Principles of Justice in Enforcement of Mortgage Rights According to the Indonesian Legal System

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Abstract. The process of implementing mortgage rights in the Indonesian legal system faces complex challenges that require a deep understanding of the principles of justice. Applications for the use of mortgage rights involve the mortgage right holder having the authority to regulate the process without interference from legal institutions. However, in practice, there is still a legal vacuum that causes inequality and violations of the principles of justice. This research explores the concept of justice in the execution of mortgage rights, basing the analysis on the principles of Pancasila and Law Number 4 of 1996 concerning Mortgage Rights. Even though the law gives authority to mortgage rights holders, its implementation still causes problems. Determination of auction price limits that do not reflect fair value and legal gaps in auction implementation guidelines create inequality and violations of justice. A deep understanding of the principles of justice, especially in the context of the execution of mortgage rights, is important to ensure that the rights and obligations of debtors and creditors are respected. In carrying out this research, the author focuses more on normative legal research. Therefore, it is necessary to update regulations and guidelines for auction implementation to ensure the implementation of mortgage rights in accordance with the principles of justice and avoid inequality that is detrimental to the parties concerned. In this way, a fair and just mortgage rights execution system can become a reality, supporting economic growth and the welfare of the Indonesian people.

Keywords: Dependent Rights, Execution, Indonesian Legal System, Justice.

1 Introduction

The mortgage right holder initiates the application procedure, as they are the ones with the capacity to oversee the process directly and do not require the involvement of legal entities. Put another way, the mortgage rights holders themselves carry out the mortgage rights auction, free from intervention by the legal council. The principle underlying this is that the debtor agrees to provide the mortgage to the creditor without the need to sell the mortgage item through the court. [1] Official requirements granting the mortgage right holder the permission to sell the mortgage item are a prerequisite for the auction procedure, which is overseen directly by the mortgage right holder and the

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object of the mortgage rights. As a component of national development, economic growth is one of the initiatives taken to achieve the welfare of a just and prosperous people in accordance with Pancasila and the 1945 Constitution.[2] Therefore, very rapid developments in the economic sector without being balanced by reform and the formation of appropriate laws will give rise to inequality, and can even endanger the development of the economic sector itself, because in the business world it is necessary to have strong legal facilities and institutions that can provide certainty, especially to resolve problems in implementing national economic development.[3]

According to Law Number 7 of 1992 Governing Banking, Article 1 Point 11, credit is defined as the provision of funds or assignments equal to those funds, based on a loan arrangement between the bank and another party. According to this agreement, the borrower must return the loan plus any applicable interest, penalties, or profit-sharing after a set amount of time.[4]

Mortgage rights may now be executed thanks to Law Number 4 of 1996 respecting Mortgage Rights, and if the debtor defaults, no additional legal action is necessary. Thus, the reason for this issue is that, under the requirements outlined in Article 14, paragraphs 1, 2, and 3 of the Mortgage Rights Law Number 4 of 1996, mortgages have execution rights that may be promptly put into effect. The significance of the "Mortgage Rights" certificate as evidence or a declaration of the existence of mortgage rights is reflected in Law Number 4 of 1996 about Mortgage Rights, Article 14 Paragraph 2, which permits the implementation of mortgage rights with an execution order. According to Irahira, the premise For the sake of justice, which is founded on faith in the Almighty God, strengthens the idea that mortgage rights have enforcement power equivalent to a legal council's decision, with legal force that is always applicable.

The application of mortgage rights must be based on the principles of justice. Justice is a principle that requires every individual to obey rules, must not violate them, and must carry out fair actions, by complying with certain requirements. This aims to ensure that people can live side by side, respect each other, and not take away other people's rights. The principle of justice must be the main concern in the entire law enforcement process, from its implementation until the law becomes a reality. There are three key elements that must be considered in enforcing the law, namely "legal benefits, legal certainty and justice".[5] Justice is "priority or preference for the first good of social institutions as truth in a system of thought that concerns the relationship between one another in accordance with their rights and obligations".[6]

Ignoring the principle of justice in implementing guarantees is the same as ignoring general principles in guarantee law, such as the principle of publicity, the principle of specificity, the principle of indivisibility, the principle of inbezittstelling, and the principle of horizontality. This principle especially applies in the context of the right to maintenance itself.[1] It should be remembered that Article 6 UUHT which regulates implementation, especially in the context of implementation, still requires further elaboration so that implementation can run smoothly and does not cause confusion in the actions of officials responsible for the parade.

The Mortgage Rights Law Number 4 of 1996, especially Article 6 which discusses "Implementation of Mortgage Rights", is expected to guarantee the application of fair principles of justice and not harm both debtors and creditors. Article 6 gives special authority to creditors to sell assets that are collateral if the debtor violates the agreement without the consent of the collateral provider. This aims to create justice for debtors, collateral providers, borrowers and owners of collateral.

2 Method

The major focus of the author's research is normative legal research; however, secondary data or library research is also encouraged in this study, which inherently includes primary, secondary, and tertiary legal resources.[7] Principal legal documents, including those pertaining to the Mortgage Law. Large Indonesian dictionaries, legal dictionaries, encyclopedias, and other writings on law that are not official documents are considered tertiary legal resources. Books, dictionaries, journals, and court judgments are examples of secondary legal materials. Methods for gathering legal information by applying the library study paradigm.[8] The formation and application of laws are the two main focuses of legal practice, which is closely related to normative legal science.[9]
To fulfill the expected scientific values, according to its nature the research carried out is categorized as descriptive-analytical research, meaning that it is an analysis of data based on general legal theory published to explain another set of data.[10] Using both a philosophical and statutory approach, this research is normative juridical in nature.
Content analysis is the legal material analysis method employed in this study. Analyzing content is a methodical process that looks at the information that has been gathered. This study is centered on all of the gathered secondary data. Following the acquisition of the required data, this study applies logic, method, and legal analysis to the data.
When data is evaluated logically, it is done so using the principles of deductive reasoning, which makes inferences from broader problems to the specific ones at hand. This principle ensures that the analysis follows a rational and continuous train of thought.
Systematic analysis means connecting one data with other data that are interrelated and interdependent. With this approach, data is analyzed by looking at its interrelationships and dependencies, so as to provide a comprehensive and comprehensive picture of the problem under study.
Additionally, the information was evaluated legally by making reference to current rules and connecting them to the dominant body of legislation. This process involves reviewing laws, regulations and policies that are relevant to the topics discussed, as well as how they are applied in real contexts. In this way, legal analysis is conducted not only based on the legal text, but also considers the implementation and interpretation of the law in practice.

3 Result and Discussion

3.1 Principles of Justice in the Execution of Mortgage Rights According to the Indonesian Legal System

Although the mortgage rights law recognizes its existence as a reform of the land guarantee institution, legal problems cannot be denied between the weak status and standing of debtors before creditors and the low capital limit for mortgage auctions, which does not reflect the need for mortgage rights. principles of certainty and justice. Debtors who are subject to enforcement and auction are not given space and legal remedies in the Pawn Law, so debtors must use other options regarding legal remedies.

Debtors and creditors can get legal protection in upholding justice related to mortgage rights, namely "providing guarantees regarding legal certainty and justice", but in its implementation there are many complaints, legal problems and unfair decisions, so as said by NE Ahmed Ali is right quoting Algra in his book "Legal Theory and Judicial Prudence" whether the case is said to be fair depends on whether (rechtmitigheid) it is in accordance with the legal assessor's personal opinion. It is best not to say "this is fair", but to I think it is fair, "seeing things as fair is a view of personal value".[11] Thus, by definition, "the debtor's rights become the creditor's obligations and vice versa in the application of distribution rights in the mortgage collateral," as stated by Aristotle. Debtors and creditors have the option to receive shares depending on their equity through equity.

Enforcement of seizures requires fair prosecution. Because law is a way to achieve justice.[12] The results of legal conclusions, whether in the form of court decisions or implementing regulations, are needed, apart from ensuring legal certainty and order, to protect interest groups based on honesty and truth. In this case, creditors have the same rights. This does not mean that creditors have special rights and debtors have inferior rights, but both have the same position.

Apart from that, in Pancasila, the content of the second principle contains the commandment of "just and civilized humanity" which is translated into respect for human rights and the fifth principle of commandment regarding "social justice for all Indonesian people", which in other words means economic justice and or prosperity as a good national policy. According to the Pancasila values-based concept of justice, "everyone has the right to live a decent life, work, and earn an income."

3.2 Application of the Principles of Justice in the Execution of Mortgage Rights

One of the tasks of guaranteeing home ownership loans is legal certainty for the creditor (bank) if the debtor makes a mistake on one day at the agreed time. If the debtor cannot pay his debt to the creditor, in this case the bank, a mortgage can be taken in lieu of the debtor's unpaid debt. Regarding mortgage collateral, the creditor is only entitled to debts that have not been paid by the debtor, and which are specified in the contract and which arise later after the end of the loan agreement, if there is still a loan balance. mortgage collateral, then the money is returned to the debtor. Article 6 Law no. 4 of 1996 concerning Mortgage Rights regulates the power to sell securities.

Article 6: Rights of Mortgages According to Law No. 4 of 1996, in the event of a debtor's failure, the first mortgagee is often entitled to auction the mortgage on his own power and keep the earnings. Law No. 4 of 1996, which governs mortgage rights and items connected to land, states in Articles 20(1) and (2) that banks may utilize or earn money from collateral in various ways.

Before Indonesia implemented the regulations regarding mortgage rights “UUHT 1996 No. 4, effective April 9 1996”, regulations regarding “land collateral” mortgages are regulated in the Civil Code, and Koninlijk Besluit Stb, 1908 No. 452 Amended by Stb. 1937 No. 190.[13] Holding a mortgage auction is the option most often used by banks as mortgage holders to realize collateral from unpaid debtors. This is because carrying out the auction process is a simple and fast procedure, especially because the lender/guarantor has the right to sell securities under the law without a court order.
The author of this book focuses more on how the principles of fairness are applied to mortgage guarantees and how bidders must be aware of certain limitations when making an auction request. The principle of justice in enforcing mortgage rights in its application refers to all aspects of procedural justice, which is expected to create fair justice in relation to the owner of the outsourced object to be auctioned and the buyer of the object being auctioned. In practice, in many cases, when the creditor sets the guarantee limit at a price lower than the fair price or based on liquidation value, it is necessary to optimize the market price before setting the limit based on liquidation value. In this case it seems that justice has not been served by all parties. The author argues that due to the legal lacuna in the PMK’s “Auction Implementation Guidelines”, many cases fall under the setting of fair price limits, which allows creditors to set auction limits. Confiscation of less than fair value will cause the debtor (owner of the item to be auctioned) to suffer a loss. The existence of a situation where one of the parties is disadvantaged by a legal vacuum, which shows that the required procedural fairness is not fully realized in the implementation of the mortgage.

4 Conclusion

According to the Pancasila ideal of justice in the Indonesian legal system, the responsibilities of the creditor are to uphold the debtor’s rights and vice versa when it comes to enforcing the guarantee of mortgage rights. Justice permits creditors and debtors to be paid according to their respective portions. Based on Pancasila ideals, the concept of justice asserts that every individual has the right to a decent life, employment, and income. When it comes to the application of home ownership loans, the fairness principle is interpreted to mean that it impacts every facet, including procedural compliance. This justice is applied to both the owner of the auction goods and the auction buyer. Based on these conclusions, there are several suggestions. First, the state’s duty is to ensure legal protection of mortgage rights arising from auctions and seizures, so that debtors and creditors can operate efficiently and as widely as possible. The government should also be able to update or amend the “Mortgage Law” to provide guarantees to debtors and creditors in implementing measures to protect mortgage rights in accordance with the principles of justice and equality.

Authors' Contribution

Bachtiar Marbun: Writing—preparing the first draft—methodology, software, and conceptualization. visualization and research. Budi Santoso: Validation and supervision. Yunanto: Validation and supervision. Composing, editing, and reviewing.

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