

# Parate Execution of Mortgage Right of Non-Agreement in the Deed of Mortgage

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## ABSTRACT

Mortgage holder has the authority to sell the mortgage object through the auction on their power, even there was no prior agreement outlined in the mortgage deed. The authority to sell the mortgage object on is one of the manifestations and priorities position that the holder of the security authority has. There is include the promise of appointment in the mortgage deed, like the promise that the holders of the mortgage have the authority to sell on his power the object in the Mortgage if the debtor default from the public auction without requiring the approval of the guarantor of the mortgage and takes the payment of the receivables from the proceeds of the sale of the other creditors. This condition shows that there is inconsistency in Parate execution's arrangement in the provision of guarantees with mortgages. This inconsistency can decrease and also distort the legal aspect of certainty as the core element of the law. So, there will be legal uncertainty. There are legal issues to be studied: the legal position of the undertakings of Parate execution of mortgage rights in mortgage deed and the legal force of Parate in executing mortgage rights that are not agreed upon in mortgage deed. The legal position of the undertakings of Parate execution of mortgage rights in mortgage deed will give the sense of psychological security for the parties since the legal power of the Parate execution of mortgage right is born from the favorable of legal provisions regulating the security rights that must not be agreed upon in mortgage deed.

**Keywords:** *Mortgage Deed, Parate Execution.*

## 1. INTRODUCTION

Mortgage institutions provide guarantee rights enforced on the rights of land as in the law number 5 in 1960 with regard to basic agrarian law, whether or not including the other objects that become the integral part of the land.

There are 3 models that can utilize to execute the mortgage object if the debtor defaults, that is, parate execution, execution based on the executorial title stipulated in the mortgage certificate, and also underhanded sales parate execution arrangements that are stated specifically in the article 6 of act number 4 in 1996 concerning mortgage rights which states that "if the debtor fails to promise, the holder of the first mortgage has the right to bargain the object of the mortgage on his power with the auction of public and take the repayment of receivables from the sale proceeds."

Substantially the elements contained in article 6 of the mortgage rights act show 2 important things when the debtor defaults, namely the transfer of rights and the execution of rights for the creditor/first mortgage holder. The act has explicitly mandated the first mortgage holder to bargain the mortgage object in the auction, even there was no agreement outlined in the deed of granting mortgage as known as *beding van eigenmatig verkoop*. (J. Satrio, 2002: 250). The authority to bargain the mortgage object on its power is one of the manifestations and also priority position of the mortgage holder granted by the article 6 of the mortgage rights act. The authority or right is owned by law by the person concerned (heny tanuwidjaja, 2012: 37).

Furthermore, if there is such an agreement, it is only facultative. the parties are free to state or not mention the undertakings in the action of granting mortgage rights. This explicitly stipulated in article 11 paragraph (2) letter e of act on mortgage rights that "in

the deed of granting mortgage, promises can be made, including a promise that the first mortgage holder has the right to sell on his power the object of the mortgage if the debtor is injured promise.”

This formulation seems to explain more than what should be explained which then contradicts the content of the main provisions. the formulation of the article is then supported by an explanation of article 11 paragraph (2) letter e of the mortgage rights act, which formulates that “in order to have the authority as stated in the article 6, the act of granting mortgage shall include this promise. this study intended to analyze from a legal perspective the building of a mortgage guarantee legal system that wants to provide legal certainty and protection for debtors and creditors, which turns out to be inconsistencies in the parate execution arrangements in the act on mortgage rights provisions. Therefore, the main issues that need to be studied are: how is the legal position of the promise on the parate of the execution of the mortgage in the deed of granting the mortgage and what is the legal force of the parate of the execution of the mortgage that is not agreed upon in the deed of granting the mortgage.

## **2. METHOD**

The method in this research is normative legal to examine the level of consistency of the articles in the mortgage rights act as the materials of primary legal. The primary legal materials are complemented by secondary legal materials, like legal books, legal, scientific works of the research results, and legal literature with regard to the problems. As for the analysis of legal materials, the grouping of the equal laws and regulations, the regulations in the hierarchy below them.

## **3. RESULT AND DISCUSSION**

### ***3.1 Position of the Undertakings on the Execution Parate in Granting Mortgage***

The parate executive institution is deliberately held for the holder of creditors Mortgage Rights in order to retrieve the repayment of their receivables quickly and inexpensively, to recess the formalities of procedural law and strengthen the position of creditors on the parties who have the authority from them. (Herowati Poesoko 2008: 282). Granting mortgage is about the material agreement including a series of legal actions from the Deed of Granting Mortgage to registration by getting Mortgage certificate from the Land Office.

The material agreement refers to an accessory agreement in the form of credit agreement, loan agreement, or the other agreements, which creates the relationships of lending and borrowing between the creditor and debtor. This mortgage was born through

encumbrance, which consists of the activity process, namely: the granting of Mortgage and registration (Purwahid Patrik, Kashadi: 1996:64).

The granting of Mortgage is used to provide Mortgage as the guarantee for the repayment of certain debts, which is outlined in and an inseparable part of the debt agreement focused on the Deed of Granting Mortgage by the Land Deed Officer (PPAT) which is attended by giver and receiver of Mortgage and two witnesses. The Granting of Mortgage refers to the content that must be included and facultative content not mandatory. Facultative promise does not affect the validity of the deed, but it has binding power to the third party.

The stipulation of said undertakings in the Granting Mortgage only give the sense of stability or just psychological sense, not juridical to the Mortgage holder than if it is not stipulated (Sutan Remy Sjahdeini: 1996: 227). The stipulation of the undertakings in the Granting Mortgage provide the parties the sense of psychological security even it does not own the juridical power because it has been specified in the Mortgage Rights Act.

### ***3.2 Legal Power of Mortgage Parate Execution of Non-Agreement in the Deed of Mortgage Granting***

The execution arrangement can be known in 20 paragraph (1) letter a in the conjunction with Article 6 of Mortgage Rights Act, which explains that: if the debtor is in the breach of contract, then the first Mortgage holder will bargain the mortgaged object on his power through the public auction and take the repayment of his receivables. from the sale proceeds without having to ask for the Head of the District Court. The right to bargain the Mortgage object through the public sale on its power is as one of the manifestations and the priority position. This is the priority of the Mortgage since the Mortgage keeps the creditors who prioritize the amount of capital borrowed by the debtor with guaranteed land rights.

The holder of the first Mortgage has the right to sell on his power the object of Mortgage, when the debtor break his promise. This authority should no longer need to be agreed upon in the Deed of Mortgage Granting due to legally, the right to sell the Mortgage object on the power. The authority to sell the the Mortgage object on its power can be agreed again with the Mortgage provider. Parate execution can be conducted even though it is not agreed upon in the Deed of Granting Mortgage. As long as the creditor carrying out the execution is the creditor holding the first Mortgage. Other creditors also demand repayment of their receivables.

#### 4. CONCLUSION

The legal position of the promise on the parate of execution of the Mortgage in granting the Mortgage will provide the security of psychological to the parties though, it does not own juridical power since it has been explicitly explained in the Mortgage Rights Act. Article 6 of the Mortgage Rights Act has determined the binding provision that if the debtor default the undertakings, the holder of the first Mortgage has the right to bargain the Mortgage object based on his power through public auction. Legislative Institutions and the Government need to revise again the formulation of the explanation of Article 6 in the Mortgage Rights Act jo. Elucidation of Article 11 paragraph (2) letter e of the Mortgage Rights Act, thus the formulation of the explanation and provisions of the norms of the article do not conflict with each other to assure the legal certainty.

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