

Parate Executie Polemic: The Nature of the Authority to Sell Creditors for Objects of Collateral Rights

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Abstract: Execution of collateral objects is basically uncomplicated. The holder of the first Mortgage is also entitled to carry out direct execution of the object of the Mortgage that is used as collateral because in addition to the deed of Mortgage it also functions as proof of the existence of a Mortgage. Mortgage is a guarantee institution for land rights in the codification of national land law since the Mortgage Law was promulgated on April 9, 1996, Mortgage rights function to provide protection for certain creditors and certain positions. where the deed is affixed with the irah-irah "For the sake of Justice Based on Belief in the One and Only God", which has executive powers which is the same as a court decision that has permanent legal force. Despite the fact that the auction procedure is likewise governed by a Minister of Finance Regulation, many lawsuits seeking the cancellation of auctions are nonetheless filed with the District Court on a regular basis. This research is included in the category of normative legal research, which analyzes laws and regulations in a comprehensive legal system. With regard to authority, in essence, an owner (eigenaar) has the power to control (beschikkingsbevoegdheid) and is authorized to act (handelingsbekwaamheid), but a person who is not an owner does not have power (beschikkingssonbevoegdheid) and may not act. Parate executie arrangements were prepared by legislators as a form of legal protection for the parties and are an excellent means of adjusting to legal requirements in the economic field.

Keywords: Parate Executie; Legal Protection; Mortgage; Authority; Rights

1. Introduction

The Civil Code has protected creditors when giving credit to debtors by providing broad guarantees in accordance with articles 1131 and 1132 of the Civil Code, which states that all debtor assets, both movable and immovable, existing and new and or there will be.¹ When the debtor defaults, all of his assets that are used as collateral will be divided based on the amount of each creditor's receivables and sold by auction.² However, in practice lending, banks feel the need to ask for additional guarantees, especially those of a material nature, because it is suspected that protection from general guarantees does not yet provide a sense of security for creditors. Therefore, the existence of the Mortgage

¹ Abdul Wahid, Elva Kusuma Dewi, and Sarip, "The Power of Authentic Evidence Against Deeds of Officials Making Land Deeds Based on Government Regulation Number 24 of 2016 Junto Article 1868 of the Civil Code," *Kampung Jurnal IAIN Syekh Nurjati Cirebon* 2 (2AD).

² N Adistie and J Anwar, "Hubungan Keabsahan Pengalihan Piutang (Cessie) Yang Dilakukan Secara Berulang Kali Terhadap Perpindahan Hak Tanggungan Milik Debitur Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah," *Yustisia* 1, no. 4 (2021): 93–117.

Act as a substitute for pawnshops and credit banks has several advantages in terms of providing a sense of security and legal certainty for all parties.

Mortgage is a guarantee institution for land rights in the codification of national land law since the Mortgage Law was promulgated on April 9, 1996.³ Mortgage rights function to provide protection for certain creditors and certain positions. Laws governing loans guaranteed by mortgage rights, among others, impose restrictions on the ability to sell particular assets put up for auction and then receive payment for the proceeds in the event that the debtor defaults.⁴ Provisions regarding the transfer of mortgage rights from debtors to creditors in connection with obligations guaranteed by mortgage rights are regulated in Article 1 Paragraph 1 UUHT by granting authority to the creditor concerned to sell objects used as collateral when the debtor violates the agreed agreement. In synergy with the prevailing credit loan arrangements, the granting of mortgage rights serves as collateral to repay the debtor's obligations to creditors.

It is actually quite simple how collateral objects are used by creditors. As the mortgage's object is utilized as collateral and the mortgage's deed acts as evidence of its existence, the first mortgage holder is also permitted to execute the mortgage's object directly, where the deed is affixed with the words "For the sake of Justice Based on Belief in the One and Only God", which has executive powers which is the same as a court decision that has permanent legal force against the creditor.⁵ Although if the auction procedure has been governed by a Minister of Finance Regulation, in reality, there are still a lot of lawsuits filed in District Court asking for the cancellation of auctions. The Regulation of the Minister of Finance Number 93/PMK.06/2010 about Rules for Conducting Auctions specifies the procedures for holding auctions in Indonesia.

The implementation of the auction as a form of privilege granted by the law regarding mortgage rights is inconsistent and even canceled due to a court decision.⁶ Therefore, the granting of special rights to the mortgage holder is in vain because in the end the mortgage rights and the sale of the mortgage object are declared to have never existed because of a court decision made after the mortgage object has been sold. The auction was canceled by court order resulting in a lack of legal protection for the auction winner.

This will certainly invite heated discussion and develop into a long and intellectually interesting discussion considering that parate executie in practice cannot be carried out effectively and quickly on objects of mortgage rights and can lead to legal inconsistencies in its implementation. This article will at least highlight some of the important things from the various legal issues that have arisen and become obstacles to the application of the execution law. Execution through parate executie is an out-of-court execution institution, meaning that execution deviates from the principle of execution regulated in the Criminal

³ S Nurjanah, "Eksistensi Hak Tanggungan Sebagai Lembaga Jaminan Hak Atas Tanah (Tinjauan Filosofis)," *Jurisprudentie* 5, no. 1 (2018).

⁴ R Afrida, "Perlindungan Hukum Bagi Kreditur Dalam Perjanjian Kredit Dengan Jaminan Hak Tanggungan," *Jurnal Universitas Muhammadiyah Mataram* 1, no. 1 (2021).

⁵ Abrari Mahar Manik, "Legal Protection for Holders of Land Ownership Certificates Used as Collateral for Debt Study Decision Number 293/Pdt/2018/PT.Mdn)," *Legal Brief* 9, no. 2 (2020).

⁶ H M Arba and D A Mulada, *Hukum Hak Tanggungan* (Jakarta: Sinar Grafika, 2020).

Procedure Code. So, the procedure is faster than the execution regulated under the Criminal Procedure Code. The convenience provided by the Mortgage Law to holders of material guarantees to pay off their receivables is not always easy

2. Method

This research is included in the category of normative legal research, which analyzes laws and regulations in a coherent legal system.⁷ To create a more comprehensive understanding of legal issues (Legal Issues), a different methodology will be used as normative-prescriptive legal research on the implementation of mortgage rights, including⁸: Statutory approach (Statute Method), which was carried out to analyze and examine rules and regulations in the field of mortgages and banking, followed by a philosophical approach. Then the conceptual approach is the next method to further understand the theories and legal concepts related to mortgage rights. The four comparative methodologies are used to compare laws and legal systems which contain the principles and governing norms that arise from a set of legal objectives. The fifth is the Analytical Approach, namely Johnny Ibrahim's term for the process of analyzing ideas on legal principles, legal interpretations, etc.

3. Result and Discussion

3.1. Discourse on Authority to Sell Objects of Collateral Right by Creditors

Law No. 5 of 1960 Concerning Fundamental Agricultural Laws refers to mortgage as a guarantee right attached to land rights. as a guaranteeing entity, the purpose of the parties in making agreements as well as guarantees that give rise to this mortgage right is to complete the main agreement, which is usually in the form of a loan agreement or credit agreement.⁹ So that it can be understood that the credit agreement which is the main agreement, and the guarantee agreement which is a supplementary agreement are the unity of the legal relations of the parties (accessoir). In General Explanation No. 3 UUHT, Mortgage has four (four) main characteristics that make it a strong guarantee institution, namely:¹⁰

- 1) give priority to the holder;
- 2) Always follow the object that is in your hands, no matter what it may be.;
- 3) Satisfy the requirements for detail and publicity in order to obligate third parties and give interested parties legal certainty.;
- And
- 4) execution is easy and certain.

⁷ Aziz Bahri, "Kajian Yuridis Pelaksanaan Pelelangan Objek Hak Tanggungan Secara Elektronik," *Jurnal Hukum (Online)* 1, no. 1 (2019).

⁸ Barulzaman and Mariam Darus, *Kompilasi Hukum Jaminan (Serial Hukum Perdata Buku Kedua)* (Bandung: Mandar Maju, 2019).

⁹ Budi Supriyatno, "Reconstruction of Legal Protection of Debtors in the Execution of Mortgage Guarantee Object Based On the Value of Pancasila Justice," *Sch Int J Law Crime Justice* 4, no. 1 (2021): 5–10.

¹⁰ Claudia R Tumbalaka, "Legal Protection for Creditors in Executing Credit Agreements with Guaranteed Mortgage over Land," *Journal of Lex Privatum* 8, no. 4 (2020).

Especially for execution in the event of a default debtor, it is hoped that the Mortgage guarantee's goal can be carried out with ease and can offer legal assurance. Article 20 of the UUHT's explanation of mortgage principles states, among other things, that the implementation of the mortgage guarantee is straightforward and certain. Mortgage rights are implemented in accordance with 3 (three) characteristics, namely:

- i. The right of the holder of the first mortgage right to sell the mortgage object as referred to in Article 6 UUHT (parate execution);
- ii. Executor's title listed in the mortgage deed as referred to in Article 14 paragraph (2); And
- iii. Execution through the sale of Mortgage objects under the hand of an agreement between the giver and the Mortgage holder (article 20 paragraph (2) of Law Number 4 of 1996 concerning UUHT).

Parate Executie is defined as direct execution without going through a court or judge process.¹¹ According to Subekti, parate executie is when someone executes himself or takes what is legally his right without the intervention of a judge to sell the collateral himself.¹² Parate executie is an execution carried out by the holder of mortgage rights (pledge and mortgage) only with the assistance of the State Auction Center and without the involvement of the District Court.¹³ Alternatively, to put it another way, Without asking a fiat execution or a District Court permit, parate executie is carried out. The goal is to draw attention to new elements that have unique importance, whether by introducing new terminology or giving it a new definition, so that the concept of "parate executie" can be viewed as one that is outside of one's comfort zone. To introduce a new phrase is the reason. So that one keyword can be used as a substitute for one or more descriptions. For the phrase "parate executie" to suffice, the line "authority to sell on its own" must be used.¹⁴

The introduction of buying and selling through auctions of Mortgage objects solely through public auctions, without the need to ask permission from the Head of the District Court, makes it easier to use the provisions of Article 6 UUHT. When compared with the implementation of court decisions that already have binding legal force, this convenience shows time efficiency. This is taken into account when examining the execution process through procedural law procedures; the process is long and difficult. Because it costs nothing to apply for an executor's determination to the Chief Justice of the District Court, executors are more affordable than executing executors with executorial titles.

¹¹ Eunice Primsa, "Determination of Expiration in Liability of Notaries for Deeds Made," *Doktrina Journal Of Law* 3, no. 2 (2020).

¹² Titin Apriani, "Konsep Ganti Rugi Dalam Perbuatan Melawan Hukum Dan Wanprestasi Serta Sistem Pengaturannya Dalam KUH Perdata," *Jurnal Ganec Swara* 15, no. 1 (2021).

¹³ Sigit Priyambodo, "Perlindungan Hukum Bagi Nasabah Debitur Terhadap Penetapan Bunga Bank Yang Tidak Sesuai Dengan Peraturan Perundang-Undangan Dalam Perjanjian," *Jurnal Media Hukum Dan Peradilan* 5, no. 1 (2019).

¹⁴ Habib Adjie, *Problematisa Dan Solusi Terpilih Tentang Hukum Kenotariatan Indonesia* (Bandung: PT Citra Aditya Bakti, 2020).

This is due to concerns that creditors may hesitate to provide credit in exchange for a mortgage (mortgage), especially if the size of the bill is insignificant.¹⁵ Article 6 UUHT will protect the creditor from the debtor's actions that are inappropriate or even in good faith. Of course, it will also seem out of proportion if the execution through this court is primarily focused on the sum that must be charged for all the effort, expenses, and particularly the time required to bring the bad credit back.¹⁶ The legislators made Article 6 UUHT to become the basis for creditors (banks) who want accelerated repayment of their debts. There is no doubt that Article 6 UUHT is the legal basis for the implementation of *parate executie* when the debtor defaults, which is used as a good way to respond economic needs. Receivables that have been returned to creditors can then be used for economic turnover.

According to Articles 224 HIR and 258 R.Bg., execution arrangements are a *gross acte mortgage* (Certificate of Mortgage) and *gross acte debt acknowledgment execution*.¹⁷ The two *grosse acts* are intended to have executorial rights, which entitles them to the same authority as a court judgement with irrevocable legal effect. Hence, the execution is respectful and obedient as it pertains to the implementation of a court order, which must be done per the District Court Chairperson's order.¹⁸ It would be inaccurate if the ex-Article 224 HIR execution was referred to as *parate executie*. This structure is no longer necessary and will cause countless conflicts and potentially a clash of norms. It can be said that the founder of the UUHT in granting authority (rights) to creditors holding the first mortgage was inconsistent (in-consistency). If such contradictions exist, they must be resolved very away in order to provide assurance for the parties, in particular. It can be said that UUHT makers are inconsistent in giving power of attorney (rights) to creditors who hold initial mortgage rights (inconsistency). Such contradictions must be resolved immediately to provide clarity to the parties, in particular.

If one looks to the General Explanation of UUHT Number 9 for more information, it may be deduced that one of the qualities of strong mortgage rights is a simple and assured execution if the debtor defaults. Despite the fact that execution requirements are normally governed by the applicable KUHAP, it is thought necessary to add particular execution rules for mortgage rights in this law. Article 224 of the Revised Indonesian Regulations (Regulations of *Het Herziene Outback*) and Article 258 of the Regulations on Regional Law Processes Outside Jawa and Madura refer to provisions governing different implementing agencies.¹⁹

¹⁵ I Wayan Jody Bagus Wiguna, "Tinjauan Yuridis Terkait Pendaftaran Hak Tanggungan Secara Elektronik," *Jurnal Acta Comitatus* 5, no. 1 (2020).

¹⁶ S Koto, "Pengalihan Kreditur Melalui Cessie (Studi Kasus Pada Koperasi Simpan Pinjam Indosurya)," *Jurnal Perspektif Hukum* 1, no. 3 (2020).

¹⁷ Muhammad Rudiansyah, "Analisis Yuridis Perjanjian Arbitrase Perihal Tidak Dapat Ditandatangani Perjanjian Tertulis Oleh Para Pihak Yang Bersengketa," *Jurnal Penegakan Hukum Indonesia* 1, no. 2 (2020).

¹⁸ Eunice Primsa, "Penetapan Daluwarsa Dalam Pertanggungjawaban Notaris Terhadap Akta Yang Dibuatnya," *Doktrina Journal Of Law* 3, no. 2 (2020).

¹⁹ Annisa Ridha, Watikno, and Moch Najib Imanullah, "Perlindungan Hukum Terhadap Kreditor Pemegang Jaminan Hak Atas Tanah Yang Belum Terdaftar Akibat Debitor Wanprestasi," *Jurnal Repertorium* 6, no. 1 (2019).

Furthermore, when the General Explanation of Number 9 UUHT is connected with the Elucidation of Article 14 paragraphs (2) and (3) which states:²⁰

"The irah listed on the Mortgage certificate is intended to confirm the existence of executorial power on the Mortgage certificate, so that if the debtor defaults, the Mortgage certificate is executed like a court decision that has permanent legal force, through procedures and by using institutions *parate executie* in accordance with civil procedural law.

An understanding of the two explanations shows the intent of the legislature as follows:²¹

- 1) Regulate the implementation of *parate executie* as referred to in Article 224 HIR/258 R.Bg.
- 2) Implementation of the Mortgage certificate through procedures and by using the *Parate Executie* institution in accordance with the Civil Procedure Code.

Regarding the right to sell on one's own power, as stated in Article 6 UUHT, it is important to pay attention to both the General Explanation of Number 9 and the explanation of Article 14 paragraph (2) UUHT. It can be interpreted that the procedure for executing a certificate of mortgage right is the same as the procedure for executing a creditor's right with a separate executor.²² In other words, if the debtor defaults, the first mortgage holder can carry out the promise by selling the mortgage object by auction on his own power (*parate execution*) based on Article 224 HIR/Article 258 R.Bg. procedures that must go through permission and on the order of the Head of the District Court.

According to General Explanation No. 9 and Elucidation of Article 14 Paragraphs (2) and (3), the Execution Paragraph should not be based on Article 224 HIR and 258 R.Bg (3). On the other hand, *parate executions* were carried out without seeking approval from the Head of the District Court. If these two explanations are related to Article 6 UUHT, then both are legally constructed, and the process of carrying out separate executions is hampered by the following factors.

First, the makers of the rules for executing the object of the mortgage object explain how the execution of the object of the mortgage has a double meaning, namely that you must first obtain the fiat of the Head of the District Court (based on Article 1224 HIR/258 R.Bg.) then carry out the execution through a public auction (Article 6 UUHT). Confused understanding is produced by multiple meanings (*vage normen*). This shows the inconsistency of UUHT makers and shows how unclear their perception of the importance of legal certainty is.²³

²⁰ Selly Virginia, "Analisis Putusan Kepailitan Mahkamah Agung No. 769K/PDT.SUS-PAILIT/2016 Mengenai Pemberesan Harta Pailit," *Jurnal Hukum Adigama* 1, no. 1 (2019).

²¹ N Nadira, "Pendaftaran Hak Tanggungan Elektronik Yang Akan Mulai Dilaksanakan Di Badan Pertanahan," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 17, no. 11 (2019).

²² Nurwulan Pandam, "Implementasi Pelayanan Hak Tanggungan Elektronik Bagi Kreditor Dan Pejabat Pembuat Akta Tanah," *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021).

²³ Nadira, "Pendaftaran Hak Tanggungan Elektronik Yang Akan Mulai Dilaksanakan Di Badan Pertanahan."

Second, if the execution is seen from the perspective of material law. Legal theory can be developed regarding how the law should be applied. This relates to the application of legal studies. Any type of legal development must prioritize the effective application of the law. Legal drugs have the potential to be useful because they meet people's needs. However, they often do not operate because no specific organization has been chosen to enforce the law, or perhaps because the requirements for implementing the law are complex.²⁴

In theory it is possible to use what is written in the law because it reflects the intentions of the people. For what, Of course, no preconditions are met for the law to be applied if it is not practicable. Laws that were good on paper but hard to enforce were all that remained.²⁵ In fact, there should be no deviation from the spirit of the law in its application. often deviate from the topic of legal objectivity. It is not possible to enforce procedural laws above or beyond their legal basis. Therefore, the application of legal science fills the gap between application and content of law. Peter Mahmud is of the opinion that substantive requirements should not be changed or overruled by procedural restrictions.²⁶

Furthermore, if Article 6 UUHT in terms of its legal nature is a regulation that is material law in nature which contains formal legal nature or if the term given by Sudikno is material law which contains formal law in it. The enactment of the right of the creditor holding the first Mortgage Right to sell the object of Mortgage on his own power through a public auction is conditional if the debtor defaults. The purpose of going through a public auction means without having to ask for fiat from the Chairman of the District Court.²⁷ This can be seen as deviating from Article 6 UUHT which is a substantive regulation, if the Head of the District Court orders that an execution be carried out (Article 224 HIR). Because it would be contrary to the guidelines of Article 6 UUHT if the execution of parate requires the approval of the Head of the District Court. As a result, the procedural nature of the implementing regulations for the implementation of the Mortgage object has deviated from the substantive rules. Naturally, rules that differ from the norm may not be used, but such rules may be ignored or even unnecessary as they may interfere with one of the purposes of usability law (*zwekmatigheid*).²⁸

Third, the implementation of the execution of the Mortgage by the UUHT maker, is not based on the norms in the body that specifically regulates the material for execution of the mortgage (Article 6 UUHT), but uses an authentic interpretation that refers to the General Elucidation of article 9 and the Elucidation of Article 14 paragraph (2) and (3)

²⁴ G. F. Marantika et al., "Identification of Fire Safety Indicators for Shopping Centre Buildings in Surabaya," *IOP Conference Series: Materials Science and Engineering* 930, no. 1 (2020), <https://doi.org/10.1088/1757-899X/930/1/012009>.

²⁵ Rudiansyah, "Analisis Yuridis Perjanjian Arbitrase Perihal Tidak Dapat Ditandatangani Perjanjian Tertulis Oleh Para Pihak Yang Bersengketa."

²⁶ Virginia, "Analisis Putusan Kepailitan Mahkamah Agung No. 769K/PDT.SUS-PAILIT/2016 Mengenai Pemberesan Harta Pailit."

²⁷ Kadek Cahya Susila Wibawa, "Menakar Kewenangan Dan Tanggung Jawab PPAT Dalam Perspektif Bestuurs Bevoegdheid," *Jurnal Crepido* 1, no. 1 (2019).

²⁸ Irma Devita Purnamasari, *Hukum Jaminan Perbankan* (Yogyakarta: PT Mizan, 2021).

UUHT which regulates materials for making Mortgage Certificates.²⁹ In order for its implementation to comply with Article 224 HIR/258 R.Bg., the Head of the District Court must issue a fiat. As a result, UUHT's reasons for executing parate do not explicitly have strong legal reasons. Two conflicting execution rules, one based on Article 6 UUHT and the other based on Article 224 HIR/258 R.Bg., are used to carry out parate execution of mortgage objects, giving rise to standard conflicts.³⁰ As a result, if the debtor violates his agreement, the convenience that was originally provided by law for the creditor holding the first Mortgage is no longer valid.

In banking practice, to further secure the funds channeled by creditors to debtors, additional security is required in the form of special guarantees that are used as material guarantees in the form of land.³¹ The use of land as collateral for credit, both for productive and consumptive loans, is based on the consideration that land is the safest and has a higher economic value. This is consistent with the findings of Retnowulan Sutantio's research which found that land with collateral rights is the guarantee institution that is considered the most reliable and effective by financial institutions. This is based on the ease of identifying the principal of the guarantee as well as the clarity and certainty of its implementation.³² In addition, the secured debt must be used to pay other debts up front along with the guaranteed debt. Another factor is the certificate of mortgage has executorial rights. What is more important, however, is that mortgages have legal protection, and the value of property secured by mortgages tends to increase over time.³³ Mortgage rights, in particular, have advantages compared to other material security rights. Creditors who have collateral also have special rights, such as *droit de suit*, *droit de preference*, and the ability to act as separatist creditors in bankruptcy. A discussion of complete subjective rights or rights, then talking about authority or authority, which is a unit and that authority is the authority to do or not do something, the most important of which includes the authority to take ownership actions such as selling and guaranteeing everything within the limits determined by law.³⁴ This authority as a right is an authority that is recognized by law, but does not mean that the owner of the right has absolute authority to do or not do something, because as mentioned above it is given within the limits permitted by law.³⁵

²⁹ Annisa Ridha, Watikno, and Moch Najib Imanullah, "Legal Protection of Creditors Holding Guaranteed Land Rights Who Have Not Been Registered Due to Default Debtors," *Repertorium Journal* 6, no. 1 (2019).

³⁰ Primsa, "Penetapan Daluwarsa Dalam Pertanggungjawaban Notaris Terhadap Akta Yang Dibuatnya."

³¹ Pandam, "Implementasi Pelayanan Hak Tanggungan Elektronik Bagi Kreditor Dan Pejabat Pembuat Akta Tanah."

³² Priyambodo, "Perlindungan Hukum Bagi Nasabah Debitur Terhadap Penetapan Bunga Bank Yang Tidak Sesuai Dengan Peraturan Perundang-Undangan Dalam Perjanjian."

³³ Bahri, "Kajian Yuridis Pelaksanaan Pelelangan Objek Hak Tanggungan Secara Elektronik."

³⁴ Afrida, "Perlindungan Hukum Bagi Kreditor Dalam Perjanjian Kredit Dengan Jaminan Hak Tanggungan."

³⁵ L Lismanto and Y Utama, "Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial Dalam Perspektif Negara Demokrasi," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 416–33.

The law essentially gives freedom to people to pursue their interests in social life, within certain limits, but that does not mean that people are free to do or not do anything.³⁶ If morality and the public good require limits, these limits are enforced by coercive laws, including unwritten laws. However, in this case, coercive legal action is an exception because in general legislators must maintain the freedom of movement of members of the public and leave legal life alone. Legislators can only impose rules and restrict freedoms when doing so would be contrary to good behavior or the general welfare. The law does offer freedom, but that freedom must not violate morality, law, or the public interest.

The definition of the right to do something (*handelingsbekwaamheid*) is different from the meaning of the right to control something (*beschikkingsbevoegdheid*). Except for those placed under guardianship and minors who are not yet adults, everyone has the right to bring legal action. They need a parent or guardian representative to initiate legal action. The ability to guarantee and distribute wealth is known as authority. A young person has the power to manage their wealth even if they are unable to carry out legal proceedings. He must be represented by his guardian to take legal action against the property.³⁷ Because someone who controls is not necessarily an owner (*eigenaar*) who is not necessarily authorized to act, the authors argue that the authority in question is the authority to control as well as the authority to act. However, if it is understood as the power to decide and take action, it can be concluded that the speaker is the owner of any property or object. Therefore, if we are owners, we must have the power or authority to do what is also the power to manage.

This is in line with the opinion that an owner (*eigenaar*) has the power to control (*beschikkingsbevoegdheid*) and is authorized to act (*handelingsbekwaamheid*), but a person who is not an owner does not have power (*beschikkingssonbevoegdheid*) and may not act. However, there are cases where it is determined that a person no longer has any ownership rights over his property. This power of attorney is given to a third party who is not the owner. This happens, for example, in bankruptcy. The curator now has control over the assets of the insolvent person.

In the event that the debtor defaults, the granting of rights based on a power of attorney to the creditor to carry out the fulfillment of the achievements of the debtor is the granting of authority from the debtor in the form of rights to the creditor to carry out the fulfillment of achievements in the engagement. This power of attorney also provides legal certainty to creditors in the event of default by the debtor, enabling uninterrupted achievement of objectives and preventing creditor losses from debtors. In addition, creditors are not considered to be *eigenrichting* if they act with the authority of the power of attorney. Ratio legis Article 1241 BW refers to scenarios that give creditors and debtors a sense of justice.

³⁶ M Julyon and A Y Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido* 1, no. 1 (2019).

³⁷ HS Salim, *Development of Collateral Law in Indonesia* (Jakarta: RajaGrafindo Persada, 2019).

The granting of authority from the debtor to the creditor can be used to carry out the agreement in accordance with article 1241 BW, while the contents of the agreement according to article 1234 BW may be to provide something, do something, or do nothing. The granting of this power of attorney is also a form of legal protection for creditors in the form of legal certainty when the debtor defaults, so with this power the fulfillment of achievements can still be carried out, so that the creditor is not harmed by the debtor. In addition, if the creditor performs on the basis of said power of attorney, the creditor is not deemed to have committed *eigenrichting*. Such a situation provides a sense of justice for creditors and debtors, this meaning is what is meant by the *ratio legis* of Article 1241 BW.³⁸ If the debtor defaults as referred to in Article 1241 BW, the creditor has the authority to fulfill the debtor's obligations. As a result, Article 1241 BW (Article 1178 paragraph (2) BW) can be used as a basis or guideline for the implementation of *parate executie*.

Because law is a unified system composed of parts or elements that are interconnected with each other, the regulation of rules that are full of consistency cannot be separated from its relationship with the systematics of other legal regulations. In other words, the legal system is a unit consisting of components that interact and work together to carry out the goals of that unit. This unity is applied in various legal concepts, including legal principles, legal ideology, and legal definitions.³⁹ For the sake of protection and legal certainty for these creditors, it is very important to have a basis to find a solution to the ambiguity of the regulation because the regulation of creditor rights as referred to in Article 6 UUHT is contrary to the Elucidation in Article 6.

Starting from the intent of material civil law which contains material legal aspects, the terms of an agreement between creditors and debtors, each of whom has the rights and obligations that have been agreed upon, are designed to become material civil law which contains legal components. While the formal aspect is contained in material law, especially material civil law, which regulates the relationship between people, namely between legal subjects including the rights and obligations of the parties at the time of an agreement.⁴⁰ Material legislation, such as guarantee agreements, determines how these rights are exercised if one of the parties to the arrangement defaults. People who feel their legal rights have been violated often go to court. However, creditors are authorized to sell of their own free will in connection with mortgage guarantees in Article 1155 BW. This is what is meant by saying that material law contains elements of formal law. Those disadvantaged by court decisions, for example, have the ability to appeal formal laws that contain important features. Formal law, by contrast, has a formal component, such as instructions on how to appeal. As a result of the agreement made by the parties (creditor and debtor), then the rights and obligations arising from the agreement will bind the creditor and the debtor. As long as each party complies with its rights and obligations, the agreement will function normally. However, if the debtor is

³⁸ Marantika et al., "Identification of Fire Safety Indicators for Shopping Centre Buildings in Surabaya."

³⁹ A C Uniar, "Analisis Pengalihan Piutang Secara Cessie Atas Hak Tanggungan Di Bank Btn Syariah," *Jurnal Hukum* 4, no. 1 (2021): 33–44.

⁴⁰ Tumbalaka, "Legal Protection for Creditors in Executing Credit Agreements with Guaranteed Mortgage over Land."

reluctant to fulfill the obligation and waits until it can be determined that the debtor has defaulted or broken a promise, the creditor's interests will undoubtedly be harmed. If that happens, the creditor has the right to insist that the debtor fulfill his responsibilities and is allowed to use force according to law.

According to Article 1131 BW, which regulates this situation, if the debtor defaults, the creditor can collateralize the debtor's assets by asking the judge to order the assets to be sold at auction with the proceeds guaranteed to cover the debt. However, because Article 1131 BW stipulates that the execution of an order by the creditor must first obtain permission from the court before doing so.⁴¹ For creditors, this procedure is not effective. Therefore, to protect the interests of creditors and to complete the main agreement (credit agreement) support is needed. This support, which is called a material guarantee, is not included in the obligator agreement category, so that a material agreement is an agreement between the parties to make, change, or abolish material rights. Whereas the existence of such material agreements can give rise to absolute material rights, namely rights that can be imposed on anyone and place the creditor in a more prioritized position if the debtor defaults, the preferred creditor must give priority to the fulfillment of his obligations and has the power to precede the rights of concurrent creditors in terms of debt repayment.⁴² By showing certain items that have been agreed by the parties to be used as collateral and thus constitute special collateral, the creditor of the loan has been protected more effectively and carefully from the start.

The author assumes that collateral is a temporary transfer of ownership of collateral from the debtor to the creditor while the creditor's receivables are still unpaid. The right status is transferred to the debtor if the receivables have been paid off, but if the debtor defaults, the creditor is given the right to sell collateral to fulfill the debtor's obligations. The only items that may be subject to a guarantee agreement are traded items, not non-traded items. Land objects and non-land objects, both fixed and movable, are both acceptable forms of merchandise. It is clear that objects that can be guaranteed must be cashable because material guarantees are a preventive measure in securing credit, so it is impossible to guarantee something that cannot be liquidated or cashed out. Considering that the function of a guarantee legally is the existence of legal certainty for repayment of the debtor's debt or the implementation of a performance, it is clear that the object that can be guaranteed must be cashable. In addition, the collateralized goods must be movable and valuable. The parties must also sign a guarantee agreement for the imposition of land rights under the Mortgage Law No. 4 of 1996, which means that mortgage rights are given to guarantee a certain debt, if they agree that the debt is secured by land rights. acknowledgment of sale and purchase agreement According to Article 8 General Elucidation of Law No. 4 of 1996, because the Mortgage is essentially a follow-up or *accessoir* to a certain receivable, which is based on a debt agreement or other agreement,

⁴¹ Priyambodo, "Perlindungan Hukum Bagi Nasabah Debitur Terhadap Penetapan Bunga Bank Yang Tidak Sesuai Dengan Peraturan Perundang-Undangan Dalam Perjanjian."

⁴² Imanda Nadia, "Lahirnya Hak Tanggungan Menurut Peraturan Pemerintah Agraria Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik," *Notaire* 3, no. 1 (2020).

Mortgage is a complete *accessoir* agreement. The Mortgage that becomes collateral for the receivables will also be legally transferred to the new creditor if the receivables are transferred to another creditor. Likewise with collateralized receivables, they are deleted if the Mortgage is declared invalid by the court, either due to redemption or for other reasons.⁴³ The position of the guarantee agreement which is built as an accessory agreement guarantees the stability of the guarantee institution for the security of the lender's creditor. As a result of the *accessoir* agreement, as described in the General Elucidation of Point 8 UUHT, it has legal consequences, including:⁴⁴

- 1) existence depends on the principal agreement;
- 2) participate in the change with the change of main agreement;
- 3) write-off depends on the principal agreement. The *accessoir* nature of the Mortgage as 3 is mentioned in the General Elucidation of Point 8 of the UUHT is then elaborated in Article 10 paragraph (1) of the UUHT which stipulates that: *clan* is an integral part of the debt agreement in question or other agreements that give rise to said debt.

To set aside procedural law formalities, the law has provided the right to sell on its own authority (*ex lege*). This can be seen because the *parate* executive is run by the first creditor holding the mortgage, which collects the proceeds from the sale through a public auction. Even though the opinions of Indonesian scholars were submitted to the executive *parate*, it seems that no Indonesian scholar questioned the existence of the first mortgage holder or his authority to sell mortgage goods on his own initiative (*executive parate*).⁴⁵ Many expressly admit that without going through the court as referred to in Article 1178 paragraph (2) BW. If it is specifically stated in the Mortgage Deed, the holder of the first mortgage right can immediately auction off his mortgage collateral through an auction house in accordance with Article 1178 Paragraph (2) BW (*beding van eigenmachitige verkoop*) is a business or facility held intentionally so that creditors can get their money back more cheaply. Because the sale is carried out solely through a public auction and without asking for a decision letter from the Head of the District Court, the provisions of Article 6 UUHT are simple.⁴⁶ In terms of implementation costs, using an executable *parate* is cheaper than using an executorial title. because there is no fee to file an executable fiat application for the Chairman of the District Court. This is because the execution procedure is through procedural law formalities which means the process takes a long time and is complicated, so it is feared that creditors will hesitate to provide credit with mortgage collateral, especially if the amount of the bill is not large. There seems to be an imbalance between the amount that needs to be charged and all the time, cost, and effort it takes to repair negative credit.

Because the guarantee agreement is designed as an *accessoir* agreement, its existence has the following legal consequences. First, it depends on the main agreement of its

⁴³ Nadira, "Pendaftaran Hak Tanggungan Elektronik Yang Akan Mulai Dilaksanakan Di Badan Pertanahan."

⁴⁴ Apriani, "Konsep Ganti Rugi Dalam Perbuatan Melawan Hukum Dan Wanprestasi Serta Sistem Pengaturannya Dalam KUH Perdata."

⁴⁵ Rudiansyah, "Analisis Yuridis Perjanjian Arbitrase Perihal Tidak Dapat Ditandatanganinya Perjanjian Tertulis Oleh Para Pihak Yang Bersengketa."

⁴⁶ Uniar, "Analisis Pengalihan Piutang Secara Cessie Atas Hak Tanggungan Di Bank Btn Syariah."

existence (birth). Second, the primary agreement is also a deletion factor. Third, the follow-up agreement is also terminated if the first agreement. Fourth, the follow-up agreement also changes if the initial agreement changes. Practically creditors will have higher privileges as a result of the guarantee agreement, including the Mortgage, which makes their position in transactions with debtors more secure. With these findings, it is clear that the use of guarantee agreements in the economy can provide sufficient protection for business actors. Therefore, although the guarantee agreement and mortgage are only complementary agreements, they can strengthen the primary agreement and give strong priority to creditors. This form of gatra can certainly enhance legal reputation in the business world.⁴⁷

According to the law it is necessary to carry out the sale of Mortgage objects on their own power in a public auction. In fact, KP2LN is an organization designated by law to conduct public offerings. The creditor is given the right to receive settlement of receivables from the sale proceeds before other creditors if the mortgaged item is sold by auction.⁴⁸ Because the mortgage right still exists, the debtor is still entitled to the remaining proceeds from the sale (debtor). It is clear that the embodiment of the principle of legal protection is meant for creditors and debtors when viewed from article 6 UUHT.

Even though there is a difference between the executor of the mortgage and the executor of the mortgage, it can be said that Article 6 UUHT, which if it cannot be said to have been adopted by BW, is the same as Article 1178 paragraph (2) BW, concerning mortgages, it is born because it was agreed, while parate executie Mortgage was born because it was determined. by law (ex lege). According to Article 6 UUHT, separate implementation provisions regulated in Article 1178 paragraph (2) BW do not apply to the first creditor's ability to sell mortgage goods on his own initiative. If parate executie in a mortgage only exists if agreed beforehand, but in Article 6 UUHT parate executie is given ex lege (according to the law), the same as pawning (Article 1155 BW), means that parate executie is present without the need for further approval. Therefore,

In addition, if we compare Article 6 UUHT with Article 1178 paragraph (2) BW, both of these laws regulate the "sale" of collateral in public, but there are differences between the two. Article 6 of UUHT regulates "selling on one's own power", while Article 1178 paragraph (2) BW regulates "authorized to sell." Thus, in Article 6 UUHT, the creditor with the first mortgage has been given the right to sell the mortgage object through an auction in the event that the debtor defaults.⁴⁹ Article 6 UUHT and Article 1155 BW, which regulate the separate implementation of mortgaged goods, both provide the right to sell themselves. It is clear that this is not a mortgage because the first creditor's right to separate executory rights exists only if agreed by the creditor and the debtor acting as guarantor. Auction guarantees are not obtained from the person who gives the mortgage right, but naturally he has that right because of the law that gives it to him.

⁴⁷ Apriani, "Konsep Ganti Rugi Dalam Perbuatan Melawan Hukum Dan Wanprestasi Serta Sistem Pengaturannya Dalam KUH Perdata."

⁴⁸ Supriyatno, "Reconstruction of Legal Protection of Debtors in the Execution of Mortgage Guarantee Object Based On the Value of Pancasila Justice."

⁴⁹ Purnamasari, *Hukum Jaminan Perbankan*.

The right to sell on its own authority granted by law (*ex lege*) is intended to break through the formalities of procedural law. This can be known because the implementation of the *parate executie* is carried out by the first creditor holding the Mortgage through a public auction, and takes the repayment of the proceeds from the sale.⁵⁰ The existence of the first Mortgage holder having the right to sell the Mortgage object on its own power (*parate executie*) apparently not an Indonesian scholar denied it even though the opinion of the Indonesian scholars was put forward at the *executie parate*. As meant in Article 1178 paragraph (2) BW, there are those who expressly admit that without going through a court, according to Article 1178 paragraph (2) BW, a first mortgage holder can immediately auction off his mortgage collateral through the auction office, if this is expressly agreed upon in the deed. That mortgage (*met beding van eigenmachitige verkoop*). The author agrees that the promise *ex* 1178 paragraph (2) BW is an effort or facility that is deliberately made for creditors to be able to get their money back more cheaply

3.2. Creditor Protection Based on Article 11 UUHT as a Form of Legal Certainty

Means of protection for creditors are also specified in Article 1132 BW which states that the object is a mutual guarantee for all those who benefit him; the income from the sale of said objects is divided according to the balance, that is, according to the size of each receivable, unless there is a valid reason among the creditors to take precedence. This provision is a general guarantee that arises from laws that apply generally to all creditors, the general nature of the guarantee rights means that there is no difference or priority for certain creditors, the *paritas creditorum* principle applies, where payment or settlement of debts to creditors is carried out in a balanced manner.⁵¹ This means that if a debtor has several creditors, the position of these creditors is the same, but if the debtor's wealth is unable to be used to pay off the debtor's debts perfectly, then these creditors are paid based on the principle of balance, each of which gets its receivables in balance with those of creditors. others (*nonpondspondsgewijs* principle). The meaning of the exception in Article 1132 BW is that the law makes deviations from this balance principle, if there is an agreement or if the law determines. Deviations that occur through agreements are if there is a material guarantee agreement while deviations due to laws are called privileges. The privilege is not a material right, only a right to take precedence in settlement/payment of receivables.

If one examines the words in Article 11 paragraph (2) UUHT, which states: "In the APHT "can" include promises...", the meaning of the word "can" is meant by the law is to allow creditors to agree on clauses in the form of promises that have been offered as stipulated in Article 11 paragraph (2) of the UUHT to creditors to agree on these promises or not, the law provides an option to make promises. According to Remy Sjahdeini, Article 11 paragraph (2) UUHT is optional and not limitative, meaning that the promises may be included or not included, either in part or in whole, while they are non-limitative because

⁵⁰ Bahri, "Kajian Yuridis Pelaksanaan Pelelangan Objek Hak Tanggungan Secara Elektronik."

⁵¹ Koto, "Pengalihan Kreditur Melalui Cessie (Studi Kasus Pada Koperasi Simpan Pinjam Indosurya)."

other promises other than the promises stated in Article 11 paragraph (2) UUHT can also be made.”⁵²

These pledges also have legal force on third parties if they are contained in the mortgage granting deed, which is then recorded with the land office. Promises made in accordance with the law's provisions (Article 11 paragraph (2) UUHT) do not imply that creditors may fulfil them (or provides such an opportunity). In this scenario, the law just serves to alert creditors of the potential of such commitments because, in theory, anyone can make any promise as long as it does not violate coercive laws, manners (decency), or public order.

Therefore, these agreements are printed on a blank APHT form for the convenience of the parties and in accordance with the terms agreed upon by the creditor. Thus this phrase can be removed from the relevant form with the agreement of the parties in accordance with what is stated in Article 11 paragraph (2) UUHT and printed on the APHT form. Because the mortgage must be agreed upon, in theory there should be an agreement between the two parties. That is, the guarantor can accept or reject the commitment. As long as both the creditor and the debtor agree by signing the APHT, the promises made serve as evidence of the debtor's sincerity and good faith. If the debtor breaks a promise, the creditor is still granted the promised rights or powers.⁵³ This is done for the advantage of and to safeguard the interests of the creditor if the debtor defaults and does not immediately pay off the creditor's receivables. Regarding the promise to sell on its own authority (*parate executie*), the Deed of Granting Mortgage Rights (APHT) additionally states the following: "Promise that the holder of the first Mortgage Right has the right to sell the subject of the Mortgage Right himself if the Debtor Defaults."⁵⁴

Understanding the above agreement, the creditor can enter into an agreement by granting mortgage rights regarding the right to sell the mortgage object on his own initiative, provided that the debtor is in default and the criteria are met. When read together with the other promises mentioned above, the word "promises can be included" in Article 11 paragraph (2) UUHT can be interpreted that the creditor holding the mortgage right is free to decide whether to make promises similar to that or not listed above. However, if he wants such pledge clauses to apply to himself and the mortgagee to third parties, he must enter into an agreement.

The Article 6 UUHT, which is *ex lege* in nature, can also improve the creditor's position when the debtor defaults, notably by providing provisions. On the other hand, lawmakers offer convenience to creditors, so that creditors can recover their money in an easier and cheaper method. This can be applied in the form of the right to sell collateral items, protecting the creditor from the debtor's unsuitable, inappropriate, or even unintentional activities. There is no doubt that Article 6 UUHT is the legal basis for the

⁵² Lismanto and Utama, "Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial Dalam Perspektif Negara Demokrasi."

⁵³ Wibawa, "Menakar Kewenangan Dan Tanggung Jawab PPAT Dalam Perspektif Bestuurs Bevoegdheid."

⁵⁴ Tumbalaka, "Legal Protection for Creditors in Executing Credit Agreements with Guaranteed Mortgage over Land."

application of *parate executie* to the Mortgage object if the debtor is negligent.⁵⁵ It is sufficient for the creditor holding the first mortgage to submit an application for an auction to the State Auction Office with the procedure for implementing it as referred to in Article 6 UUHT.

The law itself has given power to the creditor holding the first mortgage right to sell the mortgage object at his own will and in public. Because the law itself gives the mortgage right to him, he automatically has that authority and does not need to ask the person who gave him the mortgage. As long as the request is within the legal scope of the auction office, the auctioneer or auction officer cannot refuse a request to sell an auction made through mediation.⁵⁶ Circular Letter of the State Receivables and Auctions Agency Number: SE-21/PN/1998 concerning Instructions for Implementation of Article 6 UUHT and Circular Letter of the State Receivables and Auctions Agency Number: SE-23/PN/2000 regulates the implementation of the regulations that must be followed to implement the provisions of Article 6 UUHT.

As long as the debtor fulfills his obligations adequately and the creditor has no significant interest in the collateral object. The new creditor has the authority as referred to in Article 1178 paragraph (2) BW. The condition is, if the debtor fails to fulfill it, then the creditor is deemed to be able to carry out his decision as soon as possible by promising to sell the goods on the basis of the debtor's power. People claim that creditors have partial execution through "pledges to sell in their own power". In other words, if the debtor defaults and the owner of the first mortgage fulfills the agreement made in the mortgage deed, then he has full authority to handle the situation himself or exercise his legal rights without the intervention of a judge. This term is often referred to as "veiling bedding" (auction promise). However, the condition is that the sale of collateral must be carried out in accordance with Article 1211 BW, which in essence mandates that collateral items be offered for sale in a public auction.

As previously mentioned, the main role of guarantee institutions is to help banks or creditors reduce the risks associated with extending credit. Conversely, if the debtor cannot fulfill all of his obligations related to credit, then the guarantee is a way to maintain the security of the creditor, namely certainty over the repayment of the debtor's debt or the implementation of an obligation of the debtor or the debtor's guarantor. As long as the borrower fulfills the obligation to complete the performance that is pledged as collateral for both movable and immovable property, the function of the new collateral seems to be profitable in this scenario because the debtor is deemed to have defaulted if he does so. did not complete the task as agreed with the creditor.

This is regulated in Article 1131 BW as the formulation of regulations regarding general guarantees. In general, if the debtor refuses to fulfill his obligations voluntarily, the creditor can request that certain assets or objects belonging to the debtor be confiscated, sold by auction, and the proceeds are given to the creditor as settlement of the debtor's

⁵⁵ Shohib Muslim, "The Authority of District Court in Providing Decision of Mortgage Execution," *Journal of Law, Policy and Globalization* 79 (2018).

⁵⁶ Muslim.

obligations. Refund according to Article 1131 BW Of course, it is expensive and time consuming. Because of this, business people view this process as very wasteful; even for banks, it can interfere with the effective distribution of cash. Because creditors are protected by laws and regulations, creditors often request special guarantees from the debtor in the presence of special guarantees by designating and approving certain items to be used as collateral.⁵⁷

The requirements of Article 6 UUHT are straightforward because the sale is conducted merely through a public auction and without requesting a decision letter from the Head of the District Court. Execution of parate executions is less expensive than executorial executions utilising executorial titles since there are no fees associated with submitting an executorial fiat application to the Chief Judge of the District Court. Because the execution process for mortgages entails procedural legal procedures, which makes the operation expensive and time-consuming, creditors may be hesitant to grant credit with mortgage collateral, especially if the overall cost is not excessive. There seems to be an imbalance between the amount that needs to be charged and all the time, cost, and effort it takes to fix bad debts. However, To protect creditors from inappropriate, inappropriate or even bad faith debtors' actions, legislators have made provisions in Article 6 UUHT which make it easier and less costly for creditors to get their money back. This ex lege provision can also strengthen the creditor's position when the debtor defaults by offering provisions that can be used in the form of the right to sell the debtor's assets. There is no question that Article 6 UUHT, which was developed by legislators as the proper way to respond to economic circumstances, provides the legal foundation for the application of parate executie to the subject of the Mortgage when the debtor fails. In Article 6 UUHT, legislators have included provisions that make it simpler and less expensive for creditors to recover their money.

This ex lege provision offers provisions that can be employed in the form of the right to sell the debtor's assets, which can strengthen the creditor's position when the debtor defaults. There is no doubt that Article 6 UUHT is the legal basis for the application of parate executie to the object of Mortgage when the debtor fails because it was created by lawmakers as the right way to adapt to economic needs. legislators have made provisions in Article 6 UUHT that make it easier and less costly for creditors to get their money back. This ex lege provision can also strengthen the creditor's position when the debtor defaults by offering provisions that can be used in the form of the right to sell the debtor's assets. There is no question that Article 6 UUHT, which was developed by legislators as the proper way to respond to economic circumstances, provides the legal foundation for the application of parate executie to the subject of the Mortgage when the debtor fails.

In essence, the emergence of execution arrangements outside the Civil Procedure Code is due to the fact that each execution is carried out through procedures as stipulated in the Civil Procedure Law requiring a long time and expensive costs, as in practice, mortgage holders use the means of execution through mortgage *grosse acte*, the

⁵⁷ Arba and Mulada, *Hukum Hak Tanggungan*.

procedure is must first obtain a fiat from the Chairman of the District Court. Because of that, with the special nature of material guarantees that are determined to meet the needs of economic actors (creditors), especially creditors holding first mortgages, facilities are provided that are cheaper, simpler and more ready to be determined at any time. That is why, it is said that the holder of the first mortgage has a means of making repayment which is not only prioritized, but also simpler than the execution procedure based on mortgage *grosse acte*. The position of the creditor holding the first mortgage has rights - like the holder of a lien right - which is given the right of *parate executie*, as well as the holder of the first mortgage being given the right through a promise, ex article 1178 paragraph (2) which is ready to be used at any time in the event of a default debtor. Provisions given by legislators so that the value of the collateral object does not decrease, are also proclaimed so that those concerned are careful.

Parate executie arrangements prepared by legislators are an excellent means of adjusting to the demands of economic needs. The position of the creditor holding the first mortgage has rights - like the holder of a lien right - which is given the right of *parate executie*, as well as the holder of the first mortgage being given the right through a promise, ex article 1178 paragraph (2) which is ready to be used at any time in the event of a default debtor. Provisions given by legislators so that the value of the collateral object does not decrease, are also proclaimed so that those concerned are careful. *Parate executie* arrangements prepared by legislators are an excellent means of adjusting to the demands of economic needs. The position of the creditor holding the first mortgage has rights - like the holder of a lien right - which is given the right of *parate executie*, as well as the holder of the first mortgage being given the right through a promise, ex article 1178 paragraph (2) which is ready to be used at any time in the event of a default debtor. Provisions given by legislators so that the value of the collateral object does not decrease, are also proclaimed so that those concerned are careful. *Parate executie* arrangements prepared by legislators are an excellent means of adjusting to the demands of economic needs. Provisions given by legislators so that the value of the collateral object does not decrease, are also proclaimed so that those concerned are careful. *Parate executie* arrangements prepared by legislators are an excellent means of adjusting to the demands of economic needs. Provisions given by legislators so that the value of the collateral object does not decrease, are also proclaimed so that those concerned are careful. *Parate executie* arrangements prepared by legislators are an excellent means of adjusting to the demands of economic needs.

4. Conclusion

It is hoped that the object of the Mortgage guarantee can be executed easily and can provide legal certainty, especially for execution in the event of a default debtor. The definition of the right to do something (*handelingsbekwaamheid*) is different from the

meaning of the right to control something (*beschikkingsbevoegdheid*). Collateral is a temporary transfer of ownership of collateral from the debtor to the creditor while the creditor's receivables are still unpaid. The right status is transferred to the debtor if the receivables have been paid off, but if the debtor is in default, the creditor is given the right to sell collateral to fulfill the debtor's obligations,

Legal protection for creditors is automatically obtained when the promises are contained in the Deed of Granting Mortgage Rights which are then registered with the Land Office, so these promises also have binding force as set forth in article 11 Law number 4 of 1996. to protect creditors from the debtor's actions are inappropriate, inappropriate, or even in bad faith, legislators have made provisions in Article 6 UUHT that make it easier and less costly for creditors to get their money back. This *ex lege* provision can also strengthen the creditor's position when the debtor defaults by offering provisions that can be used in the form of the right to sell the debtor's assets

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