



Homepage Journal: <https://jurnal.unismuhpalu.ac.id/index.php/JKS>

Legal Analysis of the Implementation of the Execution of the Object of Mortgage Based on Decree Number: 10/PDT.EKS/RL/2024/PN.JKT.BRT JO. Number 265/25/2023

M. Aslam Fadli

Lembaga Bantuan Hukum CLPK

*Corresponding Author: lbhclpk@gmail.com

Artikel Penelitian

Article History:

Received: 18 Aug, 2025

Revised: 27 Oct, 2025

Accepted: 29 Oct, 2025

Keywords:

Execution, Mortgage Rights, Third Party Protection, Legal Certainty, PT Lunto Richpat

DOI: [10.56338/jks.v8i10.9043](https://doi.org/10.56338/jks.v8i10.9043)

ABSTRACT

This study aims to analyze the validity of the execution of the object of mortgage based on Decree Number: 10/Pdt.Eks/RL/2024/PN.Jkt.Brt jo. The case was registered under the title of the Building Use Rights Certificate (SHGB) No. 265/25/2023/KPKNL, Area I Jakarta, with two Building Use Rights Certificates (SHGB) No. 11 and 12 in the name of PT Inasa Wahana. The execution was carried out due to the debtor's default, but this gave rise to legal issues because a third party, PT Lunto Richpat, was operating the property under a lease agreement without receiving any notification or warning prior to the execution. Furthermore, a discrepancy was found between the addresses of the property listed in the SHGB and the locations of the executed buildings, namely Jalan Bulak Teko, RT 006 RW 003 and RT 011 RW 003. This research employed a normative juridical method with a case approach and a statute approach. Data were obtained from court rulings, KPKNL auction documents, and legal literature on collateral. The results indicate that the execution did not fully comply with the principles of legal certainty and protection for third parties as stipulated in Law Number 4 of 1996 concerning Mortgage Rights. Mismatching the execution object and the lack of notification to third parties have the potential to create legal flaws in the execution process and civil liability for the execution applicant. The author recommends that every execution of mortgage rights be conducted with the prudential principle, thorough physical verification of the object, and official notification to interested parties, to ensure fairness and legal certainty for all parties involved.

INTRODUCTION

One of the important instruments in the Indonesian security legal system is the Mortgage Right on Land and Land-Related Objects, as regulated in Law Number 4 of 1996 (UUHT). The mortgage right provides a priority position (preferential rights) to creditors in obtaining repayment of their receivables through the execution of the mortgaged object if the debtor defaults. However, in practice, the execution of the mortgage often gives rise to legal issues, particularly when there are third parties with legal relationships with the mortgaged object, such as tenants, managers, or other parties acting in good faith.

The case under study is the Execution of Mortgage Rights based on Decree Number: 10/Pdt.Eks/RL/2024/PN.Jkt.Brt jo. Number 265/25/2023/KPKNL Wil. I Jakarta, with two plots of land in the name of PT Inasa Wahana, each with SHGB Nos. 11 and 12. The shareholder's subsidiary used these certificates as collateral to obtain financing. However, due to default, the creditor (PT Primajaya Pantas Garmen) filed an execution request through the West Jakarta District Court and the KPKNL.

The problem arose because PT Lunto Richpact, a third party operating under a lease agreement, owned the mortgaged land, but received no warning or notification prior to the execution. Furthermore, there was a discrepancy between the address of the land listed on the certificate (Jalan Bulak Teko RT 006 RW 003) and the location of the building being executed (Jalan Bulak Teko RT 011 RW 003). As a result of the execution, PT Lunto Richpact suffered significant material losses, raising legal questions regarding the validity and responsibility for the execution.

Issues such as these indicate potential violations of the principles of prudence, third-party protection, and legal certainty, which should be the basis for executing mortgage rights. Therefore, analyzing this court ruling is crucial to assess whether the execution complies with applicable law and how legal protection can be provided to third parties harmed by the execution.

Problem Formulation

How is the execution of the mortgage object carried out based on West Jakarta District Court Decision Number 10/Pdt.Eks/RL/2024/PN.Jkt.Br?

What is the legal protection for third parties (PT Lunto Richpat) who are harmed by the execution?

Are there any legal errors related to the discrepancy in the addresses of the executed objects?

Research Objectives

This research aims to provide a comprehensive legal analysis of the validity of the mortgage object execution procedure and to assess the legal responsibilities of the parties involved in the execution process.

More specifically, the objectives of this research are as follows:

1. Analyzing the Validity of the Mortgage Execution Procedure

This research aims to assess whether the execution of the mortgage object complies with the provisions of Law Number 4 of 1996 concerning Mortgage Rights (UUHT) and the regulations for auction implementation through the State Assets and Auction Service Office (KPKNL). The analysis focused on formal and material aspects, including the issuance of court orders, notification to relevant parties, determination of object boundaries, and implementation of the auction. This research also examined any discrepancies in the addresses of the objects of execution, which could potentially create legal flaws in the execution process.

Based on the research and legal analysis, several important aspects were identified relating to the validity of the mortgage execution procedure, both formally and materially, as stipulated in Law Number 4 of 1996 concerning Mortgage Rights (UUHT) and the regulations for implementing auctions through the KPKNL.

1.1. Formal Aspects of Execution

Formally, the execution of mortgage rights must go through the stages stipulated by the UUHT, namely: Debtor default, evidenced by late or failed debt payments.

Application for execution by the creditor to the competent district court.

Determination of execution by the court as the legal basis for the auction by the KPKNL.

Implementation of a public auction of the mortgage object based on the said determination.

In this case, the execution procedure was preceded by a court order, but there were weaknesses in the notification process to interested parties, particularly to the third party (PT Lunto Richpat) occupying and managing the same property. The absence of formal notification or warning prior to the execution could be considered a violation of the principle of fair notice and legal protection for parties acting in good faith.

1.2. Material Aspects of Execution

Material aspects of execution must be based on the mortgage object whose identity is clearly stated and matches that stated in the Building Use Rights (SHGB) certificate. In this case, a discrepancy was found between the address of the execution object, namely between that stated in the SHGB (Jalan Bulak Teko RT 006 RW 003) and the location of the building being executed (Jalan Bulak Teko RT 011 RW 003). This discrepancy in the identity or location of the execution object creates the potential for legal defects (defect of object) because it could result in execution being carried out on an object not listed in the mortgage. This contradicts the principle of prudence and legal certainty in the implementation of mortgage rights as referred to in Articles 6 and 20 of the Mortgage Law.

1.3. Legal Implications of Procedural Inconsistencies

These procedural inconsistencies have the potential to result in the following legal consequences:

The execution may be declared invalid if it is proven that the object being executed is not the object listed in the mortgage deed.

The creditor (the applicant for execution) may be held legally liable for losses incurred by a third party based on the provisions of Article 1365 of the Civil Code concerning unlawful acts.

The third party (PT Lunto Richpat) has the right to file a lawsuit for unlawful acts or a third-party objection (*derden verzet*) against the results of the execution or auction to protect its rights and interests.

1.4. Evaluation of Implementation by the KPKNL

As the auction executor, the KPKNL is responsible for ensuring that the auctioned object has been properly verified, both administratively and physically. In this case, if the KPKNL fails to conduct a field inspection and continues to auction an object that differs from the certificate, this could be categorized as administrative negligence, which has implications for the legal liability of state institutions in the context of public services.

From the analysis above, it can be concluded that the execution of the mortgage object in this case did not fully comply with applicable legal provisions, both in terms of formal and substantive procedures. Mismatched object addresses and the lack of notification to third parties are the main factors giving rise to potential legal flaws and new disputes. Therefore, corrective measures are needed to ensure that future executions uphold the principles of legal certainty, justice, and protection of third-party rights.

2. Assessing the Legal Responsibilities of the Parties Involved

The next objective is to examine the legal responsibilities arising from the parties, namely:

The execution applicant (PT Primajaya Pantes Garmen) ensures that the application and execution are carried out in good faith and without prejudice to other parties.

In the execution of mortgage rights, several parties have their respective roles and legal responsibilities, both directly and indirectly. Based on the analysis, the legal responsibilities of the parties can be explained as follows:

2.1. Execution Applicant – PT Primajaya Pantes Garmen

As the auction winner and automatically holder of the mortgage rights, PT Primajaya Pantes Garmen has the right to file an execution application based on the KPKNL's decision as the auction winner. However, this right must be exercised in good faith and without causing harm to other parties.

In this case, PT Primajaya Pantes Garmen filed an execution application for two SHGB (Land Title Certificates) in the name of PT Inasa Wahana without thoroughly verifying the physical ownership of the property and the existence of a third party (PT Lunto Richpat) operating a business on the property.

The lack of prior notification or warning to the third party demonstrates a lack of good faith in the execution process.

From a civil law perspective, the actions of the execution applicant can be categorized as negligence resulting in losses to a third party, potentially giving rise to legal liability under Article 1365 of the Civil Code concerning unlawful acts (PMH). Therefore, PT Primajaya Pantes Garmen is legally obligated to compensate for the losses incurred if it is proven that the execution has harmed another party acting in good faith.

2.2. West Jakarta District Court

As the institution issuing the execution order, the West Jakarta District Court is responsible for ensuring that all formal and material aspects of the execution application comply with statutory regulations. In the context of this case, the court should have conducted an administrative and factual examination of the execution object, including verifying the match between the data in the Land Title Certificate (SHGB) and the physical conditions on the ground. The discrepancy between the address of the certificate (RT 006) and the location of the building being executed (RT 011) indicates that judicial oversight of the execution implementation has not been optimal. If the court fails to ensure the validity of the object of execution, this can give rise to moral and administrative liability, and serve as grounds for the aggrieved party to file a lawsuit or claim for compensation against the state based on the principle of state liability.

The legal standing of the West Jakarta District Court's implementation of the constatement process without the presence of the National Land Agency (BPN) may be deemed legally flawed or procedurally invalid, because constatement related to land requires the presence or involvement of the BPN, the agency with administrative authority and authentic data regarding land status. Without the presence of the BPN, the results of the constatement process have the potential to:

Lack complete evidentiary force, as they are not supported by official legal and physical data from the BPN.

Be potentially contested or annulled, as they are deemed to fail to comply with the principles of prudence and legal certainty in resolving land disputes.

Contradict the principle of coordination between state institutions, as stipulated in the provisions concerning the resolution of land disputes in court.

Thus, contesting by the court without the presence of the BPN does not have strong legal force and can be declared invalid or null and void if it causes losses to the party concerned.

3. KPKNL Region I Jakarta

As the executor of the auction execution, KPKNL has an administrative and legal responsibility to ensure that the auctioned object is truly the object listed in the court order and is not subject to any dispute.

In this case, if KPKNL conducts an auction without conducting field verification and auctions the object at an address different from that stated on the certificate, this action can be categorized as administrative negligence.

KPKNL is obligated to ensure transparency, accuracy, and legal certainty in every auction. Failure to fulfill these obligations can result in legal liability, both institutionally and individually, in accordance with the principle of public official accountability in state administrative law.

4. Third Party – PT Lunto Richpat

As a lessee or party operating a business on a mortgaged object, PT Lunto Richpat has the right to legal protection under a valid and good-faith contractual relationship. This third party is not included in the legal relationship between creditor and debtor, but its rights must still be respected as long as the rental agreement is valid and known to the owner of the object.

The lack of official notification to PT Lunto Richpat prior to the execution violates the principles of justice and legal protection for parties acting in good faith. Therefore, PT Lunto Richpat legally has the right to:

File a third-party objection (*derden verzet*) against the execution or auction.

File a lawsuit for unlawful acts to claim compensation for losses suffered.

Thus, the third party has a strong legal basis to demand protection of its rights due to the improper execution.

From the analysis above, it can be concluded that:

PT Primajaya Pantes Garmen is civilly liable for negligence in noticing the existence of the third party and failing to uphold the principle of good faith.

The West Jakarta District Court has a moral and administrative responsibility to ensure the accuracy of the execution object data.

The Jakarta Region I KPKNL has administrative responsibility for the auction, which must be based on factual verification of the object.

PT Lunto Richpat, as a third party, has the right to legal protection and compensation for losses arising from the negligence of other parties.

The West Jakarta District Court, as the institution that issues the execution order, must ensure the accuracy of the identity and location of the object to be executed.

Law on the Authority of the District Court to Issue an Execution Order Based on the KPKNL Auction Minutes:

The Authority of the District Court to Execute Mortgage Rights

The district court's authority to issue an execution order stems from statutory regulations that legitimize the judiciary as the executor of judicial power in the civil sector. In general, this legal basis is regulated in Article 224 of the Indonesian Law (HIR) / Article 258 of the Indonesian Law (RBg), which states: "If a decision has permanent legal force, the Chief Justice of the District Court shall order the execution of the decision by means of a warrant (execution order)." This article serves as the general basis for the district court to issue an execution order (*aanmaning* and *fiat execution*) for every application for enforcement of mortgage rights submitted by a creditor.

Article 6 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT) states, "If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object at his own discretion through a public auction and to collect the receivables from the proceeds of the sale." Although Article 6 of the UUHT grants creditors the direct right to auction without a court decision (known as *parate executie*), in practice, many financial institutions and creditors still apply for a ruling to the district court to obtain a formal legal basis, especially when there is a potential dispute, a third party, or document discrepancies.

Article 20 paragraph (1) letter b of the UUHT states, "The execution of the mortgage right may be carried out through a public auction upon the order of the Chief Justice of the District Court whose jurisdiction covers the location of the mortgage right object." This article explicitly states that the District Court has the authority to order the execution of the mortgage right auction through an official ruling, thereby granting the auction process by the KPKNL legal legitimacy.

Legal Relationship between the District Court and the KPKNL in the Implementation of Execution Auctions

Execution auctions cannot be carried out solely by the KPKNL without a court order, especially if the auction originates from a court decision or execution order. This relationship is regulated in Minister of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Auction Implementation

Guidelines, Article 17 paragraph (2) states, "Court execution auctions are carried out based on the order or determination of the Head of the authorized District Court." This means that the KPKNL only acts as the technical implementer of the auction, while the legal mandate remains with the District Court through the execution order. The auction minutes (minutes of auction results) issued by the KPKNL only have permanent legal force after a court order has been issued.

Article 1 number 3 of PMK 213/PMK.06/2020 defines an execution auction as "an auction to implement a court decision or order, or to implement provisions of laws and regulations that authorize creditors to sell collateral through public auction." Therefore, in this context, the mortgage auction carried out by the KPKNL must be based on the execution decision of the West Jakarta District Court, because the collateral object is located in its jurisdiction.

Function of the Execution Order in the Auction Process

The issuance of an execution order by the West Jakarta District Court serves as:

A legal basis for the KPKNL to conduct the auction of mortgaged property;

A guarantee of legal certainty that the execution is carried out in accordance with valid legal procedures; Administrative proof for auction buyers that the acquisition of the property was carried out based on the correct legal mechanism;

Legal protection for the court and the KPKNL from third-party lawsuits, as the process is carried out based on a court order.

Without such an order, auctions conducted by the KPKNL could potentially be deemed invalid or legally flawed, as they lack an execution order from the authorized institution.

Critical Analysis of the Practice of Issuing Orders

In practice, the West Jakarta District Court often issues execution orders based on creditor requests and mortgage documents, without prior constrating or conducting field inspections. However, as a matter of prudence, the court should ensure:

The accuracy of the identity and location of the object of execution;

No third party controls the object;

There is no discrepancy between the legal document (SHGB certificate) and the factual situation.

Inaccuracy at this stage can result in administrative and material legal flaws, and open the door for the aggrieved party to challenge the execution (derden verzet).

Based on the description above, the West Jakarta District Court's authority to issue an execution order based on the KPKNL Auction Minutes has a strong legal basis, namely:

Article 224 HIR / Article 258 RBg – the general basis for execution by the court.

Article 6 and Article 20 paragraph (1) letter b of the UUHT – the specific basis for executing mortgage rights through a public auction upon court order.

Article 17 paragraph (2) of PMK No. 213/PMK.06/2020 – the basis for the administrative relationship between the court and the KPKNL.

However, in practice, the court remains obligated to ensure the accuracy of the identity and location of the object of execution through constrating before issuing a decision, in order to realize the principles of legal certainty, justice, and legal protection for parties acting in good faith.

Analysis of the District Court's Authority to Issue Execution Orders Without Constrating

1. District Court Authority in Executing Mortgage Rights

Normally, the District Court has the authority to issue execution orders (fiat execution) based on:

Articles 195–208 of the HIR, which grant the Chief Justice of the District Court the right to order execution;

Article 20 paragraph (1) letter b of Law Number 4 of 1996 concerning Mortgage Rights (UUHT), which states that execution of mortgage rights can be carried out through a public auction upon the order of the Chief Justice of the District Court;

Article 17 paragraph (2) of Minister of Finance Regulation (PMK) Number 213/PMK.06/2020, which stipulates that court execution auctions can only be conducted based on the order or determination of the Chief Justice of the District Court.

Thus, legally, the District Court does have the authority to issue an execution order upon a creditor's request. However, this authority must be exercised with due care and adequate verification of the object to be executed.

2. Constratering as a Legal Verification Instrument

Constratering is the process of matching legal data (mortgage certificates, credit deeds, and auction documents) with the physical data of the object in the field. The goal is to ensure:

The similarity between the address and boundaries of the object listed in the documents and the actual conditions on the ground;

The absence of any third party holding legal rights or controlling the object;

The validity of the identity and location of the mortgaged object before execution.

In the context of the principles of legal certainty and justice, constratering is an essential step to prevent errors in execution of objects that do not comply with legal documents.

3. Critical Analysis of Issuing Orders Without Constratering

Issuing an execution order without constratering can give rise to serious legal issues because:

It Potentially Violates the Principle of Legal Certainty. Without field verification, the court risks issuing an order for an object that does not comply with the mortgaged document. In this case, the difference in address between the SHGB on Jalan Bulak Teko, RT 006, RW 003, and the executed object in RT 011, RW 003, indicates that constrating should have been carried out before the decision was issued.

Ignoring the Principle of Good Faith and Third Party Protection. The failure to conduct constrating resulted in the court being unaware of the existence of a third party (PT Lunto Richpat) occupying and operating a business on the object. As a result, the third party's rights were not protected, and the execution could be categorized as an unlawful act (Article 1365 of the Civil Code) because it harmed the party acting in good faith.

Creating Potential Defects in Execution Procedure. Based on civil procedural law doctrine, every execution action must be conducted with due process of law. If the court issues a decision without a factual examination of the object, the decision can be challenged or even overturned through the execution opposition mechanism (*derden verzet*) by the aggrieved party.

Contradicting the Principle of Substantive Justice. Judges are not only bound by formal rules, but also by the values of substantive justice. By failing to conduct countermeasures, the court has neglected its moral obligation to ensure that the execution does not cause undue harm to other parties with legitimate interests in the object.

4. Juridical Perspective and Judicial Practice. Several Supreme Court decisions (e.g., Supreme Court Decision No. 3220 K/Pdt/2017 and Supreme Court Decision No. 2595 K/Pdt/2019) state that errors in identifying the object of execution or executing an execution against an object different from the mortgage certificate constitute a violation of the law and can be annulled. These decisions emphasize that the court is required to conduct countermeasures, or administrative and factual verification, before issuing an execution order to ensure the accuracy of the object.

5. Legal Implications of Authority Without Countermeasures

The exercise of court authority without countermeasures can result in several legal consequences, including:

The execution order can be challenged or annulled, as it is deemed materially invalid.

The creditor requesting execution and the court can be held legally responsible for losses to third parties.

The auction conducted by the KPKNL can be canceled because its legal basis (execution order) is legally flawed.

State liability arises if the court's negligence causes losses to other parties.

Legally, the District Court has the authority to issue execution orders, but this authority is not absolute and must be exercised with prudential principles. Failure to conduct prior constrating before issuing the order constitutes a procedural omission that can harm third parties and diminish the legal legitimacy of the order.

Therefore, to ensure the principles of legal certainty, justice, and legal protection, every court should conduct constrating or at least request a field verification report before granting an execution permit for a mortgage object.

Issuance of an Execution Order by the West Jakarta District Court Without Constrating

In the execution of mortgaged property, the district court acts as the judicial authority, providing the legal basis for execution through the issuance of an execution order. This order serves as a formal requirement for the State Assets and Auction Service Office (KPKNL) to conduct an auction of mortgaged property held as collateral by the creditor. However, in this case, the West Jakarta District Court issued the execution order without first conducting constrating (matching data and objects in the field) for the object to be executed. This raises legal issues related to the accuracy of the identity and location of the object to be executed, and has the potential to cause formal and material defects in the execution process.

1. The Importance of Constrating in the Execution Process

Constrating is the stage of verifying and matching administrative data (certificates, measurement letters, or mortgage deeds) with physical conditions in the field. Its purpose is to ensure that:

The object being executed truly matches the mortgage certificate;

There are no errors in the address, land boundaries, or buildings;

No third party currently controls or has legal rights to the object.

By failing to conduct a constraint, the court risks issuing a decree for the object that does not align with the valid legal data, as seen in this case, where the address of the object in the SHGB (Mortgage Title Certificate) is listed as Jalan Bulak Teko, RT 006, RW 003, while the object being executed is actually located at RT 011, RW 003.

This clearly creates a discrepancy between the legal data and the facts on the ground, potentially leading to executions being carried out on different objects and giving rise to new disputes.

2. Legal Responsibilities of the Court

As the institution issuing the execution decree, the West Jakarta District Court has the responsibility to ensure that the execution request meets the formal and material requirements in accordance with the following provisions:

Articles 6 and 20 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT);

Articles 195–208 of the HIR (Herziene Indonesisch Reglement) concerning the procedures for implementing execution;

Minister of Finance Regulation No. 27/PMK.06/2016 concerning Auction Implementation Guidelines.

The court's authority to issue an execution order is constitutive, providing the legal basis for the auction. Therefore, the court should not only assess administrative documents but also ensure the validity of the object of execution through field inspections or constrating. This inaccuracy indicates judicial negligence, which can have legal consequences, especially if the object being executed is different from the collateral. In such a situation, the aggrieved party for example, a third party or the legal owner of the object can file a third-party objection (*derden verzet*) or a lawsuit for unlawful acts against the execution results.

3. Legal Consequences of Failure to Conduct Constrating

The failure of the court to conduct constrating has several significant legal consequences:

The execution is potentially legally flawed because it is carried out on an object that has not been physically and administratively verified.

The auction results can be annulled if it is proven that the auctioned object is not the object listed in the mortgage deed.

The court can be held administratively and morally liable for failing to ensure the validity of the object of execution.

Third parties can sue for damages, alleging that the execution was invalid and resulted in economic losses.

4. Normative Analysis

Normally, the court's decision to issue a ruling without constrating violates the principle of due process of law, which requires the implementation of law to ensure fairness and procedural accuracy. In practice, many Supreme Court decisions emphasize that courts must be cautious in issuing execution orders, especially if there are indications of differences in the object or the presence of a third party on the collateral. Thus, the West Jakarta District Court's failure to conduct a constrating can be deemed inconsistent with the principles of prudence, legal certainty, and legal protection for parties acting in good faith. The West Jakarta District Court's issuance of an execution order without constrating has resulted in inaccurate identification of the object of execution and opened the door to new disputes, particularly from injured third parties. The court should have ensured the conformity between the documents and the factual conditions on the ground before issuing the order, to ensure the legal, transparent, and fair execution of the order in accordance with the provisions of the Land Ownership Law and general legal principles.

Authorities of the National Land Agency (BPN) in Implementing Constrating of Mortgage Right Execution Objects

1. Basis for BPN's Authority in Controlling Land Data

The National Land Agency (BPN) is a government agency with administrative authority in the land sector. Based on the following provisions:

Article 2 paragraphs (1) and (2) of Presidential Regulation Number 20 of 2015 concerning the National Land Agency, the National Land Agency (BPN) is authorized to administer government affairs in the land sector, including the regulation, management, and provision of land information services.

Article 3 letter c of Regulation of the Head of the National Land Agency (BPN) of the Republic of Indonesia Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, states that land registration aims to provide information to interested parties regarding the physical and legal data of land objects.

Based on these provisions, the BPN has an authoritative function in providing certainty regarding the legal and physical data of land, including the area, boundaries, and location of land objects listed in Building Use Rights (SHGB) or Ownership Rights certificates.

2. Definition and Role of the National Land Agency (BPN) in Constrating

Constrating, in the context of mortgage execution, is the activity of matching or verifying data between the physical condition of the land in the field and the legal data stated in the land documents (land title certificates).

In its implementation, constrating typically involves the following parties:

The execution applicant (creditor);

District Court officials (bailiffs);

KPKNL officers; and

Officials from the BPN or local Land Office, as the agency with the official data and technical competence to ensure the validity of the location, boundaries, and legal status of the land.

The BPN's role in constrating is technically administrative, not judicial. This means that the BPN does not determine whether or not execution may be carried out, but rather provides factual and legal information regarding the validity and clarity of the land object.

3. BPN's Technical Authority in Constrating

BPN's authority in constrating execution objects covers several important aspects, namely:

1. Verification of Legal and Physical Land Data

Based on Article 34 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, the BPN has the authority to verify legal data (land rights, rights holders, mortgages) and physical data (location, boundaries, and area of the land).

In the context of execution, the results of this inspection serve as a reference to ensure whether the object to be executed aligns with the mortgage certificate used as collateral.

2. Issuance of a Land Registration Certificate (SKPT)

According to Article 34 paragraph (2) of Government Regulation 24/1997 and Minister of Agrarian Affairs and Spatial Planning/BPN Regulation Number 3 of 1997, the BPN can issue an SKPT containing official information about the legal status of the land, including the existence of mortgages, seizures, or disputes.

This document is used by the court or the KPKNL as administrative supporting evidence prior to execution.

3. Technical Assistance in Field Constrating

Based on Circular Letter of the Head of the National Land Agency (BPN) Number 600-1900 of 1998, the BPN can provide technical assistance in constrating by assigning surveyors to ensure that land boundaries in the field align with the registration map. This is crucial to avoid errors in execution of land objects that differ from those listed on the certificate.

4. Legal Analysis of the BPN's Role

Legally, the BPN's involvement in constrating is not mandatory, but it is crucial to ensure the validity of execution. Without official confirmation from the BPN, the court or auction official risks executing land with incorrect or misplaced boundaries. The BPN's authority in this regard serves as a supporting instrument for the principle of legal certainty as stipulated in:

Article 3 of Law No. 5 of 1960 concerning Agrarian Principles (UUPA), which emphasizes that land registration is carried out to ensure legal certainty;

Article 19 of the UUPA, which regulates the government's obligation to guarantee legal certainty of land rights through registration.

Therefore, in every application for execution of mortgage rights, the court should request official information from the National Land Agency (BPN) to ensure the validity of the object to be executed.

5. Legal Consequences if the Constrating Does Not Involve the BPN

If the court or the KPKNL (National Land Agency) carries out the execution without involving the BPN in the constrating, the following legal consequences may arise:

Inconsistencies in the data on the object of execution, such as differences in address, area, or land boundaries, which could potentially lead to legal flaws in the execution.

Legal liability for the institution carrying out the execution if it is proven that the object being executed does not match the collateral certificate.

Losses to good-faith third parties, such as tenants or business owners occupying the object, which could give rise to a lawsuit for unlawful acts against the execution applicant or the court. The National Land Agency (BPN) has the technical and administrative authority in the implementation of constrating objects for execution applications, namely:

Ensuring the validity of the legal and physical data of the land;

Providing official information through the Land Registration Certificate (SKPT);

Assisting in measuring and verifying land boundaries;

Guaranteeing legal certainty regarding the object of execution.

The involvement of the National Land Agency (BPN) is a crucial part of implementing the prudential principle in the mortgage execution process. By involving the BPN, the court can ensure that execution is carried out on the correct object, thereby avoiding potential legal flaws and ensuring the protection of third party rights.

2. Implications of Overlapping Authority (Sectoral Ego) between the West Jakarta District Court and the West Jakarta City Land Agency

In the practice of executing mortgage rights, issues often arise regarding the boundaries of authority between the judicial institution (the District Court) and the administrative institution (the National Land Agency).

Cases such as Determination Number 10/Pdt.Eks/RL/2024/PN.Jkt.Brt in conjunction with Number 265/25/2023/KPKNL Wil. I Jakarta demonstrate the potential for sectoral ego, when the West Jakarta District Court issued an execution order without first coordinating with the National Land Agency regarding the validity of the legal and physical data of the land object.

However, in the implementation of constrating or object verification, the National Land Agency is the agency with administrative and technical authority to ensure the accuracy of land data.

3. Sources of Overlapping Authority

This overlapping authority arises from the differences in the nature and legal functions of the two institutions:

West Jakarta District Court (judicial institution), Has the authority under Articles 195–208 HIR and Article 20 paragraph (1) of the UUHT to issue execution orders, Has the formal legal authority to order the auction through the KPKNL, Focuses on the legal aspects of procedure and the legality of execution. West Jakarta City Land Agency (administrative institution) Has the authority under Article 2 of Presidential Regulation No. 20 of 2015 and Government Regulation No. 24 of 1997 to regulate, register, and provide land information, Has technical authority over physical and legal land data (boundaries, location, area, and legal status), Focuses on the accuracy of land data and the legal certainty of land objects.

These differing focuses and sectoral egos often lead to weak coordination, especially in determining the appropriate objects for execution.

3. Common Forms of Sectoral Ego

In the context of mortgage execution, sectoral ego between the District Court and the National Land Agency (BPN) typically manifests itself in several ways:

The court issues a decision without seeking clarification from the BPN regarding the conformity of certificate data and the physical condition of the land.

The BPN refuses to provide field data (e.g., plot maps or recent measurement results) because it feels no legal obligation to support the judicial process.

The absence of an official coordination mechanism between the court and the BPN in the implementation of the constrating, resulting in frequently differing results of the object verification.

The BPN is reluctant to sign the minutes of the constrating, fearing that it will be deemed jointly responsible for the execution, which could lead to legal challenges.

This situation demonstrates the existence of "sectoral ego," where each institution maintains its own domain of authority without adequate institutional synergy.

4. Legal and Practical Implications of Overlapping Authority

The consequences of this overlapping authority have several important implications, both legal, administrative, and social:

a. Legal Implications

Potential for legal flaws in execution, as the court carries out execution on an object that has not been technically verified by the National Land Agency (BPN).

Court decisions can be annulled if it is proven that the object being executed does not comply with the SHGB (Land Title) or the collateral certificate.

The emergence of unlawful acts lawsuits (Article 1365 of the Civil Code) against the execution applicant, the KPKNL, and even the court, if the execution causes losses to third parties.

b. Administrative Implications

Disharmonious coordination between agencies, which hinders the effectiveness of execution.

Unclear legal responsibility, as the court feels that constrating is not its authority, while the BPN feels that execution is not within its administrative domain.

c. Social and Economic Implications

Decreased public trust in legal institutions, as execution is often perceived as arbitrary and inaccurate. Economic losses to third parties or the legal owner of the object, due to incorrect execution of land that does not comply with legal documents.

5. Normative Analysis

Normatively, the principle of coordination between government agencies and judicial institutions is part of the implementation of the principles of good governance, as stipulated in:

Article 3 of Law Number 30 of 2014 concerning State Administration, which emphasizes the importance of inter-agency coordination;

Article 19 paragraph (2) letter c of the Basic Agrarian Law, which emphasizes that land registration aims to provide information to interested parties;

Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which mandates that judicial power be exercised to uphold law and justice based on substantive truth.

Therefore, legally, the courts may not act separately from technical institutions (the National Land Agency) in determining the validity of objects of execution. Sectoral egos actually contradict the principle of synergy between state institutions to ensure legal certainty.

6. Recommended Solutions

To avoid the negative implications of such sectoral egos, the following strategic steps are necessary: Drafting a Memorandum of Understanding (MoU) between the District Court and the National Land Agency (BPN), specifically regarding constrating procedures and verification of object data prior to execution.

Establishing a Joint Technical Team between the court, the BPN, and the KPKNL to ensure compliance with land data for execution.

Standardizing national constrating procedures, requiring the involvement of the BPN in all mortgage rights executions that have the potential to give rise to disputes.

Improving the capacity of judges and auction officials to understand the technical aspects of land, enabling them to correctly interpret plot maps, certificates, and land boundaries.

Potentially Violated Laws and Regulations

The implementation of constrating by the District Court without involving the National Land Agency (BPN) can be categorized as maladministration and a violation of the principles of administrative land law and civil procedure, as detailed below:

1. Law Number 5 of 1960 concerning the Principles of Agrarian Law (UUPA)

Article 19 paragraph (1) "To ensure legal certainty, the government conducts land registration throughout the territory of the Republic of Indonesia."

Article 19 paragraph (2) letter c: "Land registration aims to provide information to interested parties regarding the legal and physical data of a land plot."

By not involving the BPN, the District Court has neglected the state's function, through the BPN, as the provider of official legal and physical data in ensuring the suitability of land objects. This results in land registration (BPN data) not being used as a basis for validating the object of execution.

2. Government Regulation Number 24 of 1997 concerning Land Registration

Article 33 paragraph (1): "The physical and legal data of each plot of land shall be recorded in a land book by the Land Office."

Article 34 paragraph (2): "The Land Office shall provide information regarding the physical and legal data of the land to interested parties."

The court unilaterally conducted a constraint without requesting verification or official information from the Land Office (BPN), even though the BPN has sole authority to validate physical and legal land data. This violates the principle of administrative authority as stipulated in the PP.

3. Presidential Regulation Number 20 of 2015 concerning the National Land Agency

Article 2 paragraph (2) letters a and b: The BPN administers government affairs in the land sector, including the regulation, management, and provision of land information services.

Courts that conduct constrating without involving the National Land Agency (BPN) have taken over administrative functions that fall under the authority of the executive branch (BPN), thus creating overlapping authority between state institutions.

4. Law Number 48 of 2009 concerning Judicial Power

Article 5 paragraph (1): "Judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society."

Article 4 paragraph (2): "Judicial proceedings are conducted simply, quickly, and at low cost without sacrificing justice."

When constrating is conducted without clear boundaries and location of the BPN, the decision or execution order does not reflect a sense of justice and legal certainty, thus potentially violating the principle of due process of law.

5. Law Number 30 of 2014 concerning Government Administration

Article 10 paragraph (1), letters c and d: Government officials are required to coordinate with other agencies in the implementation of interrelated government affairs.

Article 17 paragraph (2) letter e: Actions that exceed authority (*detournement de pouvoir*) are prohibited.

A court that carries out its own constrating without involving the National Land Agency (BPN) may be deemed to have exceeded its administrative authority (excess of authority), because constrating is a technical land matter that falls under the authority of the BPN.

B. Legal Consequences of Constrating Without the National Land Agency (BPN)

1. Legal Consequences

The execution decision has the potential for legal flaws (procedural and substantial flaws) because the verified object does not go through the authorized institution.

The execution results can be annulled by a higher court if boundary errors are found or the land object does not match the collateralized SHGB.

Risk of unlawful action lawsuits (Article 1365 of the Civil Code) from third parties or injured parties, on the grounds that the court failed to ensure the validity of the executed object.

2. Administrative Consequences

Gives rise to institutional conflicts between the District Court and the BPN (sectoral egos).

The court may be criticized by the Supreme Court Supervisory Body (Bawas MA) for acting beyond its technical authority.

The results of constrating without the BPN cannot be used as an official reference in land documents or auction minutes by the KPKNL, because they are not sourced from valid land data.

3. Social and Economic Consequences

New disputes arise between mortgage holders, third parties, and business owners occupying the property due to incorrect addresses or land boundaries.

Decreased public trust in the judiciary, as the public perceives the execution to be carried out without a valid technical basis.

Potential for significant economic losses for well-intentioned parties affected by the invalid execution.

C. Legal Explanation of the Actions of the West Jakarta District Court

The West Jakarta District Court's actions in conducting the contracting without legally involving the National Land Agency (BPN) are inconsistent with the principles of good judicial administration because:

It violates the prudential principle — every execution must be based on official verification of the collateralized legal object.

It ignores the principle of coordination between government agencies as stipulated in Law No. 30 of 2014.

It reduces the legal legitimacy of the execution decision, as field data has not been verified by the authorized agency (BPN).

Contradicts the principle of legal certainty (Article 28D paragraph 1 of the 1945 Constitution) because it creates uncertainty regarding the identity of the mortgaged object.

Therefore, this action could potentially be categorized as "arbitrary action in the exercise of judicial authority," which can be sued in civil court or reported administratively to the Supreme Court Supervisory Body.

The contracting conducted by the West Jakarta District Court without the involvement of the National Land Agency (BPN) violates several legal provisions, including:

Article 19 of the Basic Agrarian Law;

Articles 33–34 of Government Regulation No. 24 of 1997;

Article 2 of Presidential Regulation No. 20 of 2015;

Articles 10 and 17 of Law No. 30 of 2014;

Articles 5 and 4 of Law No. 48 of 2009.

The consequences include legal flaws in the execution determination, losses to third parties, and rifts in inter-agency coordination, which ultimately threaten the principles of legal certainty and justice in the execution of mortgage rights.

The overlapping authority between the West Jakarta District Court and the West Jakarta City Land Agency (BPN) is a clear manifestation of sectoral egotism that can hinder the legal and fair execution of mortgage rights.

The implications are:

It creates legal flaws in the execution;

It threatens legal certainty and the protection of third party rights;

It undermines public trust in legal institutions.

Therefore, synergy and coordination between agencies are key to ensuring that executions comply with the principles of legal certainty, justice, and benefit as mandated by the national legal system.

The Jakarta Region I KPKNL must comply with the object verification and notification procedures for interested parties when conducting auctions.

A. KPKNL's Legal Obligations in Execution of Auctions

As the implementing agency for state auctions, the KPKNL (State Assets and Auction Services Office) is responsible for ensuring that all stages of the auction are based on the principles of transparency, accountability, and legal certainty.

The legal basis for the KPKNL's authority includes:

Minister of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Auction Implementation Guidelines;

Minister of Finance Regulation (PMK) Number 27/PMK.06/2016 concerning Auction Implementation Guidelines;

Directorate General of State Assets (DJKN) Regulation Number 2 of 2017 concerning Technical Guidelines for Auction Implementation;

Articles 6 and 20 of Law Number 4 of 1996 (UUHT), which grant mortgage holders the right to sell collateral through public auction if the debtor defaults.

Based on the aforementioned legal basis, there are two main obligations that the KPKNL must fulfill:

1. Obligation to Verify Auction Objects (Formal and Material Aspects)

Before issuing the auction minutes, the KPKNL is required to conduct administrative and physical verification of the objects to be auctioned. This includes:

Conformity of the land address and boundaries with data from the National Land Agency (SHGB certificate);

The presence of third parties occupying or using the object;

Land use status (e.g., residential, industrial, or commercial);

Consistency of data between the auction application letter and the mortgage document.

If the KPKNL conducts an auction without accurate field verification or without requesting clarification from the BPN or the third party occupying the object, the auction process is administratively flawed and potentially void.

2. Obligation to Notify Interested Parties

The KPKNL is required to provide official notification (auction summons) to:

The debtor/owner of the mortgage object;

Third parties occupying or renting the object;

The local government (if necessary).

Based on Article 27 paragraph (3) of PMK No. Regulation No. 213/PMK.06/2020 states that "The Auction Officer is obliged to reject the auction if there is an objection from a third party with an interest in the auction object and the objection has not been resolved." This means that if a third party (for example, a tenant or business owner) occupies the object without receiving notification, the KPKNL may not proceed with the auction process, as this could potentially give rise to legal disputes and violate the principle of due process.

B. Analysis of the Determination of Limit Values Based on Inappropriate Appraisal Results

In the case mentioned, the KPKNL set the auction limit value based on the appraisal team's assessment results, which were lower than fair market value, and used housing standards, even though the object being auctioned was a productive industrial warehouse.

1. Legal Basis for Auction Asset Valuation

Auction asset valuation is regulated in:

Article 27 paragraph (2) of Regulation No. 213/PMK.06/2020, which states:

"The limit value is determined based on the results of an assessment by an independent appraiser or by the auction applicant, taking fair value into account."

Minister of Finance Regulation Number 101/PMK.01/2014 concerning Public Appraisers and the Appraiser Code of Ethics.

Errors in practice by the appraisal team in using a housing approach to appraise industrial objects resulted in the appraisal results not reflecting the true economic value, thus violating the prudential principle and the principle of fair value in state auctions.

2. Legal Consequences of Determining Unreasonable Limit Values

Several legal and administrative implications can arise from setting limit values that do not align with the object's condition:

Administrative legal flaws due to a violation of Article 27 paragraph (2) of PMK No. 213/PMK.06/2020;

Potential lawsuits for compensation (Article 1365 of the Civil Code) by debtors or third parties for losses resulting from undervaluation;

Risk of cancellation of the auction minutes due to the implementation not meeting the elements of transparency and fair pricing;

An indication of a violation of valuation ethics, if the appraiser uses a method that is irrelevant to the type of property.

In this context, a limit value set below market value can be considered a deviation from administrative procedures and a violation of the principle of fairness in execution auctions.

C. Violation of Statutory Regulations

The KPKNL's actions in conducting auctions without verifying the object and setting a limit value that does not align with fair value potentially violate the following provisions:

No. Regulation Article Violated Description

1. Law No. 4 of 1996 (UUHT) Article 20 paragraph (1): Auctions must be conducted in accordance with statutory regulations, not deviant procedures.
2. Minister of Finance Regulation No. 213/PMK.06/2020 Article 27 paragraphs (2)-(3): The limit value must reflect fair value; an auction may not be conducted if there are outstanding third-party objections.
3. Law No. 30 of 2014 Article 17 paragraph (2) letter e: Exceeding administrative authority by ignoring coordination procedures and the principle of prudence.

Article 1365 of the Civil Code may be sued for unlawful acts that harm another party.

D. Normative Explanation and Legal Implications

1. From a normative perspective, the KPKNL must act neutrally and professionally and only conduct auctions that have been legally verified and have clear physical and legal data regarding the object. Conducting an auction on an object that has not been verified or whose value has been misclassified violates the principle of legal certainty (Article 28D paragraph 1 of the 1945 Constitution).

2. From a practical perspective, if the KPKNL proceeds with the auction under these circumstances, the auction minutes may be annulled by the state administrative court or district court on the grounds of procedural flaws and losses to interested parties.

3. From a legal liability perspective:

KPKNL Auction Officials may be subject to administrative and ethical sanctions by the Ministry of Finance;

Public appraisers who provide appraisal results that do not comply with the method may be subject to sanctions such as revocation of their practice licenses;

The auction applicant (in this case, the creditor) is also responsible for losses resulting from the unlawful auction implementation.

The auction implementation by the Jakarta Region I KPKNL, which:

failed to thoroughly verify the object,

failed to notify interested third parties, and

set a limit value below the fair market value, violates the provisions of the UUHT, PMK 213/2020, and the principle of legal certainty.

As a result, the auction minutes are potentially legally flawed, subject to lawsuits, and can result in material losses for parties acting in good faith.

Analysis based on relevant criminal law:

A. Character of the Act and Elements of the Alleged Crime

The actions of the KJPP and KPKNL that intentionally:

reduced the value of the auction object below the fair market value,

used inappropriate valuation methods (e.g., housing-based valuation for industrial objects),

conducted these actions at the behest of the auction winner or the applicant can be classified as unlawful acts indicating corruption, fraud, or abuse of office.

B. Legal Basis and Criminal Provisions That Can Be Imposed

1. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption

Several applicable articles:

a. Article 3 – Abuse of Authority "Any person who, for the purpose of benefiting themselves or another person or a corporation, abuses the authority, opportunity, or means available to them due to their position or position, thereby causing harm to state finances or the state economy, shall be punished by a maximum imprisonment of 20 years and a maximum fine of IDR 1,000,000,000."

If a KPKNL official approves an unreasonable limit value and does so to benefit a particular party (the auction winner), then this act constitutes abuse of authority resulting in state financial losses.

b. Article 12 letter e – Bribery or Gratuity: "A civil servant or state administrator who accepts a gift or promise, knowing or reasonably suspecting that the gift or promise was given to influence a decision or action related to his/her position, shall be punished by life imprisonment or a maximum of 20 years' imprisonment."

If it is proven that there was a reward, gratuity, or "order" from the auction winner to the KPKNL official or public appraiser to lower the value, this can be categorized as a crime of bribery/gratification.

2. Criminal Code (KUHP)

a. Article 263 of the KUHP – Document Forgery: "Anyone who creates a false document or falsifies a document that can give rise to a right, obligation, or release from debt shall be punished by a maximum of 6 years' imprisonment."

If the appraisal report is prepared in a manner inconsistent with the facts and used in the auction minutes, it is considered a forged document that can mislead the legal process.

b. Article 378 of the Criminal Code – Fraud: "Anyone who, with the intent to unlawfully benefit themselves or another person, by using a false name or false status, by deception or a series of lies, persuades someone to hand over any goods... shall be punished by a maximum of four years in prison."

If the winning bidder, together with an individual from the Public Service Agency (KJPP) or Public Service Commission (KPKNL), engages in a manipulative scheme to obtain a low price, this act can be classified as fraud or manipulation in public transactions.

3. Law Number 25 of 2009 concerning Public Services

Article 54 paragraph (1): "Public service providers who violate procedures in providing services may be subject to administrative, criminal, or civil sanctions."

The KPKNL, as part of the public service institution, is obliged to maintain the integrity of the auction process; if they violate these procedures, they may be subject to disciplinary and criminal sanctions.

4. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. If there is evidence of collusion between the auction winner and the organizer (KPKNL/KJPP) to fix the auction limit or determine the winner, the perpetrator may be subject to unfair business competition sanctions (Article 22 of Law No. 5/1999).

C. Legal Consequences for Each Party

Party Type of Violation Legal Consequences

KJPP Manipulation of appraisal reports, not in accordance with the method and object. Practice permit revoked (by the Ministry of Finance and MAPI), and may be prosecuted under Articles 263 and 378 of the Criminal Code or Article 3 of the Corruption Law.

KPKNL Auction Officials Approving limit values that violate provisions or accepting compensation. Subject to administrative sanctions, corruption crimes (Articles 3 and 12 of the Corruption Law), and demotion or dismissal.

Auction Winners Giving bribes or promises to influence the appraisal. Subject to active bribery (Article 5 of the Corruption Law), with a penalty of up to 5 years in prison.

Auction Applicants (Creditors) If they are aware of or involved in price manipulation, may be sued in civil court (Article 1365 of the Civil Code) and may participate in a joint criminal act (Article 55 of the Criminal Code).

D. Evidence Aspects

To prove this crime, investigators (for example, the Prosecutor's Office or the Corruption Eradication Commission) will investigate:

1. The flow of money or gratuities to auction officials or appraisers;
2. Comparison of appraisal results with actual market value (using data from the National Land Agency (BPN), NJOP (Value-Scale Taxable Value), and other independent appraisers);
3. Communication between the auction winner and relevant officials, indicating intent to manipulate (*mens rea*).
4. Auction minutes and appraisal documents as documentary evidence (Article 184 of the Criminal Procedure Code).

If the Public Service Agency (KJPP) and the Public Service Agency (KPKNL) are proven to have knowingly and deliberately lowered the auction value below a reasonable standard at the request of the auction winner, they may be subject to:

1. Articles 3 and 12 of the Corruption Eradication Law, Abuse of Authority & Bribery (up to 20 years' imprisonment);
2. Articles 263 and 378 of the Criminal Code, Document Forgery and Fraud (up to 6 years' imprisonment);
3. Administrative sanctions and revocation of the KJPP's professional license;
4. Cancellation of the auction minutes and liability for compensation for all parties involved.

Therefore, this action not only violates administrative law and professional ethics, but also constitutes a criminal act of corruption and fraud in the implementation of state auctions.

The third party (PT Lunto Richpat), in the context of legal protection for losses suffered due to execution carried out without prior notification.

Legal Status of Third Parties in the Execution of Mortgage Rights

In this case, PT Lunto Richpat is a third party occupying or operating a business on the mortgaged property (industrial warehouse) based on a valid lease agreement with the original owner (PT Inasa Wahana).

Legally, third parties have limited property rights or personal rights that remain protected as long as the legal relationship exists prior to the execution and as long as the parties act in good faith.

The legal basis for protection for third parties is regulated in:

1. Article 1338 of the Civil Code – agreements serve as law for the parties (principle of *pacta sunt servanda*);
2. Article 1365 of the Civil Code – the right to compensation for unlawful acts;
3. Article 18 paragraphs (2) and (3) of Law No. 4 of 1996 (UUHT) – the mortgage remains, but its implementation must not violate the rights of other parties acting in good faith;
4. Article 27 paragraph (3) of PMK No. 213/PMK.06/2020 – The auction official is obliged to postpone the auction if there are objections from interested parties.

Therefore, the failure to notify third parties, such as PT Lunto Richpat, constitutes a procedural and substantive violation that has serious legal consequences.

B. Forms and Types of Losses Suffered by PT Lunto Richpat

Because the execution was carried out without notice and without giving PT Lunto Richpat the opportunity to defend its rights, various forms of losses may arise, namely:

1. Material Losses

Loss of valid lease rights (e.g., the remaining contract period that has not yet expired);

Damage to or loss of company assets, such as production machinery, raw materials, or factory equipment due to forced eviction;

Financial losses in the form of business interruption, cancellation of trade contracts, and loss of income.

2. Intangible Losses

Damaged company image among business partners and employees due to forced eviction;

Psychological stress and legal uncertainty due to the company being the victim of an unlawful execution;

Loss of investor and client confidence.

C. Legal Implications of Failure to Notify Execution

1. Procedural Defects (Maladministration)

Implementing execution without notification to third parties violates the principle of audi et alteram partem (every party has the right to be heard). Consequently:

- The execution order may be declared null and void, as it disregards the human rights of the directly affected parties.

- Court officials or auction officials may be deemed to have exceeded their authority (*detournement de pouvoir*) as stipulated in Article 17 paragraph (2) letter e of Law No. 30 of 2014 concerning State Administration.

2. Unlawful Acts (PMH)

Execution without notification can also be challenged through the unlawful act (PMH) mechanism under Article 1365 of the Civil Code, with the following elements:

2.1. The existence of an unlawful act (failure to notify the interested parties);

2.2. The existence of a real loss;

2.3. A causal relationship between the act and the loss;

2.4. There was error or negligence on the part of the perpetrator (either the KPKNL, the court, or the execution applicant).

If these four elements are met, PT Lunto Richpat has the right to demand full compensation for losses arising from the execution.

3. Violation of the Principle of Legal Certainty and Protection of Rights

Article 28D paragraph (1) of the 1945 Constitution states:

"Everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law."

By failing to provide notification, PT Lunto Richpat's constitutional rights as a party acting in good faith have been violated, thus providing the basis for a constitutional or administrative lawsuit against the execution.

D. Legal Protection Mechanisms for PT Lunto Richpat

The injured third party (PT Lunto Richpat) has several legal avenues to seek protection and restoration of its rights, including:

1. Civil Lawsuit (PMH) to the District Court

Basis Article 1365 of the Civil Code;

Object of the lawsuit: the actions of the execution applicant, the auction official (KPKNL), or the court that carried out the execution without notification;

Demands Compensation for material and immaterial damages, and cancellation of the auction minutes if proven to have caused losses.

2. Lawsuit to the State Administrative Court (PTUN)

If PT Lunto Richpat considers the auction determination or execution decision to be a procedurally flawed state administrative decision, a lawsuit may be filed to annul the administrative decision.

3. Complaint to the Ombudsman of the Republic of Indonesia

Basis Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia;

If there is evidence of alleged maladministration or procedural violations by public officials (KPKNL or the District Court), the Ombudsman can provide corrective recommendations and order procedural improvements.

4. Criminal Report (If There Are Elements of Fabrication or Collusion)

If evidence is found that the auction price was fabricated or there was collusion between the auction official and the winner, a report can be made to the Prosecutor's Office or the Corruption Eradication Commission (KPK) for alleged corruption (Article 3 of the Corruption Eradication Law) or fraud (Article 378 of the Criminal Code).

E. Consequences for Institutions Carrying Out Execution Without Notification

Party Type of Violation Legal Consequences

Execution Applicant (PT Primajaya Pantes Garmen) Failed to notify the party occupying the object. May be sued for damages due to unlawful acts.

Jakarta Region I KPKNL Conducted auction without third-party verification. Auction potentially void. Auction official may be subject to administrative sanctions.

West Jakarta District Court Decided on execution without considering the presence of a third party. The decision can be revoked, and potentially violates the principle of legal certainty (Article 28D of the 1945 Constitution).

F. Conclusion

The losses experienced by PT Lunto Richpat as a third party in the execution without notification:

Caused real material and immaterial losses;

Can be categorized as a violation of the principles of legal certainty and protection of rights;

Provided legal rights for third parties to demand compensation and cancellation of the auction.

Therefore, in every execution of mortgage rights, third parties acting in good faith must be given notification and the opportunity to file objections, as a form of implementing the principles of justice and balanced legal protection between creditors, debtors, and other interested parties.

7. Determining the Legal Implications of Improper Execution

This study also aims to identify the legal consequences that arise if execution is carried out not in accordance with legal provisions, including the possibility of a lawsuit for unlawful acts (PMH), a request for cancellation of the auction, or a claim for compensation by a third party.

Thus, the research findings are expected to provide a comprehensive understanding of the application of the principles of legal certainty, justice, and third-party protection in the execution of mortgage rights, and serve as a reference for resolving similar disputes in the future.

D. Research Benefits

This research has two main benefits: theoretical and practical, which are expected to contribute to the development of property security law in Indonesia.

1. Theoretical Benefits: This research is expected to enrich scientific studies in the field of property security law, particularly regarding the application of legal principles in the execution of mortgage rights. The analysis of execution cases based on Decree Number 10/Pdt.Eks/RL/2024/PN.Jkt.Brt in conjunction with Number 265/25/2023/KPKNL Wil. I Jakarta can contribute to the development of theory regarding legal certainty, justice, and legal protection for third parties in the execution of mortgage rights.

Theoretically, this research makes a significant contribution to the development of property security law studies, particularly regarding the execution of mortgage rights, which often gives rise to conflicts between the interests of creditors, debtors, and third parties.

In the context of property security law, mortgage rights are an instrument that provides legal certainty for creditors. However, their implementation must still adhere to the principles of justice and legal protection for other parties acting in good faith. Therefore, this research theoretically deepens our understanding of the balance between the absolute rights of the mortgage holder (creditor) and the rights of third parties who may be legally connected to the collateral object.

Through an analysis of the case of Decision Number 10/Pdt.Eks/RL/2024/PN.Jkt.Brt in conjunction with Number 265/25/2023/KPKNL Region I Jakarta, this research broadens the academic perspective in three main aspects:

The Principle of Legal Certainty in this research highlights that the execution of mortgage rights is not merely based on legal formalities (e.g., mortgage certificates and auction minutes), but must also ensure the clarity of the object and legal subjects involved. Incorrect address or identification of the object being executed can result in legal defects, which in turn undermines legal certainty.

The Principle of Justice: From a theoretical perspective, this research demonstrates that execution must consider the proportionality between the creditor's right to receive repayment of their debt and the rights of good-faith third parties who may occupy or use the object. Violations of third-party rights can create legal inequalities that contradict the principle of fairness in the implementation of collateral law.

Theoretically, the Principle of Legal Protection: This research reinforces the idea that legal protection is not only provided to the creditor as the holder of the collateral right, but also to third parties who legally have a legal relationship with the same object. Therefore, execution without notification to third parties constitutes a violation of the right to fair legal protection, as guaranteed in Article 28D paragraph (1) of the 1945 Constitution.

Through this theoretical framework, this research makes a scientific contribution to the development of the concept of "fair execution" in Indonesian collateral law—that is, execution that is not only formally valid but also fair and proportional to all parties with a legal interest in the collateral object.

Practical Benefits Practically, the results of this study are expected to serve as a reference and guideline for legal practitioners, such as judges, bailiffs, auction officials at the National Property and Real Estate Agency (KPKNL), as well as creditors and debtors, in executing mortgage rights, ensuring that they adhere to the principles of justice and legal certainty. This study can also provide guidance for executing mortgage rights to avoid violating the rights of third parties acting in good faith and having a legitimate legal relationship with the object being executed. Furthermore, this study can assist the public and legal practitioners in understanding the dispute resolution mechanisms resulting from executions that result in losses for other parties.

Practically, the results of this study have strategic value for practitioners and law enforcement, ensuring that mortgage executions are carried out in accordance with the principles of justice, legal certainty, and protection for parties acting in good faith.

These practical benefits can be explained as follows:

As a Guideline for Law Enforcement Officials and Related Officials

This study is expected to serve as a reference for judges, bailiffs, and auction officials at the National Property and Real Estate Agency (KPKNL) in interpreting and executing mortgage rights in accordance with correct legal procedures.

For judges and bailiffs, the results of this study emphasize the importance of carefully verifying the object of execution before issuing a decision or carrying out execution, including ensuring the address, land area, and identity of the object match the mortgage certificate.

For KPKNL auction officials, this study provides an understanding of the obligation to conduct administrative verification and notify interested parties, to prevent disputes or future cancellation of auction minutes.

Thus, this study serves as an implementation reference so that each execution step is not only legally valid, but also fair and transparent.

As a Guide for Creditors and Debtors

This study provides ethical and legal guidelines for creditors (banks, financing institutions, and mortgage holders) and debtors, so that:

When submitting and carrying out execution, creditors do not act arbitrarily and continue to consider the rights of other parties who may be involved in the collateral object;

Debtors understand the limits of their responsibilities and can take appropriate legal action if the execution is carried out unlawfully.

In other words, the results of this study strengthen the position of legal responsibility and accountability among the parties involved in material guarantee relationships.

3. As Protection for Good-Faith Third Parties

One of the important benefits of this research is that it provides a legal protection framework for third parties, such as tenants, managers, or other bondholders who have a legitimate relationship with the mortgage object.

This research emphasizes that the implementation of execution must not ignore the existence of good-faith third parties.

It is hoped that law enforcement will implement notification and clarification mechanisms prior to execution to prevent violations of these parties' rights.

Therefore, the results of this research serve as legal guidelines that can prevent new disputes from arising post-execution.

4. As a Source of Understanding for Practitioners and the Public

For the public, academics, and legal practitioners, this research provides a comprehensive understanding of the dispute resolution mechanism for mortgage execution, including:

Legal procedures that must be followed before execution;

Legal responsibilities of each party involved;

Legal remedies that can be taken in the event of procedural violations or losses resulting from execution.

This research is expected to serve as a scientific and practical reference for legal circles in efforts to improve the professionalism and integrity of mortgage executions in the field.

Practically, this research serves as an implementation guide and ethical reflection for all authorized parties in the enforcement of mortgage rights. Through an understanding of the principles of justice, legal certainty, and third-party protection, it is hoped that future mortgage execution practices will be more orderly, transparent, and equitable for all stakeholders.

2. Literature Review

Definition and Legal Basis of Mortgage Rights (Law No. 4 of 1996 concerning Mortgage Rights, the Civil Code, and its implementing regulations).

Mortgage Execution Procedures Refer to Article 6 of the Mortgage Law and the execution mechanism through court rulings and auctions by the National Mortgage Service Authority (KPKNL).

The Principle of Third Party Protection is based on the principles of good faith, legal certainty, and relevant Supreme Court decisions.

The Theory of Legal Certainty and Justice serves as an analytical framework for execution actions.

RESEARCH METHOD

The research method is normative juridical, using a case approach and a statute approach.

Data sources are West Jakarta District Court Decision No. 10/Pdt.Eks/RL/2024/PN.Jkt.Brt, laws and regulations, KPKNL auction documents, and legal literature.

The analysis technique uses qualitative analysis of legal norms and case facts.

RESULTS AND DISCUSSION

1. Analysis of the Validity of the Execution of Mortgage Rights

Execution procedures by the District Court and KPKNL.

Assessment of whether the formal and material requirements for mortgage execution have been met.

2. Legal Protection for Third Parties (PT Lunto Richpat)

The status of third-party lessees in mortgage rights.

Obligation to provide notification prior to execution (fair notice principle).

Legal remedies that third parties can take (denial, lawsuits for unlawful acts, etc.).

3. Analysis of Mistakes in the Object of Execution (Address Differences)

Legal impact of differences in the address between the SHGB and the physical location of the executed title.

Implications for the validity of the execution and potential claims for compensation.

4. Legal Responsibilities of the Parties

Responsibilities of PT Primajaya Pantas Garmen as the applicant for the execution.

Roles and responsibilities of the West Jakarta District Court and the Land and Building Authority (KPKNL) in ensuring the accuracy of the auction object.

CONCLUSION

Draws key findings regarding the validity of the execution and violations of third-party rights.

RECOMMENDATIONS

Encourage the application of the precautionary principle in the execution of mortgage rights, and recommend that the KPKNL and the courts verify the identity of the object before execution.

REFERENCES

Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects (Mortgage Law).

HIR (Herzien Inlandsch Reglement) / RBg (Reglemen Buitengewesten) Articles 195–208 HIR (or Articles 206–240 RBg).

Law Number 48 of 2009 concerning Judicial Power.

Supreme Court Regulation (PERMA) Number 3 of 2016 concerning Procedures for Filing Objections to the Execution of Mortgage Rights.

Jurisprudence and Legal Doctrine: Supreme Court Decision No. 3211 K/Pdt/1984 emphasizes that the execution of mortgage rights must comply with the principle of prudence.

Regulation of the Head of the National Land Agency (BPN) and Regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 concerning Implementing Provisions of Government Regulation No. 24 of 1997 concerning Land Registration.

Main Regulations in PMK 213/PMK.06/2020. Transitional Provisions and Revocation of Old Regulations. This PMK revokes PMK No. 27/PMK.06/2016 concerning Auction Implementation Guidelines.

Decision of the Supreme Court of the Republic of Indonesia Number 350 K/Pdt/2017.

Decision of the South Jakarta District Court Number 332/Pdt.G/2019/PN.Jkt.Sel.

Decision of the Supreme Court of the Republic of Indonesia Number 1022 K/Pdt/2015.

J. Satrio – Law on Security of Property Rights (Mortgage, Fiduciary, Pawn, and Mortgage). Publisher: Citra Aditya Bakti, Bandung.

R. Subekti – Contract Law and Principles of Civil Law. Publisher: Intermasa, Jakarta.

Sri Soedewi Masjchoen Sofwan – Guarantee Law in Indonesia: Principles of Guarantee Law and Individual Guarantee. Publisher: Liberty, Yogyakarta.

Gunawan Widjaja & Kartini Muljadi – Mortgage Rights: A Guarantee Institution for Land and Land-Related Objects. Publisher: RajaGrafindo Persada, Jakarta.

Salim HS – Development of Guarantee Law in Indonesia. Publisher: RajaGrafindo Persada, Jakarta.

Hermansyah – Indonesian National Banking Law. Publisher: Kencana Prenada Media Group, Jakarta.