

The Nature of Auction for the Execution of Underwriting Rights Objects in the Law of Guarantees

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Abstract: This study aims to find out and analyze and find: the nature of the auction of execution of objects of mortgages in the guarantee law, the implementation of auction execution of dependent objects at the State Financial Services Office and Auction, and the factors that affect the auction execution of objects of liability in guarantee law. This type of research is a kind of normative-empirical research, therefore in the study of normative law (legal research) this study uses a type of descriptive research (descriptive research), namely legal studies to analyze normative provisions and provide an overview by looking at the law as written in legislation law in books or as a rule that is used as a guideline for every person's behavior in society (law in action).

Keywords: Nature of the Auction, Execution, Guarantee Law, State Financial Services Office and Auction

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I. INTRODUCTION

According to the Mortgage Law No.4 of 1996, the Underwriting Right is a guarantee right which is imposed on land rights as referred to in the Basic Agrarian Law, whether or not following other objects constitute a unity with the land, to pay off debts certain, which gives priority to certain creditors to other creditors.¹ The guarantee rights charged to the land are material security rights, in which the guarantee right is attached to an object, and the object is certainly the property of the debtor, also that guarantee right is not attached to all debtor assets controlled by Article 1131 of the Civil Code. It means that the material security rights are only attached to certain objects belonging to the debtor, not all objects belonging to the debtor, this is due to an agreement between the debtor and the creditor as stated in an agreement called a collateral agreement.

A material security agreement as an additional agreement in order to support the existence of a credit agreement, is an agreement whose object is an object, and the object in question is one of the objects belonging to the debtor on the basis of an agreement to be bound as a special guarantee for a certain amount of money called collateral.

There are two credit agreements, namely principal and additional agreements. The main agreement is a credit agreement made by the banks with debtors in the context of business activities in providing bank credit, and an additional agreement in the form of a mortgage agreement. The agreement aims to provide fairness and certainty on repayment of loans. Credit agreement is a loan agreement between the bank and the debtor based on the agreement of the parties as stipulated in Article 1338 of the Civil Code which states "All agreements made in accordance with the Laws apply as Laws for those who make it. This credit agreement requires a collateral or collateral that can be used as a substitute for debt repayment if in the future the debtor is injured or promised.

Default means not fulfilling something that is required in an agreement because it does not fulfill the achievement, being late to fulfill the achievement.² Fulfilling the achievement improperly. Article 1320 Civil Code.

According to Article 6 of the Mortgage Law No.4 of 1996 concerning mortgage rights, "If the debtor is injured, the first mortgage right holder has the right to sell the object of the mortgage under his own power through public auctions and the repayment of the receivables from the sale". The first mortgage right holder does not need to seek prior approval from the mortgage rights provider nor does he also need to request the appointment of the local District Court Chair to carry out the execution. It is sufficient to submit an application to the local State Auction Office.

¹S., Salim H. *Perkembangan Hukum Jaminan Di Indonesia*. Jakarta: PT. Raja Grafindo Persada, 2005, pp. 290 – 291.

²Hariri, WawanMuhwan. *Hukum Perikatan: Dilengkapi Hukum Perikatan Dalam Islam*. Bandung: CV. Pustaka Setia, 2011, p. 104.

Auction is the sale of goods open to the public with a written or / or verbal price quote that is increasing or decreasing to reach the highest price with the auction announcement.³

II. STATEMENT OF THE PROBLEM

1. What is the nature of the auction for the execution of the object of mortgage under guarantee law?
2. How is the execution of the dependent object execution auction at the State Financial and Auction Services Office?
3. What factors affect the auction of the execution of objects of mortgage rights in guarantee law ?

III. THERORETICAL FRAMEWORK

A. Theoretical Basis

Snelbecker defines theory as a syntactically integrated set of propositions (which follow certain rules can be logically connected with each other with observable basics) and function as a vehicle to practice and explain observed phenomena.

1. Legal Purpose Theory

The main purpose of law is to create an orderly society, create order and balance. With the achievement of order in society, it is hoped that human interests will be protected in achieving their goals. To achieve this goal, the law is tasked with dividing rights and obligations between individuals in society, sharing authority and regulating how to solve legal problems and ensuring legal certainty in the association of human life. Legal certainty here is defined as having to guarantee justice and the law remains useful, which then implies another task that is that the law can keep the community from playing vigilante themselves.

2. Legal Function Theory

Law and society are like two sides of a coin, where there is a society there is a law (Ubi societies Ibi ius), where there is a law there is a society (Ibi Ius Ubi Society). As stated by Cicero, it means the existence of a community because there are legal norms as a binding value system.⁴

The function of law is to resolve conflicts of interest. With the existence of the law, the conflict is no longer resolved according to who is the strongest, but based on rules oriented towards objective interests and values by not distinguishing between the strong and the weak, and the orientation is called justice.⁵

3. Legal Effectiveness Theory

According to Bronislaw, he presents the theory of legal effectiveness by analyzing the following three problems, which include:

- a. In modern society, the social order is maintained among others by a coercive social control system, namely the law; to implement it, the law is supported by a system of instruments of power (police, court, etc.) organized by a country;
- b. In primitive societies such power tools sometimes did not exist; and
- c. Thus, is there no law in primitive societies?⁶

4. Legal Protection Theory

Roscoe Pound⁷ divides the legal interests of humans into three types which include:

a. Public interest

The main main interests include: (1). The interests of the State as a legal entity in maintaining its personality and substance; and (2). The interests of the State as guardians of the interests of society.

b. Social interest

There are six community interests protected by law as follows:

- 1) Public interest in public safety such as security, health, welfare and guarantees for transactions and income.
- 2) Interests for social institutions which include protection in the fields of: marriage, politics (freedom of speech), economy.

³Usman, Rachmadi. *Hukum Jaminan Keperdataan*. Jakarta: Sinar Grafika, 2009, p. 492.

⁴Pasamai, Syamsuddin. *Filsafat Dan Filsafat Hukum*. Makassar: PT. Umitoha Ukhuwah Grafika, 2011, p. 125.

⁵Busthami, Dachran S. "Hakekat Kepastian Hukum Perkawinan Beda Agama Dalam Sistem Hukum Perkawinan." *Disertasi*, Universitas Muslim Indonesia, 2011, pp. 25 – 26.

⁶S., Salim H., and ErliesSeptianaNurbani. *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: PT. Raja Grafindo Persada, 2013, p. 305.

⁷*Ibid.*, p. 266.

- 3) The interests of the community against moral damage, such as: corruption, gambling, swearing to God, the illegality of transactions that are contrary to good morals, regulations that limit the actions of trust members.
- 4) The interests of the community in maintaining social resources, such as refusing legal protection for the implementation of rights (abuse of right)
- 5) The interests of the community in general progress, such as: protection of: property rights, free trade and monopoly, industrial independence, new inventions.
- 6) The interests of the community in individual human life, such as: a decent life, freedom of speech, choosing office.

c. Private interest (individual interest)

In the interests of individuals three types of protection are presented as follows:

- 1) Personality interests (interests of personality), including: physical integrity (wholeness), freedom of will, reputation (good name), guaranteed personal secrets, freedom to practice the religion they hold, and freedom of expression.
- 2) Interests in household relations (interest domestuc) include: protection for marriage, demands for family care, legal relations between parents and children.
- 3) Substance interests include the protection of: assets, independence in preparing testaments, industrial independence and contracts, legal expectations of the benefits obtained.

5. Execution Theory

a. Mandate Theory

As Hoge Raaddalalm Arrest dated March 14, 1882 W.4755 considers that “for the validity of the agreement, what is used as a benchmark is the relationship between the buyer and the holder of the collateral. A sale based on power of attorney, then the legal construction is the owner selling (himself) collateral using the recipient’s hand to the buyer and therefore the buyer passes all rights of the owner, while the figure of the holder of the mortgage (now mortgage) as an intermediary is completely eliminated”⁸

b. Simplified Theory of Execution

According to Eggent that in actual implementation the creditor exercises his own rights and at the same time also acts as a representative of the parcel owner. The act of executing is the exercise of the creditor’s own rights, but when the creditor hands over the ownership rights of the mortgage giver (now mortgage) to the buyer, he acts on behalf of the owner.

According to this theory that in the case of mortgage holders (now mortgage rights) sell under Article 1178 paragraph (2) BW, the mortgage holder carries out the sale of collateral on the basis of his own authority.⁹

B. Legal Guarantee In General

1. Terms and Definition of Guarantee Law

According to Salim, giving a legal definition of collateral is the whole of the legal norms governing the legal relationship between the giver and the recipient of the guarantee in relation to the imposition of collateral to obtain a credit facility.¹⁰

2. The Role of Legal Assurance in the Banking Business

Banking institutions play a central role in the economic structure of each country. Where when the life of a bank in a country is healthy, the economic condition will be strong. Almost all aspects of daily activities, can no longer be separated from the role of banks that provide services that are very safe and comfortable. Every citizen of any society, is no stranger to the role of the bank which turns out to be a lot of help and provides convenience for carrying out daily life activities. Business activities that are managed by every member of the community, will almost certainly always intersect with the function of the bank as an intermediary institution. One of the very central business of banks is to channel loan funds needed by the community to meet both consumptive or productive needs. Providing such credit by banks certainly needs a stronghold to anticipate when future loans are problematic. To ward off these risks as early as possible the guarantee law already provides the means in the form of material security institutions, such as liens, mortgages, fiduciary, and mortgages according to the object. By requesting certain objects belonging to the debtor to be specifically bound to guarantee a number of debts, it is necessary to make a guarantee agreement by the bank after there is an

⁸Poesoko, Herowati. *Dinamika Hukum ParateExecutie: Objek Hak Tanggungan*. Yogyakarta: AswajaPressindo, 2012, p. 172.

⁹*Ibid.*, p. 178.

¹⁰S., Salim H. 2005. *Op. Cit.*, p. 6.

agreement to provide loan funds. "Security, strictly defined, is an interest in property which secures the performance of an obligation, in our case payment (Ross Cranton)."¹¹

3. Urgency of the Guarantee Agency

In general people equate the term collateral with the term collateral, but in the perspective of banking law, the term collateral is distinguished from the term collateral. As in Act No. 14 of 1967 concerning banking principles, the term collateral is not known as collateral. While in Act No.7 of 1992 concerning banking, as amended by Act No.10 of 1998 concerning Banking, it provides an understanding which is not the same as the term of guarantee according to Law no.14 of 1967.¹²

The meaning of collateral according to Law No. 14 of 1967 is given the term collateral or dependents, while the guarantee according to Law N0.7 of 1992 as amended by Act No.10 of 1998 concerning banking, is given another meaning, namely "Confidence in the willingness and ability and ability of the debtor customers to repay their debts or return the funds referred to as agreed."

According to Balkenhol and Schutte, collateral is an asset promised by the borrower to the lender until the loan is repaid if the borrower does not perform his obligations, the creditor has the right to confiscate collateral and sell it to repay the loan. From the lender's perspective, the guarantee function is basically to serve the interests of the lender, protect against risk and as a screening device. In addition to these main functions, collateral also serves to place the lender in a special position against other creditors where the borrower must become bankrupt to get it.¹³

4. Differences of Guarantee Institutions

Based on the provisions in Articles 1131 and 1132 of the Civil Code, the distinction (rights institutions) of collateral is based on their nature, namely:

- a. General guarantee rights
- b. Special guarantee rights

This general guarantee right is born or arises because of the law. So that the guarantee rights that are general in nature do not need to be promised in advance, this means, concurrent creditors simultaneously obtain the general guarantee rights due to the law. In terms of the nature of their rights, these concurrent creditors have individual rights, that is, rights that can only be defended against certain people.¹⁴

If there is more than one creditor and the proceeds from the sale of the debtor's assets are sufficient to cover his debts to the creditor, then which should take precedence in the payment among the creditors is not important because although all creditors are equal or balanced, each will get their share in accordance with its receivables. The existence of several creditors will only cause problems if the proceeds from the sale of the debtor's assets are not enough to pay off his debts, in this case it will be seen how important it is to be a preferred creditor, that is, the creditor must take precedence in payment among other creditors if the debtor defaults.¹⁵

The right to guarantee individuals is the right that gives creditors a better position, because there are more than one debtor that can be billed. The word better is better than creditors who do not have (special) collateral rights or better than general collateral.

C. Agreement in General

1. Definition of Agreement

Based on Islamic law, an agreement is an act of agreement between a person or several other people to do a certain act.¹⁶ In law, if the action has legal consequences, the act is termed legal action. Legal acts are all actions done by humans intentionally to give rise to rights and obligations.

According to R. Subekti, an agreement is an event in which a person promises to another person or where two people promise to do something. From this incident arises a relationship between the two people is

¹¹Isnaeni, Moch. *Hukum Jaminan Kebendaan: Eksistensi, Fungsi Dan Pengaturan*. Yogyakarta: LaksBangPRESSindo, 2016, p. 148.

¹²Usman, Rachmadi. 2009. *Op. Cit.*, p. 66.

¹³Anis, Friend Henry. "Kepastian Hukum Kreditor Dalam Pelaksanaan Jaminan Hipotek Kapal (the Legal Certainty Creditor in Implementation of Collateral Ship Mortgage)." *Disertasi*, Universitas Hasanuddin, 2014, pp. 27 – 28.

¹⁴Usman, Rachmadi. 2009. *Op. Cit.*, p. 74.

¹⁵Hasbullah, Frieda Husni. *Hukum Kebendaan Perdata: Hak-Hak Yang Memberi Jaminan*. Vol. 2, Jakarta: Ind-Hill Co., 2002, p. 6.

¹⁶Hariri, WawanMuhwan. 2011. *Op. Cit.*, p. 147.

called an engagement. In its form, this agreement is in the form of a series of agreements containing promises or promises that are spoken or written.¹⁷

2. Principles of Agreement

Based on the law of agreement known several principles as follows:

a. Principle of Freedom of Contract

The purpose of this principle is that everyone is free to enter into any agreement in the form of whatever it is, its form, its contents and to whom it is intended. This principle can be seen in Article 1338 of the Civil Code which stipulates that all agreements made legally apply as a law for those who make them. The principle of freedom of contract is the most important principle in the agreement, because from this principle there appears to be statements and expressions of human rights in entering into an agreement, as well as providing opportunities for the development of treaty law.¹⁸

b. Principle of Consensualism

It is an agreement enough with the agreement of those who make the agreement, without being followed by other legal actions except formal agreements.¹⁹

c. The principle of good faith

That the person who will make the agreement must be done in good faith. Good faith in the subjective sense, can be interpreted as someone's honesty, which is what lies with someone when legal actions are held. While good faith in the objective sense, is that the implementation of a legal agreement must be based on norms of compliance or what feels appropriate in society.

d. The principle of binding strength

According to this principle, an agreement is a legal agreement that has the legal force that binds both parties to carry out something. In its form, this agreement is in the form of a series of words containing obligations or undertaking to do something, and then obtaining rights to something or can sue for something.²⁰

e. Principle of Personality

According to this principle, a person is only allowed to commit himself to his own interests in an agreement. It is contained in Article 1315 of the Civil Code.²¹

3. Credit agreement

The term credit agreement comes from English, namely contract credit. In English law, bank credit agreements include loans of money.²² The term credit agreement is found in government instructions and various circulars, including:

- a. Cabinet Presidium Instruction Number 15 / EKa / 10/96, which contains instructions to banks that in providing credit in any form, banks are required to use a "credit agreement";
- b. Circular Letter of Bank Negara Indonesia Unit I Number: 2/539 / UPK / pem / 1996; and
- c. Bank Indonesia Circular Number; 2/643 / Pemb / 1996 concerning Guidelines for Policy in Credit Sector.

4. Nature of Credit Agreement

Provisions regarding saving and borrowing money have been stipulated in Article 1754 of the Civil Code, namely a loan agreement replacing an agreement in which one party gives the other party an amount of provisions for goods that are used up due to usage, on condition that the latter party will return the same amount of the same kind and condition.

D. Legal Aspects in Auctioning collateral

1. Terms and Definition of Auction

The term auction comes from the Dutch language, which is *venu*, whereas in English, it is called auction, the other term is a translation from the Dutch *openbare verkooping*, *openbare veiling*, or *openbare verkopen*, which means "auction" or "public sale".²³

¹⁷Subekti, Raden. *Hukum Perjanjian*. Jakarta: PT. Intermedia, 2005, p. 3.

¹⁸Patrik, Purwahid. *Dasar-Dasar Hukum Perikatan*. Bandung: CV. Mandar Maju, 2000, p. 4.

¹⁹Meliala, A. QiromSyamsudin. *Pokok-Pokok Hukum Perjanjian Beserta Perkembangannya*. Yogyakarta: Liberty, 2000, p. 20.

²⁰Subekti, Raden. 2005. *Op. Cit.*, p. 20.

²¹Sinungan, Muchdarsyah. *Kredit: Seluk Beluk Dan Teknik Pengelolaan*. Jakarta: Yagrat, 2001, p. 30.

²²S., Salim H. *Perkembangan Hukum Kontrak Di Luar KUH Perdata*. Jakarta: PT. Raja Grafindo Persada, 2006, p. 77.

The same thing was conveyed in the sense of auction that the word auction is taken from the word *Auctio*, which means gradual improvement. Unlike buying and selling, an auction is a general sale or sale of goods made to the public at a bid price increases or decreases or by entering the price in a closed cover, or to people who are invited or were previously informed of the auction or sale, or are allowed to participate are given the opportunity to bid on prices, agree on prices or enter prices on closed covers.²⁴

2. Auction Principles

Normatively there are actually no laws and regulations that govern the auction principle, but if a clause is examined in the laws and regulations in the auction field, the following principles can be found:

a. Principle of Openness

The principle of openness requires that all levels of society know of the existence of auction plans and have the same opportunity to take part in the auction as long as it is not prohibited by law. Therefore, each auction must be preceded by an auction announcement. This principle also prevents unfair business competition practices from occurring, and does not provide opportunities for corrupt, kalusi and nepotism practices.

b. Principle of Competition

The principle of competition implies that in the process of conducting auctions each participant or equal opportunity to compete in submitting the highest price bid or at least reaching and / or exceeding the limit value of goods to be auctioned and determined by the seller or owner of the goods. Basically the highest bidder of the item to be auctioned is endorsed by the Auction Officer as the auction buyer.

c. Principle of Justice

The principle of justice implies that in the process of conducting auctions, it must be able to fulfill a sense of fairness proportionally for all parties concerned. This principle is to prevent the occurrence of Bidders' partisans to certain bidders or favor only the seller's interests. Specifically in the execution of auction execution, sellers may not set arbitrary limit prices which result in an adverse effect on the executed party.

d. Principle of Legal Certainty

The principle of legal certainty requires that the auctions that have been carried out guarantee the existence of legal protection for those who are interested in conducting the auction. Every auction is made an auction Minutes by an Auction Officer which is an authentic treatise. Auction Minutes are used by the seller or owner of the goods, the buyer, and the Auction Officer to maintain and carry out their rights and obligations.

e. Principle of Efficiency

The principle of efficiency will guarantee that the auction will be carried out quickly and at a relatively low cost because the auction is conducted at a predetermined place and time and the buyer is legalized at that too.

f. Principle of Accountability

The principle of accountability requires that auctions conducted by Auction Officers be held accountable to all interested parties. The responsibilities of auction officials include auction administration and auction money management.²⁵

3. Auction Type

Based on applicable regulations, auctions on immovable property and movable property include:

a. Voluntary Non-Execution Auctions

Namely an auction to carry out the sale of goods belonging to individuals, community groups, or private entities that are auctioned voluntarily by the owner.

b. Auction Execution

Is an auction to carry out a court decision / stipulation or other documents in accordance with the applicable laws and regulations, equivalent, in order to assist law enforcement, including auctioning the execution of mortgage rights as regulated in Article 6 of the Underwriting Right Law No. 4 of 1996, if the debtor is injured, the holder of the first level of mortgage has the right to sell the object of the mortgage on his own power through a public arm and to take it off from the proceeds.

²³Usman, Rachmadi . *Hukum Lelang*. Jakarta: Sinar Grafika, 2016, p. 19.

²⁴Tista, Adwin. "Perkembangan Sistem Lelang Di Indonesia." *Al' Adl Jurnal Hukum*, 5, no. 10 (2013): 46 – 70.

²⁵*Ibid.*

4. Material in the auction

With regard to legal objects or material in the auction, the provisions in Article 6 of the Vendu Regulation state that the material that can be auctioned, namely:²⁶

- a. Immovable property;
- b. Land businesses on leased land;
- c. Ships containing 20 m³ or more;
- d. Securities.

5. Excellence and Auction Function

Auction service is a sale in the context of securing State assets such as the auction of inventory items belonging to the Central Government, Regional Government, BUMN or Non-Persero BUMD or those that are executable in the criminal, civil, and taxation fields. In the criminal field, for example, there are auctioned attorneys' booty, confiscated police, and KPK confiscated auctions, while in the civil field such as the District Court Execution auction, auction based on Article 6 of the UUHT, the auctioned confiscation of the State Receivables Committee, in the taxation field is a tax seized auction.

6. Auction Officer

According to Article 1 number 14 of the Minister of Finance Regulation No.27 / PMK.06 / 2016 that auction officials are people who, based on statutory regulations, are given special authority to sell goods through auction. This means that the auction official or auctioneer is a person who has been given special authority by the Minister of Finance to carry out the sale of items by auction based on statutory regulations.²⁷

7. Auction Seller and Buyer

a. Auction Seller

The seller or applicant of the auction is a translation of the terms owners, sellers or vendors, which means the owner of the goods. Auction applicants, who are auction sellers, can be individuals, legal entities or businesses or institutions that are based on the laws or regulations or agreements to sell goods at auction.

b. Participants / Buyers (auction winners)

Bidders are translations of the terms attenders, bidders, the highest bidders, buyers, or purchasers, which means they can be participants, bidders, the highest bidder / auction winner, or auction buyer. Auction participant is a person or legal entity / business entity that has fulfilled the requirements to take part in the auction. Auction buyer is a person or legal entity / business entity that has fulfilled the requirements to participate in the auction.

E. Scope of Mortgage Rights

1. Definition of Mortgage

According to Budi Harsono that the mortgage is the mastery of land rights, containing the authority for creditors to do something about the land that is used as collateral. But it is not to be physically controlled and used, but to sell it if the debtor is injured and pledges the results in whole or in part as a payment of the debtor's debt to him.²⁸

2. Principles of Mortgage Rights

Dependents can be charged more than once to the same object to guarantee repayment of more than one debt and to several creditors. This gives rise to levels for the mortgage right holder. The rating of the mortgage is determined according to the date it was registered at the land office.

3. Promises in Imposing Underwriting Rights

The provisions of Article 11 paragraph (2) of the Underwriting Right Law states that in the Deed on the Underwriting Right (APHT), the following promises may be included:²⁹

- 1) Promises that limit the authority to give mortgage rights to lease the object mortgage and / or determine or change the lease period and / or receive rent in advance unless prior written approval from the holder of the mortgage.
- 2) Promises that limit the authority of the mortgage right to change the form or structure of the object of the mortgage right, except with prior written approval from the mortgage right holder.

²⁶*Ibid.*

²⁷Usman, Rachmadi. 2016. *Op. Cit.*, p. 34.

²⁸S., Salim H. 2005. *Op. Cit.*, p. 97.

²⁹Sutadi, Adrian. *Hukum Hak Tanggungan*. Jakarta: Sinar Grafika, 2012, pp. 56 – 80.

- 3) The promise which gives the authority to the mortgage right holder to manage the object of the mortgage right is based on the determination of the Chairperson of the District Court whose jurisdiction covers the location of the mortgage right object if the debtor truly fails the promise.
- 4) Promises that give authority to the holders of mortgage rights to save the object of mortgage rights if it is needed for the implementation of the execution or to prevent the abolition or cancellation of rights that are the object of mortgage because it is not fulfilled or violated the provisions of the law.
- 5) The promise that the first mortgage right holder has the right to sell on his own power the object of the mortgage right if the debtor is in default.
- 6) The promise given by the holders of mortgage rights, first that the object of the mortgage rights will not be cleared from the mortgage rights is a promise regarding the prohibition of clearing mortgage rights on the object guaranteed by the new owner of the object if the object is changed ownership (both sale and purchase grant).
- 7) The promise that the mortgage right will not relinquish its rights to the object of the mortgage rights without the prior written approval of the mortgage rights holder.
- 8) The promise that the mortgage rights holders will obtain all or part of the compensation received by the mortgage rights provider for repayment of the receivables if the mortgage rights or rights are revoked in the public interest.
- 9) The promise that the mortgage right holder will obtain all or part of the insurance money received by the mortgage rights provider for repayment of his receivables if the insured object-object is insured. Mortgage holders have the right to ask for insurance agreement on objects that become the object of mortgage.
- 10) The promise that the mortgage rights provider will vacate the object mortgage rights at the time of execution of the mortgage rights. Sometimes the items guaranteed are controlled or inhabited by other parties as well as by the giver of the mortgage rights themselves.
- 11) A distorted promise that a certificate of land title that has been affixed with a record of the imposition of a mortgage will be returned to the holder of the relevant land rights.

4. Mortgage Objects

Basically, not all land rights can be used as collateral for debt, but land rights that are used as collateral must meet the following conditions:³⁰

- a. Can be valued in money, because the debt guaranteed in the form of money;
- b. Including the rights registered in the public register, because they must meet the requirements of publicity;
- c. Has transferable nature, because if the debtor is injured the promise of the object being used as a debt guarantee will be sold in public; and
- d. Requires appointment by law.

F. Execution of Mortgage Rights

1. Definition of Execution

According to RetnowulanSutantio interpreted the execution as the implementation of the decision. The party won in the decision can request the execution of the decision to the court that will execute it by force.³¹

2. Execution in Civil Law

Civil Law is a law that regulates the interests of one individual citizen with another individual citizen.³² Meanwhile, according to Vollmar, civil law is the rules or norms that provide restrictions and therefore provide protection to the interests of individuals in the right comparison between the interests of one with another from people in a society, especially regarding family relations and traffic relations. In the opinion of some legal experts, the definition of civil law is the rules, provisions or norms in the relationship between one person and another person who provides a limitation of protection due to the emergence of rights and obligations between related parties.³³ It is impossible that material civil law stands alone completely apart from civil procedural law. There is no point in having a civil law if it cannot be implemented or realized, and for its realization a civil procedural law is needed. Conversely, civil procedural law as an effort to guarantee the implementation of material civil law, it is impossible to enforce it without civil procedural law. Material civil law can only be maintained and enforced through a court of law with a civil procedural law, as a legal regulation governing the process of settling a civil case through a judge (the court) from the time the lawsuit is filed up to the execution of the judge's decision.

³⁰S., Salim H. 2005. *Op. Cit.*, p. 104.

³¹Poesoko, Herowati. 2012, *Op. Cit.*, p. 101.

³²*Ibid.*, p. 89.

³³*Ibid.*, p. 90.

3. Execution as a Forced Effort to Fulfill Rights

Execution turned out not only related to court decisions and gosse deeds but the term execution is in the field of guarantee law, execution of the object of collateral which is the exercise of the rights of the creditor of the collateral right to the collateral object, if the debtor fails to promise by selling the collateral object for repayment of his receivables.

4. Execution as a Means of Legal Protection for Creditors

As a consequence of the agreement made by the parties (creditors and debtors), the rights and obligations as a result of the agreement will be binding on the creditors and debtors, as long as each party fulfills the rights and obligations, it will run smoothly, but when the debtors are reluctant to fulfill their obligations and until it can be categorized that debtor defaults (breaking promises), of course the creditor will suffer losses. If this happens, the creditor has the right to demand that the debtor fulfill his obligations and it is possible to use forced power as regulated by law.

5. Abolition of Mortgage and Roya Rights

According to the law, the cancellation of the mortgage is due to several reasons:

- a. Because it has been written off debt guaranteed by the related mortgage rights.
- b. Because the mortgage right holders (creditors) release the mortgage rights.
- c. Because of the cleansing of mortgage rights based on the ranking of mortgage rights by the Head of District Court.
- d. Because the abolition of land rights that are burdened with mortgage rights.

Mortgage rights that fall into one of these categories, mean that the rights have been removed and must be removed from the land certificate by the Land Agency. The deletion of mortgage rights that have been removed is called Roya.

IV. DISCUSSION

A. The Nature of the Auction for the Object of the Mortgage Rights Under the Guaranteed Law

Mortgage is a security right on land for paying off certain debts, which gives certain creditors priority over other creditors. In a sense, that if the debtor fails to promise, the creditor holding the Underwriting Right has the right to sell through a public auction of land which is used as collateral according to the provisions of the relevant laws and regulations, with prior rights over other creditors. The priority position certainly does not reduce the preference of the State's receivables according to the provisions of applicable law

Along with developments in the guarantee law, collateral rights with land collateral are considered the most effective and secure by banking institutions. This is based on the ease in identifying the object of the mortgage right, clearly and surely the execution, besides that the debt guaranteed by the mortgage must be paid in advance from other bills with the money from the auction of land which is the object of the mortgage right, indeed things that cannot be ignored in Credit agreements which are a consequence of an agreement made by the parties, rights and obligations as a result of the agreement will be binding on the creditors and debtors, as long as each fulfills the rights and obligations then it will run smoothly, but if the debtor is reluctant to fulfill his obligations can be categorized as default. the creditors will lose their interests.

The justice approach in the context of the auction of the object execution of the mortgage rights in the guarantee law, in essence can be approached with distributive justice and cumutative justice, as well as the auction principle approach, so that the auction nature of the object execution mortgage rights in the guarantee law can be achieved, namely the creation of an objective, competitive auction, transparent, fair, certain and provide benefits to related parties, as well as in accordance with applicable laws and regulations.

B. Implementation of Mortgage Object Execution Auction

An execution auction is a general sale to carry out or execute a court decision or stipulation or other similar documents, and / or implement the provisions in the legislation.

Based on the primary data obtained at the research location through the distribution of questionnaires, after going through processing with the frequency distribution approach, the following results are presented for the processing of special data regarding the auction of execution of objects of mortgage rights in Gorontalo Province. The results of data processing are presented in the form of a table as follows.

Table 1: An auction for the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Often	32	58,18
Rarely	20	36,36
Never	3	5,46
Total	55	100

Source: Primary data processed, 2018

Listening to Table 1 above, it seems clear that 58.18% of respondents gave the answer that auctioning of objects of mortgages in Gorontalo Province was often carried out.

Furthermore, it can be seen in the table that 36.36% of respondents gave the answer that auction was rarely carried out for the execution of objects of mortgage rights in Gorontalo Province. The above table also clearly illustrates that 5.46% of respondents gave answers that there had never been an auction on the execution of objects of mortgage rights in Gorontalo Province.

In connection with the responses of the respondents above, it can be seen in the data below about the list of realization of the implementation of the auction of the execution of the object of mortgage at the State Financial Services Office and Gorontalo Auction as follows:

Table 2: List of realization of implementation of auction for article 6 execution rights of the State Financial Services Office and Gorontalo Auction Office.

No	Years	There are no enthusiasts	Salable	Cancel
1	2014	60	2	-
2	2015	761	29	-
3	2016	568	54	-
4	2017	555	23	50
5	2018	248	15	32
Total		2.912	123	82

The table above shows that the list of realization of the auction of execution of objects of mortgage rights at the Gorontalo Province State Financial Service and Auction Office from 2014 to 2018, ie there were no interested parties (TAP) of 2,192 files, 123 documents, and 82 documents canceled.

The following table explains the optimization of the practice of conducting auction of object mortgages in Gorontalo Province.

Table 3: Optimizing the practice of carrying out the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Optimal	19	34,55
Less than optimal	31	56,36
Not optimal	5	9,09
Total	55	100

Source: Primary data processed, 2018

Observing Table 3 above, it is clear that 34.55% of respondents gave answers that the auction for the execution of objects of mortgages in Gorontalo Province had been carried out optimally. Furthermore, it can be seen in the table that 56.36% of respondents gave answers that the auction for the execution of objects of mortgage rights in Gorontalo Province was less than optimal. The table above also clearly illustrates that 9.09% of respondents gave answers that the auction for the execution of objects of mortgages in Gorontalo Province, was not optimal.

The following table, Table 4, explains the practice of conducting auction of object mortgages in Gorontalo Province.

Table 4: The practice of conducting auction for the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
It is sufficient	16	29,09
Less than adequate	33	60,00
Inadequate	6	10,91
Total	55	100

Source: Primary data processed, 2018

Observing Table 4 above, it is clear that 29.09% of respondents gave answers that the auction for the execution of objects of mortgages in Gorontalo Province was sufficient. Furthermore, it can be seen in the table that 60.00% of respondents gave answers that the auction for the execution of objects of mortgages in Gorontalo Province was less than adequate. The above table also clearly illustrates that 10.91% of respondents gave answers that the auction for the execution of objects of mortgages in Gorontalo Province was inadequate.

Based on the results of the analysis above, the practice of carrying out auction of objects under mortgage rights in Gorontalo province has not been carried out competitively and objectively because there are still auction sales of mortgage rights objects at prices below market prices that do not cover debtor debt (unreasonable prices) and auction winners does not enjoy the object of mortgage because it is still inhabited by debtors or third parties.

C. Factors That Affect the Implementation of Mortgage Rights Object Execution Auction.

1. Legal Substance Factors

Discussion of the legal substance that is related to the contents of Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights and Land Related Objects, and the effect of these factors on the implementation of auction for the execution of mortgage rights objects in Gorontalo Province.

The following table explains the influence of legal substance factors on the auction of the execution of mortgage rights objects in Gorontalo Province.

The following data are in the form of tables of the results of data processing through frequency distribution analysis regarding legal substance factors.

Table 5: The influence of the legal substance factors of various laws and regulations related to the practice of conducting auction of the object of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	35	63,64
Less Influential	15	27,27
No Effect	5	9,09
Total	55	100

Source: Primary data processed, 2018

Observing table 5 above, it is clear that 63.64% of respondents gave answers that the legal substance factors of various related laws and regulations had an influence on the practice of conducting auction of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 27.27% of the respondents gave answers that the legal substance factors of various related laws and regulations had less influence on the implementation of auction for the execution of mortgage rights objects in Gorontalo Province. The table above also clearly illustrates that 9.09% of respondents who gave answers that the legal substance factor of various laws and regulations have no effect on the implementation of auction for the execution of objects of mortgage rights in Gorontalo Province

2. Legal Structure Factors

a. Quality Factors of Legal Structure

Table 6: Influence of legal structure quality factors (implementing employees auction), to the practice of conducting object execution auctions mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	32	58,18
Less Influential	15	27,27
No Effect	8	14,55
Total	55	100

Source: Primary data processed, 2018

Observing table 6 above, it is clear that 58.18% of respondents gave answers that the quality factor of the legal structure (auctioneer employees) affected the practice of carrying out the execution of objects for mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 27.27% of respondents gave answers that the quality factor of the legal structure (auctioneer employees) had less influence on the practice of carrying out the execution of mortgages in Gorontalo Province. The above table also clearly illustrates that 14.55% of respondents gave answers that the quality factor of the legal structure (auctioneer employees) had no effect on the practice of carrying out the execution of objects for mortgages in Gorontalo Province.

b. Legal Structure Quantity Factors

Table 7: Influence of legal structure quantity factors (implementing employees auction), to the practice of conducting object execution auctions mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	30	54,55
Less Influential	21	38,18
No Effect	4	7,27
Total	55	100

Source: Primary data processed, 2018

Observing table 7 above, it is clear that 54.55% of respondents gave answers that the quantity of legal structure (auctioneer employees) affected the auction of the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 38.18% of respondents gave the answer that the quantity of legal structure (auctioneer employees) had less influence on the implementation of the auction for the execution of mortgage rights objects in Gorontalo Province. The table above also clearly illustrates that 7.27% of respondents gave answers that the quantity of legal structure (auctioneer employees) had no effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

c. Commitment Factor for Legal Structure

Table 8: The influence of commitment factors in the legal structure (auctioneer employees), on the practice of conducting auction of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	29	52,73
Less Influential	18	32,73
No Effect	8	14,54
Total	55	100

Source: Primary data processed, 2018

Observing table 8 above, it is clear that 52.73% of respondents gave answers that the commitment factor of the legal structure (auctioneer employees) affected the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 32.73% of respondents gave answers that the commitment factor of the legal structure (auctioneer employees) had less effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The above table also clearly illustrates that 14.54% of respondents gave answers that the commitment structure of the legal structure (auctioneer employees) did not influence the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

d. Moral Factors of Legal Structure

Table 9: The influence of moral factors in the structure of the law (auctioneer employees), on the practice of conducting auction of the object of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	31	56,36
Less Influential	18	32,73
No Effect	6	10,91
Total	55	100

Source: Primary data processed, 2018

Observing table 9 above, it is clear that 56.36% of respondents gave an answer that the moral factor of the legal structure (auctioneer employees) affected the auction of the execution of the object of mortgage rights in Gorontalo Province. Furthermore, it appears in the table that 32.73% of respondents gave answers that the moral factor of the legal structure (auctioneer employees) had less effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The above table also clearly illustrates that 10.91% of respondents gave answers that the moral factor of the legal structure (auctioneer employees) did not affect the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

e. Factors in Formal Education Legal Structure

Table 10: The influence of formal education factors in the legal structure (auctioneer employees), on the practice of conducting auction of object mortgages in Gorontalo Province

Indicator	Frequency	Percentage
Influential	28	50,91
Less Influential	16	29,09
No Effect	11	20,00
Total	55	100

Source: Primary data processed, 2018

Observing table 10 above, it is clear that 50.91% of respondents gave an answer that the formal education factor of the legal structure (auctioneer employees) affected the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 29.09% of respondents gave an answer that the formal education factor of the legal structure (auctioneer employees) had less effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The above table also clearly illustrates that 20.00% of respondents gave an answer that the formal education factor of the legal structure (auctioneer employees) had no effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

f. Factors of Non-formal Education Legal Structure

Table 11: The influence of non-formal education factors in legal structure (auctioneer employees), on the practice of carrying out the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	24	43,64
Less Influential	21	38,18
No Effect	10	18,18
Total	55	100

Source: Primary data processed, 2018

Listening to Table 11 above, it seems clear that 43.64% of respondents gave answers that the non-formal education factor of the legal structure (auctioneer employees) affected the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 38.18% of respondents gave answers that the non-formal education factor of the legal structure (auctioneer employees) had less effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The table above also clearly illustrates that 18.18% of respondents gave answers that the non-formal education factor of the legal structure (auctioneer employees) had no effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

3. Cultural Factors and Community Legal Habits

a. Cultural Factors of Community Citizens

Table 12: The influence of cultural factors on the citizens of the practice of carrying out the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	25	45,45
Less Influential	16	29,09
No Effect	14	25,46
Total	55	100

Source: Primary data processed, 2018

In Table 12 above, it is clear that 45.45% of respondents gave answers that the cultural factors of the community, influenced the auction of the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 29.09% of respondents gave answers that the cultural factors of the community did not significantly affect the implementation of the auction for the object of mortgage security in Gorontalo Province. The table above also clearly illustrates that 25.46% of respondents gave answers that the cultural factors of the community did not affect the implementation of the auction for the execution of objects of mortgages in Gorontalo Province.

b. Factors of Legal Habit of Citizens

Table 13: Influence of factors of legal habits of citizens of the community on the practice of conducting auction for the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	24	43,64
Less Influential	19	34,54
No Effect	12	21,82
Total	55	100

Source: Primary data processed, 2018

In Table 13 above, it is clear that 43.64% of respondents who gave answers that the legal habits of citizens, affect the implementation of the auction execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 34.54% of respondents gave answers that the legal habits of the citizens, had less influence on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The table above also clearly illustrates that 21.82% of respondents gave answers that the legal habits of the citizens did not affect the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

4. Community Legal Awareness Factors

a. Community Legal Awareness Factors

Table 14: The influence of community legal awareness factors on the practice of carrying out the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	21	38,18
Less Influential	21	38,18
No Effect	13	23,64
Total	55	100

Source: Primary data processed, 2018

In Table 14 above, it is clear that 38.18% of respondents gave answers that the factor of legal awareness of the community, had an effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 38.18% of the respondents gave answers that the legal awareness factor of the citizens did not significantly affect the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The table above also clearly illustrates that 23.64% of respondents who gave answers that the legal awareness factor of the community did not affect the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

b. Understanding Factors of Community Law

Table 15: The influence of community legal understanding factors on the practice of conducting auction of objects of rights in the province of Gorontalo

Indicator	Frequency	Percentage
Influential	22	40,00
Less Influential	20	36,36
No Effect	13	23,64
Total	55	100

Source: Primary data processed, 2018

In Table 15 above, it is clear that 40.00% of respondents gave an answer that the factor of understanding citizens' law affects the auction of the execution of objects of mortgages in Gorontalo Province. Furthermore, it can be seen in the table that 36.36% of respondents gave answers that the understanding of the law of the citizens affected the auction of the execution of objects of mortgage rights in Gorontalo Province. The table above also clearly illustrates that 23.64% of respondents who gave answers that the understanding of the legal factors of citizens, had less effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

c. Factors of Community Legal Behavior

Table 16: The influence of legal behavior factors of citizens on the practice of carrying out the execution of objects of mortgage rights in Gorontalo Province

Indicator	Frequency	Percentage
Influential	19	34,55
Less Influential	15	27,27
No Effect	21	38,18
Total	55	100

Source: Primary data processed, 2018

In Table 16 above, it is clear that 34.55% of respondents gave answers that the factor of legal behavior of the community members influenced the auction of the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 27.27% of respondents gave answers that the legal behavior factor of the community members had less effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. The above table also clearly illustrates that 38.38% of respondents gave answers that the factor of legal behavior of citizens, had no effect on the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

5. Legal Facilities and Infrastructure

a. Supporting Factors

Table 17: The influence of supporting facilities on the practice of conducting auction of object mortgages in Gorontalo Province

Indicator	Frequency	Percentage
Influential	24	43,64
Less Influential	21	38,18
No Effect	10	18,18
Total	55	100

Source: Primary data processed, 2018

In Table 17 above, it is clear that 43.64% of respondents who gave answers that the supporting facilities factor influenced the auction of the execution of the object of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 38.18% of respondents gave answers that the supporting facilities factor had less effect on the implementation of the auction for the object of mortgage security in Gorontalo Province. The above table also clearly illustrates that 18.18% of respondents who responded that supporting facilities did not affect the implementation of the auction for the execution of mortgage rights objects in Gorontalo Province.

b. Supporting Infrastructure Factors

Table 18: The influence of supporting infrastructure factors on the practice of conducting auction of object mortgages in Gorontalo Province

Indicator	Frequency	Percentage
Influential	23	41,82
Less Influential	24	43,64
No Effect	8	14,54
Total	55	100

Source: Primary data processed, 2018

In Table 18 above, it is clear that 41.82% of respondents gave answers that the supporting infrastructure factor had an effect on the auction for the execution of object mortgages in Gorontalo Province. Furthermore, it can be seen in the table that 43.64% of respondents gave answers that supporting infrastructure factors had less effect on the auction of the execution of objects of mortgage rights in Gorontalo Province. The above table also clearly illustrates that 14.54% of respondents who gave answers that the supporting infrastructure factor, had no effect on the implementation of the auction for the execution of mortgage rights objects in Gorontalo Province.

6. Auction Engineering Factors

Table 19: The effect of auction engineering factors of auction employee employees on the practice of carrying out the execution of mortgage rights object

Indicator	Frequency	Percentage
Influential	39	70,91
Less Influential	14	25,45
No Effect	2	3,64
Total	55	100

Source: Primary data processed, 2018

In Table 19 above, it is clear that 70.91% of respondents gave the answer that the auction employee auction engineering factor, affected the implementation of the auction for the execution of mortgage rights objects in the guarantee law in Gorontalo Province. Furthermore, it can be seen in the table that 25.45% of respondents gave the answer that the auction employee auction engineering factor did not affect the implementation of the auction for the execution of objects of mortgage under the guarantee law in Gorontalo Province. The table above also clearly illustrates that 3.64% of respondents who gave answers that the auction employee auction engineering factor did not affect the implementation of the auction for the execution of objects of mortgage on guarantee law in Gorontalo Province.

7. Acting Power Factor

Table 20: The influence of official employee power factor on the practice of carrying out the execution of objects of mortgage rights

Indicator	Frequency	Percentage
Influential	37	67,27
Less Influential	17	30,91
No Effect	1	1,82
Total	55	100

Source: Primary data processed, 2018

In Table 20 above, it is clear that 67.27% of respondents gave answers that the auction officials' power factor influenced the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province. Furthermore, it can be seen in the table that 30.91% of respondents gave the answer that the auction officials' power factor had less effect on the implementation of the auction for the object of mortgage security in Gorontalo Province. The above table also clearly illustrates that 1.82% of respondents who responded that the auction officials' power factor did not affect the implementation of the auction for the execution of objects of mortgage rights in Gorontalo Province.

Based on the results of the study as described in the discussion above, it would seem clear that the predictions or assumptions of researchers set forth in the hypothesis in Chapter II are partially proven to be true that there are 7 (three) factors that influence the implementation of Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights On The Land Along With Objects Related To The Land. Three of the seven factors are legal substance, legal structure, and legal culture.

V. CONCLUSION

1. The nature of the auction for the execution of the object of security under the guarantee law is the creation of an auction of transparency that is transparent, fair, certain, efficient, accountable and provides benefits to related parties, as well as in accordance with applicable laws and regulations.
2. The auction for the execution of dependent objects at the State Financial Services and Auction Offices in Gorontalo Province has not been carried out optimally in accordance with the applicable laws and regulations.
3. Simultaneously, all factors, namely factors of legal substance, legal structure, legal culture, public legal awareness, facilities and infrastructure, engineering and power, influence the implementation of auction for the execution of objects of security rights in guarantee law in Gorontalo Province.

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