

The Authority of District Court in Providing Decision of Mortgage Execution

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Abstract

The arrangement of mortgage execution through *Parate Executie* in the Mortgage Act aims to provide convenience to creditors in the fulfillment of their receivables when the debtor is defaulted, i.e. the creditor can sell the object of mortgage right on his own power without having to go through the judiciary. However, the ease with which the creditors are in fact cannot be utilized due to differences in the interpretation of the regulation on execution *parate* in the Mortgage Act (Law No. 4 of 1996), the difference is increasingly tapered by the decision of the Supreme Court of the Republic of Indonesia Number 3210/K/Pdt/1984 which eliminates Bandung High Court Decision related to the case of Auction of Mortgage Objects through the absence of fiat from the Chairman of local District Court which also becomes a jurisprudence in the execution of mortgage objects.

Based on this background, then the issues of discussion are about (1) what is the *ratio decidendi* of the Decree of MARI Number 3210/K/Pdt/1984 dated on 30 January 1986 which becomes the jurisprudence in the implementation of *parate executie*? (2) what are the legal implications that may arise from the mortgage execution through *parate executie* with the availability of fiat courts, (3) how to arrange mortgage execution through the *parate executie* in the near future? Beginning from the problems, they are further analyzed deeply by undertaking legal research. The approach used is legislation approach, concept approach, and both history and case approaches. The results of the research indicate that the *ratio decidendi* of the Decision of MARI Number 3210/K/Pdt/1984 dated on 30 January 1986 which becomes the jurisprudence in the execution of *parate executie* is the procedure of mortgage execution as the basis of mortgage execution. This does not mean that the procedure of this mortgage execution could be applied to all mortgage executions, including execution under Article 6 of Liability Law. This applies specifically for execution on execution title contained in the Certificate of Mortgage as referred to in Article 14 paragraph (2) of Liability Law. Legal implications may arise from the execution of mortality rights through *parate execution* with fiat courts if it does not undergo through the District Court and the debtor is not willing to empty the object of auction. Thus, the Head of District Court is not justified to execute the emptying and to declare execution *parate* directly to the office Auction without going through the fiat of the Head of the District Court. This is considered an unlawful act. The opinion of judges in this matter raises the legal uncertainty so that the author gives an alternative concept related to the arrangement of mortgage execution through *parate executie*. In the future, this Circular Letter of the Supreme Court must be declared null and void as opposed to the Mortgage Act based on the principle of *lex superiori derogat lex inferiori*. Besides, to provide protection for the parties, especially the debtor, creditor and third party (winning bidder), it is necessary to make a regulation concerning the law of a fair and lawful auction.

Keywords: Mortgage, Mortgage Act, Liability Law

a. Introduction

Due to the validity of the Mortality Rights Act dated on 9 April 1996, the mortgage is the only land rights guarantee agency in the written national land law. The mortgage is a credit that provides protection and privileges to a particular creditor. The law on credit secured by mortgages lays down certain contractual agreements and debt relations between the creditor and the debtor which includes the right to sell the specified auction of asset. This is for subsequent repayment of the proceeds from the sale of the guarantee if the debtor is defaulted.

The process of executing mortgage carried out by the creditor is actually not difficult. This is because beside the certificate of mortgage serves as a proof of the existence of mortgage, where the certificate is affixed with the words "For the sake of Justice by the One God," which has the same executive power as the court decision which has the power of fixed law, the first mortgage holder also has the right to execute directly to the object of mortgage which is used as credit guarantee if the debtor violates the promise. This is based on the power granted by the debtor or by law to the creditor.

Based on Article 6 of Liability Law, when the debtor is defaulted, the pledge of the first mortgagee shall have the right to sell the object of the right of liability on his own behalf through a public tender and the settlement of receivables derived from the auction proceeds. This is called the execution *parate* as it has also been mentioned in Article 20 of Liability Law. Referring to the formulation of Article 6 of Liability Law, the

process of execution can be completed without intervening the court. In other words, there is no need to request the execution fiat of the Chief of District Court, since the right of the first mortgager to sell the object of mortgage on his own power is a right under the law. So, without any agreement the right emerged. While according to Grosse, deeds themselves can be directly executed as a judge's verdict through the mechanism as mentioned in the Article 224 of HIR through warning, seizure and sale. The auctioneer may occasionally refuse to conduct a public sale prior to the approval of the Chairman of the local District Court, for the reason of the executive title contained in the mortgage certificate as referred to in Article 14 Section (2).

The author's interest to discuss the execution of mortgages through parate execution is because, first, the execution agency is an execution institution outside the court which means that the execution deviates from the principle of execution stipulated in the Civil Procedure Law, whose procedure is faster than the execution arranged according to the Civil Procedure Law. Secondly, in the law practice, the execution parathy is eliminated using the legal basis of jurisprudence from Decision of MARI Number 3210 K/Pdt/1984, dated on 30 January 1986. Thirdly, there is confusion in the execution parate arranged in Liability Law.

Bank as a creditor seldom submits an auction request to the State Auction office on the basis of the guarantee as stated by Article 6 of the Liability Law because the petition shall be rejected under the guise of contradicting the Decision of the Supreme Court of the Republic of Indonesia (MARI) Number 3210 K/Pdt/1984 dated on 30 January 1986 and Book II of the Indonesia Supreme Court which requires the availability of fiat execution of the district court. Therefore, many collaterals held by creditor cannot be auctioned and sought by society due to the fear of legal problems in the future. Other problems that may arise are that the purchased land must be vacated because the court will refuse to provide an evacuation order under the pretext of non-court execution so that the execution of guarantee without fiat of the court's chairman may create legal uncertainty.

b. Research Problem

This research explains and describes the Authority of District Court in Providing Decision of Mortgage Execution which formulated as follows:

1. What is the *ratio decidendi* of the Decree of MARI Number 3210/K/Pdt/1984 dated on 30 January 1986 which becomes the jurisprudence in the implementation of *parate executie*?
2. What are the legal implications from the obligation of *parate executie* related to mortgage which must be through the decision of Head of District Court?
3. How is the arrangement of mortgage execution through *parate executie* in Law No. 4 of 1996 regarding Mortgage of Lands with objects related to them in the future.

c. Result and Discussion

Ratio Decidendi of the Supreme Court of the Republic Of Indonesia Decree Number 3210/K/Pdt/1984

Execution is essentially an act of carrying out or executing a court decision. According to Article 195 of H.I.R., the definition of execution is to carry out judicial decisions by the courts. "The right to enforce the judge's decision" as provided in the Civil Procedure Law constitutes the entire provisions governing that which may be used to compel a defeated person to do what is required of him in accordance with the verdict of the judge. If the defeated party does not do so voluntarily, then the winning party, by filing, may execute the content of the decision to the Head of the District Court where the case is filed with the aid of forced equipment.

In the execution of the object of guarantee, that is the execution by off book sales which are arranged for the material of land guarantee as stipulated in Article 20 Section (2) of Liability Law stating the buyer agreement with the holder of the mortgage rights, the sale of mortgage object can be carried out off book, thus the highest price can be obtained and it can benefit all parties. The sale as referred to in Section (2) may only be made after the expiration of 1 (one) month since it has been notified by written notes by the giver and/or the mortgage holders to the interested parties and announced at least in 2 (two) newspapers in the relevant area and/or local mass media, and no party has objected.

In its development, there are executions other than the verdict of judges and *grosse acte* (Article 224 of H.I.R.), which John Z. Loudoe calls authentic deeds such as: The State Receivables Committee listed in Perpu Number 4/1960, LN No. 156-1960, in Article 6 of PUPN's authority is to issue a letter of coerced head "For the sake of Justice by the One God". PUPN in executing does not require the fiat of the Head of District Court. There is also an authentic deed with a title-directive entitled "For the sake of Justice by the One God," whose execution requires the fiat of the Head of District Court, namely the Arbitration Decision as stated in Article 63 of Law No. 30 of 1999, about the Arbitration and Alternative of General Dispute Resolution.

Reviewing what Satjipto Rahardjo has said, if these legal principles are not clearly stated in the law, then the legal principles can be sought by comparing among several legislation presumed to contain "equality," and based on historical interpretation of law enactment. The equation desired by the legislator is the legal principle under which the legislation is concerned. Based on the equation of the execution rule applicable to the guarantee

item, when the debtor breaches the contract then on any execution of the collateral item (lien, mortgage (*hipotik*), fiduciary, and mortgage (*hak tanggungan*)), the law gives the creditor the right to sell the object of the mortgage of his own possession known as the *parate executie*. Actually, ease, simplification and acceleration of repayment for creditors when the debtor defaults using *parate executie* strongly supports the rotation of the wheels of economists who demand efficiency. Therefore, by understanding the history and equality of material security institutions which have been described, it can be said that the *parate executie* is the execution of material assurance which deviates from the principle of execution according to the Civil Procedure Law when the debtor defaults.

Study materials to be reviewed are the *ratio decidendi* and Supreme Court Decision of Republic of Indonesia dated on 30 January 1986. All cases were filed in Bandung District Court in Bandung. The case of its position is as follows: That the original plaintiff with defendant II/I has a legal relationship of money loan on credit under the Account Statement, AC. No. 9602; That on 10 December 1979 original defendant I by the original defendant III intercepted a public tender for the original plaintiff's property in the form of a plot of land with its building at Kandaga Bandung Shopping Center as described in the lawsuit; That the auction was conducted by the original defendant I in *parate executie* based on the mortgage certificate No. 130/1976 dated on 10 April 1976 without going through Bandung District Court according to Article 1178 and 1211 B.W. jo Article 224, H.I.R., which is coercive.¹ The plaintiff in its lawsuit, among others, stated that the actions/acts of defendants I and II by Mediation of Defendant III that auctioned the local land and buildings known as "Kandaga Shopping Center" on Monday, 10 December 1979 without going through the Head of the First-Class District Court of Bandung is unlawful acts.

The Bandung District Court gave its decision on 20 May 1980, No. 425/1979/G/Bdg, the decision, among others: states that the act of Defendant I and II by Defendant III auctioning the local land and buildings known as "Kandaga Shopping Center" on Monday, 10 December 1979, without going through the Head of the First-Class District Court of Bandung is an act against the law.²

At the appeal level, the Defendant's petition has been canceled by the High Court of Bandung with its decision dated on 17 November 1981, No. 76/1981/Perd/PT.B, whose commands in the principal matter of the case, among others: stating that the purchase of the auction undertaken is comparable, originally the Defendant IV in the conference, Plaintiff IV in the Reconstruction for a portion through the mediation of the State Auction Office of Bandung on plots and shop buildings as described in the auction of 10 December 1979 No. 184 is lawful.³ That with the decision of the High Court, the Plaintiff/Appellant filed an appeal to the Supreme Court of the Republic of Indonesia.

The Supreme Court of the Republic of Indonesia in the case No. 3210 K/Pdt/1984 gives its *ratio decidendi* which states: The Supreme Court of the Republic of Indonesia has revoked the decision of Bandung High Court because it is considered wrong to apply the law based on the following considerations:

- a. That based on Article 224 of HIR, the auction implementation as a result of a grosse acte mortgage using the title of "For the sake of Justice by the One God," which has the same legal power as the Court decision, shall be executed by command and head of the Court, when there is no peace in its implementation.
- b. That in fact, in this case, the execution of the auction is not on the orders of the Head of Bandung District Court but carried out by the Head of the State Auction Office Bandung on the order of Defendant origin I (Bank-Creditor), therefore, the public auction is contrary to Article 224 HIR. Thus, the auction is invalid.
- c. That therefore the Defendants of Origin (Bank-Creditor-State Auction Office and auction buyer) have committed unlawful acts.⁴

The decision of the Supreme Court of the Republic of Indonesia raises the pros and cons, the pro with the Supreme Court decision is Boedi Harsono, stating that for the creditor holder of the mortgage on the land, the law provides 2 easements in undertaking the execution, if the debtor breaches the contract. Without having to go through an ordinary civil lawsuit, according to Article 224 of H.I.R., a creditor may ask the Head of District Court to hold what is called a *parate executie*.⁵ The execution is on the orders of the District Court. This convenience, practically, cannot be utilized by creditors, because for the execution of the *parate executie*, the Head of District Court demands the handover of the Grosse Acte Mortgage. In Article 224 of H.I.R. it is called Mortgage Grosse Acte as a prerequisite to execute *parate executie*.

According to Gde Sudarta⁶, the Supreme Court's decision only concerned about the problem of grosse acte. While the High Court's cancelled decision only question about the first mortgage with the right to sell their own

¹ H. P. Panggabean, 1992. *Himpunan Putusan Mahkamah Agung RI Mengenai Perjanjian Kredit Perbankan (Berikut Tanggapan)*, jilid I, Citra Aditya Bakri, Bandung hal. 233.

² *Ibid*, hal. 238

³ *Ibid*, hal. 240.

⁴ *Ibid*, hal. 231.

⁵ Dikutip dari Buku Bahan Pendalaman Materi Hukum Hakim Tinggi Peradilan Umum, Surabaya, 21-25 Februari 1995, hal. 4

⁶ Gde Sudarta, 1989. *Pandangan Segi Hukum dan Praktek Mengenai Surat Pengakuan Hutang (Pasal H.I.R) Dan Wewenang Untuk Menjual Barang/Jaminan*, Media Notariat, No. 12-13, Tahun IV, Oktober, hal. 97-99.

clause (*beding van eigenmachtige verkoop*). The High Court in its legal consideration is of the opinion that the auction seller itself, which has been undertaken by the State Auction Office of Bandung, is not violating the provisions of the law because the credit agreement between the two parties (creditors and debtors are secured by the first mortgages containing clauses entitled to sell themselves). Thus, the revocation by the Supreme Court does not indicate whether the form of “self-imposed mortgages” is still allowed to be treated or not, instead, the revocation is solely on the basis that a *grosse acte* of the mortgage in accordance with Article 224 of HIR of the auction procedure shall be executed on the order of the Head of the Court and not by the subjected parties.

The opinions of the jurists indicate a strong protest against the MARI Decision No. 3210K/Pdt/1984, dated on 30 January 1986. The authors agree with the jurists who disagree with the decision *ratio decidendi* of MARI, because, first, based on the beginning of *parate executie*, it is to accelerate and facilitate the repayment of creditors receivable without going through the process court. Secondly, if the legal considerations of MARI stipulate that what is meant by public services in Article 1211 of B.W. is a court and not a bureau of auction, it can be presumed that MARI interprets Article 1211 of B.W. based on Article 510 Rv, which states:

“if there is a particular agreement in Article 1178 of B.W., then the applicant for execution within 10 (ten) days after the announcement as in Article 507 disclaims the seizure to the creditor who entered into the agreement and to the holder of the mortgage register at the residence of choice.”

If it is true that the consideration of MARI is based on Rv, it is clearly contrary to the applicable Civil Procedure Law, because Rv is the law of Civil Procedure for European Class, whereas for *bumiputera* people, Civil Procedure Law is applied as regulated by H.I.R. and R.Bg. In addition, Article 510 RV is actually used for third parties who might want to carry out the execution of which one object becomes the object of guarantee on material agreement (mortgages). Article 1211 B.W. should still be based on the Auction Office.

Legal Implication of *Parate Executie* On Mortgage Objects Should Be Through The *Fiat* of Chairman Of District Court

The practice of execution on mortgage (execution *parate*) of the judges is different. Some follow the content of the Supreme Court’s decision by refusing to empty the auction object directly to the Auction Office. Others do not follow the Supreme Court’s decision and are willing to vacate the auction object which is not abandoned or vacated by the negligent or defaulting debtors.¹

The difference of opinion on the decision of the Supreme Court also occurred in the Supreme Court, this is evident from the Letter of Vice Chairman of the Supreme Court of Judicial Affairs, Number 02/Wk.MA.Y/1/2010, regarding the improvement of the result formulations of Rakernas Palembang in 2009 on the execution of *grosse deed* of recognition debt or mortgage. The content of the letter is as follows:

“That in the case of execution of mortgages performed by the State Auction office if the goods that have been auctioned are not voluntarily handed over to the auction buyer, then the auction buyer may apply to the District Court to empty the object that has been auctioned without the need to file a formal lawsuit, because basically Article 200 Section (11) of HIR/208 Section (2) of RBG is not solely intended to carry out a court decision but also towards the auction conducted by the State Auction Office.”²

The dualism of opinion among judges on the execution of the mortgage according to Syahrul Machmud can occur, because the Indonesian judiciary does not follow the precedent principle (have to follow the decision of the previous judge), the Judge is given the freedom to decide cases based on his conviction, and not always follow the previous judge’s decision, even though the Supreme Court’s decision is the highest court in Indonesia. Similarly, not all Judges or District Court Chairmen have read the Supreme Court’s decision. Because the book of a collection of decisions is still very limited in number, so the access to read the decision is very limited.³

Related to SEMA, it cannot be used as a legal basis for refusing the execution of mortgage based on execution *parate*. In the general explanation of number 2 to 4, it is mentioned that Liability Law is basically intended to replace the provisions of mortgages and *creditorverband* made in the Indies era, based on land law before the existence of national land law, is certainly not in accordance with the principles of national land law, and cannot accommodate developments which occur in the domain of credit and guarantee rights as a result of the progress of economic development. The consequence is the emergence of differences of views and interpretation of various problems in the implementation of land guarantee law, such as the inclusion of executorial title, undertaking of execution and so forth, so that legislation is considered unable to guarantee the legal certainty towards credit activity. On the basis of this fact, it is necessary to immediately enact a law on a strong land rights institution with the following characteristics:

- a. Give priority to the holder;
- b. Always follow the object that is guaranteed in the hands of whomever the object is
- c. Fulfill the principle of specialism and publicity so as to bind third parties and provide legal certainty to the

¹ Syahrul Machmud, *Ibid*.

² Hasil rakernas MA Tahun 2009 di Palembang.

³ *Ibid*

- interested parties;
d. Easy and definite execution implementation.¹

Implications of SEMA Law Number 7 Year 2012 and SEMA Number 4 Year 2014 is put as a legal basis in implementing the execution *parate*, as it is already described in Chapter II on the hierarchy of the above legislation, especially in Article 7 and 8 of Law Number 12 Year 2011 on the Establishment of Legislation.

Thus, only the Supreme Court Regulation which has binding legal force, excluding the Circular Letter of the Supreme Court (because the Supreme Court Circular Letter only binds in not out). The Supreme Court as the highest court has the function of leading the judiciary in the development and establishment of law and at the same time developing the law of Indonesia through the decisions towards the unity of law and justice. The legal products of the Supreme Court might be in the form of Supreme Court Regulations (PERMA), Supreme Court Circulars (SEMA), Supreme Court *Fatwas*, and Supreme Court Decrees (SKKMA).

As stated in Chapter II earlier, the Regulation of the Supreme Court (PERMA) is basically a form of law that contains provisions of procedure law. In addition, the Circular Letter of the Supreme Court (SEMA) is the form of circular leadership of the Supreme Court to all levels of judiciary which contains guidelines in the administration of the judiciary, which is more administrative. Then, the Supreme Court's intended *Fatwa* contains the legal opinions of the Supreme Court which are granted at the request of state institutions.

Instead, the Decree of the Chairman of the Supreme Court (SKKMA) is a decree (*beschikking*) issued by the Chairman of the Supreme Court on one particular matter. As it has been described above, the Supreme Court Circular Letter is in the form of a circular letter from the Supreme Court leaders to all levels of judiciary containing guidelines in the administration of the judiciary, which is more of an administrative matter. This is in accordance with the provisions of Article 32 Section (4) of the Supreme Court Law.

Under the provisions of Article 32 Section (4) of the Supreme Court Law, SEMA is merely administrative and it cannot regulate procedure law. Jimly criticized the form of the Supreme Court Circular Letter whose material is of an arrangement. If the material contains rules, the best form of the legal products is regulation.

As the authority of the Supreme Court, one of the authorities and duties of the Supreme Court is: The Supreme Court has the authority to provide guidelines in all jurisdictions within the framework of implementing the provisions of the Judicial Power Law. Nevertheless, all legal products of the Supreme Court must remain subject to the principle or hierarchical principle.

In accordance with the hierarchy of legislation, i.e. the disjuncture of any type of legislation is based on the principle of *lex superiori derogat lex inferiori* that the higher rules ignore or overrule the lower rules, that the lower legislation should not conflict with higher legislation. Therefore, the Supreme Court Circular Letter should be subject to hierarchical principle, even the Circular Letter must be in harmony with the Mortgage Law.

Arrangement of Mortgage Execution Through *Parate Executie* In The Future

The simplicity of the *parate executie* execution over the object of the mortgage shall be in accordance with Article 1211 B.W. whose procedure is only through auction sales so that it does not take a long time because it is feared that creditors will be reluctant to give credit with mortgage guarantees, especially if the amount of the bill is not large.² The amount that will be billed with the cost, especially the time required to get the receivables back is imbalanced. It is understood that the commitment of Article 1178 Section (2) of B.W. is a deliberate effort or means for a creditor, so that he can recover his money in an easier and cheaper way.³ Therefore, the principle of equilibrium and justice appears in Chapter 1178 Section (2) of B.W.

Based on the opinions of some jurists on *parate executie* when compared to execution via *grosse acte* mortgages (certificate of mortgage) as described above, it is understandable that the commitment to sell on his own power as the creditor right of the first mortgage holder (mortgage), provided that if the debtor breaches the contract, and the sale of the guarantee object by auction and the creditor is entitled to pay off both the money and interest as well as the cost of sales revenue. This means that the underlying principle of *parate executie* is the principle of legal protection for mortgage holder creditors (mortgage) which is realized by providing facilities such as:

- 1) The ease of the execution procedure in a means to recover the money, compared to the execution process of *grosse acte* mortgages;
- 2) Rapid time to recover the money, compared to the execution process of *grosse acte* mortgages;

¹ Penjelasan Umum LIABILITY LAW angka 2 sampai 4

² V. Nierop, hal. 155, mengatakan: "Dergelijke bevoegdheid (maksud kewenangan ex Pasal 1178 ayat (2) B.W.) *bovordert ge geldschieting op, en de hypotheekatievan geringe waarde*". Selanjutnya ia mengatakan bahwa: "men heeft gaarne aan het geuit verlangen gevolg gegeven, als zich overtuigd boudende, dat daardoor een warkelijke dients aan ingezetenen zal worden gedaan, vermits bepaaldelijk de onderzetting van geringe perceelen, de geldschietters afgeschrikt hun geld te leenen, uit hoofde der kostbare procedure in cas van uitwinning". Dalam J. Satrio II, *op cit*, hal. 30.

³ Stein, hal. 102, mengatakan bahwa penjualan berdasarkan Pasal 1178 ayat (2) B.W. lebih sederhana daripada penjualan eksekusi yang biasa, karena hanya perlu memperhatikan sedikit formalitas (*...eenvoudiger da de normale executoriale verkoop, odat hij met minder formaliteiten gepaard gaat*). dalam J. Satrio II, *op cit*, hal. 31.

- 3) Cheap and simple costs to recover the money, compared to the execution process of *grosse acte* mortgages;
- 4) Protection of rights of third parties and or debtors from bankruptcy;
- 5) Certainty in the sale of collateral objects through auction;
- 6) Exceptions towards the execution of legal formalities of civil procedure law;
- 7) To prioritize the repayment of the receivables compared to selling the collateral goods through execution, *grosse deed* of mortgages;
- 8) The right to sell the collateral objects simply because it is completed without going through or without being preceded by the procedure of insertion (confiscation and seizure).

Repositioning the main purpose of execution *parate* execution. The basic provisions of the *parate executie* are in Article 6 of Liability Law, which states that: “if the debtor breaches the contract, the first holder of the mortgage shall have the right to sell the object of mortgage to his/her own power through a public tender and to take his receivable from the proceeds.” Disassembling the *parate executie* cannot be observed partially and separately between the philosophical objectives and their implementation. Instead, it must be observed comprehensively and thoroughly. It means that the value of justice contained in the doctrine of the *parate executie* must begin from the basic concept of rights and obligations which were born and must be implemented by creditors and debtors while implementing the credit agreements.

Distortion of the meaning of *parate executie* which is promiscuous with the meaning of the execution *grosse deed* on the basis of Article 224 of HIR, which must go through the determination of the Chairman of the Court,¹ precisely distanced from the side of justice. Of course, justice for creditors not only have to bear the losses due to non-performing credit payment obligations by the debtor, but also at the same time the creditor (financial institution/bank) must make a 100% (one hundred percent) backup of allowance for uncollectible accounts (PPA) of the total loan minus the value of collateral.² On the other hand, the problem also further aggravates the logical consequences of the debtor because the longer the settlement time, the more burdensome the credit borne by the debtor and it opens the possibility of a dispute in court. Based on the principle of “*lex posteriori derogat legi priori*,” it means that the new law overrides the old law then the jurisprudence cannot be used as the legal basis for the revocation of the execution *parate*.

d. Conclusion

1. *Ratio Decidendi* of the Decision of the Supreme Court of the Republic of Indonesia (MARI) Number. 3210 K/Pdt/1984, dated on 30 January 1986 stated that the existence of fiat execution from the District Court in the execution based on executorial title as intended in Article 224 of HIR/258 R.Bg. also applies to the execution of mortgage objects and may result in additional problems as follows:
 - a. Philosophical aspect: the nature of the execution *parate* of the easy and quick execution is that the creditor can easily and effectively obtain the repayment of his receivables. Whilst, judges’ consideration in the Supreme Court of the Republic of Indonesia (MARI) Decision Number 3210 K/Pdt/1984, dated on 30 January 1986 is related to *grosse deed* of mortgages.
 - b. Theoretical aspect: The Decision of the Supreme Court of the Republic of Indonesia (MARI) Number 3210 K/Pdt/1984, dated on 30 January 1986 which became the jurisprudence in the mortgage execution with the existence of Law No. 4 of 1996 about the Land Mortgage along with Objects Related to the Land is irrelevant to serve as jurisprudence in a court decision.
 - c. Normative aspect: if the procedure of execution of *parate executie* is equated with execution procedure according to Article 224 H.I.R./258 R.Bg. as indicated in Article of 14 Liability Law, it reaffirms the inclusion of *parate executie* institutions. The procedure of mortgage execution as the basis of mortgage execution does not mean that the procedure of mortgage execution is valid for all mortgage executions, including execution under Article 6 of Liability Law. It is only for execution on executorial title contained in the certificate of mortgage as referred to in Article 14 Section (2) of Liability Law.
2. Legal implications arising from the Supreme Court Decision Number 3210 K/Pdt/1984 which becomes the jurisprudence of the court in the process of mortgage execution cause legal uncertainty and obstruction of the benefit which should be obtained by the parties in executing the execution *parate*. The details are as follows:
 - a. Implications in terms of legal philosophy and the nature of undertaking execution *parate* in certificates of mortgage based on law related to the Court Chairman’s fiat cause the economic objectives of creditors, debtors and even third parties who become auction winners to be disturbed.
 - b. The implications from legal theory and normative side that the concept of execution *parate* is deviated from Article 224 of HIR is purposively to make it easier, shorter and faster so that the wheel of economic turnover of the parties can be solved with certainty and fast. Therefore, the jurisdiction of the

¹ M. Yahya Harahap I, *op cit.* hal.113

² Peraturan Bank Indonesia No.7/2/PBI/2005 Tentang Penilaian Kualitas Aktiva Bank Umum, sebagaimana yang telah dirubah terakhir kalinya melalui Peraturan Bank Indonesia Nomor 11/2/PBI/2009

- judge in providing the execution fiat on the case of the execution parate is not in accordance with the application of legislation or in other words the jurisprudence is not absolutely necessary to be implemented because it can lead to disparity of court decision.
- c. Implications of judicial professionalism, within the scope of the judiciary, are highly irrelevant if the execution parate is to be carried out with the consent and under the leadership of the Head of the District Court. Thus, there is no difference between the execution parate under Article 1178 Section (2) of Civil Code for mortgages or Article 6 jo Article 11 Section (2) Letter e of Liability Law for mortgage by execution of grosse mortgage (*hipotik*) certificate or grosse mortgage (*hak tanggungan*) certificate according to Article 224 HIR/258 of RBg. Execution is carried out by the creditor because the debtor defaulted over his debt. Next, the creditor does the auction towards guarantee object directly to the Auction Office without going through the fiat of the Head of District Court.
 3. Reconstruction towards the arrangement of the mortgage execution is by prioritizing legal certainty and legal protection for each party.