

The legal remedy against the execution of an auction that does not yet have a winner is an objection

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ABSTRACT

The execution of a mortgage auction often serves as a legal mechanism for generating disputes between creditors and debtors. Conflicts typically arise when a debtor files a lawsuit challenging an auction process that has not yet been completed, particularly when no winning bidder has been determined yet. This study examines the Supreme Court of the Republic of Indonesia's Decision No. 2644 K/Pdt/2023 clarifies that the proper legal remedy against an unfinished auction process is not a lawsuit but rather an execution objection (*perlawanan eksekusi*). Employing a normative juridical method, the research adopts both statutory and case study approaches to analyze the Court's reasoning and its implications for legal practice. The findings reveal that the Supreme Court establishes execution objection as the sole appropriate legal action at this stage to uphold legal certainty and the effectiveness of the mortgage enforcement process. Nevertheless, protecting the debtor's rights remains a critical consideration, particularly through mechanisms that ensure adequate notification and access to legal remedies. This decision underscores the court's effort to balance procedural efficiency with fairness, preventing unnecessary disruption of the execution process while safeguarding the debtor's opportunity to challenge procedural irregularities. In conclusion, the ruling provides an important precedent for distinguishing between permissible and impermissible legal remedies during the auction execution phase, reinforcing the principle that disputes concerning incomplete auctions must be resolved through execution objections rather than civil litigation.

Keywords: mortgage right, execution auction, lawsuit, objection, legal certainty.

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1. INTRODUCTION

Disputes between creditors and debtors concerning the enforcement of mortgage rights (*bak tanggungan*) through public auctions continue to be one of the most intricate and evolving legal issues in Indonesia. Within the framework of the national civil law system, a creditor who holds a mortgage right is legally authorized to execute the collateral object if the debtor defaults or fails to fulfil the obligations stipulated in the credit agreement (Sutedi, 2018). Such enforcement is typically carried out through an execution auction, either by way of *parate executie* as provided under Article 6 of Law No. 4 of 1996 on Mortgage Rights over Land and Objects Related to Land, or through a court order (Law No. 4 of 1996). This mechanism is designed to ensure that creditors can recover their debts efficiently while maintaining legal certainty in the use of secured assets as guarantees.

In practice, however, the implementation of mortgage execution auctions frequently encounters objections from debtors. These objections are often filed in the form of civil lawsuits before district courts on the grounds of alleged procedural irregularities, infringements of the debtor's rights, or as a deliberate strategy to delay the execution process (Harahap, 2017). Such practices create procedural obstacles and give rise to a distinct juridical dilemma: whether the filing of a civil lawsuit constitutes an appropriate legal remedy to contest the ongoing auction process or whether a more specific procedural mechanism should be employed. The lack of uniform judicial interpretation in this regard has further contributed to uncertainty in the enforcement of execution law, potentially undermining both creditor confidence and the stability of the credit system (Subekti, 2014).

The complexity of this issue becomes more pronounced when the debtor initiates a lawsuit before the auction process is concluded or before a winning bidder is determined. This raises a fundamental question of procedural law: whether a civil lawsuit (*gugatan perdata*) is the correct and lawful means to challenge an unfinished auction or whether an execution objection (*perlawanan eksekusi*) provides the proper legal avenue. The Supreme Court of the Republic of Indonesia addressed this issue in its landmark decision No. 2644 K/Pdt/2023, ruling that a lawsuit filed by a debtor to challenge the execution of a mortgage auction is inadmissible (*niet ontwankelijk verklaard*) because the correct procedural remedy is an execution objection, not a civil lawsuit (Mahkamah Agung RI, 2023). The Court reasoned that prior to the determination of a winning bidder or the completion of the auction process, there is no definitive object of dispute that may be adjudicated under civil procedure.

This judicial interpretation has significant implications for the development of procedural law. First, it clarifies that filing a lawsuit before an auction's completion constitutes a procedural error and cannot be substantively examined by the court. Second, it reinforces the need to protect the balance between the rights of debtors seeking justice and creditors pursuing lawful recovery. Third, it enhances the principle of legal certainty, particularly for the State Assets and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang*, KPKNL), by ensuring that execution procedures are not arbitrarily disrupted by litigation.

Accordingly, this study is relevant for three main reasons: (1) to critically analyze the Supreme Court's legal reasoning in declaring such lawsuits inadmissible, (2) to examine the procedural and conceptual distinction between a civil lawsuit and an execution objection in Indonesian civil procedural law, and (3) to assess the implications of this judicial precedent for legal practice, debtor protection, and the assurance of legal certainty for creditors as holders of mortgage rights.

Ultimately, the findings of this study are expected to contribute academically and practically to the refinement of civil procedural doctrines governing execution auctions. They may also serve as a reference for legal practitioners and policymakers in formulating a more equitable and coherent legal framework that ensures procedural justice and promotes a balance between the interests of debtors and creditors in the enforcement of mortgage rights.

2. METHOD

This study employs a normative juridical approach, which focuses on an examination of the prevailing positive legal norms and relevant legal principles in addressing the issues under investigation (Soekanto & Mamudji, 2011, p. 13). This approach is particularly appropriate because the research deals directly with the interpretation of statutory provisions, principles of administrative law, and juridical analysis of court judgments. The normative juridical method allows for a structured evaluation of legal doctrines and judicial reasoning to clarify the relationship between law in theory and law in practice (Marzuki, 2010, pp. 35–36).

The research was conducted through a library-based study (library research), relying primarily on legal sources gathered through a literature review. Three types of legal materials were used in this study. Primary legal materials include: (1) the Supreme Court Decision of the Republic of Indonesia No. 2644 K/Pdt/2023; (2) the *Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)*; and (3) Law No. 4 of 1996 on Mortgage Rights over Land and Objects Related to Land. Secondary legal materials include legal textbooks, journals, academic articles, and expert opinions relevant to the topic. Tertiary legal materials comprise law dictionaries and legal encyclopedias that assist in clarifying technical terms and contextual meanings (Soekanto & Mamudji, 2011). 15).

Additionally, this study utilizes a case approach, which involves examining and analyzing the judicial reasoning contained in Supreme Court Decision No. 2644 K/Pdt/2023. Through this approach, the research explores how judges apply legal norms and employ juridical reasoning to resolve disputes arising from governmental negligence and administrative oversight (Marzuki, 2010, pp. 146–147). The analysis of judicial decisions provides insights into the consistency and rationality of legal interpretation, particularly concerning the procedural aspects of auction execution and the accountability of public authorities.

The collected data are analyzed qualitatively, meaning that the interpretation of statutory provisions, legal doctrines, and judicial decisions is performed without statistical or quantitative techniques. Instead, the analysis focuses on logical, systematic, and objective reasoning to draw coherent and legally sound conclusions. By synthesizing normative rules and judicial practices, this study seeks to identify both the theoretical and practical implications of the current legal framework.

Through this methodological approach, this study aspires to contribute to the development of legal theory—especially in the fields of administrative and civil law—by offering a more comprehensive understanding of local government accountability and the legal protection mechanisms available to citizens. The normative juridical approach also ensures that the research findings are grounded in doctrinal accuracy while maintaining their relevance to contemporary judicial practice in Indonesia.

3. RESULT AND DISCUSSION

3.1 The Legal Considerations of the Supreme Court in the Decision of the Supreme Court of the Republic of Indonesia Number 2644 K/Pdt/2023

In this case, I Putu Juni Angga and I Putu Arya Utama acted as the plaintiffs, filing a civil lawsuit against PT Bank Negara Indonesia (Persero) Tbk, Regional Office 08 (Defendant I), and the State Assets and Auction Service Office (KPKNL) Singaraja (Defendant II). The dispute arose from a credit relationship between the Plaintiffs and Defendant I, wherein the plaintiffs had obtained a loan facility secured by a parcel of land as collateral through the imposition of a mortgage right (*hak tanggungan*), as regulated under Law Number 4 of 1996 on Mortgage Rights over Land and Objects Related to Land. However, owing to financial difficulties, the plaintiffs defaulted on their repayment obligations, prompting Defendant I to exercise its right to execute the collateral. To this end, Defendant I submitted a request to Defendant II to conduct a public auction of the mortgaged property in accordance with administrative law procedures and the Ministry of Finance regulations governing auction implementation.

In response, the Plaintiffs objected to the planned auction and filed a civil claim before the District

Court of Negara, requesting, among other things: (1) annulment of the auction plan concerning the mortgaged property; (2) suspension of the execution proceedings, asserting their good faith to independently repay the credit; (3) a grace period of two years to voluntarily sell the asset so that the proceeds could be used to repay the debt; (4) temporary reduction of the instalment payment to IDR 1,000,000 per month until the property was sold; and (5) compensation for immaterial losses amounting to IDR 1.934 billion if the execution was carried out without considering their request.

Essentially, the Plaintiffs' lawsuit represented a form of objection or opposition to the planned execution of their mortgaged property. They argued that the auction process, initiated by Defendant I and facilitated by Defendant II, disregarded the principles of fairness and good faith because it failed to consider their willingness to fulfil their financial obligations. The Plaintiffs maintained that they possessed both the capacity and the intention to settle their debt voluntarily through a private sale, thereby seeking additional time before the execution of the auction.

Furthermore, the Plaintiffs' proposal to continue paying instalments of IDR 1,000,000 per month demonstrated their commitment to meeting their financial obligations despite economic hardship. Thus, the civil claim aimed not only to cancel the auction but also to obtain legal protection against potential material and immaterial losses that might result if the auction proceeded.

During the trial, the District Court dismissed the claim, and this decision was subsequently upheld by the Denpasar High Court at the appellate level. Both courts held that the defendants' actions were legally valid and complied with the procedural requirements of the law governing the execution of mortgage rights.

However, the Supreme Court reached a different conclusion upon cassation. In its Decision No. 2644 K/Pdt/2023, the Supreme Court declared the plaintiffs' lawsuit inadmissible (*niet ontvankelijk verklaard*) on the ground that the legal remedy pursued was procedurally incorrect. The Court reasoned that because the auction had not yet been completed and no winning bidder had been determined, there was no concrete legal object that could form the basis of a civil dispute. Therefore, the appropriate legal mechanism to contest the execution was an objection to execution (*verzet*), as stipulated under civil procedural law, rather than a general civil action (Mertokusumo, 2010; Harahap, 2017).

The Supreme Court's reasoning is based on a fundamental procedural principle that a lawsuit can only be brought when there is a real and concrete dispute, not a hypothetical or anticipatory one. A civil claim must arise from an event that produces tangible legal consequences, infringes a party's rights, or causes an actual loss (Harahap, 2017). In this case, although the auction had been scheduled, no winning bidder had been determined and no transfer of ownership had occurred, meaning that there were no legal consequences yet arising from the execution process. Therefore, the Plaintiffs' claim was considered premature, as it was filed against an act that had not yet produced a definite legal impact (Hadrian & Hakim, 2018).

The doctrine of prematurity in civil actions has significant implications for procedural law, especially concerning the fulfilment of the formal requirement of legal interest (*rechtmatig belang*). A lawsuit must be grounded in a concrete and current legal interest, that is, the existence of a right that has been violated at the time the lawsuit is filed (Mertokusumo, 2010). In the absence of such interest, the lawsuit is deemed premature and fails to meet the minimum threshold for judicial admissibility. This procedural principle, which has been consistently upheld in the Supreme Court's jurisprudence, prevents courts from adjudicating matters that have yet to give rise to actual legal consequences or that rest on mere speculation about future events.

In the context of mortgage execution, an auction that has not yet produced a winning bidder does not generate any legal effect that can be construed as a wrongful act (*onrechtmatige daad*) or a ground for claiming damages. The administrative stage of the auction process conducted by the KPKNL remains a preparatory action and does not create a transfer of rights or tangible loss to the debtor. Consequently, a civil lawsuit filed before the completion of the auction and before any legal consequences arise is procedurally defective.

The Supreme Court further emphasized that the appropriate procedural avenue for challenging execution measures is *verzet* (opposition to execution), as governed by the *Herziene Indonesisch*

Reglement (HIR), which serves as a *lex specialis* to address disputes arising from enforcement proceedings (Harahap, 2017). *Verzet* enables an affected party to challenge the lawfulness or fairness of an execution action that has been ordered but not yet completed, particularly when such an execution may inflict harm or violate due process.

In contrast, an ordinary civil action constitutes a general legal remedy intended to resolve civil rights disputes and cannot be employed to halt or suspend execution procedures that are still in progress. The misapplication of this procedural path risks undermining both creditor rights and legal certainty. Accordingly, the Supreme Court’s position reinforces procedural discipline and doctrinal consistency within Indonesian civil procedure, affirming that *verzet* is the proper legal instrument for contesting execution irregularities.

This ruling thus provides important judicial clarification that distinguishes between a general civil claim and a specific procedural opposition to execution, ensuring the correct application of procedural mechanisms and preventing the overlapping of legal remedies. Moreover, it strengthens the principles of legal certainty, fairness, and efficiency within the framework of civil justice in Indonesia, safeguarding the balance between the rights of debtors and creditors in enforcing mortgage rights.

3.2 The Position and Distinction between Lawsuit and Objection to Execution in Civil Procedural Law

To fully comprehend the position of the Supreme Court in this case, it is essential to outline the fundamental distinction between a civil lawsuit and an objection to execution, particularly in the context of implementing a mortgage right auction. See Table 1

Table 1. Distinction between Civil Lawsuit and Objection to Execution (*Verzet*)

Aspect	Civil Lawsuit	Objection to Execution (<i>Verzet</i>)
Legal Basis	Civil Code, HIR/RBg	Articles 195–208 HIR (or 206 RBg)
Purpose	To resolve civil disputes between parties	To annul or suspend the execution process
Object of Dispute	Civil rights or obligations	Acts of execution by the bailiff or auction officer
Time of Submission	At any time before the statute of limitation expires	During or immediately before the execution process
Parties Involved	Generally between plaintiff and defendant	A third party or the defendant against the execution process
Example	Breach of contract claim, tort action	Objection to a planned auction or execution seizure

In the execution of a mortgage right auction, the enforcement procedure begins when the creditor, as the holder of the mortgage, files an application with the State Assets and Auction Service Office (Kantor Pelayanan Kekayaan Negara dan Lelang, KPKNL) to conduct a public auction as an enforcement measure against the collateral due to the debtor’s default. Upon receiving the application, the KPKNL initiates the administrative procedure as regulated under the applicable statutory provisions, which include scheduling and publicly announcing the auction. Essentially, this mechanism constitutes part of the non-litigation enforcement process based on the executorial force of the mortgage certificate, as stipulated in Article 20 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. However, in practice, debtors or other interested parties frequently raise objections to the planned auction, asserting that they have been disadvantaged or not given a fair opportunity to settle their obligations amicably. In such cases, the appropriate and lawful procedural remedy under civil procedural law is an objection to execution (*verzet*), which must be filed before the competent court (Soekanto & Mamudji, 2011).

An objection to execution (*verzet*) serves as a special legal remedy designed to suspend, delay, or annul enforcement actions deemed unlawful, procedurally defective, or harmful to the party subject to enforcement. This legal remedy is specifically regulated under Articles 195–208 of the *Herziene Indonesisch Reglement* (HIR) and carries a *lex specialis* character compared to the general civil lawsuit procedure (*lex generalis*) (Marzuki, 2010). As emphasised by Sudikno Mertokusumo, *verzet* provides a procedural safeguard

to ensure that the enforcement process is conducted fairly and within the boundaries of procedural law, offering protection to parties whose interests may be jeopardised by irregular execution measures (Mertokusumo, 2009, pp. 162–164). The *verzet* mechanism therefore ensures procedural balance and legal certainty by allowing objections to be raised through a formal and structured process rather than arbitrary interruptions of enforcement.

In practical terms, when a debtor believes that an auction is conducted arbitrarily, inconsistently with legal procedure, or without due consideration of good faith, the debtor retains a constitutional right to challenge such enforcement. However, this right must be exercised through *verzet*, not through a general civil lawsuit (Soekanto & Mamudji, 2011). The rationale for this distinction lies in the different legal purposes served by each remedy: a general civil lawsuit aims to resolve a private law dispute between parties, while *verzet* specifically targets the legality and procedural validity of an execution measure (Harahap, 2009, pp. 612–615). This distinction is critical to ensuring procedural integrity, the protection of individual rights, and the maintenance of *legal certainty*.

Filing a general civil lawsuit against an unfinished auction—one in which no winning bidder has yet been determined—constitutes a procedural misstep. Such an action may obstruct or delay the execution process, undermining the fundamental purpose of execution, which is to uphold legal certainty and protect the rights of creditors as holders of property security interests. Execution through auction carries an executorial nature, meaning that it grants the creditor the authority to enforce their rights directly over the collateral. Therefore, misusing the wrong legal remedy introduces legal uncertainty and potential harm to both creditor and debtor (Marzuki, 2010; Harahap, 2009). It is essential that disputing parties understand the substantive difference between a general civil action and *verzet*—the former is appropriate only when a specific legal event has resulted in tangible legal consequences, while the latter is designed to prevent or rectify unlawful or defective enforcement actions.

The Supreme Court of the Republic of Indonesia has consistently clarified this doctrinal distinction through its jurisprudence. In its Decisions Number 1795 K/Pdt/2010 and 2545 K/Pdt/2011, the Court firmly held that objections to the execution process, including auction procedures, must be pursued through *verzet* and not through a general civil lawsuit. This position reinforces the understanding that auctions conducted under the executorial authority of mortgage rights form an inseparable part of the enforcement process rather than an independent civil act (Mahkamah Agung Republik Indonesia, 2011). Accordingly, any alleged procedural defects or potential harm arising from execution must be addressed exclusively through *verzet* as regulated in Articles 195–208 of the HIR.

The Supreme Court Decision Number 2644 K/Pdt/2023 reaffirms this reasoning, establishing that lawsuits against unfinished auctions—those without a confirmed winning bidder—lack a concrete object of dispute and thus fail to meet the procedural requirements for examination in a general civil proceeding. The Court reiterated that the executorial nature of the mortgage right auction demands a *lex specialis* remedy in the form of *verzet*, rather than a *lex generalis* civil lawsuit (Mahkamah Agung Republik Indonesia, 2023). This interpretation not only ensures procedural order and efficiency but also strengthens the protection of rights for both creditor and debtor within a clearly defined legal framework.

Moreover, the Court's position reflects the principles of efficiency and *due process of law* in execution proceedings. Auctions as enforcement mechanisms must guarantee transparency, fair notice, and a balanced opportunity for all parties to exercise their procedural rights through the appropriate legal channel. As Mertokusumo (2009) explains, this procedural coherence embodies the civil procedural principle that a *special mechanism must prevail where it exists*, thereby preserving efficiency, legal certainty, and justice within the judicial process.

4. CONCLUSION

Based on the analysis of the Decision of the Supreme Court of the Republic of Indonesia Number 2644 K/Pdt/2023 and the review of the applicable civil procedural law, several key conclusions can be drawn as follows: (1) The Supreme Court explicitly ruled that a lawsuit filed by a debtor against the execution auction of a mortgage right (*bak tanggungan*) that has not yet produced a winning bidder is

deemed inadmissible (*niet ontvankelijk verklaard*). This is because no concrete legal event has occurred that could serve as the object of dispute in an ordinary civil lawsuit. The Court reasoned that an ongoing auction does not yet generate sufficient legal consequences to constitute a justiciable controversy within the realm of civil proceedings; (2) The proper legal remedy in response to an unfinished execution auction is an *objection to execution* (*verzet*), rather than a general civil lawsuit. The *verzet* procedure serves as a specific legal mechanism under civil procedural law, intended to express opposition to execution actions carried out by a creditor or auction officer, including the execution of mortgage rights. This mechanism is procedurally and substantively more appropriate as it directly pertains to the execution process itself.

This decision reinforces the principle of legal certainty and the efficiency of execution proceedings, while simultaneously emphasising the importance of a debtor's comprehension of available legal remedies. Without adequate legal knowledge, debtors are prone to resorting to inappropriate procedural channels, which ultimately fail to provide effective legal protection for their interests.

As a form of contribution to the improvement of the legal system, the author offers several recommendations as follows: (1) For debtors or parties who feel disadvantaged by the execution auction process, it is essential to enhance their understanding of the distinction between a civil lawsuit and an objection to execution (*verzet*). Professional legal assistance and legal education from the onset of credit default are crucial to prevent procedural errors in pursuing legal remedies; (2) For creditors and auction officials (KPKNL), it is important to uphold the principles of prudence and transparency throughout all stages of the auction process. Procedures for notification, auction scheduling, and objection mechanisms must be conducted openly, accountably, and in accordance with regulations to prevent well-founded objections from debtors.

Ethical Approval

Not Applicable

Informed Consent Statement

Not Applicable

Authors' Contributions

GA served as the lead author, formulated the research problem, designed the study using a normative juridical approach, conducted statutory and case analysis, and prepared the initial manuscript draft. MTS contributed to collecting and reviewing legal materials, analysing the Supreme Court Decision No. 2644 K/Pdt/2023, refining the interpretation of legal principles, and assisting in revising and finalizing the manuscript.

Disclosure Statement

The Authors declare that they have no conflict of interest

Data Availability Statement

The data presented in this study are available upon request from the corresponding author for privacy.

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Notes on Contributors

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