

JURIDIC REVIEW ON THE POWER OF LEGAL POWER AS A BASIS FOR THE IMPLEMENTATION OF LIABILITY EXECUTION AUCTIONS

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ABSTRACT

One of the executions of the mortgage object is the sale of the mortgage object through a public auction based on the executorial title contained in the Mortgage Certificate. Before the implementation is carried out by the creditor, a permit (fiat) is required to the local district court. The application for an auction for the execution of mortgage rights through a district court is closely related to obstacles, for example a lawsuit from a third party (derden verzet) who feels he has the right to the object of execution even though it has nothing to do with creditors and debtors. This opposition made the Chief Justice of the District Court unable to grant the request for execution even though the creditor had a mortgage certificate that was encumbered, but was forced to examine the relevant evidence in the trial forum to determine whether the resistance was sufficient reason or just a conspiracy with the debtor to delay the execution.

Based on this explanation, the author wants to examine the legal force of the grosse deed as the basis for the implementation of the mortgage execution auction. The type of research in writing scientific papers is a normative legal research type, with a statutory approach and a legal concept analysis approach (Analytical and Conceptual Approach). The sources of legal materials used in writing this scientific paper come from primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials were collected using library research techniques. Then analyzed using description, systematization, evaluation and finally concluded with argumentation technique. The results of this study are expected to provide scientific knowledge for academics, law enforcers, and the public.

Keywords: grosse deed; auction; mortgage right

I. INTRODUCTION

A. Background

Credit distribution to business actors as debtors is closely related to the risk of congestion. To reduce this risk, it is necessary to have a guarantee institution as a means of security. The law has provided security for creditors in channeling credit to debtors, namely by providing general guarantees in Article 1131 and Article 1132 of the Civil Code which stipulates that all debtors' assets, both movable and immovable, are already in place. or new ones will serve as collateral for all of their engagements with creditors. In the event of a default, all of the debtor's assets are sold at auction and divided according to the size of the receivables of each creditor.

Nowadays, the most requested collateral related to debtor assets by banks, especially convention-

al banks is in the form of land, because economically land has profitable prospects. The birth of Law no. 4 of 1996 concerning Mortgage Rights, hereinafter referred to as the Mortgage Law as a material legal source, is expected to accommodate the needs of conventional banking institutions regarding land as collateral as an effort to secure loans extended to the public. One of the facilities provided by the Mortgage Law is that the execution is easy and certain if the mortgage provider (debtor) does not fulfill the obligations as agreed, as stated in General Elucidation Number 9 of the Mortgage Law.

One way to implement the execution of the mortgage object is based on Article 20 Paragraph (1) letter (b) of the Mortgage Law which reads: “If the debtor is in breach of contract, then based on the executorial title contained in the Mortgage certificate as referred to in Article 14 paragraph (2), the object of the Mortgage is sold through a public auction according to the procedure specified in the laws and regulations for the settlement of the debt of the holder of the Mortgage with prior rights over other creditors.” Execution based on the executorial title contained in the Mortgage Certificate is often known as the Mortgage Execution based on the grosse notarial deed through the District Court. This is because the solution requires the permission (fiat) of the Head of the District Court.

Fiat executions are executions carried out with special permission from the Head of the local District Court even though the District Court does not conduct an examination as in ordinary civil cases. The execution fiat from the Head of the District Court usually begins with a warning (aanmaning) to the debtor, if this is not responded to, an execution order is issued, followed by a confiscation order and then an auction sale order to the State Auction Office. Before the auction is carried out, it must be preceded by the announcement of the auction twice in a row within a grace period of 15 days through the appropriate newspaper (Article 200 paragraph 7 H.I.R).

The advantages of carrying out the execution through the above method are first, sometimes the debtor deliberately avoids or disappears so that the settlement of his debt makes it difficult for the creditor, for this it is impossible to place an agreement between the creditor and the debtor to sell the object at the market price. Second, regarding the sale of the mortgage object on its own power in accordance with Article 6 of the Mortgage Law, the Auction Office usually refuses if a permit (fiat) is not previously requested to the District Court.

The provisions of the Mortgage Law as a material law are in line with the provisions of Article 224 HIR/258 R.Bg as a formal law that adheres to a view other than a court decision that has permanent legal force, only limiting the grosse mortgage deed and debt acknowledgment deed which can be executed by force. with court assistance.

In formal civil law it is determined that execution is basically an act of carrying out or carrying out a court decision. One of the principles contained in the law of execution is that executions are only carried out against court decisions that have permanent legal force, meaning that ordinary legal remedies (appeals and cassation) cannot be filed against the decision. In addition, an execution is carried out by force, namely with court assistance. Whether against a decision the convicted party is willing to carry out (sufficiently) the contents of the decision voluntarily, then no execution is required. A new execution action is required if the convicted party does not want to fulfill the decision voluntarily.

Executions are carried out on orders and under the supervision of the Chief Justice of the District Court. The absolute authority to carry out the execution rests with the district court which renders the decision at the first instance. Although what is to be executed is the decision of the High Court or the Supreme Court, the authority to carry out the decision remains with the District Court as the first to carry out the decision. In order for a decision to be implemented, the decision must be stated “For the sake of Justice Based on God Almighty”.

Given that the grosse deed has the same power as a judge's decision and has permanent legal force, then as with a judge's decision that must be implemented, the grosse deed must be carried out by auctioning all the debtor's property based on Article 1131 of the Civil Code (both guaranteed or not guaranteed).¹

In addition to court decisions that have permanent legal force, a grosse notarial deed by law is also equated with a judge's decision so that it can be enforced by force if it is not fulfilled voluntarily by the parties. The gross deed can be used to sell the auction of the debtor's property without having to comply with the judicial process with all the consequences such as appeals and cassation. The grosse holder can ask the court for the debtor's property to be executed and sold at auction.

Execution based on grosse notarial deed is a shortcut with the aim of providing convenience to creditors in collecting receivables if the debtor defaults. The gross executorial power of the deed is regulated in Article 224 H.I.R which provides exceptions to documents or deeds that are not judges' decisions which can be executed by force with the assistance (orders) of the Head of the District Court, namely grosse mortgage deed and grosse deed of debt acknowledgment. Outside of the grosse deed, the court is not authorized to carry out forced executions.

Grosse is a copy and a quote from a deed.² Grosse Deed is a copy/derivative of a mortgage deed or a debt acknowledgment deed made by a notary and affixed with the head "For Justice Based on the One Godhead" so that it has executive power as well as a judge's decision which has permanent legal force and regarding the contents of the deed cannot be doubtful again.³ According to GHS Lumban Tobing that grosse deed is a copy or excerpt of a deed above which contains a sentence that reads "For the sake of Justice Based on God Almighty", and below it is stated "Given as First Grosse" by mentioning the name of the person on whose request the grosse was given and date of delivery.⁴

The description above shows that fiat execution is only given for grosse deeds, namely: mortgages and debt securities made by a notary as the only public official appointed by law. The two types of grosse deed are documents referred to in Article 224 HIR even though they have an executive title, but the execution must ask for permission (fiat execution) to the Head of the District Court because the two documents are not issued by the court but notary, so that if there is a juridical defect in the grosse deed which is about to be executed will certainly be detrimental to the applicant for execution. As a result, the district court may refuse to grant a license (fiat). The existence of fiat execution from the Head of the District Court is an absolute requirement for execution based on the executorial title contained in the Mortgage Certificate.

Before granting the fiat of execution, the Head of the District Court should have conducted a study of the execution application file and assessed the terms of execution, both formal and material. According to Yahya Harahap, in judicial practice the parameters for assessing the grosse deed execution application (mortgage and debt acknowledgment) made by the Head of the District Court before giving the fiat execution include an assessment of:⁵

1 Eugenia Liliawati Muljono dan Hadi Setia Tunggal, *Eksekusi Grosse Akta Hipotek Oleh Bank*, (Jakarta: Rineka Cipta. 1996), page. 2.

2 Central Jakarta District Court Decision No. 68/1983/G dated August 22, 1983.

3 Central Jakarta District Court Decision No. 68/1983/G dated August 22, 1983 jis. Jakarta High Court Decision No. 458/1982 PT Perdata dated April 30, 1984, Supreme Court Decision No. 3992.K/Pdt/1986 dated September 25, 1989 and the Supreme Court Decision No. 411K/Pdt/1991 dated September 26, 1992.

4 I. Nyoman Raka, *"Beberapa Masalah Hukum Eksekusi Grosse Akte Pengakuan Hutang dan Hipotek dalam Teori dan Praktek di Indonesia"*, Tesis, Fakultas Hukum Universitas Indonesia, 1996.

5 M.Yahya Harahap. *Kedudukan Grosse Akta Dalam Perkembangan Hukum di Indonesia*. (Jakarta: Media Notariat. 1988), hal. 109.

- 1) Whether or not the grosse deed is correct
- 2) The nature of the accessoir grosse deed
- 3) Document grosse deed
- 4) Assess whether or not the amount of debt stated in the grosse deed is confirmed or not.

If these conditions are not met, the Head of the District Court has the authority to reject the request for execution.

After the issuance of Law no. 4 of 1996 concerning Mortgage, the grosse function of the deed as the basis for execution based on Article 224 H.I.R was replaced with a mortgage certificate. Article 14 Paragraph 2 and Paragraph 3 of Law no. 4 of 1996 concerning Mortgage Rights, there is a provision: the mortgage certificate has certificates with the words “For the sake of Justice Based on the One Godhead”. Based on the description above, it means that there is an executorial title which means that the mortgage certificate is given the same power as a court decision that has permanent legal force, besides that the mortgage certificate applies as a substitute for the grosse acte hypotheek as long as it concerns land rights.

Article 26 of Law no. 4 of 1996 concerning Mortgage has a similar construction to the execution of Mortgage. The execution of mortgage rights is regulated as in the execution of mortgages using Article 224 H.I.R, namely a mortgage certificate with an executorial title of execution is also carried out by requesting fiat to the Head of the District Court.

The first issue is whether the mortgage certificate has legally fulfilled the requirements as a substitute for the grosse deed in accordance with Article 224 H.I.R, because the inclusion of the executive title on the mortgage certificate based on Law no. 4 of 1996 concerning Mortgage on Land and Objects related to Land, contrary to the principle of execution law. Whereas H.I.R as a formal legal regulation, including regulating execution, has limitedly determined documents or deeds other than court decisions that can be executed by force only grosse mortgage deed and grosse deed of debt, but by Law no. 4 of 1996 concerning Mortgage on Land and Objects related to Land, plus a Mortgage Certificate. In view of Law no. 4 of 1996 concerning Mortgage on Land and Objects related to Land is a material law regulation, while the formal legal provisions still refer to Article 224 H.I.R and Article 258 R.Bg.

The second problem is that although Law no. 4 of 1996 concerning Mortgage on Land and Objects related to Land, it has been stated that the mortgage certificate is valid as a substitute for the grosse mortgage deed, but it is still to be tested whether the grosse document of the mortgage deed, it still has to be tested whether the grosse document of the notarial deed that underlies the issuance the mortgage certificate has met the requirements? Of course, this is the duty and authority of the Head of the District Court as the giver of fiat to assess the grosse of the notarial deed, not only referring to Article 224 H.I.R as a formal provision, but also covering the material provisions of Law no. 4 of 1996 concerning Mortgage on Land and Objects related to Land as well as other laws and regulations such as in the Basic Agrarian Law, even this authority is further expanded from the point of view of legal doctrine which classifies grosse as an accesoir agreement as well as the opinions of other parties. bachelor.

With the breadth of the authority of the Head of the District Court in assessing the grosse of the deed, the question arises as to what if after the grosse of the deed as the basis for the issuance of the mortgage certificate requested for execution does not meet the formal and material requirements? Of course, this is detrimental to the applicant for execution other than the Head of the District Court cannot provide fiat execution, grosse deed can be non-executable and can be declared null and void.

B. Problem Formulation

Based on the background described above, a legal problem can be drawn to be studied scientifically as follows:

1. What is the legal force of the grosse deed as the basis for the execution of the mortgage right?
2. What are the forms of problems in the execution of the mortgage auction based on the grosse deed?
3. How is the legal protection for the applicant (creditor) if the execution permit is not given by the Head of the District Court?

C. Purpose

The objectives of writing scientific papers are:

- 1) To find out the legal force of the grosse deed as the basis for the implementation of the mortgage execution auction.
- 2) To find out the issues related to the execution of the mortgage auction based on the grosse deed.
- 3) To find out the legal protection for the applicant (creditor) given by law if the execution auction permit is not granted by the Head of the District Court.

D. Benefits

1) Theoretical Benefits

It is hoped that this research can contribute to academic thoughts for academics in the field of law in general.

2) Practical Benefits

- a. For academics, it is hoped that they can contribute ideas to science, especially related to execution law which is used as teaching material related to problems that occur in the implementation of the mortgage execution auction based on the grosse deed, the legal force of the grosse deed as the basis for the execution of the mortgage execution auction, and legal protection. for the applicant (creditor) granted by law if the execution auction permit is not granted by the Head of the District Court.
- b. Practitioners are expected to be able to provide information about the importance of PPAT's prudence in making APHT as the basis for the issuance of mortgage certificates that are devoted to having perfect evidentiary power.
- c. The community is expected to provide information and knowledge to the public to further recognize the importance and role of the Mortgage Guarantee Institution, PPAT and the District Court as the institution authorized to carry out the Mortgage Execution auction.

II. RESEARCH METHODS

The type of research in writing scientific papers is a normative legal research type, with a statutory approach and a legal concept analysis approach (Analytical and Conceptual Approach). The sources of legal materials used in writing this scientific paper come from primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials were collected using library research techniques. Then analyzed using description, systematization, evaluation and finally concluded with argumentation technique.

III. DISCUSSION

A. The legal force of the grosse deed as the basis for the implementation of the mortgage execution auction.

Article 1 Paragraph (1) UUHT explains that Mortgage Rights are security rights that are imposed on land rights as referred to in the UUPA, including or not including other objects that are an integral part of the land, for the settlement of certain debts, which gives priority to the position. certain creditors against other creditors.

Based on the General Elucidation Number (3) UUHT states that the HT guarantee institution has the following characteristics:

1. Giving priority to the creditors (*droit de preference*);
2. Always follow the object that is guaranteed in the hands of whoever the object is (*droit de suite*);
3. Fulfilling the principle of speciality and the principle of publicity so that it can bind third parties and provide legal certainty to interested parties;
4. Easy and definite execution.

Lands and objects related to land that will be burdened with HT must meet the requirements as objects of HT, these requirements are as follows:

1. Can be valued in money, because the debt guaranteed is in the form of money;
2. Has a transferable nature, because if the debtor breaks the promise, the object used as collateral will be sold;
3. Including the rights listed according to the applicable land registration regulations, because they must comply with the publicity principle;
4. Requires a special designation by a law.⁶

Based on these requirements, Article 4 UUHT stipulates the object of Mortgage as follows:

1. Ownership Rights, Cultivation Rights, Building Use Rights;
2. Use of Land Rights on State Land, which according to the applicable provisions must be registered and according to their nature can be transferred;
3. Land rights including buildings, plants and works that already exist or will exist are the property of the holder of land rights whose burden is expressly stated in the relevant Deed of Granting Mortgage Rights (APHT). If the building, plant and works are not owned by the holder of land rights, the HT is released by signing and on the APHT concerned by the owner or authorized by him/her with an authentic deed;
4. Condominium Building and Ownership Rights to Flat Units (HMSRS) which are built on HM, HGB, or Use Rights granted by the State (Article 27 in conjunction with Law 16/1985).

Grosse Deed as regulated in Article 224 HIR has executive power, such as court decisions which have permanent legal force. The definition of executorial power over the grosse deed means that the execution (execution) of the grosse deed is equated with a judge's decision that has permanent legal force, so that the execution of the grosse deed can be directly executed without going through a normal lawsuit. Thus, the settlement of cases through the execution of this grosse deed is an exception from the principle of general justice, namely that a person can resolve disputes based on lawsuits, or legal proceedings.⁷

One way of executing HT as regulated in Article 20 of the UUHT is the Executive Title. The implementation of this executorial title is still using the Dutch Civil Procedure Code which is regulated in Articles 224 HIR and 258 REg, this is based on the provisions of Article 26 UUHT which states that before there are laws and regulations that specifically regulate the execution of HT, the regulations regarding the execution of Hypotheek apply. against HT execution. In carrying out the execution, the provisions of Article 14 UUHT which states that the HT Certificate is valid as a substitute for the grosse acte hypotheek as long as the rights to land that are the object of HT, HMSRS. The execution is carried out by submitting a request for execution by the creditor holding the HT to the Head of the local District Court by submitting an HT certificate as the basis. Then, the execution will be carried out on orders and with the leadership of the Head of the District Court concerned through a public auction conducted by the State Auction Office.⁸

6 Boedi Harsono, "*Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*", (Jakarta: Djambatan, 2005), page. 422.

7 M. Yahya Harahap, "*Ruang Lingkup Permasalahan Eksekusi Bidang Perdata, Cet. 5.*" (Jakarta : Gramedia Pustaka Utama, 1996), page 37.

8 Boedi Harsono, *Op.Cit.* hal. 457.

HT Execution is based on Article 224 HIR as follows:⁹

1. Application Stage

- a. The creditor submits an execution to the District Court where the collateral is located or the District Court where the collateral is located or the District Court which is stipulated in the agreement as the legal domicile.
- b. The court will summon/reprimand the debtor (aanmaning) twice with a grace period of 8 (eight) days for each loan received.
- c. Debtors can have three attitudes towards the investment, namely:
 - i. Don't care;
 - ii. Acknowledging the debt and the amount owed; in such case, the creditor may directly request payment of the entire amount of the debt or request the cooperation of the debtor to sell the collateral in order to pay off the entire amount of the debt;
 - iii. The debtor filed a rebuttal. This objection can be about the amount of the debt that cannot be in accordance with the debtor's record or regarding collateral. Very often the collateral is registered in the name of the wife or husband of the debtor and is considered used as collateral without the consent of the wife or husband. Then the wife/husband in question denied that he had never agreed to use the land and house as collateral. It can also turn out that the wife is a legal husband as evidenced by the existence of a marriage certificate/marriage certificate. In such circumstances the execution is postponed until there is a decision on the rebuttal case.

2. Foreclosure Stage

- a. Creditors apply for confiscation of the auctioned collateral.
- b. The court will issue a confiscation order which will then be followed by a confiscation process by a court official as evidenced by a confiscation report. If there is no response from the debtor, the process will continue.

3. Auction Stage

- a. The creditor submits an auction application to the District Court.
- b. The Court will publish the terms of the auction and determine the auction time after consultation with the Auction Office.
- c. Before the auction is held there are two conditions that must be met by the creditor:
 - i. The creditor notifies the court of the price ceiling (minimum price) of the collateral.
 - ii. The creditor requests a Land Registration Certificate (SKPT) of the collateral to the local Land Office.
- d. The auction was held at the local District Court. Buyers must be at least 2 (two) parties, if there are no interested parties, the auction will be postponed for approximately one month and must be preceded by 1 (one) advertisement.

The auction of the HT object from the two executions can be avoided by paying off the guaranteed debt along with the execution costs that have been incurred until the announcement of the auction is issued.

B. Forms of problems in the execution of the mortgage auction based on the grosse deed.

In its implementation, the execution of HT encounters obstacles that come from:¹⁰

- i. The creditors such as making the ceiling too low, so that the Head of the District Court refuses, does

9 Arie S. Hutagalung, *“Tebaran Pemikiran Seputar Masalah Hukum Tanah”*, (Jakarta: Lembaga Pemberdayaan Hukum Indonesia, 2005), hal. 235 - 237.

10 Arie S Hutagalung, *“Serba Aneka Masalah Tanah Dalam Kegiatan Ekonomi (Suatu Kumpulan Karangan)”*, (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2002), hal. 238.

- not prepare the buyer, does not prepare the auction price, makes peace with the debtor before the auction;
- ii. Courts such as KPN postponed on the grounds that the ceiling was not reached, there were objections, the debtor asked for a sign that it was granted; KPT letter; MARI letter; MARI phone:
 - iii. From the debtors themselves, such as suing, arguing, requesting a fatwa to the PT, requesting a fatwa to the Supreme Court, blocking auctions with fictitious buyers.

In addition, there are also other obstacles in the implementation of creditor rights as the holder of preference rights over HT often experiencing several problems, including:¹¹

1. The application process until the receipt of the auction results requires a long time and continuous monitoring;
2. With the application of the negative principle,¹² if the land has been used as collateral and it can be proven that the HT grantor is not the real owner, it will certainly result in the cancellation of the use of the land rights as collateral and thus pose a risk to the bank.
3. With the application of the horizontal principle, it can cause various obstacles such as:
 - a. If the land in question is encumbered with HT, then there is a possibility that the debtor may have obtained the machines planted on the land from the leasing company and his obligations to the leasing company have not been paid, the land and factory may be requested to be confiscated without regard to the interests of the bank as creditor of the HT holder. It is true that banks may make rebuttal efforts and other efforts, but more or less the loans/banks have been disrupted and the handling requires energy and costs that should not have happened.
 - b. Likewise, creditors must be careful to convince themselves that the owner of the land is the same as the owner of the building. If the bank makes a mistake and as a result receives a guarantee that is not entitled to it, then of course the bank will have difficulty executing it.
 - c. If the debtor of the bank is the owner of the building and not the owner of the land, of course, the creditor of the bank must know in advance the legal relationship between the owner of the land and the owner of the building and the creditor must ensure that the creditor has a position of preference over the building so that if there is bad credit and will be executed, it will not be executed. generate objections from the landowners.
4. The absence of the husband's/wife's or the Commissioner's/Shareholders' approval will result in objections that hinder the execution.
5. The certificate is asphalt or fake then the execution cannot be carried out.
6. Land encumbered by HT is in dispute so that the execution process will be suspended until the case regarding the land is resolved.
7. The land in question is being confiscated by the Court so that the execution can only be carried out if the confiscation has been lifted first.
8. If the wife or husband of the owner of the land encumbered with HT is a foreign citizen, then the right to the land encumbered by HT will be transferred to another person or the HT will also be erased with the abolition of the land right.

C. Legal protection for the applicant (creditor) if the execution permit is not granted by the Head of the District Court.

¹¹ Arie S. Hutagalung, *“Tebaran Pemikiran Seputar Masalah Hukum Tanah”*, *Op.Cit.*, page. 336-337.

¹² The negative principle is that a person whose name is listed in a certificate on the land is considered as the owner who is sharpening the land but as long as it can be proven otherwise by another party then by a court decision the land ownership can be canceled.

Legal protection for the community is divided into two, namely preventively or in terms of preventing disputes, while repressively after a decision is made by the government and some groups of people cannot accept it and eventually trigger a dispute, this must be resolved in simple language resolving disputes. that has happened.¹³

That the execution of the object of Mortgage has been regulated in the provisions of Article 20 paragraph (1) and paragraph (2) of the HT Law, one of which is fiat execution on the basis of the executorial title contained in this Mortgage Certificate is not given by the Head of the District Court, then the efforts that can be made carried out by creditors is by way of Bankruptcy.

Bankruptcy according to the provisions of Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter abbreviated as the Bankruptcy Act) is “General confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge. as regulated in this law”.

Furthermore, according to M. Hadi Subhan, “Bankruptcy is a court decision that causes general confiscation of all assets of the bankrupt debtor, both existing and those that will exist in the future”.¹⁴ The meaning of bankruptcy in the Bankruptcy Law does not indicate the essence of bankruptcy, but only shows the legal consequences of bankruptcy, namely the general confiscation of the assets of the bankrupt debtor.¹⁵

Bankruptcy has principles and characteristics that indicate the position of Bankruptcy as an unusual collection effort (oneigenlijke incassoprocedures). According to Wessels as quoted again by M. Hadi Subhan, it is said to be unusual because bankruptcy is provided as a means of pressure (pressie middel) to force debtors to fulfill obligations.¹⁶

Article 2 Paragraph 1 of the Bankruptcy Law explains “Debtors who have two or more Creditors and do not pay off at least one debt that has matured and can be collected, are declared bankrupt by a Court decision, either at their own request or at the request of one or more creditors. ” From this article, it can be seen that the requirements for submitting a debtor as a bankrupt debtor are:

- a. The debtor has two or more creditors;
- b. The debtor does not pay at least one debt that is due and collectible.

Whereas through this bankruptcy mechanism, the positions of Creditors and Debtors are no longer directly bound, but a new intermediary appears, namely the Curator who is the “custodian” of the debtor’s bankruptcy estate. This includes the Curator, who will then use the proceeds from the sale to pay off the creditors’ debts. Considering that creditors need assistance from other creditors to then be able to file an application for bankruptcy to the Commercial Court, this is as stipulated in Article 2 paragraph (1) of the Bankruptcy Law.

13 Philipus M. Hadjon, *“Perlindungan Hukum Bagi Rakyat Di Indonesia”*, (Surabaya: Peradaban, 2007), page. 10.

14 M. Hadi Shubhan, *“Hukum Kepailitan Prinsip, Norma dan Praktik di Peradilan”*, (Jakarta: Kencana, 2009), hal. 1.

15 *Ibid.*, hal. 67.

16 *Ibid.*, hal. 38.

IV. CONCLUSION

Based on the formulation of the problems that have been discussed in the discussion, it can be concluded:

1. The legal force of the grosse deed as the basis for the execution of the mortgage execution auction Grosse has executorial power, such as a court decision that has permanent legal force which means that the execution (execution) of the grosse deed is equated with a judge's decision that has permanent legal force, so that the execution from the grosse of the deed can be directly executed without going through an ordinary lawsuit.
2. The forms of problems in the execution of the mortgage auction based on the grosse deed arise because of a lawsuit from the debtor, causing the fiat execution to be postponed or rejected by the Head of the District Court.
3. Legal protection for the applicant (creditor) if the execution permit is not given by the Head of the District Court is by submitting a debtor bankruptcy application to the Commercial Court.

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