

## Prudential Execution Parade: Auction of Executory Title at the Metro District Court

Rika Dwi Liswara<sup>1</sup>, Iskandar<sup>2</sup>, Bennadi<sup>3</sup>

*Faculty of Law, University of Muhammadiyah Metro*

EMAIL: [rikadwiliswara@gmail.com](mailto:rikadwiliswara@gmail.com)

### Abstract

Article 6 of Law Number 4 of 1996 grants the first mortgage holder the right to sell the collateral on its own authority, while Article 14 attaches executorial force to the Mortgage Certificate, whose implementation follows Article 224 HIR and therefore requires a court order. Existing scholarship has mapped this norm conflict thoroughly but has not explained how first-instance courts actually resolve it in concrete cases. This study asks how auctions based on an executorial title are implemented in mortgage execution and what impedes their effectiveness. It uses a normative-empirical method combining statutory analysis with interviews at the Metro District Court Class IB. The study finds that execution proceeds through an execution request, *aanmaning*, execution seizure, an auction order, and an auction conducted by the KPKNL. Its principal finding is that the preference for fiat executie is driven not by normative necessity but by mitigation of the risk that the auction will be annulled, a phenomenon this article terms the prudentialisation of parate executie, which secures legal certainty at the cost of the simple, swift and low-cost execution the statute intended. Mapping six impediments onto Soekanto's framework shows that only one requires legislative amendment.

**Keywords:** parate executie; executorial title; execution auction; right of dependency; prudential execution.

### A. INTRODUCTION

The distribution of banking credit rests on the creditor's confidence in the debtor's ability to pay off his debt, and Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking requires this belief before commercial banks provide credit.<sup>1</sup> Because the belief cannot stand alone, the guarantee institution is present to anticipate risks that may arise in the future, so that if the debtor defaults the creditor has complete and perfect evidence to take legal action.<sup>2</sup> For the object of collateral in the form of land, the instrument is a Dependent Rights as stipulated in Law Number 4 of 1996 concerning Dependent Rights over Land and Objects Related to Land (UUHT).<sup>3</sup> The main issue that this article discusses is that the law provides for two different avenues of execution without establishing criteria for when each is used, so the choice of avenues is ultimately determined not by norms but by the court's institutional risk calculations.

This problem is not just a technical issue of the judiciary. The auction for the execution of Dependent Rights is a node where guarantee law, civil procedure law, and financial policy meet. When the execution path is slow, the cost of settling non-performing loans increases, the economic value of collateral objects decreases, and public trust in auctions as a means of transferring rights is eroded.

<sup>1</sup>Republic of Indonesia, Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, Article 8.

<sup>2</sup>M. Bahsan, *Indonesian Banking Credit Guarantee and Guarantee Law* (Jakarta: RajaGrafindo Persada, 2007), p. 73.

<sup>3</sup>Republic of Indonesia, Law No. 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land, Statute Book No. 42 of 1996, Supplement to Statute Book No. 3632.



Conversely, when execution goes without adequate supervision, the protection against debtors and third parties becomes weak. It is the space between the two poles that this article aims to map, departing from the practice of a single district court as an entrance.

The main strength of the Dependent Rights institution lies in the Certificate of Dependent Rights which contains the title "For Justice Based on the One Godhead" and therefore has the same executory power as a court decision that has permanent legal force.<sup>4</sup> With the executory title, creditors do not need to file an ordinary civil lawsuit to obtain the basis of the right of execution. This is an exception to the general principle that disputes are resolved through lawsuits, and the exception was deliberately created by law to expedite the settlement of debts that have been materially guaranteed.<sup>5</sup>

The problem is that the Law does not provide a single path. Article 6 of the Law stipulates that if the debtor breaks the promise, the holder of the first Dependent Rights has the right to sell the object of the Dependent Rights on his own power through a public auction and take the repayment of his receivables from the proceeds of the sale.<sup>6</sup> This authority is commonly called *parate executie* and was born directly from the law without the need for a court determination. This authority is strengthened by the promise to sell on its own power which is commonly included in the Deed of Grant of Dependent Rights as possible in Article 11 paragraph (2) letter e of the UUHT.<sup>7</sup> On the other hand, Article 20 paragraph (1) of the Law places execution based on the executory title of Article 14 as a separate path,<sup>8</sup> while Article 20 paragraph (2) and paragraph (3) still opens the possibility of selling under the hand of the agreement of the grantor and the holder of the Dependent Rights as long as the conditions of announcement are met.<sup>9</sup> There is also Article 26 of the Law which states that as long as there is no implementing regulation, the provisions regarding mortgage execution that are in effect at the time the Law is promulgated remain applicable to the execution of Dependent Rights.<sup>10</sup> It is through this Article 26 door that Article 224 of the HIR and Article 258 of the Criminal Code enter into the practice of execution of the Rights of Dependents.<sup>11</sup>

This tension is aggravated by the internal inconsistencies of the UUHT itself. General Explanation number 9 and Explanation Article 14 relate the execution to the provisions of the civil procedure law, thus giving the impression that all execution of the Rights of Dependents, including those relying on Article 6, must follow Article 224 of the HIR.<sup>12</sup> Theoretically, the interpretation of the law should not expand or narrow the norms within the body; when it does, what is born is a conflict of norms that has a direct impact on the effectiveness of execution.<sup>13</sup>

The practice of the judiciary reinforces that tendency. The Supreme Court Decision Number 3210 K/Pdt/1984 states that the auction was held on the order of the creditor and not on the order of the Chief Justice of the District Court contrary to Article 224 of the HIR so that the auction was invalid.<sup>14</sup> This stance is then reflected in Book II of the Guidelines for the Implementation of Duties and Court

<sup>4</sup>Republic of Indonesia, Law Number 4 of 1996, Article 14 paragraph (2) and paragraph (3).

<sup>5</sup>Sri Soedewi Masjchoen Sofwan, *Guarantee Law in Indonesia: Principles of Guarantee Law and Individual Guarantee* (Yogyakarta: Liberty, 2000), p. 45.

<sup>6</sup>Republic of Indonesia, Law Number 4 of 1996, Article 6.

<sup>7</sup>Republic of Indonesia, Law Number 4 of 1996, Article 11 paragraph (2) letter e.

<sup>8</sup>Republic of Indonesia, Law Number 4 of 1996, Article 20 paragraph (1).

<sup>9</sup>Republic of Indonesia, Law Number 4 of 1996, Article 20 paragraph (2) and paragraph (3).

<sup>10</sup>Republic of Indonesia, Law Number 4 of 1996, Article 26, as well as General Explanation number 9 and Explanation of Article 14.

<sup>11</sup>Republik Indonesia, *Revised Indonesian Regulations* (Stb. 1941-44), Pasal 224; *Rechtsreglement voor de Buitengewesten* (Rechtsreglement voor de Buitengewesten) (Stb. 1927-227), Pasal 258.

<sup>12</sup>Republic of Indonesia, Law Number 4 of 1996, Article 26.

<sup>13</sup>Herowati Poesoko, *Parate Executie Object of Dependent Rights: Inconsistency, Conflict of Norms, and Deviation of Reasoning in the Law* (Yogyakarta: LaksBang PRESSindo, 2007), p. 313.

<sup>14</sup>Republic of Indonesia, Supreme Court. Decision No. 3210 K/Pdt/1984, 30/1/1986 .



Administration which requires the existence of an execution fiat from the District Court.<sup>15</sup> Recent developments add a new layer: through Decision Number 18/PUU-XVII/2019 the Constitutional Court reinterpreted the executory power and the phrase "injury of promise" in the Fiduciary Guarantee Law, and the implications of that interpretation on the auction of the execution of the Right of Dependency are still debated.<sup>16</sup>

On the technical side, the framework for conducting auctions has also changed several times. Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Guidelines now replaces Minister of Finance Regulation Number 213/PMK.06/2020, which previously replaced Minister of Finance Regulation Number 27/PMK.06/2016.<sup>17</sup> The legitimacy of auction minutes as authentic deeds is emphasized through the Minister of Finance Regulation Number 86 of 2024.<sup>18</sup> Both regulations are based on the *Vendu Reglement* and *Vendu Instructie* as the master regulations of auctions in Indonesia.<sup>19</sup> The study still refers to the regulations of the minister of finance in 2010 and 2013 therefore no longer describes the applicable law, and this update of the reference is one of the practical contributions of this article.

The study on the execution of the Right of Dependency is not vacant land. Herowati Poesoko has in-depth mapped out the inconsistencies, conflicts of norms, and errors of reasoning in the UUHT related to *parate executie*.<sup>20</sup> J. Satrio emphasized that the right to sell on one's own power is the main characteristic of *parate executie* that distinguishes it from other forms of civil execution.<sup>21</sup> M. Yahya Harahap placed the executorial title as a form of simplifying the settlement of disputes that remain under the supervision of the court.<sup>22</sup> Salim HS mapped the development of guarantee law and its enforcement constraints,<sup>23</sup> while Boedi Harsono placed the Rights of Dependents within the framework of national agrarian law.<sup>24</sup> Thus, the claim that the execution of the Right of Dependency has not been researched can no longer be maintained as a research loophole.

The remaining gaps are of another nature. All of these studies work at the level of norms and doctrines: they explain that there is a conflict of norms between Article 6 and Article 14 in conjunction with Article 224 of the HIR, and then propose how the conflict should be resolved. What has not been explained is how the courts of first instance factually resolve such conflicts when concrete cases come to their desks, and what the institutional consequences of that settlement are. This gap is empirical and institutional, not normative, so it cannot be answered simply by reinterpreting the text of the law.

That's where the novelty of this article lies. Based on field data at the Class IB Metro District Court, this study found that the choice of the executory title path is not a conclusion from the normative interpretation that Article 6 does not apply, but rather a risk mitigation decision: the execution fiat is taken because it provides stronger legitimacy and reduces the likelihood of the auction being canceled through resistance. This article calls this phenomenon as *\*prudentialization parate executie\*\*\**, which is the process when the authority granted by law directly to creditors is reduced to an authority that in

<sup>15</sup>Republic of Indonesia, Supreme Court. *Book II Guidelines for the Implementation of Duties and Administration of the Court*, General Judicial Guidebook.

<sup>16</sup>Republic of Indonesia, Constitutional Court. Decision Number 18/PUU-XVII/2019, 6/1/2020, the case of Testing Law Number 42 of 1999 concerning Fiduciary Guarantees.

<sup>17</sup>Republic of Indonesia, Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, which revokes Regulation of the Minister of Finance Number 213/PMK.06/2020.

<sup>18</sup>Republic of Indonesia, Regulation of the Minister of Finance Number 86 of 2024 concerning Auction Minutes.

<sup>19</sup>Republik Indonesia, *Vendu Regulations* (Stb. 1908-189) then *Vendu Instruction* (Stb. 1908-190).

<sup>20</sup>Poesoko, *Parate Executie Objects of Dependent Rights*, pp. 315–322.

<sup>21</sup>Satrio, *The Law of Guarantees, Property Security Rights*, pp. 169–172.

<sup>22</sup>M. Yahya Harahap, *The Scope of Execution Problems in the Civil Sector* (Jakarta: Sinar Grafika, sixth edition, 2017), p. 263.

<sup>23</sup>Salim HS, *The Development of Guarantee Law in Indonesia* (Jakarta: Rajawali Pers, 2019), pp. 189–197.

<sup>24</sup>Boedi Harsono, *Indonesian Agrarian Law: The History of the Formation of the Basic Agrarian Law, Its Contents, and Implementation* (Jakarta: Djambatan, 2008), pp. 420–426.



practice is always asked to be determined by the court, not because the norm requires it, but because the risk structure encourages it. The second contribution is the systematic mapping of factors that hinder execution into the framework of Soerjono Soekanto's five factors of legal effectiveness, so that obstacles that require a change in norms can be sorted from obstacles that are sufficiently resolved through institutional and administrative improvements.

Since these findings are based on a specific method of data acquisition, a description of the method needs to be presented here. This article was compiled through normative-empirical legal research. The normative approach is used to examine the rules that govern the execution of the Rights of Dependents, while the empirical approach is used to obtain an overview of the application of these rules in judicial practice. Primary data was obtained through interviews with two sources, namely one judge and one clerk at the Class IB Metro District Court, which was chosen *purposively* because both were directly involved in handling applications for the execution of Dependent Rights. Primary legal materials include UUHT, HIR and RBg, *Vendu Reglement*, regulations of the minister of finance regarding auctions, Supreme Court Decision Number 3210 K/Pdt/1984, Book II of the Supreme Court, and Constitutional Court Decision Number 18/PUU-XVII/2019. Data is processed through selection, classification, and systematization, then analyzed qualitatively by drawing inferences inductively from practice towards normative assessment. The limitations of the research need to be stated openly: the number of sources is limited and the location of the research is only one court work unit, so that the findings on justification are used as a contextual picture and not a generalization of all district courts in Indonesia.

The discussion is arranged in three parts. Part B describes the implementation of the auction based on the executory title at the Class IB Metro District Court along with an analysis of legal certainty and legal protection. Section C analyzes the difference between *parate executie* and *fiat executie* and presents the findings of prudescension. Part D maps the factors that hinder execution into the framework of legal effectiveness and formulates the direction of its improvements, before closing with a conclusion in Part E.

## B. IMPLEMENTATION OF AUCTION BASED ON EXECUTORY TITLE AT THE METRO DISTRICT COURT

Dependent Rights is a material guarantee institution for land rights that occupy an important position in national financing activities. The presence of the UUHT provides legal certainty for creditors and debtors in the legal relationship of credit agreements. One of the main characteristics is the executory power attached to the Certificate of Dependent's Rights as affirmed in Article 14 paragraph (2) and paragraph (3) of the UUHT.<sup>25</sup> The existence of an executory title makes it easier for creditors to obtain repayment of their receivables if the debtor defaults. However, execution cannot be carried out arbitrarily because it still has to pay attention to civil procedure legal procedures, the principle of legal certainty, and the protection of debtors' rights. The implementation of auctions based on executory titles is thus not only the exercise of creditors' rights, but also a form of law enforcement that must ensure the balance of interests of the parties, in line with the function of judicial power as an independent power to uphold law and justice.<sup>26</sup>

Based on the results of research at the Class IB Metro District Court, the implementation of the auction based on the executory title was pursued through the mechanism of applying for execution to the Chief of the District Court. After the application is submitted by the creditor as the holder of the Dependent Rights, the Chief Justice of the District Court first gives *an amaning* or reprimand to the

<sup>25</sup>Republic of Indonesia, Law Number 4 of 1996, Article 14 paragraph (2) and paragraph (3).

<sup>26</sup>Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, Article 1 number 1.



debtor to fulfill his obligations voluntarily within the specified time frame.<sup>27</sup> This stage is sourced from Article 196 of the HIR, while the sale of auctions and the emptying of objects is based on Article 200 of the HIR.<sup>28</sup> If the debtor still does not carry out his obligations, the court issues a determination of the execution confiscation, followed by the confiscation of the object of the Dependent Rights and the determination of the implementation of the auction through the Office of State Property and Auction Services. This stage shows that execution based on an executory title remains under the control of the judicial institution as a form of protection for the rights of the parties.

The Metro District Court applies Article 224 of the HIR and Article 258 of the Criminal Code as the basis of procedural law for execution based on an executory title.<sup>29</sup> It should be emphasized that the correct reference is Article 258 of the Criminal Code as the equivalent of Article 224 of the Criminal Code for areas outside Java and Madura, not a provision in the Criminal Code as a mistake that is sometimes found in literature. Thus, even though the Certificate of Dependents already has executory power, its implementation still requires the determination of the Chief Justice of the District Court so that the entire process runs according to the principles of *due process of law*.

At the auction implementation stage, the State Wealth and Auction Service Office is bound by the Minister of Finance Regulation Number 122 of 2023, starting from verifying the completeness of documents, setting schedules, announcing auctions, determining limit values, to implementing bids electronically both through open and closed bidding.<sup>30</sup> The auction proceeds are then stated in the auction minutes which have the position of authentic deed and become the basis for the transfer of rights for the auction buyer.<sup>31</sup> The position of the auction minutes as an authentic deed is important because the auction buyer needs a strong legal basis to register the transfer of rights at the land office as well as to face possible lawsuits in the future.

In addition to the executory title route, the UUHT actually provides a third route in the form of sale under the hand of the agreement of the grantor and the holder of the Dependent Rights, as long as in this way the highest price is obtained that benefits all parties and after meeting the conditions of notification and announcement.<sup>32</sup> This route is theoretically most efficient because it does not involve courts or auction offices, but it is actually the least visible in court data because cases that are successfully resolved through an agreement never reach the judge's desk. The absence of this path in the case record should therefore not be read as ineffective, but rather as a limitation of court-based data sources.<sup>33</sup>

A comparison of the three paths shows a difference that is rarely emphasized in the literature, namely regarding the party who bears responsibility for the legitimacy of the sale. In the sale under hand, the responsibility lies entirely with the parties who agree. In *parate execution*, the responsibility lies with the creditor as the auction applicant with the auction official who assesses the completeness of the documents. Meanwhile, in executions based on an executory title, the responsibility for the validity of the procedure partly shifts to the court that issued the determination. This shift in the burden of responsibility explains why the third pathway is institutionally the safest for all parties involved, and at the same time is key to understanding the findings outlined in the next section.

The results of the interview also show that the application for execution can only be processed if the creditor can prove the debtor's default.<sup>34</sup> Default is the main condition that determines whether

<sup>27</sup>Interview with the Judge of the Metro District Court Class IB, [date].

<sup>28</sup>Republic of Indonesia, *Herziene Indonesisch Reglement* (Stb. 1941-44), Article 196 and Article 200.

<sup>29</sup>*Revised Indonesian Regulations*, Pasal 224; *Legal Regulations for the Outer Regions*, Pasal 258.

<sup>30</sup>Republic of Indonesia, Regulation of the Minister of Finance Number 122 of 2023.

<sup>31</sup>Republic of Indonesia, Regulation of the Minister of Finance Number 86 of 2024 concerning Auction Minutes.

<sup>32</sup>Republic of Indonesia, Law Number 4 of 1996, Article 20 paragraph (2) and paragraph (3).

<sup>33</sup>Interview with the Registrar of the Class IB Metro District Court, [date].

<sup>34</sup>Interview with the Clerk of the Class IB Metro District Court.



or not the object of the Right of Dependency can be executed. Proof is carried out through credit agreement documents, Deed of Grant of Dependent Rights, Certificate of Dependent Rights, and evidence that the debtor has not fulfilled his obligations according to the agreement. An executory title cannot therefore be used automatically, but must still rely on the legal fact that the debtor has broken the promise. This requirement became even more relevant after the Constitutional Court affirmed that the determination of promise damages should not be determined unilaterally by creditors, but must be based on the agreement of the parties or the legal remedies that determine it.<sup>35</sup>

Theoretically, the above mechanism reflects the application of the principle of legal certainty as proposed by Gustav Radbruch. According to Radbruch, the law must be able to provide certainty, justice, and benefits at the same time, and legal certainty is the main requirement for society to obtain protection from arbitrary actions.<sup>36</sup> In the context of the implementation of auctions based on executory titles, legal certainty is realized through clear and sequential procedures, starting from the application for execution, *aanmaning*, confiscation, to the implementation of the auction. With this procedure, creditors and debtors obtain guarantees that their rights are processed based on the provisions of the applicable law and not based on the will of one party.

In addition to guaranteeing legal certainty, the implementation of an executory title also reflects the theory of legal protection put forward by Philipus M. Hadjon. According to Hadjon, legal protection is not only provided after a repressive dispute arises, but also through preventive mechanisms.<sup>37</sup> In the implementation of the execution of the Rights of Dependents, *aanmaning* is a form of preventive protection because it provides an opportunity for the debtor to fulfill his obligations before the collateral object is auctioned. On the other hand, if the debtor still does not carry out his obligations, the auction is a form of repressive protection against the creditor's right to obtain repayment of his receivables. From the perspective of guarantee law, the existence of a Certificate of Dependent's Rights as an executory title shows that the lawmaker wants a mechanism for settling non-performing loans quickly and effectively, in contrast to other material guarantees that generally still require a civil lawsuit before they can be executed.<sup>38</sup>

### C. PARATE EXECUTIE, FIAT EXECUTIE, AND PRUDENTIAL CREDITOR AUTHORITY

One of the most common legal issues in the execution of Dependent Rights is the difference in understanding the concepts of *parate executie* and *fiat executie*. Both aim to provide an avenue for creditors to obtain repayment of receivables through the sale of collateral objects, but have different legal basis, procedures, and legal consequences. In judicial practice, these differences are often a source of disputes that actually cause legal uncertainty for creditors and debtors.

Normatively, Article 6 of the Law stipulates that if the debtor violates the promise, the holder of the first Dependent Rights has the right to sell the object of the Dependent Rights on their own power through a public auction and take the repayment of their receivables from the proceeds of the sale.<sup>39</sup> This provision shows that the law directly grants authority to creditors without requiring a court decision first. According to J. Satrio, the right to sell in one's own power is the main characteristic of *parate executie* that distinguishes it from other forms of civil execution; creditors are no longer required to file new lawsuits because such authority has been granted directly by law since the Right of

<sup>35</sup>Republic of Indonesia, Constitutional Court. Decision Number 18/PUU-XVII/2019.

<sup>36</sup>Gustav Radbruch, "Legal Philosophy," terj. Kurt Wilk, dalam *The Legal Philosophies of Lask, Radbruch, and Dabin* (Cambridge: Harvard University Press, 1950), hlm. 107.

<sup>37</sup>Philipus M. Hadjon, *Legal Protection for the People in Indonesia* (Surabaya: Bina Ilmu, 1987), pp. 2-5.

<sup>38</sup>J. Satrio, *Guarantee Law, Property Guarantee Rights of Dependents* (Bandung: Citra Aditya Bakti, 2002), p. 142.

<sup>39</sup>Republic of Indonesia, Law Number 4 of 1996, Article 6.



Dependency was registered.<sup>40</sup> The authority was then confirmed through a promise to sell on its own power in the Act on the Grant of Dependent Rights.<sup>41</sup>

Historically, the power to sell on one's own power is not new in Indonesia's guarantee legal system. The Civil Code has recognized *beding van eigenmachtige verkoop* in a mortgage institution, which is a promise that gives the creditor of the first mortgagee the right to sell the collateral publicly if the principal debt is not paid properly.<sup>42</sup> Article 6 of the Constitution basically continues this tradition with one important difference: if the authority is born in a mortgage that must be agreed, the right of dependency is given directly by law. This historical reading reinforces the conclusion that Article 6 was intended as a stand-alone norm, and not simply a repetition of procedural law provisions that require court intervention.<sup>43</sup>

On the other hand, *fiat executie* is an execution based on an executory title attached to the Certificate of Dependent's Rights as stipulated in Article 14 paragraph (2) and paragraph (3) of the UUHT, the implementation of which follows Article 224 of the HIR and Article 258 of the RBg so that it requires the determination of the Chief Justice of the District Court.<sup>44</sup> In this mechanism, the court first conducts *aanmaning*, *determination of execution* confiscation, and determination of auction before the collateral object is sold. The difference between the two therefore does not lie in the final goal, but in the procedural path taken and in the party who bears responsibility for the validity of the auction.

The problem arises because in practice there is still a difference in interpretation between Article 6 of the UUHT and the General Explanation number 9 and the Explanation of Article 14 of the UUHT. The explanation relates the implementation of *parate execution* to Article 224 of the Civil Code, giving the impression that all executions must follow the civil procedure law.<sup>45</sup> As a result, not a few officials and legal practitioners have confused the concept of *parate executie* with the title of executorial. According to Herowati Poesoko, this inconsistency is one of the main weaknesses of the Law because it causes a conflict of norms between the body of the law and its explanatory part. Theoretically, the interpretation of the law should not expand or diminish the norms that have been set in the trunk; If that happens, what is born is legal uncertainty that has a direct impact on the effectiveness of execution.<sup>46</sup>

This view is in line with Radbruch's theory of legal certainty which requires clear, consistent, and uniformly applied legal rules.<sup>47</sup> When legal norms give rise to double interpretations, creditors lose certainty regarding the execution mechanism that can be used, while debtors gain room to raise various objections that often only aim to delay the execution of the auction. The problem becomes more complicated because Article 26 of the UUHT does open the door to the enactment of mortgage execution provisions as long as the implementation regulations do not exist.<sup>48</sup> Some people read this transitional provision as a basis for subjugating all execution of the Right of Dependency to Article 224 of the HIR. Such a reading is actually incorrect, because Article 26 is aimed at the execution procedure based on an executory title, not at the authority to sell on one's own power born from Article 6. With the principle of *lex specialis derogat legi generali*, as long as the Law as a special provision has regulated the authority of the holder of the Dependent Rights through Article 6, this provision should take precedence over the general provisions of procedural law in the HIR.

<sup>40</sup>Satrio, *The Law of Guarantees, Property Security Rights*, pp. 169–172.

<sup>41</sup>Republic of Indonesia, Law Number 4 of 1996, Article 11 paragraph (2) letter e.

<sup>42</sup>Republic of Indonesia, *Civil Code*, Article 1178 paragraph (2).

<sup>43</sup>Satrio, *Law of Guarantees, Property Security Rights*, p. 142.

<sup>44</sup>*Revised Indonesian Regulations*, Pasal 224; *Legal Regulations for the Outer Regions*, Pasal 258.

<sup>45</sup>Republic of Indonesia, Law Number 4 of 1996, Article 26.

<sup>46</sup>Poesoko, *Parate Executie Objects of Dependent Rights*, pp. 315–322.

<sup>47</sup>Radbruch, "Legal Philosophy," pp. 107–110.

<sup>48</sup>Republic of Indonesia, Law Number 4 of 1996, Article 26.



However, norms do not work in a vacuum. The Supreme Court Decision Number 3210 K/Pdt/1984 states that the auction was held on the order of the creditor and not on the order of the Chief Justice of the District Court contrary to Article 224 of the HIR so that the auction was invalid.<sup>49</sup> The stance was then outlined in Book II of the Guidelines for the Implementation of Duties and Court Administration which requires the existence of an execution fiat.<sup>50</sup> For the court of first instance, both serve as a very strong sign, since choices that deviate from them risk leading to the cancellation of the auction at the appellate or cassation level.

The risk increased after the Constitutional Court through Decision Number 18/PUU-XVII/2019 stated that the executory power of the fiduciary guarantee certificate and the determination of promise damages cannot be exercised unilaterally by creditors.<sup>51</sup> Although the ruling tested the Fiduciary Guarantee Act and not the Act, the reasoning used by the Court concerned the same issue, namely when creditors could act on their own without court intervention. As long as there is no official affirmation of the reach of the reasoning on the Right of Dependency, the uncertainty itself becomes a variable that the court takes into account when choosing the path of execution.

The results of the research at the Class IB Metro District Court show that the lawsuit against the implementation of the Dependent Rights auction mostly stems from differences in interpretation regarding the obligation to obtain the fiat of the Chairman of the District Court. The debtor generally argues that every auction must obtain the determination of the Chief Justice based on Article 224 of the HIR, while the creditor argues that Article 6 of the Constitution has given direct authority to the holder of the first Dependent Right.<sup>52</sup> Faced with this situation, the mechanism of executory title is more often taken when there is a potential dispute that can hinder the implementation of the auction, with the aim of providing stronger legitimacy so as to minimize the risk of auction cancellation due to lawsuits by debtors or third parties.<sup>53</sup>

These findings are the main contribution of this article. The choice of the *fiat executie route* in the Metro District Court was not based on the normative conclusion that Article 6 of the UUHT does not apply, but rather on the calculation of institutional risk: the path that provides the greatest protection against the possibility of cancellation is the path chosen. This phenomenon is referred to here as the prudensialization of *parate executie*, which is the reduction of the authority given by the law directly to creditors to an authority that in practice is always asked to be determined by the court, not because the norm requires it, but because the risk structure encourages it. Prudensialization is different from just misinterpretation, because the officials concerned actually understand the existence of Article 6 but choose not to rely on it.

Prudensialization has two opposite consequences. On the one hand, it increases the legitimacy of execution and protects auction buyers from ownership disputes in the future, thus fulfilling the function of legal protection as Hadjon intended.<sup>54</sup> On the other hand, he undermined the purpose of the formation of the Law to present a fast, simple, and low-cost non-performing credit settlement mechanism. In other words, legal certainty is obtained at the expense of utility, that is, it is the tension between values that according to Radbruch must be balanced and not exchanged.<sup>55</sup> The further consequences are economical: the longer the path taken, the greater the execution cost and the lower

<sup>49</sup>Republic of Indonesia, Supreme Court. Decision No. 3210 K/Pdt/1984.

<sup>50</sup>Republic of Indonesia, Supreme Court. *Book II Guidelines for the Implementation of Duties and Administration of the Court*, General Judicial Guidebook.

<sup>51</sup>Republic of Indonesia, Constitutional Court. Decision Number 18/PUU-XVII/2019.

<sup>52</sup>Interview with the Judge of the Metro District Court Class IB.

<sup>53</sup>Interview with the Clerk of the Class IB Metro District Court.

<sup>54</sup>Hadjon, *Legal Protection for the People*, pp. 2–5.

<sup>55</sup>Radbruch, "Legal Philosophy," pp. 107–110.



the economic value of the collateral object, so that the auction results do not necessarily cover all the debtor's liabilities.

For banking practices, prudensialization means that the calculation of the cost of settling non-performing loans can no longer be relied on the assumption of speed promised by Article 6 of the Constitution. The creditor must take into account the *grace period*, the possibility of resistance, as well as the time for the determination of the confiscation and the determination of the auction, all of which are beyond its control. Consequently, the value of a guarantee that appears to be juridically strong is not always equivalent to the value of a guarantee that can be economically realized in a reasonable time. It is this gap between juridical power and economic realism that ultimately suppresses the rate of receivables recovery and, on a broader scale, affects banks' prudence in disbursing land-secured loans.

For the State Wealth and Auction Service Office, prudenization poses a different problem. The auction official is in the position of the executor who assesses the completeness of the application documents, not as the authority to decide the difference in interpretation between Article 6 and Article 224 of the HIR. When a creditor applies for an auction under Article 6 while there is an indication of a dispute, the auction official is in a difficult position because the rejection can be questioned as an impediment to the creditor's rights, while the receipt can lead to the cancellation of the auction. The absence of such strict criteria not only burdens the courts, but also transfers the risk of interpretation to administrative officials who are not designed to bear it.

From the point of view of legal theory, the two mechanisms are actually not contradictory but complementary. *Parate executie* is a normal mechanism when there is no dispute regarding the object of the Dependent Right, while *fiat executie* is used when legal obstacles arise such as a third-party ownership lawsuit or objection to the object of the guarantee. The problem is that, without firm criteria as to when each pathway will be used, the choice is left entirely to the risk assessment of each court, and risk assessment naturally tends to always lead to the most procedurally safe pathway. Therefore, what is needed is not to oppose the two concepts, but to build uniformity of understanding among law enforcement officials, banks, the State Wealth and Auction Service Office, notaries and land deed making officials, and academics.

#### D. FACTORS INHIBITING EXECUTION IN THE LEGAL EFFECTIVENESS FRAMEWORK

The effectiveness of the implementation of auctions based on executory titles is not only determined by the existence of norms that give executory power to the Certificate of Dependent Rights, but is also influenced by various juridical, institutional, administrative, and social factors.<sup>56</sup> To sort out the obstacles that really demand a change in norms from obstacles that are sufficiently institutionally resolved, the following field findings are mapped into the framework of Soerjono Soekanto's five factors of legal effectiveness, namely the substance of the law, law enforcement officials, facilities and infrastructure, society, and legal culture.<sup>57</sup>

On the factor of legal substance, the results of the study show that there are still differences in interpretation regarding the relationship between Article 6, Article 14, Article 20, and Article 26 of the Law with Article 224 of the HIR as well as the provisions in the regulation of the minister of finance regarding guidelines for the implementation of auctions. This situation gives rise to a double interpretation as to whether each auction must obtain the fiat of the Chief District Court or can be directly carried out based on *the right of parate executie*. This difference in interpretation is often the basis for the debtor's lawsuit against the implementation of the auction. Obstacles at this level are normative

<sup>56</sup>Salim HS, *The Development of Guarantee Law*, pp. 189–197.

<sup>57</sup>Soerjono Soekanto, *Factors Affecting Law Enforcement* (Jakarta: Rajawali Press), p. [...].



and can only be resolved through the harmonization of laws, because the source lies in the formulation of the norm itself and not in the way the apparatus implements it.

In the case of law enforcement officials, when norms give rise to double interpretation, the authorities tend to take the safest procedural step by requesting a court determination even though in certain circumstances Article 6 of the UUHT has actually given direct authority to creditors.<sup>58</sup> This is the concrete form of prudensialization that has been described in the previous section. These obstacles are institutional and can be reduced without waiting for a revision of the law, namely through the Supreme Court's technical guidelines that establish criteria for when fiat execution is required and when it is not. Such guidelines would shift the burden of risk from the shoulders of individual courts into the generally applicable rules.

In terms of facilities and infrastructure, the implementation of the auction requires the completeness of various documents, including credit agreements, Deeds of Grant of Dependent Rights, Certificates of Dependent Rights, proof of default, and other supporting documents. If one of the documents is incomplete or there is an administrative discrepancy, the auction process cannot continue until all requirements are met.<sup>59</sup> The execution also involves the courts, the Office of State Wealth and Auction Services, land offices, banks, notaries, and land deed-making officials; if coordination between institutions does not go well, the administrative process becomes longer and opens up opportunities for new disputes to arise.

In terms of community factors, debtors often file lawsuits for unlawful acts, lawsuits for default, and requests for postponement of the auction implementation. Although not all of these lawsuits are justified according to the law, the process of examining the case takes a long time so that it has an impact on the delay in the execution of the execution. The delay has implications for an increase in the value of bad loans, an increase in interest expenses, and a decrease in the economic value of collateral objects. In addition, the object of the Right of Dependency is not always in the control of the debtor, and it is not uncommon for other parties to claim to have rights to the land or building that is the object of collateral, so that the auction buyer faces difficulties in controlling the object that he has won.

It is necessary to distinguish the two forms of resistance that arise in practice, since both demand different handling. Resistance filed by the seized party or the debtor himself basically does not delay execution unless there is a very basic reason, while the resistance of a third party that postulates the right of ownership of the collateral object has a different weight because it concerns a party that is not bound by the credit agreement.<sup>60</sup> The results show that it is precisely this second form that most often encourages creditors to switch to the path of executory title, because court assignments are seen as providing better protection for auction buyers in the future.<sup>61</sup> The consistent application of formal conditions of resistance, accompanied by an initial examination of the feasibility of the postulates of ownership, can reduce the use of resistance institutions solely as a means of delay without diminishing the rights of a third party in good faith.

In terms of legal culture, the low public understanding of the mechanism of Dependent Rights and execution auctions increases resistance to the implementation of execution and increases the potential for disputes stemming from misunderstandings. Beyond these five factors, this study also found economic variables that are beyond the control of the law, namely market conditions and the interest of auction participants. When economic conditions decline or the limit value is considered too

<sup>58</sup>Interview with the Judge of the Metro District Court Class IB.

<sup>59</sup>Interview with the Clerk of the Class IB Metro District Court.

<sup>60</sup>Republik Indonesia, *Herziene Indonesisch Reglement* (Stb. 1941-44), Article 195.

<sup>61</sup>Interview with the Judge of the Metro District Court Class IB.



high, the number of auction participants becomes limited so that the bid price does not reach the expected value and the auction results are not always able to cover all debtors' obligations to creditors.

The modernization of electronic auctions gives hope to this last factor. Bidding through electronic means extends the reach of potential participants beyond the boundaries of the territory where the object is located, thus theoretically increasing the likelihood of achieving a reasonable price. However, the expansion of the range does not in itself solve the problem, because the reluctance of auction participants to the object of the Dependent Rights generally stems from concerns over the physical control of the object after the auction, not solely from the limitation of information. As long as the risk of emptying has not been addressed, the determination of a realistic limit value and clarity of the object's mastery status remain the main determinants of the auction's success.

**Table 1. Mapping Factors Inhibiting the Execution of Dependent Rights into the Legal Effectiveness Framework**

| <b>Inhibitory factors<br/>(field findings)</b>                                                            | <b>Category<br/>Soekanto</b>  | <b>Inhibitory properties</b>                          | <b>Direction of improvement</b>                                     |
|-----------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------------------------------------|---------------------------------------------------------------------|
| Conflict of interpretation of Article 6 with Article 14 jo. Article 20 and Article 26 of the Constitution | Legal substance               | Normative, sticking to the formulation of the law     | Harmonization of the body and explanation of the UUHT               |
| Prudence of the authorities in choosing fiat execution even though Article 6 is available                 | Law enforcement officers      | Institutional, a response to the risk of cancellation | The Supreme Court's technical guidelines on fiat criteria           |
| Incompleteness of documents and weak coordination between agencies                                        | Facilities and infrastructure | Administrative                                        | Simplification of procedures and integration of electronic services |
| <b>Debtor resistance lawsuits and third-party claims</b>                                                  | Society                       | Procedural, legal remedies as a means of postponing   | Strict application of formal match requirements                     |
| <b>Low legal literacy and social resistance</b>                                                           | Legal culture                 | Social                                                | Legal education on auction information assurance and transparency   |
| <b>Market conditions and limited interest in auction participants</b>                                     | Beyond the five factors       | Economical                                            | Realistic limit values and electronic auction expansion             |

*Source: processed by the author from the results of research at the Metro District Court Class IB.*

The mapping in Table 1 shows that of the six obstacles found, only one actually demands a change in the law, while the other five can be reduced through technical guidelines, administrative improvements, consistent application of procedural law, and legal education. This finding is important because the discourse that has developed so far tends to place the revision of the Law as the only way out, even though most of the obstacles are in the institutional realm that can be fixed in a much shorter period than the legislative process.



From the perspective of legal protection, the execution mechanism should not only prioritize the interests of creditors. The debtor still has the right to obtain information, the opportunity to fulfill obligations voluntarily through *aanmaning*, and the right to file objections if there is a violation of procedures. On the contrary, these rights should not be used as a means of hindering execution without a clear legal basis. The balance of legal protection for creditors and debtors must therefore be the main principle in every implementation of the execution of the Right of Dependency, as well as a measure of the success of this guarantee institution within the framework of national agrarian law.<sup>62</sup>

Based on the above analysis, legal reform in the field of execution of Dependent Rights needs to be directed at four things. First, the harmonization of Article 6, Article 14, Article 20, and Article 26 of the UUHT and their explanations so that it no longer causes double interpretations regarding the use of *parate executie* and executory titles. Second, the preparation of the Supreme Court's technical guidelines that contain measurable criteria regarding when fiat execution is required, so that the choice of path no longer depends solely on the risk assessment of each court. Third, strengthening coordination between the courts, the State Wealth and Auction Service Office, land offices, and banks through simplifying administrative procedures and digitizing execution services in line with the modernization of auctions based on the Minister of Finance Regulation Number 122 of 2023.<sup>63</sup> Fourth, increasing public legal literacy regarding the mechanism of Dependent Rights and execution auctions so that potential disputes due to misunderstandings can be minimized.

The four directions of improvement above are interrelated and cannot be carried out separately. Harmonization of norms without technical guidelines will still leave a diversity of practices between courts, while technical guidelines without strengthening coordination between institutions will only move obstacles from the courtroom to the administrative table. Similarly, increasing the legal literacy of the community will not mean that the procedures explained to the community itself still give rise to different interpretations among the enforcers. Therefore, the reform needs to be designed as a policy package that places clarity of norms as the foundation, technical guidelines as translators, institutional coordination as implementers, and legal literacy as a support for social acceptance.

## E. CONCLUSION

The implementation of the auction based on the executory title in the execution of the Dependent Rights at the Class IB Metro District Court is pursued through an application for execution to the Chief of the District Court, *aanmaning*, *determination of execution* confiscation, determination of auction, and execution of auction by the Office of State Property Services and Auctions based on the Regulation of the Minister of Finance Number 122 of 2023. Although the Certificate of Dependent's Rights has the same executory force as a judgment with permanent legal force, its implementation remains under the supervision of the court to ensure legal certainty and protection of the rights of the parties. The main finding of this study is that the choice of the path is not a normative consequence of the non-enactment of Article 6 of the UUHT, but the result of consideration of the risk mitigation of auction cancellation, a symptom that this article calls the prudential *parate execution*. This phenomenon presents legal certainty at the expense of the principle of fast, simple, and low-cost execution, so that the balance of value desired by the lawmakers is not fully achieved.

The effectiveness of the auction implementation is hampered by six factors, namely the conflict of interpretation of norms between Article 6 and Article 14 in conjunction with Article 20 and Article 26 of the Law with Article 224 of the HIR, the prudence of the apparatus in choosing the execution path, administrative obstacles and weak coordination between institutions, lawsuits against debtors and

<sup>62</sup>Boedi Harsono, *Indonesian Agrarian Law: The History of the Formation of the Basic Agrarian Law, Its Contents, and Implementation* (Jakarta: Djambatan, 2008), pp. 420–426.

<sup>63</sup>Republic of Indonesia, Regulation of the Minister of Finance Number 122 of 2023.



third-party claims for the object of collateral, low legal literacy of the community, and auction market conditions. After being mapped into the framework of Soerjono Soekanto's legal effectiveness, only one of them really demanded a change in the law, while the rest were in the institutional and administrative realm that could be fixed without waiting for legislative revision. This finding shifts the focus of reform from the discourse on law revision to strengthening technical guidelines and inter-institutional coordination.

On that basis, lawmakers need to harmonize Article 6, Article 14, Article 20, and Article 26 of the UUHT along with their explanations, the Supreme Court needs to issue technical guidelines that contain measurable criteria for when fiat execution is needed, and all institutions involved need to strengthen coordination through simplification of procedures and digitization of execution services. Given that this study only covers one court work unit with a limited number of interviewees, further research is recommended to expand the research location to several district courts and systematically analyze the decision against the execution of the Dependent Rights, so that the reasonableization thesis proposed here can be tested on a wider scope.

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