Parate Execution in Disputes Settlement of Financing Contract with Guaranteed Mortgage on Islamic Banking Practices

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ABSTRACT

Disputes settlement of financing contract with guaranteed mortgage after the decision of the Constitutional Court No. 93/PUU-X/2012 requires a follow-up of the existing verdict by conducting execution. Execution implies a forced attempt to realize rights and/or sanctions. There are three kinds of executions: the execution of the will of the parties, the parate execution and the fiat execution. In practice, there are still obstacles in the implementation of parate execution. Based on the phenomenon, the purpose of this research is to know the legal basis and parate execution mechanism in the dispute settlement of the financing contract with the guaranteed mortgage on islamic banking practices. This research is socio-legal research, using qualitative analysis and philosophical and sociological approach. Primary data was obtained from the results of research in Religious Court and Supreme Court. As for the results of the research, it was found that the parate execution in the disputes settlement of the financing contract with the guaranteed mortgage on Islamic banking practice is based on Surah al-Baqarah verses 280, 282 and 283, Law No. 21 year 2008, Article 54 of Law No. 7 year 1989 in junction with Law No. 3 year 2006 in junction with Law No. 50 year 2009, Article 20 paragraph (1 a) in junction with Article 6 of Law No. 4 year 1996, Article 1121, 1178, 1241 Civil Code, PERMA No. 2 year 2008. The mechanism of execution of guaranteed mortgage is executed by the *Shahibul Maal* (creditor/Islamic bank**)** without having to perform the fiat execution to the religious court but can be executed in cooperation with the State Auction Office (SAO).

Keywords: Parate Execution, Dispute Settlement, Financing Contract, Guaranteed Mortgage, Islamic Banking

I. Introduction

Legal relationship between the bank and the customer begins with the consensus of the contract that applies to them. The implementation of the contract was initially intended for the realization of the purpose of the parties. However, in its implementation not all financing contracts can run well. The implementation of financing contract began to be constrained by the existence of problems. According to Mahmoeddin, the problem is the existence of a difficulty that requires solving, or a constraint that interfere with the achievement of optimal goals or performance. It can also be an aberration or incompatibility between necessity and reality. The essence of the formulation of the problem that must be answered is to fix the error if there are mistakes found and eliminate the constraints if there are obstacles found (Mahmoeddin, 2010).

The legal relationship between Islamic banks and customers begins because of the financing. Beck et al., (2013) argued that Islamic banking is growing concept in the Muslims as well as in the non-Muslims countries. Financing contract is practiced in around the world, in Muslims and as well as Non-Muslims countries like United States, Australia, Canada and United Kingdom (Babar Khan et al, 2014). Especially In Indonesia, non-performing financing is one of the five major problems faced by the national banking system including Islamic banking. The definition of non-performing financing is a financing that is in the classification of doubt and troubled (Mahmoeddin, 2010). In the case of non-performing financing, the bank maintains its liquidity by attempting to solve the problems it faces. The settlement of the problems arising in the financing contract with the guaranteed mortgage is based on the principle of binding of the contract (*Mabda' Wujub Al Wafa' Bi Al 'Aqad/Pacta Sunt Servanda* principle) which means that the legally created parties' contract binds the parties as law. Similarly, if there is a problem on the financing contracts that are bound by guaranteed mortgage, it also refers to the principle.

After the Decision of the Constitutional Court Number 93/PUU-X/2012 which is related to the institution for the dispute settlement of guaranteed mortgage in the practice of Islamic banking, settlement through religious court is required. Therefore, religious courts must be ready and able to provide protection to customers and the Islamic banking industry. The development of the implementation of the settlement of Islamic banking disputes, after the decision of the Constitutional Court Number 93/PUU-X/2012 based on the opinion of some judges in the

Religious Courts, on the one hand increasingly shows to the public understanding that the Islamic economic dispute becomes the absolute competence of religious court so that they no longer filed their case to the General Judiciary. On the other hand, these developments become energy that pushes the judges in the religious courts to improve their academic readiness and judicial skills in solving Islamic economic disputes, especially Islamic banking disputes.

Dispute settlement of financing contract with guaranteed mortgage after the decision of the Constitutional Court No. 93/PUU-X/2012 requires a follow-up of the existing verdict by conducting execution. Execution implies a forced attempt to realize rights and/or sanctions. There are three kinds of executions: the execution of the will of the parties, the parate execution and the fiat execution. In practice, there are still obstacles in the implementation of parate execution due to the ignorance and lack of clarity related to its legal basis and the mechanism. Based on the description then the formulation of the problem is what is the legal basis and how the mechanism of parate execution in the dispute settlement of the financing contract with the guaranteed mortgage in the practice of Islamic banking.

II. Methods and Materials

2.1. Point of View/Stand Point

This research used socio-legal approach with qualitative tradition (Noeng Muhajir, 2002). Its operationalization was carried out according to the constructivism paradigm. The paradigm of constructivism is a set of beliefs on a legal reality (Islamic banking) as a result of construction with the nature of relative, specific and contextual. The writers' relative stand point to the problem in this research is at the episteme level which is not as a participant but as an observer. As an observer, the writers will seek answers to the formulation of the proposed problem by studying the reality of the dispute settlement of the financing contract with the guaranteed mortgage in the Islamic banking practice based on the relevant law or policy and its implementation in the community. Plenary understanding obtained is a product of interaction between researchers with the object's product studied. There is a relatively subjective transactional relationship between the researchers and the research subjects. Researchers are

instruments, so that at the level of axiology, the position of the researchers are as facilitators who bridge the diversity of existing data and subjects.

2.2. The Research Strategy

This research was conducted with two strategies namely library research and case study. Literature study is conducted on several documents or literature on dispute settlement through financing contract with guaranteed mortgage. Existing documents are then grouped according to the time dimension or period. The case studies conducted in this study are national cases, especially the cases of dispute settlement on financing contract with the guaranteed mortgage in the practice of Islamic banking. This case study was conducted to record the social facts that go along with the development of the society in supporting and sustaining human needs in the field of *muamalah* (transaction) in society.

This study uses the rules of socio-legal studies, which means to understand the law not merely as normologic and esoteric normative entities. The Islamic Civil Code (*muamalah*) in this study is understood as an entity that is strongly influenced by non-legal factors. Substance or content formulation, choice of objectives and means used to achieve the objective or dispute settlement of financing contract with guaranteed mortgage in Islamic banking practices are believed to be interaction with non-legal factors.

2.3 Data Collection Techniques

The secondary data were obtained through library research and legal documents, which include: a. Primary Legal Material, including: Surah Al-Baqarah verses 280, 282 and 283, Law No. 21 year 2008, Article 54 of Law No. 7 year 1989 in junction with Law No. 3 year 2006 in junction with Law No. 50 year 2009, Article 20 paragraph (1 a) in junction with Article 6 of Law No. 4 year 1996, Article 1121, 1178, 1241 Civil Code, PERMA No. 2 year 2008, Several Decrees of the Judges in Religious Courts and b. Secondary Law Materials, consisting of books on Islamic Banking, Legal Principles, Legal Theory, Procedure Laws in Religious Courts, Legal Research Methodology, and Journals. The primary data were obtained through field research

conducted by observations and interviews in PA Yogyakarta, PA Sleman, PA Bantul, PA Gunung Kidul, PA Temanggung, PA Bandung, PA Purbalingga and the Supreme Court.

III. Results and Discussion

3.1. Legal Relationships between Customers. Islamic Bank and Mortgage Guarantee and Legal Basis

Islamic banking is one part of the developing Islamic economy today. The existence of a guaranteed mortgages in a Islamic financing contract that develops in practice is in accordance with Islamic principles and is permissible under Islamic law. Actually there is no problem with the full implementation of The Act of Mortgages because in Islamic law it is also known as "*rahn*" which although its definition is not the same as the mortgage, it is practically the same and can be analogous to mortgage as one of the guarantee institution.

The position of guarantees in Islamic civil law and the practice of Islamic banking is not to cover the capital issued by the bank and the guarantee is not the principal issue of the financing contract. For example, on a *Murabaha* financing contract, if made and executed without guarantees, the practice may already be approved or applicable. So the position of guarantee aims to prevent or avoid the occurrence of deviation from the *musytari* (customer) party and so that the *musytari* is serious or careful with the order in accordance with the promised at the beginning of the transaction at the time of making the contract. In this case the guarantee is not a must-have and as a mandatory requirement on every *Murabaha* financing.

Bank Indonesia permits Islamic banks to bind their *musytari*'s assets in order to provide trust to the bank. The guarantee can only be executed if the *musytari* breaks a promise or default occurs. Prior to the execution of guaranteed mortgage, Islamic banks in general will perform three stages of settlement, including: rescheduling, reconditioning and restructuring. This is in line with the principle of postponement in Islamic based on Surah Al-Baqarah verse 280, which states that "And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew." However, in principle it is impossible for the banks to give the money lent to their customers because if it

happens of course the bank will go bankrupt, but at least the Islamic bank gives the postponement period so that customers can pay off their debts and the existence of the guaranteed mortgage is for the security of Islamic banking.

The legal correlation between Islamic banks and customers begins with the contract. The discussion in this article is focused on the financing contract. The existence of the contract is based on Al Qur'an Surah Al-Baqarah verse 282, which mentions: "O you who have believed, when you contract a debt for a specified term, write it down". In practice to apply prudential principles and to give trust to banks, Islamic banks are allowed to bond certain objects as mortgage in the financing contract. The legal basis for binding of mortgage in the practice of Islamic banking is based on the Qur'an Surah Al-Baqarah verse (283) which is:

"And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord." This verse provides a security arrangement.

Other than the above two paragraphs, the legal basis for the justification of the application of guarantee in the practice of Islamic banking is also based on Article 1 number 26 of Law Number 21 year 2008 concerning Sharia Banking (Sharia Banking Law). The Islamic Banking Law uses the term "mortgage" to interpret a guarantee. In that Article, mortgage is defined as additional guarantee, either in the form of movable or immovable property submitted by the mortgage owner to Islamic bank and/or sharia business unit (UUS), in order to guarantee the settlement of the obligations of the beneficiary customer.

According to the rule of positive law, a guarantee is something given to the creditor submitted by the debtor to induce trust and to ensure that the debtor will fulfill the obligation which can be valued by money arising from an engagement (Hartono Hadisoeprapto, 1984). The provisions on Guarantee are further regulated in Article 20 paragraph (12) of the Supreme Court Regulation No. 2 year 2008 on Compilation of Sharia Economic Law (KHES). In Article 20 paragraph (12) of KHES, *Kafalah* is described as a guarantee given by the guarantor to a third party or lender to meet the obligations of the second party or the guarantor. Under Article 303 KHES there are two types of *kafalah*, namely on self *kafalah* and over property *kafalah*. KHES

does not give an explanation of the sense of on self *kafalah* and over property *kafalah*. To explain the meaning of each, the opinion of Sayyid Sabiq (Sayyid Sabiq, 1987) can be used, which mentions that there are two types of *kafalah*. The first is *kafalah bi an-nafs* (self *kafalah*) which, in a narrow sense, is the obligation of a guarantor to bring in people borne (*makful*) to the insured (*makful lahu*) whereas in a broad sense, it is a *kafalah* where the borne object to bring people to the insured. The second is *kafalah bi al-mal* (treasure *kafalah*) is a form of *kafalah* where the guarantor is bound to pay the obligation in the form of money as treasure. Kafalah is an Arabic word for responsibility, amenability or suretyship. It often refers to an act of someone adding himself to another person, and making himself liable to perform the responsibility, together with the person. Kafalah can be seen in the Sunnah of the Prophet Muhammad S.A.W., where Abu Qatadah asked the Prophet to pray for a man to whom he (Abu Qatadah) had been a guarantor for a debt (Al Bukhari, Al-Jami' Al Sahih, 3/94) (Maryam Sofia Mohd Suhaimi, 2016).

In the practice of Islamic banking, the mortgage applied mostly to the financing contract. In the legal relationship between Islamic bank customers and Islamic banks should be properly implemented based on Islamic principles and laws and regulations applicable in Indonesia. Based on Article 10 paragraph (1) of Law Number 4 year 1996 regarding the Right of Dependence (hereinafter written UUHT), is stated that the mortgage is preceded by a pledge to grant the mortgage as a security of a certain debt repayment poured in and is an integral part of the financing contract of the related receivable or any other agreement that generates the finance.

Based on Article 10 Paragraph (2) of UUHT, it is stated that the granting of the mortgage shall be made by the Deed of Grant of Mortgage by the Land Deed Official (hereinafter written PPAT) in accordance with the prevailing laws and regulations for the interest of the parties to be fulfilled, therefore it should be agreed well and correctly. In addition, the contract must be balanced between the rights and obligations between the parties that bind each other. Financing that will apply the mortgage should be done by an authentic deed. This is based on the provisions of Article 15 paragraph (1) of the UUHT which mentions that the Power of Attorney to Charge a Mortgage shall be made by the notary deed or the PPAT deed. The PPAT deed can be categorized as an authentic deed.

According to Yahya Harahap, the strength of proof that is inherent in the authentic deed consists of three inherent strengths which are:

a. The power of external proof which is an authentic deed shown to be considered and treated as an authentic deed; unless it can be proved otherwise that the deed is not an authentic deed. As long as it cannot be proved otherwise the deed attaches the strength of external proof. The purpose of the words 'having an external proofing power' is to attach the principle of legal presumption that every authentic deed must be considered true as an authentic deed until the opposite is able to prove otherwise.

b. The power of formal proof which is based on Article 1871 of the Civil Code that all information contained therein is properly given and submitted to the official who made it. Therefore, all statements given by signatories in authentic deeds shall be deemed as correct as the statements to be said and desired. The presumption of the truth contained therein is not limited to the information or statements therein are true of the person who signed it but also includes the formal truths contained by the certifying authority of the date specified in it so that the date shall be deemed true, and the date of the deed is not be disqualified by the parties and judges.

c. The power of material proof. The power of this third authentic deed holds three principles contained in the authentic deed:

    1) The signing of an authentic deed by a person for the benefit of the other. This is a fundamental principle of material power of an authentic deed whereby any authentic deed signatories by a person shall be permanently deemed for the benefit of the other party, not for the benefit of the signatory;

    2) One can only burden the obligation to oneself. This principle is a continuation of the first principle (Yahya Harahap, 2005).

The product of the Land Deed Official includes the Deed of Grant of Mortgage (hereinafter written APHT) containing the granting of mortgage to certain creditor as guarantee for the settlement of the receivables. In order to have flawless strength, APHT must be registered in the Land Office which is the work unit of the National Land Agency in a regency,

municipality or other administrative area of the same extent, which registers land title and maintenance of a general register of land registration. With the registration of APHT, the the rights receiver of the APHT shall have a preferred right if the party has a breach of promise.

3.2. Dipute Settlement of the Financing Contract with the Guaranteed Mortgage with Parate Execution

If the debtor fails to promise (default) and dispute settlement efforts both non litigation and litigation has been taken and there has been a decision with permanent legal force then the next stage stands on the regulation of execution of the Mortgage arranged in Parate Executie institution. Parate Executie can be found in **Article 20 paragraph (1) of the UUHT**, which states that if the debtor is defaulted, then:

a. The Right of the first Mortgage Holders to sell the object of Mortgage as referred to in Article 6 of the UUHT, or

b. The Executorial titles contained in the certificate of Mortgage as referred to in Article 14 paragraph (2) of the UUHT, the object of Mortgage is sold through a public tender in accordance with the procedures specified in the legislation for the repayment of the holders of the Mortgage with the preceding right of the other creditor.

The substance of the complete juridical text of Article 6 of the UUHT is: “If the debtor has defaulted, the first holder of the Mortgage shall have the right to sell the object of the mortgage on his own power through a public tender and to take his receivable from the proceeds of sale”.

The convenience of using the means of Article 6 of the UUHT is due to the sale of the object of mortgage is only through public auction without having to request for fiat execution to the Chairman of the Religious Court. The convenience primarily reflects the efficiency of time compared to the execution of court decisions that have a permanent legal force. This is because if the procedure of execution through the formalities of procedural law, the process takes a long time and complicated procedures. Parate Executie is cheaper than the implementation of executie

using the executorial title because they do not bear the cost of applying for the execution of the executie so that it is a more effective means of resolving a dispute on the mortgage.

According to J. Sartio, the term "parate executie" is etymologically derived from the word "paraat" which means ready at hand (Satrio J, 2015), so Parate Execution is said to be an execution tool ready at hand. According to the dictionary of law, Parate Execution has the meaning of direct implementation without going through the process (court or judge) (Anonymous, 1977).

The definition of parate execution given by the opinion of experts is the authority to sell on its own power. In addition to this, other notion of Parate Execution is if the debtor defaults, the creditor can execute the object of mortgage without having to ask for fiat from the Chairman of the Court, without having to follow the rules of the game in the Law of Procedure. Therefore, there are rules of the game itself, no need to have a confiscation first, and no need to involve bailiffs and hence the procedure is easier and cheaper (Herowati Poesoko, 2013).

Parate Execution is implicitly expressed and implied in UUHT. Particularly it is mentioned in point 9 section about General Explanation of UUHT, which states: "One of the characteristics of strong mortgage is that it is easy and certain in the execution, if the debtor defaults. Although in general the provisions on execution have been regulated in applicable Civil Procedure Law, It is deemed necessary to include in particular the provisions on execution of mortgage in this law, which governs the institution of "Parate Execution" (by the author) as referred to in Article 224 of Updated Indonesia Regulation (*Het Herziene Inlands Reglement*) and Article 258 Regulation of Procedure Law for the Regions of Outer Java and Madura (*Reglement tot Regeling van het Rechtwezen in de Gewesten Buiten Java en Madura*)..." (Ibid, p. 198).

Based on the general explanation section above, the intention of the UUHT formers states that although basically the execution is generally governed by the Civil Procedure Code, but to prove one of the characteristics of the mortgage lies in the easy and sure execution. Therefore, specifically the provision of execution of mortgage is regulated on the Parate Execution institution. Before continuing the intention of the UUHT formers, the Parate

Execution arrangement in the UUHT must be looked for first. The basic principle is on the regulation concerning the execution of mortgage, which is regulated in Article 20 paragraph (1) of UUHT as mentioned above.

Based on the contents of Article 6 UUHT, the intertwined elements that become the essence of Article 6 of UUHT are:

a. Debtor defaults;

b. The first Mortgage Holder Creditor is entitled;

c. The right to sell the object of Mortgage over its own power;

d. Terms of sale through a public auction;

e. The right of the creditor to take out the settlement of receivables is limited to the right of claim.

It is therefore understandable that the purpose of the UUHT formers to establish the Parate Execution Institution, in one hand is to provide a means that is deliberately held for the first mortgage holders creditors to get back the repayment of receivables in an easy and cheap way, with the intention to break through the formalities of procedural law on the other hand, the formation of a legitimate Parate Execution is with the intention to strengthen the position of the creditor of the first mortgage holder and those entitled to it.

Of course, it seems to be not balanced if the execution through the court, especially about the amount to be collected with all efforts, costs and especially the time required to get back the non-performing financing. Therefore with the existence of Article 6 of UUHT, the creditor will be protected from the inappropriate actions of debtors, feasible or even does not have good willingness. Article 6 of the UUHT is prepared by the legislator as the main pillar for the creditor (bank) in obtaining acceleration of the settlement of its receivables, so that the receivables that have been returned to the creditor then can be used for the rotation of the wheels of the economy. There is no doubt that Article 6 UUHT is the legal basis of Parate Execution of if the debtor default which is used as an excellent means for the adaptation of economic needs.

The provisions that existed before the UUHT are provisions for mortgage institutions, provided for in Article 1178 paragraph (2) of the Civil Code, which states: "It is permissible for the first mortgage creditor to, at the time of the granting of the mortgage, firmly requests that if the principal is not paid off properly or if the owed interest is not paid, it shall be entirely authorized to sell a pledged *persil* (land) in public, to withdraw the principal, or interest and expenses, of the sales revenue. Such promises shall be made in accordance with the manner mentioned in Article 1211 of the Civil Code." If Article 1178 Paragraph (2) of the Civil Code is constructed, then there will be found some elements that are interwoven into the essence of the article, namely:

a. The existence of this clause must be firmly agreed upon (*met beding in van eigenmachtige verkoop*);

b. There is, when given a mortgage;

c. Promised for the first mortgage;

d. The debtor has defaulted;

e. The existence of the authority to sell on its own power;

f. The existence of absolute power;

g. Must be registered;

h. The existence of the terms of sale implementation;

i To heed the provisions of Article 1211 of Civil Code.

j. The creditor's right to the proceeds from the sale.

k. Not through litigation.

The contents of Article 1211 Civil Code are:

In the case of voluntary sale, the claim for release from such hypothetical charges cannot be made unless the sale has taken place in public, in accordance with local

customs, and before a public official; in addition, the registered creditors must be notified thereof, at least thirty days prior to the allotment, by writ, which shall be forwarded to the cities, which were selected by the creditors at the registration.

There is a relationship between the provisions of Article 1178 paragraph (2) of Civil Code with Article 1211 of Civil Code. Article 1178 paragraph (2) of the Civil Code mentions that the requirement of "public sale", by referring to the provisions of Article 1211 of Civil Code which must comply with the provisions: (1) Sales has taken place in public; (2) Based on local custom; (3) The sale shall be made before a public official namely State Auction (Djuhaendah Hasan, No Year).

To implement the provisions of Article 6 of UUHT, the implementation guideline shall be regulated in the Circular Letter of the State Agency of Receivables and Auctions Number: SE-21/PN/1998 concerning the Implementation Guideline of Article 6 of UUHT and the Circular Letter of the State Agency of Receivables and Auctions Number SE-23/PN/2000. In number 1 of Circular Letter Number: SE-21/PN/1998, it is mentioned that therefore there is no need to hesitate again to serve the auction demand from the banking sector on the Object of Mortgage under Article 6 UUHT". Based on the number 3 of Circular Letter Number SE-21/PN/1998, it determines that the Auction Object of Mortgage under Article 6 of UUHT is categorized as Voluntary Auctions.

Based on the objectives of the legislators regulating the Parate Execution as regulated in Article 1155 of the Civil Code and Article 1178 paragraph (2) of the Civil Code, it can be seen the legislation ratio – the reason why there is such provision (Peter Mahmud Marzuki, 2005) – a Parate Execution is to accelerate the settlement of the creditor's receivables when the debtor is defaulted by giving the creditor the right to sell the object of guarantee to his or her own power through a public auction, which is carried out by the State Auction Office known as KP2LN.

3.3. **Dispute Settlement of Guaranteed Mortgage with Eggens Theory and Concept of Law Enforcement Effectivity by Soerjono Soekanto**

If found a justification based on simplified theory proposed by Eggens, which states that in the case of the mortgage holder's, lender sells under Article 1178 paragraph (2) of the Civil Code, the holder of mortgage executes the sale of mortgage on the basis of his or her own power. Eggens develops the theory that in such an implementation the creditor actually exercises his own rights and acts as the representative of the owner of the plot (Herowarti Poesoko, 2013).

The right of creditors to conduct Parate Execution in the financing contract with the guaranteed mortgage on the practice of sharia banking can also be based on the lawsuit ratio arising in the law of engagement which is also based on the provisions of Articles 1240 and 1241 of the Civil Code.

Article 1240 Civil Code, contains:

> However, the creditor is entitled to claim the abolition of everything that was conducted in contravention to the obligations, and he is entitled to request the judge to authorize him abolish all such contraventions at the expense of the debtor; without prejudice to his right to claim for compensation of costs, damages and interests should there be grounds for them.

Article 1241 of the Civil Code, contains: If such obligation is not performed, the creditor may be authorized to implement the obligations at the expense of the debtor. Based on the contents of Article 1241 of the Civil Code, some elements can be known including:

a. Non-performing debtors;

b. The creditor obtains the right on the grounds of power;

c. Conduct the engagement himself; and

d. At the expense of the debtor.

In case all dispute settlement processes have been attempted and the time has come to execute an existing verdict then one of the most effective and efficient alternatives for creditors

is to use Parate Execution. According to the UUHT formers, the enforcement of the provisions on execution mentioned in Article 20 of UUHT requires implementing regulations, a regulation which further regulates the execution procedure of each type of execution. This is firmly mentioned in Article 26 of the UUHT which mentions: As long as there is no legislation regulating it, taking into account the provisions of Article 14 of the UUHT, the rules concerning the execution of mortgages in effect on the coming into force of this law shall apply to the execution of mortgage. The provision of Article 26 is reaffirmed by the explanatory section and General Description of point 9. In the description of Article 26 of the UUHT it is said that the regulations concerning mortgage execution contained in this article are the provisions contained in Article 224 of HIR/Article 258 of RBg. The provision in Article 14 of the UUHT that must be considered is that *grosse acte* of mortgages that serve as a letter of evidence of the existence of mortgages, in the mortgage is a certificate of mortgage.

In order to have effective execution of Parate Execution of Guaranteed Mortgage in the implementation of financing contracts on the practice of Islamic banking, its enforcement can also pay attention to the concept of Effectiveness of Law Enforcement according to Soerjono Soekanto (Soerjono Soekanto, 2005). Soerjono Soekanto argues that there are 5 (five) factors in law enforcement, among others: a. Legal factor (Law); b. Law enforcer factor; c. Facilities or supporting facilities factor; d. Community factor; and e. Cultural factor.

Based on the above description, the existence of legal factors (law) has been presented. In order to carry out the Parate Execution more effectively, the other four factors namely law enforcer factor, facilities or supporting facilities factor, community factors and cultural factors must also support.

IV. Conclusion

The conclusion of this research is that the parate execution in dispute settlement of financing contract with the guaranteed mortgage on Islamic banking practice is based on Surah al-Baqarah verses 280, 282 and 283, Law No. 21 year 2008, Article 54 of Law No. 7 year 1989 in junction with Law No. 3 year 2006 in junction with Law No. 50 year 2009, Article 20

paragraph (1 a) in junction with Article 6 of Law No. 4 year 1996, Article 1121, 1178, 1241 Civil Code, PERMA No. 2 year 2008. The mechanism of execution of guaranteed mortgage is executed by the *Shahibul Maal* (creditor/Islamic bank**)** without having to perform the fiat execution to the religious court but can be executed in cooperation with the State Auction Office (SAO). The implementation of Parate Execution is evidenced by the transfer of certificate of mortgage from the *Musytari* (beneficiary) to *Shahibul Maal* in this case, the Islamic bank.

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