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Execution of Mortgage Objects in the Event of Non-Performing Loans Without Court Proceedings (Parate Executie)

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Abstract

This article aims to analyze the material nature of mortgage rights, the position of the first mortgage holder as a preferred creditor, and the procedural limits of parate executie in non-performing loan cases. Using normative legal research, the study applies statutory, conceptual, case-based, and prescriptive approaches to Indonesian guarantee law, banking law, civil law, auction rules, and selected court-related materials. The study finds that a mortgage is not merely an accessory promise attached to a credit agreement, but a registered material security right that follows the object, is publicized through land registration, and grants priority to the preferred creditor. Parate executie is legally justified because Article 6 of the Mortgage Law authorizes the first mortgage holder to sell the mortgage object through public auction when the debtor defaults. However, this authority must be exercised through a rule-bound auction process supported by valid default, proper notification, transparent valuation, accurate documents, and access to legal remedies. The article concludes that parate executie should remain available as an efficient enforcement instrument, but it must not become arbitrary private dispossession.

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1. Introduction

Credit has a central function in modern commercial life because it allows capital to circulate beyond the immediate cash capacity of borrowers. In banking practice, the extension of credit is normally followed by a legal assessment of the borrower's character, capacity, capital, collateral, and business prospects. Collateral becomes especially important when the loan turns into a non-performing loan, since repayment can no longer depend solely on voluntary payment from the debtor. Indonesian banking law defines

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credit as the provision of money or equivalent claims based on an agreement that obliges the borrower to repay after a certain period with interest or compensation.[2] The quality of bank assets is then assessed through prudential banking rules, including the classification and management of problematic loans.[3] Indonesian banking research also shows that bank-specific factors influence non-performing loans, so collateral enforceability must be read together with credit-risk management rather than treated as a purely procedural issue.[4]

Among the most important forms of collateral in Indonesian banking practice is the mortgage right over land, known as Hak Tanggungan. Mortgage rights are governed by Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. The law defines a mortgage as a security right imposed on land rights, including objects that constitute an integral part of the land, for the settlement of certain debts, which gives priority to a certain creditor over other creditors.[5] This statutory formulation contains three key elements: the existence of a specific debt, the attachment of the security right to a land object, and the preferred position of the mortgage holder. Indonesian scholarship further emphasizes that parate executie is intended to protect both creditor certainty and debtor safeguards when the mortgage object is sold through a legal auction mechanism.[6]

The urgency of this research arises from a practical tension. On the one hand, banks and other secured creditors require an enforcement mechanism that is fast, predictable, and not overly dependent on litigation. Delay in execution may reduce the economic value of collateral, increase the amount of unpaid interest, and weaken credit discipline. On the other hand, the execution of land and buildings directly affects ownership, possession, residence, business continuity, and third-party interests. A mortgage execution mechanism that is too creditor-oriented may become a source of arbitrariness, while an enforcement system that is too court-dependent may undermine the commercial value of the security right itself. Comparative financial studies have shown that weak enforcement institutions can reduce lending and investment, which explains why secured credit needs predictable execution.[7]

Parate executie represents the most significant point of this tension. In general terms, parate executie refers to the authority of a secured creditor to sell the collateral object without first obtaining a court judgment or fiat of execution. In mortgage law, this

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[2] Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan, art. 1(11).
[3] Otoritas Jasa Keuangan, Peraturan Otoritas Jasa Keuangan Nomor 40/POJK.03/2019 tentang Penilaian Kualitas Aset Bank Umum.
[4] Rachman et al., "Bank-Specific Factors Affecting Non-Performing Loans in Developing Countries: Case Study of Indonesia."
[5] Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah, art. 1(1).
[6] Hirsanuddin and Sudiarto, "Perlindungan Hukum Bagi Para Pihak (Kreditur Dan Debitur) Melalui Parate Executie Obyek Hak Tanggungan."
[7] Ponticelli and Alencar, "Court Enforcement, Bank Loans, and Firm Investment: Evidence from a Bankruptcy Reform in Brazil."

authority is attributed to the first mortgage holder when the debtor defaults. The execution must be conducted through public auction and the creditor may take repayment from the sale proceeds. Indonesian auction literature notes that parate execution is preferred in practice because it offers a shorter bureaucracy and lower cost, while still requiring auction legality and post-auction procedures when possession remains disputed.[8]

Nevertheless, parate executie is not the same as informal self-help enforcement. The creditor cannot simply seize and transfer the mortgage object privately. The sale must be conducted through an auction mechanism regulated by the state. The mortgage deed, mortgage certificate, debtor's default, auction documents, valuation, announcement, bidding process, and auction minutes all form part of the legality of enforcement. Therefore, the phrase 'without court proceedings' should not be understood as 'without law'. It means only that the enforcement path does not begin with a contentious lawsuit or a court judgment, not that the creditor is free from procedural requirements.[9]

The novelty of this article lies in its integrated construction of parate executie. Previous studies generally discuss either the material nature of mortgage rights, the creditor's preferred position, auction procedure, or debtor protection as separate issues. This article differs by linking those elements into a single normative model: first, the mortgage must be valid as a registered material security right; second, the debtor's default must be legally verifiable; third, the auction must be procedurally accountable; and fourth, court remedies must remain available when execution is unlawful. This formulation is important because many disputes arise when the creditor treats parate executie as a direct consequence of default, while the debtor treats the absence of a court decision as automatic illegality.

The objective of this article is to provide a normative analysis of mortgage execution in Indonesia by placing parate executie within the broader architecture of guarantee law. The article argues that the legitimacy of parate executie depends on two cumulative foundations. The first is the substantive foundation: the mortgage is a registered material security right that grants preference and follows the object. The second is the procedural foundation: execution is valid only when conducted through a transparent and rule-bound public auction. A proper understanding of both foundations prevents two opposite mistakes: reducing parate executie to arbitrary creditor power, or eliminating it by treating every mortgage execution as requiring litigation.

1.1 Concept and Theory

The theoretical framework of this article is built on the law of security rights, the accessory principle, the publicity principle, the specificity principle, and the doctrine of preferential creditors. These theories are not separate concepts. They operate sequentially. The accessory principle connects the mortgage to a valid debt; the specificity principle requires the debt and object to be identifiable; the publicity principle makes the security

[8] Suharto, "Lelang Eksekusi Hak Tanggungan."
[9] Poesoko, *Parate Executie Obyek Hak Tanggungan: Inkonsistensi, Konflik Norma Dan Kesesatan Penalaran Dalam UUHT.*

right visible to third parties through registration; the material-right doctrine makes the right follow the object; and creditor preference explains why the first mortgage holder may be paid ahead of ordinary creditors. Modern secured-transactions scholarship similarly treats registration and publicity as key instruments for making security rights predictable against third parties.[10]

The accessory character means that a mortgage cannot stand independently from the secured debt. If the debt is extinguished, the mortgage loses its basis. If the credit agreement is invalid, the security right may also be affected. However, the accessory character should not be confused with a purely contractual character. A mortgage is not merely an internal promise between creditor and debtor. It is registered in the land administration system and produces effects against third parties. For this reason, security law scholars classify mortgage rights as rights in rem, or material rights, rather than ordinary contractual rights.[11]

The material nature of a mortgage is traditionally explained through several characteristics. First, the right is specific because it burdens a clearly identified land right and secures a clearly identified debt. Second, the right is public because it must be registered, so third parties can know that the land is encumbered. Third, the right follows the object, meaning that transfer of ownership does not eliminate the mortgage. Fourth, the right gives preference, meaning that the mortgage holder has priority over unsecured creditors in receiving payment from the collateral proceeds. These characteristics distinguish mortgage rights from personal guarantees, which bind only the guarantor personally and do not create a real right over a specific object.[12] In electronic mortgage services, the same characteristics must be preserved through reliable digital registration because the moment of registration determines when the mortgage right is born.[13]

The theory of creditor preference is also necessary. Indonesian civil law generally recognizes that all assets of the debtor become a common guarantee for all creditors, and that creditors are paid proportionally unless there is a lawful ground for priority.[14] A mortgage therefore does not create absolute ownership for the creditor, but it creates a statutory priority over the auction proceeds of the mortgage object. This preferred status is the foundation for faster enforcement, including parate executie, because the law has already allocated a special position to the mortgage holder.[15]

The concept of parate executie is understood in this article as a lawful non-judicial execution path attached to certain material security rights. It is non-judicial in the sense that a prior court decision is not required before sale, but it remains legal and institutional because the auction is carried out according to state auction rules. The theory behind

[10] Mooney, "Choice-of-Law Rules for Secured Transactions: An Interest-Based and Modern Principles-Based Framework for Assessment."
[11] Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*.
[12] Sofwan, *Hukum Jaminan Di Indonesia: Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan*.
[13] Imanda, "Lahirnya Hak Tanggungan Menurut Peraturan Pemerintah Agraria Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik."
[14] Kitab Undang-Undang Hukum Perdata [Civil Code], arts. 1131–1134.
[15] Usman, *Hukum Jaminan Keperdataan*.

parate executie is functional: collateral would lose much of its value if the creditor had to undergo full litigation before realizing the object in every case of default. At the same time, the doctrine must be limited by procedural legality so that speed does not defeat fairness. This theoretical relationship becomes the analytical basis for this article: material-right theory explains why the creditor may execute, while due-process theory explains why the execution must remain documented, transparent, and challengeable.

2. Method and Legal Material

This research uses normative legal research with a prescriptive-analytical character. Normative legal research is appropriate because the main issue concerns the meaning, scope, and limits of legal norms governing mortgage rights, preferred creditors, non-performing loans, and auction-based execution. The research does not attempt to measure the frequency of auction disputes or the statistical success rate of parate executie. Instead, it evaluates whether the legal construction of parate executie can be justified within Indonesian guarantee law and how it should be applied to maintain legal certainty.[16]

The research uses four approaches. The statutory approach is used to examine the Mortgage Law, the Civil Code, banking regulations, bankruptcy law, land registration principles, and auction regulations. The conceptual approach is used to explain the nature of material rights, the accessory principle, creditor preference, default, and execution without court proceedings. The case approach is used to read selected constitutional and civil-court-related materials on execution safeguards. The prescriptive approach is used to formulate a balanced model for mortgage execution that protects the preferred creditor's enforcement interest while maintaining safeguards for debtors and third parties.

The primary legal materials consist of Law Number 4 of 1996 on Mortgage Rights, the Indonesian Civil Code, Law Number 10 of 1998 on Banking, Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, regulations on auction implementation, land administration rules, and selected court decisions concerning execution safeguards. Secondary legal materials include books and scholarly works on guarantee law, civil law, contract law, mortgage rights, auction execution, civil procedure, and Indonesian legal journal articles with DOI-based publication metadata.

The legal materials are analyzed deductively and interpretatively. Grammatical interpretation is used to read the wording of Article 6, Article 14, and Article 20 of the Mortgage Law. Systematic interpretation is used to connect those provisions with the Civil Code, banking regulations, bankruptcy rules, land registration rules, and auction regulations. Teleological interpretation is used to identify the purpose of mortgage execution, namely maintaining credit certainty while preventing arbitrary dispossession. The study also uses prescriptive evaluation by testing whether each execution stage satisfies validity, default certainty, auction legality, transparency, and remedial control.

[16] Marzuki, *Penelitian Hukum*.

3. Results and Discussion

3.1 The Material Nature of Mortgages and the Position of Preferred Creditors According to Guarantee Law

The material nature of a mortgage begins from the statutory design of the Mortgage Law. Mortgage rights are imposed on land rights and objects related to land for the settlement of specific debts. The mortgage is created through a deed granting mortgage and becomes complete through registration.[17] Registration is not a mere administrative formality; it is the legal act that gives publicity to the encumbrance and allows the mortgage to operate against third parties. Without registration, the creditor may possess a contractual promise to create security, but the material security right has not yet achieved its full legal force against the land object.

This legal structure shows that a mortgage has both accessory and material dimensions. It is accessory because it secures a particular debt. The creditor's right to execute depends on the debtor's failure to fulfill the debt obligation. At the same time, it is material because it attaches to the object and is enforceable against third parties. If the mortgagor transfers the land after the mortgage has been registered, the mortgage does not disappear merely because ownership changes. The creditor's right follows the object, reflecting the principle of droit de suite.[18]

The specificity principle further reinforces the material nature of mortgages. The secured debt must be identifiable and the mortgage object must be clearly described. This requirement prevents uncertainty in credit markets and protects third parties who may rely on land records. A mortgage that does not clearly identify the debt or the object would create excessive uncertainty because potential buyers, subsequent creditors, and other interested parties would not be able to measure the legal burden attached to the land. In guarantee law, specificity is therefore not a technical detail but a condition of legal certainty.[19]

The publicity principle functions as a counterpart to the preferred status of the creditor. Because the mortgage gives priority over other creditors and follows the object even after transfer, the law requires that the encumbrance be made public through registration. A hidden security right over land would be incompatible with the protection of third parties. The land registration system allows the existence, ranking, and scope of the mortgage to be known. In this respect, publicity justifies preference: the creditor receives a stronger position because the legal burden is disclosed to the public legal order.[20]

The preferred creditor position must be understood carefully. A mortgage holder is preferred because the law gives priority to receive payment from the proceeds of the mortgage object. This priority does not mean that the creditor owns the object. It also

[17] Undang-Undang Nomor 4 Tahun 1996, arts. 4, 10, 13, and 14.
[18] Sjahdeini, *Hak Tanggungan: Asas-Asas, Ketentuan-Ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan*.
[19] Salim, *Perkembangan Hukum Jaminan di Indonesia*.
[20] Badrulzaman, *Aneka Hukum Bisnis*.

does not allow the creditor to appropriate the object privately without sale. The creditor's preferred status is a right to repayment from execution proceeds, not a right to confiscate the debtor's land outside the legal process. This distinction is essential to prevent abuse of security rights. A mortgage is a guarantee of repayment, not a transfer of ownership.

In the Civil Code framework, all debtor assets generally constitute security for all creditors. Without a special legal basis, creditors stand equally and receive proportional payment according to the paritas creditorum principle. A mortgage modifies this equality because it creates a lawful basis for priority. The mortgage holder is therefore separated from ordinary concurrent creditors. If the collateral is sold, the mortgage holder has a stronger right to the proceeds than unsecured creditors. This doctrinal position explains why the mortgage is valuable in credit transactions: it transforms the creditor from a general claimant into a secured and preferred creditor.

The mortgage certificate also strengthens the creditor's position because it contains an executorial title. The Mortgage Law provides that the certificate has executorial force equivalent to a final and binding court decision.[21] This feature supports execution when the debtor defaults. However, the existence of an executorial title should be distinguished from parate executie. The executorial title provides one execution path, while Article 6 provides another path for the first mortgage holder to sell the object through public auction under its own authority. Both mechanisms are connected to the material nature of the mortgage, but they are not identical.

The ranking of mortgage holders is another consequence of the material nature of the right. Land may be encumbered by more than one mortgage, and the order of registration determines priority. The first mortgage holder has the strongest position and is the party specifically recognized in Article 6 for parate executie. Subsequent mortgage holders have rights according to their ranking, but their position is subordinated to the first mortgage holder. This ranking system gives predictability to credit markets and allows creditors to assess risk before accepting land as security.

The preferred status of the creditor also continues to matter in insolvency situations, although it may be subject to statutory limitations. Bankruptcy law recognizes the position of secured creditors, but it also imposes certain procedural restrictions in order to protect the collective process and other interests.[22] This confirms that preference is strong but not unlimited. The creditor's material right remains central, yet its enforcement may be regulated by procedural rules when the debtor is subject to bankruptcy or suspension of debt payment obligations. In economic terms, enforceable priority also influences how banks price risk and allocate financing in default-prone transactions.[23]

From the debtor's perspective, the material nature of a mortgage creates a serious burden. The debtor or landowner does not merely promise to repay the debt; the land itself becomes exposed to execution if the debt is not paid. This is why mortgage creation must

[21] Undang-Undang Nomor 4 Tahun 1996, art. 14(1)–(3).
[22] Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, arts. 55 and 56.
[23] Rodano, Serrano-Velarde, and Tarantino, "Bankruptcy Law and Bank Financing."

be formal and specific. The deed must reflect the parties' intention, the debt, the secured amount, and the object. The debtor's consent at the creation stage is the legal basis for later enforcement. However, consent to a mortgage does not mean consent to unlawful enforcement. The creditor must still prove that the conditions for execution have arisen.

The concept of default is therefore a bridge between the principal debt and the security right. The creditor may not execute merely because it prefers liquidation or because the value of the collateral is attractive. Execution is justified only when the debtor has failed to perform the secured obligation according to the credit agreement. Default may arise from failure to pay installments, failure to pay at maturity, breach of covenant, or other events of default agreed by the parties, but such default must be legally and factually supportable.[24] For that reason, default must be treated as a legally verifiable condition, because weak default identification can transform enforcement from a risk-management device into a source of procedural injustice.

The role of contract law is significant here. Credit agreements often contain acceleration clauses, warning mechanisms, cross-default provisions, and collateral maintenance obligations. These clauses influence when a loan becomes due and when the creditor may treat the debtor as being in default. However, contract clauses cannot eliminate mandatory protections under guarantee law and auction law. Good faith and proportionality require the creditor to use enforcement only when the debtor's breach is sufficiently clear and when the procedural requirements for sale are satisfied.[25]

A balanced construction therefore views the mortgage holder as a preferred creditor with strong but structured power. The strength lies in the material right, publicity, priority, ranking, and statutory execution mechanisms. The structure lies in the accessory relationship to a valid debt, the requirement of default, the prohibition of private appropriation, the need for public auction, and the debtor's right to challenge unlawful conduct. Under this construction, the creditor's preference is not weakened; rather, it is made legally sustainable.

This understanding is consistent with the purpose of guarantee law. Security rights are created to support credit distribution and economic development. If collateral cannot be executed efficiently, credit will become more expensive and riskier. Yet if collateral can be executed without safeguards, debtors and landowners will face excessive vulnerability. Mortgage law therefore must preserve both values: commercial reliability for creditors and legal protection for owners. The material nature of mortgages is the foundation of creditor preference, but legality of execution is the condition for enforcing that preference.

The result of this analysis is that the first mortgage holder's position is not merely procedural. It is a substantive legal status created by a registered material security right. This status justifies priority and supports execution without ordinary court proceedings. However, the status does not remove the need for lawful implementation. The creditor is preferred in relation to proceeds, not sovereign in relation to the object. The object

[24] Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*.
[25] Subekti, *Hukum Perjanjian*.

remains part of the debtor's or landowner's property until lawfully sold through an authorized mechanism.

3.2 Parate Executie of Mortgage Objects through Auction

Parate executie of mortgage objects is grounded primarily in Article 6 of the Mortgage Law. The article provides that if the debtor defaults, the first mortgage holder has the right to sell the mortgage object under its own authority through public auction and to take repayment from the sale proceeds.[26] This provision is the normative basis for execution without prior court proceedings. It gives the first mortgage holder a direct statutory authority to initiate sale, provided that the debtor is in default and the sale is conducted through public auction.

The phrase 'under its own authority' should not be read literally as unlimited private power. It means that the creditor does not need a prior court judgment ordering the sale. The creditor may apply for auction based on the mortgage documents and evidence of default. However, the sale itself is not private. It must be conducted through a legally recognized auction process. This distinction is important because it prevents the misconception that parate executie allows unilateral physical seizure and private transfer. The creditor's authority is direct, but the realization of the collateral remains institutional.

Parate executie also differs from execution based on the executorial title of the mortgage certificate. The certificate contains the words of executorial force and may be executed like a court decision. By contrast, Article 6 creates a specific right of the first mortgage holder to sell by auction when default occurs. Article 20 of the Mortgage Law recognizes execution through the Article 6 mechanism, execution based on the executorial title, and private sale under strict conditions.[27] The existence of multiple execution routes demonstrates that Indonesian mortgage law does not rely on a single procedural model.

The strongest justification for parate executie is efficiency. Non-performing loans may create continuing losses for banks and may reduce their ability to distribute credit. Court proceedings can take a long time, and delay may reduce collateral value. A secured transaction system therefore requires a credible enforcement method. If the creditor's only option were ordinary litigation, the mortgage would lose part of its commercial function. Parate executie allows the creditor to convert collateral into payment more quickly while still using the public auction mechanism as a control. Indonesian legal literature records that lelang eksekusi hak tanggungan can operate through parate executie and fiat execution, with parate executie being attractive because it is shorter and less costly.[28]

Nevertheless, efficiency cannot be the only standard. Parate executie affects ownership and possession; therefore, it must be conducted with legality and fairness. The minimum requirements should include a valid mortgage, first-ranking status of the

[26] Undang-Undang Nomor 4 Tahun 1996, art. 6.
[27] Undang-Undang Nomor 4 Tahun 1996, art. 20(1)–(3).
[28] Suharto, "Lelang Eksekusi Hak Tanggungan."

applicant creditor, a secured debt that has become due, a debtor in default, proper warning or notification, complete auction documents, transparent valuation, lawful announcement, and execution through authorized auction officials. Empirical-normative research on Indonesian auction practice shows that pre-auction procedure, auction implementation, and auction minutes must be treated as connected safeguards, especially where notification to the debtor and customer protection remain weak.[29]

The public auction requirement is the main safeguard. A public auction aims to obtain an objective price through open bidding and to prevent the creditor from taking the collateral at an artificially low value. Auction also produces official documentation, including auction minutes, which support transfer of rights and distribution of proceeds. In this sense, auction law protects not only the creditor but also the debtor, other creditors, bidders, and the land administration system. Current auction rules therefore become a key normative source for determining whether parate executie has been carried out lawfully.[30]

The following table summarizes the normative stages of parate executie through auction in non-performing loan cases and adds the main legal basis for each stage.

Table 1. Normative Stages of Parate Executie through Public Auction

Stage	Legal focus and main legal basis	**Operational requirement**	**Protection function**
Pre-execution review	Debt and mortgage validity; UUHT arts. 4, 10, 13, 14	Check agreement, APHT, registration, ranking, secured amount, and electronic certificate data	Prevents invalid execution
Default assessment	Clear non-performance; credit agreement and Article 6 UUHT	Identify maturity, arrears, acceleration, warning, or other event of default	Prevents premature sale
Auction application	Institutional legality; PMK 122/2023 and auction office rules	Submit required documents to the authorized auction office and verify formal completeness	Ensures public legal sale
Valuation and announcement	Transparent price and process; PMK 122/2023	Use accountable valuation, announcement, object disclosure, and bidding terms	Reduces undervaluation risk
Auction sale and proceeds	Realization of preference; Article 6 and Article 20 UUHT	Issue auction minutes, pay according to priority, and return excess proceeds	Limits recovery to lawful debt

Source: Author's normative construction, 2026.

[29] Sudiarto, Hirsanuddin, and Purnomo, "Analisis Perlindungan Hukum Terhadap UMKM Dengan Keberadaan Ritel Modern di Kabupaten Lombok Utara."

[30] Kementerian Keuangan Republik Indonesia, Peraturan Menteri Keuangan Nomor 122 Tahun 2023 tentang Petunjuk Pelaksanaan Lelang.

A crucial issue is the relationship between default and dispute. Debtors often argue that execution should not proceed if they contest the amount of debt or the occurrence of default. Creditors often respond that the mortgage deed and account records are sufficient. A balanced approach is necessary. Mere objection by the debtor should not automatically paralyze parate executie, because otherwise the mechanism would be easily defeated. However, where there is a serious and demonstrable dispute about the validity of the debt, the identity of the collateral, the ranking of the mortgage, or the creditor's compliance with mandatory procedure, auction officials and creditors should proceed cautiously. Parate executie is designed for clear default, not for resolving complex contractual disputes.

Notification and warning also play an important role. Although Article 6 gives direct authority to the first mortgage holder, principles of good faith require the debtor to know that the loan has been declared in default and that the collateral will be auctioned. Notification gives the debtor a final opportunity to pay, restructure, object to incorrect calculations, or prepare legal remedies. It also strengthens the legitimacy of the auction because it shows that execution is not sudden or concealed. In practice, warning letters, demand notices, and auction announcements become part of the documentary basis for lawful enforcement.

Valuation is another central safeguard. A mortgage object may consist of land, buildings, plantations, commercial property, or residential property. Its value may fluctuate according to location, market conditions, physical condition, and legal encumbrances. If the auction limit value is too low, the debtor may suffer excessive loss and the creditor may be accused of bad faith. If the value is set unrealistically high, auction may repeatedly fail. Recent Indonesian research on the difference between market value and liquidation value emphasizes that a limit value must be accountable and should reflect a fair market basis to preserve justice in mortgage execution.[31]

The distribution of auction proceeds must reflect the preferred status of the mortgage holder but also the limits of that status. The first mortgage holder may take repayment from the proceeds up to the amount of the secured debt and lawful costs. If proceeds exceed the debt and costs, the excess belongs to the debtor or other entitled parties. If proceeds are insufficient, the remaining debt becomes an unsecured claim unless otherwise supported by additional guarantees. This rule confirms that parate executie is a method of repayment, not enrichment. The creditor's preference is a priority to payment, not a right to take more than what is owed.

Private sale is sometimes considered as an alternative because it may achieve a higher price than auction. The Mortgage Law allows private sale only when agreed by the grantor and holder of the mortgage and when it will obtain the highest price beneficial to all parties. The law also requires notice and waiting conditions. This mechanism is different from parate executie because it depends on agreement and is not simply the unilateral authority of the first mortgage holder. In non-performing loan cases, private sale can be

[31] Abdullah, Kesuma, and Putri, "Kajian Perbedaan Nilai Limit Dalam Pelaksanaan Lelang Eksekusi Hak Tanggungan."

useful for preserving value, but it should not be confused with Article 6 public auction execution.

The debtor's legal remedies remain relevant even though parate executie is conducted without prior court proceedings. The debtor may challenge unlawful execution, incorrect debt calculation, lack of default, forged documents, procedural defects, or bad faith. The availability of legal remedies does not mean that every auction must wait for litigation. Rather, it means that parate executie is subject to ex post judicial control when rights are violated. The possibility of judicial review helps maintain constitutional and civil law safeguards while preserving the functional speed of auction execution.

Case materials also show that the problem of execution does not end at auction sale. Research on auctioned mortgage objects controlled by third parties explains that the buyer's difficulty in obtaining possession may trigger further legal disputes after the auction is completed.[32] This finding strengthens the normative argument that parate executie must be separated into two phases: sale of the object through auction and lawful control or vacancy of the object after sale. The validity of auction minutes may support transfer of rights, but physical control still requires lawful procedure and cannot be achieved through coercive private action.

Comparative reasoning from fiduciary guarantee execution has influenced debates on secured transactions. The Constitutional Court's Decision Number 18/PUU-XVII/2019 emphasized the need for agreement on default and voluntary surrender in the context of fiduciary execution.[33] The later Decision Number 2/PUU-XIX/2021 clarified the continuation of those safeguards in fiduciary execution debates.[34] Although those decisions concern fiduciary security rather than mortgages, Indonesian legal scholarship treats them as a warning that execution clauses must not be used to justify arbitrary coercion.[35]

Court-related studies on parate executie of mortgage rights further confirm that judges tend to evaluate whether the creditor's execution power remains balanced with debtor protection. A study of Decision Number 34/Pdt.G/2019/PN Tbk, for example, frames parate executie as an instrument of legal certainty for creditors that must also be tested against debtor protection and procedural fairness.[36] The lesson is that the absence of prior court proceedings does not prevent later judicial assessment of default, notification, valuation, auction procedure, and the proportionality of execution.

The role of auction officials should therefore be understood as more than administrative. Auction officials do not decide the debt dispute like judges, but they must

[32] Oktiana and Muntaqo, "Lelang Hak Tanggungan Yang Objeknya Dikuasai Pihak Ketiga."
[33] Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 18/PUU-XVII/2019.
[34] Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 2/PUU-XIX/2021.
[35] Kosasih, Agung, and Dewi, "Parate Eksekusi Pasca Putusan Mahkamah Kostitusi (MK) NO. 18/PUU-XVII/2019 Dan No: 02/PUU-XIX/2021 Terhadap Eksekusi Jaminan Fidusia Atas Lembaga Pembiayaan Leasin."
[36] Lagut, Fasya, and Salma, "Analisis Keseimbangan Fungsi Hak Tanggungan Dalam Pelaksanaan Parate Executie Sebagai Instrumen Kepastian Hukum dan Perlindungan Debitur (Studi Putusan Nomor 34/Pdt.G/2019/PN Tbk)."

review whether the documents required for auction are formally complete and whether there is an obvious legal obstacle. If the auction office ignores fundamental defects, the auction may become vulnerable to cancellation or subsequent litigation. Conversely, if auction officials demand a court decision in every case, Article 6 would lose its function. The proper standard is formal-legal verification, not full adjudication.

The principle of proportionality should guide the creditor's decision to execute. A bank may have the legal right to auction collateral, but it should also consider restructuring efforts, the amount of arrears, debtor cooperation, the value of collateral, and the prospects of repayment. Execution should not be used as a punitive measure when a less burdensome solution is viable and consistent with prudential banking. However, when restructuring fails or the debtor acts in bad faith, parate executie provides a legitimate pathway to protect the creditor and the stability of credit.

A further concern involves occupied residential property. Mortgage objects may be used by debtors and their families as homes. The auction sale may transfer ownership, but physical vacancy can raise separate legal issues. Parate executie sells the object through auction; it does not automatically authorize violent eviction. If the debtor refuses to vacate after the auction, the buyer may need to use lawful procedures for possession. This distinction protects social order and prevents the auction mechanism from being followed by unlawful coercion.

Electronic mortgage registration also affects parate executie. With electronic mortgage services, certificates and registration data may be issued digitally. This development improves efficiency and reduces administrative delay, but it also requires accuracy in electronic records. The creditor must ensure that the electronic mortgage certificate, ranking information, and object data correspond to the auction application. Digital administration strengthens publicity only when the data are reliable and accessible.[37]

The ideal model of parate executie therefore consists of five layers. First, substantive validity: the debt and mortgage must be valid. Second, default certainty: the debtor's non-performance must be clear and documented. Third, auction legality: the sale must be processed through authorized auction rules. Fourth, transparency: valuation, announcement, and bidding must be open and accountable. Fifth, remedial control: debtors, auction buyers, and third parties must retain access to legal remedies against unlawful execution. These layers preserve the essence of parate executie while preventing abuse.

This model also clarifies the phrase 'without court proceedings'. It does not remove the court from the legal system entirely. It merely means that court involvement is not a condition precedent for auction in ordinary cases of clear default by a debtor whose land is encumbered by a first-ranking mortgage. The court remains available as a forum for objections, damages claims, cancellation actions, or enforcement-related disputes. In this way, parate executie is not anti-judicial; it is a specialized non-judicial enforcement route

[37] Imanda, "Lahirnya Hak Tanggungan Menurut Peraturan Pemerintah Agraria Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik."

with possible judicial supervision after or around the process.

4. Conclusion

The execution of mortgage objects in non-performing loan cases without prior court proceedings is legally grounded in the material nature of mortgage rights and the preferred position of the first mortgage holder. Once validly created and registered, a mortgage becomes a material security right that follows the object, is publicized in the land registration system, grants priority to the creditor, and supports specific execution mechanisms. This preferred position gives the creditor a strong right to obtain repayment from collateral proceeds, but it does not transfer ownership of the collateral to the creditor.

Parate executie through public auction is legitimate under Article 6 of the Mortgage Law when the debtor is clearly in default and the first mortgage holder follows the required auction procedure. The mechanism is therefore not arbitrary private enforcement. Its validity depends on valid documents, proper warning or notification, reasonable valuation, transparent announcement, lawful bidding, auction minutes, accountable distribution of proceeds, and continuing access to legal remedies for debtors, auction buyers, and affected third parties.

The practical implication is that banks should prepare a pre-auction checklist covering debt validity, mortgage ranking, default evidence, notification, valuation, and auction documents before applying for parate executie. Auction officials should verify formal legality without transforming every auction request into a court-like trial. Policymakers should harmonize mortgage execution rules, electronic mortgage records, and auction safeguards so that parate executie remains efficient for credit recovery while protecting debtors from undervaluation, unclear default, and unlawful dispossession. The limitation of this research is its normative character; future empirical studies should examine auction cancellations, creditor compliance, and debtor protection in specific regions.

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Conflict of interest

The authors declare no conflict of interest related to this research.

Authors' contribution

The first author contributed to conceptualization, methodology, formal analysis, writing of the original draft, and writing, review, and editing of the manuscript. The second author contributed to data curation, resources, validation, and writing, review, and editing of the manuscript. All authors have read and approved the final version of the manuscript.

Statement of the use of AI

The authors declare that generative artificial intelligence (AI) tools were used solely to assist in improving the language, readability, grammar, and organization of the manuscript. The AI tools were not used to generate the legal analysis, interpret legal authorities, formulate arguments, or draw research conclusions. All legal analyses, cited sources, interpretations, and conclusions were independently reviewed, verified, and approved by the authors, who assume full responsibility for the accuracy, originality, and integrity of the manuscript.

References

Abdullah, Ali, Diana Kesuma, and Novelza Restu Ayu Putri. "Kajian Perbedaan Nilai Limit Dalam Pelaksanaan Lelang Eksekusi Hak Tanggungan." *Jurnal Hukum Sasana* 10, no. 2 (December 27, 2024): 217–29. https://doi.org/10.31599/sasana.v10i2.3054.

Badrulzaman, Mariam Darus. *Aneka Hukum Bisnis*. Bandung: Alumni, 1994.

Hernoko, Agus Yudha. *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*. Jakarta: Kencana, 2010.

Hirsanuddin, Hirsanuddin, and 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 (April 26, 2021): 253–67. https://doi.org/10.29303/ius.v9i1.890.

Imanda, Nadia. "Lahirnya Hak Tanggungan Menurut Peraturan Pemerintah Agraria Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik." *Notaire* 3, no. 1 (May 15, 2020): 151. https://doi.org/10.20473/ntr.v3i1.17536.

Kementerian Keuangan Republik Indonesia. Peraturan Menteri Keuangan Nomor 122 Tahun 2023 tentang Petunjuk Pelaksanaan Lelang.

Kitab Undang-Undang Hukum Perdata.

Kosasih, Johannes Ibrahim, Anak Agung Istri Agung, and Anak Agung Sagung Laksmani Dewi. "Parate Eksekusi Pasca Putusan Mahkamah Kostitusi (MK) NO. 18/PUU-XVII/2019 Dan No: 02/PUU-XIX/2021 Terhadap Eksekusi Jaminan Fidusia Atas Lembaga Pembiayaan Leasin." *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (April 24, 2022): 114–35. https://doi.org/10.29303/ius.v10i1.971.

Lagut, Veronica Sekar Wela, Farah Fasya, and Athifa Huurun Salma. "Analisis Keseimbangan Fungsi Hak Tanggungan Dalam Pelaksanaan Parate Executie Sebagai Instrumen Kepastian Hukum Dan Perlindungan Debitur (Studi Putusan Nomor 34/Pdt.G/2019/PN Tbk)." *Causa: Jurnal Hukum Dan Kewarganegaraan* 16, no. 8 (2026). https://doi.org/10.6679/6tcwmg18.

Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 18/PUU-XVII/2019.

Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 2/PUU-XIX/2021.Marzuki, Peter Mahmud. *Penelitian Hukum*. VI. Jakarta: Predana Media Group, 2010.

Mooney, Charles W. "Choice-of-Law Rules for Secured Transactions: An Interest-Based and Modern Principles-Based Framework for Assessment." *Uniform Law Review* 22 (2017): 842. https://ssrn.com/abstract=3000566.

Oktiana, Dina, and Firman Muntaqo. "Lelang Hak Tanggungan Yang Objeknya Dikuasai Pihak Ketiga." *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 13, no. 1 (2024). https://doi.org/10.28946/rpt.v13i1.3679.

Otoritas Jasa Keuangan. Peraturan Otoritas Jasa Keuangan Nomor 40/POJK.03/2019 tentang Penilaian Kualitas Aset Bank Umum.Poesoko, Herowati. *Parate Executie*

Obyek Hak Tanggungan: Inkonsistensi, Konflik Norma Dan Kesesatan Penalaran Dalam UUHT. Yogyakarta: LaksBang Pressindo, 2007.

Ponticelli, Jacopo, and Leonardo S. Alencar. "Court Enforcement, Bank Loans, and Firm Investment: Evidence from a Bankruptcy Reform in Brazil *." *The Quarterly Journal of Economics* 131, no. 3 (August 1, 2016): 1365–1413. https://doi.org/10.1093/qje/qjw015.

Rachman, Rathria Arrina, Yohanes Berenika Kadarusman, Kevin Anggriono, and Robertus Setiadi. "Bank-Specific Factors Affecting Non-Performing Loans in Developing Countries: Case Study of Indonesia." *The Journal of Asian Finance, Economics and Business* 5, no. 2 (May 31, 2018): 35–42. https://doi.org/10.13106/jafeb.2018.vol5.no2.35.

Rodano, Giacomo, Nicolas Serrano-Velarde, and Emanuele Tarantino. "Bankruptcy Law and Bank Financing." *Journal of Financial Economics* 120, no. 2 (May 2016): 363–82. https://doi.org/10.1016/j.jfineco.2016.01.016.

Salim, H S. *Perkembangan Hukum Jaminan Di Indonesia*. Jakarta: Rajawali Pers, 2014.

Satrio, J H. *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*. Bandung: Citra Aditya Bakti, 1997.

Sjahdeini, Sutan Remy. *Hak Tanggungan: Asas-Asas, Ketentuan-Ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan*. Bandung: Alumni, 1999.

Sofwan, Sri Soedewi Masjchoen. *Hukum Jaminan Di Indonesia: Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan*. Yogyakarta: Liberty, 1980.

Subekti, R. *Hukum Perjanjian*. Jakarta: Intermasa, 2005.

Sudiarto, Hirsanuddin, and Chrisdianto Eko Purnomo. "Analisis Perlindungan Hukum Terhadap UMKM Dengan Keberadaan Ritel Modern Di Kabupaten Lombok Utara." *Commerce Law* 4, no. 2 (December 11, 2024): 441–52. https://doi.org/10.29303/commercelaw.v4i2.5643.

Suharto, R. "Lelang Eksekusi Hak Tanggungan." *Law, Development and Justice Review* 2, no. 2 (November 13, 2019): 183–93. https://doi.org/10.14710/ldjr.v2i2.6315.

Usman, Rachmadi. *Hukum Jaminan Keperdataan*. Jakarta: Sinar Grafika, 2008.

Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah.

Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan.

Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.