the execution of mortgage rights can only be carried out after the fiat from the head of the District Court.

However, KPKNL Yogyakarta has been carrying out Parate Executive so far, and this can be seen from one of the auction announcements issued by KPKNL Yogyakarta on July 3, 2015, which was conducted without going through the fiat of the head of the District Court. And the implementation of the auction on July 10, 2015. Where the creditor is PT. BRI Branch Office Sleman. So it can be concluded that Parate Executive still exists and is implemented in Yogyakarta, but nationally, Parate Executive has not been appropriately implemented and intact as mandated by UUHT. If you look at the legal basis for Parate Executive, then all KPKNL throughout Indonesia should be able to carry out Parate Executive, because it is a mandate from the Law (UUHT), although if later there are third parties who dispute the direct execution, the KPKNL must resolve it themselves. Moreover, in KPKNL, there is an Information and Law section, one of which is to solve such problems, as in KPKNL Yogyakarta, there is an Information and Law section, one of which is to resolve third party disputes concerning direct executions carried out by KPKNL Yogyakarta. Although it is only a mediation, and if the mediation fails, the settlement is brought to the Court, and in the opinion of the author, the Court is only limited to resolving cases of claims from third parties, not canceling or ordering executions carried out by KPKNL, because that is the right of KPKNL.

Regarding book II of the Supreme Court guidelines, which requires fiat from the head of the District Court to execute the Mortgage object, in the author's opinion, it also does not conflict with UUHT, because Article 20 paragraph (1) point b of the UUHT also provides opportunities for the execution of the Mortgage Object utilizing executorial title in the sense of execution with the Fiat of the Head of the District Court first, but this according to the author only applies to the execution of the Mortgage Object submitted by the creditor to the District Court and does not apply to the execution of the Mortgage Object submitted by the creditor directly to the

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<sup>19</sup>*Ibid.*, P. 5-6

District Court. KPKNL, because judges in civil law are only passive and may not add cases outside the scope of the case being submitted. So it is fatal if the District Court cancels the direct execution carried out by the KPKNL.

## CONCLUSION

Parate Executie, which is the main goal in UUHT, which aims to provide legal protection to creditors holding Mortgage Objects to feel safe in the credit process, has a solid and transparent legal basis UUHT. Articles 6 and 14 are the legal basis for implementing Parate Executie on the implementation of the auction of the Mortgage Object, the KPKNL as the executor of the execution in the field must carry out the mandate of the UUHT. However, in reality in the field, there are still KPKNL that do not carry out Parate Executie, on the grounds of the Jurisprudence of Supreme Court Decision No. 3210 K/Pdt/1984, which is one of the ratio decidendi in it, that the public auction conducted by the Bandung KPKNL without fiat from the Head of the District Court is invalid, is also supported by an order from book II of the Supreme Court Guidelines for the execution of the Mortgage Object carried out after the fiat of the Head of the District Court. This is just a misunderstanding of the jurisprudence of the above decision and the order of book II of the Supreme Court guidelines. UUHT is a special law on mortgages born in 1996, meaning the Supreme Court's decision no. 3210 K/Pdt/1984 in 1984 was ruled out by the UUHT, which was born after it, and book II of the Supreme Court's guidelines only applies to the execution (Object Mortgage) submitted to the Court and does not apply to execution (Object Mortgage). which is directly submitted to the KPKNL, because civil law recognizes judges is passive and only waiting, without being allowed to seek or increase the scope of cases from those originally submitted.

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