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Reconceptualization of the Separation of Executive and Judicial Powers in the Execution of Mortgage right in Indonesia

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Abstract. *The practice of mortgage execution in Indonesia demonstrates an overlapping authority between the executive and judicial branches of power. Article 6 of the Mortgage Law, which provides the basis for creditors to carry out parate execution directly through the KPKNL as an executive organ, conflicts with Article 224 HIR/258 RBg, which places fiat execution as a condition for executing mortgage execution. This inconsistency in norms creates uncertainty in the execution of collateral objects and obscures the principle of separation of powers, which is the foundation of the rule of law. This article aims to reanalyze the configuration of the authority relationship between the executive and the judiciary in mortgage execution, by examining the theoretical aspects of separation of powers and its application in the parate execution mechanism. Using a normative-juridical study, combining legislative, conceptual, and case-based approaches, the research finds that the dualism of execution authority creates a contradiction between the lex specialis norm and the formalistic judicial mechanism. As a result, further disputes often arise, legal protection is suboptimal for the parties, and the effectiveness of execution is hampered. A reconceptualization of the relationship between the executive and judiciary in the execution of mortgage rights is needed through harmonization and synchronization of norms, clarification of the roles of state institutions, and strengthening of preventive and repressive protection mechanisms. This reorientation is necessary to ensure that execution can proceed simply, quickly, and reliably without neglecting the proportional separation of powers in Indonesia.*

Keywords: *Parate Execution; Separation of Powers; Rule of Law.*

1. INTRODUCTION

In today's world countries, the concept of separation of powers is popular in the modern legal state, this concept was born from the idea that in order to achieve the ideal goal of the rule-of-law state, it is necessary to divide power into several institutions that are organized in a system, because the handover of power to one highest authority is very vulnerable to abuse of power. (MPR, 2017)

The rule-of-law state essentially contains the principle of limiting power. Each state institution must work within the legal corridor and be supervised by other institutions so as not to act arbitrarily. Important elements in the rule-of-law state include: a) Rule of law, b) principle of legality, c) equality of position in the law, d) independent executive organs, e) limitation of power, f) free and impartial judiciary, g) constitutional court, h) state administrative court, i) democratic, j) human rights protection, k) functioning as a means of realizing state goals, l) transparency and social control. (Jimly Asshiddiqie, 2005)

In the Indonesian constitutional system, the principle of separation of powers was adopted constitutionally through the 1945 Constitution. Executive power is exercised by the President as the head of government, legislative power is exercised by the House of Representatives (DPR), while judicial power is exercised by the Supreme Court and the judiciary under it and the Constitutional Court. These three branches of power work in a balanced manner through the principle *of checks and balances*, to ensure that no institution acts beyond the limits of its authority.

The mortgage right is a material guarantee institution for land regulated in Law No. 4 of 1996 concerning the Mortgage right over Land and Objects Related to Land (UUHT). Through this institution, creditors have a stronger position than other creditors because the mortgage right provides *preferential rights* (privileged status) and enforcement power that is equivalent to a court decision that has permanent legal force (Nugroho, 2022). If the debtor does not fulfill his obligations, the creditor as the holder of the mortgage right has the right to sell the collateral object in the form of land through a public auction. This mechanism is regulated in *the Vendu Regulation* of 1908 Number 189 and updated through the Regulation of the Minister of Finance Number 27 of 2016 concerning Guidelines for the Implementation of Auctions. Based on Article 20 paragraph (1) letters a and b of Law No. 4 of 1996 of the UUHT, the execution can be carried out in three ways, namely parate execution**,** executory title, and sale under the hand. Lihat (*UU No. 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-benda Yang Berkaitan Dengan Tanah*, n.d.)

First, the parate execution gives the creditor the right to sell the collateral object in his own power through a public auction without the need for a court determination, as stipulated in Article 6 of the Constitution. Second, execution based on an executory title is carried out using a certificate of dependency rights that has legal force equivalent to a court decision that has permanent legal force, but its implementation must still follow the provisions of Article 224 HIR/258 RBg**,** so it takes longer. Third, the privat sale can only be done if there is an agreement between the creditor and the debtor, and the proceeds of the sale are used to pay off the debt. (Rosari et al., 2022)

The execution of the mortgage right is in a gray area between the administrative and judicial realms. The mechanism *of parate execution* as stipulated in Article 6 and Article 20 paragraph (1) letter a of the Law gives the right to the holder of mortgage right (creditors) to sell the collateral object without going through the court process, this provision is again emphasized in Article 11 paragraph (2) letter e of the UUHT. This means that the execution is carried out directly by the executive institution, through state auction officials under the Ministry of Finance (KPKNL). In practice, the parate execution cannot be carried out completely without judicial intervention. When there is resistance (verzet) or objection from the debtor to the implementation of the auction, the implementation must obtain *a fiat* (execution permit) from the Chief of the District Court as stipulated in Article 224 HIR/258 RBg. (Nugroho, 2022)

The relationship between state institutions that does not always run ideally, raises new problems in civil law in Indonesia, the overlapping of authority between the executive institution through state auction officials and the judiciary through the courts, ultimately giving birth to new questions about the extent to which the principle of *separation of powers* is applied in the implementation of the execution of mortgage right in Indonesia.

Studies related to the implementation of the execution of the mortgage right, especially the parate execution which is considered to intersect between the two authorities of the institution have been carried out by many researchers previously, but this research has a different focus and contribution. First, the research conducted by Siti Rahayu Korompok, focuses on normative-juridical analysis of Article 6 of the Law which is considered to be contrary to Article 224 of the HIR. The results of the study confirmed the existence of a non-synchronization of norms between the provisions of the Law and the HIR, which has implications for the emergence of dualism in the interpretation of judges in the application of parate executions. (Korompot, 2023a)

Second, research by Supriadi Jufri, Anwar Borahima, and Nurfaidah Said, is oriented towards legal protection for auction buyers who are in good faith in the implementation of the auction of the execution of the mortgage right. This study uses a normative approach by examining *the Vendu Regulation* (VR) and its implementation regulations. The results of the study show that legal protection for auction buyers is still repressive, namely obtained through a lawsuit mechanism in court, there are no rules that provide preventive protection. (Jufri et al., 2020a)

Third, the research by Dwi Nugrohandini and Etty Mulyati, the research examines the legal consequences of lawsuits or resistance to the implementation of the auction of execution of mortgage right. Using an empirical juridical approach, the study highlights the legal uncertainty that arises due to the overlap between the mechanism of parate execution in Article 6 of the Constitution and the fiat of execution in Article 14 of the Constitution. (Nugrohandini & Mulyati, 2019)

In contrast to the three studies, this study seeks to reconceptualize the power relationship between the executive and judicial institutions in the implementation of the execution of mortgage right. This study examines the intersection of authority between executive officials (through KPKNL and auction officials) and judicial institutions (through court fiat), as well as examines the application of the principles of *separation of powers* and *checks and balances* in civil law practice in Indonesia.

This research is expected to be able to make a theoretical and conceptual contribution in formulating a more proportionate model of division of authority between branches of state power, to ensure the effectiveness of execution and provide a guarantee of fair and beneficial legal certainty for creditors, debtors, and auction winners in auction execution in Indonesia.

This research is important because to create an efficient and fair settlement of guaranteed disputes, it is important to clarify the limits of authority between branches of state power, as well as realize legal certainty for creditors and debtors in the implementation of mortgage right. This study will examine how the principle *of checks and balances* works within the limits of authority between the executive and the judiciary in the execution of mortgage right.

2. RESEARCH METHODS

This research is normative-juridical research in the qualitative research group. By combining a legislative approach, a case approach and a conceptual approach, this study will examine secondary sources in the form of laws and regulations and theoretical concepts in law to examine how to reconceptualize the separation of executive and judicial powers in the execution of Indonesia's mortgage right.

This research will be an additional study in the legal world, as well as a reference for recommendations for the formation of laws and regulations in the future, by linking the case of the non-ideal relationship between the executive and judicial institutions in the execution of the mortgage right with theoretical concepts that have been conveyed by many legal experts, this research will be a rich research on the theory of state law.

3. RESULTS AND DISCUSSION

3.1 The Principle *of Checks and Balances* in the Modern Legal State

Initially, the concept of the rule-of-law state began to develop in mainland Continental Europe which was developed by several experts using the German *"rechtstaat"* such as Immanuel Kant, Fichte, Paul Laband, Julius Stahl, and others. Meanwhile, the "*rule of law"* is a concept of the rule-of-law state developed in the Anglo Saxon tradition of the United States by A.V. Dicey. (Badan Pengakajian MPR RI, 2017)

Julius Stahl divides the concept of the rule-of-law state into four main elements consisting of the division of powers, the protection of human rights, governance based on the law, and the administrative justice of the state. This view was inspired by Immanuel Kant's view that the function *of recht* in *the staat* was limited to the protection of individual rights and placed state power in a passive sense or what came to be known as the night watchman's state. Meanwhile, in the tradition of the Anglo Saxon state, A.V. Dicey divides the characteristics of the rule-of-law state into three elements, namely the *supremacy of law, due process of law,* and *equality before the law.* (Badan Pengakajian MPR RI, 2017)

In the next development, the main principles of the legal state of *rechtstaat* stated by Julius Stahl in combined in the three main principles of the rule-of-law state the *rule of law* according to A.V. Dicey, in the development of the modern legal state today, for countries in the world that claim to be a rule-of-law state, these characteristics become a must. (Badan Pengakajian MPR RI, 2017) 3-4.

Basically, the main essence of the rule-of-law state is the protection of Human Rights. In the concept of the modern rule-of-law state, the task of government is active, the big goal is to realize a welfare law state, not solely to maintain security, the rule-of-law state in the modern context is responsible for creating the welfare of its citizens. (Ismoyo et al., 2025)

In Indonesia, the purpose of the state is stated in the fourth clause of the preamble to the 1945 Constitution which states that the purpose of "*the Government of the State of Indonesia is to protect the entire Indonesian nation and all Indonesian bloodshed, and to promote public welfare, educate the life of the nation, and participate in implementing a world order based on independence, lasting peace, and social justice".* Furthermore, in order to realize the goals of the state as mandated by the constitution, state institutions were formed to carry out the goals of the state.

Indonesia as a country of law, wants a written legal tradition, this is not without reason, the writing of the law will guarantee the value of certainty. Written laws will be a more definite basis than unwritten laws. The application that refers to the law will definitely avoid any arbitrariness in the use of the law. Bagir Manan views that there are five important components that affect the implementation of legal certainty, the five components consist of laws, judicial processes, bureaucratic services, social unrest, and political unrest. Simply put, what affects the implementation of legal certainty is not only the law itself, but also social issues and power in a country. (Bagir Manan, 2004)

The law is only in accordance with its usefulness if it creates justice as much as possible, negates justice in the law as well as equalizes law with power. The definition of justice was previously put forward by Aristotle into two types, consisting of distributive justice and cumulative justice. Distributive justice is justice where everyone does not get equally, but according to their merits. While cumulative justice is justice where everyone gets an equal share, cumulative justice plays an important role in the exchange relationship. Meanwhile, justice in law is closely related to substantive justice that Aristotle meant. Apeldoorn also interprets justice not as equalization, as the definition of distributive justice in Aristotle's view. (L.J Van Apeeldoorn, 1997)

In legal norms that are regulating, the value of usefulness is very useful, people will obey the law without coercion if they themselves feel the benefits of the law. Jeremy Bentham said that law can be categorized as a good law if it is able to provide happiness to some people (*the greatest happiness of the greatest number*). The value of utility intersects directly with the interests of legal subjects, legal norms emphasize the protection of legal subjects and the interests of those who are at the bottom of the ladder. This means that the value of benefits must prioritize the minority/lower class.

John Locke began his thinking on the concept of power division in his book "*Two Treaties of Government*", in order to avoid the power of absolutism in a country, Lock divided power into three branches of power consisting of legislative, executive, and federative powers. Lock places legislative power as the highest branch of power compared to the other two branches of power. The reason is that the legislative power is authorized to give birth to laws. This power comes from the legitimacy given by the community to the state. Therefore, the state must not act arbitrarily in setting policies, the laws that are formed should be oriented towards the goal of realizing the welfare of the people. In fact, legislative power is still limited by the people as the highest power holder in the state. Judicial power, according to Lock, is included in the category of executive power. Meanwhile, federative power, namely the authority to declare war and establish peace, make treaties with other countries, and carry out all affairs related to relations between countries, is a separate authority apart from the other two branches of power. (Badan Pengakajian MPR RI, 2017)

Half a century later, this theory was developed by Montesquieu, in his book "*L'Esprit des Lois*", known as the concept of *trias politica*, just like Lock, Montesquieu divided the state into three branches of power, namely executive, legislative, and judicial. The goal, as John Locke wanted, was so that there would be no misappropriation, so that power had to be divided. For when a government holds absolute power, the tendency to act arbitrarily becomes greater. This is in line with the theory put forward by Lord Acton, who states that "*power tends to corrupt but absolute power corrupts absolutelly*." (Acton, 1887)

In its development, the modern expansion of the classical theory *of trias politica,* gave birth to the *check and balances mechanism*, According to Jimly Asshiddiqie, *checks and balances* include not only the relationship between the three branches of state power, but also the involvement of the community. According to him, to achieve substantial democracy, direct involvement of the community in state supervision is needed. (*Webinar Konstitusi Bahas Prinsip Checks and Balances Dan Independensi MK*, n.d.)

In Indonesia, the system of institutions is not purely *trias politica*, Indonesia uses a distribution *of powers* system that is adapted to the constitutional presidential model. Relations between state institutions are coordinated with mutual supervision. For example, the President (executive) issues government regulations to implement laws, but the House of Representatives (legislature) has the right to supervise, and the Supreme Court and/or the Constitutional Court (judicial) can test the validity of such executive actions. In more detail, here is the division:

3.1.1 Executive powers

As an adherent of the Presidential system, in Indonesia the highest power to carry out the orders of the law is held by the President. In Article 4 paragraph (1) of the 1945 Constitution, it is stated that "the President of the Republic of Indonesia holds the power of government according to the Constitution". In the context of the division of power, the term *government* refers to executive power. As the holder of executive power, the President carries out government functions consisting of general government powers and special government powers. (Bagir Manan, 2006)

3.1.2 Legislative power

Legislative power in Indonesia is held by the House of Representatives (DPR), Article 20A of the 1945 Constitution states that the House of Representatives holds the highest power as a legislative institution. In this case, the House of Representatives has three main functions, namely the functions of legislation, budget, and supervision. The implementation of these three functions is also applied to the district/city DPRD can. (*Menyoal Fungsi Legislasi Pasca Amandemen UUD 1945*, n.d.)

3.1.3 Judicial power

Judicial power in Indonesia is exercised by the judiciary. In the constitution, this is regulated in Chapter IX Article 24 concerning Judicial Power. In carrying out the functions of law enforcement and justice, judicial power is exercised by the Supreme Court and its judicial bodies, which include the general court, the state administrative court, the military court, and the religious court, as well as by the Constitutional Court.

Check and balances require a balance relationship between state institutions, so that there is no *abuse of power* by each state institution, including compromises or deviations due to certain political interests. According to Bagir Manan, simply put, in the presidential system, the implementation of *checks and balances* is used to ensure the implementation of a government based on the principles of the rule-of-law state and constitutionalism. (Bagir Manan, 2012)

Although the power of legislation is in the hands of the DPR, the President as an executive institution also has the authority to form legal norms, which are based on the hierarchy of norms based on Law No. 12 of 2011 concerning the Establishment of Laws and Regulations consisting of: 1) the 1945 Constitution, 2) Decrees of the People's

Consultative Assembly, 3) Law/Perppu, 4) Government Regulations, 5) Presidential Regulations, 6) Provincial Regulations, 7) Regency/City Regulations. These legal products reflect legitimacy and relationships with each other. The implementation of norm hierarchy theory is important in this regard.

The theory of norm relations began with the thought of Hans Kelsen, known as the theory of the legal pyramid (*stufentherie*). Kelsen views the legal system as an arrangement consisting of rules (*stufenbau des recht*). At its peak, there is a fundamental rule called *grundnorm|ursprungnorm*. These fundamental principles are abstract and general. In the middle, it is called a legal rule (*generall norm*) and finally it is positively turned into *a concrete norm* (real norm). (Attamimi, 1990)

Kelsen's thought was then developed by Hans Nawiasky who is known as the *theory of von stefenbau der rechtsordnung*, based on this theory, the arrangement of norms consists of:

a) *Staatsfundamentalnorm* (fundamental norm of the state).

b) *Staatsgrundgesetz* (the basic rules of the state).

c) *Formell gesetz* (formal law).

d) *Verordnung en autonome satzung* (implementing regulations/autonomous regulations). (Attamimi, 1990b)

Its implementation in Indonesia can be seen as follows:

a) Pancasila as *a staatsfundamentalnorm.*

b) The body of the 1945 Constitution, the TAP of the MPR, the Constitutional Convention as *a staatsgrundgesetz.*

c) The law as *formell gesetz.*

d) Government Regulations up to Regent/Mayor Regulations as*Verordnung en autonome satz.*

The theory of the hierarchy of norms is also inspired by the thought of Adolf Merkl, in his theory *das doppelte rech stanilitz,* Merkl believes that norms have two faces, meaning that a legal norm upwards comes from the law that is above it, and downwards as the basis for the law below it. So that a norm according to Merkl has *a rechkracht* (validity period), the validity period of a norm is based on the norm that exists on it, if the norm above it is deleted or revoked, then the norm below it is also deleted/revoked. (Maria Farida Indrati S, 2007)

In relation to the hierarchy of norms, the following principles are known in legislation: (Hasyimzoem Yusnani, 2017)

a) *Lex superiot derogate legi inferiori*, namely legal norms with a higher level of enforceability take precedence over legal norms with a lower level.

b) *Lex specialist derogate legi generalis,* which is a legal norm that takes precedence over general legal norms.

c) *Lex posteriori derogate legi priori,* which is a new legal norm that takes precedence over older legal norms.

In modern legal thought, there are three legal ideals that must be contained proportionally according to Gustav Redbrunch, namely *rechtssicherkeit* (certainty), *gerechtigkeit* (justice), and *zweckmasigkeit* (usefulness). So it is important in the formation of every legal norm to pay attention to these values in their content.

3.2 Regulation of Execution of Mortgage right in Indonesia

Dependency rights in Indonesia have a long history dating back to the Dutch colonial rule, which was then regulated through the provisions *of land rights* in 1834. After Indonesia's independence, the regulation of land rights was updated through Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), the law became the legal basis for various types of land rights, including dependency rights as material security. It does not stop there, in order to achieve a more comprehensive guarantee of legal certainty, the government passed Law No. 4 of 1996 UUHT, which specifically regulates material guarantee institutions. The 1996 Law became an important milestone in the national agrarian legal system, marking the transition from the colonial guarantee legal system formerly known as *Hypotheek* and *Credietverband* to a national land law system based on the principles of the UUPA. In its development, the law has not yet provided more detailed technical arrangements related to modern land administration. Therefore, more technical provisions were born related to procedures, procedures, and service requirements for mortgage right, namely Government Regulation No. 18 of 2021 concerning Mortgage right. (Resti et al., 2025)

According to KBBI, the term *dependents* mean goods that are used as collateral, while *collateral* is defined as something that is an insurer for the loan received by a person. In simple terms, the mortgage right can be understood as a right of guarantee imposed on the land owned by the debtor, where the creditor obtains the right to sell the land if the debtor does not fulfill his obligations. (Arba et al., 2021)

Based on Article 1 point (1) of Law No. 4 of 1996, mortgage right is a form of guarantee for land that is charged to ownership rights or other rights to land as stipulated in Law No. 5 of 1960 UUPA. The guarantee can cover land alone or also objects that are united with the land. The Mortgage right is granted to guarantee the repayment of certain debts, and grants privileges (higher standing) to creditors holding mortgage right compared to other creditors. (Undang-Undang (UU) Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah, n.d.)

Based on the applicable law, the types of land that can be used as the object of Mortgage right include property rights, building use rights, and business use rights. In addition, the right to use state land can also be used as a guarantee with mortgage right, provided that the right must be registered and can be transferred in accordance with the applicable legal provisions. (*Undang-Undang (UU) Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah*, n.d.-b)

Property rights, building use rights, business use rights and under certain conditions the right to use state land can be used as objects of mortgage right because these four types of rights have economic value and can be transferred to other parties. In the Indonesian land law system, the main condition that a land right can be used as a guarantee is that the right is officially registered and transferable, thus providing legal certainty for creditors and debtors. On the other hand, land rights that are personal or temporary, such as non-transferable use rights or lease rights, cannot be used as objects of mortgage right, because they do not meet the elements of certainty and legal protection for creditors. (Atikah, 2022)

Furthermore, if a loan/credit experiences problems, the creditor has the right to immediately take rescue steps so as not to cause greater losses. Credit rescue efforts can be carried out if the debtor's business activities still have good prospects, through several ways such as *rescheduling,* restructuring, or changes in credit requirements (*reconditioning*). However, if the credit has developed into bad credit and cannot be saved, then the creditor has the right to take legal steps to withdraw the loan funds. This effort can be carried out through litigation (court) and non-litigation (out of court), in accordance with applicable policies and regulations. (Jufri et al., 2020)

If all rescue efforts do not succeed in solving the problem, then the implementation of the execution of the guarantee becomes the last resort. In the context of dependents, execution can be carried out by three main mechanisms, namely parate execution, execution based on executory title, and privat sale. First, in the execution process, the creditor as the holder of the first dependent right has the right to sell the collateral object directly through the State Property and Auction Service Office (KPKNL) without the need for a court determination. Second, execution based on an executory title is carried out through the determination of the Chief Justice of the District Court, where the auction process can only be carried out after obtaining court approval. Finally, the sale under the hand is carried out based on an agreement between the creditor and the debtor to sell the land as collateral directly to other interested parties. (Jufri et al., 2020b)

The implementation of the auction for the execution of the mortgage right cannot be carried out by a private institution, its implementation is required through the official state institution authorized to hold the auction/KPKNL. The auction winner is the party who submits the highest bid and is ratified by the state auction official, and the transfer of new land rights is considered valid if proven by an extract of the official auction minutes, as stipulated in Article 41 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration. Only buyers who legally follow legal procedures and provisions, will be entitled to obtain legal protection for the auctioned land objects as referred to in Article 1338 paragraph (3) of the Civil Code. (Bela & Leviza, 2022)

De *jure,* when the debtor fails to fulfill its obligations, the creditor has the right to directly sell the loan collateral object, without the parate execution allowing the execution to be carried out independently by the creditor, without going through the civil procedure legal process such as confiscation or the involvement of the bailiff as stipulated in Article 6 of the UUHT. Therefore, the execution parade is considered simpler, faster, and more efficient in helping creditors recover their receivables. The provisions in Article 6 of the UUHT actually give the right to the holder of the first dependent right to sell the collateral object through a public auction without the need for court permission. This is affirmed in the Circular Letter of the State Receivables and Auction Affairs Agency (BUPLN) Number SE-23/PN/2000. However, de *facto, often the* court demands a fiat of execution from the Chief Justice of the District Court, as stipulated in Article 224 of the HIR. This condition causes the implementation of the parate execution to lose its simple and fast nature, because it still has to go through the judicial process. (Korompot, 2023)

3.3 Reconceptualization of the Separation of Powers in the Execution of Mortgage right

In the mortgage system, the parate execution (sale of own power) can only be carried out if there has previously been a firm promise in the credit agreement that gives the right to the creditor. This provision is regulated in Article 1178 paragraph (2) of the Civil Code (KUHPercivil). This means that the right to sell the collateral object directly is not an automatic right, it must be agreed in advance between the debtor and the creditor in the mortgage deed. The deed was made in the form of a gross mortgage deed containing *the title "For Justice Based on the One Godhead"*, and was notarized by a notary.

Because this right to sell is sourced from an agreement, the implementation of its execution requires leadership and supervision from the Chief Justice of the District Court. (Robert Bonar, n.d.)

In Article 224 of the HIR (Herziene Indonesisch Reglement) it is stated, "*Original letters of mortgage and debt deeds, made before a notary in Indonesia and which bear the words: "in the name of justice" on their head, have the same power as a judge's decree. In the case of carrying out such a letter, if it is not fulfilled by peaceful means, then the regulations in this section may be treated, but with the understanding that coercion of the body may only be carried out after it has been permitted by the decision of the Judge. If the matter of carrying out the decision must be carried out in whole or in part outside the jurisdiction of the district court, whose chairman ordered it to be carried out, then the regulations in article 195 second and subsequent paragraphs shall be complied with*."

Subsequently, Article 6 of the Law states that *"If the debtor is injured by the promise, the holder of the first Mortgage right has the right to sell the object of the Mortgage right on their own power through a public auction and take the repayment of their receivables from the proceeds of the sale."* The regulation is reaffirmed in Article 20 paragraph (1) letter (a) of the UUHT, that the holder of the first Mortgage right has the authority to make a sale of the collateral object as stipulated in Article 6. Therefore, the implementation of the auction carried out by the KPKNL as per Article 6 of the UUHT is based on the principle *of parate executie*, namely the right to sell on one's own power without going through court fiat.

Referring to number 4 of the General Explanation of the Law, it is stated that, "*The Mortgage right is the right to guarantee land for the repayment of certain debts, which gives priority to certain creditors over other creditors. In the sense that if the debtor violates the promise, the creditor holding the Mortgage right has the right to sell through a public auction the land that is used as collateral according to the provisions of the relevant laws and regulations, with the right of precedence over other creditors. The priority position certainly does not reduce the preference of the State's receivables in accordance with the applicable legal provisions."*

The guarantee of legal certainty in Article 6 of the Law is vague, because its implementation refers to the General Explanation number 9 and the Explanation of Article 14 paragraph (2) and paragraph (3) of the Law on the Rights of Dependents, the mechanism of parate execution/*parate executie* is required to follow the procedures in Article 224 of the HIR (Onassis, 2024). Article 224 HIR/258 RBg which requires a fiat or order from the court to carry out the execution of fixed objects. Based on the year of birth, the HIR/RBg is an old legal product dating back to the Dutch colonial period (early 20th century) and the UUHT is a newer national legal product, passed in 1996. In addition, the HIR/RBg regulates general *procedural law*, while the Law specifically regulates the execution of material guarantees in the form of land rights (*special law*). Both the HIR and the Mortgage Right Law are classified as statutes within the Indonesian hierarchy of norms. However, the Mortgage Right Law is a more recent national legal product, whereas the HIR is a colonial-era procedural code. From a modern perspective, the Mortgage Right Law should therefore be regarded as having a stronger normative position as *lex posterior* and *lex specialis*.

Based on the principles *of lex posterior derogat legi priori* and *lex specialis derogat legi generali*, the provisions of Article 6 of the UUHT should override Article 224 HIR/258 RBg. However, application in the field shows a tendency to the opposite, the implementation of the parate execution still requires court fiat. This condition gives rise *to a system of self-executing rights* which is implemented based on the principle of convenience and certainty for creditors in order to achieve quick goals, but has failed to be achieved. In fact, the involvement of the court has been regulated separately in another auction mechanism, namely the executory title, which is carried out through the fiat of the Chief Justice of the District Court, so that it goes through a more formal process and takes longer.

In relations between state institutions, the application *of the principle of checks and balances* in Indonesia, especially in this case, the executive and the judiciary, must reflect a dynamic relationship, coordination between institutions, mutual supervision, and not control (Habibah et al., 2025). The relationship between the two institutions in the case of the execution of dependents seems to weaken the authority of the KPKNL as the executive government, and dominate the authority of the district court as a judicial institution. The clarity of the norms that have been regulated in writing has not been able to provide legal certainty for the two state institutions in the execution of the right of dependents, especially in the mechanism of the parate execution. In addition, the less firm interpretation between the two existing legal norms (Article 6 of the Constitution and Article 224 of the HIR/258 RBg), caused the situation to worsen.

The meaning and application of the concept *of parate executie* has shifted. The confusion in the understanding between the concept of parate execution and execution based on an executory title causes not all KPKNL to be willing to carry out the sale of the object of the mortgage right, on the grounds that every auction of the object of the mortgage right is required to first obtain a fiat from the Chief of the District Court. This situation is not without reason, in a number of cases, even though the auction has been carried out in accordance with the provisions of PMK Number 122 of 2023 and declared valid, and has produced an auction winner, the process after that actually raises new problems.

Based on Article 41 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, auction minutes are the basis for the transfer of rights from the seller to the auction buyer. The transition process often does not go smoothly, several problems often occur, such as the auction buyer not being able to control the object he bought, new lawsuits/legal resistance from the previous owner, to the cancellation of the auction by the District Court. This situation caused losses for many parties, including creditors and auction buyers who should have obtained legal rights. For example, what happened at the Bekasi District Court, in case Number 412/Pdt.G/2015/PN.Bks, there was a cancellation of the execution auction from PT. Bank Rakyat Indonesia, this is because the certificate used as the object of collateral is the result of unlawful action by the debtor. (Oroh et al., 2025)

In another case, the debtor tried to cancel the auction conducted by Bank Mandiri through KPKNL, in case Number 738/Pdt.G/2023/PN.Jkt.Pst, the debtor claimed that he had never defaulted. On the other hand, evidence shows that since 2016, there has been evidence of arrears. In the end, the application was rejected, the panel of judges affirming that the execution parade does not require court fiat (*Putusan Pengadilan Negeri Jakarta Pusat Nomor 123/Pdt.G/2023*, n.d.). This mistake is rooted in the process of forming the Law and the way the judiciary interprets the two execution mechanisms. As a result, there was confusion among creditors holding mortgage right and doubts from state auction officials (KPKNL) to carry out auctions based on Article 6 of the Constitution, because they were worried that it would violate legal provisions if it was done without court approval. (Korompot, 2023)

This condition has become an obstacle in creating an ideal legal ideal, the value of certainty has not been sufficiently fulfilled in it. The writing of law in countries adhering to *civil law* requires a guarantee of certainty, indeed, Indonesia is not a pure adherent *of civil law*, this can be seen from several cases where Indonesia also adopts some of the values of the *Anglo Saxon* system, such as in the judicial system in Indonesia. Even so, Indonesia is a legal country that has adopted the values of these two systems, both *civil law* and *Anglo Saxon*. Therefore, legal writing in Indonesia is very important, as well as the value of certainty that it wants to achieve. Then it becomes a new problem, when the available legal norms are not enough to provide a value of certainty, in theory if studied using legal principles such as *lex posterior derogat legi priori* and *lex specialis derogat legi generali, the enactment of Article 6 of the UUHT gets a stronger position. In practice, law has shown the essence of its own value, that the law does not live in the paper of the law alone, the law lives and is applied in the midst of society, so that law enforcement is very dependent on the society itself.*

Based on Article 6 juncto Article 20 paragraph (1) letter (a) of the Constitution, the holder of the mortgage right has the authority to execute the object of collateral on his own power through a public auction if the debtor defaults. With this provision, the law provides a direct legal basis (*ex lege*) for creditors to carry out the sale of mortgage right objects without requiring permission or approval from other parties. The auction mechanism as referred to in Article 6 of the Constitution, which is further regulated through the regulation of the Minister of Finance, stands separately from the execution based on *the executory title* contained in the Certificate of Mortgage right as stipulated in Article 14 of the Constitution.

Preventive and repressive protection needs to be strictly regulated. Before the auction starts, the institution related to the auction implementer, needs to re-ensure that there is no dispute in the auction object, the involvement of the court must be limited to the auction object that is recorded by a third party dispute. If there is a dispute in the middle of the auction process, there must be norms that regulate how the transition of the auction process to the parate execution is transferred to the auction process of the executory title. Likewise, after the legal auction is held, legal protection for debtors, creditors, and even auction winners, needs to be strictly regulated. Efforts to test post-auction disputes accurately and quickly need to be carried out, the goal is to prevent disputes from dragging on in the long term, thus injuring the rights of auction winners. (Ekwanto et al., 2025)

Efforts to solve this phenomenon should be carried out by the state. When the existing law turns out to be not dynamic enough, or even not in accordance with the circumstances and needs of the community, then a reform of the law is needed. Moreover, in the case of the execution of the mortgage right involving two branches of state power, so that the interdependence of the relationship between the two is highly dependent on the legal certainty provided. The legislative institution, as the owner of the legislative authority, needs to be involved and review the urgency of updating the relevant legal norms.

The involvement of the courts in the execution parade must be regulated by synchronization and harmonization of clear norms. So that there is no multi-interpretation among the state institutions involved. Disharmony between legal norms results in ambiguity of interpretation and lack of definite legal protection for creditors, debtors,

4. CONCLUSION

The relationship of authority between the executive and judicial branches of power in the implementation of the execution of dependents in Indonesia does not fully reflect the principle of proportional separation of powers as idealized in the modern legal state. The regulation of the parate execution, which expressly gives the authority to the creditor to sell the collateral object of his own power through the KPKNL, is in practice still burdened by the need to obtain court fiat based on Article 224 HIR/258 RBg. The inconsistency opens up a space for multiple interpretations, which ultimately raises doubts between institutions in the implementation of execution, thereby reducing the effectiveness of the parate execution function which the law intends as simple, fast, and sure mechanism. This condition shows that normatively, the enactment of Article 6 of the UUHT as *lex specialis* and *lex posterior* should provide a stronger legal basis for the implementation of the parate execution without judicial intervention. However, empirically, law enforcement is heavily influenced by the interpretation of judicial institutions and the dynamics of bureaucratic practices. As a result, the execution often causes further disputes, uncertainty for creditors, debtors, and auction winners, and hinders the implementation of legal ideals to realize certainty, justice, and utility. Efforts are needed to reconceptualize the relationship of authority between the executive and the judiciary in the execution of the mortgage right. Clarity of the limits of authority through synchronization and harmonization of norms, as well as the affirmation of the role of judicial institutions in the context of disputes that really require judicial intervention are important agendas in legal reform. In addition, the establishment of more comprehensive rules, both in preventive and repressive aspects, is crucial to ensure that the execution mechanism does not create new uncertainties.

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