

Parate Execution Against Third Party Interest From Debtor Default and Creditor Breach Within The Framework Of National Security Law

¹Yusuf Pranowo, ²Yuhelson, ³Supaphorn Akkapin

^{1,2}Jayabaya University, Indonesia

³Rajamangala University of Technology Krungthep-Thailand

¹yusufpranowo@gmail.com, ²yuhelson2870@gmail.com, ³supaphorn.a@mail.rmutk.ac.th

ABSTRACT

This research aims to analyse the implementation of parate execution in the legal system of property security in Indonesia, especially in relation to the protection of third-party rights. Although parate execution is a creditor's right that is legally regulated in legislation, its practice often raises issues of justice, legal certainty, and legal expediency. Third parties, such as heirs or auction buyers, often suffer losses because their rights are not properly considered or protected. This research uses a normative juridical approach by analysing parate execution cases involving conflicts between creditors, debtors, and third parties. The results show that there is injustice in the implementation of parate execution when the rights of third parties are ignored, as well as legal uncertainty due to inconsistent procedures and rules for execution. In addition, the current legal system has not been able to create optimal legal benefits, as third parties often do not receive adequate protection. Based on these findings, the study recommends clearer regulatory reforms and transparent procedures to protect the rights of third parties. This reform is needed to ensure that the implementation of parate execution is fair, provides legal certainty, and produces equitable benefits for all parties involved.

Keywords: Parate Execution, Third Party, Security Law

Introduction

Agreement in Indonesian law is a legal relationship that cannot be separated from the social life of society (Azis & Nurhaedah, 2018). This agreement is the basis for various economic activities, including financial transactions involving debt and credit. One form of agreement that is common in business practice is a debt and credit agreement that is equipped with material security (Lalafaryan, 2022). This guarantee provides certainty for the creditor that the debtor will fulfil its obligations in accordance with the agreed agreement. With material security, the creditor has the right to execute the collateral if the debtor fails to fulfil its obligations.

Material security, such as mortgages, mortgages, and fiduciaries, are used to protect the interests of creditors (Elul, 2016; Rizkianti et al., 2020). In the event that the debtor defaults or fails to fulfil its obligations, the creditor has the right to execute the collateral (Renneboog et al., 2017). One form of execution that is often used is *parate* execution, which is direct execution without the need to go through court proceedings first (Res, 2021; Suryatomo, 2016). *Parate* execution allows creditors to execute collateral objects quickly and efficiently. However, behind this practicality, *parate* execution often raises legal issues, especially when it involves third parties who have an interest in the collateral object (Res, 2021).

The phenomenon of *parate* execution is increasingly prevalent in the Indonesian banking system. Dispute cases related to collateral execution often occur in court, especially when third parties feel disadvantaged due to executions carried out without considering their rights. Data from Bank Indonesia and the Consumer Protection Agency show an increase in collateral execution cases that lead to legal disputes. By 2023, it was recorded that 50% of total banking disputes involve the issue of execution of mortgage collateral, where third parties often feel disadvantaged due to improper execution procedures.

In addition, a survey from the Financial Services Authority shows that 30% of *parate* execution cases fail to provide adequate legal protection for third parties, such as heirs or auction buyers. This data indicates an imbalance between the creditor's right to execute the collateral and the legal protection for third parties with an interest in the collateral object. This imbalance can potentially lead to legal uncertainty and violation of the rights of third parties, which in turn worsens the legal situation related to *parate* execution.

The urgency of this research lies in the importance of providing clear and effective legal protection for third parties involved in the *parate* execution process. Effective protection will not only provide legal certainty for third parties, but also maintain public confidence in financial institutions and the banking system as a whole. Unfairness in the execution of collateral can affect economic stability, as the credibility of financial institutions is highly dependent on transparency and fairness in the collateral execution process.

A strong and fair legal system is crucial in protecting the rights of third parties involved in collateral execution. Without firm and consistent rules, legal uncertainty and the risk of disputes will continue to increase. A regulatory vacuum or inconsistent application of the law in relation to the protection of third-party rights will exacerbate this situation. Therefore, clearer legal recommendations regarding *parate* execution are needed, both in terms of execution procedures and legal protection mechanisms for third parties. This research addresses a research gap related to the lack of comprehensive studies on legal protection for third parties in the context of *parate execution*. In practice, debtor defaults accompanied by violations of rights by creditors often lead to disputes involving third parties. Therefore, it is important to pay more attention to legal protection for third parties to prevent violations of rights in the process of guarantee execution.

The purpose of this research is to identify and analyze legal violations and defaults that occur in the implementation of *parate execution* against collateral objects, especially related to the protection of third-party interests. This research also aims to develop the concept of *parate execution* that is not only in accordance with formal legal provisions, but also materially protects the rights of third parties. In addition, this research seeks to formulate legal recommendations that can be applied by financial institutions and the government to strengthen regulations and procedures for the implementation of *parate* execution, so as to improve justice, legal certainty, and legal benefits in the practice of collateral execution in Indonesia.

Methods Research

This research uses a normative juridical approach, with descriptive and prescriptive analysis (Robert & Zeckhauser, 2011). The data used is secondary data consisting of primary legal materials, such as laws and regulations, and secondary legal materials, such as legal journals and related scientific works. The research was conducted through a literature study by examining the Mortgage Law, the Civil Code, and concrete cases involving *parate* execution. The analysis is conducted by identifying the elements of default and violation of law that occur in the process of execution of property security.

Results and Discussion

This research highlights various problems that arise in the implementation of *parate* execution in Indonesia, which include aspects of justice, legal certainty, legal expediency, and protection of the rights of third parties. One of the main findings is the injustice often experienced by third parties in the process of collateral execution. Although *parate* execution is a legally recognized right of creditors, its practice often ignores the rights of third parties

such as heirs or good faith auction buyers (Mochtar et al., 2021a). This injustice occurs when the execution is carried out without sufficient notice or without considering the objections of third parties, leading to protracted legal disputes. This condition reinforces the urgency to reform the parate execution system to make it fairer for all parties involved.

In addition, this research also shows that legal uncertainty is one of the main challenges in the implementation of parate execution. Hans Kelsen emphasized that legal certainty should be the foundation of any legal action (Bix, 2018). However, in many cases, creditors carry out parate executions without following clear legal procedures, which causes uncertainty for debtors and third parties (Wibisono, 2022). These inconsistent procedures often lead to confusion and worsen the dispute situation. For example, many third parties only find out about the execution after the auction process has been completed, which means they miss the opportunity to defend their rights. The lack of uniform standards in different regions also exacerbates legal uncertainty, as collateral executions are not always carried out according to the rules in all jurisdictions.

From the perspective of legal expediency, proposed by Mochtar Kusumaatmadja, the law must provide balanced benefits for all parties involved. However, in the context of parate execution, creditors tend to benefit more than debtors and third parties (Mochtar et al., 2021b). The high cost of execution and the lengthy court process in resolving disputes often disadvantage third parties, which in turn creates systemic injustice. To overcome this, there is a need to reform execution procedures to make them more efficient and fairer, so that legal benefits can be felt by all parties.

In addition, this research identifies a gap in the protection of third-party rights. Many previous studies have focused on the relationship between creditors and debtors, but protection for third parties is often overlooked (Herman & Subagyo, 2023; Pangestu, 2019). Third parties, who are not directly involved in the credit agreement, are often in a vulnerable position when the security object is executed. They are not always given the opportunity to state their claims or defend their rights prior to execution. This creates an urgency to improve regulations that are more transparent and set clear procedures to protect the interests of third parties. This gap should be addressed with policies that ensure the rights of third parties are adequately protected in every execution process.

The research also found a lack of transparency in the auction process, which is a major factor in disputes involving third parties. Many auction buyers are not fully informed about the status of the collateral being auctioned, so they are often caught up in disputes after the auction process is complete (Amindya Putri, 2021; Prihartanto, 2021). This lack of information exposes manipulation in the auction process, where creditors can take advantage of the ignorance of third parties to complete the execution quickly. This condition creates an urgency to improve transparency in auctions, so that all interested parties have access to complete and accurate information.

In addition, this research highlights the role of the court in parate execution, which is often the deciding factor in resolving disputes. Although parate execution is intended as a quick solution to bad debts, in reality, many disputes end up in court, which slows down the execution process (Rahmadhani, 2024). Courts sometimes prolong the execution process, which results in additional costs and time for debtors and third parties. The imbalance of power between creditors and third parties is also an important issue, where creditors with better access to legal resources can dominate court proceedings (Agusti-Panareda, 2004; Gazal-Ayal & Perry, 2014). This points to the urgency of improving the role of the courts in handling execution disputes more quickly and efficiently, and ensuring that all parties are treated equally.

Furthermore, this research also found that access to legal aid for third parties is still very limited. Many third parties, especially those in a weaker economic position, do not have adequate access to legal aid to defend their rights in *parate execution* proceedings. The lack of socialization regarding the rights of third parties in collateral execution also exacerbates the situation, where many third parties do not understand their rights or how to defend them (Pastor Vilanova, 2019). Therefore, the urgency to provide more accessible legal aid and improve socialization of rights in collateral execution is crucial.

The main urgency raised in this research is the need for comprehensive reform of the *parate execution* system in Indonesia, with a focus on improving fairness, legal certainty, and protection for third parties. Gaps in third party protection, inconsistency in procedures, lack of transparency, and limited access to legal aid show that the current system is still unable to protect all parties fairly. Reforms are needed so that the *parate execution* process can run more efficiently, transparently, and provide equitable benefits for creditors, debtors, and third parties.

Conclusion

The conclusion of this research shows that the implementation of *parate execution* in Indonesia still faces various serious problems, especially related to injustice, legal uncertainty, and lack of protection for third parties. Creditors often execute without regard to the rights of third parties, leading to disputes and uncertainty. Lack of transparency in the auction process and inconsistent procedures in different regions also exacerbate the situation. In addition, limited access to legal aid for third parties further reinforces the urgency of the need for reform. This research closes the gap by offering solutions in the form of regulatory reform, increased supervision, and better protection for third parties, so that the *parate execution* process runs more fairly, transparently, and efficiently for all parties involved.

Suggestion And Recommendation

This study recommends regulatory reform and increased supervision of the implementation of *parate execution* in Indonesia. Existing regulations need to be updated to be clearer and more consistent, especially in terms of notification obligations to third parties with an interest in the collateral object. The government and financial institutions should strengthen supervision to ensure that execution procedures are conducted transparently and in accordance with the law, so as to minimize legal uncertainty and potential disputes. In addition, transparency in the auction process should also be improved so that the parties involved, including auction buyers and third parties, can obtain complete information regarding the status of the collateral object. This step aims to prevent manipulation in the execution process and provide better protection to all parties.

In addition to regulatory reform, faster and more efficient dispute resolution mechanisms are also urgently needed, for example through mediation or arbitration. This will speed up the dispute resolution process without burdening the often-slow judiciary. Improved access to legal aid is also crucial, especially for third parties and debtors who are economically weaker. Free or affordable legal aid programmers will ensure that they get proper protection during the execution process. More intensive legal education and socialization should also be conducted by the government and related institutions so that all parties understand their rights and obligations in the *parate execution* process. Thus, it is expected that the execution of collateral can run more fairly, transparently, and provide benefits for all parties involved.

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