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INCONSISTENCY IN THE IMPLEMENTATION OF SEMA NO. 4 OF 2014 CONCERNING THE EMPTYING OF MORTGAGE RIGHT AUCTION OBJECTS: ANALYSIS OF COURT DECISIONS AND ITS IMPLICATIONS FOR LEGAL CERTAINTY FOR CREDITORS

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Abstract

This study examines the inconsistency in the application of Supreme Court Circular (SEMA) Number 4 of 2014 concerning the eviction of mortgage auction objects and its implications for creditor legal certainty. Employing a normative juridical method with statutory and case-based approaches, this research analyzes two court decisions: Palu District Court Decision No. 57/Pdt.G/2023/PN Pal and Klaten District Court Decision No. 93/Pdt.G/2019/PN Kln. The findings reveal that inconsistency manifests in two forms: procedural, where SEMA was entirely unaddressed despite physical eviction having been carried out prior to the verdict; and normative-substantive, where the creditor protection spirit underlying SEMA was ignored in the judges' legal reasoning. Both forms of inconsistency result in illusory legal certainty for creditors, rendering the parate execution right guaranteed under Article 6 of Law Number 4 of 1996 on Mortgage Rights effectively unenforceable in practice.

Keywords: Inconsistency, Auction Eviction, Creditor Legal Certainty

I. Introduction

Inconsistency is disobedience or disharmony.[1] In general, inconsistency occurs when there is a condition of inconsistency or conflict between two or more things that should support or be in harmony. According to Satjipto Rahardjo, inconsistency in law arises when there is disharmony between the regulations made, the society as the target, and their implementation, so that it can disrupt legal certainty and the effectiveness of the legal system as a whole [2]. This can ultimately disrupt legal certainty and the effectiveness of the legal system as a whole. In the legal context, inconsistency can also be seen as a conflict between legal norms and their implementation in court, including differences in decisions between judges in similar cases.

Consistency is a key pillar in law enforcement, crucial for achieving legal certainty. Consistency is defined as attitude, steadfastness, and adherence to law in acting or making decisions. [3]From a legal perspective, Satjipto Rahardjo emphasized that the consistency of court decisions is a concrete manifestation of the principle of legal certainty, which must be diligently upheld. Without consistency, the legal system loses its predictability, making it difficult for the public and those seeking justice to trust the judiciary.[4] One area of law prone to such inconsistencies is collateral law. Article 6 of the Mortgage Law (UUHT) grants mortgage holders the right of parate execution to sell the collateral through public auction without a court

[1] Language Development and Fostering Agency, *Big Indonesian Dictionary* (KBBI), online edition, sv "inkonsistency," accessed April 8, 2026, https://kbbi.kemdikbud.go.id/entri/inkonsisten .
[2] Satjipto Rahardjo, Progressive Law: A Synthesis of Indonesian Law (Yogyakarta: Genta Publishing, 2009), pp. 12–15.
[3]Language Development and Fostering Agency, Big Indonesian Dictionary (KBBI), online edition, sv "consistency".
[4]Satjipto Rahardjo, Legal Science (Bandung: Citra Aditya Bakti, 2007), p. 45.

order if the debtor defaults [5]. However, this ease at the auction stage does not necessarily extend to the eviction stage. The Supreme Court issued Circular Letter No. 7 of 2012, which qualifies mortgage auctions as voluntary auctions.[6]

However, the inconsistency in the application of SEMA No. 4 of 2014 remains evident in judicial practice. In Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, the physical vacancy of the auction was carried out on May 15, 2023, but the debtor still filed a regular lawsuit to cancel the auction. Klaten District Court Decision Number 93/Pdt.G/2019/PN Kln also shows similar complexity at the stage of encumbrance of mortgage rights. Some courts still require a regular lawsuit before vacancy, while others immediately apply the vacancy determination based on SEMA, [7]so that the Supreme Court guidelines have not fully created a unity of law . As a result, auction winners often have to wait years to physically take possession of the auction object, bearing financial losses, and facing uncertainty that should not have occurred.[8]

In this case, the inconsistent application of SEMA Number 4 of 2014 weakens the principle of legal certainty, which is one of the fundamental principles in the Indonesian rule of law. Creditors can no longer clearly predict how long the vacancy process will be completed. This situation is not only detrimental to the banking and financing institutions, but can also reduce public confidence in the civil justice system as a whole. [9]Studies in the collateral law literature also show that the issue of legal certainty for creditors holding collateral is a cross-instrument issue. When the collateral execution mechanism changes due to judicial intervention without being balanced by consistent application by the courts, creditors are forced to seek protection measures outside the channels that should be available, so that the effectiveness of the collateral instrument itself is questionable. [10]Therefore, this study is important to analyze the inconsistency in the application of SEMA No. 4 of 2014 and the judge's considerations in determining the decision to vacate the object of the mortgage auction.

II. Research methods

The research method used by the author in this study is the normative juridical method, namely legal research that relies on the analysis of primary and secondary legal materials to examine various concepts, principles, norms, and legal regulations relevant to the problem being studied. [11]This research is oriented towards a systematic assessment of the application of legal norms in judicial practice.

This study applies a normative juridical approach to analyze the inconsistencies in the implementation of SEMA Number 4 of 2014 concerning the Emptying of Mortgage Auction Objects, as well as the judge's considerations in relevant court decisions. The author examines in depth the relevant laws and regulations, namely Law Number 4 of 1996 concerning Mortgage Rights, SEMA No. 4 of 2014, the provisions of the Herzien Inlandsch Reglement (HIR), and various court decisions. Thus, this study is not only descriptive, but also analytical-prescriptive in providing solutions to the problems raised.

[5] Sudikno Mertokusumo, Indonesian Civil Procedure Law, revised edition (Yogyakarta: Atma Jaya University Publisher, 2021), pp. 67-68.
[6] Margono, Principles of Justice, Benefit and Legal Certainty in Judges' Decisions (Yogyakarta: Genta Publishing, 2009), pp. 12-15.
[7] Supreme Court of the Republic of Indonesia, Circular Letter of the Supreme Court Number 4 of 2014.
[8]Rizky Perdana Putra, "Legal Protection for Auction Winners Who Cannot Control the Auction Object" (Thesis, Veteran National Development University Jakarta, 2023), pp. 45–47.
[9]Satjipto Rahardjo, Progressive Law: A Synthesis of Indonesian Law (Yogyakarta: Genta Publishing, 2009), p. 78.
[10] Wardani Rizkianti, Muhammad Helmi Fahrozi, and Muthia Sakti, "Protection Against Creditors Right Holders Fiduciary Guarantee Post Constitutional Court's No. 18/PUU/XVII/2019," Lambung Mangkurat Law Journal 5, No. 2 (2020), pp. 181-183
[11]Soerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Review (Jakarta: RajaGrafindo Persada, 2001), pp. 13-14.

III. DISCUSSION

1. Inconsistency in the Implementation of SEMA No. 4 of 2014 Concerning the Vacating of Mortgage Auction Objects in Court Decisions in Indonesia

Supreme Court Circular Letter (SEMA) Number 4 of 2014 was issued to standardize the guidelines for implementing court duties in handling cases of vacating mortgage auction objects after the mortgage auction object. [12]based on Article 6 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT) [13]. Through this SEMA, auction winners can directly submit a request for vacancy to the Head of the District Court without having to take a regular civil suit, on the basis of expanding Article 200 paragraph (11) HIR. [14]This SEMA revises SEMA Number 7 of 2012 which previously qualified mortgage auctions as "voluntary auctions" so that the fast vacancy mechanism cannot be used. [15]This formulation was then revised through the 2013 Civil Chamber Plenary Meeting and was included in SEMA No. 4 of 2014.

Normatively, the consistent implementation of SEMA No. 4 of 2014 includes three stages, namely: The auction buyer obtains property rights based on the Auction Minutes; if the object is still controlled by the debtor, the winner can immediately submit a request for vacation; and the Head of the District Court issues a decision and orders forced execution if necessary. This procedure is administrative-judicial in nature, not an examination of the main case [16].

Although the normative provisions are quite clear, the practice shows at least three forms of interrelated inconsistencies. First, differences in interpretation of the qualifications of auction types: some courts still refer to SEMA No. 7 of 2012 which qualifies mortgage auctions as voluntary auctions [17], while other courts recognize their executorial nature in accordance with SEMA No. 4 of 2014. Second, procedural inconsistencies, where a number of courts still require a regular civil suit before vacating, contrary to the spirit of legal certainty which requires a common interpretation of cases with similar characteristics [18]. Third, there is no judicial oversight of the vacating process that has been carried out physically without a determination containing considerations of compliance with SEMA, so that there is no judicial documentation that can be used as a reference if a dispute arises in the future [19].

There are also differing views among judges regarding the binding power of the SEMA. Herowati Poesoko called it a "systemic fallacy," [20]while J. Satrio emphasized that the purpose of the mortgage is to quickly and securely recover the creditor's receivables, which can only be achieved if the entire execution process is consistent and predictable [21].

a. Decision No. 57/Pdt.G/2023/PN Pal

The Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, handed down on November 21, 2023, shows the tension between the mortgage execution mechanism and the

[12]Supreme Court of the Republic of Indonesia, Circular Letter of the Supreme Court Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2013 as a Guideline for the Implementation of Duties for the Court (Jakarta, 28 March 2014), Point 3 of the Formulation of the Civil Chamber.

[13]Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 6.
[14]Article 200 paragraph (11) of the Herzien Inlandsch Reglement (HIR).
[15]Supreme Court of the Republic of Indonesia, Circular Letter of the Supreme Court Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Session of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, Point 3 of the Civil Chamber.
[16]M. Yahya Harahap, Civil Procedure Law: Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions, Second Ed. (Jakarta: Sinar Grafika, 2016), pp. 892–895.
[17]Satjipto Rahardjo, Legal Science (Bandung: Citra Aditya Bakti, 2007), p. 45.
[18]Sudikno Mertokusumo, Indonesian Civil Procedure Law, Revised Edition (Yogyakarta: Liberty, 2016), p. 23.
[19]Rizky Perdana Putra, "Legal Protection for Auction Winners Who Cannot Control the Auction Object" (Thesis, Veteran National Development University Jakarta, 2023), pp. 45–47, available in the UPN Veteran Jakarta institutional repository.
[20] Herowati Poesoko, Parate Executie Obyek Hak Tanggungan: Inconsistency, Conflict of Norms and Fallacies in Reasoning in UUHT (Yogyakarta: LaksBang PRESSindo, 2008), pp. 215–218.
[21]J. Satrio, Law of Guarantee, Property Guarantee Rights, Mortgage Rights (Bandung: PT. Citra Aditya Bakti, 2002), p. 241.

protection of parties who feel disadvantaged by the auction process [22]. The plaintiff (Suhariadji), the owner of land and a two-story building measuring 639 m² with a Certificate of Ownership Number 1715/Kamonji in Palu City which was used as collateral for credit by his wife to PT. Bank Mandiri Palu Branch (Defendant), sued Bank Mandiri, KPKNL Palu (Co-Defendant I), and auction winner Asriyandi Tri Putra (Co-Defendant II). Due to default since March 2014, the creditor took execution parate based on Article 6 of the UUHT and held four auctions, until the fourth auction on September 27, 2022, was sold for Rp917,000,000 to Co-Defendant II. The Plaintiff argued that the limit value was unreasonable based on the Indonesian Valuation Standards (SPI 366) and the Minister of Finance Regulation Number 213/PMK.06/2020, thus requesting that Auction Minutes Number 365/78/2022 be declared invalid. The most relevant fact to the SEMA issue is the Plaintiff's own admission in his lawsuit that the execution of the vacancy of the auction object had been carried out by the Court on May 15, 2023 [23], meaning that the physical vacancy had been completed before this case was decided.

SEMA No. 4 of 2014 should be the relevant procedural basis in this case because the case is directly related to the vacancy of the mortgage auction object, the vacancy has been physically carried out before the decision was issued, and the Plaintiff's lawsuit essentially questions the validity of the auction process that is the basis for the vacancy [24]. Comprehensive legal considerations should assess whether the vacancy that has been carried out complies with SEMA procedures, and whether the Plaintiff's lawsuit can be qualified as a form of resistance to the vacancy determination issued based on the SEMA.

However, the Panel of Judges in this decision did not consider and did not refer to SEMA No. 4 of 2014 in its entire legal considerations [25]. The absence of this reference reflects the absence of the analytical framework that should be used. First, the Panel of Judges did not discuss the legality of the implementation of the vacancy on May 15, 2023, even though the crucial question is whether the vacancy was carried out based on the determination of the Chief Justice of the District Court in accordance with SEMA in conjunction with Article 200 paragraph (11) HIR or without a clear procedural basis. Second, the lawsuit was not classified properly within the SEMA framework: The Defendant in his exception had argued, based on Supreme Court Decision No. 1739 K/Sip/1975, that objections to the implementation of the auction must be submitted as a rebuttal/resistance, not a lawsuit for unlawful acts [26], but the Panel of Judges granted the exception without linking it to SEMA No. 4 of 2014 at all. Third, the fact that the eviction had been carried out before the decision was made should have been a critical point of examination to assess whether the SEMA procedures had been complied with or whether a procedural violation had occurred, but these two possibilities were not examined at all [27].

This discrepancy can be explained by several factors: the tendency of judges to treat the SEMA as an internal guideline that is not required to be explicitly stated in the decision, the focus of the trial is more focused on the debate over the auction limit value, and the granting of the exception of lack of parties (Plurium Litis Consortium) which causes the lawsuit to be declared inadmissible (niet ontvankelijke verklaard) without entering into the main points of the case, so that

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[22]Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, dated November 21, 2023, pp. 1–6, available in the Directory of Decisions of the Supreme Court of the Republic of Indonesia (putusan3.mahkamahagung.go.id).
[23]Ibid., p. 5 (Posita number 5): "that based on the results of the aquo auction, the Court has executed an eviction on May 15, 2023."
[24]Supreme Court of the Republic of Indonesia, Circular Letter of the Supreme Court Number 4 of 2014, Point 3 of the Civil Chamber Formulation; see also Article 6 in conjunction with Article 20 paragraph (1) letter a of Law Number 4 of 1996 concerning Mortgage Rights.
[25]Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, pp. 39–43 (Legal Considerations).
[26]Supreme Court Decision Number 1739 K/Sip/1975, as quoted in the Defendant's exception, see Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, pp. 39–43.
[27]Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, pp. 43–46.

all substantive issues regarding the vacancy procedure are never touched upon. The Supreme Court through Book II of the Guidelines for the Implementation of Court Duties and Administration emphasizes that auctions carried out in accordance with the provisions cannot be canceled, but this does not relieve the court from the obligation to verify the compliance of the post-auction stages, including vacancy, with SEMA No. 4 of 2014. [28]As a result, parties who lose objects through vacancy do not receive certainty regarding the validity of the process, and decisions that do not discuss the SEMA further strengthen the pattern of systemic inconsistency in the enforcement of mortgage execution laws in Indonesia, thus making it difficult to achieve unity of law [29].

If examined further, the most relevant provision of SEMA No. 4 of 2014 which is not consistently applied in this case is Point 3 of the Civil Chamber Formulation in conjunction with Article 200 paragraph (11) HIR, which states that buyers of mortgage auctions who cannot control the auction object because it is still controlled by the debtor/execution applicant can submit a request for vacancy directly to the Head of the District Court without going through a lawsuit [30]. This provision should be the main reference framework for assessing whether the vacancy that was carried out on May 15, 2023 was based on a valid determination by the Head of the District Court according to this mechanism. Because the Panel of Judges did not refer to or apply this provision at all, either to assess the validity of the vacancy that had occurred, or to correctly classify the position of the Plaintiff's lawsuit as a challenge to the vacancy determination, the violation of Point 3 of SEMA No. 4 of 2014 in conjunction with Article 200 paragraph (11) HIR is the core of the inconsistency in the application of SEMA in Decision No. 57/Pdt.G/2023/PN Pal.

b. Decision No. 93/Pdt.G/2019/PN Kln

The Klaten District Court Decision Number 93/Pdt.G/2019/PN Kln dated October 28, 2019, adjudicated a land ownership dispute (SHM No. 697/Klaten) between the plaintiff who claimed inheritance rights against the buyer who acquired the land through AJB No. 247/2014 and the creditor holding the Mortgage Right (APHT No. 373/2014). The plaintiff argued that the AJB and APHT were invalid because the seller did not have the authority to transfer the object. [31]. The plaintiff argued that the transaction that gave birth to the AJB was carried out without rights because the seller did not have the authority to transfer the object, thus requesting that the AJB and APHT be declared invalid.

Legally, the creditor as Co-Defendant I has fulfilled all the required procedures where APHT No. 373/2014 was registered and an executorial Mortgage Certificate was issued in accordance with Article 13 in conjunction with Article 14 of UUHT [32]. The most fundamental legal fact is that on May 6, 2014 when the AJB was signed, the land book of SHM No. 697/Klaten did not contain any records of disputes, collateral seizures, or execution seizures [33]. Based on the principles of publicity and good faith, creditors who rely on the official data should receive full legal protection.

Although SEMA No. 4 of 2014 specifically regulates the situation of mortgage auction buyers who cannot control the auction object because it is still controlled by the debtor, namely the

[28]Supreme Court of the Republic of Indonesia, Book II: Guidelines for the Implementation of Court Duties and Administration (Jakarta: Supreme Court of the Republic of Indonesia, 2013), pp. 100 and 149, available on the official website of the Supreme Court of the Republic of Indonesia (mahkamahagung.go.id).

[29]Ari Surya Kusuma et al., “Legal Implications of Obstacles to Emptying Mortgage Objects on Legal Certainty for Auction Winners in Good Faith”, SENTRI Journal 4, No. 1 (2025), pp. 14–16.

[30]Ari Surya Kusuma et al., “Legal Implications of Obstacles to Emptying Mortgage Objects on Legal Certainty for Auction Winners in Good Faith”, SENTRI Journal 4, No. 1 (2025), pp. 14–16.

[31]Decision of the Klaten District Court Number 93/Pdt.G/2019/PN Kln, dated October 28, 2019, pp. 1–5 (Section of the Case), available in the Directory of Decisions of the Supreme Court of the Republic of Indonesia (putusan3.mahkamahagung.go.id).

[32]Law Number 4 of 1996 concerning Mortgage Rights, Article 13 in conjunction with Article 14.

[33]Klaten District Court Decision Number 93/Pdt.G/2019/PN Kln, pp. 4–6 (Trial Facts).

problem at the post-auction stage [34]. Case No. 93/Pdt.G/2019/PN Kln is at a fundamentally different stage, namely when the validity of the mortgage burden is questioned. If the Supreme Court has recognized the need for strong protection for creditors at the post-auction stage, then the same protection, even more fundamental, should also be provided at an earlier stage when the basic validity of the mortgage itself is questioned. The inconsistency in this case is therefore normative-substantive, namely ignoring the spirit and philosophy of creditor protection that underlies SEMA, not procedural inconsistency in the form of ignoring the mechanism for requesting vacancy as specifically regulated by SEMA No. 4 of 2014.

The Panel of Judges at the Klaten District Court focused more on the plaintiff's ownership claim without proportionally assessing its impact on the creditors' legally established rights. [35]In fact, based on Article 32 paragraph (1) of Government Regulation Number 24 of 1997, [36]third parties acting in good faith must be protected from cancellation lawsuits that were never recorded in the land registration system. As a result, a chain effect arose, namely that the cancellation of the AJB automatically destroyed the APHT which was of an accessory nature, so that creditors who had acted according to procedure actually lost their rights.

Based on the analysis, Co-Defendant I should have obtained legal protection based on three principles: first, the principle of good faith as the land book SHM No. 697/Klaten did not contain any dispute records when the APHT was made, so that creditors cannot be expected to know about claims that were never registered; second, the principle of publicity, the Plaintiff's claims that are not reflected in the land book should not invalidate rights that were legally born based on official data; and third, the accessory nature of mortgage rights, because AJB No. 247/2014 has fulfilled all the requirements of Article 1320 of the Civil Code and is free from obstructing records, then APHT No. 373/2014 which stands on it is also valid and provides full executorial rights. The cancellation of AJB based on unregistered historical claims is not only detrimental to creditors, but also damages the reliability of the land registration system as a pillar of legal certainty.[37]

The next question is whether ignoring the spirit of the SEMA can be used as a basis for cassation against the decision of the judex factie. The SEMA is not formally a statutory regulation and cannot be directly used as a basis for cassation based on Article 30 of the Supreme Court Law [38], which limits cassation to decisions of the judex factie that are not authorized, misapply or violate applicable law, or fail to fulfill the requirements required by statutory regulations [39]. However, if ignoring the spirit of the SEMA simultaneously constitutes a disregard for positive legal norms, for example Articles 6, 13, 14, or 20 of the UUHT, or Article 32 of Government Regulation No. 24 of 1997 concerning the evidentiary power of certificates, then there is sufficient basis to declare that the judex factie has misapplied the applicable law. In such a case, the spirit and substance of the SEMA can be used as an interpretive tool to assess the accuracy of the application of the UUHT norms and the PP on land registration by the judex factie. Herowati Poesoko strengthens this view by stating that the repeated inconsistencies in the application of mortgage rights at the judex factie level indicate a systemic problem in the judges' understanding of the UUHT norms, which can only

[34]Supreme Court of the Republic of Indonesia, Supreme Court Circular Letter Number 4 of 2014, Point 3: the scope of this SEMA specifically regulates buyers of mortgage auctions who cannot control the auction object.
[35]Klaten District Court Decision Number 93/Pdt.G/2019/PN Kln, pp. 25–30 (Legal Considerations).
[36]M. Yahya Harahap, Civil Procedure Law, pp. 342–345.
[37]Government Regulation Number 24 of 1997 concerning Land Registration, Article 32 paragraph (1).
[38]M. Yahya Harahap, The Powers of the Supreme Court: Cassation Examination and Civil Case Review (Jakarta: Sinar Grafika, 2009), pp. 439–445.
[39]Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and Law Number 3 of 2009, Article 30 paragraph (1).

be consistently corrected through cassation and judicial review based on arguments regarding violations of positive legal norms.[40]

A comparison of the two decisions shows that the inconsistency in the application of SEMA No. 4 of 2014 is present in two forms rooted in the same problem, namely the absence of a consistent analytical framework. In Decision No. 57/Pdt.G/2023/PN Pal, the inconsistency is procedural because SEMA is not referred to at all; whereas in Decision No. 93/Pdt.G/2019/PN Kln, the inconsistency is normative-substantive because the spirit of creditor protection that is the philosophy of SEMA is ignored. As Margono emphasized, consistency in judges' decisions does not mean absolute uniformity, but rather a similar approach to similar cases and characteristics [41], and these two decisions show that this similarity of approach has not been realized, so that legal certainty for creditors holding mortgage rights is not guaranteed in Indonesian judicial practice.

2. Judge's Considerations in Determining the Decision Regarding the Vacating of Mortgage Auction Objects

The judge's reasoning (ratio decidendi) is the most important part of a decision, because it describes how the judge interprets the facts, relates them to applicable legal norms, and ultimately draws legal conclusions. In the context of this research, the judge's reasoning is key to understanding the extent to which SEMA No. 4 of 2014 concerning the Vacating of Mortgage Auction Objects is truly used as a reference, both procedurally and in terms of its underlying spirit and philosophy. Peter Mahmud Marzuki emphasized that in the legal discovery method, the judge is obliged to consider all relevant legal facts, including the internal regulations of the Supreme Court that are substantially related to the main case being examined [42]. Based on this framework, the following discussion will outline three things: first, what is the nature and direction of the judge's reasoning in the two decisions analyzed; second, how the issue of vacating mortgage auction objects is placed within this consideration; and third, what kind of legal certainty is ultimately obtained—or not obtained—by the mortgage holder as a result of the judge's reasoning.

a. Judge's Consideration

In general, legal considerations in a civil decision should be structured in a hierarchical manner, starting from examining the formal requirements of the lawsuit, proving relevant facts, to applying material legal norms in accordance with those facts [43]. In Decision No. 57/Pdt.G/2023/PN Pal, the Panel of Judges took a very short path: the legal considerations stopped at accepting the Defendant's exception regarding the lack of parties (Plurium Litis Consortium), so that the lawsuit was declared inadmissible (niet ontvankelijke verklaard) without ever entering the main points of the case [44]. Consequently, all of the Plaintiff's arguments regarding the validity of the auction limit value, the validity of Auction Minutes Number 365/78/2022, and the validity of the vacancy that had been carried out on May 15, 2023, were never materially examined. Such legal considerations were formal-procedural in nature and did not touch on the substance of the case, thus not providing legal answers to the questions actually raised by the parties.

In Decision No. 93/Pdt.G/2019/PN Kln, the judge's considerations differ: The Panel of Judges entered the main case and assessed the validity of the Deed of Sale and Purchase (AJB) No. 247/2014 and the Deed of Granting Mortgage Rights (APHT) No. 373/2014, but the

[40]Herowati Poesoko, Parate Executie Obyek Hak Tanggungan: Inconsistency, Conflict of Norms and Fallacies in Reasoning in UUHT (Yogyakarta: LaksBang PRESSindo, 2008), pp. 225–230.
[41]Margono, Principles of Justice, Benefit and Legal Certainty in Judges' Decisions, pp. 70–72.
[42]Peter Mahmud Marzuki, Legal Research, Revised Edition (Jakarta: Kencana Prenada Media Group, 2016), pp. 137–140.
[43]M. Yahya Harahap, Civil Procedure Law: Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions, Second Ed. (Jakarta: Sinar Grafika, 2016), pp. 855–860.
[44]Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, pp. 43–46.

assessment was more based on an analysis of the Plaintiff's historical ownership argument obtained through inheritance [45]. The legal considerations in this decision proportionally less review the position of Co-Defendant I as the holder of the mortgage right who had obtained his rights through a series of legal procedures in accordance with the UUHT, even though the cancellation of the AJB and APHT directly impacted the existence of the mortgage rights he owned. In other words, the legal considerations in this decision tended to be one-sided, namely more oriented towards protecting the ownership rights argued by the Plaintiff rather than protecting the property rights of third parties in good faith.

If the two types of considerations are compared, it can be concluded that both in the decision that stopped at the formal exception (Pal Decision) and in the decision that entered the main point of the case but was not proportional (Klaten Decision), SEMA No. 4 of 2014—both textually as a guideline for the vacancy procedure, and contextually as a reflection of the spirit of protection for creditors holding mortgage rights—was never made part of the legal consideration framework. Margono reminded that the consistency of the judge's considerations is a prerequisite for achieving three basic principles of law simultaneously, namely justice, benefit, and legal certainty [46]. The absence of SEMA in the considerations of these two decisions indicates that the guidelines specifically issued by the Supreme Court to address the issue of vacating objects of mortgage auctions have not been fully internalized in the mindset of judges at the district court level, so that the consistency that Margono meant cannot be realized.

b. Clearance of Mortgage Auction Object

SEMA No. 4 of 2014 outlines that buyers of mortgage auctions who cannot control the auction object because it is still controlled by the debtor or related parties can directly submit a request for vacancy to the Head of the District Court, who then has the authority to issue a vacancy order and order the bailiff to carry out forced execution based on Article 200 paragraph (11) HIR [47]. This mechanism is administrative-judicial in nature and normatively does not require an examination of the main case, because the basis for the determination is solely based on the validity of the auction process that has been carried out. Thus, the vacancy of the mortgage auction object should always be traceable to a decision of the Head of the District Court which serves as the legal basis, so that the validity of the vacancy can be tested if it is later questioned by the injured party.

In Decision No. 57/Pdt.G/2023/PN Pal, the fact of the vacancy that was carried out on May 15, 2023, as acknowledged by the Plaintiff himself in his lawsuit, [48]this decision is the only event of vacating the object of the mortgage auction that appears concretely in the two decisions analyzed. However, the Panel of Judges did not examine at all whether the vacancy was based on the determination of the Chief Justice of the District Court referring to SEMA No. 4 of 2014, or whether it was carried out without a clear determination. The absence of this examination makes the vacancy that has already occurred a stand-alone fact, independent of the legal framework that should cover it. In fact, the Supreme Court itself through Book II of the Guidelines for the Implementation of Duties and Court Administration emphasized that auctions carried out in accordance with the provisions cannot be canceled, but this affirmation does not

[45]Klaten District Court Decision Number 93/Pdt.G/2019/PN Kln, pp. 28–33 (Legal Considerations).
[46]Margono, The Principles of Justice, Benefit and Legal Certainty in Judges' Decisions (Yogyakarta: Atma Jaya Yogyakarta University Publisher, 2021), pp. 67–72.
[47]Article 200 paragraph (11) of the Herzien Inlandsch Reglement (HIR) in conjunction with the Supreme Court of the Republic of Indonesia, Circular Letter of the Supreme Court Number 4 of 2014, Point 3 of the Civil Chamber Formulation.
[48]Palu District Court Decision Number 57/Pdt.G/2023/PN Pal, p. 5 (Posita number 5): “that based on the results of the aquo auction, the Court has executed an eviction on May 15, 2023.”

automatically relieve the court from the obligation to verify whether the post-auction stages, including vacancy, have complied with the provisions of SEMA No. 4 of 2014 [49].

In Decision No. 93/Pdt.G/2019/PN Kln, the issue of vacating the auction object is not directly relevant, because the case is at the stage of imposing mortgage rights and has not yet reached the auction stage, let alone vacating [50]. However, a comparison of these two decisions actually shows the complete series of parate execution rights granted by Article 6 in conjunction with Article 20 paragraph (1) letter a of the UUHT to creditors holding mortgage rights, namely starting from the birth of a valid mortgage right (as experienced by Co-Defendant I in the Klaten Decision), the implementation of the auction if the debtor is in default, to the vacating of the auction object as the final stage (as experienced by the parties in the Pal Decision) [51]. If at each stage of the series, both at the stage of imposing mortgage rights and at the post-auction vacating stage, the court does not consistently provide protection and certainty in accordance with applicable norms and guidelines, then the series of parate execution rights guaranteed by the UUHT ultimately loses its practical meaning for creditors, because each stage has the potential to become a new point of uncertainty.

c. Certainty Obtained by Mortgage Rights Holders

Sudikno Mertokusumo emphasized that legal certainty requires a common interpretation and approach to cases with similar facts and characteristics, so that each legal subject can clearly estimate the legal consequences of their actions [52]. In line with that, Satjipto Rahardjo added that legal certainty does not only mean the existence of clear regulations, but also consistency in their application, so that legal subjects can entrust their legal actions to the judicial system [53]. Measured by these parameters, the two decisions analyzed show that the legal certainty promised by the parate execution right in Article 6 of the UUHT, as emphasized by J. Satrio as an instrument for fast, certain, and cheap debt recovery for creditors [54], has not been felt in real terms by the parties who are in the position of creditors or auction winners.

In Decision No. 57/Pdt.G/2023/PN Pal, although the Plaintiff's lawsuit was finally declared unacceptable, which formally benefited the Defendant, KPKNL, and the Auction winner, the certainty obtained was pseudo (formal certainty without substantive certainty). There is no part of the decision that explicitly states that the vacancy that was carried out on May 15, 2023, was valid and in accordance with SEMA No. 4 of 2014. As a result, the legal status of the vacancy remains in a legal grey area : if a new lawsuit is filed in a revised format according to the identified formal deficiencies, the issue of the validity of the vacancy has the potential to be questioned again without clear guidelines from the previous decision [55]. This kind of uncertainty is in line with the findings of Rizky Perdana Putra, who showed that auction winners are often in a vulnerable position to follow-up lawsuits even though they have won and paid for the auction object according to procedure [56]. Similar issues in the context of other material guarantees show

[49] Supreme Court of the Republic of Indonesia, Book II: Guidelines for the Implementation of Court Duties and Administration (Jakarta: Supreme Court of the Republic of Indonesia, 2013), pp. 100 and 149.

[50] Klaten District Court Decision Number 93/Pdt.G/2019/PN Kln, pp. 4–6 (Trial Facts) and pp. 28–33 (Legal Considerations).

[51] Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Article 6 jo. Article 20 paragraph (1) letter a.

[52] Sudikno Mertokusumo, Indonesian Civil Procedure Law, Revised Edition (Yogyakarta: Liberty, 2016), p. 23.

[53] Satjipto Rahardjo, Legal Science (Bandung: Citra Aditya Bakti, 2007), pp. 45–48.

[54] J. Satrio, Law of Guarantee, Property Guarantee Rights, Mortgage Rights (Bandung: PT. Citra Aditya Bakti, 2002), p. 241.

[55] Ari Surya Kusuma et al., "Legal Implications of Obstacles to Emptying Mortgage Objects on Legal Certainty for Auction Winners in Good Faith", SENTRI Journal 4, No. 1 (2025), pp. 14–17, available on the official SENTRI journal page (e-journal).

[56] Rizky Perdana Putra, "Legal Protection for Auction Winners Who Cannot Control the Auction Object" (Thesis, Veteran National Development University Jakarta, 2023), pp. 45–50, available in the UPN Veteran Jakarta institutional repository.

a consistent pattern. Where every time the guarantee execution mechanism is affected by judicial developments without being accompanied by consistent implementation, creditors holding guarantees must be more careful in ensuring that their rights are protected, because ultimately the judge's decision should realize justice not only for the debtor, but also for the interests of the creditor.

In Decision No. 93/Pdt.G/2019/PN Kln, [57]the uncertainty experienced by Co-Defendant I is more fundamental, as it concerns the existence of the mortgage right itself. Although Co-Defendant I has followed all procedures in accordance with Article 13 of the UUHT, has examined the land register which is free from any records of disputes, collateral seizures, or execution seizures at the time the APHT was made, and has obtained a Mortgage Certificate that provides executorial power, his legal position remains threatened by a lawsuit for cancellation rooted in an unregistered ownership claim. Herowati Poesoko highlighted that the court's tendency to ignore legal protection for creditors who have acted in accordance with procedures, when faced with third-party ownership claims, is a systemic weakness in the application of the UUHT which ultimately weakens the function of mortgage rights as a reliable collateral instrument [58]. Thus, legal certainty for creditors in this case is not only not yet realized, but is in fact threatened with being lost altogether if the judge's considerations do not equally take into account the creditor's position as a third party in good faith.

When compared to Decision No. 57/Pdt.G/2023/PN Pal, whose inconsistency is procedural (the SEMA is not referenced at all), these two decisions demonstrate that the inconsistent application of the SEMA manifests itself in two different ways, but stems from the same problem: the absence of a consistent analytical framework from the judges. This situation confirms that legal certainty for creditors holding mortgage rights has not been adequately guaranteed in Indonesian judicial practice.

IV. CONCLUSION

This study confirms that the inconsistency in the application of SEMA No. 4 of 2014 is present in two qualitatively different forms but both are rooted in the absence of a consistent analytical framework in the judge's considerations. In Decision No. 57/Pdt.G/2023/PN Pal, the inconsistency is procedural: although the physical eviction had been carried out on May 15, 2023 before the decision was issued, the Panel of Judges did not refer to SEMA No. 4 of 2014 at all, so that the validity of the eviction was never verified and its status remained in a gray area. In Decision No. 93/Pdt.G/2019/PN Kln, the inconsistency is normative-substantive: the spirit of creditor protection that was the philosophy behind the birth of SEMA was not reflected in the judge's considerations which were more biased towards the Plaintiff's historical ownership claim. These two forms of inconsistency lead to the same problem: the legal certainty obtained by creditors is illusory, because not one decision states explicitly that the series of executions of mortgage rights has been carried out legally, so that the parate execution right guaranteed by Article 6 of the UUHT loses its certainty precisely at the stage where it should be most protected.

From a methodological perspective, the applied normative legal approach has proven to be able to adequately address the formulated problems. The statutory approach allows for a systematic mapping of the normative hierarchy between the UUHT, Article 200 paragraph (11) HIR, SEMA No. 7 of 2012, and SEMA No. 4 of 2014, so that the normative foundations that should be used as a reference by judges can be clearly identified. The case approach through an analysis of the ratio decidendi of the two decisions then shows concretely where deviations from the normative framework occur in practice. The concept of legal certainty from Sudikno Mertokusumo and Satjipto Rahardjo functions effectively as a benchmark for assessing the

[57] Wardani Rizkianti, Muhammad Helmi Fahrozi, and Muthia Sakti, "Protection Against Creditors Rights Holders Fiduciary Guarantee Post Constitutional Court's No. 18/PUU/XVII/2019," Lambung Mangkurat Law Journal 5, No. 2 (2020), pp. 180–189.
[58]Herowati Poesoko, Parate Executie Obyek Hak Tanggungan: Inconsistency, Conflict of Norms and Fallacies in Reasoning in UUHT (Yogyakarta: LaksBang PRESSindo, 2008), pp. 215–230.

quality of certainty actually obtained by creditors, while the concept of consistency of decisions from Margono and the concept of parate execution rights from J. Satrio and Herowati Poesoko successfully explain why the inconsistencies found are not merely technical differences, but have deeper implications for the reliability of the material security instrument as a whole. Thus, the theoretical framework and the chosen method support each other in uncovering the root of the problem that is the focus of this research.

However, this study is not without limitations that must be acknowledged as a basis for further research. The analysis relies solely on two decisions from two different jurisdictions, so the findings cannot be generalized as a comprehensive portrait of court practices across Indonesia. Furthermore, the normative juridical approach inherently falls short of empirical data, such as judges' direct views on the binding status of the SEMA or creditors' actual experiences in dealing with the vacancy process, which could enrich understanding of the non-structural factors underlying these inconsistencies. Therefore, further research is recommended to expand the quantitative coverage of decisions from various district court jurisdictions in Indonesia to construct a more representative map of inconsistencies. Furthermore, a combination of an empirical-sociological approach through interviews with judges and creditors will enable this issue to be understood not only from the perspective of the legal text but also from the perspective of the legal culture that shapes it, thus enabling more targeted remedial efforts.

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