

Execution of Second-Rank Mortgage Rights Due to breach of contract at PT Bank Sulutgo

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Abstract

This study aims to analyze the effectiveness of Article 20, Paragraph (2) of Law Number 4 of 1996 on Mortgage Rights in the execution of mortgage guarantees due to Breach Of Contract, with a focus on the case of PT Bank Sulutgo. The main issue examined is the challenges in executing Second-Rank Mortgage Rights when multiple creditors are involved, as well as the legal uncertainty surrounding the private sale mechanism. This research employs an empirical juridical method with a socio-legal approach, combining document studies and interviews with relevant parties at PT Bank Sulutgo and analyzing using grammatical interpretation and systematic interpretation. The findings indicate that execution through public auction often encounters administrative and legal obstacles, particularly concerning the position of the Second-Rank Mortgage Rights holder, who is dependent on the First-Rank Mortgage Rights holder. Furthermore, the lack of clear regulations regarding the execution of Second-Rank Mortgage Rights leads to multiple interpretations in practice. As an alternative, private sales provide a more flexible solution; however, in the case of PT Bank Sulutgo, this mechanism negatively impacts other debtors who still have outstanding credit obligations. This study concludes that the effectiveness of Article 20, Paragraph (2) of the Mortgage Rights Law remains weak in providing legal certainty for Second-Rank Mortgage Rights holders. Therefore, more detailed regulations on the execution mechanism of Second-Rank Mortgage Rights are necessary to ensure legal protection for all parties involved.

keywords:

Effectiveness; Execution Of Mortgage Rights; Banking Law; Breach Of Contract.

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A. Introduction

Banking institutions in Indonesia are currently experiencing progress.¹ The primary activity of a bank is to collect funds from the public and redistribute them through credit.² This credit facility is highly sought after by business actors, as it is particularly helpful in providing additional business capital. Credit activities by banks are highly profitable if managed properly and cautiously.³ However, these activities also carry significant risks, as most of the funds come from public deposits.⁴ It is important to note that lending must be accompanied by strict risk management and a reliable system. The risk in question refers to the possibility of a debtor being unable to pay installments or settle their credit due to unforeseen circumstances. One of the ways banks mitigate the risk of non-performing loans is by conducting a 5C analysis (Character, Capacity, Capital, Collateral, and Condition).⁵

Character refers to the personal traits or nature of the customer, both in their personal life and business environment. Capacity is the prospective customer's ability to run their business in order to generate the expected profit. Capital represents the amount of funds or personal equity owned by the prospective customer. Condition refers to the political, socio-economic, and cultural circumstances that influence the economic environment, which may, at some point, impact the smooth operation of the prospective customer's business.⁶ Meanwhile, Collateral refers to assets pledged by the borrower to the lender as security until the loan is repaid. If the borrower fails to meet their payment obligations, the lender, by law, has the right to seize the collateral and sell it to settle the debt.⁷ In other words, Collateral, also known as security, is a form of debt repayment guarantee provided by the borrower to the lender. Its function is to strengthen the lender's confidence that the loan granted will be repaid. Although Collateral plays a crucial role in the lending process, it is not the sole factor to consider; the other four principles must also be taken into account.

¹ Khoirun Niswah and Khairina Tambunan, "Analisis Strategi Manajemen Bank Syariah Indonesia Dalam Meningkatkan Market Share Melalui Pemanfaatan Teknologi Informasi," *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam* 3, no. 6 (August 6, 2022): 1272–89, <https://doi.org/10.47467/elmal.v3i6.1210>

² Liza Amelia and Doni Marlius, "PENGENDALIAN KREDIT DALAM UPAYA MENCIPTAKAN BANK YANG SEHAT PADA PT. BANK PEMBANGUNAN DAERAH SUMATERA BARAT CABANG UTAMA PADANG," December 4, 2018, <https://doi.org/10.31227/osf.io/kpc64>.

³ Ida Bagus Angga Wijaya Putra and I Komang Agus Ariana, "PENGEMBANGAN USAHA MIKRO, KECIL DAN MENENGAH TERHADAP PENYALURAN KREDIT USAHA RAKYAT," *Jurnal Abdimas Gorontalo* 7, no. 1 (December 30, 2024): 28–34, <https://doi.org/https://doi.org/10.30869/jag.v7i1.1357>.

⁴ Muhamad Djumhana, *Hukum Perbankan Di Indonesia* (Bandung: PT Citra Aditya Bakti, 2012) Hlm. 39.

⁵ Lailatul Jamilah, "Analisis Aplikasi Prinsip 5C Terhadap Penyaluran Kredit Modal Kerja PT Bank Rakyat Indonesia (Studi Kasus Pada PT Anugerah Surya Cemerlang Sejati Malang)," *Jurnal Ilmiah Mahasiswa FEB* 3, no. 2 (April 8, 2016): 1–9, <https://jimfeb.ub.ac.id/index.php/jimfeb/article/view/2221>.

⁶ Qomariyah Qomariyah, "ANALISIS APLIKASI 5C (CHARACTER, CAPACITY, CAPITAL, CONDITIONAL, AND COLLATERAL) PADA PEMBIAYAAN MURABAHAH DI BMT MANDIRI UKHUWAH PERSADA," *El-Qist: Journal of Islamic Economics and Business (JIEB)* 5, no. 2 (October 25, 2015): 1112–24, <https://doi.org/10.15642/elqist.2015.5.2.1112-1124>.

⁷ Thivany Icci Sumangando and Grace B. Nangoi, "EVALUATION OF THE INTERNAL CONTROL APPLICATION FOR THE PROCESS OF ACCEPTANCE AND RETURN OF COLLATERAL AT PT. PEGADAIAN (PERSERO) UPC RATAHAN," *Jurnal EMBA: Jurnal Riset Ekonomi, Manajemen, Bisnis Dan Akuntansi* 3, no. 2 (July 22, 2015): 375–499, <https://doi.org/https://doi.org/10.35794/emba.3.2.2015.8577>.

In banking practice, to secure the funds provided by the creditor to the debtor, an additional specific guarantee is required, commonly in the form of real property collateral, such as land.⁸ Thus, if the debtor fails to fulfill their obligations, the funds can be executed, and the proceeds can be used to settle the debtor's debt to the creditor. One of the most effective and secure forms of credit collateral is the Mortgage Right.⁹ Article 1 paragraph (1) of the Mortgage Law regulates:

“Mortgage Right is a security right imposed on land rights as intended in Law No. 5 of 1960 on the Basic Agrarian Law, along with or without other objects that are integral to the land, for the settlement of a specific debt, which grants priority status to a particular creditor over other creditors”.

Based on this article, it can be explained that the Mortgage Right is a security right for debt settlement used to encumber collateral such as land, along with or without buildings, plants, and works related to the land, whether existing or to be created in the future. The regulation regarding the encumbrance of collateral is stipulated in Law No. 4 of 1996 on Mortgage Rights and Objects Related to Land, hereinafter referred to as the Mortgage Law (UUHT). This mortgage is made by a notary in accordance with the authority of his position.¹⁰

The ease provided by the Mortgage Law (UUHT) for creditors holding Mortgage Rights when the debtor Breach Of Contracts includes, among other things, the Execution Auction of the Mortgage Rights. This is also based on Article 6 of the Mortgage Law, which regulates:

“If the debtor Breach Of Contracts, the holder of the first Mortgage Right has the right to sell the object of the Mortgage Right on their own authority through a public auction and recover the debt from the proceeds of the sale”.

The creditor, as the holder of the Mortgage Right, may sell the object of the Mortgage Right through a public auction without requiring further approval from the giver of the Mortgage Right and then recover the debt from the proceeds of the sale (*parate executie*). *Parate executie* is an execution carried out by the holder of the security right on their own, without the assistance or intervention of the district court, but solely based on the assistance of the State Auction Office.¹¹ The State Wealth and Auction Service Office, hereinafter referred to as KPKNL, is a vertical agency under the Directorate General of State Wealth and Auction (DJKN), which is subordinate to and directly responsible to the Head of the Regional Office. The Auction Officer is an employee of KPKNL who is authorized by law to conduct the sale of goods through auction. Therefore, if there is a court decision or order, a provision, or a statutory directive that mandates the sale of goods by auction, or if the sale of private property belonging to an individual or a legal

⁸ Agus Yudha Hernoko, “Lembaga Jaminan Hak Tanggungan Sebagai Penunjang Kegiatan Perkreditan Perbankan Nasional” (Tesis, Universitas Airlangga, 1998) Hlm. 7-8.

⁹ Herowat Poesoko, *Dinamika Hukum Parate Executie Obyek Hak Tanggungan* (Yogyakarta: Aswaja Pressindo, 2023) Hlm. 3.

¹⁰ Zenza Bronica Iman, Patricia Audrey Ruslijanto, and Arini Jauharoh, “The Urgency of Regulating the Measure of Violation in Terms of Sanctioning Notary,” *NEGREI: Academic Journal of Law and Governance* 4, no. 2 (November 25, 2024): 203–22, <https://doi.org/10.29240/negrei.v4i2.11406>.

¹¹ Hirsanuddin Hirsanuddin and Sudiarto Sudiarto, “Perlindungan Hukum Bagi Para Pihak (Kreditur Dan Debitur) Melalui Parate Executie Obyek Hak Tanggungan,” *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (April 26, 2021): 253–67, <https://doi.org/10.29303/ius.v9i1.890>.

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entity/business is required to be auctioned voluntarily, the auction will be conducted by KPKNL through the Auction Officer.¹²

This research specifically focuses on examining the effectiveness of Article 20 paragraph (2) of Law No. 4 of 1996 on Mortgage Rights concerning the execution of collateral rights from credit facilities due to Breach Of Contract at PT Bank Sulutgo. This is based on Article 20 paragraph (2) of Law No. 4 of 1996 on Mortgage Rights, when the collateral object is ranked. Therefore, this study is crucial to understanding the process, procedure/mechanism, and form of execution at PT Bank Sulutgo. Thus, this research focuses on (1) The legal certainty of the norm regarding Mortgage Right collateral in cases of Breach Of Contract, and (2) How effective Article 20 paragraph (2) of Law No. 4 of 1996 in the execution of Mortgage Rights collateral due to Breach Of Contract at PT Bank Sulutgo?

There have been several previous studies that also discuss the execution of Mortgage Rights, including the following: First, Andina Purba Nurisnaini with the research title “Execution of Second-Rank Mortgage Rights Due to Non-Performing Loans (Case Study at PT. Bank Rakyat Indonesia (Persero), Tbk.)” conducted in 2021.¹³ This study shares similarities with the aforementioned research, as both focus on the execution of Mortgage Rights due to non-performing loans. The difference, however, lies in the bank and the case of non-performing loan resolution involving Mortgage Rights, as this study involves more than one creditor, which distinguishes it from the research being conducted. Second, Wahyu Susila with the title “Implementation of Parate Executie of Mortgage Rights as an Alternative to Resolving Problematic Loans (Case Study of PT. BPR Profidana Paramitra Yogyakarta)” was conducted in 2019.¹⁴ The similarity of this study is that it both discusses the implementation or application of the execution of Mortgage Rights based on the applicable provisions. The difference, however, is that this study does not address the execution of ranked Mortgage Rights but instead focuses on the factors causing the execution of Mortgage Rights to not proceed as intended.

Considering the various legal aspects discussed, this article provides a significant contribution to understanding the effectiveness of Article 20 paragraph (2) of Law No. 4 of 1996 regarding the execution of Mortgage Right collateral due to Breach Of Contract, specifically at PT Bank Sulutgo. Unlike previous studies that focus more on the execution of Mortgage Rights in general or in cases with a single creditor, this article specifically examines the issues of execution when the collateral object has multiple ranks, as well as its implications for legal certainty and debtor protection. Therefore, this study not only enriches the academic discourse on the execution of Mortgage Rights but also provides practical insights for legal and banking practitioners in addressing the legal challenges arising in the resolution of non-performing loans.

¹² Permata Arina Iasya Landina, Marjo, and Moch Djais, “PELAKSANAAN LELANG ATAS BARANG MILIK DAERAH MELALUI INTERNET (E-AUCTION) OLEH KANTOR PELAYANAN KEKAYAAN NEGARA DAN LELANG (KPKNL) SEMARANG,” *Diponegoro Law Journal* 5, no. 2 (2016): 1–18, <https://doi.org/https://doi.org/10.14710/dlj.2016.11296>.

¹³ Andina Purba Nurisnaini, “EKSEKUSI HAK TANGGUNGAN PERINGKAT KEDUA AKIBAT KREDIT MACET (STUDI KASUS PADA PT. BANK RAKYAT INDONESIA (PERSERO), TBK.)” (Tesis, Universitas Gajah Mada, 2021).

¹⁴ Wahyu Susila, “Pelaksanaan Parate Eksekusi Hak Tanggungan Sebagai Alternatif Penyelesaian Kredit Bermasalah (Studi Kasus PT. BPR Profidana Paramitra Yogyakarta)” (Tesis, Universitas Islam Indonesia, 2019).

Research Method

This study uses the Empirical Legal Research Method, which is also referred to as sociological legal research or field research.¹⁵ Empirical Legal Research involves data obtained directly from the community as a primary source through field research. Empirical research is a study based on activities that have already occurred within society, where participants have experience in the field. This research serves as a distinct form of inquiry or an alternative approach.¹⁶ Therefore, this research is conducted directly with the aim of assessing the effectiveness of Article 20 paragraph (2) of Law No. 4 of 1996 on Mortgage Rights. The approach used in this legal research is the socio-legal approach. To collect the primary data required for this study, the researcher employs a structured interview method to gather information from relevant parties. A case study does not have a single definition; it encompasses a broad range of meanings in the social sciences. The secondary data collection will be carried out through document studies and legal regulations regarding the execution of ranked Mortgage Rights. This is because the research involves collecting and inventorying the facts that occur in the field about the execution of second-rank Mortgage Rights and the efforts made to resolve them.

This research was conducted at PT Bank Solutgo, located in North Sulawesi Province, with primary data obtained from interviews and secondary data collected through literature studies. The data collection used interview and documentation techniques. Interviews are one of the techniques commonly used in empirical legal research, involving a question-and-answer process with competent sources in the field to obtain the necessary data for the study. The types of interviews used by the researcher are structured interviews and personal interviews, where the researcher interviews a single respondent to inquire about issues related to Non-Performing Loans and Mortgage Rights at PT Bank Solutgo. In this study, the researcher interviewed the Head of Department and the Commercial Credit Analyst at PT Bank Solutgo, who are involved in handling the case. The respondents in this study consist of the Head of Department at PT Bank Solutgo, the Commercial Credit Analyst at PT Bank Solutgo, and the debtors of PT. ST and PT. SKM.

The data obtained from field research will be analyzed descriptively and qualitatively, with the data sources categorized and classified based on the quality of data gathered from the field and then linked to legal theories in order to obtain information about the actual situation.¹⁷ This analysis uses the methods of Systematic Interpretation and Interdisciplinary Interpretation.¹⁸ The analysis of the research results is then carried out by critiquing, supporting, providing commentary, and

¹⁵ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Prenadamedia, 2018) Hlm. 149.

¹⁶ F.C. Susila Adiyanta, "Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (November 8, 2019): 697–709, <https://doi.org/10.14710/alj.v2i4.697-709>.

¹⁷ Celline Gabrielle Tampi, Lucky Endrawati, and Amelia Sri Kusumadewi, "Challenges in The Implementation of Regulations in The Drafting of Cooperative Deeds in Manado," *NEGREI: Academic Journal of Law and Governance* 4, no. 2 (November 15, 2024): 139–62, <https://doi.org/10.29240/negrei.v4i2.11136>.

¹⁸ Sekar Rizqi Triroosa Putri, Afifah Kusumadara, and R. Imam Rahmat Sjafi'i, "Notary's Responsibility for Making Deed of Statement Related to Sale and Purchase Deed Containing Nominee Element," *NEGREI: Academic Journal of Law and Governance* 4, no. 2 (November 15, 2024): 163–84, <https://doi.org/10.29240/negrei.v4i2.11137>.

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drawing conclusions from the research findings using one's own reasoning and the aid of a literature review.

Discussion and Analysis

Ranked Mortgage Rights

Before referring to ranked Mortgage Rights, it is important to understand that Mortgage Rights, as defined in Article 1 paragraph (1) of Law No. 4 of 1996 on Mortgage Rights Over Land and Objects Related to Land (UUHT), is a security right imposed on land rights as stipulated in Law No. 5 of 1960 on the Basic Agrarian Law, along with or without other objects that are an integral part of the land, for the settlement of specific debts, granting preferential rights to certain creditors over other creditors. Furthermore, Mortgage Rights essentially serve as a guarantee for debt settlement, providing priority rights, with the object of the guarantee being land rights as regulated in Law No. 5 of 1960 on the Basic Agrarian Law.¹⁹ Therefore, Mortgage Rights, as a robust security institution over land that provides legal certainty for the parties involved, possesses the following characteristics:²⁰

- 1) It grants a preferential position or priority to its holder (certain creditors). Based on the definition of Mortgage Rights as explained, it is understood that Mortgage Rights provide priority to certain creditors over other creditors.
- 2) It always follows the object being pledged, regardless of who possesses it, meaning that the Mortgage Right remains attached to the object, no matter who owns it (*droit de suite*).
- 3) It adheres to the principles of specificity and publicity, thereby binding third parties and providing legal certainty to the interested parties. The principle of specificity is realized through the creation of a Deed of Mortgage Grant by the Land Deed Official. Meanwhile, the principle of publicity is applied when the registration of the Mortgage Right grant is conducted at the Land Office.
- 4) The execution is easy and certain. One of the advantages of Mortgage Rights is the ease and certainty in its execution.

In addition to possessing these four characteristics, Mortgage Rights also have several other traits, including:²¹

- (1) Mortgage Rights are inseparable. Mortgage Rights encumber the entire object, including all its parts. Partial payment of the secured debt will not eliminate the Mortgage Right on part of the object. The Mortgage Right remains in effect for the entire object until the debt is fully paid off.
- (2) Mortgage Rights are accessory agreements. Mortgage Rights are granted to secure the debtor's repayment of debt to the creditor, making the Mortgage Right an accessory agreement connected to the main agreement that creates the legal relationship of debt and

¹⁹ Kartini Muljadi and Gunawan Widjaja, *Hak Tanggungan* (Jakarta: Kencana Prenada Media Group, 2006) Hlm. 13.

²⁰ Arie Sukanti Hutagalung, *Serba Aneka Masalah Tanah Dalam Kegiatan Ekonomi, Suatu Kumpulan Karangan* (Jakarta: Fakultas Hukum, Universitas Indonesia, 1999) Hlm. 225.

²¹ Rosa Agustina, *Prosedur Dan Tata Cara Eksekusi Objek Hak Tanggungan* (Surabaya: Citra Ilmu, 2007) Hlm. 25.

credit. The creation, existence, transfer, execution, termination, and cancellation of Mortgage Rights automatically depend on the transfer and settlement of the secured debt.

Furthermore, the subjects of Mortgage Rights are regulated in Articles 8 and 9 of the Mortgage Rights Act (UUHT). Based on the provisions of these two articles, it can be concluded that the legal subjects in a Mortgage Right are those related to the agreement granting the Mortgage Right, namely Individuals (Persons) and Legal Entities (Recht Person). In a Mortgage Right agreement, there are two parties involved: a) The Grantor of the Mortgage Right, who is the person or party pledging the object of the Mortgage Right (the debtor); b) The Holder of the Mortgage Right, who is the person or party receiving the Mortgage Right as collateral for the debt they have provided.²²

The objects of the Mortgage Right, according to Article 4 paragraph (1) of Law No. 4 of 1996 concerning Mortgage Rights, state that the rights over land that may be encumbered with a mortgage are: a) Ownership Rights; b) Business Use Rights; c) Building Use Rights. These land rights are recognized and regulated under the Basic Agrarian Law No. 5 of 1960. However, in addition to these rights, Article 4 paragraph (2) of the UUHT expands the scope of land rights that may serve as collateral for debt. Apart from the land rights mentioned in paragraph (1), the objects of the Mortgage Right may also include: a) The Right to Use State Land. The Right to Use State Land, which must be registered under applicable regulations and, by its nature, may be transferred and encumbered with a mortgage; b) Likewise, Condominiums and Ownership Rights over Condominium Units built on land with Ownership Rights, Business Use Rights, Building Use Rights, and the Right to Use granted by the State (Article 27 in conjunction with Law No. 16 of 1985 on Condominiums) are also included as objects of the Mortgage Rights.

A Mortgage Right can be done in a tiered manner if the debtor's ability and the value of the collateral are still sufficient to allow for the tiered encumbrance of the Mortgage Right. This is regulated in Article 5 of the UUHT. In his book, Boedi Harsono explains: "Each Mortgage Right is given what is called a different rank (First Rank, Second Rank, and so on), which is determined based on the date of the creation of the land book for the Mortgage Right or the date of the creation or issuance of its Deed Number (Article 5). In the case of more than one Mortgage Right over the same object being granted on the same date, the rank of those Mortgage Rights is determined by the deed number sequence. Since it is encumbered on the same object of the Mortgage Right on the same date, the creation of the relevant deeds can only be performed by the same PPAT. The rank of the Mortgage Right determines the order in which the payment of each guaranteed debt will be settled. The creditor holding the Mortgage Right of the First Rank has the right to collect the payment first, before the holder of the Mortgage Right of the Second Rank."²³

If a collateral object is encumbered with more than one Mortgage Right, the rank of each Mortgage Right will determine the order of priority for debt repayment (*droit de preference*). The ranking of each Mortgage Right is based on the time of registration at the Land Office, or if multiple registrations occur on the same day, the ranking is determined by the order of the creation

²² Andrian Sutedi, *Hukum Hak Tanggungan* (Jakarta: Sinar Grafika, 2001) Hlm. 54.

²³ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria Dan Pelaksanaannya* (Jakarta: Universitas Trisakti, 2013) Hlm. 426.

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date of the Deed of Grant of Mortgage Right (APHT). This Principle of Priority also applies if a collateral object is encumbered by more than one Mortgage Right. If the First Rank Mortgage Right is removed in accordance with the provisions of Article 18 paragraph (1) of the UUHT, then based on the Principle of Priority, the position of the holder of the Second Rank Mortgage Right will automatically replace the position of the First Rank Mortgage Right holder. This means the holder of the Second Rank Mortgage Right is entitled to sell the collateral object through auction and first collect the payment from the proceeds of that sale. With the removal of the agreement between the Bank as the holder of the First Rank Mortgage Right and the debtor, the First Rank Mortgage Right will also be extinguished, causing the position of the holder of the Second Rank Mortgage Right to rise and replace the position of the holder of the First Rank Mortgage Rights.²⁴

The Effectiveness of Article 20 Paragraph (2) of Law No. 4 of 1996 Regarding the Execution of Mortgage Guarantees Due to Breach Of Contract at PT Bank Sulutgo

A. Form of Execution of Mortgage Guarantee

Article 20 of Law Number 4 of 1996 on Mortgage over Land and Related Objects (UUHT) regulates:

- (1) If the debtor Breach Of Contract, then based on:
 - a. The right of the first mortgagee to sell the mortgaged object as referred to in Article 6, or
 - b. The executory title contained in the mortgage certificate as referred to in Article 14, paragraph (2), where the mortgaged object is sold through public auction according to the procedures stipulated in the regulations for the settlement of the mortgagee's debt, with priority over other creditors.
- (2) By agreement between the grantor and the holder of the mortgage, the sale of the mortgaged object may be conducted privately if it results in the highest price that benefits all parties involved.
- (3) The sale as referred to in paragraph (2) may only be carried out after a period of 1 (one) month has passed since written notice was given by the grantor and/or the holder of the mortgage to the concerned parties and published in at least 2 (two) newspapers circulating in the relevant area and/or local media, and no party has raised any objections.
- (4) Any agreement to execute the mortgage in a manner that contradicts the provisions in paragraphs (1), (2), and (3) shall be null and void by law.
- (5) Until the announcement for the auction is made, the sale as referred to in paragraph (1) may be avoided by the settlement of the debt secured by the mortgage, along with the execution costs that have been incurred.

²⁴ DIMAS NUR ARIF PUTRA SUWANDI, "PERLINDUNGAN HUKUM BAGI BANK PEMEGANG HAK TANGGUNGAN PERINGKAT KEDUA DALAM EKSEKUSI OBJEK HAK TANGGUNGAN," *Media Iuris* 1, no. 3 (December 18, 2018): 420, <https://doi.org/10.20473/mi.v1i3.10183>.

Based on Article 20 of Law Number 4 of 1996 on Mortgage, as outlined above, the procedure for the execution of the mortgage is carried out in two ways, namely:

1. Execution through Public Auction

Execution through a public auction is carried out compulsorily when the debtor commits a Breach Of Contract or refuses to voluntarily surrender the collateral for sale in order to settle the debt.²⁵ In such circumstances, the object of the Mortgage Right will be auctioned in accordance with the provisions of Articles 6 and 21 paragraph (1) of the UUHT. The holder of the Mortgage Right has the right to take part or all of the proceeds from the auction as repayment of the debt. This execution is based on the execution title included in the Mortgage Certificate. The explanation of Articles 14 paragraphs (2) and (3) of the UUHT emphasizes that the inclusion of the execution clause in the certificate is intended to provide execution power. Thus, if the debtor Breach Of Contracts, the collateral provided will be executed as a court decision with permanent legal force, through the parate execution procedure.

2. Execution through Private Sale

The sale underhand as a form of execution is carried out based on an agreement between the grantor and the holder of the Mortgage Rights.²⁶ The purpose is to ensure that the object of the Mortgage Right can be sold at the highest price, providing benefits to both parties. This mechanism is applied to expedite the collateral sale process, as the price obtained through public auction often fails to reach its optimal value.

In addition to the two procedures mentioned above, according to the provisions of Article 21 of the UUHT, the execution of the Mortgage Right can still be carried out even if the grantor of the Mortgage Right or the debtor is declared bankrupt.²⁷ However, the holder of the Mortgage Right or the creditor still has the authority to exercise their rights in accordance with the provisions outlined in this law.

B. The Position of the Issue at PT. Bank Sulutgo

In carrying out its business activities as a general bank and to achieve its goal of supporting the growth of the economy in North Sulawesi and Gorontalo, PT. Bank Sulutgo Manado Branch has extended credit to the public (Debtors), including to a group of contractor companies, namely PT. ST and PT. SKM. Both are contractor companies with similar business activities but have different corporate management and obtain different project assignments. The credit extended by PT. Bank Sulutgo is as follows:

²⁵ Dwi Nugrohandhini and Ety Mulyati, "AKIBAT HUKUM GUGATAN DAN PERLAWANAN TERHADAP LELANG EKSEKUSI HAK TANGGUNGAN," *Jurnal Bina Mulia Hukum* 4, no. 1 (September 13, 2019): 35–52, <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/63/18>.

²⁶ Kasiani Kasiani and Weppy Susetiyo, "Pengaturan Dan Kedudukan Debitur Wanprestasi Dalam Proses Eksekusi Penjualan Objek Hak Tanggungan Milik Pihak Ketiga Secara Di Bawah Tangan," *Jurnal Supremasi*, March 24, 2024, 87–104, <https://doi.org/10.35457/supremasi.v14i1.2865>.

²⁷ Clara L. Sumeisey, "EKSEKUSI BENDA JAMINAN YANG DIBEKANI HAK TANGGUNGAN KETIKA DEBITUR PAILIT," *LEX ET SOCIETATIS* 2, no. 9 (January 19, 2014): 5–17, <https://doi.org/https://doi.org/10.35796/les.v2i9.6382>.

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1. PT. ST, with its President Director, Mr. Wa, obtained a Contractor Working Capital Credit Facility (KMK-Kontraktor) for the Project Works of PT. ST, financed by Bank Sulutgo in the amount of IDR 10,000,000,000 (Ten billion rupiahs) under the terms and conditions set forth in the Notarial Deed of the Credit Agreement No. 92 dated August 20, 2017. For this credit facility, the Debtor provided collateral in the form of 6 Certificates of Ownership (SHM), Nos. 1232, 1321, 138, 234, 178, and 243, registered in the name of Mr. Wa.

The total value of the collateral for this credit facility is IDR 12,730,000,000 (Twelve billion seven hundred thirty million rupiahs), which is 107% of the value of the credit granted. The credit collateral has been encumbered and charged with a Deed of Granting Mortgage with First Rank Priority.²⁸

2. PT. SKM, with its President Director, Mr. Ze, obtained a Contractor Working Capital Credit (KMK-Kontraktor) facility for the PT. SKM project, financed by Bank Sulutgo in the amount of IDR 5,000,000,000 (Five billion rupiahs), with the terms and conditions set forth in the Notarial Deed of Credit Agreement No. 95 dated August 25, 2017. For this credit facility, the debtor provided collateral in the form of 3 Certificates of Ownership (SHM), Nos. 506, 507, 508, registered in the name of Mr. Ze.²⁹

The total value of the collateral for this credit facility is IDR 3,910,000,000 (Three billion nine hundred ten million rupiahs), which represents 78% of the credit value provided. This collateral value is then supplemented with the collateral already pledged under the First Ranking, which was secured by PT. ST with SHM No. 178 and SHM No. 243, registered in the name of the owner, Mr. Wa. This collateral is then encumbered and secured with a Deed of Granting Mortgage in the Second Ranking. Therefore, the total credit provided to PT. SKM and PT. ST, compared to the total collateral provided, can be outlined as follows:

PT. ST

The credit plafond for PT. ST is IDR	Rp. 10.000.000.000,-
The collateral provided is IDR	Rp. 12.730.000.000,-

Which is encumbered by a First Rank Mortgage

PT. SKM

The credit limit for PT. SKM is IDR	Rp. 5.000.000.000,-
The collateral provided is IDR	Rp. 3.910.000.000,-

Yang diikat secara Hak Tanggunan Peringkat Kedua

The credit plafond for PT. ST + PT. SKM is IDR	Rp. 15.000.000.000,-
The total collateral provided is IDR	Rp. 16.640.000.000,-

Therefore, regarding the credit provided to PT. ST and PT. SKM, the collateral mortgaged to PT. ST, part of which is registered in the name of Mr. Wa, is added to fulfill the collateral value for the credit limit of PT. SKM, ensuring that the collateral must be at least 100% of the value of

²⁸ Department Heads of Bank Sulutgo, "Primary Data, Interview" (January 12, 2024).

²⁹ Department Heads of Bank Sulutgo, "Primary Data, Interview" (January 12, 2024).

the credit limit provided. This collateral has been secured with a Deed of Granting Mortgage of First and Second Rank.

In the course of events, the contract for the project being undertaken by PT. SKM was terminated, resulting in the Debtor's inability to make the scheduled credit payments as agreed. Bank Solutgo then intends to conduct an auction for the Execution of the Mortgage Rights based on Article 20, Paragraph (1) of the UUHT, by registering a request for auction with the KPKNL Manado.

The Request for the Auction of Credit Collateral by PT. Bank Solutgo on the Mortgage Rights of the Debtor in the name of PT. SKM had previously been submitted. The first Auction Request was submitted to the KPKNL Manado on January 12, 2022, regarding the Request for the Auction of Credit Collateral by PT. Bank Solutgo. At the time of this submission, an Auction Schedule Determination Letter was issued by KPKNL Manado. However, the Auction Status was canceled due to the failure to issue one of the SKPT (Land Registration Certificate) for the Auctioned Mortgage Collateral. Subsequently, PT. Bank Solutgo submitted another request for the auction to be conducted on July 12, 2022, for the same Mortgage Collateral. After verification of this auction request, there were still several issues that needed to be corrected through the KPKNL Manado auction application. PT. Bank Solutgo then resubmitted the Auction Request on November 7, 2022.³⁰

The Auction Request submitted by PT. Bank Solutgo on November 7, 2022, was considered non-compliant with the applicable provisions in the auction process by the KPKNL, as there were several collateral objects that were the same for both the Second-Grade Mortgage and the First-Grade Mortgage. As a result, KPKNL concluded that the First-Grade Mortgage must first be released, or the debtor from PT. ST must agree to Breach Of Contract. However, this conclusion could not be fulfilled as the debtor from PT. ST refused to be declared in Breach Of Contract, preventing the execution of the Second-Grade Mortgage under Article 20, Paragraph (1) of the UUHT.³¹

Because PT. Bank Solutgo did not want to incur any losses, the bank opted for a private sale, based on Article 20, Paragraph (2) of the UUHT, which states that:

“With the agreement of both the grantor and the holder of the Mortgage Right, the sale of the object of the Mortgage Right may be conducted privately if this will result in the highest price that benefits all parties”.

As a result of the private sale, the non-performing loan from the Second-Grade Mortgage of PT. SKM could be settled. However, PT. ST, as the debtor of the First-Grade Mortgage, feels aggrieved because it is required to provide additional collateral to meet the credit loan ceiling.³²

C. Legal Analysis of the Issues at PT. Bank Solutgo

- a) Execution of Mortgage Rights Based on Article 20 of the Mortgage Law (UUHT)

³⁰ Commercial Credit Analyst PT Bank Solutgo, “Primary Data, Interview” (May 23, 2024).

³¹ Debitur PT. ST dan PT. SKM, “Primary Data, Interview” (March 15, 2024).

³² Debitur PT. ST dan PT. SKM, “Primary Data, Interview” (March 15, 2024).

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Article 20 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT) regulates the execution mechanism for objects of Mortgage Rights in the event of debtor Breach Of Contract. PT. Bank Sulutgo faces challenges in executing the collateral for the credit provided to PT. ST and PT. SKM, which involves First and Second Rank Mortgages. From a legal perspective, the execution procedure in paragraph (1) prioritizes public auction as the main mechanism, while paragraph (2) allows for private sales, provided there is an agreement between the mortgagor and the mortgagee. This aims to achieve a price that is more beneficial for all parties involved.

b) Challenges in the Execution of the Second Rank Mortgage Rights

PT. Bank Sulutgo faces obstacles in the execution of the Second Rank Mortgage Rights over PT's assets. SKM. These obstacles include:

- 1) The rejection by the KPKNL in the auction process due to overlapping collateral between the First Rank Mortgage Rights (PT. ST) and the Second Rank Mortgage Rights (PT. SKM).
- 2) PT. ST's reluctance to be declared in Breach Of Contract makes the execution of the Second Rank Mortgage Rights impossible without PT. ST's consent.

c) Implication of Article 20 Paragraph (2) of the UUHT in Private Sale

As a solution to the obstacles in execution through public auction, PT. Bank Sulutgo chose to use the mechanism of private sale based on Article 20 Paragraph (2) of the UUHT. However, the implementation of this mechanism leads to legal consequences, particularly:

- 1) PT. ST feels aggrieved as it is required to provide additional collateral to maintain compliance with the credit facility's ceiling value.
- 2) There is no legal certainty for the holder of the Second Rank Mortgage in executing the collateral if there is a refusal from the holder of the First Rank Mortgage.

D. The Effectiveness of Article 20 Paragraph (2) of the UUHT in the Perspective of Soerjono Soekanto's Theory of Legal Effectiveness

According to Soerjono Soekanto, the effectiveness of a law is measured by how well a regulation achieves its objectives, namely changing or directing societal behavior to align with the law. The effectiveness of the law is also determined by three main factors:³³

- a. In line with the principles governing the enactment of laws, in this case, the principle of legal certainty in the execution of mortgage rights. This means that in the context of the execution of mortgage rights, particularly under Article 20, Paragraph (2) of the Mortgage Law (UUHT), the principle of legal certainty should

³³ Harris Yonatan Parmahan Sibuea, "PENEGAKAN HUKUM PENGATURAN MINUMAN BERALKOHOL (LAW ENFORCEMENT REGULATION OF ALCOHOLIC BEVERAGES)," *Negara Hukum* 7, no. 1 (June 17, 2016): 127–43, <https://doi.org/http://dx.doi.org/10.22212/jnh.v7i1.926>.

ensure that the creditor has a strong right to execute the collateral when the debtor Breach Of Contracts.

- b. The existence of necessary implementing regulations, which unfortunately are still not optimal in regulating the execution mechanism of the Second Rank Mortgage. The implementing regulations governing the execution of the Second Rank Mortgage are not yet optimal, creating legal uncertainty for subordinate creditors. The Mortgage Law (UUHT) only emphasizes the priority of execution for the First Rank Mortgage holder, but does not provide detailed guidance on how the Second Rank Mortgage holder can execute the collateral if the primary creditor has not Breach Of Contracted. Furthermore, there are no clear technical guidelines regarding the procedures for public auctions or private sales in such situations, leading to frequent rejections by auction institutions such as KPKNL. The absence of clear regulations results in slow execution processes, the potential for legal disputes, and uncertainty for creditors in obtaining their rights, ultimately hindering the effectiveness of the law in banking and financing practices.
- c. Clarity of legal norms, which in Article 20 paragraph (2) of the Mortgage Law (UUHT) still leads to multiple interpretations, especially in the application of private sales. Article 20 paragraph (2) of the UUHT provides the possibility of private sales as an alternative execution of the Mortgage, but this provision still causes multiple interpretations in practice. The phrase "with the agreement of the grantor and holder of the Mortgage as well as a price deemed fair" does not clearly regulate the approval mechanism between the parties involved, especially when there are multiple Mortgage holders with different rankings. This lack of clarity often results in different interpretations between creditors, debtors, and related institutions such as KPKNL, leading to delays or even failures in execution. Without clear and definite legal norms, the implementation of Article 20 paragraph (2) has the potential to create uncertainty for subordinate creditors and hinder the effectiveness of collateral execution.

Furthermore, Soerjono Soekanto also stated that the effectiveness of law is influenced by five main factors:³⁴

- a. Legal regulations factor: Article 20 paragraph (2) of the UUHT still requires refinement to clarify the rights and obligations of the Second Ranking Mortgage Holder.
- b. Law enforcement factor: Creditors and related institutions must have a common understanding of how to interpret this provision.

³⁴ Ria Ayu Novita, Agung Basuki Prasetyo, and Suparno, "EFEKTIVITAS PELAKSANAAN UNDANG-UNDANG NOMOR 2 TAHUN 1960 TENTANG PERJANJIAN BAGI HASIL TANAH PERTANIAN (TANAH KERING) DI DESA BRINGIN, KECAMATAN BAYAN, KABUPATEN PURWOREJO," *Diponegoro Law Journal* 6, no. 2 (July 2017): 1–12, <https://doi.org/https://doi.org/10.14710/dlj.2017.16975>.

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- c. Facilities and infrastructure factor: The involvement of banks, KPKNL, and notaries is essential to ensure effective execution.
- d. Societal environment factor: The trust of debtors and creditors in the legal execution system will influence the effectiveness of applying this rule.
- e. Legal culture factor: Banking practices and civil law in Indonesia still face challenges in ensuring a balance between creditor rights and debtor protection.

Based on the analysis above, the effectiveness of Article 20 paragraph (2) of the UUHT in the execution of mortgages, particularly in the case of PT. Bank Solutgo, still faces various legal and practical challenges. Obstacles in the execution of the Second Ranking Mortgage demonstrate that the mechanism of private sales has not fully provided legal certainty for all parties involved. The ambiguity of legal norms, the lack of detailed implementing regulations, and administrative issues in the auction process are the main factors hindering the effectiveness of securing the collateral. Therefore, there is a need for more specific regulatory updates, as well as a harmonization of understanding among stakeholders, to ensure that the execution of mortgages can proceed more effectively, fairly, and in accordance with the principle of legal certainty.

Conclusion

1. Article 20 paragraph (2) of the UUHT provides an alternative for private sales in the execution of Mortgage Rights, but in practice, it still creates legal uncertainty, especially for holders of the Second Rank Mortgage Rights. The case of PT. Bank Solutgo illustrates that overlapping collateral and the limitations of implementing regulations can hinder the execution, making the solution through private sales potentially harmful to other parties. The lack of clarity in the implementation mechanism and the multi-interpretation of legal norms are the main factors that impede the effectiveness of collateral execution under this provision.
2. Regulatory improvements in the form of clearer implementing regulations regarding the procedure for executing Mortgage Rights, particularly in the execution of Second Rank Mortgage Rights and the application of private sales, are needed. The government and related institutions, such as KPKNL and the banking sector, must align their understanding and procedures to ensure that the execution of collateral can proceed more effectively and without disadvantaging the parties involved. Additionally, transparency in the execution process, as well as strengthening the role of notaries in ensuring legal certainty for both creditors and debtors, are crucial steps to enhance the effectiveness of the UUHT in banking practice.

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