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Reforming Mortgage Execution Norms to Enhance Justice for Debtors

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Original Article

Abstract

The execution of mortgage rights under Article 6 of Law No. 4 of 1996 grants creditors direct authority to sell collateral through public auctions without requiring a court order. However, this practice frequently results in procedural violations that harm debtors and undermine the principle of justice. This study aims to analyze the legal framework governing mortgage execution, identify common procedural violations in auction practices, and propose an ideal legal protection model for debtors. Employing a juridical-normative methodology, the study analyzes relevant laws and regulations alongside case documentation. The findings reveal a significant imbalance in the legal positions of creditors and debtors, primarily due to insufficient procedural oversight. The study concludes that reforming existing norms and enhancing supervisory mechanisms for execution auctions are essential to ensure legal certainty, protect debtor rights, and promote substantive justice within Indonesia's collateral law system.

Keywords: *Mortgage Rights, Procedural Violations, Debtor Protection, and Legal Certainty*

Abstrak

Eksekusi hak tanggungan berdasarkan Pasal 6 Undang-Undang Nomor 4 Tahun 1996 memberikan kewenangan langsung kepada kreditur untuk menjual objek jaminan melalui pelelangan umum tanpa memerlukan putusan pengadilan. Namun, praktik ini sering kali menimbulkan pelanggaran prosedural yang merugikan debitur dan mengabaikan prinsip keadilan. Penelitian ini bertujuan untuk menganalisis pengaturan hukum pelaksanaan eksekusi hak tanggungan, mengidentifikasi bentuk pelanggaran prosedural dalam praktik pelelangan, serta merumuskan model perlindungan hukum yang ideal bagi debitur. Metodologi yang digunakan adalah pendekatan yuridis-normatif dengan analisis peraturan perundang-undangan dan studi dokumen terhadap sejumlah kasus. Hasil penelitian menunjukkan adanya ketimpangan kedudukan hukum antara kreditur dan debitur akibat lemahnya kontrol prosedural. Kesimpulannya, diperlukan reformulasi norma dan penguatan mekanisme pengawasan lelang eksekusi guna menjamin kepastian hukum, perlindungan hak debitur, dan keadilan substantif dalam sistem hukum jaminan kebendaan di Indonesia.

Kata kunci: *Hak Tanggungan, Pelanggaran Prosedural, Perlindungan Debitur, Kepastian Hukum*

1. INTRODUCTION

Changes in market structure are fundamentally driven by fluctuations in consumer demand for goods and services, which, in turn, create business opportunities for individuals capable of adapting to economic changes. Although the expansion of the financial services sector has opened up broader access to entrepreneurial opportunities, not all individuals are able to translate these opportunities into productive business ventures. One of the primary obstacles in realizing business ideas is limited access to capital. In this context, loans from financial institutions, particularly banks, are a commonly utilized source of initial capital for starting a business.

In practice, the extension of credit by banks invariably requires legal safeguards in the form of written credit agreements between lenders and borrowers—referred to as creditors and debtors. These agreements form the legal foundation of civil relations, as stipulated in Article 1313 of the Indonesian Civil Code (KUHPer), and are further reinforced by contract law doctrines developed by legal scholars such as Subekti. This legal relationship establishes a binding agreement outlining the rights and obligations of both parties, particularly with regard to debt repayment and the use of collateral, which functions as a manifestation of trust.

Among the most frequently utilized forms of collateral in credit agreements is a mortgage on immovable assets, especially land. Such mortgages confer executorial power upon creditors, granting first mortgage holders the legal authority to unilaterally auction off the collateral through a public auction, as provided under Article 6 of Law No. 4 of 1996 on Mortgage Rights (UUHT). This provision affords creditors a robust legal position—equivalent, in many respects, to that of a court ruling with permanent legal force. However, in practice, the execution of mortgage rights frequently gives rise to legal disputes, particularly concerning issues of procedural fairness and debtor protection. This raises critical questions regarding how the legal system should ensure equitable protection for debtors during the execution of mortgage rights, especially in terms of the creditor's obligation to uphold transparent and accountable auction procedures that reflect the true economic value of the collateral. Furthermore, it is necessary to assess the effectiveness of existing regulations—such as Ministry of Finance Regulation No. 213/PMK.06/2020 and No. 27/PMK.06/2016—in setting price limits and execution procedures that protect debtors from unjust outcomes.

The issue of non-performing loans leading to the execution of collateral has become a focal point in civil law scholarship in Indonesia. Ferdinansyah et al. examine the executorial authority granted to creditors under Article 6 of the UUHT, which permits unilateral auctions without judicial intervention. However, this provision is seen

as potentially creating an imbalance in legal power between creditors and debtors.¹ Sabila et al. emphasize the importance of conducting auctions that take into account fair market values and price limits to prevent harm to debtors.² Similarly, Hutapea argues that creditors' negligence in setting auction prices below market value constitutes a form of misconduct that can lead to tangible financial losses for debtors.³

Further studies by Haddina and Budhiawan and Lumare and Djajaputra highlight the urgency of ensuring legal protections for debtors, particularly in instances where collateral is auctioned below market value. These scholars underscore the need for establishing limit values based on official appraisals and fair market estimates as part of the creditor's legal duty.⁴ Prasetyo et al. and Nofiyanti et al. contend that non-compliance with auction procedures not only results in disputes but also reflects the inadequacy of the national legal framework in delivering substantive justice to debtors. In fact, their findings suggest that judicial institutions lack consistent guidelines for adjudicating disputes arising from credit default-related auction executions.⁵

Previous research has predominantly focused on the normative and legal dimensions of mortgage execution, particularly with reference to the provisions of Article 6 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT). However, a significant research gap remains—namely, the lack of critical inquiry into the imbalance of legal positions between debtors and creditors in the practical implementation of mortgage execution. This includes insufficient attention to unfair auction procedures that may violate the principles of proportionality and legal protection, as well as the absence of normative evaluation of ambiguous provisions within the UUHT. A key example is the interpretation of the “right to sell under one’s own authority,” which is frequently exploited by creditors under the guise of efficiency and legal certainty.

Moreover, there has been limited scholarly work examining the urgency of reconstructing the normative framework of mortgage execution in the context of

¹ Ferdinansyah Ferdinansyah, M.S. Tumanggor, and Noviriska Noviriska, “Perlindungan Hukum Terhadap Debitur Atas Eksekusi Hak Tanggungan Dalam Penyelesaian Kredit Bermasalah,” *Action Research Literate* 8, no. 4 (2024): 823–32, <https://doi.org/10.46799/ar.v8i4.281>.

² Putri Reyvita Ridha Sabila et al., “Perlindungan Hukum Bagi Debitur Terhadap Eksekusi Hak Tanggungan Akibat Kredit Macet,” *Jurnal Education and Development* 11, no. 1 (2022): 275–79, <https://journal.ipts.ac.id/index.php/ED/article/view/4456>.

³ Jessica A Putri Hutapea, “Perlindungan Hukum Terhadap Debitur Atas Lelang Eksekusi Hak Tanggungan Yang Tidak Mencapai Nilai Maksimum,” in *National Conference on Law Studies*, vol. 2 (Jakarta: Universitas Pembangunan Nasional Veteran Jakarta, 2020), 448–63, <https://conference.upnvj.ac.id/index.php/ncols/article/view/1493>.

⁴ Murni Haddina and Adlin Budhiawan, “Perlindungan Hukum Terhadap Harta Debitur Sebagai Objek Jaminan Hak Tanggungan: Studi Putusan No. 126/Pdt.G/2019/PN Kpn,” *Jurnal Preferensi Hukum* 4, no. 2 (2023): 193–201, <https://doi.org/10.22225/jph.4.2.7224.193-201>; Lawrina Cristi Natalia Lumare and Gunawan Djajaputra, “Identifikasi Perlindungan Hukum Terhadap Debitur Atas Pelaksanaan Lelang Berdasarkan Undang-Undang Hak Tanggungan,” *Unes Law Review* 6, no. 1 (2023): 2003, <https://doi.org/10.31933/unesrev.v6i1>.

⁵ Bony Prasetyo, Hartana Hartana, and G. Nyoman Tio Rae, “Perlindungan Hukum Terhadap Debitur Pemilik Jaminan Dalam Penyelesaian Sengketa Lelang Hak Tanggungan Apabila Kreditur Beritikad Tidak Baik,” *Jurnal Global Ilmiah* 2, no. 2 (2024): 893–900, <https://doi.org/10.55324/jgi.v2i2.140>; Dwi Nofiyanti et al., “Perlindungan Hukum Bagi Debitur Akibat Wanprestasi Terkait Pelaksanaan Lelang Eksekusi Hak Tanggungan Dibawah Nilai Jual/Limit Terhadap Obyek Jaminan,” *Innovative: Journal of Social Science Research* 4, no. 5 (2024): 4221–31, <https://doi.org/10.31004/innovative.v4i5.15135>.

distributive justice—emphasizing a fair balance between the rights of creditors, who hold preferential security interests, and debtors, who face the risk of disproportionate asset loss. The originality of this research lies in its constructive critique of Article 6 of the UUHT and its emphasis on ensuring legal protection for debtors by positioning the principle of justice as the primary lens through which mortgage execution should be assessed.

Unlike previous studies that rely solely on a normative legal approach, this research integrates a broader perspective by embedding legal analysis within the framework of substantive justice, particularly for vulnerable parties. Based on the background and problem identification outlined above, this study aims to: (1) analyze the legal framework governing mortgage execution under Article 6 of the UUHT, especially in the context of resolving non-performing loans by banking institutions; (2) identify procedural violations in the practice of collateral auctions conducted by creditors that result in legal injustice for debtors; and (3) examine and formulate an ideal model of legal protection for debtors that can prevent abuse of authority by creditors and support normative improvements within the UUHT.

2. RESEARCH METHODOLOGY

This study employs a normative legal approach enriched with a critical-constructive perspective, aiming to evaluate the provisions of positive law and the practical implementation of mortgage right executions by banking institutions under Article 6 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT). The normative approach is utilized to analyze written legal norms, including statutes, regulations, jurisprudence, and legal doctrines. In contrast, the critical-constructive approach is applied to investigate practical issues and to propose a substantively just model for legal reform.

This research is doctrinal in nature, with both prescriptive and evaluative dimensions. It is prescriptive in its effort to formulate ideal legal norms that uphold procedural justice, and evaluative in its analysis of legal gaps, ambiguities, and inconsistencies in the current regulatory framework. Several methodological approaches are employed: the statutory approach, to analyze the UUHT and related technical regulations such as those issued by the Ministry of Finance (PMK) and the Financial Services Authority (OJK); the conceptual approach, to explore relevant legal theories and principles of justice; the case approach, through the analysis of judicial decisions related to mortgage executions; and historical and comparative approaches, to trace the origins of mortgage law and compare implementation practices in countries such as the Netherlands and Malaysia.

The legal materials used in this study include primary sources (such as the UUHT, the Indonesian Civil Code, and jurisprudence), secondary sources (including academic literature and peer-reviewed legal journals), and tertiary sources (such as legal

dictionaries and encyclopedias). Data collection is conducted through library research, while data analysis follows a qualitative, descriptive-argumentative method, using both deductive and inductive reasoning. Source triangulation is employed to ensure data validity and interpretive accuracy. Special emphasis is placed on reconstructing the normative content of Article 6 of the UUHT in accordance with the principles of distributive and corrective justice.

3. RESEARCH RESULT AND DISCUSSION

3.1. Regulatory Framework for the Execution of Mortgage Rights under Article 6 of Law No. 4 of 1996 in the Resolution of Non-Performing Loans

This study seeks to analyze the regulatory framework governing the execution of Mortgage Rights under Article 6 of Law No. 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects (UUHT), with particular emphasis on its application in resolving non-performing loans (NPLs) by banking institutions. The research also explores the relevance of these legal provisions in ensuring the effectiveness of execution processes, protecting creditor rights, and upholding legal certainty in banking dispute resolution.

Based on empirical findings from three branch offices of national banks, as well as a review of execution application documents submitted to the courts and the State Assets and Auction Service Office (KPKNL), it is evident that Article 6 of the UUHT—which grants mortgage holders the authority to sell collateral through a public auction without requiring a court judgment—serves as the primary legal basis for banks in addressing problematic credit. However, practical implementation remains hindered by several challenges, including bureaucratic delays at the KPKNL, incomplete or unprepared auction documentation, and debtor objections that frequently result in litigation.

In practice, banking creditors typically rely on the executorial clause embedded in the Mortgage Right Certificate, as stipulated in Article 14(2) of the UUHT. To initiate an auction, the bank must submit a formal request to the KPKNL, supported by key documents such as a warning letter (*somasi*), a declaration of default, an appraisal report of the collateral, and an official appointment letter for the auctioneer. Despite this procedural clarity, execution efforts are often obstructed when debtors file objections or counterclaims (*verzet*), leading the KPKNL to postpone auction proceedings.

This study affirms that, from a normative standpoint, Article 6 of the UUHT offers a robust and efficient legal foundation for collateral execution without the need for judicial intervention. Nonetheless, the actual effectiveness of this provision depends significantly on the administrative readiness of the banking institution, adherence to formal procedures, and the coordination with KPKNL regulations governing auction

implementation. Moreover, debtor resistance through litigation frequently undermines the enforcement power envisioned by Article 6.

These findings align with prior research by Hadisantoso, who noted that although creditors holding Mortgage Rights possess preferential claims in debt repayment, state receivables and debtor resistance remain significant barriers to execution.⁶ Similarly, Kanter et al. observed that private (underhand) sales, as regulated under Article 20(2) of the UUHT, are seldom used due to the requirement for mutual agreement and prolonged procedures for notification and publication, rendering them less efficient than public auctions.⁷ Pratiwi and Mahmudah emphasized that the completeness of auction application documents—including warning letters and collateral appraisals—is a crucial determinant in KPKNL’s acceptance of execution requests.⁸ In this context, the present study reinforces the conclusion that internal compliance mechanisms and the administrative capacity of banking institutions play a critical role in the successful implementation of Mortgage Right executions.

The findings of this study indicate that the execution mechanism established under Article 6 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT) operates on a semi-executory basis. In this framework, the phrase “For Justice Based on the Almighty God” inscribed on the Mortgage Right Certificate is deemed sufficient to authorize the execution of collateral through public auction. However, in practice, judicial intervention and debtor objections frequently disrupt this mechanism, effectively reverting the process to a litigation-based model.

Consequently, the role of the State Assets and Auction Service Office (KPKNL) as the executing authority becomes pivotal and must be supported by enhanced competencies of the appointed auction officials. As stipulated in Article 17 of Minister of Finance Regulation No. 27/PMK.06/2016, the auction official is responsible for verifying the authenticity of ownership and collateral documents and ensuring the continuity and legality of the auction process. Nonetheless, inadequate oversight and limitations in human resource capacity frequently hinder timely execution, leading to procedural delays. Based on the above findings, the following conclusions can be drawn:

- a) Article 6 of the UUHT provides a strong legal foundation for creditors to execute collateral independently of the court, enabling expedited resolution of non-performing loans. However, this provision must operate synergistically with other

⁶ Antonius Bernardus Hadisantoso, “Perlindungan Hukum Kreditor Pemegang Hak Tanggungan Terhadap Obyek Hak Tanggungan Yang Diletakkan Sita Jaminan: Analisis Putusan Pengadilan Negeri Jakarta Timur Nomor 321/PDT.G/2012/PN.JAKTIM Dan Nomor 211/PDT.G/2014/PN.JAK.TIM,” *Sapientia et Virtus* 3, no. 2 (2018): 104–21, <https://doi.org/10.37477/sev.v3i2.180>.

⁷ Anjel Ria Meiliva Kanter, Mochammad Bakri, and Imam Koeswahyono, “Keabsahan Jual Beli Atas Objek Jaminan Hak Tanggungan Oleh Bank Yang Dilakukan Tanpa Melalui Mekanisme Lelang,” *Perspektif Hukum* 17, no. 1 (2017): 46–64, <https://doi.org/10.30649/ph.v17i1.58>.

⁸ Widya Sari Pratiwi and Siti Mahmudah, “Implementasi Parate Eksekusi Sebagai Penyelesaian Kredit Bermasalah Pada Bank,” *Pamali: Pattimura Magister Law Review* 4, no. 3 (2024): 311–23, <https://doi.org/10.47268/pamali.v4i3.2326>.

- related articles—particularly Articles 20 and 26 of the UUHT—to ensure procedural coherence.
- b) The effectiveness of mortgage execution is highly contingent on the completeness and readiness of supporting documentation, as well as the quality of coordination between banking institutions and the KPKNL.
 - c) Debtor-initiated legal resistance—such as the filing of lawsuits—can significantly undermine the implementation of Article 6, as courts frequently respond by suspending or delaying auction proceedings.
 - d) Underhand sales, although theoretically capable of producing optimal value for both creditors and debtors, remain underutilized due to their procedural complexity and the requirement for mutual consent between the parties.
 - e) Creditor protection within the current execution framework requires regulatory refinement to harmonize the authority of the KPKNL with the legal force of the Mortgage Right Certificate (HT certificate), thereby avoiding conflicting interpretations and authority overlaps.
 - f) Legal certainty and substantive justice can only be achieved when the auction-executing institution possesses integrity, technical competence, and effective supervisory mechanisms to ensure lawful, transparent, and efficient execution processes.

In light of these conclusions, there is a pressing need for legislators to consider drafting a dedicated legal framework specifically governing the execution of Mortgage Rights. Such legislation should be operational in nature and adaptable to practical field conditions. It should clarify the legal standing of the HT certificate as a sufficient basis for execution and facilitate expedited resolution of debtor objections through pretrial mechanisms or alternative dispute resolution platforms. By enhancing administrative procedures, upgrading the competencies of auction officials, and strengthening coordination among the courts, KPKNL, and financial institutions, Article 6 of the UUHT has the potential to serve as a highly effective legal instrument for resolving non-performing loans without generating further disputes.

3.2. Procedural Violations in the Auction of Collateral Objects by Creditors

This study seeks to identify the types of procedural violations committed by creditors during the auction of collateral assets and to evaluate their implications for the legal protection of debtors. The primary focus is on how non-compliance with applicable legal norms—particularly the Mortgage Law (UUHT) and its implementing regulations—undermines the principles of legal certainty, justice, and fairness in execution practices, thereby resulting in legal and social injustices for debtors.

The research findings reveal five prevalent forms of procedural violations committed by creditors during collateral auctions:

1) Absence of a Warning Letter (Surat Peringatan/SP) Prior to Execution

In numerous cases, creditors proceeded to request an auction without issuing a series of warning letters as mandated by banking regulations and customary practice (typically three stages). This conduct violates the principle of good faith under contract law and disrupts the assurance of legal certainty in the execution process.

2) Failure to Meet Administrative Requirements for Auction Implementation

Some auctions were initiated despite the absence of essential administrative documents, including the Land Ownership Information Statement (SKPT), original land certificates, or other documents substantiating the validity of the collateral and the creditor's legal control over the object. Disregarding these requirements increases the risk of third-party legal claims and undermines the legitimacy of the auction.

3) Non-Transparent or Improper Auction Announcements

Several cases involved auction announcements that were conducted in a closed manner—limited to specific parties—or did not adhere to the publication timeline as mandated by Regulation of the Minister of Finance (PMK) No. 27/PMK.06/2016. Such practices result in suboptimal bidding prices, ultimately causing economic harm to the debtor.

4) Execution of Auctions Without Physical Control Over the Collateral

Creditors were found to auction off collateral objects that they did not yet physically control, despite this being a fundamental prerequisite for auction execution. This procedural defect exposes the process to legal challenges by debtors or third parties on the grounds of invalid execution.

5) Execution of Auctions Despite Pending Third-Party Lawsuits

Some auctions were carried out even though a third party had filed an ownership claim in court. In contravention of Article 30 of PMK No. 27/2016, such auctions should be suspended to avoid potential legal disputes concerning ownership rights.

These procedural violations have significant consequences for the realization of substantive justice. Failure to adhere to statutory auction procedures compromises not only the formal legality of the execution process but also infringes upon debtors' constitutional rights to fair and equitable legal protection. This form of institutional non-compliance constitutes a breach of the principle of due process of law.

These findings are consistent with prior research by Maskanah et al., which reports that collateral executions by banks frequently occur without rigorous oversight from auction officials, leading to civil disputes and, in some instances, criminal complaints.⁹ Similarly, Pranoto and Soemartono argue that the absence of persuasive measures—such as the issuance of warning letters—demonstrates the dominant and often unchecked power held by creditors in an imbalanced creditor-debtor relationship.¹⁰

The findings of this study reveal that the execution system based on Article 6 of the Mortgage Law (UUHT) employs a semi-executory approach, wherein the inscription “For the Sake of Justice Based on the Belief in the One and Only God” on the mortgage certificate serves as a sufficient legal basis for conducting collateral auctions. However, this study broadens the analytical scope by examining technical-administrative dimensions and the involvement of third parties in the execution process—areas often overlooked in previous research. Moreover, the study underscores the necessity of interpreting the principle of legal protection not only from a procedural standpoint but also within the socio-economic context of debtors who are deprived of property due to procedural violations.

Procedural violations committed by creditors can be characterized as abuses of rights—specifically, the misuse of legal entitlements that are expected to be exercised in good faith and in accordance with principles of justice. When banks, as financial institutions, execute collateral without fulfilling formal requirements—such as issuing prior warning letters (SP), conducting open and public auction announcements, and verifying the legal standing of auction documents—the resulting process is legally flawed and vulnerable to annulment by court ruling.

From the standpoint of administrative and auction law, conducting auctions in violation of Regulation of the Minister of Finance (PMK) No. 27/PMK.06/2016 constitutes a breach of the principle of administrative legality. Auction officers, as executors of state administrative authority, are duty-bound to reject auction processes that fail to meet formal procedural standards in order to preserve legal accountability. Execution practices that disregard the socio-economic conditions of debtors and lack transparency contribute to the structural marginalization of vulnerable groups—an outcome fundamentally at odds with the mission of consumer protection and the principles of distributive justice within the Indonesian legal system. Key findings of this study underscore the following:

1) Systemic Impact of Procedural Non-Compliance

⁹ Umami Maskanah et al., “Peran Dan Tanggung Jawab Pemerintah Dalam Mengawasi Lelang Non Eksekusi Wajib Di Indonesia,” *Judge: Jurnal Hukum* 5, no. 2 (2024): 306–14, <https://doi.org/10.54209/judge.v5i02.585>.

¹⁰ William Sudassi Akanittha Pranoto and Gatot P. Soemartono, “Legal Certainty of Creditor’s Rights in The Fiduciary Agreement,” *Unes Law Review* 6, no. 1 (2023): 3054–68, <https://doi.org/10.31933/unesrev.v6i1.1097>.

Failure to comply with formal auction procedures not only renders the auction legally defective but also fosters repeated disputes, erodes public trust in the financial system, and exposes auction officials and financial institutions to legal liabilities.

2) Lack of Internal Oversight Mechanisms

The absence of effective supervision by regulatory authorities such as the Financial Services Authority (OJK) and the State Asset Management and Auction Service Office (KPKNL) has enabled arbitrary practices by creditors, particularly in determining auction timing, reserve pricing, and buyer selection. This undermines the debtor's bargaining position and increases the potential for injustice.

3) The Need to Incorporate Restorative Justice Principles in Debt Resolution

An execution model focused solely on procedural legality, without allowing room for debt restructuring or renegotiation, can adversely affect the economic recovery of debtors and their families. Auction should function as a last resort, not as the default mechanism for resolving non-performing loans.

4) Legal Reform in Execution Auction Governance

Reform measures should mandate procedural due diligence by auction officials, ensure auction transparency through mechanisms accessible to public scrutiny, and enforce administrative or criminal sanctions against violations committed by sellers—including banks.

5) Affirmative Legal Protections for Debtors

As the structurally weaker party, debtors must have access to legal assistance and an effective appeal mechanism to contest auction outcomes—both through judicial processes and through non-litigation avenues such as the OJK or the Consumer Dispute Resolution Agency (BPSK), which are mandated to address individual financial disputes.

3.3. Ideal Legal Protection for Debtors in Mortgage Right (HT) Execution Practices

This study aims to analyze the implementation of collateral auctions arising from the execution of Mortgage Rights (Hak Tanggungan/HT) by creditors, identify legal loopholes that enable abuses of authority, and propose a model of ideal legal protection for debtors. This objective is particularly urgent given the persistence of execution practices that fail to comply with procedural legal standards, resulting in injustice to

debtors—especially in the context of weak oversight by the State Asset Management and Auction Service Office (KPKNL) and the judiciary.

The study identifies two dominant patterns of abuse of authority by creditors in the execution process:

- 1) Inconsistencies in Administrative Procedure

Numerous auctions are conducted without the issuance of formal written warning letters (Surat Peringatan/SP) to debtors, as required by auction regulations—particularly those mandated as supporting documents for submission to KPKNL. This procedural lapse denies debtors the opportunity to repay their obligations voluntarily before the auction is carried out, violating the principle of fair notice.

- 2) Manipulation of Reserve Prices (Limit Value)

Creditors, who are authorized to set the reserve price of the collateralized asset, frequently establish values significantly below market prices to expedite the auction process. Such practices undermine the debtor's right to equitable treatment and result in financial harm due to the undervaluation of auctioned property.

Furthermore, the study reveals that the current legal framework under the UUHT lacks explicit provisions for supervisory mechanisms and administrative sanctions applicable to creditors or auction officials who violate established procedures. The absence of an independent supervisory authority further exacerbates the potential for unchecked abuses of power. The findings indicate that the existing legal protection system for debtors in the execution of Mortgage Rights in Indonesia remains fragmented and reactive. Although the UUHT serves as the principal legal instrument governing mortgage execution, it fails to establish clear due process standards—particularly with regard to document verification, fair asset valuation, and debtor participation in auction-related decisions. While Article 20 of the UUHT provides for underhand sales (*penjualan di bawah tangan*) as an alternative to public auctions, such provisions are seldom implemented due to their non-mandatory nature and the absence of mechanisms for market price oversight.

Accordingly, this study recommends substantive reforms to legal norms to ensure not only the protection of creditors' rights but also the fulfillment of debtors' rights to a fair, transparent, and proportionate execution process. These reforms should aim to establish due process guarantees and oversight mechanisms that prevent arbitrary actions during mortgage execution.

This study corroborates previous findings, which observed that the execution of Mortgage Rights is often conducted hastily and without procedural integrity—

particularly concerning auction announcements and debtor notifications.¹¹ However, it advances the discourse by proposing a preventive model of legal protection, moving beyond a solely repressive approach. Unlike prior studies that largely adopt a normative-legal perspective, this research emphasizes a procedural fairness framework and the prudential principle in executing collateral. These approaches are proposed as vital strategies for restoring public confidence in Indonesia's land administration and banking legal systems.

The findings of this study reveal that the imbalance between creditors and debtors in debt agreements extends beyond the contractual dimension and into the execution phase. When creditors initiate execution through the State Asset Management and Auction Service Office (KPKNL), the debtor is left with virtually no opportunity to defend their rights if the procedural requirements are deemed administratively complete—even when such execution contradicts substantive justice. This reflects a critical shortcoming in the application of the principle of proportional legal protection, which should be a cornerstone of a modern legal system.

The execution authority attached to the Mortgage Right (Hak Tanggungan/HT) certificate functions as a dominant legal instrument that significantly weakens the debtor's bargaining power. Therefore, a reformulation of the legal norms within the UUHT is imperative to enhance preventive legal protection mechanisms, rather than relying solely on reactive measures such as post-auction litigation. Based on the analytical findings, an ideal model of legal protection for debtors in the execution of Mortgage Rights should be grounded in three essential components:

- 1) Open Verification by an Independent Institution

An independent body, separate from both the KPKNL and the judiciary, should be established to evaluate the legitimacy of auction applications. This institution would be responsible for verifying the legality of the process, the fairness of the reserve (limit) price, and the validity of the execution documents. It would serve as a neutral intermediary to balance the interests of both creditors and debtors.

- 2) Integrated Three-Stage Warning System

Creditors must demonstrate that they have issued three successive written warning letters (Surat Peringatan) to the debtor, and that these letters were lawfully

¹¹ Elisabeth Putri Hapsari, "Eksekusi Objek Hak Tanggungan Untuk Pelunasan Kredit Macet," *Legalitatum* 1, no. 1 (2019): 1–10, <https://ejournal2.undip.ac.id/index.php/otentik/article/view/7129>; Marnita Marnita, "Eksekusi Jaminan Hak Tanggungan Sebagai Upaya Penyelesaian Pembiayaan Bermasalah: Studi Pada PT Bank Muamalat Indonesia Cabang Lampung," *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 3 (2016): 525–44, <https://doi.org/10.25041/fiatjustisia.v10no3.791>.

received.¹² Proof of this process must accompany the auction application and be verified electronically by either the KPKNL or the independent verification body.

3) Debtor's Right to Contest Unreasonable Limit Values

The HT Law should mandate a deliberation process between creditors and debtors to jointly determine the reserve price, particularly in cases where asset values have declined. In the absence of an agreement, the limit value should be determined by a jointly appointed independent appraiser.¹³

This proposed model not only strengthens procedural fairness but also functions as a preventive mechanism against the violation of debtor rights, encouraging creditors to exercise their execution rights with greater caution and ethical consideration. A significant finding of this study is that the current implementation of HT execution auctions tends to be overly administrative and formalistic. This creates significant opportunities for the abuse of authority by creditors, especially in the absence of effective supervisory mechanisms. The provisions outlined in Articles 20 and 26 of the UUHT are inadequate to safeguard debtor rights, as they do not provide an interactive evidentiary mechanism or a forum for pre-execution verification.

Accordingly, a revised legal protection framework must incorporate the principles of procedural justice, value transparency, and active debtor participation in the auction process. Embedding this framework as a mandatory provision within the UUHT revision would not only balance creditor and debtor rights but also enhance the integrity and credibility of Indonesia's mortgage execution system.

4. CONCLUSION

This study aims to analyze the legal provisions governing the execution of mortgage rights under Article 6 of Law No. 4 of 1996 concerning Mortgage Rights (Undang-Undang Hak Tanggungan/UUHT), particularly in the context of resolving non-performing loans by banking institutions. The study also seeks to identify forms of procedural violations in the practice of collateral auctions conducted by creditors and to formulate an ideal legal protection model for debtors—one that prevents abuse of creditor authority and promotes normative improvements within the UUHT framework. The findings reveal that Article 6 of the UUHT grants creditors direct authority to execute collateral without judicial involvement. However, in practice, this

¹² Ni Made Shinta Teja Paramitha and I Ketut Markeling, "Eksistensi Surat Peringatan Kreditur Kepada Debitur Terkait Kredit Macet Dan Eksekusi Hak Tanggungan Melalui Lelang," *Kertha Semaya: Journal Ilmu Hukum* 2, no. 2 (2014): 1–16, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/42596>.

¹³ Deity Yuningsih et al., "Penerapan Asas Keadilan Terhadap Penetapan Limit Pada Proses Pelelangan Hak Tanggungan Di Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKLP) Kota Kendari," *Halu Oleo Legal Research* 4, no. 2 (2022): 149–167, <https://doi.org/10.33772/holresch.v4i2.41>.

authority is frequently misused through procedural violations such as invalid auction notifications, setting reserve (limit) prices below fair market value, and disregarding the debtor's right to contest the execution. These practices contribute to a structural imbalance in the legal standing between creditors and debtors, resulting in substantive injustice.

This study highlights the urgent need for a reformulation of the relevant norms in the UUHT by incorporating principles of procedural justice, transparency, and the establishment of an independent auction verification mechanism. These reforms are essential for ensuring a fairer execution process and safeguarding debtor rights in line with modern legal standards. The theoretical and practical contributions of this research lie in its potential to strengthen Indonesia's collateral legal system and enhance the protection of debtors facing execution. However, the study is limited by its juridical-normative approach, which does not extensively explore empirical dimensions. Therefore, future research should adopt a socio-legal approach supported by multi-site case studies to better understand the diverse practices across different regions. Additionally, comparative legal analysis with other jurisdictions is recommended to enrich the proposed model of debtor protection in the context of mortgage execution.

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