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## The Nature of Including the Remarks "For the Sake of Justice Based on the one Almighty God" on the Mortgage Rights Certificate

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### Abstract

The phrase in the mortgage certificate is stated as "For the Sake of Justice Based on the Almighty God". The phrase "For the Sake of Justice Based on the Almighty God" shows that the execution of the mortgage object can be equated with executing the Grosse Acta of the Mortgage. On the other hand, the UUHT explains that the execution in the HT certificate is worthy of a court decision that has permanent legal force. This condition gives rise to an interpretation of Article 6 in conjunction with the explanation of Article 20 paragraph (1) letter (a) of the UUHT, Article 14 paragraph (3) and number 9 of the UUHT. The concept of execution is based on the principle of convenience and certainty, so that when the debtor defaults, the creditor can execute it, this is the concept of parate executie. The legal issues raised 1). What is the essence of the inclusion of the irah-irah "for the sake of justice based on the one and only God" on the mortgage certificate? and 2). How is the execution of the mortgage certificate that includes the irah-irah "For the sake of justice based on the one and only God" that is just, certain and beneficial? Normative legal research method, with a statutory approach, historical approach, conceptual approach, and comparative approach. Discussion results: 1). The nature of the inclusion of the Irah-Irah "For the Sake of Justice Based on the Almighty God" on the HT certificate, shows that the certificate has the same executorial power and legal force as a court decision that has permanent legal force, thus causing losses for the debtor. 2). The executorial power over the HT certificate before the dispute occurred has eliminated the debtor's right to defend himself before the law, there is exploitation by the capital owner against the community. The conclusion is that the inclusion of the irah-irah "For the Sake of Justice Based on the Almighty God" on the cover of the HT certificate has caused a conflict of norms and the Execution of Mortgage Rights which is expected to provide justice, legal certainty and benefits for the community, it turns out that it cannot provide justice, legal certainty and benefits to the community in its implementation.

**Keywords:** Liability, Mortgage, Debtor, Breach of Promise

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### Introduction

The existence of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT) as an important effort to maintain the continuity of development in the economic sector aims to advance the Indonesian nation. In order to realize this, the need for funds for national development is crucial for the government, legal entities and individuals involved <sup>[1]</sup>. Funding is an important basis for supporting credit activities, the purpose of which is to maintain the smooth running of national development. UUHT provides a legal basis that allows parties involved to use mortgage rights on land and objects as collateral to obtain funds <sup>[2]</sup>.

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<sup>1</sup> Oktavianus Wiro, Analisis Yuridis Terhadap Eksekusi Benda Jaminan Grosse Akta Pengakuan utang. Jurnal, Ilmu Hukum Legal Opinion, Edisi 2, Vol 4, (2016)

<sup>2</sup> Adrian Sutedi, Hukum Hak Tanggungan. (Jakarta: Sinar Grafika, 2012), p. 55

Based on these regulations, legal certainty is provided for financial institutions in distributing credit, which ultimately encourages economic growth and national development.

Credit activities require collateral for security in credit transactions, so the institution of mortgage rights is known as a form of right attached to land objects as collateral for credit transaction<sup>[3]</sup>. This right provides a guarantee right to land for security for the creditor, if the debtor cannot pay off his debt<sup>[4]</sup>. The presence of mortgage regulations is based on the mandate contained in the provisions of regulations on the use and utilization of land<sup>[5]</sup>. In relation to additional guarantees in credit practices that are classified as special guarantees to provide certainty for the fulfillment of debtor's debt repayment. The position of land as an object in the guarantee means that a mortgage is imposed on it.

Land becomes collateral in a credit agreement, the scheme of which can be in the form of a credit agreement for business development and a credit agreement to fulfill daily needs, on the grounds that land has high economic value and is easy to sell according to the principal value of the loan<sup>[6]</sup>. Therefore, a law is needed that regulates the institution responsible for collateral rights on land, as well as the existence of clear provisions regarding the meaning and implementation of rights. There are main characteristics of mortgage rights<sup>[7]</sup> namely:

1. Give priority (privileges) to the holder;
2. Attached to the collateral object held by a certain party;
3. The existence of a specific principle means that it only applies to land objects, and the existence of a principle of openness means that it is carried out by openly providing information regarding the object of the guarantee, the amount of the guarantee, and the conditions related to the guarantee;
4. The execution process is easy and certain.

These provisions are always attached to mortgage rights, with the conveniences as regulated in the UUHT, when the debtor does not carry out his obligations in accordance with the credit agreement, the party holding the mortgage rights can carry out the following actions:<sup>[2]</sup>

1. The party holding the mortgage has the right to sell the land contained in the mortgage certificate (*parate executie*)<sup>[3]</sup>.
2. The mortgage certificate contains the title for executing the object<sup>[8]</sup>.
3. The sale of collateral objects is not done through a public auction in order to get a high price, which has a good impact on the parties, but the process still requires agreement between the party giving and the party

receiving.

Direct execution (*Parate executie*) of collateral means giving the creditor the right to sell the collateral by means of compulsory execution only through an auction house, without going through a court order<sup>[9]</sup>. UUHT recognizes the term *Parate Executie* institution which is regulated in Article 6 and Article 20 paragraph (1) letter a UUHT. Its enforcement is generally regulated in the Civil Procedure Code, but it is also understandable if the legislative institution wants to realize the uniqueness of KPR, namely easy and safe law enforcement<sup>[10]</sup>. The sale of a pawned item can be carried out by the legitimate owner, the creditor, at an auction.

The proceeds from the sale of the property are paid directly to the creditor as payment of the debt, but only if the amount exceeds the nominal value of the debtor's debt, then the remainder will be returned to the debtor<sup>[11]</sup>. In essence, as is often the case when the beneficiary of the mortgagee uses the option of enforcement, the executory agreement is not subject to civil procedure law because the enforcement process is time-consuming and not cheap through *grosse acte*<sup>[12]</sup>. These provisions were provided by the legislators so that the parties can ensure that the value of the collateral does not decrease in price and the parties can be careful.

The implementation of *parate executie* over mortgage rights is unclear and there is even a deviation from the principles and teachings regarding *parate executie*, as stipulated in Article 14 Paragraph (2) and Paragraph (3) of the UUHT, which explains that the implementation of execution with a mortgage certificate is due to the existence of the *irah-irah* "For the Sake of Justice Based on the One Almighty God". However, on the other hand, the UUHT explains that the execution of a mortgage certificate is like a court decision that has permanent legal force<sup>[13]</sup>. Therefore, there is a deviation in the concept, because its enforcement must be in accordance with the court decision that has been determined and the creditor cannot simply sell the collateral, and partial enforcement does not provide convenience and the principle of security is not achieved.

This condition gives rise to several interpretations that are in line with Article 6 in conjunction with the explanation of Article 20 paragraph (1) letter (a) UUHT, Article 14 paragraph (3) and number 9 UUHT. Moreover, as the recipient of the mortgage, the creditor hopes that the guarantee will be executed simply, legally and safely, because the creditor cannot easily enforce the mortgage guarantee depending on the purpose of the implementation of the mortgage. The execution of an acknowledgment of debt

<sup>3</sup> Tiyas Putri Megawati, Aulia Dwi Ramadhanti, & Faizah Nur Fahmida, Akibat Hukum Penandatanganan Surat Kuasa Jual Mutlak Sebelum Debitor Mengalami Kredit Macet, *Jurnal Ilmu Kenotariatan*, Vol. 5, No. 1, (2024), h. 76-87.

<sup>4</sup> Vikriatuz Zahro, Iswi Hariyani, & Iwan Rachmad Soetijono, Juridical Implications of the Issuance of Covert Notes by A Notary as Basis of Disbursing Credit of Banking, *Jurnal Ilmu Kenotariatan*, Vol. 4, No. 2, (2023), h. 102-118

<sup>5</sup> Salim HS, *Perkembangan Hukum Jaminan Di Indonesia*, (Jakarta, Raja Grafindo Persada, 2014), p. 190

<sup>6</sup> Meralda Amala Istighfarin, "Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain", *Acten Journal Law Review* 1, No. 1, (2024): 65-85.

<sup>7</sup> Nina Papatungan, *Kajian Hukum Hak Tanggungan Terhadap Hak Atas Tanah Sebagai Syarat Memperoleh Kredit*, *Lex Privatum*, Vol. IV, No. 2 (2016),

<sup>8</sup> Anton Suryanto, *Kepastian Hukum Dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan*, (Depok, Prenadamedia Group, 2018), p. 126.

<sup>9</sup> Ni Putu Teresa Giovana, *Standing Commitment of Sale and Purchase Agreement (PPJB) in Purchasing Flats Unit as Legal Protection for Consumers*, *Substantive Justice International Journal of Law* (2019), p. 23

<sup>10</sup> Gatot Supramono, *Perjanjian utang piutang*, (Jakarta: Kencana Prenadamedia, 2013), p.62

<sup>11</sup> Ananda Fitki Ayu Saraswati, *Dilematis Eksekusi Hak Tanggungan melalui Parate Executie dan Eksekusi melalui Grosse Akta*, *Repertorium* Vol.2, No. 2 (2015), p. 56

<sup>12</sup> Elza Sylvania Pittaloka dan Pranoto, *Permasalahan dalam Pelaksanaan Eksekusi Grosse Akta Pengakuan Hutang*, *Jurnal Privat Law* Vol.4, No. 1 (2016), p. 82

<sup>13</sup> Muhammad Ilham Arisaputra dkk, *Akuntabilitas Administrasi Pertanahan dalam Penerbitan Sertipikat* *Jurnal Mimbar Hukum UGM*, Vol 29 No.2 (2017), p. 277-289, <https://doi.org/10.22146/jmp.16383>

(grosse acte) requires a court fiat <sup>[14]</sup>.

Herowati Poesoko <sup>[15]</sup>, stated that the execution regulation according to Article 224 HIR is an execution aimed at the grosse mortgage deed and the grosse debt recognition deed. Both grosse deeds are indeed intended to have execution rights, which means that both grosse deeds have the power as a court decision that has permanent legal force. Therefore, its implementation is obedient and likewise the implementation of a court decision must be carried out in accordance with the orders of the Head of the District Court <sup>[16]</sup>.

The legal problem of including irah-irah in the Mortgage Right certificate causes a conflict of norms that causes legal uncertainty. Sudikno Mertokusumo explains that the irah-irah "for" in "For the Sake of Justice Based on the Almighty God", the phrase is interpreted as "for the benefit", as the purpose of the court is to achieve justice. So it is not "justice" that is represented by an agency to carry out justice, but "justice" itself that is of interest in a legal process in court <sup>[17]</sup>. The use of irah-irah should be the authority of the institution that decides the case, namely the judiciary.

This study analyzes and seeks the background of the inclusion of irah-irah on the title of the cover of the Mortgage Certificate by the Land Office based on the legal system in Indonesia. Irah-irah whose phrase states "For the Sake of Justice Based on the Almighty God" on the Mortgage Certificate is expected to make it easier for creditors to carry out the execution. If the execution cannot be carried out, the executorial title has no meaning, so it is necessary to conduct a study, namely:

1. What is the essence of the inclusion of the words "For the sake of justice based on the Almighty God" on the Mortgage Certificate ?
2. How to Execute a Mortgage Certificate That Includes the Words "For the Sake of Justice Based on the Almighty God" That is Just, Legally Certain and Beneficial?

## Methodology

Research methods are the main elements to find, develop, verify, and take steps in finding the truth. The use of scientific methods in writing a dissertation can be used to find, process, and formulate the legal materials obtained, draw conclusions that are in accordance with scientific truth, and answer direct questions <sup>[18]</sup>. The type of research is normative law. The approaches used by researchers are the legislative approach, historical approach, conceptual approach, and comparative approach <sup>[19]</sup>.

## Discussion

### 1. The Essence of the Inclusion of the Words "For the Sake of Justice Based on the Almighty God" on the Mortgage Certificate

The verdict's irah-irah explains that judges in conducting examinations and deciding court cases are based on the basic values of true justice, which means that justice is in accordance with what God created, so judges can make

decisions that are implemented fairly without any bias according to their oath of office. Placing the irah-irah at the beginning of a court decision is the main consideration for a judge to decide a case before him, namely prioritizing the absolute value of God's justice.

The construction of the irah-irah contains fundamental things, namely: the phrase "for the sake of justice", then it can be interpreted as a form of judge's oath in court, an oath that prioritizes justice above it. That the judge swears before God as the creator to judge the case fairly. The oath refers to the moral responsibility of the judge to God so that the judge must carry out his duties and functions in a trustworthy, honest and responsible manner. The benchmark for the judge to decide the case lies in the actions carried out by the judge in the form of accountability before the constitution and social society in the Indonesian nation.

Apart from that, judges are based on their beliefs in deciding a case, judges must comply with their oath to God which is based on the value of justice <sup>[20]</sup>. The phrase "For Justice Based on Belief in the Almighty God" has strong historical roots in Indonesian legal tradition. The phrase is closely related to the Preamble to the 1945 Constitution, and the first principle of Pancasila states "Belief in the Almighty God", while also reflecting the cultural and religious influences in Indonesia, that justice and belief in God are very important values.

Along with the development of the history of justice in Indonesia, the use of this phrase has evolved. In fact, the institution that is most entitled to provide a verdict of justice in a case is the judicial institution, not other institutions. Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law) Chapter Two concerning the Principles of the Implementation of Judicial Power in Article 2 emphasizes that:

paragraph (1) The trial is carried out "For the Sake of Justice Based on the Almighty God".

paragraph (2) The state judiciary implements and enforces law and justice based on Pancasila".

paragraph (3) All courts throughout the territory of the Republic of Indonesia are state courts regulated by law.

paragraph (4) The trial is carried out simply, quickly and at low cost <sup>[21]</sup>.

The irah-irah in the verdict is a formulation of an oath, as Bismar Siregar said that the irah-irah is referred to as a judge's prayer, so that a judge's accountability is addressed to God, so that these words are sacred and noble in their use. The irah-irah or head of the verdict is written at the beginning of the judge's verdict, from the irah-irah sentence there are two important parts. The first sentence is "For Justice", stating that the irah-irah is a formulation of an oath.

The oath that reads "For Justice" is said by a judge that justice is in the name of God who has internal accountability related to the responsibility of a judge to Him so that he must be consistent in carrying out his duties and responsibilities. As a jurist who behaves and speaks in accordance with the

<sup>14</sup> Rangan, Shendy Vianni. 2015. "Pelaksanaan Eksekusi Grosse Akta Pengakuan." *Jurnal Ilmiah Mahasiswa Universitas Surabaya* Vol. 4 No. 1 (2015)

<sup>15</sup> Herowati Poesoko, *Dinamika Hukum Parate Executie Obyek Hak Tanggungan*, (Yogyakarta, Aswaja Pressindo, 2012), p. 35

<sup>16</sup> Herowati Poesoko, *Parate Executir Obyek Hak Tanggungan (Inkonsistensi, Konflik Norma dan Kesesatan Pealaran dalam UUHT)*, (Yogyakarta: Laksbang Pressindo, 2007), p. 9

<sup>17</sup> Sudikno Mertokusumo, *Sejarah Peradilan dan Perundang-Undangan di Indonesia Sejak 1942*, (Yogyakarta: Universitas Atmajaya, 2011), p. 54.

<sup>18</sup> Peter Mahmud Marzuki, *Metode Penelitian Hukum*, (Jakarta, Kencana Prenada Media, 2020), p. 35

<sup>19</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Jutifikasi Teori Hukum*, (Jakarta: Kencana, 2016), p. 156.

<sup>20</sup> Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktek*, (Bandung: Citra Aditya Bakti, 1994), p. 52

<sup>21</sup> Ahkam Jayadi, *Beberapa Catatan Tentang Asas Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*, *Jurisprudentie*, Vol. 5 No. 1, (2018), p. 13

applicable laws and regulations to decide a case, which is a parameter for a judge to be accountable constitutionally and socially<sup>[22]</sup>.

The second sentence, namely "Based on the Almighty God", is a prayer of a judge that is written and spoken in delivering a verdict in a case. "O God, in Your name I pronounce my verdict, a prayer that carries the name of God has direct vertical accountability to the Almighty God. Irah-irah is a representation of a judge with full awareness in conducting a case examination in court until making a decision based on philosophical values to justice. It is expected that the judge can give the fairest decision without any sense of tendentiousness according to his oath of office.

The transcendental aspect depicted in the irah-irah shows that the judicial process is not only a moral and legal problem, but a transcendental problem that contains the meaning of vertical accountability to God Almighty. Therefore, judges in making decisions must always draw closer to God so that they can reap the emanation of God's justice values into every decision they make"<sup>[23]</sup>.

Meanwhile, legal certainty is something that is dynamic, following changes and developments in society according to Rousseau's opinion, as quoted by E. Fernando M. Manullang, that ideally what is enacted in the law is a direct reflection of what society says, so if this is inconsistent, such laws should be rejected for the good of individuals and society<sup>[24]</sup>. The second sentence is "Based on the One Almighty God", this sentence is a prayer of a judge which is written and uttered when delivering a verdict on a case. "O God, in Your name I pronounce my decision, this prayer carries the name of God whose responsibility is directly vertical to God Almighty." Therefore, judges in this case must always draw closer to God so that they can always communicate intensively to obtain guidance and direction from God Almighty when deciding a case so that they can produce thoughts about the values of God's justice in every decision they make"<sup>[107]</sup>. God's justice is the highest justice, a judge in interpreting the aspirations for justice in society is still based on his closeness to God Almighty.

The execution of a mortgage certificate containing the words "For the Sake of Justice Based on the Almighty God" is as strong as a court decision that has obtained permanent legal force and is valid as a substitute for the grosse mortgage deed as long as it concerns land rights, this is an authority that is granted and determined by applicable laws. The legal position of the government as a representative of the position and legal entity, where the Land Office as a state administrative official has the authority to implement positive law, namely the UUHT which creates a legal relationship between the government and citizens, in accordance with the three aspects of the principle of legality according to the opinion of H.D. Stout.

A historical review of the placement of the irah-irah "For the Sake of Justice Based on the Almighty God", allows for various considerations to arise from various aspects. This

includes the principles of legality and legal implications of including these provisions in legal documents such as mortgage certificates. This could include an analysis of the constitution, laws, regulations, and court decisions related to the issue. In addition, it also includes tracing the historical origins of the use of irah-irah in legal practice, along with its relevance in the context of Indonesian law and culture. Analysis of the inclusion of irah-irah "For the Sake of Justice".

Based on the Almighty God" on the mortgage certificate historically, aims to provide a deeper understanding of its legal implications in the context of the judiciary and the legal system. The placement of the words "For the Sake of Justice Based on the Almighty God" which are placed on the cover of the Mortgage Certificate, is an effort to confirm as proof of the existence of a mortgage which has the same executorial power value as a court decision. This sentence is then referred to as the irah-irah or head of the decision. This irah-irah has executive power. This is in accordance with Article 14 paragraph (2) of the UUHT, namely:

"The Mortgage Certificate as referred to in paragraph (1) contains the words "FOR THE SAKE OF JUSTICE BASED ON THE ONE ALMIGHTY GOD"<sup>[25]</sup>.

These verses contain the words "For Justice" where a judge will say these words in deciding a case in court in the name of God Almighty so that his responsibility is directly vertical to God. Thus a judge in deciding a case will give the fairest decision in accordance with the oath of office of a judge<sup>[26]</sup>.

The Mortgage Certificate is issued by the City/District Land Office, which has the position of state administrative official (executive institution). Normatively, every government authority as an executive institution must be based on statutory regulations and the authority adopted by a country that adheres to the principle of a "state of law". There is a demand that the administration of government can provide guarantees for the basic rights of its citizens so that equal treatment and legal certainty are realized.

The government can only carry out legal acts if it has legality based on law. The implementation of the execution of the Mortgage Certificate is a legitimacy owned by the government, namely the authority granted by law<sup>[27]</sup>. Thus, the substance of the principle of legality is authority, namely the ability to carry out certain legal acts, namely acts or actions that give rise to legal consequences<sup>[28]</sup>. In the context of a Mortgage Certificate which contains instructions on its cover, it has executorial power, which is an anticipatory effort if the debtor defaults on his promise, then the creditor can carry out execution actions against the object of the mortgage.

The authority held has an important position because it contains the rights and obligations to do or not do certain actions. The legal position of the irah-irah on the Mortgage Right certificate is the government's authority in relation to the ability to implement positive law, namely the UUHT, so that a legal relationship is created between the government

<sup>22</sup> M. Natsir Asnawi, *Hermeneutika Putusan Hakim, Pendekatan Multidisipliner Dalam Memahami Putusan Peradilan Perdata*, (Yogyakarta: UII Press, 2014), p. 77.

<sup>23</sup> M. Natsir Asnawi *Ibid.* p. 78.

<sup>24</sup> E. Fernando M. Manullang.

<sup>25</sup> Lukas Riyanto, *Undang-Undang Republik Indonesia Nomor 4 Tahun 1996*, (Jakarta: SL Media, 2010), p. 57

<sup>26</sup> Yopi Junaidillah, *Makna Irah-Irah "Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa" Pada Sertifikat Hak Tanggungan*, Tesis,

Program Studi Magister Kenotariatan Fakultas Hukum Universitas Brawijaya, 2016.

<sup>27</sup> Putri Paramita. Eksistensi dan Kekuatan Eksekutorial Sertipikat Hak Tanggungan terhadap Hak Milik Atas Satuan Rumah Susun sebagai Jaminan Hutang dalam Perjanjian Kredit di Bank, *Jurnal Repertorium*, Vol II No. 2, (2015).

<sup>28</sup> Bayu Indra Permana, et.al., *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights*, *International Journal of Social Science and Education Research Studies*, Vol. 2. No. 11, 2022, h. 13.



and citizens and other state institutions <sup>[29]</sup>. The Mortgage Certificate is a product of land law policy as an implementation of the bureaucratic system and public services regarding access to use, control, ownership and utilization of land rights as an object of mortgage rights.

As is known, legal subject data related to land is stored at the Land Office/National Land Agency <sup>[30]</sup> with an open nature to the public, so that the public can obtain information about the correct data. The process is inseparable from the land registration system which is *Recht Cadaster* in nature, meaning it aims to guarantee legal certainty so that the parties concerned are aware of what burdens are attached to the certificate for the land at the City/District Land Office.

In contrast to the deed of granting mortgage rights, although in essence it is the same as a mortgage deed whose existence is based on an agreement signed jointly between the grantor and the recipient of the mortgage rights, however, with the signature of the deed of grantor of mortgage rights, by and before the PPAT, the derivative of the deed of granting mortgage rights cannot be used as evidence of debt recognition that has an executory nature. Evidence of debt recognition that there is a grant or burden of mortgage rights still requires a further process through registration of mortgage rights at the defense office and ends with the issuance of a "Mortgage Certificate".

## 2. Execution of Mortgage Certificates that Include the Words "For the Sake of Justice Based on the Almighty God" Which is Just, Legally Certain and Beneficial

The judge's decision certainly brings up the term execution, for cases that have been decided always include an order to carry out execution. In terminology, execution is an action carried out by force against the losing party in a case, namely the defendant. So it can be said that the defendant's position changes to become the executed party. The emergence of the term "execution" of the decision as a substitute for execution, which was then standardized into "Implementation of the Decision" can be felt to be more appropriate.

At least starting from the provisions of Chapter Ten, Part Five of the HIR or Title Four, Part Four of the RBG that the meaning of execution is the same as the act of carrying out a decision (*ten uitvoer legging van vonnissen*). As for enforcing a court decision, it is an effort to implement the contents of the court decision, namely implementing the court decision "by force" with the help of general force if the party being executed does not want to carry it out voluntarily (*vrijwillig, voluntary*) <sup>[31]</sup>.

In principle, the implementation of a decision (execution) is a coercive action carried out by the court with the help of general powers to carry out a decision that has permanent legal force. As long as the decision has not yet obtained permanent legal force, the decision cannot be implemented. However, there are several exceptions that can deviate from the general principle that execution can only be carried out on decisions that have permanent legal force. In certain cases, the law allows execution of decisions that have not yet obtained permanent legal force.

For the exception, the execution is carried out in accordance with the rules of procedure for execution of a decision that has obtained permanent legal force, one form of exception is the execution of mortgage rights based on the UUHT. The Mortgage Certificate as proof of the existence of mortgage rights contains the words "For the Sake of Justice based on the Almighty God". The mortgage certificate has the same executorial power as a court decision that has permanent legal force and is valid as a substitute for the *Grosse Acte Hypotheek* as long as it concerns land rights.

The provisions stated on the Mortgage Certificate are intended to confirm the existence of executorial powers <sup>[32]</sup> on the Mortgage Certificate, so that if the debtor defaults on his promise, it can be executed like a court decision that has permanent legal force. Article 20 paragraph (1) stipulates that:

1. If the debtor breaks his contract, then based on: a. the right of the first Mortgage Rights holder to sell the Mortgage Rights object as intended in Article 6 (*parate executie*);
2. the executorial title contained in the mortgage certificate as referred to in Article 14 paragraph (2), the object of the Mortgage Right is sold through a public auction according to the procedures determined in statutory regulations for the settlement of the debts of the Mortgage Right holder with priority rights over other creditors.

The facilities and conveniences provided to creditors such as in the mortgage guarantee institution are also contained in the mortgage rights. The makers of UUHT also realize the need to provide convenience to creditors holding mortgage rights in collecting their receivables that are stuck in the hands of debtors. As has been explained, the mortgage holder has rights and facilities as in the mortgage guarantee institution. Such arrangements are intended to provide a conducive climate for economic activities, especially the banking world under the umbrella of the mortgage institution.

However, the implementation of the creditor's privileges was interpreted incorrectly by the UUHT Makers, namely not based on the deed made by a notary but based on a certificate made by the Head of the Land Office. The B.W. Makers have provided a proper legal construction for the implementation of creditor rights, namely based on the deed (mortgage) made by a notary as a public official supervised by a judge. Meanwhile, the UUHT Makers provided an erroneous legal construction, namely the implementation of creditor rights to execute the object of the mortgage by force is based on a certificate made by an executive official who is not under the supervision of a judge. This erroneous legal construction was enforced by force by making Article 224 H.I.R the basis for executing the mortgage certificate.

Article 26 of the UUHT states that as long as there are no laws and regulations governing it, taking into account the provisions in Article 14, the regulations regarding mortgage execution that existed before this law came into effect shall apply to the execution of mortgage rights. The explanation of Article 26 of the UUHT expressly mentions Article 224

<sup>29</sup> Ananda Fitki Ayu Saraswati, "Dilematis Eksekusi Hak Tanggungan melalui Parate Executie dan Eksekusi melalui Grosse Akta," *Repertorium* 2, no. 2 (2015): 56.

<sup>30</sup> I Kadek Adi Surya, Pelaksanaan Pendaftaran Hak Tanggungan Dalam Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik Pada Kantor Pertanahan Kabupaten Tabanan, *Vidya Wertta* Vol 5 No.2,(2022),p.37-53

<sup>31</sup> M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Edisi Kedua, (Sinar Grafika, Jakarta, 2009), p. 6

<sup>32</sup> Sutrisno, Fenty Puluhulawa dan Lusiana Margareth Tijow, Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi, *Gorontalo Law Review*, Vol 3 No. 2 (2020)

H.I.R./258 R.Bg as the regulation that applies to the execution of mortgage rights. In another section, namely in the General Explanation number 9 of the UUHT, it has also been emphasized that during the transition, namely before the formation of regulations regarding the execution of mortgage rights, the regulation that applies to the execution of mortgage rights is Article 224 H.I.R./258 R.Bg.

It has been expressly stated by the UUHT that the execution of the object of the mortgage right if the debtor defaults is based on Article 224 H.I.R. / 258 R.Bg. In fact, Article 224 H.I.R specifically regulates the execution of the gross mortgage deed and debt letters (*schuldbrieven*) which are carried out by force with the assistance and under the leadership of the Head of the District Court, Article 224 H.I.R is imitative in the sense that only the gross mortgage deed and debt letters can be executed with the assistance of the District Court.

Execution of the mortgage object through the District Court is actually the last alternative after the attempt of private sale or sale under one's own authority (*parate execution*) has failed. As previously explained, private execution cannot be carried out if the debtor deliberately avoids or disappears so that the settlement of his debt makes it difficult for the creditor<sup>[33]</sup>. Likewise, the sale of the mortgage object under one's own authority based on Article 6 of the UUHT, is usually if not always rejected by the Auction Office if a letter of order (*fiat*) is not previously requested to the District Court<sup>[34]</sup>.

Although as a last alternative and forced effort for the settlement of creditor receivables, in practice this court execution is used as the main effort by banking institutions. This means that the bank as a creditor rarely takes steps of underhand sales or auction sales under its own authority (*parate execution*)<sup>[35]</sup>. If the debtor defaults, the bank generally directly requests the District Court to carry out execution based on the Mortgage Certificate which has an executorial title. Such execution is based on Article 224 of the *Herziene Indsland Reglement (H.I.R)* and Article 258 of the *Reglement Buiten Gewesten (R.Bg.)* which regulates execution of documents or *grosse deeds* other than court decisions which have an executorial title.

After all the requirements for the auction application are met, then the Auction Office conducts an auction of the general mortgage object where the proceeds are used to pay off the debtor's debt, and the remainder will be returned to the debtor. If the proceeds from the auction sale are not sufficient to pay off the debtor's debt, it does not mean that the debtor's obligation is simply erased, but the debtor's debt remains an obligation that must be paid<sup>[36]</sup>. It's just that the fulfillment of the debt is no longer guaranteed by a special material guarantee (mortgage), but is guaranteed by a general guarantee as regulated in Article 1131 and Article 1132 of the Civil Code.

Execution of the object of the mortgage right through the District Court can only be carried out by creditors from private banks. Meanwhile, creditors from government banks

cannot resolve bad debts through the courts, because there is already a special institution that handles state receivables (including bad debts in the government bank environment), namely the State Receivables Affairs Committee (PUPN). There is even a prohibition for government banks to resolve bad debts outside the State Receivables Affairs Committee, for example by handing it over to a lawyer.

The community has sued the existence and authority of PUPN in court. However, the judicial institution has actually confirmed the existence and authority of the two institutions, including in the judicial field (*rechtspraak*). The latest development was given by the Constitutional Court which annulled the authority of the State Receivables Management Committee in handling problematic loans in state banks. The execution of Mortgage Rights which includes the provisions for justice based on the Almighty God can be described by the author as follows:

### 1. Fulfillment of Rights to Creditors

The value of the debt that can be collected for settlement through an execution auction on the object of the mortgage right is a maximum of the value of the Mortgage Right. Before the debt is settled from the results of the execution auction, it is necessary to know in advance the components or elements contained in the amount of debt and obligations that must be charged to the debtor, both in accordance with the credit agreement and in accordance with the UUHT, namely:

1. The amount of principal debt;
2. Amount of interest, fines, administration fees;
3. Costs starting from the *aanmaning* stage, execution seizure and execution auction;
4. Auction fee of 2% of the total auction price, as stipulated in Government Regulation No. 1 of 2013 dated January 2, 2013 concerning "tariffs on types of non-tax state revenue applicable to the Ministry of Finance" and 0% Poor Money based on Minister of Finance Regulation No. 40/PMK.07/2006.

That the amount of costs and the amount of debtor's debt as mentioned above is the total amount of all debtor's obligations<sup>[37]</sup>. In this case, the amount is based on evidence submitted by the creditor and costs in accordance with the mutual agreement in the credit agreement and in accordance with the provisions of applicable laws and regulations. The total amount of the obligation is considered and decided jointly by the Head of the District Court and the Head of the State Receivables and Auction Service Office, the amount is stated in the auction minutes and in the minutes of the execution auction.

Fulfillment or granting of rights and legal protection to creditors depends on the results of the mortgage auction as described in the section above, namely if the auction results exceed the amount of the debtor's debt, the remaining auction results are returned to the debtor; if the auction results can meet and pay off the entire amount of the debtor's debt, the

<sup>33</sup> Vania Nabilah Bani Sonjaya, Atik Winanti, Pelaksanaan Parate Eksekusi Objek Hak Tanggungan Tanpa Fiat Pengadilan Untuk Menyelesaikan Kredit Bermasalah, *Jurnal USM Law Review* Vol 6 No 3 (2023),p. 307-320

<sup>34</sup> M. Khoidin, *Hukum Eksekusi Bidang Perdata*, (LasBang Justitia, Yogyakarta, 2018),p.16

<sup>35</sup> Sinaga, Niru Anita. "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian." *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2020): 1–20. <https://doi.org/https://doi.org/10.35968/jp.v10i1.400>

<sup>36</sup> Suharto, R. "Lelang Eksekusi Hak Tanggungan." *Law, Development and Justice Review* 2, no. 2 (2019): 183–93. <https://doi.org/https://doi.org/10.14710/ldjr.v2i2.6315>

<sup>37</sup> Lawrina Cristi Natalia Lumare, Gunawan Djajaputra, Identifikasi Perlindungan Hukum Terhadap Debitur Atas Pelaksanaan Lelang Berdasarkan Undang-Undang Hak Tanggungan, *Unes Law Review*, Vol.6,No.1, ( 2023),p. 3261- 3268 DOI: <https://doi.org/10.31933/unesrev.v6i1>

debt is declared paid off. Conversely, if the auction results cannot meet or pay off the entire amount of the debtor's debt, the creditor can use legal remedies by filing a civil lawsuit with the Court for the remaining amount of debt and at the same time requesting that a collateral seizure be placed (*conservatoir beslag*) on the debtor's property.

### 1. Fulfillment of Rights to Debtors

The implementation of the execution of the mortgage is intended to guarantee the return of the debtor's debt to the creditor if the debtor defaults. Usually the application for execution of the mortgage is made by the creditor to the Head of the District Court if the debtor's credit has been classified as bad or doubtful collectibility and if it is allowed to continue, it is feared that the credit recovery will not be able to pay off the existing amount of debt. Or it could also be the condition of the collateral object which is getting worse if it is allowed to continue or if the debtor does not have good intentions to pay off his debt.

Repayment of credit by the debtor from the sale of collateral, either through auction or sale of collateral underhand, then the debtor gets four rights in legal protection as follows:

1. If the proceeds from the sale of the collateral object, either through parate execution or fiat execution or through a private sale, exceed the amount of the debt, the excess proceeds from the sale become the debtor's right and the debtor receives a certificate of settlement for his credit. If the proceeds from the sale of the collateral object, either through parate execution or fiat execution or through a private sale, are equal to the amount of the debt, the debtor's debt is declared settled and the debtor receives a certificate of settlement for his credit.
2. If the proceeds from the sale of the collateral object, either through parate execution or fiat execution or through a private sale, are less than the amount of the debt, the shortfall remains the responsibility of the debtor if the debtor acts in good faith and is able to pay the remaining debt either by selling goods that are not collateral or by paying the remaining debt in installments to the creditor.
3. If the proceeds from the sale of the collateral object owned by a third party or guarantor are sold either through parate execution or fiat execution or through a private sale, is less than the amount of the debt, the shortfall from the proceeds of the sale is the debtor's obligation, the guarantor or third party is not responsible for the shortfall.

Explanation of number 9 and Explanation of Article 20 paragraph (1) UUHT clearly and clearly describes the execution of mortgage certificates carried out quickly, precisely, easily and guaranteed and is carried out in general sales, so it is hoped to get the highest price from the sale of the auction execution object. The debtor has the right to obtain legal certainty so that his credit guarantee which has

been installed with a Mortgage Right is immediately auctioned so that his debt is immediately paid off.

If the mortgage object that has been auctioned is sufficient to pay off all of the debtor's debt, the debtor no longer has any obligations to the creditor so that the debtor receives a statement of settlement from the creditor<sup>[38]</sup>. However, if the proceeds from the sale of the mortgage object are not sufficient to pay off the entire debt, the debtor is still responsible for paying off the remaining debt,<sup>[39]</sup> unless the creditor with special consideration will write off the remaining debt of the debtor,<sup>[40]</sup> is it because the debtor is known to no longer have assets or because the loss can still be covered by the creditor's profits in the current year.

The mortgage certificate issued by the Land Office has the title "FOR JUSTICE BASED ON GOD ALMIGHTY". which has the same executorial power as a court decision. This title makes it easy for creditors to carry out execution on the object of the Mortgage if the debtor defaults on his promise. In carrying out the creditor's authority based on the promise given in Article 1178 paragraph (2) of the Civil Code, difficulties were encountered with the issuance of the Supreme Court Decision dated 30 January 1984 Number 3210/K/Pdt/1984, which stipulated that the Auction Office may only carry out auctions based on the provisions of Article 224 HIR on the orders and under the leadership of the Head of the District Court<sup>[41]</sup>.

In addition, in practice, many mortgage executions do not run smoothly, often problems arise that hinder the execution process, including the emergence of objections from third parties. The problem is that many mortgage executions do not run smoothly or are delayed by the District Court for various reasons, including: 1. There is an objection from the execution applicant 2. There is an objection from a third party 3. Ordinary civil lawsuits to third parties<sup>[42]</sup>.

Execution of mortgage certificates that include provisions for the sake of justice based on the Almighty God, then the execution of the mortgage certificate can be carried out/executed if the debtor is in default. While the debtor is said to have defaulted if the debtor does not carry out what has been agreed. Of course it will also be felt unbalanced if the execution is through the court, especially regarding the amount to be collected with all efforts, costs and especially the time needed to get back the bad credit, then with Article 6 of the UUHT creditors will be protected from the actions of debtors who are inappropriate, unworthy or even do not have good intentions.

Article 6 of the UUHT was prepared by the legislators as the main pillar for creditors in obtaining accelerated settlement of their receivables, so that the receivables that have been returned to the creditors and the finances can be used for the rotation of the wheels of the economy, so there is no doubt that Article 6 of the UUHT is the legal basis for the application of parate executie when the debtor is in default, which is used as an excellent means for adjusting to economic needs.

<sup>38</sup> Rizki, A. (2021). *Perlindungan Hukum Terhadap Debitur Yang Objek Jaminannya Dilelang Oleh Kantor Pelayanan Kekayaan Negara Dan Lelang Di Kota Pekanbaru* (Doctoral dissertation, Universitas Islam Riau)

<sup>39</sup> Yuningsih, D., Sanib, S. S., Sjaiful, M., Haris, O. K., Ruliah, R., & Lamaronta, B. (2022). *Penerapan Asas Keadilan terhadap Penetapan Limit pada Proses Pelelangan Hak Tanggungan di Kantor Pelayanan Kekayaan Negara dan Lelang (KPCLP) Kota Kendari*. *Halu Oleo Legal Research*, 4(2), 149-167

<sup>40</sup> Yusuf, M. (2019). *Tanggung Gugat Kreditur dan Pejabat Lelang Atas Penentuan Harga Limit Lelang Dibawah Nilai Tanggungan*. *Jurnal Media Hukum dan Peradilan*, 5(1).

<sup>41</sup> Mochammad Taufiq Arifin, "Eksekusi Grosse Akta Merujuk Pada Pasal 224 HIR dan Putusan Mahkamah Agung," *Jurnal Hukum dan Kenotariatan* 3, no. 1 (2019): 101-102

<sup>42</sup> Juli Asril, *Beberapa Permasalahan Terkait Hak Tanggungan Sebagai Lembaga Jaminan Atas Tanah*, *Jurnal Ilmiah MEA (Manajemen, Ekonomi, dan Akuntansi)* Vol. 4 No. 2, (2020), p. 503

In practice, if the Creditor believes that the Debtor has breached his promise or has not fulfilled the agreed performance, then the Creditor will come to the KPKNL office to submit an auction for the object of the Mortgage Right to obtain payment for his receivables from the proceeds of the sale/auction. There is no obligation for the Creditor to notify the Debtor of the planned sale of the object of the Mortgage Right on the grounds that it has been agreed in the Deed of Granting of Mortgage Right as regulated in Article 11 of the UUHT, so that the debtor is not aware of the auction of his goods which are used as collateral for credit bound by the mortgage right.

The provisions in the UUHT provide great benefits to the Creditor, but ignore the rights of the Debtor. Thus, viewed from the theory of utility or utilitarianism, the Mortgage Law is not a good law because according to the theory of utility or utilitarianism, a good law is one that can provide the greatest benefits and to the greatest number of people.

### Conclusion

1. The essence of the inclusion of the words "For the Sake of Justice Based on the Almighty God" in the mortgage certificate is that the certificate has executorial power, which means that the mortgage certificate that includes the words "For the Sake of Justice Based on the Almighty God" has the same legal force as a court decision that has permanent legal force, the power to be implemented, either voluntarily or through execution efforts by the court. The inclusion of the words "For the Sake of Justice Based on the Almighty God" on the cover of the mortgage certificate has caused a conflict of norms.
2. The Land Agency is authorized to issue a Mortgage Certificate that includes the sentence Irah-Irah "For Justice Based on the Almighty God". The authority of the Land Agency is given based on the attribution authority specified in Article 14 of the UUHT above it. The execution of Mortgage Rights which is expected to provide justice, legal certainty and benefits for the community, turns out to be unable to provide justice, legal certainty and benefits to the community in its implementation.

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