

## Legal Protection in the Fair Implementation of Mortgage Rights

Frida Nurrahma Masturi<sup>1</sup>, Normalita Destyarini<sup>2</sup>, Asep Herlan<sup>3</sup>

Faculty of Law, Jendral Soedirman University<sup>123</sup>

Corresponding Email: Frida.masturi@unsoed.ac.id

### ABSTRAK

Ju This research aims to analyze the application of the principles of balance and good faith in the enforcement of mortgage rights, with a particular focus on ensuring proportional legal protection for debtors. Although the Mortgage Law provides legal certainty for creditors, execution practices frequently disadvantage debtors, especially regarding auction pricing, notification mechanisms, and creditor conduct in determining default. Using a normative juridical method with statutory and conceptual approaches, this study finds that debtor protection should not merely rely on formal declarations of default, but must also consider factual conditions, including force majeure circumstances and the debtor's good faith. The implementation of procedural transparency, objective pre-execution mechanisms, and the principle of balance is essential to prevent abuse of rights by creditors and to ensure that execution serves as a last resort. Therefore, harmonizing legal certainty, justice, and utility is indispensable to create a fair legal relationship between creditors and debtors in the execution of mortgage rights.

**Keywords: Legal Protection , Mortgage Rights, Principles of Balance, Good Faith**

### A. INTRODUCTION

A mortgage is a security interest in an immovable object used to repay a debtor's debt. Mortgage rights are regulated by Law Number 4 of 1996 concerning Mortgage Rights. This legal provision is expected to create a sense of security for lenders and provide legal protection for borrowers. However, in practice, the application of legal principles in the enforcement of mortgage rights is not always balanced between debtors and creditors.

In banking practice, under debt agreements, the application of mortgage rights prioritizes legal certainty for the creditor. As a result, an imbalance often arises between the creditor and the debtor. This situation places the debtor at a disadvantage, especially during collateral execution. In practice, the debtor does not have a balanced position in determining the auction value or execution stages, thus creating unfairness for the debtor (Widiasari, 2018).

The imbalance in the execution of mortgage rights indicates a suboptimal application of the principles of balance and good faith, particularly in the legal relationship between debtors and creditors. These principles are fundamental principles in contract law, aiming to create justice and proportional legal protection for both creditors and debtors. The principle of balance requires that the rights and obligations of the parties in the agreement be fair and balanced, not only favoring the creditor's economic strength or dominant position, but also considering the interests of the debtor as the economically weaker party and in a bargaining position.

The principle of good faith is regulated in Article 1338 paragraph (3) of the Civil Code. This principle emphasizes the importance of honesty, openness, and moral compliance in every stage of the agreement process, from pre-agreement to post-agreement. In the mortgage process, this principle requires creditors to act in good faith in the guarantee execution process, including in determining the auction value and communicating with the debtor. Therefore, the application of the principles of balance and the principle of good faith is important to realize the implementation of mortgage rights that not only guarantee legal certainty, but also uphold the values of justice and humanity (Safira Meisya Salsa Bina, 2023).

Based on this, it reaffirms the urgency of applying the principles of balance and good faith in the execution of mortgage rights in order to guarantee legal certainty for both debtors and creditors (Meher et al., 2019). The application of these principles is expected to create legal practices that are fairer, more transparent, and oriented towards proportional protection of the parties.

Several previous studies, including those conducted by Afif Khalid in 2023 with the title *Analysis of Good Faith as a Legal Principle of Agreements* (Khalid, 2023), which discusses the understanding and application of the principle of good faith in agreements, then Safira Meisya who conducted research in 2023 with the title *The Principle of Balance in Contract Law* (Safira Meisya Salsa Bina, 2023) which discusses the principle of balance in its application in agreements. *Analysis of the Execution Process of Mortgage Rights for Immovable Property Collateral based on the UUHT* written by Ari Priyanto in 2016 (Priyanto et al., 2016) which analyzes the process of executing mortgage rights as regulated in the UUHT and the problems therein. As well as *Legal Protection for Debtors Holding Collateral in the Settlement of Mortgage Auction Disputes if the Creditor Acts in Bad Faith*, written by Bony Prasetyo et.al in 2024 (Prasetyo et al., 2024) The

research discusses the protection of debtors when a mortgage auction dispute occurs when it is discovered that the creditor has bad intentions.

The novelty of this research lies in its analysis of the harmonious application of the principles of balance and good faith specifically in the execution of mortgage rights, by positioning these principles not merely as general contract law principles, but as concrete standards for creating fair, transparent, and proportional legal protection between debtors and creditors in the collateral execution process.

Based on this research, this research aims to examine how to apply the principle of balance and the principle of good faith in harmony in the implementation of the execution of mortgage rights to create balanced legal protection between debtors and creditors so as to realize fair and proportional legal protection.

Problems concerning unfair mortgage execution practices are also reflected in several recent Indonesian court decisions that have obtained permanent legal force (*inkracht*). For example, Decision Number 54/Pdt.G/2021/PN Pal declared that the execution auction constituted an unlawful act because the auction limit value was determined disproportionately below the market price, causing unfair losses to the debtor. Similar issues were also examined in Decision Number 427/Pdt.G/2022/PN.Bks, where the court considered that the auction process conducted by the creditor did not sufficiently reflect fairness and proportionality principles in determining the auction value. Furthermore, Decision Number 36/Pdt.G/2023/PN Sby emphasized that mortgage execution should not merely prioritize formal default, particularly when the debtor's financial difficulties were influenced by force majeure conditions following the Covid-19 pandemic, leading the court to order postponement and renegotiation. These recent cases indicate that disputes regarding auction limit values, procedural transparency, debtor participation, and proportional legal protection remain recurring problems in mortgage execution practices in Indonesia, thereby strengthening the urgency of implementing the principles of balance and good faith in mortgage execution.

This research employs a normative juridical method focusing on the analysis of legal norms governing mortgage rights execution and the application of the principles of balance and good faith in contractual relations. The research applies a statutory approach, conceptual approach, and limited case approach. The statutory approach is used to examine Mortgage Rights, the Indonesian Civil Code, auction regulations, and other related legal provisions, while the conceptual approach

is utilized to analyze legal doctrines concerning legal protection, proportionality, balance, and good faith in contract law. In addition, a limited case approach is applied through the examination of several Indonesian court decisions related to mortgage execution disputes in order to strengthen the analysis of practical legal issues. The analytical framework of this research is based on the relationship between legal certainty, justice, and proportional legal protection in mortgage execution practices, particularly regarding auction procedures, determination of auction limit values, debtor participation, and creditor conduct during execution.

The legal interpretation methods used in this research include grammatical interpretation, systematic interpretation, and teleological interpretation. Grammatical interpretation is applied to examine the meaning of statutory provisions concerning mortgage execution and debtor-creditor relations, while systematic interpretation is used to analyze the relationship between the Mortgage Law, the Civil Code, and auction regulations as an integrated legal system. Teleological interpretation is employed to assess whether the implementation of mortgage execution aligns with the objectives of justice, legal protection, and proportionality. Primary legal materials consist of legislation, official regulations, and court decisions concerning mortgage execution disputes, whereas secondary legal materials include legal journals, textbooks, scientific articles, and previous studies relevant to mortgage rights, execution procedures, and contract law principles. The selection of legal materials is based on their relevance, legal authority, academic credibility, and connection to the principles of balance and good faith. All legal materials are analyzed qualitatively through legal reasoning and normative interpretation to formulate legal arguments concerning fair and proportional mortgage execution practices

## **B. DISCUSSION**

P A guarantee or collateral in a loan is an additional agreement that only arises if a principal agreement already exists. The principal agreement in question is the debt-receivables agreement that forms the basis for the debtor's obligation to pay, leading to a collateral agreement being created to secure repayment. Through this collateral agreement, certain assets belonging to the debtor serve as collateral that can be auctioned off if the debtor is unable to fulfill their debt repayment obligations.

The provisions regarding the execution of this guarantee are in line with Article 224 of the *Herzien Inlandsch Reglement (HIR)* which states that *grosse mortgage deeds and debt letters made*

before a notary have the same power as a judge's decision because they are headed "For the Sake of Justice Based on the One Almighty God." Therefore, when a guarantee is bound by an authentic deed, the creditor has the authority to execute it directly without having to go through a lawsuit process first, if the debtor is proven unable to pay off his debt (B & Gunawan, 2022).

Although Article 224 HIR provides creditors with executorial power through *grosse deeds* without requiring lengthy litigation, its implementation in practice often creates an imbalance between creditors and debtors. Normatively, the executorial mechanism is intended to ensure legal certainty and efficiency in debt recovery; however, in practice, the execution process frequently prioritizes creditor interests while limiting debtor participation in determining auction values and execution procedures. Debtors are often placed in a weak bargaining position, particularly when auction limit prices are determined unilaterally and below market value. This situation demonstrates an inconsistency between the legal objective of mortgage execution as a fair enforcement mechanism and its practical implementation, which may lead to disproportionate losses for debtors. Therefore, the execution of mortgage rights should not merely emphasize procedural legality, but must also incorporate the principles of balance, proportionality, transparency, and good faith to prevent abuse of rights in execution practices.

The definition of material collateral is collateral in the form of absolute rights to an object that has a direct relationship to a particular object, can be defended against anyone, and follows its materiality. Article 1 paragraph 1 of the UUHT regulates that mortgage rights are security rights that are imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), including or not including other objects that are an integral part of the land, for the repayment of certain debts, which provide a preferred position to certain creditors over other creditors (Ginting, 2016). This security right provides creditors with certainty that debt repayment is secured by clear and economically valuable collateral. Thus, the existence of a security right serves not only as a safeguard but also as an instrument that ensures certainty and stability in financing relationships.

Article 6 of the Mortgage Law stipulates that if a debtor defaults, the first Mortgage Holder has the right to sell the mortgaged object at his own discretion through a public auction and to collect the receivables from the proceeds of the sale. This means that the debtor can execute the auction of the mortgaged object through the State Assets Auction and Auction Office.

The principle of balance holds that creditors remain obligated to consider the interests of the debtor, particularly regarding the transparency of the execution process and the fairness of auction price determination. The rights and obligations of both debtor and creditor must be regulated fairly, based on the principle of balance, both in the credit agreement and the mortgage execution process.

In practice, the principle of balance can be seen based on transparent agreements and balanced bargaining positions in credit agreements, so that the parties know their rights and obligations fairly (Meher et al., 2019). Debtors essentially have the right to legal protection, including in the process of determining the auction price limit during collateral execution. This protection is crucial to ensure that the price limit is set fairly and reflects the true market value, preventing the debtor from incurring losses due to setting a price too low, which could potentially result in the collateral being sold far below its true value (Widiasari, 2018). With a transparent and proportional limit price determination mechanism, the execution of mortgage rights can be carried out without ignoring the principle of justice for creditors.

In practice, disputes concerning auction limit prices frequently arise because debtors are often excluded from the valuation process, resulting in auction prices significantly below market value. This issue can be seen in Decision Number 54/Pdt.G/2021/PN Pal, where the court considered that the auction process constituted an unlawful act because the auction limit value was determined disproportionately and caused unfair losses to the debtor. Similar considerations were also reflected in Decision Number 427/Pdt.G/2022/PN Bks, which emphasized the importance of objective and transparent valuation mechanisms in mortgage execution. These cases demonstrate that although auction execution is legally permitted under the Mortgage Law, the absence of debtor participation and independent valuation standards may create injustice and weaken debtor protection in execution practices.

Creditors do have the right to execute collateral if the debtor is declared in default, but the exercise of this right cannot be done arbitrarily. The execution process must still follow fair, transparent, and proportional procedures, thus providing protection for the debtor from being harmed by actions that exceed the creditor's authority. Therefore, the existence of the right of execution should not be used as an excuse to ignore the principles of balance and good faith that should be inherent in every legal process between the parties.

The principle of good faith requires parties to be honest, open, and non-detrimental from the moment the agreement is made until the execution process begins. This principle requires creditors

to carry out the execution transparently, professionally, and consider the debtor's interests so that the actions taken do not cause harm or imbalance.

Debtors who have demonstrated good faith certainly deserve legal protection, including when a creditor transfers their receivables. Notification of the transfer is crucial so that the debtor knows to whom they must fulfill their obligations, thus avoiding the risk of double payments or double losses due to ignorance of the change in creditor (Hardiyansyah & Tjempaka, 2025). With the obligation of clear and timely notification, the implementation of mortgage rights can proceed more orderly, transparently, and in line with the protection of parties acting in good faith.

The auction process should be conducted fairly, including by determining the limit price, which should be based on an assessment by a truly objective, independent party. This ensures that the set value is not manipulated or exploited by creditors to set an unreasonably low price. By involving professional appraisers, the mortgage execution process becomes more transparent and provides reasonable protection for debtors.

The application of the principles of balance and good faith can begin at the earliest stage of the contractual relationship, namely at the beginning of the credit agreement. At this stage, the agreement should fairly outline the rights and obligations of the parties and avoid standard clauses that could potentially place one party, particularly the debtor, in a weak position. By creating a fairer and more transparent agreement, the legal relationship between debtors and creditors becomes more equitable and reduces the potential for future disputes.

The harmony between the principles of balance and good faith must also be reflected in the enforcement mechanism for mortgage rights. Ideally, the enforcement process should be transparent, accountable, and provide the debtor with the opportunity to defend their interests. This ensures that the enforcement process is not abused by the dominant party, in this case the creditor.

Strengthened regulations and oversight by the relevant authorities are needed to ensure these two principles are fully implemented in credit agreements and auction execution processes. Clearer regulations and effective oversight will prevent execution practices that only benefit creditors and potentially disregard debtors' rights. With a strong oversight mechanism, mortgage execution can proceed proportionally and remain oriented toward legal protection for all parties involved.

In addition to the importance of applying the principles of balance and good faith in the process of executing mortgage rights, legal protection for debtors also requires consideration of force majeure. Not all debtors' inability to fulfill their obligations can be directly interpreted as a

form of default, as certain conditions can prevent the debtor from fulfilling their obligations beyond their will or ability.

Such force majeure can arise in various forms, such as natural disasters, extreme economic crises, or other extraordinary events that the debtor could not have predicted or prevented. In such situations, the debtor has a legal basis to assert that their inability was not due to negligence or intent, so their position cannot be automatically classified as a party in default. Therefore, an assessment of the debtor's condition must objectively consider the factual factors affecting their ability to fulfill their obligations (Isradjuningtias, 2015).

In determining whether force majeure can prevent mortgage execution, Indonesian contract law generally refers to Articles 1244 and 1245 of the Civil Code, which require that the debtor's inability to perform must occur beyond the debtor's control, without bad faith, and in circumstances that could not reasonably be predicted. Judicial interpretation also emphasizes that force majeure must be assessed substantively rather than merely formally, particularly by examining whether the debtor still demonstrates good faith and reasonable efforts to fulfill obligations. During the Covid-19 pandemic, several courts and financial restructuring policies recognized that severe economic disruption could constitute a force majeure condition affecting debt performance. Therefore, creditors should not immediately proceed with execution without first assessing whether the debtor's default was genuinely caused by extraordinary circumstances beyond the debtor's control.

Debtors who act in good faith and demonstrate efforts to fulfill their obligations should receive more proportional protection. The principle of good faith requires that creditors not immediately take enforcement action without considering the debtor's actual condition and actual capabilities. In many cases, debtors are willing to renegotiate or restructure, but the creditor still chooses the enforcement route, citing default. Substantively, this situation allows for force majeure, which eliminates the element of the debtor's fault (Tjoanda et al., 2021). It is necessary to apply the principle of balance so that execution is only carried out as a last resort after all just settlement options have been fully exhausted.

Based on this, the application of the principles of balance and good faith applies not only during the drafting of agreements and the auction process, but also during the assessment of the debtor's condition when a default occurs. This is where the importance of pre-execution mechanisms that must be taken by creditors becomes important, such as providing the debtor with

the opportunity to prove the existence of force majeure, conducting open communication, and requesting an independent assessment of the debtor's condition. These steps are in line with the principle of substantive justice, namely considering the factual context before imposing severe legal consequences (Firdaus et al., 2025). Thus, execution should not be the first option, but rather a last resort, taken after all reasonable efforts have been fully exhausted. This approach is expected to foster a more humane, proportional, and balanced legal practice for the parties.

The implementation of pre-execution mechanisms should include several procedural stages to ensure proportional legal protection for debtors. Before conducting execution, creditors should first provide formal warnings and opportunities for mediation or credit restructuring, particularly when the debtor demonstrates good faith and willingness to repay obligations. Independent appraisal of collateral value should also be mandatory to prevent manipulation of auction limit prices. In addition, supervisory involvement from institutions such as the Financial Services Authority (OJK) or auction supervisory bodies is necessary to ensure transparency and accountability during execution procedures. Through these mechanisms, execution can genuinely function as a last resort rather than an immediate enforcement instrument solely benefiting creditors.

With objective and transparent pre-execution procedures, the mortgage execution process becomes a final step, not the primary instrument used immediately in the event of a formal breach of the credit agreement. This principle aligns with the objective of the Mortgage Law to create legal certainty while maintaining balance and benefit for all parties. This ensures optimal protection for debtors in good faith without compromising the creditor's rights as collateral.

The issue of imbalance in the execution of mortgage rights indicates that the Mortgage Law needs to be revised to strengthen the position of debtors without weakening legal certainty for creditors. Some of the things that need to be done include explicit regulations regarding mandatory pre-execution, independent assessment of auction limit prices, mandatory electronic notification, and an audit mechanism for the sales process and distribution of auction proceeds.

Furthermore, system modernization is also an urgent need. Digitizing mortgage rights through e-mortgage, e-notification, and data synchronization with the National Mortgage and Public Housing Office will strengthen transparency, minimize the opportunity for price limit manipulation, and expedite the process of examining emergency claims. This digital transformation aligns with guarantee models in various countries and is a requirement of modern

legal developments (Meher et al., 2019). With integrated digitalization, mortgage execution can be more accountable, efficient, and oriented toward mutual protection. Ultimately, this reform is expected to create banking and financing practices that are fairer, more humane, and more responsive to social and technological changes.

Comparative practices in several countries demonstrate that digitalization of secured transaction systems can strengthen transparency and debtor protection in execution procedures. For example, Australia through the Personal Property Securities Register (PPSR) has implemented an integrated electronic registration system that allows parties to access collateral information transparently and reduces the risk of hidden encumbrances and procedural abuse. Likewise, electronic notification and digital auction systems in several jurisdictions help ensure that debtors receive timely information regarding execution stages, auction schedules, and valuation processes. In the Indonesian context, the implementation of e-mortgage, electronic notification, and integrated digital valuation systems may improve transparency by providing debtors with access to collateral valuation data, execution procedures, and creditor actions in real time. Such digitalization can also reduce opportunities for manipulation of auction limit prices, strengthen supervisory mechanisms, and ensure greater accountability in mortgage execution practices. Therefore, digital transformation is not merely an administrative modernization effort, but also a legal protection mechanism intended to reinforce the principles of balance, transparency, and good faith in mortgage execution.

Strengthening the role of institutions such as the National Security and Public Order Agency and the Financial Services Authority (OJK) is also necessary to ensure that execution proceeds go beyond simply fulfilling formal procedures and ensuring a substantive evaluation of the debtor's condition. These institutions can be authorized to postpone execution if there are indications that the debtor acted in good faith and has a compelling reason for the situation. This will make execution more accountable and align with the principle of protecting the vulnerable.

### **C. CONCLUSION**

The implementation of mortgage rights in practice still shows the dominance of creditor interests that are oriented solely towards legal certainty, thus placing debtors in a weak position in the collateral execution process. This imbalance is evident in the often non-transparent determination of auction limits, minimal notification regarding the transfer of receivables, and the

tendency to enforce defaults without considering the debtor's factual conditions, including the existence of good faith repayment efforts or force majeure that could actually eliminate the element of debtor fault. Therefore, legal protection for debtors cannot be based solely on the formality of fulfilling the conditions of default, but must also pay attention to the principles of balance and substantial good faith. Pre-execution mechanisms, such as renegotiation, credit restructuring, transparency of auction limits, and independent assessment of collateral objects, need to be implemented as preventive measures to prevent abuse of execution rights by creditors. Thus, the harmonization between legal certainty, justice, and benefit must be strengthened through strengthening regulations, supervision of related institutions, and modernization of the execution system so that the execution of mortgage rights truly becomes a last resort that is proportional, fair, and in line with the principle of legal protection for both parties.

Theoretically, this research contributes to the development of mortgage law by positioning the principles of balance and good faith not merely as abstract principles of contract law, but as concrete standards for evaluating the fairness and proportionality of mortgage execution practices. Practically, this research highlights the need for reform in Indonesian mortgage law through stronger pre-execution mechanisms, transparent auction valuation procedures, independent supervision, and digitalized execution systems that provide greater protection for debtors without eliminating legal certainty for creditors. These reforms are important to ensure that mortgage execution functions as a proportional legal remedy and a last resort mechanism that reflects justice, transparency, and substantive legal protection for all parties involved.

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