

DUALISM IN THE ENFORCEMENT OF MORTGAGE RIGHTS OVER DISPUTED OBJECTS: A STUDY BETWEEN PARATE EXECUTION AND EXECUTORIAL BESLAG

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Abstract. The enforcement of Mortgage Rights in Indonesia is essentially intended to provide legal certainty for creditors in obtaining repayment of receivables when debtors default. However, in practice, the enforcement of Mortgage Rights over disputed objects continues to raise legal issues, particularly due to the dualism between the mechanisms of *parate execution* and *executorial beslag*. This study aims to analyze the legal regulation of *parate execution* and *executorial beslag*, examine the dualism of their implementation in judicial practice, and assess the legal certainty of Mortgage Rights enforcement over disputed objects. This research employs a normative juridical method with statutory, conceptual, and case approaches. The legal materials used consist of primary, secondary, and tertiary legal materials, which are analyzed through descriptive qualitative analysis. The results of the study indicate that Law Number 4 of 1996 concerning Mortgage Rights has provided a legal basis for creditors to carry out enforcement through *parate execution* and *executorial title*. However, in judicial practice, the enforcement of disputed objects often still involves the court through the mechanism of *executorial beslag*. This condition creates inconsistency in the application of law and affects legal certainty for creditors, debtors, and third parties. Therefore, regulatory harmonization and consistency in judicial practice are needed so that the enforcement of Mortgage Rights can be carried out effectively, fairly, and with balanced legal protection for all parties.

Keywords: Mortgage Rights; *parate execution*; *executorial beslag*; disputed object; legal certainty.

I. INTRODUCTION

The development of financing activities in the banking and financial institution sectors in Indonesia has positioned security rights as an important instrument in ensuring the certainty of debt repayment by debtors. In credit practices, banking institutions generally require collateral as a form of risk mitigation against the possibility of non-performing loans. One of the most widely used forms of security rights is Mortgage Rights, as regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Mortgage Rights are essentially intended to provide legal protection and certainty for creditors in obtaining repayment of receivables when debtors default.

Mortgage Rights possess special characteristics as security rights because they grant a preferential position to creditors holding Mortgage Rights and embody the principle of *droit de suite*, namely a security right that continues to follow the object even if the object is transferred to another party. In addition, the Mortgage Rights certificate contains an executorial title in the form of the phrase "For the Sake of Justice Based on the Almighty God," thereby giving it executorial force equivalent to a court decision that has obtained permanent legal force (Poesoko, 2023). With such executorial title, creditors are given the convenience of enforcing the collateral object without first having to file an ordinary civil lawsuit.

One enforcement mechanism of Mortgage Rights recognized in the Indonesian legal system is *parate execution*. Article 6 of the Mortgage Rights Law grants the first holder of Mortgage Rights the authority to sell the collateral object through public auction under their own authority when the debtor defaults. Conceptually, *parate execution* is intended to create a mechanism for resolving non-performing loans that is fast, simple, effective, and capable of providing legal certainty for creditors (Hariansyah & Harun, 2024). Through this mechanism, creditors do not need to undergo a lengthy litigation process to obtain repayment of their receivables.

Nevertheless, the implementation of *parate execution* in practice does not always proceed effectively. The enforcement of Mortgage Rights often encounters obstacles in the form of debtor lawsuits, third-party opposition (*derden verzet*), land ownership disputes, overlapping certificates, and objections to auction procedures. These conditions often cause enforcement to be delayed, particularly when the object of Mortgage Rights is involved in a civil dispute (Tektona et al., 2023). Thus, although *parate execution* is normatively designed as a fast and efficient instrument, in practice this mechanism still faces various legal issues.

This problem indicates the existence of dualism in the enforcement of Mortgage Rights. On the one hand, Article 6 of the Mortgage Rights Law grants direct authority to creditors to sell the collateral object through public auction without

requiring court authorization. On the other hand, judicial practice shows that enforcement over disputed objects often still requires court involvement through the mechanism of *executorial beslag* or executorial seizure. This situation creates tension between the principle of convenience in *parate execution* and the need for legal protection for other parties who claim rights over the collateral object.

This dualism ultimately creates disharmony between legal norms and the practical implementation of enforcement in the field. Normatively, *parate execution* is designed to provide protection to creditors so that non-performing loans can be resolved quickly and efficiently. However, in practice, enforcement often cannot be carried out directly because of ownership lawsuits or objections from third parties concerning the object of Mortgage Rights. As a result, the resolution of non-performing loans becomes prolonged and may potentially harm both creditors and other parties with an interest in the collateral object (Prihatanto et al., 2026).

Uncertainty in the enforcement mechanism of Mortgage Rights also has implications for increased financing risks in the banking sector. Obstacles in enforcement make the process of recovering creditors' receivables ineffective, thereby potentially increasing the ratio of non-performing loans. From the perspective of economic law, this situation may affect the confidence of financial institutions in extending credit to the public. If the collateral enforcement mechanism fails to provide legal certainty, the function of Mortgage Rights as a risk mitigation instrument in financing activities becomes suboptimal.

From the perspective of legal certainty theory, this issue indicates that the regulation of Mortgage Rights enforcement in Indonesia has not been optimally effective. Ideally, law should be able to provide certainty, justice, and utility in a balanced manner (Sidharta, 2021). However, in the practice of Mortgage Rights enforcement, there is often a tension between the creditor's interest in obtaining prompt repayment of receivables and the protection of the rights of debtors or third parties who may be harmed by the enforcement of the collateral object. Therefore, *parate execution* should not be understood solely as an instrument for creditor protection, but must also be placed within a proportional framework of legal protection for all parties.

Research on *parate execution* of Mortgage Rights has generally been widely conducted, particularly in relation to the effectiveness of enforcement, legal protection for creditors, and the position of auction winners. However, studies that specifically discuss the dualism between *parate execution* and *executorial beslag* concerning disputed Mortgage Rights objects still need to be strengthened. Most previous studies tend to focus on legal certainty for creditors without specifically linking it to normative conflicts, judicial practice, and legal protection for third parties in disputes over Mortgage Rights objects.

Based on the foregoing discussion, this article aims to analyze the legal regulation of *parate execution* and *executorial beslag* in the enforcement of Mortgage Rights in Indonesia. In addition, this article examines the dualism in the enforcement of Mortgage Rights over disputed objects in judicial practice and its implications for legal certainty. Therefore, this study is

expected to contribute to the formulation of a more harmonious and effective model of Mortgage Rights enforcement while maintaining a balance of legal protection for creditors, debtors, and third parties acting in good faith.

Mortgage Rights as Security Rights

Mortgage Rights constitute a form of security right over land and objects related to land, functioning to secure the repayment of certain debts. Based on Article 1 point 1 of Law Number 4 of 1996 concerning Mortgage Rights, Mortgage Rights provide a preferential position to certain creditors over other creditors. In financing practices, particularly in the banking sector, Mortgage Rights play an important role as a legal instrument that provides certainty for creditors in obtaining repayment of receivables when debtors default.

As a security right, Mortgage Rights have two main characteristics: preferential rights and the principle of *droit de suite*. Preferential rights grant priority to creditors holding Mortgage Rights to obtain repayment before other creditors. Meanwhile, the principle of *droit de suite* means that the security right continues to follow the object even if the object is transferred to another party. These characteristics make Mortgage Rights a strong security instrument in the legal relationship between creditors and debtors (Poesoko, 2023).

In addition to granting preferential rights, the Mortgage Rights certificate also has executorial power because it contains the phrase "For the Sake of Justice Based on the Almighty God." This phrase gives the certificate legal force equivalent to a court decision that has obtained permanent legal force. Thus, the Mortgage Rights certificate may serve as a basis for creditors to enforce the collateral object when the debtor defaults, without first having to file an ordinary civil lawsuit.

Mechanisms for the Enforcement of Mortgage Rights

The enforcement of Mortgage Rights can essentially be carried out through several mechanisms. The Mortgage Rights Law provides that enforcement may be conducted through *parate execution* as regulated in Article 6, enforcement based on an executorial title as regulated in Articles 14 and 20, and private sale based on an agreement between the parties. These three mechanisms indicate that Indonesian security law provides alternative methods for resolving non-performing loans while still considering the interests of creditors and debtors.

Among these mechanisms, *parate execution* is considered the most effective because it grants the first holder of Mortgage Rights the authority to sell the collateral object through public auction under their own authority. This mechanism aims to create a fast, simple, and efficient resolution of non-performing loans. Through *parate execution*, creditors do not need to undergo a lengthy litigation process to obtain repayment of their receivables (Hariansyah & Harun, 2024).

Nevertheless, the enforcement of Mortgage Rights in practice does not always proceed as expected. Obstacles often arise in the form of debtor lawsuits, third-party opposition, overlapping ownership claims, certificate disputes, and objections to auction procedures. These conditions often prevent the direct enforcement of Mortgage Rights and give rise to issues of legal certainty in judicial practice.

Parate Execution and Executorial Beslag

Parate execution is the authority granted to the first holder of Mortgage Rights to sell the collateral object through public auction when the debtor defaults. The regulation of *parate execution* is found in Article 6 of the Mortgage Rights Law. Conceptually, *parate execution* gives creditors a direct right to enforce the collateral object without requiring prior court authorization.

The existence of *parate execution* is intended to provide convenience for creditors in resolving non-performing loans. From the perspective of security law, this mechanism is necessary to maintain the effectiveness of the financing system because creditors can obtain repayment more quickly. However, in practice, the implementation of *parate execution* often faces obstacles when the object of Mortgage Rights is under dispute, whether due to ownership claims, overlapping certificates, inheritance disputes, or third-party opposition to the auction process (Tektona et al., 2023).

This situation gives rise to the use of the mechanism of *executorial beslag* or executorial seizure through the court. *Executorial beslag* is the seizure of a debtor's assets based on a court order in the context of enforcing a decision that has obtained permanent legal force. Unlike *parate execution*, which grants direct authority to creditors, *executorial beslag* places the court as the institution authorized to supervise and carry out the enforcement process.

The dualism between *parate execution* and *executorial beslag* arises because of differences in legal construction between the Mortgage Rights Law and civil procedural law. Article 6 of the Mortgage Rights Law grants creditors direct authority to carry out enforcement, while civil procedural law places the court as the institution responsible for enforcement. This difference leads to inconsistency in practice, particularly when the object of Mortgage Rights is under dispute or when there is third-party opposition.

Legal Certainty in the Enforcement of Mortgage Rights

Legal certainty is one of the primary objectives of law in a state governed by the rule of law. From the perspective of Gustav Radbruch, law should ideally provide certainty, justice, and utility in a balanced manner. Legal certainty means that the law must be applied clearly, consistently, and predictably by society (Sidharta, 2021). In the context of Mortgage Rights enforcement, legal certainty relates to the clarity of enforcement mechanisms, consistency in the application of norms, and protection of the rights of creditors, debtors, and third parties.

Normatively, the Mortgage Rights Law has provided a basis for legal certainty through the regulation of *parate execution* and executorial title. However, in judicial practice, different approaches are still found in the enforcement of disputed Mortgage Rights objects. In some cases, courts continue to allow *parate execution* because creditors possess preferential rights. In other cases, courts postpone or annul enforcement on the grounds of protecting third parties who claim rights over the collateral object (Prihatanto et al., 2026).

These differences in application indicate that legal certainty in the enforcement of Mortgage Rights has not yet been fully realized. The inconsistency of judicial practice causes creditors to face uncertainty in obtaining repayment of receivables,

particularly when the collateral object is under dispute. On the other hand, courts also have the responsibility to ensure that enforcement does not harm third parties acting in good faith.

Regulation of Mortgage Rights Enforcement in the Indonesian Legal System

The regulation of Mortgage Rights enforcement in Indonesia is not only derived from Law Number 4 of 1996 concerning Mortgage Rights, but is also related to civil procedural law. Article 6 of the Mortgage Rights Law grants the first holder of Mortgage Rights the authority to sell the collateral object through public auction. Meanwhile, Articles 14 and 20 of the Mortgage Rights Law regulate the executorial power of the Mortgage Rights certificate, which may be enforced in the same manner as a court decision that has obtained permanent legal force (Sjahdeini, 2021).

In addition to the provisions of the Mortgage Rights Law, enforcement is also related to Article 224 of the *Herziene Indonesisch Reglement* (HIR). This provision regulates the enforcement of grosse deeds of mortgage and debt instruments that have executorial force through court assistance. In practice, Article 224 of the HIR is often used as the basis for court involvement in the enforcement of Mortgage Rights, particularly when there is a dispute over the collateral object.

Furthermore, execution auctions are also subject to regulations concerning auction implementation guidelines. These regulations aim to establish administrative order and legal certainty in the auction process. However, if there is a lawsuit or objection concerning the object to be auctioned, the auction may be postponed. This condition shows that the enforcement of Mortgage Rights does not depend solely on the norms contained in the Mortgage Rights Law, but is also influenced by procedural law provisions and judicial practice.

Disputes over Mortgage Rights Objects in Judicial Practice

Disputes over Mortgage Rights objects constitute one of the main issues in the enforcement of security rights. Such disputes may include land ownership disputes, overlapping certificates, inheritance claims, unlawful transfers of rights, and third-party opposition to execution auctions. In judicial practice, the existence of a dispute over the object of Mortgage Rights often becomes a basis for courts to postpone or annul enforcement.

Courts generally consider legal protection for third parties who claim to have rights over the collateral object. This is done to avoid losses that may arise from unlawful enforcement. Therefore, the implementation of *parate execution* in practice cannot always be carried out absolutely, even though creditors possess preferential rights under the Mortgage Rights Law (Hernoko, 2022).

In this context, the enforcement of Mortgage Rights over disputed objects is not only related to the creditor's right to obtain repayment of receivables, but also to legal protection for other parties who have an interest in the collateral object. The different applications of *parate execution* and *executorial beslag* in judicial practice indicate that issues of legal certainty remain in the Mortgage Rights enforcement system in Indonesia. Therefore, harmonization between security law norms and civil procedural law is necessary so that enforcement can be carried out effectively, fairly, and with balanced legal protection for all parties.

II. RESEARCH METHODS

This study employs a normative legal research method, also known as a normative juridical method. Normative legal research is a type of research that positions law as a set of norms, rules, principles, doctrines, and statutory systems used as the basis for addressing legal issues. This method is applied because the focus of this article is to analyze the legal regulation concerning the enforcement of Mortgage Rights, particularly the dualism between the mechanisms of *parate execution* and *executorial beslag* over disputed objects. In normative legal research, legal materials serve as the primary source of analysis because the research is directed toward examining positive legal norms, legal concepts, and their application in legal practice (Marzuki, 2021; Soekanto & Mamudji, 2009).

The approaches used in this study include the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine legal provisions governing the enforcement of Mortgage Rights, particularly Law Number 4 of 1996 concerning Mortgage Rights, the HIR/RBg, the Indonesian Civil Code, and regulations concerning auction implementation. The conceptual approach is used to understand the concepts of Mortgage Rights, *parate execution*, *executorial beslag*, legal certainty, and legal protection. Meanwhile, the case approach is used to examine judicial practice related to disputes over the enforcement of Mortgage Rights, particularly cases involving objections from debtors or third parties to the collateral object.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to Mortgage Rights and collateral enforcement, such as the Indonesian Civil Code, Law Number 4 of 1996 concerning Mortgage Rights, the HIR/RBg, regulations on auction implementation, and court decisions relevant to disputes over Mortgage Rights enforcement. Secondary legal materials are obtained from books, scholarly journals, legal articles, and previous studies discussing Mortgage Rights, *parate execution*, *executorial seizure*, legal certainty, and legal protection for creditors, debtors, and third parties. Tertiary legal materials are used as supporting materials, such as legal dictionaries, legal encyclopedias, and other reference sources that support the explanation of legal terms and concepts used in this study (Muhaimin, 2020).

The technique for collecting legal materials is conducted through library research. Library research is carried out by tracing, inventorying, and examining legal materials relevant to the issue of dualism in the enforcement of Mortgage Rights. The collected legal materials are then classified based on their relevance to the research problems, namely the legal regulation of *parate execution* and *executorial beslag*, the practice of enforcing Mortgage Rights over disputed objects, and legal certainty in the enforcement of Mortgage Rights.

The method of analysis used in this study is descriptive qualitative analysis. The analysis is conducted by systematically describing legal materials and interpreting the relationship between legal norms, legal concepts, and judicial practice. Through this analysis, the study seeks to explain how the dualism between *parate execution* and *executorial beslag* occurs in the enforcement of Mortgage Rights over disputed

objects. In addition, this analysis is also used to assess the extent to which the regulation and practice of Mortgage Rights enforcement have provided legal certainty and balanced legal protection for creditors, debtors, and interested third parties.

III. RESULTS AND DISCUSSION

Legal Regulation of Parate Execution and Executorial Beslag in the Enforcement of Mortgage Rights

The findings of this study indicate that the legal regulation concerning the enforcement of Mortgage Rights in Indonesia essentially has a strong normative basis under Law Number 4 of 1996 concerning Mortgage Rights. Mortgage Rights, as a form of security right over land, occupy a strategic position in the financing system because they provide legal protection to creditors through preferential rights and the executorial power attached to the Mortgage Rights certificate. This position makes Mortgage Rights an important instrument in ensuring repayment of receivables when debtors default (Poesoko, 2023).

The regulation of Mortgage Rights enforcement is specifically reflected in Articles 6, 14, and 20 of the Mortgage Rights Law. Article 6 grants the first holder of Mortgage Rights the authority to sell the collateral object through public auction under their own authority when the debtor defaults. This provision is known as *parate execution*, namely an enforcement mechanism that enables creditors to sell the collateral object without first obtaining a court decision. Normatively, *parate execution* is intended to create a fast, simple, and efficient mechanism for resolving non-performing loans (Hariansyah & Harun, 2024).

In addition to *parate execution*, the Mortgage Rights Law also regulates enforcement based on an executorial title. Article 14 paragraph (2) of the Mortgage Rights Law states that the Mortgage Rights certificate contains the phrase "For the Sake of Justice Based on the Almighty God." This phrase gives the certificate executorial power equivalent to a court decision that has obtained permanent legal force. Therefore, the Mortgage Rights certificate may serve as the basis for enforcement through court assistance, as also regulated in Article 20 of the Mortgage Rights Law.

Although these provisions have provided a legal basis for creditors to carry out enforcement, in practice, a dualism of enforcement mechanisms still exists. This dualism arises because the implementation of *parate execution* under Article 6 of the Mortgage Rights Law often intersects with civil procedural law, particularly Article 224 of the HIR. Article 224 of the HIR essentially places the court as the institution authorized to enforce grosse deeds or documents that possess executorial force. Consequently, in practice, the enforcement of Mortgage Rights is not always carried out directly by creditors, but may also involve the court through the mechanism of *executorial beslag* or executorial seizure.

This difference in legal construction indicates a disharmony between the norms of security law and civil procedural law. The Mortgage Rights Law provides room for creditors to carry out *parate execution* directly, whereas civil procedural law continues to place the court as the institution supervising the enforcement process. This condition becomes

more complex when the object of Mortgage Rights is under dispute, because the auction may be postponed if there is a lawsuit or objection concerning the object to be enforced (Tektona et al., 2023).

Furthermore, the enforcement of Mortgage Rights is also related to regulations concerning auctions. Auction regulations provide administrative guidelines for the sale of collateral objects through public auction. However, in practice, the existence of a lawsuit against the auction object may become a reason to postpone the auction. This shows that although creditors normatively have the right to carry out *parate execution*, such right cannot always be exercised absolutely when there is a dispute over the object of Mortgage Rights.

Thus, the findings of this study show that the legal regulation of *parate execution* and *executorial beslag* has not yet been fully harmonized. On the one hand, the Mortgage Rights Law provides creditors with ease of enforcement through *parate execution*. On the other hand, civil procedural law and judicial practice continue to position the court as an important institution in the enforcement process, particularly when the collateral object is under dispute. This disharmony has implications for legal uncertainty for creditors, debtors, and third parties with an interest in the collateral object.

Dualism in the Enforcement of Mortgage Rights over Disputed Objects in Judicial Practice

The findings of this study also indicate that the implementation of *parate execution* in judicial practice does not always operate in accordance with the purpose of the Mortgage Rights Law. Although Article 6 of the Mortgage Rights Law grants creditors direct authority to sell collateral objects through public auction, enforcement often encounters obstacles when the object of Mortgage Rights is under dispute. Such disputes may include land ownership claims, overlapping certificates, inheritance disputes, contested transfers of rights, or third-party opposition to the execution auction.

In judicial practice, there are different approaches to the implementation of *parate execution* over disputed objects. In some cases, courts continue to allow *parate execution* on the consideration that creditors possess preferential rights as holders of Mortgage Rights. This approach positions Mortgage Rights as a security right with special legal force because it grants creditors the right to receive repayment of receivables in priority over other creditors (Sjahdeini, 2021).

However, in other cases, courts tend to prioritize legal protection for third parties who claim rights over the collateral object. Under this approach, courts consider that *parate execution* cannot be carried out directly if the legal status of the collateral object remains disputed. Enforcement over an object that is still in dispute is considered to potentially cause losses to third parties acting in good faith. Therefore, courts may postpone or annul the auction until legal certainty regarding the status of the object of Mortgage Rights is obtained (Prihatanto et al., 2026).

These differing approaches reveal inconsistency in the practice of Mortgage Rights enforcement. On the one hand, courts acknowledge the existence of *parate execution* as a special right of creditors under the Mortgage Rights Law. On the other hand, courts still apply the principles of prudence and third-party protection as considerations in assessing the

legality of enforcement. This condition demonstrates that *parate execution* in practice cannot be understood as an absolute authority.

The dualism in enforcement also reflects a conflict of interests between creditors and other parties claiming rights over the collateral object. Creditors have an interest in obtaining repayment of receivables quickly through *parate execution*. Conversely, debtors or third parties have an interest in obtaining legal protection when there are alleged legal defects concerning the collateral object or auction procedures. In this context, the court often plays a balancing role between the interest of enforcement efficiency and legal protection for parties who may suffer losses.

From the perspective of economic law, this dualism affects the effectiveness of resolving non-performing loans. If enforcement is delayed due to a dispute over the collateral object, the creditor's receivables recovery process becomes ineffective. Such obstacles may increase financing risks and weaken the function of Mortgage Rights as a risk mitigation instrument in banking activities. In other words, uncertainty in enforcement does not only affect the legal relationship between creditors and debtors, but may also influence the broader stability of financing.

Based on the above discussion, the dualism between *parate execution* and *executorial beslag* in judicial practice shows that the Mortgage Rights enforcement system in Indonesia still faces problems of normative harmonization and consistency in legal application. *Parate execution* does provide convenience for creditors, but its implementation must still consider the legal status of the collateral object and the protection of third parties acting in good faith.

Legal Certainty in the Enforcement of Mortgage Rights over Disputed Objects

Legal certainty is an important aspect in the enforcement of Mortgage Rights. In the context of the rule of law, legal certainty requires that the law be applied clearly, consistently, and predictably by the parties. According to Radbruch, law must not only provide certainty, but also justice and utility (Sidharta, 2021). Therefore, the enforcement of Mortgage Rights must be able to balance the interests of creditors in obtaining repayment of receivables with legal protection for debtors and third parties.

Normatively, the Mortgage Rights Law has provided a basis for legal certainty through the regulation of *parate execution* and *executorial title*. Creditors are granted the right to sell collateral objects through public auction when debtors default. However, the findings of this study show that such legal certainty has not been fully realized in practice. Uncertainty arises due to differences in interpretation and application of law by courts regarding disputed objects of Mortgage Rights.

In some cases, auctions are still allowed because courts consider that creditors possess preferential rights protected by the Mortgage Rights Law. However, in other cases, courts postpone or annul auctions because of lawsuits filed by third parties or legal issues concerning the collateral object. These differences indicate that legal certainty in enforcement is strongly influenced by the court's assessment of the disputed status of the object of Mortgage Rights.

This inconsistency creates legal consequences for creditors. Creditors do not always obtain certainty in exercising their enforcement rights, even though they have normatively been granted the right of *parate execution* by law. On the other hand, if *parate execution* is carried out without considering the dispute over the collateral object, the enforcement may potentially harm third parties acting in good faith. Therefore, legal certainty in Mortgage Rights enforcement cannot be understood solely as certainty for creditors, but must also include certainty of protection for all interested parties.

The discussion confirms that legal certainty in the enforcement of Mortgage Rights over disputed objects needs to be built through harmonization between *parate execution* and *executorial beslag*. Such harmonization is necessary so that there are clear boundaries regarding when creditors may directly carry out *parate execution* and when enforcement must involve the court. With clearer regulation, enforcement can proceed more effectively without disregarding legal protection for debtors and third parties.

Harmonization is also necessary in judicial practice. The Supreme Court needs to provide more uniform guidelines for courts in handling disputes concerning Mortgage Rights enforcement, particularly when there is a lawsuit against the object to be auctioned. Such guidelines are important so that court decisions do not create new legal uncertainty for creditors or other interested parties. In addition, banking institutions need to apply the prudential principle in assessing the legal status of collateral objects before granting credit, so that potential disputes at the enforcement stage can be minimized.

Thus, legal certainty in the enforcement of Mortgage Rights over disputed objects cannot be achieved merely by strengthening the position of creditors. Legal certainty must also be built through balanced protection for debtors and third parties acting in good faith. Therefore, the dualism between *parate execution* and *executorial beslag* should not be positioned as an absolute contradiction, but rather as mechanisms that must be harmonized to create Mortgage Rights enforcement that is effective, fair, and legally certain.

IV. CONCLUSIONS

Based on the discussion, it can be concluded that the enforcement of Mortgage Rights in Indonesia has a strong legal basis under Law Number 4 of 1996 concerning Mortgage Rights, particularly Articles 6, 14, and 20. These provisions grant authority to creditors holding Mortgage Rights to enforce the collateral object, either through the mechanism of *parate execution* or based on the executorial title attached to the Mortgage Rights certificate. However, in practice, such enforcement cannot be separated from the provisions of civil procedural law, particularly Article 224 of the HIR, which positions the court as an institution with authority in the enforcement process. This situation indicates a dualism of regulation between *parate execution*, which normatively grants direct authority to creditors, and the mechanism of *executorial beslag*, which requires court involvement in the enforcement process. This dualism becomes increasingly apparent when the object of Mortgage Rights is in dispute. In judicial practice,

there are different judicial approaches in assessing the enforcement of disputed collateral objects. On the one hand, some court decisions continue to allow the implementation of *parate execution* on the basis that creditors holding Mortgage Rights possess preferential rights that must be protected. On the other hand, there are also decisions that postpone or annul the enforcement process on the grounds of legal protection for third parties who claim rights over the collateral object. These differing approaches demonstrate that the enforcement of Mortgage Rights has not been implemented consistently, thereby creating legal uncertainty for creditors, debtors, and third parties with an interest in the collateral object. Legal certainty in the enforcement of Mortgage Rights over disputed objects between *parate execution* and *executorial beslag* has not yet been optimally achieved. Although the Mortgage Rights Law has provided a clear normative basis through the right of *parate execution* and executorial title, judicial practice still shows inconsistency in its application. This uncertainty affects the effectiveness of resolving non-performing loans, as the process of recovering creditors' receivables may become prolonged when the collateral object is disputed. In addition, this condition may also increase financing risks in the banking sector because the function of Mortgage Rights as a risk mitigation instrument cannot operate optimally. Therefore, harmonization of regulations concerning the enforcement of Mortgage Rights is necessary, particularly in determining the boundary between the implementation of *parate execution* and the need to apply the mechanism of *executorial beslag*. Such harmonization is important to prevent multiple interpretations in practice, especially when the object of Mortgage Rights is under dispute. Lawmakers need to provide clearer provisions regarding the specific conditions under which *parate execution* may still be carried out and the circumstances that require court involvement in the enforcement process. In this way, the enforcement of Mortgage Rights can be conducted more effectively without disregarding the principle of legal protection for the parties involved. In addition to regulatory harmonization, uniformity in judicial practice is also necessary. The Supreme Court needs to formulate guidelines or regulations that can serve as a reference for courts in handling disputes concerning the enforcement of Mortgage Rights. Such guidelines are important to avoid inconsistency in court decisions and to provide legal certainty for creditors, debtors, and third parties. On the other hand, banking institutions and creditors holding Mortgage Rights also need to apply the prudential principle more optimally from the credit granting stage, particularly in examining the legal status of the collateral object. Careful examination of the collateral object will minimize the potential for disputes at the enforcement stage. Ultimately, the enforcement of Mortgage Rights must be placed within the framework of balance between legal certainty, justice, and utility. Protection of creditors as holders of Mortgage Rights is indeed important to maintain the effectiveness of resolving non-performing loans, but such protection must not disregard the rights of debtors and third parties acting in good faith. Through regulatory harmonization, consistency in judicial practice, and the application of the prudential principle in credit granting, the system of Mortgage Rights enforcement in Indonesia is expected to operate more

effectively, fairly, and provide legal certainty for all interested parties.

REFERENCES

- [1] Fadilah, N. A. (2025). Legal protection for third parties in the enforcement of Mortgage Rights. *Jurnal Yustisi*, 11(2), 120–137.
- [2] Hariansyah, M. R. Y., & Harun, M. (2024). *Parate executie* of Mortgage Rights: Decision of the North Jakarta District Court Number 561/Pdt.G/2019/PN Jkt.Utr. *Muamalah*, 10(2), 164–176.
- [3] Hemoko, A. Y. (2022). *Contract law: The principle of proportionality in commercial contracts*. Kencana.
- [4] Herziene Indonesisch Reglement (HIR).
- [5] Indonesian Civil Code.
- [6] Kurniawan, A., & Arya, D. P. (2025). The effectiveness of Mortgage Rights enforcement in resolving non-performing loans. *Commerce Law Journal*, 8(2), 211–228.
- [7] Marzuki, P. M. (2021). *Legal research* (Revised ed.). Kencana.
- [8] Muhaimin. (2020). *Legal research methods*. Mataram University Press.
- [9] Otto, J. M. (2020). *Legal certainty in developing countries*. National Law Commission.
- [10] Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for Auction Implementation.
- [11] Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines for Auction Implementation.
- [12] Poesoko, H. (2023). *Mortgage Rights law in Indonesia*. Prenadamedia Group.
- [13] Posner, R. A. (2022). *Economic analysis of law*. Wolters Kluwer.
- [14] Prihatanto, R. I., Firza, M., & Kristiwanto, G. (2026). Settlement of Mortgage Rights enforcement over disputed collateral objects between debtors and third parties. *Unes Journal of Swara Justisia*, 9(4), 734–745.
- [15] Rahardjo, S. (2021). *Legal science*. Citra Aditya Bakti.
- [16] Ramadhan, R. M. (2024). Dualism in the enforcement of Mortgage Rights between *parate executie* and court authorization. *Notaire Review*, 6(1), 88–104.
- [17] Rechtsreglement voor de Buitengewesten (RBg).
- [18] Sidharta, B. A. (2021). *Reflections on the structure of legal science*. Mandar Maju.
- [19] Siregar, D. A., & Hidayat, T. (2024). Problems of *parate execution* of Mortgage Rights over disputed objects in Indonesian judicial practice. *Jurnal Ius Constituendum*, 9(1), 55–71.
- [20] Sjahdeini, S. R. (2021). *Mortgage Rights: Principles, main provisions, and issues faced by banking institutions*. Prenadamedia Group.
- [21] Soekanto, S. (2021). *Factors influencing law enforcement*. Rajawali Pers.
- [22] Soekanto, S., & Mamudji, S. (2009). *Normative legal research: A brief overview*. Raja Grafindo Persada.
- [23] Suparji. (2021). *Security rights in financing*. UAI Press.
- [24] Tektona, R. I., Ali, M., & Suindro, A. (2023). Legal certainty of execution auctions of Mortgage Rights objects based on *parate executie*. *Jurnal Hukum dan Sosial Politik*, 1(3), 66–89.
- [25] Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.
- [26] Usman, R. (2024). *Law of land security rights: Mortgage Rights*. Literasi Nusantara Abadi Grup.