

**Legal Analysis Of The Implementation Of Execution Parate
Monitoring Rights By Pt. Bank Of Papua**

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Abstract

The aim of this research is to determine the implementation of parate execution carried out by PT. Bank Papua and to find out form of execution of collateral objects charged with Rights Dependents.

The method used in this research is approach normative law and empirical legal approaches. Legal research Normative is legal research that places law as a norm, rule and statutory regulation. Whereas Empirical legal research is legal research that will provide a complete understanding and response to the law in the context of norms to answer questions about the implementation of the rights execution parate dependents. The research results show that the implementation of the execution parate carried out by PT. Bank Papua is not running well because there is resistance from the debtor who does not want the object the collateral is auctioned off. Pursuant to Article 6 of the Bill of Rights Dependents then the creditor has the right to carry out parate execution without requires a fiat of execution from the Court

I. Introduction

Increasing efforts to develop a nation's economy requires the support of a healthy banking sector. Development National is a series of purposeful activities improve the economic and living conditions of society, nation and country from an uncertain condition to a quality level better life. To support an increase in living standards society, there should be changes in the economic structure society by improving banking institutions as a supporter of the real sector in national economic efforts (Ingratubun, 2013).

Banks as financial institutions have a role very important in driving the wheels of the economy through activities The main thing is collecting funds from the community and distributing them returned to society in the form of providing credit. In Current practice is that banks distribute credit according to needs and community activities.

In Law Number 10 of 1998 concerning Banking in Article 1 paragraph (11) states that:

“Credit is the provision of money or bills that are paid equate with it based on agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after certain period of time with interest.”

Banks must have confidence in their abilities and the debtor's ability to return the funds received lend to the Debtor on time with interest conditions that have been mutually agreed upon by the Debtor and Bank credit agreement. In providing credit, the Bank carries out an assessment carefully regarding personality (character), abilities (capacity), capital (capital), collateral (collateral) and economic conditions (conditions of economy).

Relating to collateral (collateral) or collateral in nature material or material goods, one of which is Mortgage Rights Land as regulated in Law Number 4 of the Year 1996 concerning Mortgage Rights on Land and Objects Relating to Land. However, land rights that can be used as collateral must meet the following conditions (H.S, 2003):

1. Can be valued in money, because debt is in the form of money.
2. Including rights listed in the general register, because they must meet publicity requirements.
3. Has the property of being transferable, because if the debtor breach of contract, the object used as collateral for the debt will be sold in advance general.
4. Requires appointment by law.

Credit distribution contains risks affecting the health and continuity of the bank's business. On Generally banks will not just give credit without it guarantee or collateral. Bank as a financial institution should receive legal protection for credit givers and credit recipients as well as parties related to obtain protection through strong collateral rights institutions which can provide legal certainty for all parties involved interested.

Specifically the provisions regarding the execution of mortgage rights which regulates parate executie is regulated in Article 6 of the Mortgage Rights Law which reads: "If the debtor breaks his promise, The first mortgage holder has the right to sell object of Mortgage Rights over one's own power through auction general and take repayment of its receivables from sales proceeds the"

In the explanation of Article 6 it is said that the right to selling the object of Mortgage Rights on one's own authority is one manifestation of the priority position held by Mortgage Rights holder or Mortgage Rights holder firstly, in the event that there is more than one Rights holder Dependents. These rights are based on promises given by giver of Mortgage Rights that if the debtor breaks his promise, Mortgage Rights holders have the right to sell the Rights object Dependents through public auction without requiring approval again from the mortgage provider and then take it repayment of receivables from the sales proceeds before other creditors. The remaining sales proceeds remain vested mortgage rights provider.

Parate execution is the implementation of execution without going through court. Auction sales with parate execution is a way easiest and simplest for creditors to recover repayment of the Debtor's debt. With this Auction Sale you can This can be done through the assistance of the auction house's services or can also be done directly through the State Property and Auction Services Office (KPKNL). In this case, the Auction House acts as the implementing partner creditor.

It turns out that execution is not only related to decisions court and grosse deed, but the term execution is also present in the field of collateral law. Execution of the collateral object which is the implementation of the rights of the creditor holding the collateral rights to the collateral object, if the debtor breaks his promise or defaults by selling the collateral object to pay off his debt. Execution for collateral objects other than based on Article 224 HIR/258 In RBg there are also regulations specifically regarding implementation security rights, where creditors are given special rights, the right to sell What power does it have if the debtor breaks the contract, also known as parate name Execution or direct execution. Parate execution is the first creditor's right to sell certain goods debtor's property by auction without first obtaining fiat court.

If the execution using this method is not possible carried out with certain considerations by the Creditor, then it can be done by executing it with the executorial title. The execution method with the executorial title can also be used settlement or payment of debt, but this method is felt to be it costs a lot of money and takes quite a long time compared to the method of execution and sales below hand.

Arrangement of execution parameters for mortgage rights objects The basic ground on which it stands is on the regulations regarding execution of mortgage rights as regulated in Article 20 paragraph (1) of the Mortgage Rights Law, which essentially states that if the debtor breaks his promise, the mortgage right holder is the first to sell the object of mortgage rights as intended in Article 6 of the Mortgage Rights Law. The elements contained in Article 6 of the Mortgage Rights Law show that there are 2 (two) important things when a debtor is in default, namely the transfer of rights and implementation of rights for creditors holding first mortgage rights. Given to the first mortgage holder, not because he agreed with the mortgage provider, but because the law stipulates this. Based on Article 6 of the Mortgage Rights Law should still be able to do so provide convenience in implementing the sale of rights objects dependents only through public auction, without having to ask for fiat Chairman of the District Court, there is no doubt that Article 20 para (1) in conjunction with Article 6 of the Mortgage Rights Law, is the basis The law applies the execution parate to the object of mortgage rights above ground.

Based on the background above, the researcher tried to conduct research related to the implementation of Parate Execution carried out by PT. Papua Bank.

2. Research Method

In this research the author conducted two types of research law, namely normative and empirical legal research. According to Mukti Fajar and Yulianto Achmad that types of legal research are divided into normative legal research and empirical legal research (sociological) (Achmad, 2010). Legal research Normative is legal research that places law as building norm system. The norm system in question is regarding principles, norms, rules of laws and regulations, court decisions, agreements and doctrines.

Meanwhile, empirical legal research is legal research which will provide a complete understanding of internal law the context of norms and when applied in a social context. Based on legal research normative and empirical will answer questions about implementation mortgage execution parate. which is conducted by Creditors/Banking.

3. Results and Discussion

Implementation of Execution Parate by PT. Papua Bank

PT. Bank Papua as one of the banking institutions provide credit facilities. In relation to land as collateral in granting credit, it will be charged with Mortgage Rights which provide special privileges for the bank as a creditor in a credit agreement with a debtor.

procedures in the process of imposition of Mortgage Rights carried out by PT. Bank Papua includes, among others:

a. Credit agreement

In terms of encumbering Mortgage Rights, the parties namely the debtor and the bank (creditor) first make an agreement credit. The basis for a credit agreement is that it has been approved previously by the debtor and bank (creditor) on the value of the Rights object Dependents that will be charged and the amount of credit value will be given through a credit offer letter issued by the bank regarding the amount of credit that can be obtained charged to the collateral object that will be charged with mortgage right.

Credit agreement entered into by PT. Papua Bank can be done in two ways, 1) Private credit agreement, namely a credit agreement made only between the debtor as borrower and the bank (creditor) as a credit lender. In practice Private credit agreements are only made for amounts certain credit scores only. Based on Article 10 paragraph (1) of the Mortgage Law, the agreement that gives rise to Debts and receivables can be created by private deed or must be made with an authentic deed. 2) Notarial credit agreement, namely a credit agreement that is made before a notary.

b. Stage of Granting Mortgage Rights

In Article 10 paragraph (1) that is the beginning of the stage of granting rights Dependency is preceded by a promise to provide rights Dependents as collateral for repayment of certain debts, which stated in the debt and receivable agreement and is an inseparable part of the debt and receivable agreement related or other agreements that give rise to debt the. Inclusion of a promise to grant Mortgage Rights as Guarantee of repayment of certain debts is the nature of rights Dependency as accessoir agreement. If the object of the Mortgage Rights is land rights comes from the conversion of old rights that have met the requirements registered but the registration has not been carried out, the granting of mortgage rights is carried out simultaneously with application for registration of rights to the land in question. The granting of Mortgage Rights is carried out by making a Deed Granting Mortgage Rights (APHT) by the Deed Making Official Land (PPAT) in accordance with statutory regulations applicable.

- c. The mortgage rights registration stage is carried out by the official Land Deed Maker (PPAT)

The granting of Mortgage Rights according to Article 13 paragraph (1) of the Mortgage Rights Law must be registered with the Office Land. In Article 13 paragraph (2) and paragraph (3) of the Mortgage Law, it is explained how to do this Mortgage registration is carried out by: (1) After signing the Deed of Granting Mortgage Rights made by the Land Deed Making Official the parties, the Land Deed Making Officer sends the Deed Granting of the relevant Mortgage Rights and inheritance other things required by the Land Office. Delivery This must be done by the Land Deed Official concerned no later than 7 (seven) working days after signing the Deed of Granting Mortgage Rights. (2) Registration of Mortgage Rights is carried out by the Land Office by making a land mortgage book and record it in the land book of the rights to the land that becomes object of Mortgage Rights and copy the note to certificate of title to the land in question. (3) The date of the Mortgage Land book is the day of the month seventh after complete receipt of the letters required for registration and if the seventh day falls on holidays, the relevant land book is dated next job.

- d. Issuance of Mortgage Rights Certificate

The Land Office issues a certificate of proof called certificate as proof of the existence of Mortgage Rights. In the Regulations Minister of Agrarian Affairs/Head of National Land Agency Number 3 In 1996 it was stated that the Mortgage Rights Certificate consisted of: on a copy of the Mortgage Land Book and a copy of the Deed The granting of the relevant Mortgage Rights made by Head of the Land Office bound together in a cover documents whose form is determined based on regulations the. As the same executive power as judge's decision which has permanent legal force, Mortgage Rights certificate is given irah-irah by affixing on the cover the sentence "FOR JUSTICE BASED ON FAITH IN THE ALMIGHTY GOD" (Article 14 paragraphs (2) and (3).

In practice, credit distribution by banks does not last forever running well, sometimes bad credit problems occur. The existence of bad credit in the banking world is something that is very disturbing and deeply threatening continuity of banking business. As with banks in general, at PT. Bank Papua is also not always in the process of returning credit by debtors is going well, in other words there is problem credit. Usually banks will not just give credit without pay attention to guarantees or collateral (collateral) to guarantee credit obtained by debtors. Collateral is generally accepted in banking circles are fixed objects in the form of land and buildings, which is bound by the Mortgage Rights regulated in Law Number 4 of 1996.

The classification of bad credit can be said if the debtor breach of promise (default) or not fulfilling what was promised in the credit agreement. Credit classification at PT. Papua Bank carried out based on several categories, namely:

a. Smooth (Pass)

That is, if the payment is made correctly by the debtor time in accordance with bank regulations, both principal installments debt and interest on debt.

b. Special mention (special mention)

That is, if the payment made by the debtor is available arrears in payments, both principal and debt installments debt interest and has not exceeded 90 (ninety) days consecutive calendars.

c. Substandard (substandard)

It is categorized as substandard if the debtor is in arrears credit payments, both principal installments and interest on debt arrears of more than 90 (ninety) calendar days consecutive.

d. Doubtful (doubtful)

It can be categorized as doubtful if the debtor is in arrears credit payments, both principal installments and interest on debt arrears exceeding 120 (one hundred and twenty) days consecutive calendars.

e. Bad credit

Categorized as bad credit if the debtor is in arrears credit payments, both principal installments and interest on debt arrears that have exceeded 270 (two hundred and seventy) consecutive calendar days.

According to Daniel Palullungan (Palullungan, 2023), regarding problematic credit parties Banks have settlement methods or operational standards separately which applies at PT. Bank Papua in carrying out handling bad credit that occurs, of course also guided by the rules set by Bank Indonesia. Furthermore, Daniel Palullungan stated that, in The bank will carry out normal bad credit settlements make a verbal warning/charge first so that the debtor carry out credit payments in the form of installment payments credit, if in this case this method does not work then the party The bank will issue a summons/warning to the debtor arrears in credit payments containing:

- a. Notification regarding interest payment due date and/or credit principal.
- b. An order to pay a debt in a certain amount accordingly bank request or notification.
- c. Time limit for debtors to make payments.

Bank actions in carrying out credit rescue depending on the nature of credit bottlenecks and problem debtors This means that the bank will assess whether the credit is bad caused by intentional or unintentional factors, In this case the bank will usually determine the steps which can lighten the debtor's burden, with the aim of obtaining credit The debt can be resolved by the debtor.

Resolving problematic credit or bad credit is possible carried out based on the Bank Indonesia Circular Letter Number 26/4/BPPP dated 29 May 1993 which in principle arranging rescue of problematic loans before they are resolved through legal institutions is through alternative handling rescheduling (rescheduling), return requirements (reconditioning), and restructuring. In a letter This circular is what is meant by credit rescue problems through rescheduling, reconditioning and restructuring are as follows (Nurhaedah, 2023):

- 1) Through rescheduling, which is an effort to make changes to several terms of credit agreements relating to payment schedules return/credit period including grace period, change in amount installments. If necessary with additional credit.
- 2) Through reconditioning (reconditioning), namely doing changes to part or all of the terms of the agreement not limited to changes in installment schedules or credit term only. But the credit changes are without provide additional credit or without making a top conversion all or part of the credit becomes the company's equity.
- 3) Through restructuring, namely efforts in the form of make changes to the terms of the credit agreement in the form of granting additional credit or making conversions or all or part of the credit to the company carried out with or without rescheduling or reconditioning.

Steps taken to rescue bad debts One way for banks is through credit restructuring namely the bank will carry out an analysis of problem loans for obtain information regarding the causes of arrears payments based on related financial reports with the debtor's business. Settlement of bad credit through offers restructuring offered by banks requires good faith from debtor, in this case the debtor is willing to follow the terms and offers made by the bank.

Credit restructuring is a process for restructuring problematic loans with the aim of improving them debtor's financial position. Credit restructuring is a payment credit with conditions that are more lenient or lighter in comparison with the terms of credit payment before the process is carried out credit restructuring.

Restructuring of bad loans carried out by banks will provide policies that include the following:

1) Decreasing Interest Rates

Restructuring through reduction or relief interest rate which aims to provide relief to debtors, so that with a decrease in credit interest rates there will be making payments that the debtor must pay will be smaller on each payment date. With this way It is hoped that this will provide relief to internal debtors injuring credit/debt payments.

2) Extension of Credit Term

Restructuring through extending the credit term aims to give debtors time to make

longer credit payments, so that debtors can continue his business.

3) Additional Credit Facilities

Restructuring through additional credit facilities aims to: It is hoped that the debtor can develop his business again will generate income that can be done credit payments.

Resolving bad credit through restructuring is an effort made by the bank to deal with credit problematic or bad credit due to debtor default, however If these efforts do not produce results, then the bank carry out repressive methods, namely through the streets which has been agreed and determined by law.

The last effort was made by the bank inside dealing with bad credit is by executing it object of Mortgage Rights as regulated in Article 20 The Mortgage Rights Law states that:

- a) If the debtor breaks the contract, then it is based on the rights of the Rights holder The first mortgage to sell the mortgage object as intended in Article 6 of the Rights Law Dependents and Executive Title contained in the certificate in Mortgage Rights as intended in Article 14 paragraph (2).
- b) Based on the agreement of the mortgage rights provider, sale of the rights object The bet can be carried out privately, if in this way the highest profitable price can be obtained all parties.

Based on an interview with the Head of the Credit Division of PT. Bank Papua, said that PT. Bank Papua uses the method execution as regulated in Article 20 paragraph (1) letter a regarding Parate Execution, as regulated under Article 6 of the Mortgage Law which states if the debtor is injured promise, the first mortgage holder has the right to selling the object of mortgage rights over one's own power through public auction and take repayment of receivables from the proceeds the sale.

Execution under Article 6 of the Bill of Rights Dependents give authority to carry out execution directly without the need to request a determination or fiat of execution from court first. This can be seen by the words selling one's own power which shows that there is priority position to the Mortgage Rights holder in this case the Bank is the creditor. The usual straightforward execution also called an execution parate is an execution that can carried out directly without the assistance of the court.

Based on Guarantee Theory, guarantees are very necessary in granting credit, because the creditor has an interest and belief in the collateral provided by the debtor then if the debtor does not carry out his obligations or is negligent carry out their obligations with the authority they have creditors will hold a public auction. So are based on the agreement theory that the debtor applies for credit in the agreement it is mandatory to provide guarantees which constitute assessor

agreement or additional agreement, while agreement The main thing is a credit agreement or loan agreement money.

Subekti (Subekti, 1998) says that the Execution Parate is run yourself or take for yourself what becomes His rights, in the sense of being without the intermediary of a judge, are directed at something collateral to then sell the goods yourself.

The basis for this direct execution or Parate Execution granted by Article 6 which gives authority to Mortgage Rights holder to sell the Mortgage Rights object on its own authority through a public auction if the debtor breach of contract or default. Authority to sell up This power itself is strengthened by the promise in the Deed Granting Mortgage Rights (APHT) which states that The first mortgage holder has the right to sell on the object of the Mortgage's own authority if the debtor is injured promise.

Pay attention to the substance of Article 6 of the Law on Rights Dependency with Article 1178 paragraph (2) BW, the similarities between both regulate the "selling" of collateral objects in public, but the difference is, in Article 6 of the Bill of Rights Dependents regulate about "selling on one's own power", while Article 1178 paragraph (2) BW regulates "authorized to sell", so in Article 6 of the Law of Rights Encumbrance, the creditor's right in the event of a debtor's breach of contract, to sell the object of the mortgage right through auction, has been given by the law itself to the creditor holding the mortgage right First. This means that if the debtor defaults, the creditor The first right holder has the right to sell the collateral object through auction, not obtained from the mortgagee, however This right naturally belongs to him, because of the law himself gave it to him.

Furthermore, Daniel Palullungan (Palullungan, how to apply for execution, 2023) said that, Bank carry out the Execution Parate through a public auction or tender execution by submitting a request for execution of Rights Dependent in writing to the Wealth Services Office State and Auction (KPKNL), in the party's request for execution The bank will provide documents for the auction requirements execution, which takes the form of:

- a) Proof of debtor default, in the form of warning letters 1 to 3 carried out by the Bank.
- b) Copy of proof of details of the debt amount that must be met by the debtor.
- c) Copy of credit agreement
- d) Copy of mortgage certificate.
- e) Copy of Ownership Certificate (SHM) as proof of ownership.

The implementation of the execution auction carried out by KPKNL is appropriate with Minister of Finance Regulation Number 106/PMK.06/2013 concerning

Amendments to Minister of Finance Regulation Number 93/PMK.06/2010 concerning Auction Implementation Guidelines, which stated that KPKNL is a government agency under the Directorate General of State Assets at the Department Finance is responsible for organizing the auction.

Form of Execution for Collateral Objects Encumbered with Rights Dependents

1) Parate Execution by the State Assets Service Office and Auction (KPKNL)

In the Mortgage Law, the provisions parate execution refers to the provisions of Article 20 that if the Debtor In default, the first mortgage holder has rights to sell mortgage rights objects through public auction as well take repayment of its receivables from the proceeds of the sale.

State Property and Auction Services Office (KPKNL) is a vertical agency of the Directorate General of State Assets is under and directly responsible to the Head Regional Office of the Directorate General of State Assets, meanwhile The Regional Office itself is directly responsible to the Director General of State Assets (DJKN) under whose auspices Ministry of Finance whose provisions are regulated in Regulations Minister of Finance No. 170/PMK.01/2012 concerning Organization and Governance Work of Vertical Agencies of the Directorate General of State Assets.

The provisions in Article 6 provide rights to creditors Firstly, to sell the object of mortgage rights over the authority themselves through a public auction and take payment receivables from the sale proceeds if the debtor breaks his contract. Based on Article 6 of the Mortgage Rights Law should still be able to provide convenience in implementation sale of mortgage rights objects only through public auction, without having to ask for the fiat of the Chairman of the District Court. Convenience It mainly shows the time efficiency compared to execution of court decisions that have legal force which is fixed. Because the execution parate is cheaper compared to the execution uses the executorial title, because it does not bear the costs of submitting an application for determination execution to the Chairman of the District Court (Poesoko, 2008). Because it is feared that creditors will be reluctant to provide credit with collateral dependents, especially if the bill is not large.

To be able to use the authority to sell the object of rights responsibility under their own power without the consent of the debtor a promise from the debtor is required as regulated in Article 11 paragraph (2) of the Mortgage Rights Law. That promise included in the Deed of Granting Mortgage Rights (APHT). Promise This is facultative, meaning it has no influence on the validity of the deed, with the inclusion of the promise in the Deed of Gift Mortgage Rights (APHT), which are then registered with the Office Land, then these promises have binding force to a third party. Regarding the inclusion of a promise to sell yourself Through a public auction there are differences of opinion among groups legal practitioners.

According to Boedi Harsono, (Harsono, 2008) although generally these promises are Facultative, but there are promises that must be included, namely those mentioned in Article 11 paragraph (2) letter e of the Mortgage Rights Law that the first mortgage holder has the right to sell on their own authority the object of Mortgage Rights if debtor defaults. This promise does not stand alone, however complement and therefore must be connected and constitute one unity with the provisions of Article 6 of the Bill of Rights Dependents. This promise is necessary for juridical requirements in implementing the rights of the Mortgage Rights holder stipulated in Article 6 of the Mortgage Rights Law.

Meanwhile, Sutan Remy Sjahdeini (Sjahdeni, 2003) stated that there was inclusion of a promise for the Mortgage Rights holder to sell object of Mortgage Rights based on its own power in the Deed Giving mortgage rights is excessive. Article 6 of the Mortgage Rights Law has determined as a provision that binding if the debtor breaks the promise of the Mortgage Rights holder first has the right to sell the Mortgage Rights object the basis of its own power through public auctions and taking repayment of receivables from the sales proceeds. In other words, both the powers of the first Mortgage Rights holder whether or not included in the Deed of Granting Mortgage Rights, The first Mortgage Rights holder has the power/ authority to carry out such actions. The inclusion of such a promise in the Deed of Granting Rights The dependents concerned will only provide a taste steady (only psychological, not juridical) to holders of Mortgage Rights rather than if they are not listed.

In the Circular of the State Receivables and Auctions Agency Number: SE-21/PN/2000 determines that the sale not by force, but an act of implementation agreement by the parties. Therefore there is no need to hesitate any longer serving auction requests from banks for Rights objects Dependents based on Article 6 of the Mortgage Rights Law

Furthermore, to carry out the auction, you can appoint and carried out through the assistance of the Auction House. Next in the Letter Minister of Finance Number 304/KMK.01/2002, dated 13 June 2002 Concerning Auction Implementation Instructions in Article 2 paragraph (3) stated that: "The auction office may not reject the application auction submitted to him as long as the auction requirements are met fulfilled". Next, the implementing regulations are enforced follow up with the Decree of the Director General of Accounts Receivable and State Auction Number 35/PL/2002, dated 27 September 2002 regarding Technical Instructions for Auction Implementation. Therefore further clarifying the implementation of the holder's first creditor rights mortgage right to sell the object of the mortgage right to land with its own power (parate execution), namely through auction, implemented by KPKNL.

2) Parate Execution with the Assistance of Judge

Implementation of the execution using the executorial title Based on the Mortgage Rights Certificate, the implementation must be submitted and comply with the Civil Procedure Law as stated specified in Article 224 HIR or 258 RBg (Article 14 jo 26 Mortgage Rights Law), the implementation procedures It takes a long time because you have to apply request for execution to the Chairman of the local District Court first. Requests for execution are made orally or by letter to the Chairman of the District Court in accordance with the provisions contained in Article 195 paragraph (1) HIR. Then the Chairman of the District Court will summon the debtor and admonish him to fulfill his obligations (aanmaning) in 8 (eight) working days in accordance with the provisions of Article 196 HIR (Pati, 2013).

If the specified time has passed and the debtor has not fulfill its obligations or after being summoned the debtor cannot coming to face or after coming to face and being reprimanded does not want to fulfill his obligations then the Chairman of the District Court give an order in a letter to use the goods as collateral confiscated. And if permanent goods are confiscated, they must be announced to the public (Kosasih, 2022). If the item has been registered at the Land Office, the confiscation report will be notified to the Office National Land Agency. Starting from the time the confiscation was carried out and announced to the public, the items confiscated may not be transferred to another person, burdensome or rent out the confiscated property. If after the goods the collateral was confiscated and the creditors still did not want to comply The obligation is that the confiscated collateral can be auctioned off after first obtaining a determination from the Chairman of the District Court regarding the auction.

According to the Chairman of the Jayapura Class 1A District Court that execution of collateral objects in the Rights Law Dependents if the debtor defaults in principle adopt provisions regarding mortgages. But on the Bill of Rights Dependents have inconsistencies in the articles governing parate execution. Article 6 implies that the execution parate can carried out even without an agreement because the right is inherent by law, whereas the explanation of the article states that this right is new There is a condition where a prior agreement is made to sell direct object of collateral. However, in its development the Court Agung has issued decision Number 3201 K/Pdt/1980 dated May 20, 1984 regarding the promise to sell on his own authority by prohibiting creditors from carrying out direct executions at the Auction Office, but must first go through the fiat of the Chairman of the District Court formerly (Putra, 2021).

He further said that he too had carrying out the execution of emptying the execution parate because of him is of the opinion that the execution parate for the Mortgage Rights has the executorial power is the same as the court decision that has been made has permanent legal force (Panjaitan, 2018).

3) Parate Execution with Underhand Sales

Mortgage Rights Holders can sell objects Mortgage Rights based on Article 20 Paragraph (2) of the Rights Law Liability, namely by selling under the hand. Underhand execution/sales aim in that way obtain the highest price that benefits all parties. You can only sell mortgage objects under your own hands implemented if there is an agreement between the donor (debtor) and Mortgage Rights holder (creditor). Underhand sales must pay attention to the provisions of Article 20 Paragraph (3) of the Law Mortgage which states that the sale is only can be done after 1 (one) month has passed since notification in writing by the grantor and/or holder of Mortgage Rights to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned and/or local mass media, and no party who expressed objection (Junaedi, 2022).

Obstacles in the Implementation of Rights Execution Parate Dependents

The law has provided for the Execution Parate institution Mortgage Rights as intended in Article 6 of the Mortgage Rights Law are a way out if the debtor breaks his contract or default in fulfilling its payment obligations to bank as creditor. However, in practice in the field it still is There are several obstacles faced by PT. Bank Papua in implementation of the Execution Parate. The theory of legal certainty wants legal certainty in society. Legal certainty is what society wants don't cause conflict. What happens is that the debtor wants it so that mortgage rights as collateral do not end up being auctioned off clearly regulated in Article 6 of the Liability Rights Law that the Creditor has the right to auction the collateral object (Harahap, 2017).

Obstacles experienced at the beginning of the implementation of rights execution responsibilities include resistance carried out by the debtor regarding the execution efforts to be carried out by the Bank. It's not uncommon when knowing that the bank will carry out execution efforts on the land and/or buildings that serve as collateral for credit, debtors with good intentions It's not good to fight back by filing a lawsuit at the District Court. It is hoped that the debtor will get this lawsuit stop the process of executing mortgage rights carried out by PT. Bank Papua or at least delaying the execution time the. As done by Sumiati (Sumianti, 2021) said that the guarantee is in the form of a plot The land used as collateral will be executed by PT. Papua Bank. Before the execution was carried out Sumiati had asked to the bank not to execute the collateral even though it was overdue, Sumiati filed a lawsuit against Class IA District Court to suspend the implementation of parate execution by PT. Papua Bank.

Another obstacle experienced by PT. Bank Papua is the difficulty looking for auction buyers for the land and buildings that are the object execution auction. Not all people understand and know the mechanism for carrying out auctions for the execution of mortgage rights. Not to mention the public's concern about the possibility of The problem is ownership of land and buildings purchased through

auction, for example there is a lawsuit from the debtor or owner for a long time the land and buildings could not accept it holding an execution auction for his land and buildings. Community concerns also arise when land objects and The building being auctioned is physically still inside control of the debtor or other third party.

Obstacles in the Judicial Execution of Mortgage Rights that the auction is carried out through Article 6 of the Rights Law Dependents without a judge's decision or without fiat The court's execution of this article is theoretically hampered with Article 26 of the Mortgage Rights Law, which regulates as long as there are no statutory regulations regulating it, taking into account the provisions in Article 14, regulations regarding execution comes into force of the Guaranteed Rights law, comes into force also in the execution of Mortgage Rights.

Apart from that, sociologically, the implementation of the object execution auction Mortgage Rights are based on the provisions of Article 6 of the Rights Law Dependents at KPKNL (State Assets and Services Office Auction) in practice is guided by the provisions of the Law Mortgage Rights and factors that become obstacles in the implementation of the execution auction based on the provisions of Article 6 of the Mortgage Rights Law and its completion, has very serious consequences detrimental to Debtors, especially those experiencing problems their economy is disrupted (unlucky), so they do resistance to execution.

4. Conclusion

Based on the research results, the researcher trie formulate the following conclusions:

- a) PT. Bank Papua as one of the banking institution provide credit facilities, in relation to land as collateral in granting credit, it will be charged with Mortgage Rights which provide special privileges for the bank as a creditor in a credit agreement with a debtor. In practice Credit distribution by banks does not always go well, Sometimes bad credit problems occur. The existence of bad credit in the world of banking is a very big thing disrupt and threaten business continuity banking. Usually banks will not just give credit without regard to guarantees or collateral for guarantee the credit obtained by the debtor. Collateral in general accepted in banking circles are fixed objects in the form of land and building, which is bound by the Mortgage Rights regulated in Law Number 4 of 1996.
- b) Form of Execution for collateral objects charged with Rights Dependencies can be made by the Wealth Services Office State and Auction (KPKNL), Parate Execution with assistance Judges as well as underhand sales. In the Bill of Rights Dependents, the provisions of the execution parate refer to the provisions Article 20 states that if the Debtor defaults on the rights holder The first dependent has the right to sell the object of the right dependents through a public auction and take payment receivables from the sales proceeds.

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