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Legal Protection of Creditors Against Auction Execution of Mortgage Rights Objects in Disputes

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Abstract: The execution of mortgage collateral auctions often encounters legal obstacles when the object of collateral provided by the debtor is under dispute. Such conditions pose significant challenges to the legal protection of creditors, particularly in their efforts to secure debt repayment through auction mechanisms. Disputes over the collateral frequently result in delays or even render the auction process infeasible, weakening the creditors' position as holders of mortgage rights. This study analyzes the legal protection afforded to creditors against obstacles in auction execution caused by disputes over the collateral. Furthermore, the research examines the role of legal provisions stipulated in Law No. 4 of 1996 concerning Mortgage Rights in resolving such challenges. The findings emphasize the necessity of stricter law enforcement and the establishment of effective dispute resolution mechanisms to safeguard creditors' rights, even when the mortgage collateral is subject to legal disputes.

Keywords: Legal protection, Creditor, Mortgage Rights, Dispute, Auction Execution.

1. INTRODUCTION

The issue of auctioning mortgage collateral objects still under dispute is a frequent challenge in civil law practice. Creditors, as holders of mortgage rights, often face legal obstacles when attempting to execute an auction on collateral the debtor provides. The creditor's right to execute the collateral through auction should be a legally guaranteed right. However, legal disputes over the collateral frequently become a significant barrier, hindering the exercise of this right. These obstacles impact the creditor and undermine the legal certainty that should be the principal foundation of every collateral execution. A credit agreement is the primary basis of the legal relationship between the creditor and the debtor. The creditor provides credit facilities based on terms agreed upon in a written contract. Article 1320 of the Indonesian Civil Code (KUHPerduta) requires four elements in a credit agreement: consent, legal competence, a specific object, and a lawful cause. To safeguard their interests, creditors typically require collateral in the form of mortgage rights over the debtor's assets (Yustiana, 2020).

A mortgage is a legal instrument designed to grant creditors a privileged position as holders of security rights over property. This position is explicitly regulated under Article 1 paragraph (1) of Law Number 4 of 1996 concerning Mortgage on Land and Land-Related Objects (the Mortgage Law). A mortgage gives creditors priority rights to recover debts from the proceeds of a debtor's asset auction if the debtor is declared in default. This principle ensures creditors that their right to debt repayment will take precedence over other parties with claims on the same object. The uniqueness of a mortgage lies in its feature granting direct execution rights to the creditor without the need for a new lawsuit in court. This is affirmed in Article 6 of the Mortgage Law, which authorizes creditors to sell the collateral through a public auction if the debtor fails to meet their obligations. This authority is made possible by the mortgage certificate, which includes an executorial title. Such a title holds the same legal force as a final and binding court decision. The execution of a mortgage aims to provide legal certainty and efficiency in resolving debt obligations. Creditors are not required to await a court ruling to execute the debtor's assets, allowing for swift and effective debt resolution. This speed is crucial,

particularly when a debtor faces financial difficulties that could diminish the value of the collateral if execution is delayed. However, despite having direct execution rights, creditors must still comply with the legal procedures stipulated in the prevailing regulations (Sukmaya et al., 2020).

The implementation of mortgage rights also reflects the principle of balance between the rights and obligations of creditors and debtors. Creditors are granted a prioritized position but remain bound by the obligation to execute the collateral lawfully and by the law. Article 20 of the Mortgage Law stipulates that execution must be done through a transparent public auction mechanism overseen by an auction official. This procedure aims to protect the rights of all interested parties, including the debtor, ensuring that the execution process is not conducted arbitrarily. Legal certainty in executing mortgage rights is essential to maintaining creditors' confidence in the security rights system. Without such certainty, creditors risk losing their right to debt repayment if the collateral cannot be executed. Thus, mortgage rights protect creditors and strengthen the legal system's role in promoting justice and order in civil legal relations. The establishment of mortgage rights involves granting security over land or land-related objects. Creditors and debtors enter into a mortgage agreement formalized in an authentic deed made by a land deed official (PPAT). Article 10 paragraph (2) of Law Number 4 of 1996 concerning Mortgage on Land and Land-Related Objects (the Mortgage Law) requires the mortgage grant to be registered with the Land Office to gain legal force. Article 13 of the Mortgage Law specifies that after the mortgage is registered, the Land Office will issue a mortgage certificate as authentic proof of its existence. The procedures for exercising mortgage rights are strictly regulated under the Mortgage Law to protect the rights of both creditors and debtors. Article 20 of the Mortgage Law grants creditors the right to execute the collateral in case of debtor default. Collateral execution can be carried out through three mechanisms: executorial title, direct sale based on mutual agreement, or public auction. These procedures aim to create fairness and legal certainty in the execution process. However, legal disputes involving the collateral often hinder the execution process, preventing creditors from exercising their rights directly.

The primary purpose of mortgage rights is to provide legal certainty and protection to creditors as the parties owed. Article 1, paragraph (1) of the Mortgage Law states that mortgage rights grant creditors a prioritized position to recover debts from the auction proceeds of the collateral object. This fundamental principle balances rights and obligations in the legal relationship between creditors and debtors. Mortgage rights also simplify the execution process, allowing creditors to enforce their rights without navigating overly complex procedures. However, the issue of executing auctions on disputed mortgage collateral objects presents a significant challenge that requires serious attention. Collateral under dispute cannot be auctioned due to ongoing legal proceedings. Article 224 of the *Herziene Indonesisch Reglement (HIR)* mandates a court determination for execution when legal objections are raised. Lawsuits filed by third parties or even by the debtor often delay the auction process. This situation creates legal uncertainty for creditors, who should have the right to recover debts by auctioning the collateral. Creditors often incur losses due to delays in collateral execution caused by disputes. Debtors or third parties filing lawsuits frequently exploit this situation to obstruct auction proceedings. Article 6 of the Mortgage Law grants creditors the right to sell collateral through auction if the debtor defaults. However, this right cannot be exercised if the collateral is subject to legal disputes. The existence of such disputes prevents creditors from executing their rights until the legal process is resolved. This condition has profound implications for implementing mortgage rights as a debt security instrument. Creditors lose time and the opportunity to obtain timely debt repayment. Debtors often exploit legal loopholes to evade their obligations. Article 1977 of the Indonesian Civil Code (KUHPerdata) stipulates that ownership unsupported by valid evidence can be subject to disputes. This provision allows third parties or debtors to file claims on the collateral object, thereby hindering the auction process (Wijayanto et al., 2021).

The auction execution of mortgaged collateral is a legal action taken to forcibly sell the debtor's secured assets to fulfill their debt repayment obligations to the creditor. This process is firmly grounded in law, as stipulated in Articles 6 and 20 of Law Number 4 of 1996 on Mortgage Rights on Land and Land-Related Objects (the Mortgage Law). These provisions empower creditors to execute the collateral if the debtor fails to fulfill their obligations under the credit agreement. The execution process begins with notifying the debtor that the creditor intends to exercise their executorial rights. Creditors must ensure that this process complies with the legal procedures, mainly through public

auctions organized by the State Assets and Auction Services Office (KPKNL) or other authorized auction institutions. This auction process ensures transparency, fairness, and legality in resolving debt obligations. Unlike other legal actions, executing mortgage rights does not require a new lawsuit in court, as the mortgage certificate contains an executorial title equivalent to a final and binding court decision. However, creditors are still required to submit an execution request to the Chairman of the local District Court to obtain approval for the auction. This request must include supporting documents such as the mortgage certificate, credit agreement, and evidence of the debtor's default.

The auction execution must adhere to several key principles: transparency, protection of parties' rights, and efficiency. The principle of transparency is implemented through widely announced auction notices to allow public participation. The principle of protecting parties' rights ensures that the auction process considers the interests of creditors, debtors, and third parties who may have claims over the collateral. The principle of efficiency aims to facilitate a swift resolution of debt obligations without compromising the debtor's rights as the owner of the collateral. Despite the creditor's privilege to execute mortgaged collateral, several challenges often arise. One common issue occurs when the collateral is subject to legal disputes. This situation can impede the auction process because the collateral status lacks legal certainty. Additionally, debtors or third parties frequently file objections or lawsuits to delay or nullify the auction execution. These legal actions can prolong the debt resolution process and result in creditors incurring financial losses. The auction process must also comply with Article 14 paragraph (2) of the Minister of Finance Regulation Number 27/PMK.06/2016 on Auction Implementation Guidelines. Creditors must complete all administrative and technical procedures before conducting the auction. Failure to comply with these regulations may invalidate the auction or lead to potential lawsuits from aggrieved parties. The primary objective of auctioning mortgaged collateral is to protect creditors' rights by securing debt repayment from the debtor's assets. However, the execution must be carried out carefully and comply with applicable legal regulations. Adhering to legal procedures safeguards the creditors' rights and ensures justice for the debtor and other parties with legitimate interests in the mortgaged collateral.

Resolving disputes over mortgaged collateral requires swift and effective mechanisms to protect creditors' rights. Resolving such disputes through litigation often takes considerable time, diminishing the effectiveness of mortgage rights as a security instrument. Current legal provisions offer alternative dispute resolution options, such as mediation or arbitration. However, the effectiveness of these mechanisms remains limited due to a lack of legal awareness and mutual agreement among the disputing parties. Creditors require stronger legal protections to ensure their rights are upheld during any collateral execution process. Legal provisions governing disputes over mortgaged collateral need further clarification to provide legal certainty for all parties involved. Disputes must be resolved promptly and efficiently to avoid disadvantaging creditors with legitimate legal standing. Executing auctions for mortgaged collateral subject to dispute illustrates the complexities of civil legal practice. This issue calls for in-depth analysis to develop effective solutions. The principles of legal certainty, justice, and the protection of rights must underpin any policy regulating the implementation of mortgage rights. Creditors, as holders of mortgage rights, require robust legal support to exercise their rights without unnecessary impediments. By strengthening legal frameworks and ensuring effective dispute resolution, the balance of rights and obligations between creditors and debtors can be better maintained, fostering trust and efficiency within the legal system.

The previous studies referenced in this journal, which establish its originality, include several significant works. First, Yustiana, in her research titled *"Execution of Mortgage Rights on Non-Performing Bank Loans,"* found that the factors influencing the execution of mortgage rights are the creditor and debtor. An agreement between the parties can prevent the execution of mortgage rights, and if execution occurs, it is typically carried out peacefully. This study was published in *Jurnal Ilmiah Hukum* by Sekolah Tinggi Ilmu Hukum Lamadukelleng (Yustiana, 2020). Second, Radisti Wensy Marwa and Heru Susetyo, in their research titled *"Execution of Mortgage Objects Guaranteed to Third Parties Without the Creditor's Consent,"* identified three primary methods for executing non-performing loans: *para te* execution, underhand sales execution, and execution based on the executorial title of the mortgage certificate. This study appeared in *Jurnal Al Manhaj* by Universitas Indonesia (Susetyo et al., 2023). Third, Alvin Riza Subakti and Zakki Adhlyati, in their study *"Legal Protection for Holders of Mortgage Rights over Objects Controlled by Third Parties (Case Study of Decision No.*

326/Pdt/2015/PT.Smg)", concluded that auction executions can proceed even if a third party controls the object. However, third-party opposition may cancel the execution if ownership rights are proven. This research was published in *Jurnal Verstek* by Universitas Sebelas Maret (Adlhiyati et al., 2022). Fourth, Naufal Alfian Tri Pamungkas and colleagues, in their study "*Settlement of Disputes over Mortgage Objects Taken by Debtors with Unlawful Debt Payment Letters (Analysis of Decision No. 81/Pdt.G/2019/PN Kpn)*", highlighted that mortgage rights provide creditors with protection in loan agreements. If default occurs, creditors may sell the object of the mortgage under Article 20(1) of the Mortgage Law. This study was featured in *Diponegoro Private Law Review* by Universitas Diponegoro (Alfian et al, 2021). Finally, Winni and colleagues, in their study "*The Status of Mortgage Objects Disputed by Third Parties (Analysis of Supreme Court Decision No. 858 K/Pdt/2021)*", concluded that the disputed mortgage object is not considered unlawful, as the debtor had legitimate ownership of the certificate when the mortgage was established. This study was published in *Jurnal Normatif* by Universitas Al Azhar (Winni et al., 2021).

2. LITERATURE REVIEW

Mortgage Rights are collateral that provide special rights to creditors to obtain debt repayment from the results of executing the collateral object if the debtor defaults. Based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Mortgage Rights contain the principle of Droit de preference, namely the right to be prioritized, and droit de suite, namely the right to follow the object in anyone's hands. Creditors can execute their rights by auctioning the mortgage object as regulated in Article 20 of the Mortgage Law. This execution aims to provide legal certainty and protection for creditors (Harjono, 2020).

Legal protection for creditors can be divided into preventive and curative protection. Preventive protection is realized through a credit agreement that regulates the rights and obligations of the parties. In contrast, curative protection is provided if a dispute arises through litigation or non-litigation. In the event of a dispute over the implementation of the mortgage auction, the creditor has the right to continue the auction process based on Article 6 of the Mortgage Law while still observing the applicable legal procedures. The auction procedure is specifically regulated in the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Auctions, which includes the procedures and requirements for implementing the auction (Marzuki, 2018). Disputes in auction execution are often caused by debtors' objections regarding auction procedures or third-party claims to the mortgage object. In this context, creditors have legal protection through the parade executive mechanism, namely the right to auction without the debtor's consent, if it meets the formal requirements. However, if a dispute occurs, settlement can be carried out through the courts or mediation. This is in line with the theory of legal certainty put forward by Gustav Radbruch, which states that the law must provide certainty, justice, and benefits for the interested parties (Rahardjo, 2019).

John Rawls' theory of justice is also relevant in this study, especially in protecting creditors' rights and respecting the rights of other parties. Auction execution must be carried out with the principle of justice, not to harm the parties concerned. In addition, the theory of legal protection put forward by Satjipto Rahardjo emphasizes the importance of providing a sense of security for creditors as holders of mortgage rights in facing potential auction execution disputes (Rawls, 2001).

3. RESEARCH DESIGN AND METHOD

The research "Legal Protection for Creditors Against the Execution of Auctioned Collateral Objects in Dispute" employs a normative juridical method. Normative juridical research is a legal study examining written legal norms as its primary subject. This approach analyzes various statutory regulations, legal doctrines, and court decisions to understand how the law should be applied in a specific context. In this method, law is understood as a normative system that governs human behavior based on established legal rules. Normative juridical research utilizes several approaches, such as the statutory approach, which examines the texts of applicable laws; the conceptual approach, which

explores the ideas or principles underlying legal provisions; and the case approach, which analyzes court decisions to observe the application of legal norms in practice. The primary objective of this research is to clarify the existing legal rules, understand the relationships among legal norms, and provide recommendations to address shortcomings or inconsistencies in applying the law in real-life scenarios.

4. RESULT AND DISCUSSION

4.1. *The Impact of Legal Disputes on Objects Encumbered by Mortgage Rights in Credit Agreements*

Mortgage rights are a type of security interest that grants creditors a preferential position to recover debt repayment from the proceeds of auctioning the collateral object. This is explicitly regulated under Article 1 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects (Mortgage Rights Law). Mortgage rights aim to provide optimal legal protection for creditors against the risk of default by debtors. Default occurs when a debtor fails to fulfill their obligation to repay the debt according to the agreed credit terms. The legal system safeguards the position of creditors holding mortgage rights by providing priority rights to secure debt repayment from the sale proceeds of the mortgaged object. However, implementing mortgage rights often encounters obstacles when the collateral object becomes the subject of a legal dispute. Legal disputes over the object of mortgage rights can arise for various reasons, such as claims from third parties asserting ownership over the collateral object or objections from debtors regarding the execution of the auction. These disputes have profound implications for the legal certainty afforded to creditors. Article 6 of the Mortgage Rights Law grants creditors the authority to sell the collateral object through auction in case of debtor default. Nevertheless, this authority is frequently impeded when legal objections challenge the status of the collateral object (Halihah & Arif, 2021).

Disputes involving collateral objects under mortgage rights result in delays in executing the auction process. Such delays lead to economic losses for creditors, who lose the opportunity to receive timely repayment of their debts. Article 224 of the *Herziene Indonesisch Reglement* (HIR) requires a court ruling to proceed with the execution process if there are legal objections. While this provision is intended to safeguard the rights of all interested parties, it also allows debtors or third parties to file lawsuits that hinder the execution process. Third parties filing claims against the collateral object often exploit legal loopholes to obstruct the auction execution. Article 1977 of the Indonesian Civil Code underscores the principle that property ownership cannot be upheld unless supported by valid evidence. This provision highlights the importance of legality and proof in any ownership claim. Without valid evidence, an individual's claim to ownership of a property can be contested and even nullified by a party with more substantial evidence. This principle emphasizes the critical role of legal documentation and substantiation in resolving disputes and securing creditor rights, particularly in cases involving collateral objects encumbered by mortgage rights (Ningsih, 2021).

Valid evidence includes ownership documents such as land certificates, deeds of sale, payment receipts, or other documents recognized by law as valid proof. In disputes over ownership, such evidence becomes a key factor in determining who holds the rightful claim to the property. If individuals cannot present valid evidence for their claim, the law will neither recognize nor protect their ownership. This principle is closely related to the protection of third-party rights. For instance, if a person acquires property through unlawful means or without clear legal grounds, the aggrieved party may file a lawsuit to annul the ownership. Article 1977 of the Indonesian Civil Code provides the legal basis for interested parties to challenge illegitimate ownership claims. This provision also aims to prevent abuse of rights and ensure legal certainty in legal relationships concerning property. Legal certainty is crucial for maintaining stability in transactions and legal relationships between individuals. Without clear evidence, property ownership becomes vulnerable to disputes and legal conflicts. Article 1977 of the Civil Code also grants third parties the right to file claims even if the collateral object has been lawfully registered as a mortgage. Consequently, the status of the collateral object remains uncertain until the legal dispute is resolved.

The delay in execution due to legal disputes negatively impacts the function of mortgage rights as an instrument of debt security. A mortgage intended to provide certainty and ease in the debt repayment process loses its effectiveness due to rising legal obstacles. Creditors holding mortgage rights often suffer due to prolonged legal proceedings. Article 20 of the Mortgage Rights Law provides a precise mechanism for executing mortgage rights as a secured transaction. This mechanism includes procedures that allow creditors to take effective legal action without requiring lengthy court proceedings. Article 20, paragraph (1) of the Mortgage Rights Law states that if a debtor defaults, the first mortgage holder has the right to sell the collateral object through a public auction to settle the debt. This sale can be made using the executorial power attached to the mortgage certificate, as stated in Article 14, paragraph (2) of the Mortgage Rights Law.

This certificate holds the same authority as a court ruling with permanent legal force, eliminating the need for additional court proceedings to enforce the execution. The execution mechanism in Article 20 also provides several options for creditors. First, creditors may execute the mortgage through direct sales based on an agreement between the debtor and creditor, as permitted under Article 20, paragraph (2). Direct sales must be conducted transparently and by fair market value to protect the interests of all parties involved. If direct sales are not feasible, creditors may proceed with a public auction through the State Auction Office. This auction process adheres to applicable legal regulations and is supervised by auction officials to ensure fairness and transparency. The proceeds from the auction are used to settle the debtor's debt, with any remaining balance returned to the debtor or rightful parties. However, executing rights under Article 20 of the Mortgage Rights Law also face limitations. If the collateral object is subject to a legal dispute, execution cannot proceed until the dispute is resolved. This provision aims to prevent harm to parties with valid claims over the object and ensure that the execution process aligns with principles of fairness. Article 20 of the Mortgage Rights Law provides a structured and definitive mechanism for execution, ensuring legal certainty for creditors. This provision protects creditors' rights and considers fairness for debtors and related third parties. With this mechanism in place, the execution of mortgage rights is expected to proceed effectively, efficiently, and by prevailing legal principles (Gegana et al., 2024)

Legal certainty in executing mortgage rights is fundamental to ensuring creditors' trust in Indonesia's security rights system. Legal certainty refers to clear, consistent, and predictable rules governing the exercise of rights held by parties, particularly creditors, in the event of debtor default. Without legal certainty, the execution process risks facing obstacles that may harm creditors and reduce the efficiency of the security rights system. The mortgage certificate, as regulated in Article 14 paragraph (2) of the Mortgage Rights Law, also provides legal certainty through its executorial power. This power equates the mortgage certificate to a court decision with permanent legal force, expediting and simplifying the execution process. This mechanism ensures that creditors can exercise their rights without undergoing lengthy legal proceedings, which could create uncertainty and result in time and financial losses.

However, legal certainty does not solely depend on the existence of legal rules but also their implementation. The consistent, transparent, and lawful execution of procedures is an absolute prerequisite for maintaining creditors' trust. For instance, in the auction process of a mortgage object, non-compliance with legal procedures or unresolved disputes can undermine confidence in the legal system. Disputes over the mortgage often pose challenges to achieving legal certainty. When the mortgage object is under dispute, execution must be postponed until the dispute is resolved. While this step is necessary to protect the rights of other interested parties, it can also create uncertainty for creditors. Therefore, a fast and effective dispute resolution mechanism is essential to ensure that creditors' rights are not unduly affected. Legal certainty in executing mortgage rights is crucial in creating a conducive investment climate. A reliable legal system instills confidence among creditors, enhances access to financing, and encourages financial institutions to participate in providing credit facilities. Conversely, uncertainty in executing mortgage rights can add risks for creditors, potentially reducing credit availability or increasing borrowing costs. Legal certainty is the foundation for ensuring that the execution of mortgage rights aligns with the principles of fairness, efficiency, and legal protection for all parties involved. Clear legal regulations, consistent implementation, and strict supervision are necessary to maintain the stability and trust in Indonesia's security rights system.

Through this synergy, the system can support economic growth while safeguarding the interests of creditors, debtors, and third parties.

Creditors require assurances that their rights to debt repayment will be safeguarded, even in legal disputes involving the collateral object. Provisions in Article 13 of the Mortgage Rights Law, which mandate the issuance of a mortgage certificate by the Land Office, are intended to clarify the legal status of the collateral object. However, post-issuance legal disputes often reveal that existing regulations are ineffective in protecting creditors. The government and policymakers must reassess the legal framework governing the execution of mortgage rights. Current provisions must be improved to strengthen creditors' positions and minimize legal barriers in the execution process. Establishing a more robust mechanism for resolving disputes over mortgage objects would significantly benefit creditors and enhance the legal system. Barriers to implementing mortgage rights also negatively affect the financial system's stability. Creditors unable to execute collateral objects face substantial financial losses, potentially affecting their liquidity and business continuity. Financial system stability relies on legal certainty that upholds the function of mortgage rights as a reliable security instrument. Prolonged legal disputes harm creditors and create uncertainty for debtors and third parties with interests in the collateral object. Efficient and timely dispute resolution mechanisms will ensure legal certainty for all involved parties. Provisions in Article 10 of the Mortgage Rights Law, which regulate the registration process at the Land Office, are intended to guarantee the validity of creditors' rights. However, the persistence of legal disputes following registration highlights the need to strengthen the existing legal framework. A more comprehensive and effective legal system is essential to safeguard creditors' rights, maintain financial stability, and ensure equitable treatment for all parties. Policymakers must prioritize measures to resolve disputes efficiently and enhance the reliability of mortgage rights as a cornerstone of Indonesia's financial and legal infrastructure (Badriyah & Jannah, 2023).

Enhancing legal mechanisms for resolving disputes over collateral objects is a crucial step in ensuring the effectiveness of the mortgage system and safeguarding the interests of creditors. This effort requires close collaboration and synergy among judicial institutions, land authorities, and stakeholders to address the recurring challenges in enforcing mortgage rights. Disputes over collateral objects often undermine the certainty and predictability that mortgage rights are intended to provide, necessitating a comprehensive and multi-faceted approach to legal reform and implementation. Judicial institutions play a central role in resolving disputes over collateral objects. Courts must prioritize fairness, efficiency, and impartiality in adjudicating such cases. Legal proceedings' lengthy and often costly nature can discourage creditors from pursuing their rights, leaving disputes unresolved and creating further uncertainty. To mitigate this issue, courts must adopt measures to streamline case handling, such as establishing specialized chambers or expedited procedures for mortgage-related disputes. These initiatives can ensure that creditors and other affected parties receive timely and equitable resolutions.

Land authorities also bear significant responsibility in preventing disputes over collateral objects. Registering mortgage rights, as outlined in Article 10 of the Mortgage Rights Law, should provide a precise and reliable basis for the creditor's legal claim over the collateral. However, in practice, discrepancies in land records, fraudulent claims, and administrative errors often give rise to disputes. To address this, land offices must strengthen their oversight mechanisms and implement rigorous verification procedures during the registration process. Utilizing advanced technologies, such as blockchain or digital land registries, can enhance transparency and reduce the risk of errors or fraudulent registrations. Furthermore, enforcing legal provisions regarding mortgage rights must be firm and consistent to prevent abuse by debtors or third parties. In some cases, parties deliberately exploit legal loopholes or procedural delays to obstruct the execution of mortgage rights, depriving creditors of their legitimate claims. More substantial legal penalties and deterrent measures should address such behavior. By ensuring that those who intentionally hinder the execution process face consequences, the legal framework can uphold the integrity of the mortgage system and protect creditors' rights.

Giving creditors stronger legal protections is essential to maintaining their confidence in the mortgage system. The primary purpose of mortgage rights is to offer creditors security and assurance that their claims will be satisfied in the event of default by the debtor. When disputes or procedural

inefficiencies erode this assurance, creditors face increased risks, potentially leading to reduced lending activity or higher borrowing costs. Revising the Mortgage Rights Law to include provisions prioritizing creditors' interests without compromising the rights of debtors and third parties is critical. For instance, mechanisms allowing provisional measures, such as temporary injunctions or interim possession of collateral, can help safeguard creditors' rights during disputes. The government must actively revise the Mortgage Rights Law to address weaknesses in its implementation. While the law provides a robust framework for creating and enforcing mortgage rights, practical challenges often limit its effectiveness. A thorough review of the law, involving input from legal experts, financial institutions, and civil society, can identify gaps and ambiguities that must be addressed. Reforms should focus on simplifying execution procedures, enhancing the clarity of legal provisions, and ensuring that all parties involved in the mortgage system clearly understand their rights and obligations. In addition to legislative reforms, capacity-building initiatives for judicial and administrative officials involved in mortgage-related matters are essential. Judges, land officers, and enforcement agents must have the knowledge and skills to handle complex mortgage disputes effectively. Regular training programs, guidelines, and access to updated legal resources can enhance their ability to address disputes consistent with legal principles and best practices (Hutapea, 2020).

4.2. Legal Protection of Creditors as Mortgage Rights Holders When the Collateral Object Up for Auction is in Dispute Status

Legal protection for creditors as mortgage holders plays a significant role in ensuring legal certainty and fairness. Creditors, as parties providing credit facilities, hold a privileged right over the mortgage object to settle the debtor's debt in case of default. However, implementing mortgage rights often faces challenges, particularly when the collateral is involved in legal disputes. Such disputes create legal obstacles that may hinder the execution process and disadvantage creditors (Dewantara et al., 2022). The Mortgage Law provides a robust legal framework for enforcing mortgage rights. Article 20, paragraph (1) of the Mortgage Law stipulates that the primary mortgage holder has the right to sell the object through a public auction to settle the debtor's debt. This provision grants creditors a special privilege to execute their rights promptly without enduring prolonged court proceedings. Nevertheless, disputes over the collateral frequently obstruct execution, necessitating robust legal protection for creditors. Disputes over mortgage objects may arise for various reasons, including third-party claims or objections from debtors concerning execution. Article 1977 paragraph (1) of the Indonesian Civil Code emphasizes that ownership of goods cannot be defended without valid evidence. Such disputes often emerge due to unclear legal status or contested ownership evidence among parties. Under these circumstances, execution must be postponed until the dispute is resolved to prevent legal harm to any party involved (Lubis & Harahap, 2023).

The execution of mortgage rights aims to provide legal certainty to creditors as a safeguard against debtor default. Article 14, paragraph (2) of the Mortgage Law asserts that the mortgage certificate holds executorial power equivalent to a final and binding court decision. This provision offers creditors a legal advantage, enabling direct execution without requiring additional court rulings. However, when the mortgage object is under dispute, the executorial power becomes ineffective, as legal procedures to resolve the dispute must first be undertaken. Procedures for resolving disputes involving mortgage objects must be swift and effectual to safeguard creditors' interests. Article 6 of the Mortgage Law grants creditors the right to sell the collateral through public auction if the debtor fails to fulfill their obligations. However, if the collateral is under dispute, the auction process must be suspended to prevent potential violations of other parties' rights. This situation poses a legal dilemma for creditors, as delays in auctions can lead to significant financial losses due to the depreciation of collateral value or additional costs incurred during the dispute process (Winarno, 2022).

Creditors affected by disputes over collateral require clear and firm legal protection. The Mortgage Law does not explicitly regulate mechanisms for creditor protection when mortgage objects are disputed. This legal uncertainty diminishes the effectiveness of mortgage rights and erodes creditors' trust in the legal system governing collateral. Consequently, regulatory reforms are necessary to strengthen legal frameworks and provide faster, more efficient dispute resolution mechanisms. Legal protection for creditors is concerned not only with the execution of mortgage rights but also with

procedural certainty during the execution process. Articles 224 of the *Herziene Indonesisch Reglement (HIR)* and 258 of the *Rechtsreglement voor de Buitengewesten (RBg)* stipulate that executing mortgage objects must be based on court decisions or documents with executorial force. Creditors dealing with disputed collateral often face lengthy and complex legal processes to secure their rights. These processes impose financial burdens on creditors and undermine the efficiency of mortgage rights as a debt security instrument. Amicable settlements or mediation can serve as effective alternatives to overcome obstacles in mortgage rights enforcement. Mediation allows parties to reach agreements without resorting to time-consuming and costly court proceedings. However, the success of mediation heavily relies on the good faith of all parties involved. In this context, the role of notaries as authorized officials in drafting collateral deeds becomes crucial in ensuring that mortgage documents are transparent and legally compliant (Sitompul et al., 2022).

The importance of legal certainty in mortgage rights execution aligns with the primary objective of mortgage rights. Mortgage rights protect creditors legally while ensuring fairness for debtors and other interested parties. Disputes over collateral undermine this objective if not adequately addressed. Therefore, concerted efforts among policymakers, judicial institutions, and stakeholders are necessary to develop a legal system more responsive to mortgage rights enforcement challenges. Adequate legal protection for creditors as mortgage holders not only benefits creditors directly but also contributes to the stability of the financial and economic systems. Creditor trust in the legal framework of collateral increases access to financing and stimulates economic growth. Conversely, legal uncertainty in mortgage rights enforcement discourages creditors from extending credit facilities, negatively impacting the national economy (Hashanah, 2022).

5. CONCLUSION

The legal disputes surrounding objects encumbered by mortgage rights in credit agreements highlight critical challenges in Indonesia's security rights system, undermining creditors' intended certainty and protection. While the Mortgage Rights Law provides a robust framework, practical obstacles, including delays in execution, fraudulent claims, and procedural inefficiencies, often impede creditors' ability to enforce their rights. These disputes create financial losses and legal uncertainty for creditors, destabilizing the financial system and reducing confidence in credit markets. To address these issues, legal reforms must prioritize enhancing the clarity, efficiency, and fairness of execution mechanisms, mainly by streamlining dispute resolution processes and strengthening land registration systems. Collaboration among judicial institutions, land authorities, and stakeholders is vital to implementing advanced technologies, such as digital land registries, ensuring rigorous oversight, and introducing deterrents against procedural abuse. Additionally, capacity-building initiatives for legal and administrative personnel and revisions to the Mortgage Rights Law are essential to safeguard creditors' interests, uphold fairness for all parties, and maintain the integrity of the financial and legal infrastructure.

Legal protection for creditors as mortgage rights holders is vital for ensuring legal certainty, fairness, and the effective enforcement of mortgage rights. Despite the robust framework provided by the Mortgage Law, disputes over collateral objects often hinder execution processes, exposing creditors to financial losses and diminishing their trust in the legal system. These disputes arise from unclear ownership status, third-party claims, or procedural challenges, which delay auctions and undermine the executorial power of mortgage certificates. The absence of explicit mechanisms in the Mortgage Law to protect creditors during such disputes exacerbates the issue, highlighting the need for regulatory reforms and the development of efficient dispute resolution mechanisms. Strengthening legal protections, streamlining execution procedures, and promoting alternative dispute resolution methods such as mediation are essential to safeguarding creditors' rights while maintaining fairness for debtors and third parties. By addressing these challenges, policymakers can enhance creditor confidence, stabilize the financial system, and foster economic growth through improved access to credit facilities.

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