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PARATE EXECUTION OF LIABILITY RIGHTS BY CREDITORS AS A LEGAL ACTION: A CASE STUDY OF INDONESIA

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ABSTRACT

Research on the Parate of Mortgage Execution by Creditors as an Unlawful Actions, departs from the issues discussed, namely what is the legislative ratio of the Minister of Finance Regulation Number: 27 / PMK.06 / 2016 dated February 22, 2016 regarding instructions for auction implementation, appointing the seller as the authorized party to determine the limit value of the auction price of collateral at the parate auction for the execution of mortgage rights and is the parate for execution of mortgage rights by the seller categorized as an illegal act? The purpose of this research is to analyze and find the legislative ratio of the Minister of Finance Regulation Number: 27 / PMK.06 / 2016 dated February 22, 2016 regarding auction implementation instructions, appointing the seller as the authority to determine the limit value for the auction price of collateral at the parate auction for the execution of mortgage rights. , and parate execution of mortgage rights by the seller is categorized as an act against the law. The research method uses normative legal research, with a statutory approach (statute approach) and a case approach (case approach). The sources of legal materials used consisted of primary, secondary and tertiary legal materials, while the analysis of legal materials was carried out in a descriptive qualitative manner. Based on the results of the study, it can be concluded that the seller's legis ratio is the authorized party to set the auction price limit for guaranteed guarantee goods based on the provisions of Article 1 number 28 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated February 22, 2016 regarding auction implementation instructions which determines that the minimum price of the goods to be auctioned is determined by the seller, in this case the security right holder. This refers to Article 6 of the UUHT where the first Mortgage holder has the right to sell the object of the Mortgage on his own power through a public auction and to collect his receivables from the sale proceeds. In determining the limit value which is determined based on the results of the appraiser's assessment, where the auction limit value must be at the lowest level in accordance with the liquidation value so that the auction office has the authority to reject the auction application submitted by the seller, if it does not comply with the standards stipulated in the Regulation of the Minister of Finance. No.27 / PMK.06 / 2016, then categorized as an act against the law.

KEY WORDS

Parate execution, mortgage rights, unlawful acts.

Banking has the main function of collecting and distributing public funds through a process called credit, preceded by an application submitted by a prospective customer, either an individual or a business entity (legal entity), then analyzed by the bank for approval or not. For an application approved by the Bank, the prospective debtor is still asked for confirmation to agree to the requirements offered by the Bank, namely having to provide collateral or guarantee.

The provisions on the need to provide guarantees for credit or financing are not explicitly stated in the banking law, but are stated in the general explanation of the law. In order to gain confidence before giving credit, the Bank must carry out a careful assessment

of the character (character), ability (capacity). capability), capital (capital), collateral / guarantee (collateral), and business prospects of the debtor customer (condition).¹

The collateral or collateral for immovable property that is most attractive to creditors is land whose ownership can be proven by showing a certificate of ownership. For collateral or collateral in the form of land which has proof of rights in the form of title to land, it can be attached / burdened with a mortgage. According to Liliawati, the existence of Law Number 4 of 1996 concerning Mortgage Rights to Land and Objects related to Land (hereinafter abbreviated to the Mortgage Rights Law), is to meet the needs of the community.² After going through the charging process, in the end a certificate of mortgage will be issued. With the mortgage certificate, the creditor can execute the guaranteed land, if the debtor is in default (default).

The method of execution is carried out by auction, and is often referred to as parate execution of collateral is as an implementation of Article 6 of the Mortgage Law.

Determination of the auction sale price or known as the limit value of collateral to be sold at auction is based on Article 1 number 28 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated February 22, 2016 regarding instructions for auction implementation, namely that the minimum price of goods to be auctioned is determined. by the seller³ in this case is the holder of the first mortgage.

Based on the description above, the issues to be discussed are what is the legislative ratio of the Minister of Finance Regulation Number: 27 / PMK.06 / 2016 dated February 22, 2016 concerning auction implementation instructions, appointing the seller as the authorized party to determine the limit value of the auction price for collateral. at the parate auction the execution of mortgage rights? and is the parate of execution of mortgage rights by the seller categorized as an act against the law?

The research method uses normative legal research, with a statutory approach (statute approach) and a case approach (case approach). The sources of legal materials used consisted of primary, secondary and tertiary legal materials, while the analysis of legal materials was carried out in a descriptive qualitative manner.

Legis Ratio Regulation of the Minister of Finance Number: 27 / PMK.06 / 2016 dated February 22, 2016 which appoints the seller as the authorized party to determine the auction price limit value for collateral at the parate auction for the execution of mortgage. Article 1131 of the Civil Code has stipulated that: "all objects belonging to the debtor, both movable and immovable, both currently existing and those that will exist in the future, are entirely borne by their debts".

In other words, the assets of the debtor, both movable and immovable, are used as collateral for their debts. For collateral in the form of land it can be installed / encumbered with mortgage rights and after going through the imposition process, in the end a certificate of mortgage will be issued. With the mortgage certificate, the creditor can execute the guaranteed land, if the debtor is in default (default). Because in the collateral right certificate there is an irah-irah "For the sake of Justice based on Almighty Godhead", which makes the collateral right certificate, has the same executorial power as a court decision that has obtained permanent legal force (Article 14 paragraph (2) of the Rights Law. Dependents). The power of the said execution, namely the execution through the auction institution of the auction guarantee object, is regulated in Article 6 in conjunction with Article 20 paragraph (1) of the Mortgage Rights Law.

The Legis Ratio of the seller as the authorized party sets the auction price limit for collateral guaranteed rights based on the provisions of Article 6 of the UUHT which states that "if the debtor breaches the promise, the first Mortgage holder has the right to sell the object of the Mortgage on his own power through a public auction and take repayment accounts receivable from the sale ".

¹ Wijanarto. *Hukum dan Ketentuan Perbankan di Indonesia*. Pustaka Utama Grafity. Jakarta, 2013, hal. 92

² E. Liliawati Mulyono, *Tinjauan Yuridis Undang-Undang Nomor: 4 Tahun 1996 Tentang Hak Tanggungan dalam Kaitannya Dengan Pemberian Kredit Oleh Perbankan*, Harfarindo, Jakarta, 2003, hal.1

³ www.jdih.kemenkeu.go.id, Peraturan Menteri Keuangan No.27/PMK.06/2016 tanggal 22 Februari 2016 tentang petunjuk pelaksanaan lelang, diakses pada tanggal 10 Oktober 2020.

Meanwhile, the provisions of Article 20 of the Mortgage Law states that:

(1) If the debtor is in default, 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 Certificate of Mortgage as referred to in Article 14 paragraph (2), the object of the Mortgage is sold through a public auction according to the procedure stipulated in the laws and regulations for the settlement of the Mortgage Holders' receivables with pre-emptive rights from other creditors. .

(2) Upon the agreement of the giver and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hand if it will obtain the highest price that benefits all parties

(3) The sale as referred to in paragraph (2) can only be carried out after 1 (one) month has passed since being notified in writing by the giver and / or insurance rights holder to interested parties and it is announced at least in 2 (two)) newspapers circulating in the area concerned and / or local mass media, and neither party has raised any objections.

(4) Any promise to carry out the execution of the Mortgage Rights in a manner contrary to the provisions in paragraph (1), paragraph (2), and paragraph (3) is null and void.

(5) Until the announcement for the auction is issued, the sale as referred to in paragraph (1) can be avoided by paying off the debt guaranteed by the Insurance Right along with the execution costs that have been incurred.

When examined further, in fact the provisions of Article 20 paragraph (1) of the Mortgage Law are to support and strengthen the provisions as stated in Article 6 of the Insurance Rights Law, so that it can be seen clearly that if the debtor is in default, the holder of the Mortgage has the right to sell the object Mortgage rights on their own power through a public auction.

Due to the authority granted by law to sell objects of Mortgage Rights, the Collateral Right holder (seller / bank) then sets a limit on the auction price for collateral. This is the Legis ratio why the mortgage rights holder (seller / bank) feels that they are the authorities in setting the auction sale price or auction price limit for collateral. Moreover, this is supported by the provisions of Article 1 number 28 Regulation of the Minister of Finance No.27 / PMK.06 / 2016 dated February 22, 2016 regarding instructions for auction implementation, which stipulates that "the minimum price of goods to be auctioned is determined by the seller, in this case the right holder dependents". In determining the limit value of the execution parate auction price based on Article 44 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated February 22, 2016, it is stated as follows:

1. The seller / mortgage holder in determining the limit value is based on:

- Assessment by the appraiser; or
- Appraisal by an appraiser / appraisal team.

2. The appraiser as referred to in paragraph (1) letter a is the party that conducts the assessment independently based on his / her competence.

3. The appraiser as referred to in paragraph (1) letter b above is a party originating from the selling agency or company, which carries out the appraisal based on an accountable method including the Curator for art objects and antiquities / ancient objects.

4. The determination of the limit value as referred to in paragraph (1) shall not be the responsibility of KPKLN or class II auction officials.

Then based on Article 45 of the Regulation of the Minister of Finance Number: 27 / PMK.06 / 2016 concerning instructions for auction implementation, it is stipulated that the limit value set by the seller must be based on the results of the appraiser's assessment in the following cases:

1. Voluntary non-execution auction of goods in the form of land and or buildings with a limit value of at least Rp. 1,000,000,000.00 (One billion rupiah)

2. Voluntary non-execution auction of goods in the form of land and or buildings with a limit value of at least Rp. 1,000,000,000.00 (One billion rupiah)

3. A creditor bank will participate in the auction for the execution of Article 6 of the Mortgage Law or the auction for the execution of fiduciary.

Parate execution of mortgage rights by the seller is categorized as an illegal act. With regard to parate execution of Mortgage Rights, the General Explanation number 9 of the Mortgage Law states that one of the characteristics of Mortgage Rights is that the execution is easy and certain if the debtor fails to promise. Furthermore, the General Explanation of the Mortgage Law states that the execution of the Mortgage is carried out based on the parate execution institution as referred to in Article 224 *Herziene Inlands Reglement (H.I.R)* and Article 258 *Regulation Buiten Gewesten (R.Bg.)*. The elucidation of Article 14 paragraph (2 and 3) of the Mortgage Law also states that the letters contained in the Mortgage certificate are intended to confirm the existence of executorial power in the Mortgage Certificate, so that if the debtor fails to promise, the Certificate of Mortgage is executed just like court decisions that have obtained permanent legal force, through procedures and by using an execution parate institution in accordance with the applicable Civil Procedure Law.

The creators of the Mortgage Law turned out to give a wrong interpretation regarding the parate execution institution by pointing to the provisions of Article 224 *Herziene Inlands Reglement (H.I.R)*. Whereas in fact the execution parate was not carried out based on Article 224 *Herziene Inlands Reglement (H.I.R)*. This misinterpretation seems to refer to the opinion of Budi Harsono who says that for creditors holding mortgages on land, the law provides two facilities in executing execution if the debtor fails to promise. Without having to go through ordinary civil suit filings, said Budi Harsono, based on Article 224 *Herziene Inlands Reglement (H.I.R)*, creditors can ask the Chairman of the District Court to hold what is called an execution parate. The execution is sufficient to be carried out by order and with the leadership of the Head of the District Court.⁴ In another part, Budi Harsono said that the gross deed of mortgage, *credietverband*, was mentioned among others in Article 224 *Herziene Inlands Reglement (H.I.R)* and Article 258 *Reglement Buiten Gewesten (R.Bg.)* as the basis for holding an execution parate.⁵

Wouldn't it be right if the execution of the former Article 224 *Herziene Inlands Reglement (H.I.R)* was called an execution parate?⁶ Because the provision regarding the execution parate was born from a promise (*beding*) given by the guarantor right to the right recipient, namely the promise to sell the collateral on his own power (*beding van eigenmachtige verkoop*). In a pawn, the right to sell on one's own power is given by law (Article 1155 of the Civil Code), while in mortgages it still has to be agreed upon by the mortgage provider and holder. The giver and recipient of first tier mortgages can agree on the right to sell the mortgage object on their own power (Article 1178 paragraph (2) of the Civil Code).

Regarding the mortgage rights, according to Article 11 paragraph (2) letter (e) of the Mortgage Rights Law it is also stated that in the Deed of Assignment of Mortgage Rights (APHT), promises are included, including the promise of the first Mortgage holder to sell the object of the insurance right to power itself if the debtor fails to promise. As an agreed-upon right, its existence will only exist if it is expressly agreed upon by the debtor and creditor in the Deed of Granting Mortgage Rights. A new promise exists and is binding if an agreement has been reached between the two parties who agreed.

Although the right to sell on his own power is stated as a promise, further the Mortgage Law also determines as a right granted by law, that is, if the debtor breaches the promise, the holder of the first mortgage is given the right to sell the object of the mortgage on his own power through a public auction and taking the payment of the debt from the proceeds from the sale (Article 6 UUHT). The regulation of authority that was originally born from an agreement (promise) to become a binding norm is an improvement compared to similar provisions in Article 1178 paragraph (2) of the Civil Code.

⁴ Budi Harsono, 1994, *Kasus-kasus Pengadaan Tanah dalam Putusan Pengadilan Suatu Tinjauan Yuridis*, Makalah Seminar Nasional Pengadaan Tanah untuk Pembangunan (Konsepsi Hukum, Permasalahan dan Kebijakan dalam Pemecahannya), Kerjasama FH Usakti dan BPN Jakarta, 3 Desember 1994, hal. 4.

⁵ Ceramah Budi Harsono dengan judul *Jaminan Kepastian Hukum di Bidang Pertanahan*, di Hotel Istana Bandung, 15 Februari 1995. Dikutip dari Tartib, 1996, *Catatan Tentang Parate Eksekusi*, Artikel dalam *Majalah Varia Peradilan Th. XI, No. 124*, Januari 1996, hal. 151.

⁶ Sudikno Mertokusumo, 1996, *Eksekusi Obyek Hak Tanggungan, permasalahan dan hambatan*, Makalah Penataran Dosen Hukum Perdata, FH UGM Yogyakarta, 16-23 Juli 1996, hal. 8.

However, it turns out that the provisions are overlapping and excessive (overbodig), that is, on the one hand it is regulated as a promise made by the parties, but on the other hand it is determined as a right granted by law. The legislators mixed up the power to sell themselves the object of the mortgage right, namely as a norm as well as a promise. This can be seen from the explanation of Article 6 of the Mortgage Rights Law which states: "the right is based on a promise given by the guarantor of the mortgage that if the debtor breaches, the holder of the security right has the right to sell the object of the mortgage right through a general extension." Then the Elucidation of Article 11 paragraph (2) letter (e) of the Mortgage Rights Law states that "in order to have the authority as referred to in Article 6, the APHT includes this promise".

The two regulations, namely as a binding norm and as a promise that must be mutually agreed upon, indicate an inconsistency between the articles in the Mortgage Rights Law. If the right to sell on one's own power has been granted by law, it does not need to be regulated again as a promise (beding) that is included in the law. So, on the one hand, this right is regulated as a binding norm according to law, but on the other hand, it is also regulated as a promise. This of course confuses and confuses the regulations regarding the electronic mortgage rights of the mortgage guarantee institution.

The exercise of the right to sell the object of guarantee on one's own power is carried out without going through trial. It is as if the creditor is selling collateral based on the power he has, so that such a sale is often referred to as selling on his own power. Because execution is based on parate execution according to Article 1178 paragraph (2) of the Civil Code is very practical and simple, it can also be called a simplified execution (vereenvoudigde executie).

Theoretically and normatively, parate execution can actually be carried out without asking permission (fiat) for execution from the District Court and can still be carried out against the debtor, even though he is in bankruptcy. The exercise of such creditor rights, by Pitlo⁷ said as "een verkoop buitenhet terrein van rechtsvordering blijft, er wordt geen beslag gelegd, er komtgeen deurwaarder te pas, hetgeheel wordt afgewikkeld als verkocht men zijn eigen goed in het openbaar"... (a sale that is outside the jurisdiction of procedural law and there is no need for confiscation, does not involve bailiffs, everything is carried out like a person who sells his own goods in public...).

In line with Pitlo, Subekti also said that the execution rate is to carry out itself or to take what is rightfully its own, in the sense that it is not the intermediary of a judge (court), which is aimed at collateral to then sell the item itself.⁸ *Parate execution is an execution which is carried out by the security right holder (pawn and mortgage) without the assistance or interference of the District Court, but only based on the assistance of the State Auction Office. In other words, the execution parate was carried out without asking for fiat execution or permission from the District Court.*

Regarding the promise to sell on their own power as the right of the first creditor when the debtor breaches, it turns out that it has the support of several legal experts. Scholten⁹ views the sale of its own power as a simple and inexpensive exercise of creditor rights. Yahya Harahap¹⁰, believes that the parate of execution is an exception to the principle of execution under the order and leadership of the Chairman of the District Court.

The execution parate institution in the Mortgage Rights is regulated ex lege in Article 6 of the Mortgage Law and is also regulated as a promise made by the giver and holder of the Mortgage (Article 11 paragraph (2) letter (e) of the Mortgage Rights Law. In the form of the Deed of Granting Mortgage, which is printed uniformly, there is also a promise to sell collateral objects under one's own power, so that it is impossible to overlook every mortgage issuance by a debtor to a creditor. Granting of Mortgage Rights has binding power, so it must

⁷ A. Pitlo, *Het Zakenrecht Naar Het Nederlands Burgerlijk Wetboek*, Tjeenk Willink & Zoon, Haarlem, 1979.

⁸ Subekti, *Jaminan jaminan untuk Pemberian Kredit (Termasuk Hak Tanggungan) Menurut Hukum Indonesia*, ditulis kembali oleh Johannes Gunawan, Bandung: Citra Aditya Bakti, 1996.

⁹ Paul Scholten, dalam J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan*, Bandung: CitraAditya Bakti, 2002, hal. 43

¹⁰ M. yahya Harahap. (1991), *Ruang Lingkup Permasalahan Eksekusi*, Jakarta: Gramedia, 1991; Lihat juga Herowati Poesoko, 2006, *Parate Executie Obyek Hak Tanggungan (Inkonsistensi, Konflik Norma dan Kesesatan Penalaran dalam UUHT)*, LaksBang PRESSindo, Yogyakarta, hal. 231-232.

be registered with the Land Office.

If the Deed of Granting Mortgage has been registered with the Land Office, automatically the promises listed in it (including the promise to sell on one's own power are registered, so that it has binding power for the parties and third parties. If the debtor is in default, then the sale must be made through a public auction. The provisions must be sold in public which is intended to provide protection to the debtor from the creditor's delinquency, namely avoiding the sale of the collateral object which is detrimental to the debtor.

Thus, if the debtor is really in default, then the first Mortgage holder can carry out the promise by selling the auction of the object of the Mortgage on his own power (parate execution). The implementation of the execution parate is not based on Article 224 Herziene Inlands Reglement (H.I.R) and Article 258 Reglement Buiten Gewesten (R.Bg.) as stated in the General Elucidation number 9 and Elucidation of Article 14 and Article 26 of the Mortgage Rights Law. So, the parate of the execution was carried out without asking for fiat for execution or a ruling from the Head of the District Court. This is in accordance with the rights granted by law to the first creditor as stipulated in Article 6 of the Mortgage Rights Law.

While the execution according to Article 224 Herziene Inlands Reglement (H.I.R) and Article 258 Reglement Buiten Gewesten (R.Bg.) is not an execution parate, because executions based on these articles must request execution fiat to the Head of the District Court. Execution under Article 224 Herziene Inlands Reglement (H.I.R) and Article 258 Reglement Buiten Gewesten (R.Bg.) is aimed at grosse mortgage deeds and debt securities that have an executorial title. So, execution based on these two articles must ask for fiat execution to the District Court and be carried out or led by the Head of the District Court, while the parate execution is carried out by the creditor himself without asking for fiat execution to the Head of the District Court.

Execution parate institutions ex Article 1178 paragraph (2) of the Civil Code in practice often experience obstacles. This is because it is sterilized by the judiciary. The Supreme Court of the Republic of Indonesia in Decision No. 3201 K / Pdt / 1984 dated January 30, 1986 stated that an execution parate carried out without seeking approval from the District Court even though it was based on Article 1178 paragraph (2) of the Civil Code was an act against the law and the auction was canceled.

The Supreme Court decision overturned the execution parate institution which from the beginning was intended to facilitate creditors in collecting their receivables when the debtor defaults. Since the Supreme Court ruling, the State Auction Office is practically not willing to serve parate requests for execution submitted by holders of land collateral rights (mortgages and credietverband).

After the Mortgage Law came into effect, the authority of the first mortgage holder to sell the object of the mortgage on his own power also could not be exercised. It turns out that the State Auction Office still asks for an order (fiat) for execution from the Chairman of the District Court to the applicant for execution if he wants to sell the auction of the object of coverage, even though there is an authority to execute it himself based on Article 6 of the Mortgage Law. The State Auction Office does not dare to carry out the auction sale if the application is not accompanied by a court order.

The refusal of the State Auction Office to carry out the execution based on Article 6 of the Mortgage Law is based on the reason that there is no approval from the debtor or mortgage provider as the owner of the land. The caution of the State Auction Office in rejecting the request for parate execution is aimed at avoiding abuse of authority by the creditor, so that the sale of the auction can only be carried out after the permission of the Head of the District Court is obtained. This is based on the reason that the debtor's position is on the weak and unprofitable side, so that the selling price of the Mortgage object that is going to be auctioned may not be in accordance with the wishes of the debtor, for example, it is sold at too low a price.

The banking community also acknowledges the difficulty of executing parate execution of objects of mortgage rights if the debtor defaults. The bank has never submitted a bid for auction directly to the Auction Office based on Article 6 of the Mortgage Law. The application will be rejected by the State Auction Office because of the Supreme Court Decision Number

3210 K / Pdt. G / 1984 as well as the provisions in Book II of the Supreme Court Guidelines which require an execution fiat by the Head of the District Court. In addition, there is a lack of enthusiasts who want to buy collateral that is being auctioned because problems will arise at the time of vacating. The court will refuse to issue a vacant order if the execution is not in court.¹¹

Obstacles in the implementation of parate executions seem to have been triggered by the confusion of the meaning and meaning of parate executions carried out by the creators of the Mortgage Law themselves. As is known, the General Explanation of the Mortgage Rights Law number 9 and the explanation of Article 6, Article 11 paragraph (2) letter (e), Article 14 paragraph (2 and 3) and Article 26 of the Mortgage Rights Law, states that "the execution of the execution parate is based on Article 224 Herziene Inlands Reglement (HIR) and Article 258 Reglement Buiten Gewesten (R.Bg.). In fact, Article 224 Herziene Indsland Reglement (H.I.R) stipulates that executions must be carried out by requesting fiat execution from the Head of the District Court. The truth is that the execution of the execution parate is not based on Article 224 Herziene Inlands Regulation (H.I.R) which must request fiat execution to the District Court, but is carried out by the creditor himself.

In connection with the sterility of the execution parate agency in the auction sale of mortgage rights objects, Sudargo Gaotama in his capacity as a legal practitioner once expressed his disappointment over the non-validity of the provisions regarding execution parates stipulated in Article 6 of the Mortgage Rights Law. According to Sudargo Gaotama, this is due to a provision in the memory of the explanation of the Mortgage Rights Law which states that although the right to sell on one's own power is enforced, it must be implemented according to Article 224 Herziene Inlands Reglement (H.I.R). The last sentence in the General Explanation of the Mortgage Law is considered by the State Auction Office as a binding provision, so that every execution of a mortgage object, including parate execution, must go through a court.¹²

The auction official interprets the meaning of the execution parate as stated in the General Explanation number 9 and the Elucidation of Article 14 paragraphs (2 and 3) of the Mortgage Law, so that they still ask to be attached with a warrant from the District Court for each application to execute the object of guarantee right, including those implemented based on Article 6 of the Mortgage Law. In fact, the elucidation of Article 6 of the Mortgage Rights Law states that the auction sale is carried out without seeking approval from the mortgage provider, also without a warrant from the District Court. The State Auction Office is very careful in implementing parate institutions for execution of Mortgage Rights, because they have had the bitter experience of being blamed by the Supreme Court when carrying out an auction of mortgage objects without a court order, even though at that time it was in accordance with the law (Article 1178 paragraph (2) Civil Code.

In a regulation of the Minister of Finance, it is possible to sell auctions through an execution parate agency based on article 6 of the Mortgage Law through the auction hall. In Article 6 of the Decree of the Minister of Finance No. 339 / KMK.O1 / 2000, dated 18 August 2000 Concerning the Auction Hall,¹³ It is stated that the business activities of the Auction Hall include voluntary auctions, parate execution of mortgage rights, fiduciary and goods that are not owned or controlled by the state. In practice, auction execution based on article 6 of the Mortgage Rights Law has been carried out several times by the Auction Hall at the request of a private bank, but only limited to pre-auction activities, while the auction must still be carried out in front of the auction official from the State Receivables and Auction Management Office.¹⁴

In addition, based on the Regulation of the Minister of Finance Number: 304 / KMK.O1 / 2002, June 13, 2002, which was then followed up by the Decree of the Director General of

¹¹ Retnowulan, dkk, 1997, *Penelitian Tentang Perlindungan Hukum Eksekusi Jaminan Kredit*, BHPN Departemen Kehakiman RI, Jakarta, hal. 28-29.

¹² Sudargo Gaotama, 1996. *Komentar atas Undang-undang Hak Tanggungan Baru Nomor 4 Tahun 1996*, citra Aditya Bakti, Bandung hal. 8 dan 11

¹³ SK Menkeu tersebut dijabarkan dalam SK Kepala BUPLN No. 44/PN/2000, tanggal 14 Desember 2000 Tentang Petunjuk Teknis Balai Lelang. Lihat <http://w.w.w.indolelang.Com/law®ulation>.

¹⁴ Pengumuman lelang parate eksekusi pada hartan Kompas tanggal 15 Nopember 2003 dan 2 Desember 2003.

Accounts Receivable and State Auction Number: 35 / PL / 2002, stair 1 27 September 2002, authorized to the Management Office Receivables and State Auctions to implement article 6 of the Mortgage Rights Law.

The latest Regulation of the Minister of Finance Number: 93 / PMK.06 / 2010 concerning auction implementation guidelines, which has been amended by the Minister of Finance Regulation Number: 106 / PMK.06 / 2013 which has been amended by the Minister of Finance Regulation Number: 27 / PMK.06 / 2016 concerning instructions for auction execution of 22 February 2016. This method of auction execution is often referred to as parate execution of collateral as an implementation of Article 6 of the Mortgage Law, which entitles the mortgage holder (seller / bank) to sell the collateral himself.

Determination of the auction sale price or known as the limit value of collateral to be sold at auction is based on Article 1 number 28 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated February 22, 2016 concerning Guidelines for Auction, namely that the minimum price of goods to be auctioned is determined by the seller¹⁵ in this case is the holder of the first mortgage. In determining the limit value of the execution parate auction price must be based on Article 44 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated February 22, 2016.

In reality, the parate for the execution of the auction of collateral goods is bound by mortgage rights based on Article 1 number 28, Article 44 paragraph (1), (2), (3), (4) and Article 45 of the Regulation of the Minister of Finance Number: 27 / PMK. 06/2016 dated 22 February 2016 mentioned above, as a guide to the auction implementation of the mortgage rights execution parate auction based on the Mortgage Rights Law, there is an "illegal act" in determining the limit value of the price of the items being auctioned, because in practice it is not in accordance with existing regulations.

Every act of breaking the law that brings harm to another person obliges the person who due to his wrongdoing to issue the loss, to compensate the loss (Article 1365 of the Civil Code) With the inclusion of the terms of error in Article 1365 of the Civil Code, legislators wish to emphasize that the perpetrator of an illegal act is only responsible for the losses he causes if the act can be blamed on him.

Every parate of auction execution of collateral that is bound with mortgage rights, always leaves a problem that results in a lawsuit from the guarantor. The emergence of a lawsuit from the guarantor, because the seller or the holder of the Mortgage (bank) is deemed to have committed an illegal act as a result of the parate auction for the execution of mortgage rights over land.

The statutory regulations regarding the auction implementation instructions still do not provide hope in the form of a sense of justice to the debtor as the guarantor, because in determining the limit value of the items being auctioned it is still the authority of the party holding the Mortgage Rights (bank), and ignores the assessment results of the appraiser and the results. appraisal from appraisers. Even though the regulatory provisions are clear that the seller, in this case the Mortgage holder (bank) in determining the limit value, must be based on an assessment by an appraiser or an appraisal by an appraisal team (Article 44 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated 22 February 2016).

In reality, the holder of the Mortgage (bank) always ignores the results of the appraiser's appraisal or the appraiser's appraisal results, which results in detrimental to the guarantor. Collateral is auctioned at an arbitrary price limit for the Mortgage holder (private bank or state bank) with an auction price limit "below the standard" selling price that should be.

The pillars of law formation, namely justice, benefit and legal certainty are ignored in the legal principle of determining the limit value of the auction price of collateral for the execution of the mortgage When analyzed based on the theory of justice, as argued by Aristotle that law must guide humans to rational moral values, law must be fair, legal justice is identical to general justice, justice is characterized by good relations between one another,

¹⁵ www.jdih.kemenkeu.go.id, Peraturan Menteri Keuangan No.27/PMK.06/2016 tanggal 22 Februari 2016 tentang petunjuk pelaksanaan lelang, diakses pada tanggal 10 Oktober 2020.

not to prioritize oneself, but also do not put the other party first and there are similarities. If it is related to this theory, the problem of justice in determining the limit value of the auction price should involve the guarantor and independent appraisal. The injustice meant here is that the seller or the mortgage holder (bank) in determining the auction price limit does not involve the guarantor (debtor) and does not involve an independent appraisal, therefore in the execution of the parate auction, the execution does not solve the problem but creates new problems.

In its development, although the parate execution arrangements are ambiguous, legal conflicts and misguided, with the existence of a regulation from the Minister of Finance which regulates the implementation of Article 6 of the Mortgage Law which authorizes the State Auction Office to implement Article 6 of the Mortgage Rights Law, of course parate institutions executions are no longer paralyzed and dead but rather live and re-exist as the main supporting pillar for mortgage guarantee institutions, although not all State Auction Offices in Indonesia have implemented these regulations.¹⁶

Thus it can be elaborated that the inability to exercise the creditor's right to execute the object of his / her own right to power is caused by several things, namely the occurrence of norm conflicts or inconsistencies in parate execution arrangements in the Mortgage Rights Law. In addition, there is also a decision by a judicial institution (Supreme Court of the Republic of Indonesia) which deliberately inflames and weakens the provisions regarding the right to sell objects of guarantee on one's own power. At the practical level, the implementation of parate execution is sterile because there is concern and fear from the State Auction Office to implement the provisions for parate executions as stipulated in Article 6 of the Mortgage Rights Law. Although the Minister of Finance Regulation has authorized the implementation of the parate execution provisions, not all State Auction Offices have the courage to carry out the orders contained in this Regulation of the Minister of Finance.

The existence of the parate right of execution on creditors who hold the first Mortgage as an effort to fulfill the creditors' receivables has actually been strengthened by the Constitutional Court of the Republic of Indonesia through Decision Number: 70 / PUU-VIII / 2011, dated December 5, 2011. The Constitutional Court decision stated that if the debtor default, then the holder of the first mortgage has the right to sell the object of the mortgage on his own power through a Public Auction and to collect his debt from the proceeds of the auction sale without asking the court's fiat.

CONCLUSION

The Legis Ratio that the seller is the authorized party to set the auction price limit for collateral guaranteed rights based on the provisions of Article 1 point 28 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 dated 22 February 2016 concerning auction implementation instructions, which stipulates that The minimum price for the goods to be auctioned is determined by the seller, in this case the security right holder. This refers to Article 6 of the UUHT where the first Mortgage holder has the right to sell the object of the Mortgage on his own power through a public auction and to collect his receivables from the sale proceeds.

The determination of the limit value is determined based on the results of the appraiser's assessment, where the auction limit value must at the lowest be in accordance with the liquidation value, so that the auction office has the authority to reject the auction application submitted by the seller, if it does not comply with the standards stipulated in the Ministerial Regulation. Finance No.27 / PMK.06 / 2016, then it is categorized as an act against the law.

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