Bridging the Gap Between Legal Certainty and Practice: An Empirical Study of Mortgage Enforcement for Non-Performing Loans in Indonesia

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ABSTRACT

Purpose of the study: This study aims to analyze the legal implementation of the execution of mortgage right (Hak Tanggungan) collateral objects by PT. Bank Rakyat Indonesia (Persero) Tbk, Tanjung Sub-Branch Unit, Makassar, and to identify the juridical and non-juridical obstacles encountered by the bank in executing such collateral for the settlement of non-performing loans.

Methodology: The research employed an empirical-juridical approach, examining how positive law—principally Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT)—is applied in factual banking practice. Primary data were obtained through structured interviews with the Account Officer and Mantri (credit supervisor) of PT. BRI (Persero) Tbk Tanjung Sub-Branch Unit, Makassar, as well as with a debtor whose collateral had been subject to execution. Secondary data were derived from statutory regulations, legal doctrine, prior scholarly studies, and internal bank documentation on non-performing loans for the period 2013–2016. Data were analyzed qualitatively and presented descriptively-analytically.

Results: The execution of mortgage objects at PT. BRI (Persero) Tbk Tanjung Sub-Branch Unit, Makassar, was conducted in accordance with Article 20 of the UUHT through three mechanisms: public auction (parate executie), private sale (penjualan di bawah tangan), and execution based on a District Court decision. Between 2013 and June 2016, the bank recorded 21 non-performing loan accounts, of which 8 required collateral execution; six were resolved through auction, one through private sale, and one remained in the seizure (sita eksekusi) stage. Non-juridical obstacles identified include protracted debtor negotiation behavior, disagreement over auction limit prices, legal resistance through District Court lawsuits, post-auction vacant-possession (pengosongan) disputes, buyers' inability to gain possession of the auctioned object, and third-party claims over the collateral.

Conclusions: Although the UUHT normatively guarantees an easy and certain execution mechanism for mortgage holders, its practical implementation at the bank-unit level remains hampered by debtor non-cooperation, valuation disputes, and litigation strategies used to delay execution. Strengthening pre-execution mediation, transparent valuation procedures, and expedited court handling of debtor resistance suits are recommended to restore the intended efficiency of mortgage execution under Indonesian secured-transactions law.

Keywords:
mortgage right; Hak Tanggungan; execution; auction; non-performing loan; banking law.

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INTRODUCTION

Banking institutions occupy a strategic position in national economic development as financial intermediaries that collect funds from the public in the form of deposits and channel them back into society in the form of credit(Gusrial et al., 2020; Raditya et al., 2024). Under Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 on Banking, a bank is defined as a business entity that gathers public funds in the form of savings and distributes them to the public in the form of credit or other forms, in order to improve the standard of living of the wider population. This intermediary function—commonly described as "borrowing short and lending long"—inherently exposes banks to credit risk, market risk, liquidity risk, and operational risk, of which credit risk, particularly non-performing loans (NPLs), remains the most persistent challenge across emerging banking systems, including Indonesia (Ferdinansyah et al., 2024; Saiful, 2017, p. 36).

To mitigate credit risk, Indonesian banking practice relies heavily on the institution of Hak Tanggungan (mortgage right), regulated under Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT)(Andaryanti et al., 2025). Hak Tanggungan is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, together with or without other objects forming an integral part of the land, for the settlement of a specific debt,

granting a preferential position to a particular creditor over other creditors (Arba et al., 2021; Hudallah et al., 2022, p. 57). One of the fundamental principles underlying this institution—codified in Articles 6 and 26 of the UUHT—is that execution of the security object must be easy and certain (mudah dan pasti), thereby offering legal certainty to creditors when debtors default.

Global and comparative literature on secured-transactions law consistently emphasizes that the enforceability and speed of collateral execution directly influence the cost and availability of credit; jurisdictions with weak or protracted enforcement mechanisms tend to experience higher lending risk premiums and more conservative credit allocation (Bae & Goyal, 2009; Moro et al., 2016, p. 258). In the Indonesian context, however, a persistent gap exists between the normative design of the UUHT—which grants the mortgage holder the parate executie privilege to sell the collateral through public auction on its own authority—and the practical reality of implementation at the operational level of individual bank units (Res, 2021; Shohib & Zamzami, 2023). Recent Indonesian legal scholarship has increasingly highlighted this normative-practical gap. Studies on mortgage execution reform document a significant imbalance in the legal positions of creditors and debtors caused by insufficient procedural oversight during execution auctions (Ferdinansyah et al., 2024), while research on parate executie versus fiat pengadilan (court-sanctioned execution) reveals that creditors frequently resort to litigation-based execution despite holding self-execution rights, owing to resistance anticipated from debtors (Tanuwidjaya, 2016). Other studies examine the legal protection of good-faith auction winners who nonetheless cannot obtain physical possession of the collateral object even after fulfilling all auction requirements Nugraha et al. (2024), and the legal consequences arising when third-party claims or unlawful acts vitiate the outcome of a mortgage auction (Yunanda & Nefi, 2023).

Despite this growing body of literature, most existing studies approach mortgage execution from a normative-doctrinal standpoint or from the vantage point of national jurisprudence (Supreme Court and District Court decisions), with comparatively few empirical studies examining how a single bank unit—particularly a small sub-branch (Kantor Cabang Pembantu/Unit) operating in a specific local context—actually manages the execution process from restructuring, through auction, to post-auction vacant possession (Fonda & Nurdin, 2024; Taufano & Silalahi, 2025; Utami et al., 2025). This creates a research gap: the operational, day-to-day obstacles faced by front-line bank officers (Account Officers and Mantri) in negotiating with defaulting debtors, coordinating with the State Asset and Auction Service Office (KPKNL), and litigating debtor resistance suits remain under-documented, even though these micro-level frictions are precisely what determine whether the UUHT's promise of "easy and certain" execution is realized in practice.

This study addresses that gap by providing an empirical account of mortgage execution practice at PT. Bank Rakyat Indonesia (Persero) Tbk, Tanjung Sub-Branch Unit, Makassar. The rationale for selecting this locus is twofold: first, BRI's Unit-level network is the primary channel through which micro and small enterprise credit—historically the segment most exposed to default risk—is disbursed in Indonesia; second, documenting the concrete procedural pathway and the recurring obstacles at this operational level offers practical insight that pure doctrinal analysis cannot provide.

The objectives of this research are: (1) to describe and analyze the implementation of the execution of mortgage right (Hak Tanggungan) collateral objects by PT. BRI (Persero) Tbk Tanjung Sub-Branch Unit, Makassar; and (2) to identify and examine the obstacles encountered in executing such collateral objects, both those arising during the auction process and those arising from litigation initiated by debtors.

METHODOLOGY

This research applies an empirical-juridical (yuridis-empiris) approach, a method of legal research that examines how law operates and is applied within society, rather than confining the analysis to statutory text alone. This approach was selected because the central concern of the study is not merely the normative content of the UUHT, but the extent to which its provisions are realized in actual banking practice.

Location

The research was conducted at PT. Bank Rakyat Indonesia (Persero) Tbk, Tanjung Sub-Branch Unit, Makassar, South Sulawesi, Indonesia, as the locus where the disputed collateral-execution practices originated.

Data types and sources

Two categories of data were used. Primary data were obtained directly from the field through structured and semi-structured interviews with key informants: the Account Officer, the Mantri (credit supervisor), and a debtor (identity anonymized at the respondent's request) whose mortgaged collateral had been executed. Secondary data consisted of primary legal materials (Law Number 4 of 1996 on Mortgage Rights, the Indonesian Civil Code, Law Number 10 of 1998 on Banking, and related implementing regulations), secondary legal materials (legal textbooks, prior theses, and peer-reviewed journal articles on mortgage-right execution), and internal bank documentation, including the loan-collectability report (laporan kolektibitas pinjaman) for the 2013–2016 period.

Data collection techniques

Data were collected through (a) field interviews conducted between June and July 2016 with the designated informants, and (b) documentary study of statutory regulations, bank records, and relevant scholarly literature.

Data analysis

Data were analyzed qualitatively using a descriptive-analytical technique: interview transcripts and documentary evidence were categorized according to the stages of mortgage execution (credit-rescue measures, auction, private sale, and court-based execution) and the types of obstacles encountered (juridical and non-juridical), then interpreted against the normative framework of the UUHT to identify points of convergence and divergence between law-in-books and law-in-action.

RESULTS

Non-Performing Loan Profile and Pre-Execution Credit-Rescue Measures

Based on the bank's loan-collectability report, non-performing loans at PT. BRI (Persero) Tbk Tanjung Sub-Branch Unit, Makassar, fluctuated over the observation period: IDR 593,728,000 across 5 accounts in 2013; IDR 198,875,000 across 2 accounts in 2014; a renewed increase to IDR 778,395,000 across 6 accounts in 2015; and IDR 982,622,000 across 8 accounts as of June 2016. Of the 8 non-performing accounts recorded in 2016, 6 had been resolved through execution auction, 1 through private sale, and 1 remained in the collateral-seizure (sita eksekusi) stage.

Prior to initiating execution, the bank consistently applies credit-rescue measures rather than proceeding directly to collateral liquidation. When a debtor experiences difficulty in servicing principal and interest, the bank first investigates the underlying cause and, where warranted, negotiates one of thre restructuring instruments: rescheduling (adjustment of repayment schedule), reconditioning (adjustment of credit terms), or restructuring (comprehensive renegotiation of the credit agreement) (Brunner & Krahnen, 2008, p. 432; Wei, 2023, p. 190). According to bank practice, credit-rescue measures are offered a maximum of two times; execution is pursued only after these measures fail to restore the debtor's repayment capacity.

Mechanisms of Mortgage Execution

The results indicate that execution of mortgage objects at PT. BRI (Persero) Tbk Tanjung Sub-Branch Unit, Makassar, is carried out through three mechanisms consistent with Article 20 of the UUHT: First, public auction (pelelangan umum / parate executie) under Article 6 of the UUHT, whereby the mortgage holder sells the collateral object on its own authority through open auction and takes settlement of the receivable from the proceeds. This mechanism is the bank's principal method, reflecting the legislative rationale that open, competitive bidding tends to produce a fair or near-fair price, since a low opening bid may attract competing bidders to raise their offers—thereby protecting both the security-right grantor and the creditor's right to preferential settlement, with any surplus above the secured debt returned to the grantor (Garcimartín & Gutiérrez, 2021, p. 23; Scott, 1986, p. 919). Second, private sale (penjualan di bawah tangan) under Article 20(2) and (3) of the UUHT, applied when the debtor independently secures a buyer willing to pay above the bank's minimum limit price; the debtor then requests the bank's consent to proceed with an under-hand sale rather than a public auction(Handayani et al., 2023, p. 444; Wijayanti & Harahap, 2019, p. 29). Third, execution based on a District Court decision (fiat eksekusi/putusan pengadilan), invoked when a debtor formally contests the execution through a civil suit at the Makassar District Court. As reported by the bank's Account Officer, two such cases occurred during the study period, requiring the bank's legal team to prepare and litigate the full proceedings—including exceptions (eksepsi) and rejoinders (duplik)—from the initial hearing through to final judgment.(Jappelli et al., 2005, p. 237; Pujiyono et al., 2021, p. 140).

Obstacles in the Execution Process

The findings identify two clusters of obstacles: those arising in the creditor–debtor relationship prior to and during auction, and those arising after the auction has been completed.

Protracted debtor negotiation (debitur berbelit-belit)

Several debtors were found to delay or complicate the mediation process, prolonging negotiations without genuine intent to resolve the default—behavior the bank's officers characterized as indicative of bad faith and a deliberate strategy to postpone the sale of the collateral object.(Mann, 1997, p. 199; Mubarach, 2025).

Price disagreement (ketidakcocokan harga).

Debtors frequently objected to the auction limit price set by the bank in accordance with the Fair Market Value (Nilai Pasar Wajar), regarding it as too low relative to their own valuation, thereby necessitating renewed negotiation to reach a mutually acceptable figure.

Legal resistance through litigation (upaya perlawanan hukum)

Debtors dissatisfied with execution filed civil suits at the District Court, arguing that the credit agreement could still be salvaged through further restructuring. Interview data from one debtor confirmed that despite having already received two rounds of credit-rescue measures, the debtor pursued litigation upon receiving the bank's execution warning letter. Although the bank generally held a strong evidentiary position—holding the notarized Mortgage Certificate (Sertifikat Hak Tanggungan) and credit agreement—such suits consumed considerable time, manpower, and cost, and disrupted the routine duties of Account Officer(Arif, 2025; Haykal & Kurniawan, 2026; Utami et al., 2025).

Post-auction vacant-possession disputes (pengosongan objek jaminan)

Where the mortgaged land or building remained occupied by the defaulting debtor after auction, forced vacant possession—sometimes requiring police or court assistance—was occasionally necessary, discouraging some auction winners from participating in future auctions.

Auction winners unable to gain possession of the object (pembeli lelang tidak dapat menguasai objek)

In certain cases, the collateral pledged to the bank was later found not to be the debtor's exclusive property, obstructing the auction winner's ability to take control of the object.

Third-party claims (gugatan pihak ketiga)

A third party occasionally challenged the auction on the ground that they had never authorized the debtor to encumber the land with a mortgage, particularly where the power of attorney underlying the encumbrance had been executed privately (di bawah tangan) rather than before a notary. Notably, the absence of bidders or buyers for a given auctioned object was not classified by respondents as an execution "obstacle" per se, but rather as a reflection of insufficient market outreach by the State Asset and Auction Service Office (KPKNL) responsible for conducting the auction(Best et al., 2023, p. 2127; Nauw et al., 2024; Shanty et al., 2025).

DISCUSSION

Interpreting the Findings

The results demonstrate that PT. BRI (Persero) Tbk Tanjung Sub-Branch Unit, Makassar formally complies with the execution mechanisms prescribed by Article 20 of the UUHT, and that public auction remains the dominant and preferred route—consistent with the legislative intent that auction, rather than private negotiation or litigation, should be the default execution channel because it best approximates fair market value through competitive bidding. However, the data also reveal that the bank does not resort to execution mechanically; a structured, multi-stage credit-rescue process (rescheduling, reconditioning, restructuring) is applied first, indicating that in practice execution functions as a last-resort instrument rather than the first response to default (Gormley et al., 2018; Mokal, 2002, p. 717). This finding nuances the common assumption in secured-transactions literature that creditors invariably seek the fastest route to liquidation; at the Unit level, relational and reputational considerations appear to motivate a more conservative, negotiation-first posture(Mann, 1997; Thadden et al., 2010, p. 2676). At the same time, the obstacles identified—protracted negotiation, valuation disagreement, and litigation-based resistance—show that the "easy and certain" execution promised by Articles 6 and 26 of the UUHT is, in practice, mediated and frequently delayed by debtor behavior that the bank's own legal and evidentiary strength (notarized mortgage certificates, formally executed credit agreements) cannot fully neutralize (Manggala & Susanti, 2024; Poetra & Yunanto, 2024; Solihah et al., 2019, p. 348). Even where the bank ultimately prevails in court, the time, cost, and diversion of Account Officers' attention represent a real erosion of the efficiency the legislature intended the parate executie mechanism to provide.

Comparison with Prior Studies

These findings are consistent with, and extend, several strands of recent Indonesian legal scholarship. Ferdinansyah et al. (2024) similarly found that insufficient procedural oversight in execution auctions produces an imbalance between creditor and debtor legal positions, a dynamic mirrored in this study's finding that price disagreement and post-auction disputes recur despite the bank's technically correct adherence to statutory procedure. The present findings on debtor litigation as a delay strategy corroborate Tanuwidjaya (2016) observation that the tension between parate executie and fiat pengadilan often pushes creditors toward court-based execution even when self-execution rights formally exist, since anticipated debtor resistance makes direct auction commercially and administratively riskier. Likewise, the obstacle of auction winners being unable to take possession of the object echoes the protective concerns raised in the Nugraha et al. (2024) study on good-faith auction winners, and the third-party claim obstacle identified in this study parallels the unlawful-act (perbuatan melawan hukum) grounds for auction annulment analyzed in the District Court case study reported in (Yunanda & Nefi, 2023). Taken together, this convergence across independently conducted studies—spanning different banks, regions, and time periods—suggests that the obstacles documented here are not idiosyncratic to a single Unit office but reflect systemic frictions in Indonesia's mortgage-execution regime (Arif, 2025; Haykal & Kurniawan, 2026)

Implications of the Findings

The practical implication of these findings is that closing the gap between the UUHT's normative promise of easy and certain execution and its operational reality requires interventions beyond the statute's text. Strengthening pre-auction mediation protocols, ensuring transparent and jointly verified valuation procedures (to pre-empt price disputes), and encouraging Indonesian courts to expedite debtor-resistance suits against mortgage execution—so that dilatory litigation cannot be used as a de facto stay of execution—would collectively restore more of the efficiency the legislature envisioned. For bank management, the findings also suggest that investment in front-line Account Officers' negotiation and mediation capacity may reduce reliance on costly litigation-based execution.

Limitations of the Research

This study is subject to several limitations. First, it is confined to a single bank unit (PT. BRI Tanjung Sub-Branch Unit, Makassar) over a relatively short observation window (2013–June 2016); the findings should therefore be read as an in-depth case study rather than as statistically generalizable across all BRI units or Indonesian banks. Second, the primary data rely on a small number of informants (two bank officers and one debtor), which, while appropriate for a qualitative, empirical-juridical design, limits the diversity of perspectives captured—particularly the perspectives of auction winners, third-party claimants, and KPKNL auction officials, none of whom were directly interviewed. Third, because the debtor informant's identity was anonymized at their own request, triangulation of the debtor's account against independent court records was not undertaken. Future research employing a multi-site comparative design, a larger and more diverse informant pool, and quantitative analysis of auction outcomes (e.g., realized price relative to limit price, time-to-completion) would help establish the broader generalizability of the patterns observed here.

CONCLUSION

This study set out to analyze how PT. Bank Rakyat Indonesia (Persero) Tbk, Tanjung Sub-Branch Unit, Makassar implements the execution of mortgage (Hak Tanggungan) collateral objects, and to identify the obstacles encountered in that process. The findings show that execution is carried out through three mechanisms consistent with Article 20 of the UUHT—public auction, private sale, and court-based execution—preceded by a structured credit-rescue process comprising rescheduling, reconditioning, and restructuring. This confirms that, at least at the operational level examined, the bank's practice is formally aligned with the statutory framework governing mortgage execution. At the same time, the research reinforces the concern raised in the introduction: the principle of "easy and certain" execution enshrined in Articles 6 and 26 of the UUHT is, in practical implementation, frequently constrained by non-juridical obstacles—protracted debtor negotiation, disagreement over auction limit prices, and legal resistance through District Court litigation—as well as juridical complications arising after auction, including vacant-possession disputes, buyers' inability to gain possession, and third-party claims. These findings corroborate and extend prior studies on mortgage execution and auction protection in Indonesia, indicating that the gap between normative design and operational reality is

a recurring, systemic feature of the country's secured-transactions regime rather than an isolated occurrence.

The significance of these findings lies in demonstrating that legal certainty in mortgage execution cannot be achieved through statutory design alone; it requires complementary institutional measures—transparent valuation, responsive mediation, and expedited judicial handling of debtor-resistance suits—to ensure that the UUHT's protective and efficiency-oriented objectives are realized in practice for both creditors and debtors. In this respect, the evidence gathered from the introduction's stated concern for adequate protection of debtor and creditor rights during auction is substantiated by the discussion's findings: procedural compliance by the bank does not, by itself, eliminate the frictions that undermine timely and certain execution.

Further research is invited to test these findings across a broader sample of bank units and regions, to incorporate the perspectives of auction winners and KPKNL officials, and to examine quantitatively how mediation-based and technology-assisted valuation mechanisms might reduce the incidence of the obstacles identified in this study. Suggestions and critical feedback from readers and fellow researchers on the interpretations offered here are welcomed and would meaningfully contribute to refining future inquiry into this area of Indonesian banking and secured-transactions law.

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CONFLICT OF INTERESTS

The author declares no conflict of interest with respect to the research, authorship, and/or publication of this article. This study was conducted independently and was not funded or influenced by PT. Bank Rakyat Indonesia (Persero) Tbk or any other commercial party with an interest in its outcome.

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