

## **DEBTOR'S DEFAULT AND BANK RAKYAT INDONESIA CREDIT GUARANTEE AUCTION PROCEDURE**

**Saifudin Wahid<sup>1\*</sup>, Appe Hutauruk<sup>2</sup>, Hotman Sinambela<sup>3</sup>, Fendi Maruba Parlindungan Hutahaean<sup>4</sup>**

<sup>1,2,3,4</sup>Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Mpu Tantular, Jakarta, Indonesia

wongpurwo227@gmail.com<sup>1\*</sup>, appehturuk@gmail.com<sup>2</sup>, hotmanbertaok@gmail.com<sup>3</sup>, fendihutahaean@gmail.com<sup>4</sup>

### Abstract

The purpose of this study is to analyze the definition and classification of debtor default in BRI credit agreements based on Decision No. 397/Pdt.G/2025/PN Jkt.Pst and to analyze the BRI credit guarantee auction procedure and its implications for debtor protection based on Decision No. 397/Pdt.G/2025/PN Jkt.Pst. This study uses a normative juridical method with a statutory approach and a case approach, based on secondary data in the form of laws and regulations, court decisions, and doctrines. The results of the study indicate that the debtor CV. SAMIJAYA is normatively in a state of default due to prolonged payment arrears so that it cannot be qualified as force majeure; Thus, BRI as the holder of the mortgage has a legal basis to carry out the execution of the guarantee as long as the procedure is in accordance with the provisions, the credit guarantee auction procedure through the KPKNL which is based on the mortgage certificate and the Minister of Finance Regulation Number 122 of 2023 without the involvement of the fiat of the Head of the District Court and by setting a limit value that is far below the market price, it creates problems with the hierarchy of norms and has the potential to cause excessive losses to debtors, so that the practice of parate execution needs to be aligned with the HIR/RBg, the principle of legal certainty, and the principle of consumer protection for financial services.

**Keywords:** Auction, Credit Guarantee, Debtor Default, Mortgage Rights

**INTRODUCTION**

The increasing intensity of legal disputes between debtors and banking institutions in Indonesia is currently inseparable from the phenomenon of problematic credit trends that often lead to aggressive collection actions and execution of collateral (Hardyansah, et. al., 2026). Within the legal framework of obligations and guarantees, when a debtor experiences a state of default or default, the bank as a preferred creditor often chooses a shortcut to recover its receivables through an auction execution mechanism at the State Assets and Auction Service Office (KPKNL) (Angreinni, et. al., 2026). Banking practices show a strong tendency to use the institution of parate execution, namely an authority granted by the Mortgage Law (UUHT) to the first mortgage holder to sell the collateral object at their own power without having to go through the procedure of being determined by the Head of the District Court. This systemic phenomenon is clearly illustrated in the legal case between CV. Samijaya, which is a debtor of Micro, Small, and Medium Enterprises (MSMEs), against PT Bank Rakyat Indonesia (Persero) Tbk (BRI) as the creditor, along with other related institutions, as recorded in the Decision of the Central Jakarta District Court Number 397/Pdt.G/2025/PN Jkt.Pst. The a quo case began when CV. Samijaya received a Current Account Credit facility worth Rp1,000,000,000.00 with collateral in the form of a Certificate of Ownership (SHM) No. 9651 for a plot of land measuring 140 m<sup>2</sup> and a building of 60 m<sup>2</sup> in the Depok area in the name of Ari Nurita. Although initially the debtor showed good faith by routinely fulfilling the interest payment obligation of Rp14,999,116.00 per month, economic fluctuations that resulted in a drastic decline in business turnover finally forced them into the abyss of arrears. This default, rooted in economic vulnerability, was then classified by the bank as an absolute default, which directly triggered the activation of collateral rights and overridden various alternative resolution efforts, such as restructuring or voluntary asset sales.

The problem became even more complex when the auction execution plan faced the reality of an imbalanced bargaining position between banks, as dominant financial service providers, and MSME debtors, as vulnerable consumers. In the case of CV. Samijaya, the debtor explicitly questioned the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. In practice, credit agreements often take the form of standard agreements drafted unilaterally by the bank, thus obscuring the debtor's free will and complete understanding (Atmoko, 2022). Worse still, the Plaintiff argued that BRI had violated the principle of transparency and the right to correct, clear, and honest information as mandated in Article 4 letter c of Law Number 8 of 1999 concerning Consumer Protection, because the bank did not provide an original copy of the credit agreement deed and did not detail crucial provisions related to the Deed of Granting of Mortgage Rights (Riyanto & Ratnawati, 2024). This tension reached its peak when BRI sent a Notification Letter of Auction Implementation which set the auction limit value of collateral objects at the Bogor KPKNL at only IDR 635,000,000.00. This limit figure was considered to be very detrimental to the sense of justice and detrimental to the debtor, considering that the fair price of the land and building was believed to reach IDR 1,500,000,000.00. As a result of this unilateral determination, the debtor claims to have suffered material losses in the form of a price difference of IDR 865,000,000.00, as well as immaterial losses of IDR 1,000,000,000.00 due to psychological pressure, disruption of business stability, and defamation. In addition to questioning the substance of the losses, the Plaintiff also attacks the formal legal basis used by the bank, arguing that the act of continuing the auction process without a fiat or determination of the Head of the District Court is an act that is clearly contrary to Article 1211 of the Civil Code, Article 200 paragraph (1) HIR, and Supreme Court Jurisprudence Number 3210 K/Pdt/1984 (Shanty, et. al., 2025).

Judicial Vacuum Due to a Void Decision (Verstek) and Its Implications In an effort to seek justice and preserve its vital business assets, the debtor filed a lawsuit with a petitum requesting that the Central Jakarta District Court declare the auction null and void, cancel the

credit agreement, and order the bank to pay billions of rupiah in compensation (Zatmiko & Hafidah, 2026). The plaintiff also requested an interim decision that could be implemented first (*uitvoerbaar bij voorraad*) to stem the threat of permanent loss of collateral during the legal process. However, ironically, this long trial ended anticlimactically and left a profound legal vacuum. After going through various stages starting from the proper summons of the parties, the implementation of the mediation process that ended in failure on October 16, 2025, to the determination of the trial date for the reading of the lawsuit material, the plaintiff repeatedly failed to appear without providing a legally valid reason. Faced with this situation of negligence, the Panel of Judges examining the case was ultimately forced to apply the provisions of Article 124 of the HIR and, on November 20, 2025, issued a decision declaring the Plaintiff's lawsuit dismissed, along with a penalty of Rp730,000.00 in court costs. Procedurally, this decision was valid and in accordance with applicable procedural law, but from a substantive and academic perspective, it raised very serious problems. The main points of the case, which contained fundamental arguments regarding proving the debtor's default, the validity of the collateral auction procedure, and the conflict in the legal hierarchy between ministerial regulations and the law, were never tested, examined, or even given a judicial assessment by the panel of judges. As a result, the central issues concerning the limits of tolerance for the use of *parate executori* and guarantees of legal certainty for MSME debtors were left hanging without any legally binding answers. This lack of judicial judgment in the decision provides ample scope and demands for comprehensive, critical, and systematic scientific intervention.

Much of the previous literature and research, such as that of Siregar & Putra (2022), Firdaus, Aina & Ridhotullah (2025), and Zai, Marniati & Sahril (2026), on the execution of mortgage rights, tends to be trapped in a rigid normative approach and places too much emphasis on legal protection for creditors or auction winners in defending collateral from lawsuits by third parties or heirs. These studies often ignore the substantive protection dimension for debtors whose assets are being forcibly executed (Noor et al., 2023). To bridge this gap in the literature, this study takes a bold step by presenting three broad theoretical frameworks as its primary analytical tools. First, Aristotle's theory of corrective justice is used to assess whether the execution action with a limit value far below the market price has truly restored the balance of rights between the bank and the customer. Second, Lon Fuller's theory of internal legal morality is implemented to evaluate the institutional procedures of the KPKNL and banking, to ensure that the execution rules implemented do not only rely on formal legality alone, but also fulfill a sense of procedural justice and legal morality. Third, Hans Kelsen's pure legal theory of the hierarchy of norms is applied sharply to test crucial arguments regarding the validity of the Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Guidelines. Given that the ministerial regulation is not explicitly recognized in the hierarchy of Law Number 12 of 2011, its use as the primary basis for overriding the obligation of *fiat execution* regulated in higher legal instruments such as the HIR and RBg has the potential to create systemic anomalies that harm legal certainty.

Ultimately, this research into the background of the CV. Samijaya v. Bank Rakyat Indonesia dispute is not merely an attempt to dissect an individual case, but rather a reflection on the structural tension between the banking sector's need to maintain asset quality and the debtor's fundamental right to fair treatment. The execution of credit guarantees through mortgages has a destructive socio-economic impact on the survival of MSMEs; the loss of key assets supporting the business due to cheap, unilateral auctions is not commensurate with the severity of defaults that may arise purely due to economic force majeure. Banks, under the strict supervision of the Financial Services Authority (OJK), are required to implement prudential banking principles not only during the disbursement of funds, but also during the settlement phase of problem loans, where banks must respect business ethics and consumer protection.

Therefore, this research aims to fill this academic and judicial gap by presenting an integrative analysis that combines legal facts, normative structures, and theoretical considerations. The results of this in-depth study are expected to significantly contribute to enriching the literature on contractual law in the academic environment, while simultaneously formulating constructive policy recommendations for stakeholders. It is hoped that relevant agencies such as the Financial Services Authority (OJK), the National Corruption Eradication Commission (KPKNL), the judiciary, and the banking industry can reorganize the disharmony between the Ministry of Finance Regulation, the UUHT, and the HIR/RBg, and strengthen the objection mechanism for debtors. By improving regulations and standard operating procedures based on a balance of protection, the investment climate and credit access for MSMEs can be maintained, ensuring that the banking sector continues to function as an economic driver that upholds material justice and complete legal certainty.

## **RESEARCH METHODS**

This research is a normative juridical legal or library research that examines document studies with secondary data such as laws and regulations (Mortgage Law No. 4/1996, Civil Code, HIR), court decisions (No. 397/Pdt.G/2025/PN Jkt.Pst), legal theory of default, and legal expert doctrines related to BRI credit guarantee auction procedures. The main approach is the regulatory approach (statutory approach) to analyze the hierarchy of norms (Law No. 12/2011, Minister of Finance Regulation No. 122/2023) and the case approach (case approach) to study Decision No. 397/Pdt.G/2025/PN Jkt.Pst and related jurisprudence (MA No. 3210 K/Pdt/1984).

This research uses primary legal materials in the form of statutory regulations (Civil Code Article 1234, 1211, 1365; Law No. 4/1996 Article 26; Law No. 8/1999; Law No. 10/1998; HIR Article 200, 224, 124), jurisprudence (Jkt.Pst District Court Decision No. 397/2025 and Supreme Court), as well as Pancasila and the 1945 Constitution as a basis. Secondary legal materials in the form of law books (Subekti, Law of Contracts; J. Satrio, Law of Mortgage Guarantee), journals (Socius Journal, Lex Privatum), and research results related to default and execution, internet data (OJK website, ILS Law Firm) for the context of banking practices.

The legal materials collection technique is carried out through library research (legal literature searches) in university libraries, official websites (Supreme Court, JDIH BPK, OJK), and online legal databases to collect comprehensive primary/secondary data. The legal materials that have been collected are processed through the following steps Classification of legal materials based on their type (primary, secondary). Reduction and systematization of information by separating legal norms, doctrines, and jurisprudential facts. Content analysis of legal norms and their relevance to cases and theories. Drawing legal conclusions, which are carried out inductively and deductively. Data analysis techniques are processed qualitatively with normative logistical analysis (syllogism) and legal logic to draw descriptive-explanatory conclusions regarding the problem formulation, connecting *das sollen* (norms) with *das sein* (decision facts).

## **RESULT AND DISCUSSION**

The civil dispute between CV SAMIJAYA as the debtor and PT Bank Rakyat Indonesia (Persero) Tbk (BRI) as the creditor, as recorded in the Decision of the Central Jakarta District Court Number 397/Pdt.G/2025/PN Jkt.Pst, is essentially rooted in the legal construction of default in a credit agreement. In the context of this contractual relationship, default is defined as a situation where the debtor is proven to have failed to carry out its fundamental obligations, namely making installment payments of principal debt and payment of interest expenses according to the schedule and nominal amount mutually agreed upon in the agreement deed. The failure to pay or arrears experienced by CV SAMIJAYA is not a stand-alone event, but rather an accumulation of economic difficulties and a drastic decline in business turnover which

ultimately plunged the company into non-performing loan status. This absolute default status then automatically triggers a series of very crucial legal implications, where banks as preferred creditors obtain full legal legitimacy to activate more aggressive collection instruments. Based on the legal basis of obligations in the Civil Code (KUHPerdota), the debtor's structural inability to fulfill obligations in a timely manner and according to the amount of the bill provides a solid basis for the creditor to execute the mortgage right on the collateral object to ensure the protection of bank receivables from various potential fatal losses.

Furthermore, the classification of default that befell CV SAMIJAYA gave rise to in-depth legal debate regarding the line separating the concept of force majeure and pure business risk that is actually obligatory for business actors (Purba, et. al., 2023). Debtors who are economically pressed often try to hide behind the argument that macroeconomic fluctuations, uncertain market dynamics, and internal cash flow difficulties of the company are external conditions beyond their rational control. This is expected to eliminate or at least alleviate civil liability for credit arrears. However, upon a normative and doctrinal examination, a mere decline in business performance cannot be qualified as a legitimate force majeure event, but rather is an integral part of normal operational risks in the business world. Although debtors consistently claim to have good intentions by continuing to make sporadic interest payments or actively seeking loan restructuring facilities, the national civil law system always firmly emphasizes its assessment on the fact of actual performance fulfillment. Unilateral good intentions that are not accompanied by a commitment to repay maturing obligations do not eliminate the status of default in the eyes of the law, but instead place the debtor in a more vulnerable position when forced to face the enormous executorial power of banking institutions.

Entering the next crucial phase, the administrative default status finally transformed drastically into a real legal action through the initiation of an auction procedure for collateral executed unilaterally by BRI management. This step turned into the root of the main dispute that essentially questioned the level of validity of formal procedures and guarantees of protection of the debtor's basic rights. Positioning itself as the holder of the first legitimate mortgage certificate for a plot of land and its accompanying buildings with Ownership Certificate No. 9651 in Depok City, BRI firmly chose to implement an instant and unilateral settlement mechanism commonly known as parate execution. Through the special authority of parate execution facilitated by the State Assets and Auction Services Office (KPKNL), the creditor felt the absolute right to carry out the sale of collateral objects through an open auction in public under its own authority, without being required to request a decision or fiat execution from the Head of the local District Court.

This forced execution action culminated when the bank sent a Notification Letter for the Implementation of the Auction, in which the bank unilaterally dared to set the opening limit value of the auction object at a minimum of Rp635,000,000.00. The determination of this extremely low limit value then sparked a wave of serious objections from the CV SAMIJAYA camp, because considering the factually, the fair market price (market value) was believed to have reached around Rp1,500,000,000.00. Facing the threat of losing its vital business assets disproportionately and arbitrarily, the debtor took legal action that strategically shifted the landscape of the dispute from a mere issue of default to a dispute over unlawful acts (PMH) and a serious violation of consumer rights. The plaintiff strongly argued that BRI not only violated customary banking ethics, but also totally ignored the principle of information transparency as strictly mandated by the Consumer Protection Law, especially regarding the failure to submit an original copy of the contract and the lack of a comprehensive explanation regarding the risks of binding mortgage rights. Furthermore, this legal challenge fundamentally highlights the alleged conflict of legal hierarchy within the national legal system. The plaintiffs argue sharply that the continuation of the auction procedure, which relies purely on the Minister of Finance Regulation concerning auction implementation guidelines, deliberately ignoring the

absolute obligation of court execution as stipulated in the Herzien Inlandsch Reglement (HIR), constitutes a fatal procedural flaw that undermines legal certainty. The deadly combination of setting a limit value below the standard of reasonableness, minimal public information disclosure, and the complete absence of judicial intervention in the execution stage are cumulatively seen as a form of institutional arrogance by the bank that fails to provide proportional protection, resulting in enormous material losses and immaterial suffering for customers.

Ironically, the series of legal debates, which were truly essential and full of theoretical complexity, had to end anticlimactically in the courtroom due to the court's decision to dismiss the lawsuit purely due to the Plaintiff's physical absence without valid explanation. The Panel of Judges at the Central Jakarta District Court was forced to rigidly refer to the formal provisions of Article 124 HIR, so that this case was decided by default without ever entering the substantive examination stage of the lawsuit's arguments regarding the submitted auction procedure (Wijaya, Martinelli & Agusman, 2026). The direct consequence of this decision, which was entirely procedural and administrative in nature, was the creation of a profound judicial vacuum, where the judiciary was completely unable to provide a definitive answer regarding the validity or otherwise of the default claim from a material perspective, the appropriateness of the auction limit value unilaterally set by the bank, and the level of compliance of the creditor institution with the hierarchy of civil procedural law norms. This vacuum of judicial judgment actually further emphasizes the urgency and relevance of compiling a comprehensive academic study. This dispute demonstrates the structural imbalance in Indonesia's banking guarantee legal system, which urgently demands real regulatory harmonization to balance the absolute enforcement rights of large creditors with guarantees of procedural justice and the protection of the basic economic rights of MSME debtors.

The legal construction of a debtor's default status within the Indonesian legal framework of obligations, as well as the application of enforcement rights by creditors, must be rigorously tested and calibrated using the parameters of Aristotle's theory of corrective justice. Within the realm of positive law and modern banking governance, the default experienced by CV SAMIJAYA is a legal fact that cannot be denied, both dogmatically and empirically. CV SAMIJAYA, as the debtor, having received a Current Account Credit facility with a maximum limit of Rp1,000,000,000.00 from PT Bank Rakyat Indonesia (Persero) Tbk (BRI), has been proven to have failed to fulfill its contractual obligations.

This fundamental failure is clearly manifested in the form of arrears in the payment of principal installments and interest expenses that persist and continue for a long time, which is triggered by a cycle of declining business performance and the deterioration of the company's internal cash flow stability. This condition of failure to fulfill economic performance, when examined using a civil law doctrine approach, especially the literature view from Subekti, must absolutely be classified as a form of pure default. The drastic decline in business turnover and the dynamics of market economic turmoil such as this do not at all meet the legal ratio to be categorized as a force majeure. This is because economic fluctuations are an inherent entity of the operational risk part of the business that must be projected and borne independently by commercial business entities from the start, and in no way constitutes a disaster or extraordinary incident beyond the reach of human control that is legally able to free a debtor from the trap of responsibility for fulfilling civil obligations and compensation.

Due to its absolute nature, the shift in credit collectibility status from a current credit category that has fallen into a non-performing or non-performing loan automatically provides a very strong supply of normative legitimacy for BRI as a banking institution. Procedurally and through legal formalities, the banking party holds a very solid foundation to immediately activate the credit security instrument mechanism, namely in the form of the execution of the first level of mortgage rights that have been legally bound to burden the physical collateral in

the form of a plot of land and its accompanying buildings under the Ownership Certificate (SHM) No. 9651 belonging to the debtor.

However, the exploration of academic studies in this chapter is not at all willing to stop and limit itself to the mere stage of justification or justification of formal legality for proving the status of default, but rather boldly draws the discourse of this obligation deep into the depths of the substantive philosophical test space through the use of the lens of the theory of corrective justice, the idea of classical thinker Aristotle (Jasmine, et. al., 2025). The fundamental theory of Aristotelian corrective justice essentially instills a firm doctrine that any form of violation of the smoothness of an obligation will indeed automatically trigger a systemic imbalance, which inevitably demands the birth of a correction or action to restore losses.

However, the form, method of implementation, and the magnitude of the figures of the correction are strictly required to uphold the principle of proportionality, must be balanced in strict arithmetic calculations, and morally absolutely not allowed to transform into an instrument of repression of giant power that actually gives birth to a new type of injustice disaster for the perpetrator of the violation itself. Within the specific context of this complicated credit settlement dispute, CV SAMIJAYA's default is undoubtedly recognized as a denial and a clear violation of the creditor's basic economic rights to receive the full disbursement of the principal funds disbursed from the outset. Using this loss as a basis for action, BRI's aggressive and forced repayment demands, even to the point of initiating a unilateral auction for the collateral with the State Assets and Auction Service Office (KPKNL), are a reasonable corrective measure to restore and restore the bank's balance sheet to its original economic equilibrium.

However, corrective justice, in principle, philosophically, and morally, strongly opposes any opportunity for excessive and highly destructive retaliatory corrective action (over-correction). This comprehensive study then highlights with a sharp level of criticality the fatal decision of BRI management, which unilaterally and discretionarily set the basic limit value of the opening auction for collateral objects at a nominal amount that was too low and far removed from the logic of fair market valuation. Based on the claim documents submitted fiercely by the debtor camp, the crucial asset tied up as the central collateral object actually has an estimated fair market transaction value that successfully reached a figure as high as Rp1,500,000,000.00. In stark contrast to the claim of such high-value assets, the bank actually forced the determination of the opening auction limit value to crawl at the nadir, namely in the range of the limit of Rp635,000,000.00. This unilateral discretionary action in setting a limit figure that has dropped too sharply and deviated far below the standard line of feasibility of the current market economy is considered to have clearly torn and exceeded the tolerance fence of rationality of a bank's loss compensation.

The second point that occupies the throne as the central pillar of the subsequent discussion dissects holistically and without compromise the anatomy of the tangled technical procedures for the execution auction of the credit guarantee taken by BRI, along with outlining a series of implications of the impact of the explosion that damaged the foundation of the essential legal protection network for middle-class debtors, where the entire polemic is analyzed using a scalpel from the theory of internal morality of law thought by Lon L. Fuller (Ammade, Muslihat & Kamilia, 2023) and critically combined with the theory of the hierarchy of pure legal norms owned by the scholar Hans Kelsen (Suhenriko, 2023). The most deadly knot of the problem begins and stems from the execution mechanism which was aggressively designed from the start by the bank's policy makers, who excessively depended on the fate of the execution on the luck of the validity of the mortgage certificate in order to smooth the way for control of the collateral through a fast track, namely a shortcut instrument for direct execution to the administrative bureaucratic desk at the Bogor KPKNL, by simply taking shelter firmly in the blanket of formal legal basis of the Regulation of the Minister of Finance (Permenkeu)

Number 122 of 2023 concerning Instructions for the Implementation of Auctions which is suspected to be very sectoral in nature. The unilateral decision in selecting the administrative auction instrument without involving the courtroom in a short time has succeeded in giving rise to a storm of very fundamental and organized legal resistance from the debtor's camp, which in compiling its rebuttal arguments firmly relies on the heart of the main provisions of the main civil procedural law inherited from the Indonesian civil court, which in this case specifically refers to the rigid construction of the provisions of Article 200 paragraph (1) of the *Herzien Inlandsch Reglement (HIR)* in conjunction with Article 1211 of the Civil Code, and at its peak, the strength of its resistance is perfected by the eternal precedent of the Supreme Court of the Republic of Indonesia Jurisprudence Number 3210 K/Pdt/1984.

The group of arguments and doctrines of civil procedural law that are held firmly as if they were a non-negotiable price by the debtor and his legal representatives in principle emphasize a mandatory prerequisite regarding the existence of a supervisory instrument and intervention of the judicial system, where the implementation of the practice of selling assets through open auctions aimed at executing the object of the mortgage security seizure is considered completely prohibited and is not permitted to be executed autonomously, secretly, or arbitrarily without first successfully proving and obtaining a formal legal stamp in the form of the issuance of a fiat letter or official execution approval determination that may only be signed by the holder of the authority of the hammer of justice, namely the Head of the District Court in the relevant jurisdiction.

The devastating blow that arose as a result of the structural scale clash between the two types of dispute execution system regimes is essentially not just a manifestation of a trivial polemic regarding the discretion of banking preferences in determining the flow of credit settlement administration counters, but actually appears as a living monument of the portrait of the failure of legal system harmonization and a perfect reflection of hierarchical disharmony within the backbone of the national legal system, which will unwittingly continue to distribute the implications of economic disasters with a very massive and widespread spectrum that risks directly strangling the lifeblood of the survival of the fate of millions of debtors in the Micro, Small, and Medium Enterprises sector.

It is precisely in the central vortex of this storm of legal system uncertainty that the existence of a pure theory of law, the result of the contemplation of the great thought of Hans Kelsen, is presented and implemented with great precision, with a single mandate to dismantle and completely expose every layer of flawed validity and chaos of normative logical reasoning within the procedural structure of bank execution. The sacred doctrine of the *Stufenbau Theory* or the principle of the hierarchy of the legal pyramid ala Kelsen lays out the affirmation with a very absolute attitude that the state legal order is purely a form of creation from the architectural construction of imperative norms that are always arranged systematically, tiered with discipline, and very strictly tiered towards one central point. The validity, authoritative validity, and the level of binding coercive power of the existence of a type of regulatory norm instrument whose strata are placed far away inhabiting the caste at the lowest level of the ladder (inferior norm) are naturally absolutely required so that the source of the existence of its power always radiates from, always obeys and relies on, and the most crucial is that it is absolutely not allowed to tolerate the slightest deviation or clash of conflict that deviates from the spirit of the mandate of the formation of the main norm framework that is currently enthroned at the top of the highest caste level above it (superior norm).

In highlighting the framework of the anatomical web of the order of legislation that is alive and pulsating, driving the Indonesian state today, the legal text contained in the formulation of the norms of the Mortgage Rights Law (UUHT) is indeed explicitly recorded on paper giving the green light to the granting of a special mandate in the form of the authority of the right of express execution to the creditor holding the main preference. However, such

exclusive civil security legal privileges can never and should never be willing to be released, let alone forcibly cut from the historical roots of the rules of civil procedural law enforcement that frame it, all of which have long been regularly regulated and forcibly locked in the thick veil of instruments at the level of the umbrella pillar of formal laws such as HIR and RBg.

The strength of HIR is then tightened by a series of established rules that are firmly formed in the kitchen of jurisprudence and cassation decisions of the Supreme Court which forever remains unmoved holding and positioning itself as the holder of the baton of control of the highest level of law enforcement and justice authority throughout the country. When the ranks of directors from the commercial funding provider institutions insist on their arrogance to recklessly force their inner will to execute the fate of the public collateral solely by making a derivative instrument in the form of a Minister of Finance Regulation as the sole pillar of support, which in fact the regulatory instrument is actually only limited to occupying the caste as an instrument of the extension of the administrative legal branch of government at the level of a low ministry.

The events of rejection and maneuver steps that are aggressively designed with cunning goals that are deliberately aimed at setting aside and killing the obligation of the need for involvement in civil court supervision procedures and the lack of respect for the official fiat mandate of the noble figure of the Chief Justice of the District Court, in essence have vulgarly given rise to a real manifestation of the emergence of a tragedy of anomalous hierarchical violations on a fatalistic scale. Such bureaucratic-administrative execution maneuvers have undoubtedly succeeded in triggering damage and destroying the face of discipline in the harmonious hierarchy structure of the norm system, which with a domino effect is able to collapse and uproot the pillars supporting the essence of protection guarantees from the foundation of certainty of law enforcement and tear apart the integrity of the unity of the legal system itself, and in turn distort as well as deviate and change the form of the ideal function of the purpose of the formation of law.

The law which from the beginning was expected to always faithfully carry out its function to become a shield and a strong protective shield that is absolutely obliged to protect and secure the public's right to justice, in this tragedy, its nature has been diverted to become nothing more than an instrument of legitimacy for the perpetuation of the banking procedural power system, which in the end the entire management of the process flow has been completely designed only to provide a guarantee contribution so that it can always be profitable and thicken the profits of the coffers of the continuity of the business of giant corporate financial octopus institutions.

## **CONCLUSIONS**

CV SAMIJAYA has been proven to be in default under the BRI credit agreement due to prolonged arrears in interest and principal payments that cannot be classified as force majeure under the Civil Code and the doctrine used. Based on the default framework in Article 1234 of the Civil Code, the classification of banking credit quality (from current to non-performing), and the fact of the relationship between the overdraft credit secured by the mortgage right on SHM No. 9651, this study concludes that BRI has a strong legal basis to demand fulfillment of performance, collect repayment, and at some stage activate the collateral execution as long as the execution procedures comply with applicable norms.

However, this conclusion also confirms that although BRI's right to treat the debtor as a defaulting party has been dogmatically fulfilled, the method of implementing correction through the mortgage instrument must still be calibrated with the principles of corrective justice, banking prudence, and debtor protection to prevent it from turning into an economic penalty that exceeds the actual gravity of the violation. The credit guarantee auction procedure planned by BRI for CV SAMIJAYA's guarantee through KPKNL Bogor, based on the

mortgage certificate and Minister of Finance Regulation 122 of 2023 without the fiat of the Head of the District Court and by setting a limit value of Rp. 635,000,000 far below the fair price of around Rp. 1,500,000,000, in this study it is concluded that it is not fully in line with the principles of legal certainty and debtor protection, indicating that the series of procedures gives rise to problems of norm hierarchy (between the Mortgage Law, HIR/RBg, and ministerial regulations), the failure to fulfill Fuller's internal legal morality principles (openness, clarity, consistency), and the imbalance of correction according to Aristotle's corrective justice because the risk of loss experienced by the debtor has the potential to exceed the bank's real loss.

Therefore, the conclusion of the study for the second problem formulation is that the practice of parate execution and auction of BRI's credit guarantee in case No. 397/Pdt.G/2025/PN Jkt.Pst still leaves ample room for normative and institutional correction, so it needs to be realigned with HIR/RBg, the principle of banking prudence, and financial services consumer protection standards so that debtor protection can be guaranteed in a fair and balanced manner.

## REFERENCES

- Ammade, F. R. D., Muslihat, S. N. N., & Kamilia, Z. (2023). Tantangan Dan Hambatan Dalam Upaya Penegakan Delapan Prinsip Moralitas Hukum Lon L. Fuller di Indonesia. *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora*, 1(02). <https://journal.forikami.com/index.php/nusantara/article/view/562>
- Angreinni, A., Arifin, Z., Nuswanto, A. H., Aryaputra, M. I., & Yuniar, P. H. (2026). Peran Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL) Dalam Menjamin Keadilan Dan Kepastian Hukum Lelang Negara. *Jurnal USM Law Review*, 9(1), 416-434. <https://doi.org/10.26623/julr.v9i1.13474>
- Atmoko, D. (2022). Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku. *Binamulia Hukum*, 11(1), 81-92. <https://doi.org/10.37893/jbh.v11i1.308>
- Firdaus, A. F. N., Aina, I., & Ridhotullah, M. V. (2025). Problematika Eksekusi Hak Tanggungan Dalam Perbankan Syariah Terhadap Efektifitas Pasal 20 Uuht. *Jurnal Media Akademik (JMA)*, 3(6). <https://doi.org/10.62281/v3i6.2169>
- Hardyansah, R., Darmawan, D., Samawati, W., Mukti, A. P., Merak, S. M., & An'im Falahuddin, M. (2026). Analisis Hukum Penyelesaian Kredit Macet: Keseimbangan Perlindungan Bank dan Debitur: Legal Analysis of Non-Performing Loan Resolution: Balancing Protection for Banks and Debtors. *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)*, 6(03), 1-16. <https://doi.org/10.69957/cr.v6i03.2761>
- Jasmine, M., Otich, D., Setiawan, R. W., & Mufid, M. (2025). Konsep Dan Tipe Keadilan Dalam Pemikiran Aristoteles. *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora*, 3(01). <https://journal.forikami.com/index.php/nusantara/article/view/945>
- Noor, A., Solihah, I. N., Dewata, M. I., Widyahastuti, M., & Najmi, N. (2023). Kompleksitas Pelaksanaan Eksekusi Hak Tanggungan: Analisis Kesulitan Eksekusi, Ketidakseimbangan Informasi, Birokrasi & Kepemilikan Properti. *Innovative: Journal Of Social Science Research*, 3(5), 8218-8232. <https://j-innovative.org/index.php/Innovative/article/view/4037>
- Purba, B., Purba, D., Sinaga, E., & Daniel, H. (2023). Aspects of justice in business contracts: Force majeure study on franchise agreements in the Covid-19 period. *Indonesian Journal of Advanced Research (IJAR)*, 2(7), 889-900. <https://doi.org/10.55927/ijar.v2i7.4613>
- Riyanto, O. S., & Ratnawati, E. T. R. (2024). Hak atas informasi kesehatan dan perlindungan hukum bagi dokter: implikasi ham dalam komunikasi dokter-pasien. *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, 3(1), 78-88. <https://doi.org/10.37631/jrkhm.v3i1.39>

- Shanty, W. Y., Prawira, D. C., Nahuddin, Y. E., Rahman, F., & Nurmala, L. D. (2025). Prosedur Pelaksanaan Lelang Eksekusi Terhadap Benda Tidak Bergerak. *Bhirawa Law Journal*, 6(2), 140-149. <https://doi.org/10.26905/blj.v6i2.16296>
- Siregar, N. R., & Putra, M. F. M. (2022). Tinjauan Hukum Kekuatan Eksekutorial Terhadap Permohonan Lelang Eksekusi Hak Tanggungan Atas Debitur Wanprestasi. *Jurnal USM Law Review*, 5(1), 128-143. <https://doi.org/10.26623/julr.v5i1.4872>
- Suhenriko, M. (2023). Implementasi teori hierarki Hans Kelsen terhadap perumusan kebijakan di Indonesia. *Jurnal Ilmiah Multidisipin*, 1(2), 64-71. <https://ejournal.lumbangpare.org/index.php/jim/article/view/191>
- Wijaya, G., Martinelli, I., & Agusman, A. (2026). Keabsahan Tindakan Eksekusi dan Lelang dalam Perspektif Perbuatan Melawan Hukum: Studi Putusan MA Nomor 5549 K/PDT/2025. *At-Tasyrih: jurnal pendidikan dan hukum Islam*, 12(1), 283-291. <https://doi.org/10.55849/attasyrih.v12i1.508>
- Zai, N. A., Marniati, F. S., & Sahril, I. (2026). Kepastian Hukum Eksekusi Jaminan Hak Tanggungan Atas Perjanjian Kredit Terkait Gugatan Debitur. *YUSTISI*, 13(1), 45-63. <https://doi.org/10.32832/yustisi.v13i1.22657>
- Zatmiko, R., & Hafidah, N. (2026). Keabsahan Putusan Verstek Akibat Cacat Hukum Pada Relas Pemanggilan (Dalam Perspektif Hukum Acara Perdata Dan Prinsip Fair Trial). *Iuris Studia: Jurnal Kajian Hukum*, 7(2), 501-514. <https://doi.org/10.55357/is.v7i2.1294>