

***Parate Executie*: In the Context of Principle of Proportionality and the Principle of Speedy Administration of Justice**

Ni Putu Paramita Dewi¹

Abstract

Parate execution is a legal privilege granted to documents that are equivalent to court judgments, such as mortgage and fiduciary rights. However, with the existence of a judicial review through the Constitutional Court Decision 18/PUU-XVII/2019, there are juridical implications regarding the position of Parate execution. This review specifically focuses on Article 15, Paragraph (2) and Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees. On one hand, Parate execution can achieve proportionality by balancing the interests of both parties through the inclusion of a default clause before execution by the creditor. It also ensures equal treatment of documents equivalent to court judgments by following civil procedure law procedures. On the other hand, this may result in additional procedures that do not require court approval, potentially hindering the principle of speedy justice administration.

Keywords: *Parate Executie, Fiduciary Law, Mortgage Law, Executie, Speedy Administration of Justice*

Introduction

Justice by John Rawls in his monumental work -A Theory of Justice- described an equal opportunity principle as the second principle of the second part of Rawls' theory of justice as well as the Indonesian Constitution which explicitly provides a constitutional guarantee as contained in Article 28D of the 1945 Constitution.² This confirms the constitutional mandate regarding the recognition of rights, guarantees of protection, fair legal certainty and equality before the law which is implemented in justice to be treated equally not least in the implementation of civil executions.

A state based on law guarantees the implementation of the constitutional rights of Indonesian citizens by submitting a judicial review of the Law against the 1945 Constitution. An application is made if there is a loss due to the enactment of a law. This authority exists in the Constitutional Court based on Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning the Constitutional Court.³ Based on this, there is a judicial review of Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 on Fiduciary Guarantees.⁴ This is because, in its implementation, article *a quo* is considered to only benefit one party (the creditor) and arbitrary in the process of executing using *parate executie*. Judicial review of article *a quo* is carried out because the creditor withdraws the object of fiduciary guarantee with a mechanism that is contrary to the provisions of Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1), Article 28H paragraph (4) of the 1945 Constitution, by using debt collectors.

Parate execution according to Subekti is "carrying out by oneself or taking by oneself what is rightfully his, in the sense without the intermediary of a judge, which is indicated on a collateral item to then sell the item himself". In other words, Parate Execution allows a creditor to sell the property of the debtor, when there is a default on a loan, without a court

¹ Ni Putu Paramita Dewi, Lampung University, Email: paramitaputudewi@gmail.com

² Pan Mohamad Faiz, "Teori Keadilan Rawls," *Jurnal Konstitusi*, 2009, 146.

³ Undang-Undang Nomor 8 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 24 Tentang Mahkamah Konstitusi

⁴ Putusan Mahkamah Konstitusi 18/PUU-XVII/2019

decision.⁵ The execution of a fiduciary guarantee is carried out based on Article 29 of Law Number 42 of 1999 on Fiduciary Guarantees and can be directly executed by the creditor because it has the same *executoriale kracht* as a Court Decision as stipulated in Article 15 paragraph (2) of Law Number 42 of 1999 on Fiduciary Guarantees. The creditor has the right to sell the object of the Fiduciary guarantee under their own power. This is the main characteristic of a fiduciary guarantee, as execution can be carried out directly by the creditor if the debtor is in default. The same thing applies to Mortgage collateral, which is contained in Article 6 of the Undang-Undang Hak Tanggungan regarding *parate execution*.

The judicial review on Article 15 Paragraph (2) and Paragraph (3) of Law Number 42 of 1999 on Fiduciary Guarantees which assesses the power of execution is unconstitutional and overrides *parate execution* which is a privilege of the Fiduciary Guarantee. The Constitutional Court Decision 18/PUUXVII/2019 granted the petition by interpreting the executorial phrase in Article 15 paragraph (2) Law Number 42 of 1999 on Fiduciary Guarantees as the same as a court decision that has permanent legal force because it has the inscription "*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*" on the fiduciary certificate, so the same procedure must be carried out in accordance with the provisions of Article 195 *Herzien Inlandsch Reglement* (HIR)⁶, namely by submitting a request for execution to the Chief District Court.

Based on this, there will be implications of the Constitutional Court Decision 18/PUUXVII/2019 on the principle of speedy justice of administration in the process of civil litigation in court. This paper will analyze the relationship between *parate execution* of documents equated with court decisions (Mortgage and Fiduciary Rights) in the context of the principle of speedy justice of administration in the effectiveness of civil execution in general.

Problem Formulation

Based on this background, the following problems were formulated are the *executoriale kracht* of documents equated with Court Judgments, the position of *parate execution* against documents equated with Court Judgments in Civil Execution Law, challenges to the principle of proportionality and the principle of speedy administration of justice when using *parate execution*.

Methodology

This research uses a normative legal research method that discusses the implementation of *Parate execution* on documents that are equivalent to Court Decisions, as well as its current existence after the Constitutional Court Decision 18/PUUXVII/2019 on Fiduciary Guarantees. Data collection is conducted by literature study to find out the concept through literature and the legal framework of *parate execution* in civil execution through relevant laws and regulations such as *HIR (Herzien Inlandsch Reglement)/RBg*

⁵ Johannes Ibrahim Kosasih, Anak Agung Istri Agung, and Anak Agung Sagung Laksmi Dewi, *Parate Eksekusi Fidusia* (Bandung: Mandar Maju, 2021), 140

⁶ *HIR/RBg*, Pasal 195

(*Rechtreglement voor de Buitengewesten*), BW (*Burgerlijk Wetboek*), Mortgage Law, Fiduciary Law and Constitutional Court Decision 18/PUUXVII/2019 on Fiduciary Guarantee.

Discussion and Result

Executorialie Kracht of Documents Equated with Court

The definition of execution or enforcement of judgment is a legal action executed by the Court to the losing party in some cases, which is a rule and procedure for the continuation of the case examination process and is continuous from the entire civil procedural law process.⁷ Meanwhile, R. Subekti explains the term execution (enforcement of judgment) and the defeated party does not want to obey the judgment voluntarily so the judgment must be imposed on him with the help of public force.⁸ The implementation of civil execution is carried out of them with the general principle that the decision must have a permanent legal force⁹. This means that for execution to be carried out, it must have *executorialie kracht*¹⁰ which is contained in the title "*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*" at the head of the Court Decision¹¹. Moh. Djais provides a broader definition where execution is also related to efforts to realise rights and not just the implementation of Court Decisions.¹² This is in line with the fact that in practice, civil execution is not only carried out on Court Decisions with permanent legal force (*inkracht van gewijsde*) which are punitive (*condemnatoir*), but also on Judicial Quasi and Documents that are equivalent to Court Decisions.¹³

Documents equated with Court Decisions are intended as documents or deeds of a main agreement made to bind between one party and another party which contains additional agreements (*accessoir*) related to objects that guarantee the fulfillment of the main agreement. It is called a Document Equal to a Court Decision because at the head of the document there is an title "*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*" which has *executorialie kracht* even though it is not issued by a Judicial Institution. Such as Groose Deed of Acknowledgement of Debt (Amendment to Law Number 30 of 2004 concerning Notary Position, Article 1 point 11 of Law Number 2 of 2014¹⁴), Mortgage (Law Number 4 of 1996 on Mortgage Rights Article 15 point (2)¹⁵ and (3) *jo* Number

⁷ Harahap. M Yahya, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata (Edisi Kedua)* (Jakarta: Sinar Grafika, 2022), hlm 1 dan hlm. 20

⁸ R Subekti, *Hukum Acara Perdata, Cetakan Kedua* (Bandung: Binacipta, 1982), hlm. 130

⁹ Harahap. M Yahya, *Op.cit.* hlm.6

¹⁰ *Ibid, hlm.7*

¹¹ LeIP, *Kertas Kebijakan Penguatan Sistem Eksekusi Sengketa Perdata Di Indonesia : Solusi Alternatif Penguatan Sistem Eksekusi Sengketa Perdata Yang Efektif & Efisien Untuk Kepastian Hukum* (Jakarta, 2019), hlm. 185

¹² Mochammad Djais, "*Pikiran Dasar Hukum Eksekusi*" (Fakultas Hukum Universitas Diponegoro, 2000).

¹³ Harahap. M Yahya, *Op.cit*

¹⁴ Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Jabatan Notaris, menyatakan "*Grosse Akta adalah salah satu salinan Akta untuk pengakuan utang dengan kepala Akta "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA"*, yang mempunyai kekuatan eksekutorial"

¹⁵ Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 Tentang Hak Tanggungan, menyatakan "*Pasal 15 Ayat (2) Sertipikat Hak Tanggungan sebagaimana dimaksud pada Ayat (1) memuat irah-irah dengan kata-kata "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA" dan Ayat (3) Sertipikat Hak Tanggungan sebagaimana dimaksud pada Ayat (2) mempunyai kekuatan eksekutorial yang sama dengan putusan*

213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions¹⁶⁾ and Fiduciary Guarantee (Article 15 point 1 of Law Number 42 of 1999 Undang-Undang Jaminan Fidusia concerning Fiduciary¹⁷⁾).

These documents although not made by the Judge through the trial process, but because they have *executoriale kracht*, in the event of a breach of promise can apply for execution to the District Court. Such as *Groose Akta Hipotek* (debt securities using mortgages and debt securities made before a notary/notary deed) has been regulated in Article 224 HIR which explains that letters that are considered to have definite strength which have an *executoriale* title “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa” to be executed like a decision made by a Judge in Court if the letter is not obeyed it will be executed by order of the head of the District Court in accordance with the rules of Court execution¹⁸. Furthermore, *Hak Tanggungan*, which replaces *Groose Akta*, is a security imposed on immovable objects and has a unity with land (*creditverband* and mortgage)¹⁹ made for the repayment of certain debts. The *executoriale kracht* of Mortgage Rights must fulfill the juridical and administrative processes, namely: 1) A credit agreement (principal agreement) with an encumbrance clause (*accessoir*); 2) Preparation of the Deed of Granting Mortgage Rights (APHT) by a Land Deed Official (PPAT); 3) Registration of the granting of the Mortgage Rights at the Land Office; and 4) the Mortgage Rights Certificate.²⁰ The Mortgage Rights Certificate, which is registered at the Land Office, becomes the basis for *executoriale kracht* because it contains the title “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa”. It is no different from the Fiduciary Guarantee where the *executoriale kracht* of the Fiduciary Guarantee is the inclusion of the title “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa” on the Fiduciary Guarantee Certificate based on Article 15 point (1) of Law Number 42 of 1999 on Fiduciary Guarantees followed by article (2) The Fiduciary Guarantee Certificate as referred to in article (1) has the same *executoriale kracht* as a court decision that has obtained permanent legal force and (3) which explains that if the debtor is in default, the Fiduciary Recipient (creditor) has the right to sell the object of the Fiduciary Guarantee under its own power.²¹

Position of *Parate* Execution on Mortgage and Fiduciary Rights

a. *Parate* Execution of Mortgage Rights

The existence of executorial power in Documents that are equivalent to Court Decisions has been explained because of the inclusion of the title “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa” so that its implementation can be done by making an application to the Chairman of the District Court. However, Article 20 of the Mortgage

pengadilan yang telah memperoleh kekuatan hukum tetap dan berlaku sebagai pengganti grosse acte Hypotheek sepanjang mengenai hak atas tanah.

¹⁶ Peraturan Menteri Keuangan Republik Indonesia Nomor 213/PMK.06/2020 Tentang Petunjuk Pelaksanaan Lelang

¹⁷ UUJF, “Pasal 15 Ayat (1) Dalam Sertifikat Jaminana Fidusia sebagaimana dimaksud dalam Pasal 14 ayat (1) dicantumkan kata-kata “DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA”.

¹⁸ HIR/RBg, Pasal 224 HIR/ 258 RBg tentang *Groose Akta*

¹⁹ Harahap. M Yahya, Op.cit, hlm. 188

²⁰ *Ibid*, hlm. 189-192

²¹ Reza Irawan et al., “Analisis Pertimbangan Hakim Terhadap Kedudukan Jaminan Fidusia Dalam Putusan Pn Jakarta Selatan No. 345/Pdt.G/2018: Perspektif Asas Keseimbangan,” *Perspektif Asas Keseimbangan* 2743, no. 345 (2018): 2743–50, <https://doi.org/10.59141/comserva.v3i07.1043>.

Rights explains that the execution of Mortgage Rights can be conducted by 1) *Parate* execution in Article 6 Mortgage Rights (*eigenmachtig verkoop*); 2) *Executoriale verkoop* (auction) requested to the Chairman of the District Court based on the executorial title; and 3) Sale under the hand based on the agreement of the parties.²²

The Mortgage Law (*Undang-undang Hak Tanggungan*) relating to land provides legal protection to the creditor when the debtor is in default, starting from Article 1 paragraph (1) Law Number 42 of 1999 on Fiduciary Guarantees which gives priority to creditors as holders of Mortgage Rights in obtaining repayment of their debts. Furthermore, in Article 6 of the Mortgage Law, the right to sell the object of Mortgage Rights on its own power (*parate* execution) through auction without requesting assistance from the District Court, the last is in Article 7 of Law Number 42 of 1999 on Fiduciary Guarantees regarding the *Droit de Suite* Principle, this principle is a special guarantee for the interests of the holder of the Mortgage Rights, that even though the object of the Mortgage Rights has passed to another party, the creditor retains the authority to enforce his rights if the debtor is in default. From this, it explains that in the Mortgage Rights Guarantee, the execution is valid using *Parate* execution. *Parate* execution is in accordance with Article 1178 of the Civil Code against the Mortgage Guarantee which is carried out by following the provisions of Article 1211 of the Civil Code.²³ However, there are things that are underlined is the implementation of execution that do not use the execution fiat from the Court there must be a promise that the first holder of the Mortgage Rights has the right to sell on its own power the object of the Mortgage Rights in the Deed of Encumbrance of Mortgage Rights (*Akta Pemberian Hak Tanggungan / APHT*).²⁴

The principle in *parate executie* is to simplify the process of recovering creditors' rights against debtors' debts without going through the fiat of the Court preceded by a protective confiscation.²⁵ *Parate* execution also has pros and advantages, according to Pitlo quoted by J. Satrio, the advantages consist of:²⁶

1. The sale is based on power (Mandate) or as the exercise of its own rights (Execution), which is agreed with the guarantor;
2. Outside the area of procedural law, with the consequence that procedural law, as far as execution is concerned, does not have to be followed. This has other consequences;
3. Does not need to go through or be preceded by confiscation;
4. There is no need to produce a *grosse acte*;
5. There is no need for a fiat of execution from the President/Chief of the Court;
6. There is no need for a summons, if in the credit agreement it is agreed that with the passage of time / a certain date, the debtor is considered to be in a state of default (even if it should be given).

²² Herowati Poesoko, *Dinamika Hukum Parate Executie Obyek Hak Tanggungan* (Yogyakarta: Aswaja Pressindo, 2023).

²³ Kitab Undang-Undang Hukum Perdata

²⁴ Prilla Geonestri Ramlan, "Parate Executie Dalam Pelaksanaan Lelang Eksekusi Pasal 6 Undang-Undang Hak Tanggungan," *Artikel DJKN*, 2022.

²⁵ Poesoko, *Op.cit.* hlm.153-154

²⁶ Ramlan, "Parate Executie Dalam Pelaksanaan Lelang Eksekusi Pasal 6 Undang-Undang Hak Tanggungan, *Artikel DJKN*, 2022

However, there is confusion regarding Article 6 Mortgage Rights regarding *Parate* execution that it still refers to Article 224 HIR/256 RBg which requires a clause that promises the power to sell alone (*eigenmachtig verkoop*) in APHT, and if not, the fulfillment of creditors' rights must be requested to the Chairman of the District Court through auction (*executoriale verkoop*).²⁷ The existence of a promise to sell on one's own power stated in the Akta Pemberian Hak Tanggungan/APHT and the Mortgage Certificate, if the debtor is in default, the creditor can execute the Mortgage object directly through the State Wealth and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*) without the necessity of a District Court decree.²⁸ Although all forms of execution of the Mortgage collateral have been regulated in such a way, in order to protect the interests of the debtor from the creditor's arbitrariness following the execution of *Parate*, it is still a problem. In terms of protection of creditors when execution is carried out on the object of collateral there is a refusal from the debtor, it is necessary to have the assistance of public power with an application to the District Court.²⁹

Fiduciary Guarantee and the Implications of the Constitutional Court Decision Number 18/PUUXVII/2019 on *Parate* Execution

Fiduciary comes from the Roman language, *Fides*, which means trust, fiduciary is also taken from the Dutch term *Fiduciare Eigendom Overdracht (FEO)* and English *Fiduciary Transfer of Ownership* which means transfer of property rights based on trust. Fiduciary refers to the transfer of ownership of property or assets based on trust where the object being transferred remains under the authority of the original owner. The fiduciary trusts that the fiduciary is willing to return the title of the surrendered item once the fiduciary's debt is repaid. The fiduciary has confidence that the fiduciary will not misuse the collateral under the fiduciary's control. The fiduciary beneficiary does not assume liability for the consequences of the fiduciary's acts or omissions in connection with the use and transfer of the fiduciary security object. The right of the fiduciary beneficiary to execute the collateral object only exists if there is a default on the part of the fiduciary grantor.³⁰ Then, generally known as the term fiduciary guarantee in Article 1 paragraph (2) of Law Number 42 of 1999 on Fiduciary Guarantees is a security right over movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered by Mortgage Rights, which remain in the control of the fiduciary (debtor), as collateral for the repayment of certain debts, which gives priority to the fiduciary against other creditors.³¹

Guidance on fiduciary enforcement prior to the promulgation of Law Number 42 of 1999 on Fiduciary Guarantees was very limited. The establishment of this Law regulates the implementation of fast, simple and efficient execution and provides legal certainty through *Parate* execution as stated in Article 15 paragraph (3) of Law Number 42 of 1999

²⁷ Harahap. M Yahya, Op.cit. hlm.197

²⁸ PMK 213/PMK.06/2020 Tentang Petunjuk Pelaksanaan Lelang

²⁹ Christine Widyawati and Hartiwiningsih Pranoto, "Perbandingan Eksekusi Hak Tanggungan Melalui Pengadilan Negeri Dengan *Parate* Eksekusi Hak Tanggungan Melalui Kantor Kekayaan Negara Dan Lelang Di Surakarta," *Jur Nal Reper Torium* Vol.3, no. No.2 (2016).

³⁰ Muhammad Rutabuz Zaman, "Eksekusi Sertifikat Jaminan Fidusia Putusan Mahkamah Konstitusi 18/PUU-XVII/2019," *Jurnal Studi Islam*, 2020.

³¹ Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia, Pasal 1 Ayat (2)

on Fiduciary Guarantees. Article 15 point 2 and paragraph 3 of the Law Number 42 of 1999 on Fiduciary Guarantees authorizes the fiduciary recipient (creditor) of the fiduciary guarantee without going through a judicial process and is final and binding.³² The term Parate execution in R. Subekti's explanation in the introduction means to execute alone without the intermediary of a judge. It is stated that Parate execution is a special feature of collateral in particular that gives the creditor the right to conduct a sale under its own power of the object used as collateral by the debtor, implemented in public in a simple manner without involving the debtor and the judge's fiat through the executorial title.³³ The Creditor's own sale process is carried out based on Article 29 of Law Number 42 of 1999 on Fiduciary Guarantees.

There is a difference with Parate execution in Mortgage Rights that must be agreed upon in the *Akta Pemberian Hak Tanggungan/APHT*, where *parate* execution in Fiduciary Guarantee is granted by law without the need to be agreed upon by the parties.³⁴ Through Article 15 point (2) and point (3) of the Law Number 42 of 1999 on Fiduciary Guarantees which was then subjected to a judicial review in the Constitutional Court because it was considered to benefit creditors only The Constitutional Court Decision Number 18/PUU-XVII/2019 on Fiduciary Guarantee where the verdict states that Article 15 point (2) of Law Number 42 of 1999 on Fiduciary Guarantees along the phrase "*executoriale kracht*" and the phrase "equal to a court decision with permanent legal force" is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as "against fiduciary guarantees where there is no agreement on dereliction and "the debtor opposes the voluntary relinquishment of the asset serving as the fiduciary guarantee, then all legal mechanisms and procedures in the implementation of the execution of the fiduciary guarantee". The Fiduciary Guarantee Certificate must be performed and applies the same as the execution of a court decision that has permanent legal force, and states that Article 15 point (3) of Law Number 42 of 1999 on Fiduciary Guarantees along with the phrase "breach of promise/default/ dereliction" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted that "the existence of a breach of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine the occurrence of a breach of promise".³⁵ So the Decision of the Constitutional Court Number 18/PUU-XVII/2019 concerning Fiduciary Guarantees, it is the same as the Mortgage Rights guarantee, namely the necessity for the clause to promise the power to sell itself by the creditor in the Fiduciary guarantee debt agreement and if not, the execution process is carried out following the provisions of Article 196 HIR.³⁶

³² Joni Alizon, "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Putusan Mahkamah Konstitusi 18/PUU-XVII/2019," *Eksekusi Jurnal of Law* Vol 2 No (1) (2020).

³³ Johannes Ibrahim Kosasih, Anak Agung Istri Agung, and Anak Agung Sagung Laksmi Dewi, *Parate Eksekusi Fidusia* (Bandung: Mandar Maju, 2021), hlm. 139

³⁴ *Ibid*, hlm.152

³⁵ Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019.

³⁶ HIR/RBg, Pasal 196 HIR "Jika pihak yang dikalahkan tidak mau atau lalai untuk memenuhi isi keputusan itu dengan damai, maka pihak yang menang memasukkan permintaan, baik dengan lisan, maupun dengan surat, kepada ketua, pengadilan negeri yang tersebut pada ayat pertama pasal 195, buat menjalankan keputusan itu Ketua

Challenges to the principle of proportionality and the principle of speedy administration of justice when using Parate Execution

A reflection of equality before the law when viewed using the principle of Proportionality through Constitutional Court Decision Number 18 / PUU-XVII / 2019 concerning Fiduciary Guarantees provides juridical coercion, especially in terms of determining the debtor's default/dereliction must be based on an agreement. Quoted from Hernoko states that proportion (part), is balanced or comparable. The word 'balance' means a balanced state (equal weight, comparable, equal).³⁷ Employment of the principle of proportionality in the area of contract law aims to give the parties according to their proportions, as well as provide a guarantee that differences in interests between the parties will be resolved proportionally.³⁸ The decision a quo indicates that there is a legal constraint on the Creditor's ability to undertake Parate execution, specifically through an agreement acknowledging a breach of promise by the debtor. At the outset, this was not clearly regulated in Law No. 42/1999 on Fiduciary Guarantee, which seemed to give the creditor the widest scope to sell the object of Fiduciary Guarantee.

From a broader perspective, there is no reduction in the meaning of Parate Execution in Constitutional Court Number 18/PUU-XVII/2019. Parate execution by creditors may be undertaken in the event of a breach of promise by the debtor, contingent upon an agreement. The need for the facilitation of business can still be fulfilled; it instills a sense of security due to the certainty of equal rights and obligations between the parties. The Decision a quo provides legitimacy to the validity of the balanced relationship between the parties in the fiduciary guarantee that had not previously been achieved because Article 15 point (2) and point (3) were considered to have weaknesses and only focused on providing legal certainty for the rights of the Fiduciary Recipient (Creditor) by being able to execute the Fiduciary Object immediately. Therefore, the Decision a quo can achieve certainty and justice in law because an agreement regarding a breach of promise means involving the debtor in the decision to sell the fiduciary security object. So in terms of the concept of legal legitimacy, the Decision a quo can not only provide a juridical basis but also provide justice and expediency.³⁹ The Constitutional Court Decision 18/PUUXVII/2019 does not negate the position of *Parate* execution, but adds an alternative for creditors in collecting their rights through execution by making an application to the District Court so as to avoid unlawful acts and provide an equal position between creditors and debtors.

The underlying principle of *parate* execution is employed to expedite the repayment of creditors' receivables and safeguard creditors' rights as a manifestation of the principle of speedy administration of justice.⁴⁰

menyuruh memanggil pihak yang dikalahkan itu serta memperingatkan, supaya ia memenuhi keputusan itu di dalam tempo yang ditentukan oleh ketua, yang selama-lamanya delapan hari”

³⁷ Faiq Tobroni, “Asas Proporsionalitas Sebagai Moderasi Pandangan Hukum Diametral,” *Jurnal Yudisial* 11, no. 3 (December 26, 2018): 307, <https://doi.org/10.29123/jy.v11i3.313>.

³⁸ *Ibid*, hlm 313.

³⁹ Margono, *Asas Keadilan, Kemanfaatan Dan Kepastian Hukum Dalam Putusan Hakim* (Jakarta: Sinar Grafika, 2019).

⁴⁰ Andi Hamzah, *Pembaharuan Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2009).

“... Speedy administration of justice or swift administration of justice is always coveted by every justice seeker. In general, every justice seeker wants a quick and complete settlement of the case, they generally want a quick and complete settlement of the case notwithstanding the fact that it is ultimately resolved rather than subjected to a prolonged examination and delay, the case is ultimately won. It is customary for individuals seeking justice to desire expedited case resolutions. In addition to a swift clarification of their legal entitlements, prolonged or protracted proceedings result in significant financial and temporal costs. Consequently, the adage 'justice delayed is justice denied' reflects a well-established sentiment”.

The establishment of proportionality in the execution of documents equated with Court Decisions is achieved through the application of Article 196 HIR, which entails integrating Civil Procedure Law procedures into matters that should be addressed through Parate Execution outside the court. Essentially, requests for dispute resolution presented to the Court should not be rejected, in line with the principle of *Curia Ius Novit*, as such rejections undermine the guarantees of justice.⁴¹ The resolution of these matters through the Judicial Institution inevitably entails delays due to the accumulation of cases, thereby impeding creditors from obtaining timely redress. Debt security documents, such as Mortgages and Fiduciary Rights, which are frequently employed in business transactions, necessitate prompt and efficient handling. Consequently, the application of Article 196 HIR in the execution of these debt security documents may hinder the realization of principles such as simplicity, expeditiousness, and cost-effectiveness. The execution process within the Court system is also fraught with various challenges and obstacles. Research conducted by the Institute for Judicial Independence Studies and Advocacy (LeIP) in its “*Kertas Kebijakan Penguatan Sistem Eksekusi Sengketa Perdata di Indonesia*” highlights that the issues related to court execution stem from deficiencies in regulations, facilities, infrastructure, and human resources.⁴²

Conclusion

1. The executorial *kracht* equivalent to a Court Decision by a Judge is possessed by Mortgage Rights and Fiduciary guarantees which are stated in the head of the certificate which contains the title “*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*”.
2. The Mortgage Rights set forth in Article 6 of the Undang-Undang Hak Tangungan provide a framework for *parate* execution, a concept also enshrined in Article 1178 Civil Code. This is carried out through the procedural mechanism outlined in Pasal 1211 Civil Code. However, the application of Article 224 HIR/256 RBg has led to confusion, as it necessitates a clause that guarantees the authority to sell independently (*eigenmachtig verkoop*) in the *Akta Pemberian Hak Tangungan/APHT*. Likewise, the same approach is applied to fiduciary guarantees through the

⁴¹ Roni Sulistyanto Luhukay, “Konsekuensi Peradilan Dalam Menolak Perkara Dalam Perspektif Keadilan,” *Jurnal Meta-Yuridis* 5, no. 2 (2022), <http://journal.upgris.ac.id/index.php/meta-yuridis/>.

⁴² LeIP, *Kertas Kebijakan Penguatan Sistem Eksekusi Sengketa Perdata Di Indonesia : Solusi Alternatif Penguatan Sistem Eksekusi Sengketa Perdata Yang Efektif & Efisien Untuk Kepastian Hukum*.

Constitutional Court Decision 18/PUUXVII/2019, which determines that the default status is contingent upon the agreement of the parties involved. The findings of these two cases indicate the necessity of clearly defining the debtor's state of default in the context of *parate* execution, both in the context of fiduciary and mortgage collateral.

3. The execution of mortgage and fiduciary rights raises a complex issue between adhering to the proportional principle, which aims to equilibrate the interests of the involved parties according to Article 196 HIR, and the procedural requirements mandated by the Civil Procedure Law in judicial proceedings. While the principle of proportionality advocates for a balanced approach, the court's procedural requirements entail a detailed process that contrasts with the streamlined nature of Parate Execution. Moreover, there are several problems and obstacles to execution that frequently arise in court and must be recognized by the parties, particularly since the swift utilization of rights and obligations through debt collateral such as Mortgage and Fiduciary Rights is essential for convenience in business

Suggestion

1. *Parate* execution, as a mechanism for the enforcement of creditor rights, should be established as a standard procedure to prevent arbitrary execution by creditors.
2. Given the various issues and obstacles encountered during execution when mandated by the Court, it is essential to draft an update to the Execution Law within the Civil Procedure Code. This revision should address regulations, resources for executors, security provisions, and necessary facilities and infrastructure.

References

- Alizon, Joni. "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Putusan Mahkamah Konstitusi 18/PUU-XVII/2019." *Eksekusi Jurnal Of Law* Vol 2 No (1) (2020).
- Djais, Mochammad. "Pikiran Dasar Hukum Eksekusi." Fakultas Hukum Universitas Diponegoro, 2000.
- Faiz, Pan Mohamad. "Teori Keadilan Rawls." *Jurnal Konstitusi*, 2009, 146.
- Hamzah, Andi. *Pembaharuan Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika, 2009.
- Harahap, M Yahya. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata (Edisi Kedua)*. Jakarta: Sinar Grafika, 2022.
- HIR/RBg
- Irawan, Reza, Tri Handayani, Nun Harrieti, and Universitas Padjadjaran. "Analisis Pertimbangan Hakim Terhadap Kedudukan Jaminan Fidusia Dalam Putusan Pn Jakarta Selatan No. 345/Pdt.G/2018: Perspektif Asas Keseimbangan." *Perspektif Asas Keseimbangan* 2743, no. 345 (2018): 2743–50. <https://doi.org/10.59141/comserva.v3i07.1043>.
- Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek*)
- Kosasih, Johannes Ibrahim, Anak Agung Istri Agung, and Anak Agung Sagung Laksmi Dewi. *Parate Eksekusi Fidusia*. Bandung: Mandar Maju, 2021.
- LeIP. *Kertas Kebijakan Penguatan Sistem Eksekusi Sengketa Perdata Di Indonesia : Solusi Alternatif Penguatan Sistem Eksekusi Sengketa Perdata Yang Efektif & Efisien Untuk Kepastian Hukum*. Jakarta, 2019.

- Luhukay, Roni Sulistyanto. "Konsekuensi Peradilan Dalam Menolak Perkara Dalam Perspektif Keadilan." *Jurnal Meta-Yuridis* 5, no. 2 (2022). <http://journal.upgris.ac.id/index.php/meta-yuridis/>.
- Margono. *Asas Keadilan, Kemanfaatan Dan Kepastian Hukum Dalam Putusan Hakim*. Jakarta: Sinar Grafika, 2019.
- Peraturan Menteri Keuangan Republik Indonesia Nomor 213/PMK.06/2020 Tentang Petunjuk Pelaksanaan Lelang," n.d. www.jdih.kemenkeu.go.id.
- Poesoko, Herowati. *Dinamika Hukum Parate Executie Obyek Hak Tanggungan*. Yogyakarta: Aswaja Pressindo, 2023.
- Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019
- Ramlan, Prilla Geonestri. "Parate Executie Dalam Pelaksanaan Lelang Eksekusi Pasal 6 Undang-Undang Hak Tanggungan." *Artikel DJKN*, 2022.
- Subekti, R. *Hukum Acara Perdata*. Cetakan Kedua. Bandung: Binacipta, 1982.
- Tobroni, Faiq. "Asas Proporsionalitas Sebagai Moderasi Pandangan Hukum Diametral." *Jurnal Yudisial* 11, no. 3 (December 26, 2018): 307. <https://doi.org/10.29123/jy.v11i3.313>.
- Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Jabatan Notaris
- Undang-Undang Nomor 8 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 24 Tentang Mahkamah Konstitusi
- Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia
- Undang-Undang Republik Indonesia Nomor 4 Tahun 1996 Tentang Hak Tanggungan
- Widyawati, Christine, and Hartiwiningsih Pranoto. "Perbandingan Eksekusi Hak Tanggungan Melalui Pengadilan Negeri Dengan Parate Eksekusi Hak Tanggungan Melalui Kantor Kekayaan Negara Dan Lelang Di Surakarta." *Jur Nal Reper Torium* Vol.3, no. No.2 (2016).
- Zaman, Muhammad Rutabuz. "Eksekusi Sertifikat Jaminan Fidusia Putusan Mahkamah Konstitusi 18/PUU-XVII/2019." *Jurnal Studi Islam*, 2020.