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# Reconstruction of Certainty and Efficiency-Based Execution of Guarantee Objects: A Legal Comparative Approach

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**ABSTRACT**

The execution of the object of collateral is a crucial phase in the material guarantee legal system because it determines the effectiveness of creditor protection and legal certainty in settling receivables. In Indonesian law, the Right of Dependency is designed as a guarantee instrument that gives preferential position and executory power to creditors. However, practice shows that the mechanism for the execution of the collateral object has not been fully implemented definitively and efficiently, and often even gives rise to further disputes. This study aims to analyze the structural problems of the execution of collateral objects in Indonesia and formulate a reconstruction of the execution mechanism based on legal certainty and efficiency through a comparative legal approach. This research uses normative legal research methods with legislative, conceptual, case, and comparative legal approaches. The results of the study show that the uncertainty of execution is caused by conflicts between legal regimes, ambiguity of execution norms, weak protection in execution auctions, and pre-execution problems related to the binding of guarantees. Through comparison with practices in other countries, this study found that the certainty and efficiency of execution can only be realized through coherent system design, post-execution dispute resolution, and harmonization between legal regimes. This research offers a reconstruction model of the execution of the collateral object that affirms the final character of the execution, strengthens the protection of parties in good faith, and integrates the principles of legal certainty and efficiency as a normative framework. This reconstruction is expected to be a reference for the renewal of the law on the execution of material guarantees in Indonesia



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## 1. INTRODUCTION

The execution of the object of collateral is the most decisive phase in the law of material guarantees because it is at this stage that the effectiveness of creditor protection, legal certainty, and the efficiency of settlement of receivables are tested in real terms. In the Indonesian legal system, the Right of Dependency is designed as a land guarantee institution that gives preferential position and executory power to creditors, as stipulated in Law Number 4 of 1996. Normatively, the construction is intended to ensure legal certainty and accelerate the process of fulfilling creditors' rights through a simple and effective execution mechanism.

However, practice shows that the execution of the object of collateral in Indonesia does not fully reflect these normative objectives. The execution of the Right of Dependency often becomes a source of further disputes, prolongs the debt settlement process, and incurs significant economic and social costs. This phenomenon indicates that the issue of execution is not purely technical, but reflects structural weaknesses in the design of the material guarantee execution system.

Recent research shows that the uncertainty of the execution of the Rights of Dependents stems from conflicts between legal regimes. Abd Jalil and Lamonsya revealed that there is a conflict of preference between the state and holders of Dependent Rights in the practice of tax confiscation through the KPKNL, where the state's fiscal interests often get rid of the position of separatist creditors who are materially guaranteed.(Fadhel et al., 2025) This practice weakens the principle *Right of preference* and creates uncertainty for financing actors, because the right to guarantee that should give priority to repayment becomes relative when dealing with the public interest.

Similar conflicts are also seen in the bankruptcy and Suspension of Debt Payment Obligations (PKPU) regimes. Pranoto pointed out that in the settlement of bankruptcy assets, the bank's executory rights as holders of Dependent Rights are often limited by the bankruptcy mechanism, so that the position of separatist creditors is not fully protected.(Arief Alfred Pranoto, n.d.) This is strengthened by the findings of Ngantung and Rahardiansah which highlight the imbalance of protection between separatist creditors and the principle of going concern debtors in the PKPU process.(Ngantung & Rahardiansah, 2025) These restrictions, although intended to maintain the debtor's business viability, ultimately erode legal certainty and the efficiency of the execution of guarantees.

Outside the context of bankruptcy, problems also arise in the implementation of the execution of Dependent Rights for bad loans. Abdallah, Aritonang, and Naufal noted that the implementation of the execution parade still raises juridical debates, especially regarding the need for court fiat and the protection of debtors' rights.(Abdallah et al., 2025) This ambiguity causes the execution to be often delayed or sued, so that the efficiency goal inherent in the concept *squirrel* Execution is not achieved optimally.

These procedural uncertainties have a direct impact on the practice of execution auctions. Sirait and Esther pointed out that the implementation of bank guarantee auctions that do not comply with procedures is often the object of debtor lawsuits, thereby hindering the transfer of rights and reducing the economic value of the collateral object.(Sirait et al., 2025) Sulastri added that auction buyers often do not obtain adequate legal protection in the process of emptying auction objects, which ultimately harms a well-meaning third party.(Sulastri, 2024) This condition shows that the execution not only has an impact on creditors and debtors, but also on the legal certainty of the other parties involved.

Furthermore, the uncertainty of execution cannot be separated from the problem at the pre-execution stage. Rahma, Amanah, and Putri emphasized the importance of the principle of good faith in the Dependent Rights agreement as the foundation of the legitimacy of execution.(Rahma et al., 2025) Cristi revealed the issue of binding collateral on land objects that have not completely changed ownership, which has the potential to cause disputes when the execution is carried out.(Cristi & S, 2025) Meanwhile, Lindartanto and Az pointed out that the certificate of Dependent Rights issued on the basis of the authority of the defective guarantor lost its legal force, thus directly aborting the basis of execution.(Felix Rovi, 2025)

Recent developments also show the expansion of the object of Dependent Rights and the modernization of the administrative system. Lestari examines the possibility of Intellectual Property Rights being used as objects of Dependent Rights, which requires adjustments to the execution mechanism.(Lestari, 2025) On the other hand, Sabatini et al. and Al Qindy et al. highlight the implementation of electronic registration of Dependent Rights, which, although improving administrative efficiency, has not been fully balanced with the certainty of the execution mechanism.(Sabatini, 2025) Without adaptive execution design, such innovations have the potential to create new legal uncertainty.

From a comparative legal perspective, these weaknesses show that the enforcement system of collateral objects in Indonesia is still procedural and vulnerable to post-execution disputes. Maskanah and Murianto, through a comparison of execution auction practices between Indonesia and the United States, show that the comparator country emphasizes procedural clarity, limitations on post-execution judicial intervention, and proportionate legal protection for the parties.(Maskanah et al., 2025) These practices allow executions to run more efficiently and provide greater legal certainty.

Based on the development of the study, it can be concluded that previous studies are still partial and sectoral, focusing on conflicts of norms or protection of one party. There has not been a study that comprehensively reconstructs the mechanism of execution of the object of collateral by making legal certainty and efficiency as an integrated normative framework, and utilizing the comparative legal approach as a reconstructive instrument.

On that basis, this research is directed to answer three main problems, namely: first, how the structural problems of the execution of the object of collateral in the Indonesian legal system are reviewed from the principles of legal certainty and efficiency; second, how the regulation and practice of the execution of the object of collateral in other countries in guaranteeing these two principles; and third, how to reconstruct the mechanism of the execution of the object of collateral that is ideal and contextual for Indonesia based on the approach legal comparison. This study uses a normative legal research design with a comparative legal approach, which aims not only to criticize the applicable norms, but also to formulate a more coherent, efficient, and legal certainty execution model.

## 2. METHODS

This research is a normative legal research (*normative legal research*), which is research that aims to examine law as a norm or rule that applies in society, with a focus on the regulation and practice of the execution of collateral objects in the Indonesian legal system. This approach was chosen because the problems studied are directly related to the inconsistency of norms, conflicts between legal regimes, and the need for reconstruction of legal arrangements to realize legal certainty and efficiency.(Marzuki, 2017a)

In order to achieve the research objectives, several legal research approaches are used, namely the legislative approach (*statute approach*), conceptual approach (*conceptual approach*), case approach (*case approach*), and comparative legal approaches (*comparative law approach*). The legislative approach is used to systematically review the positive legal provisions that govern the execution of the object of collateral, especially Law Number 4 of 1996 concerning the Rights of Dependents, the Civil Code, the Bankruptcy and PKPU Law, as well as their implementing regulations related to the auction of execution and the authority of state institutions.(Marzuki, 2017b)

The conceptual approach is used to examine the legal concepts and principles that are the basis of the analysis, including the principles of *Right of preference*, *parate executie*, the position of separatist creditors, legal certainty, and legal efficiency. This approach is important for building a coherent theoretical framework as the basis for the reconstruction of the execution mechanism of the collateral object.(Ibrahim, 2006) The case approach is used to analyze court decisions and concrete practices related to the execution of Dependent Rights, including execution auction disputes, tax confiscation, and bankruptcy settlement. The analysis is carried out by examining the judge's legal considerations and their implications for the protection of the parties.(Mertokusumo, 2010)

In addition, this study uses a comparative legal approach by comparing the regulation and practice of execution of collateral objects in Indonesia with other countries that have a relatively well-established legal system of collateral collateral. The comparator country was selected based on the similarity of the function of the guarantee law and its relevance to the Indonesian context, such as the United States or the Netherlands. The comparative approach of law is used as an evaluative and reconstructive instrument to identify principles and best practices (*best practices*) that can be adapted in the Indonesian legal system.(Kotz, 1998)

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, court decisions, and official documents related to the execution of the collateral object. Secondary legal materials include legal textbooks, national and international scientific journals, as well as the results of previous research relevant to the research topic. The tertiary legal materials are used as supporting materials, such as legal dictionaries and encyclopedias.(Soerjono, 2015)

The collection of legal materials is carried out through literature studies (*library research*) by tracing legal sources in print and electronic form. All legal materials obtained were analyzed qualitatively using the prescriptive-analytical analysis method. The analysis is carried out by interpreting legal norms, examining the consistency between norms, comparing practices between jurisdictions, and assessing their conformity with the principles of legal certainty and efficiency.(Marzuki, 2017b)

The results of the analysis are then used to compile recommendations in the form of reconstruction of the execution mechanism of the collateral object that is prescriptive and applicative. This reconstruction was formulated by taking into account the characteristics of the Indonesian legal system, the need for financing practices, and balanced legal protection for creditors, debtors, and third parties. Thus, this research method not only produces normative understanding, but also offers relevant conceptual solutions for the reform of the law on the execution of collateral objects in Indonesia.(Sidharta, 2009).

## 3. FINDINGS AND DISCUSSION

### A. Structural Problems of Execution of Guarantee Objects in the Indonesian Legal System

The results of the study show that the problems of the execution of collateral objects in Indonesia are not incidental, but structural and systemic. Normatively, Law Number 4 of 1996 concerning Dependent Rights has placed execution as the main instrument of creditor protection through the principles of *droit de préférence* and *droit de suite*. However, in practice, the execution of the Rights of Dependents often loses the simple, fast, and definite nature as intended by the lawmakers.

One of the prominent structural problems is the conflict of preferences between legal regimes. Abd Jalil and Lamonsya's research shows that in the practice of tax confiscation, the state often positions itself as a super preferred creditor that overrides the position of the holder of the Dependent Rights.(Fadhel et al., 2025) This condition not only causes legal uncertainty, but also erodes the trust of business actors and financing institutions in the effectiveness of material guarantees. From the perspective of guarantee law, the situation shows that there is a disharmony between tax law and guarantee law that has not been resolved systemically.

Similar problems are also found in the context of bankruptcy and PKPU. Pranoto emphasized that although doctrinally the holder of the Right of Dependency is qualified as a separatist creditor, in practice the liquidation of the assets of the executory right is often limited by the collective mechanism of bankruptcy.(Arief Alfred Pranoto, n.d.) Ngantung and Rahardiansah added that the principle of *going concern* Debtors are often used as an excuse to delay or limit execution, so that the interests of separatist creditors do not receive optimal protection.(Ngantung & Rahardiansah, 2025) These findings indicate that the legal certainty of the execution of bail in Indonesia is highly dependent on judicial and administrative policies, not on the certainty of norms alone.

In addition to conflicts between legal regimes, uncertainty also stems from the ambiguity of the norms of execution itself. Application *Execution Schedule* as stipulated in Article 6 of the Law on the

Rights of Dependents still raises debates in practice. Abdallah, Aritonang, and Naufal point out that differences in interpretation of the court's fiat requirements cause executions to be often delayed or even canceled.(Abdallah et al., 2025) This condition shows that the norm that is intended to provide convenience has actually turned into a source of uncertainty due to weak consistency of interpretation.

These procedural problems have a direct impact on the implementation of execution auctions. Sirait and Esther revealed that violations of auction procedures, both in the announcement and implementation stages, are often the basis for debtor lawsuits.(Sirait et al., 2025) Sulastri pointed out that auction buyers often do not obtain adequate legal protection when facing resistance to the emptying of auction objects, resulting in economic losses and uncertainty of ownership status.(Sulastri, 2024) These findings suggest that the execution of Dependent Rights is not only problematic for creditors and debtors, but also has implications for the protection of third parties in good faith.

**B. Uncertainty of Execution at the Pre-Execution Stage and Its Impact on Legal Certainty**

The results of the study also show that the failure of the execution of the collateral object is often rooted in pre-execution problems. Rahma, Amanah, and Putri emphasized that the abandonment of the principle of good faith in the Dependent Rights agreement has a direct impact on the legitimacy of execution.(Rahma et al., 2025) When agreements are built on unbalanced relationships or non-transparent information, execution tends to be legally questionable.

Cristi revealed the issue of binding collateral on land objects that have not completely changed ownership.(Cristi & S, 2025) In such a condition, even if the certificate of Dependent Rights has been issued, the execution has the potential to be sued because the object of the guarantee is not fully *clear and clean*. Lindartanto and Az even point out that the certificate of Dependent Rights issued on the basis of the authority of the guarantor who is juridically defective loses its legal force.(Felix Rovi, 2025) This confirms that the certainty of execution cannot be separated from the quality of the guarantee binding process from the beginning.

Recent developments also show the expansion of the object of Dependent Rights and the digitalization of administration. Lestari examines Intellectual Property Rights as the object of Dependent Rights and shows that the expansion has not been accompanied by clarity of the execution mechanism.(Lestari, 2025) Sabatini et al. and Al Qindy et al. highlighted the electronic registration of Dependent Rights which, although it improves administrative efficiency, does not fully guarantee the certainty of execution in the event of default.(Sabatini, 2025) These findings show that administrative modernization without reconstruction of execution design has the potential to create new legal problems.

**C. Legal Comparative Analysis: Lessons from Other Countries**

The comparative approach of the law shows that the issue of the execution of the object of collateral in Indonesia is not inevitable. Maskanah and Murianto, through a comparison of execution auction practices between Indonesia and the United States, show that the system in the comparative country emphasizes procedural clarity, restrictions on post-execution interventions, and proportionate legal protection for all parties.(Maskanah et al., 2025) In such a system, the execution of the guarantee is positioned as the final administrative-executory mechanism, so that post-execution disputes are minimized.

This comparison shows that the certainty and efficiency of execution is not only determined by the strength of the executory title, but by the design of a coherent and consistent system. Comparator countries tend to place the importance of transaction certainty as the primary value, while judicial intervention is limited to very specific conditions. This model provides an important lesson for Indonesia that the reconstruction of executions is not enough to be carried out through the addition of norms, but rather through the restructuring of relations between legal regimes and the limitation of the space for disputes.

**D. Reconstruction of the Assurance and Efficiency Object Execution Model**

Based on the results of normative analysis and legal comparison in the previous section, it can be concluded that the problem of execution of collateral objects in Indonesia is not solely caused by the weakness of written norms, but by the design of the execution system that has not been conceptually integrated. Therefore, the reconstruction of the execution of the object of collateral needs to be directed at the restructuring of the normative and institutional framework by making legal certainty and efficiency as the main principles that complement each other.

The first reconstruction offered is the reaffirmation of the final character and binding execution of the Dependent Rights. In current practice, execution often loses its final nature due to the opening of post-execution litigation space, both by the debtor and a third party. In fact, from the perspective of guarantee law, execution should be the final stage of a credit relationship that has gone through a warning and default process. The experience of comparative countries shows that the limitation of post-execution disputes is the main key to creating efficiency and legal certainty.(Kotz, 1998)

The second reconstruction is the harmonization between legal regimes that intersect with the execution of the object of guarantees, especially tax law and bankruptcy law. The conflict of preferences between the state and the holder of the Dependent Right, as demonstrated in the practice of tax confiscation, signifies the need for explicit regulation regarding the limitation of the state's preference for the object to which the Dependent Rights have been encumbered.(Fadhel et al., 2025) Similarly, in bankruptcy and PKPU, it is necessary to affirm that the restriction of the right of execution of separatist creditors must be temporary and proportional, and not eliminate the essence *Right of preference*.(Ngantung & Rahardiansah, 2025)

The third reconstruction has to do with the simplification and standardization of execution auction procedures. Many auction disputes arise not because of the substance of the default, but because of procedural inconsistencies. Therefore, a stricter but simpler standard of execution procedures is needed, including clear legal protections for auction buyers in good faith. This protection is important to maintain public confidence in the auction mechanism as an instrument of execution.(Sulastri, 2024)

The fourth reconstruction is the arrangement of the pre-execution stage. Research shows that many execution failures are rooted in weaknesses in collateral binding. Therefore, the reconstruction of execution must be accompanied by strengthening the pre-execution aspect, including through supervision of the authority of the guarantor, clarity of the status of the object, and the substantive application of the principle of good faith.(Rahma et al., 2025) Without improvements at this stage, efficient and definite execution is difficult to realize.

The fifth reconstruction is adaptation to the development of collateral objects and digitalization. The expansion of the object of Dependent Rights and the implementation of electronic registration require adaptive execution design, including specific arrangements regarding the execution of non-conventional objects and inter-agency data integration.(Sabatini, 2025) This reconstruction aims to ensure that the modernization of the administration does not stop at the formal aspect, but also guarantees the effectiveness of execution.

Collateral Object Execution Model Comparison Table

| **Aspects** | **Indonesia (Currently)** | **Comparator Country (USA)** | **Reconstruction Model (Proposed)** |
|---|---|---|---|
| Nature of Execution | Not final, prone to post-execution lawsuits | Final and binding, lawsuits limited | Final limited, lawsuit only for gross procedural violations |
| The Role of the Court | Often asked for fiat or intervention | Minimal, only limited supervision | Courts as *a last resort* |
| Conflict of Preferences | The state often outperforms separatist creditors | Clear Priorities | Explicit harmonization of preferences |

| | | | |
|---|---|---|---|
| Auction Buyer Protection | Weak, prone to emptying | Strong and final | Explicit protection of the buyer in good faith |
| Procedure Efficiency | Long and high cost | Fast and standardized | Simple national procedure standards |
| Digitization | Administrative, not yet executory | Integrated | Administration–execution integration |

**E. Theoretical and Practical Implications of Reconstruction of the Execution of the Object of Collateral**

1. Theoretical Implications

Theoretically, this reconstruction reinforces the view that legal certainty and efficiency are not conflicting principles, but rather complementary in the law of material guarantees. This study emphasizes that legal certainty is not enough to be guaranteed through an executory title alone, but must be supported by a coherent and consistent design of an execution system. This approach enriches the study of guarantee law with systemic and comparative perspectives that have been relatively neglected in national research.(Sidharta, 2009)

In addition, this research makes a conceptual contribution by placing the reconstruction of execution as part of legal *reform*, not just procedural improvement. Thus, this study expands the discourse of guarantee law from a normative-descriptive approach to a prescriptive and reconstructive approach.

2. Practical Implications

From a practical perspective, the results of this research are relevant for policymakers in formulating regulatory updates regarding the execution of Dependent Rights, both through the revision of laws and implementing regulations. For law enforcement officials and auction implementing agencies, this reconstruction can serve as a guideline to simplify procedures and limit non-essential disputes.

For the banking and finance sectors, a more secure and efficient execution model will increase confidence in the Dependent Rights as a risk mitigation instrument. Meanwhile, for debtors and third parties, procedural certainty and proportionate legal protection will create a fairer balance of interests in the execution of execution.(Marzuki, 2017b)

## 4. CONCLUSION

Based on the results of the research and discussion, it can be concluded that the mechanism for the execution of collateral objects in the Indonesian legal system, especially the Dependent Rights, still faces structural problems that have a direct impact on legal certainty and efficiency of receivables settlement. Although normatively Law No. 4 of 1996 has provided a solid basis through preferential status and executory titles, in practice execution often loses its simple, fast, and definite nature. This shows that there is a gap between the normative goal of the establishment of Dependent Rights and the reality of its implementation.

This study found that the uncertainty of the execution of the collateral object was caused by several main factors. First, there are conflicts between legal regimes, especially between guarantee law and tax law and bankruptcy law, which creates an unclear hierarchy of preferences and limits the executory rights of separatist creditors. Second, the ambiguity of norms and inconsistencies in interpretation related *to the execution parade* that causes the execution to be delayed or sued. Third, weak legal protection in the implementation of execution auctions, especially for buyers of auctions in good faith, which has implications for the increase in post-execution disputes.

This study uses a comparative legal approach by comparing the regulation and practice of the execution of collateral objects in Indonesia with other countries that have a relatively established material collateral legal system. The comparator country was selected based on the similarity of the function of the guarantee law and its relevance to the Indonesian context, such as the United States or the Netherlands. The comparative legal approach is used as an evaluative and reconstructive instrument to identify principles and best practices that can be adapted in the Indonesian legal system.

Through a comparative legal approach, this study shows that other countries are able to create a more certain and efficient mechanism for the execution of the object of collateral by emphasizing procedural clarity, limitation of post-execution intervention, and proportionate legal protection for the parties. Based on these findings, this study concludes that the reconstruction of the execution mechanism of collateral objects in Indonesia is an urgent need to ensure legal certainty and efficiency, while maintaining a balance of the interests of creditors, debtors, and third parties.

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