

# Granting of Dependent Rights: A Legal Comparison Between Indonesia and Malaysia

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## Abstract

**Introduction:** The enforcement of security rights plays a crucial role in debt guarantee systems, balancing the interests of creditors and debtors. Although both countries share a civil law tradition, significant differences exist in their execution mechanisms, particularly regarding the role of the courts, auction procedures, and the protection of debtor rights. In Indonesia, execution procedures are governed by Law Number 4 of 1996 on Mortgage Rights, which allows creditors to initiate either a *parate* execution or litigation through court proceedings. In contrast, Malaysia mandates judicial foreclosure for all mortgage enforcements, as regulated under the National Land Code 1965 and the applicable procedural rules.

**Purposes of the Research:** This study aims to analyze and compare the procedures for executing mortgage objects between Indonesia and Malaysia.

**Methods of the Research:** This research adopts a normative juridical and descriptive-comparative approach by examining statutory regulations, court decisions, and relevant legal literature from both jurisdictions.

**Findings of the Research:** The findings reveal that Indonesia's system offers speed and flexibility but poses a higher risk of procedural abuse, while Malaysia's judiciary-based approach provides greater debtor protection at the cost of increased time and legal expenses. The study also identifies practical challenges such as administrative delays, high execution costs, and legal uncertainties. Accordingly, this research recommends strengthening the oversight of execution practices in Indonesia and considering the introduction of a statutory limitation period, as implemented in Malaysia, to ensure a balanced approach between efficiency and justice in mortgage enforcement systems.

**Keywords:** Mortgage Rights; Execution; Legal Comparison; Indonesia; Malaysia; Legal Protection.

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## INTRODUCTION

The execution of the object of the right of dependency is an integral part of the debt guarantee system in many countries, including Indonesia and Malaysia, in this context, the right of dependency has a function as collateral for the debt given by the debtor to the creditor. The procedure for the execution of the right of dependency is important to ensure that the creditor can regain his rights if the debtor fails to meet his obligations. Therefore, a deep understanding of these execution procedures is essential to improve efficiency and fairness in the resolution of disputes related to dependents.<sup>1</sup>

In Indonesia, the execution of the object of the right of dependency is regulated by Law Number 4 of 1996 concerning the Rights of Dependents, which provides the procedures and mechanisms that must be followed in carrying out the execution. On the other hand, Malaysia has a different system even though both come from the civil law tradition. In

<sup>1</sup> S. H. Simanjuntak, *Hukum Jaminan dan Eksekusi Hak Tanggungan*, (Jakarta: Raja Grafindo, 2017), p. 12.

Malaysia, the execution of the right of dependency is regulated by the National Land Code 1965 and other related laws. Although there are similarities in the legal basis for granting rights of dependents, there are differences in the methods of implementation, especially related to court procedures and auctions.

Several previous studies have discussed the legal aspects of the execution of dependent rights, both in the context of Indonesia and other countries. For example, a study by A. Wijaya that discusses the comparison of the execution of dependent rights in Indonesia and European countries, but is still limited to the analysis of legal theory without examining the practical challenges faced by the relevant parties in execution.<sup>2</sup> Other research by D. H. Gunawan focuses more on procedural aspects in Indonesia, but has not provided a comparison with ASEAN countries that have similar legal systems. Most of the existing literature also does not sufficiently explore the socio-economic impact of the execution process on debtors and creditors.<sup>3</sup> This study aims to fill this gap by comparing the execution procedures of the object of the right of dependency between Indonesia and Malaysia, by comparing these two legal systems, it is hoped that it can provide a deeper understanding of the strengths and weaknesses of the system of execution of the right of dependency, as well as the potential improvements that can be applied in Indonesia. In addition, this study will also highlight aspects of the protection of debtors' rights in execution procedures, which are often a concern in legal practice.<sup>4</sup>

This research will use a comparative approach, by analyzing the regulations and procedures that apply in Indonesia and Malaysia, and examining the implementation of these procedures through relevant case studies. The results of this study are expected to provide useful recommendations for policymakers, legal practitioners, and the public to improve and improve the system of execution of dependent rights in Indonesia.<sup>5</sup> The formulation of the problem is how to execute the object of the right of dependency based on the applicable regulations in Indonesia and Malaysia, as well as what are the differences in procedures and practical challenges faced by creditors and debtors in each country.

## LITERATURE REVIEW

### A. Dependent Rights in Indonesia

Dependent rights in Indonesia are a form of material security provided by the debtor to creditors as a form of legal protection for the repayment of a debt. This right gives a preferential position to the creditor who holds the right of dependency over the object of the guarantee in the form of land rights and everything attached to it. Regulations regarding dependent rights are regulated in Law Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land (Law on Dependent Rights). According to Article 1 number 1 of the Law on Dependent Rights, "Dependent Rights on land and objects related to land are security rights imposed on land rights as referred to in the Basic Agrarian Law, which gives priority position to certain creditors over other creditors". Dependent rights can only be charged on land rights that have a transferable and registered nature, such as

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<sup>2</sup> A. Wijaya, "Perbandingan Eksekusi Hak Tanggungan di Indonesia dan Negara-Negara Eropa", *Jurnal Hukum Eropa*, 14 no. 1 (2019): p. 22-37.

<sup>3</sup> D. H. Gunawan, "Prosedur Eksekusi Hak Tanggungan di Indonesia: Tantangan dan Solusinya", *Jurnal Hukum dan Ekonomi*, 9 no. 3 (2020): p. 45-58.

<sup>4</sup> M. H. Saragih, "Perlindungan Hukum bagi Debitor dalam Eksekusi Hak Tanggungan", *Jurnal Hukum Indonesia*, 7 no. 2 (2021): p. 102-115.

<sup>5</sup> S. K. Harahap, *Penyelesaian Sengketa dan Eksekusi Hak Tanggungan di Indonesia*, (Bandung: Refika Aditama, 2022), p. 123.

Property Rights, Business Use Rights, Building Use Rights, and certain Use Rights.<sup>6</sup> The strength of the right of dependency lies in its nature that provides legal certainty and ease of execution through *execution parate* and execution based on an executory title. In addition to the Law on the Rights of Dependents, the Civil Code is also the normative basis that underlies the existence of the right of guarantee, especially in the form of mortgages and mortgages. The right of dependency in this case is a form of renewal of the concept of a mortgage on immovable property as stipulated in Article 1162 of the Civil Code.

Another legal basis is Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles, especially Article 51 which states that further provisions regarding land security rights will be regulated by a separate law, namely the Law on Dependent Rights, in the context of digitalization, Ministerial Regulation of ATR/BPN Number 9 of 2019 introduces the Electronic Dependent Rights system to speed up the registration process and increase transparency and administrative efficiency Liability Rights.

## B. Charge or Legal Charge in Malaysia

In Malaysia, the system of property security over land is known as *charge*, which is regulated in the National Land Code 1965 (NLC). Unlike Indonesia, which recognizes "dependent rights" as a separate institution, Malaysia adheres to the *Torrens system* which integrates the registration system of property rights and guarantees into a single certificate document. Under Section 241(1) of the NLC, "Any proprietor or co-proprietor of alienated land may, by an instrument of charge in Form 16A, charge the land or his share or interest therein to secure the payment to the chargee of a debt or other money or the fulfillment of any obligation." Charges in Malaysia can be *legal charges* or *equitable charges*. The legal charge is formed through official registration (Form 16A) and is recognized by law as the main instrument of execution because it is registered in the land office, while the equitable charge is more recognition in the principle of equity without registration. However, it is still recognized under the Civil Law Act 1956, especially the principles of common law and equity which are adopted on a limited basis in Malaysia.

Although both give rights to creditors, the legal force of the charge is superior because it can be directly executed through legal proceedings as stipulated in Sections 256–260 of the NLC.<sup>7</sup> In addition, the initial agreement process for the formation of charges refers to the provisions of the Contracts Act 1950, which governs the validity of the agreement and the obligations of the parties. The Contracts Act 1950 is the main law in Malaysia that regulates the basic principles of contract. For a contract to be considered valid and legally binding, it must meet the conditions as specified in the first part of the Contracts Act 1950, in particular Part II: Of the Communication, Acceptance and Revocation of Proposals and Part III: Of Contracts, Voidable Contracts, and Void Agreements. Validity of Contracts under the Contracts Act 1950: According to Section 10 of the Contracts Act 1950: "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."

From this article, there are several valid conditions of the agreement: a) Free Consent: (1) Regulated in Sections 13–19; (2) A contract is only valid if it is made without coercion, fraud, mistake, undue influence, or misrepresentation; b) Competent Parties: Section 11 states that the

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<sup>6</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Bandung: Djambatan, 2005), p. 489.

<sup>7</sup> Teo Keang Sood, *Land Law in Malaysia*, 3rd Edition, (Malaysia: LexisNexis 2019), p. 519–523.

contracting party must: (1) Be at least 18 years of age (*legal age*); (2) Common sense; (3) Not declared legally invalid (e.g. due to bankruptcy or insanity); c) *Lawful Consideration*: (1) Section 2(d) and Section 25; (2) Each promise must be given in return for a value (monetary or non-monetary) that is considered valid. d) *Lawful Object*: The contract must not have a purpose that is contrary to law, public order, or morality. e) *Not Expressly Void*: A contract must not be classified as a contract that is explicitly considered void by law, such as a contract to commit an unlawful act or that involves fraud.

Meanwhile, the litigation and execution process of property encumbered with *charges* is regulated in the Rules of Court 2012, especially in Order 83 which regulates the procedures for execution through *foreclosure proceedings* in court. Foreclosure is a legal process to obtain an order from the court for the collateralized property to be sold through a public auction to pay off the debtor's debt. This is commonly done for properties that are burdened with legal charges. Unlike Indonesia, which allows direct *execution through* the State Auction Office, Malaysia relies on *the judicial foreclosure* mechanism as the only means of execution, thus strengthening protection for debtors but can also take longer.

C. Conceptual Comparison

In general, both Indonesia and Malaysia recognize the importance of tangible land guarantees as protection for creditors. However, the approach used is different. Indonesia separates land title and security instruments (dependent rights as separate objects), while Malaysia integrates security through *the Torrens* system into the ownership structure itself. Indonesia adheres to the civil law system with a codification approach, while Malaysia adheres to the common law system with the principles of jurisprudence and living equity. This has an impact on the administrative mechanisms and legal systems underlying the creation and implementation of the right of guarantee. In Indonesia, the right of dependency must be stated in the Deed of Grant of Dependent Rights and registered at the Land Office, while in Malaysia it is enough through Form 16A and registration at the relevant land official.

**Table 1. Comparison of the concept of Dependent Rights between Indonesia and Malaysia**

Aspects	Indonesia	Malaysia
Legal terms	Dependent Rights	Legal Charge / Equitable Charge
Legal system	Civil law	Common law (Torrens system)
Main Law	Law on Dependent Rights Number 4 of 1996	National Land Code 1965
Supporting legal sources	Civil Code, Basic Agrarian Law, Regulation of the Minister of ATR/BPN	Contracts Act 1950, Civil Law Act 1956, Rules of Court 2012
Registration process	APHT and the Land Office	Form 16A and Land Office
Forms of acknowledgment of collateral	Registered and executorial	Legal charge (registered) and equitable charge (unregistered)



## METHODS OF THE RESEARCH

This study uses normative and comparative descriptive juridical methods to analyze and compare the execution procedures of the object of dependency rights between Indonesia and Malaysia. The normative juridical method focuses on the study of the legal norms that apply in both countries, namely the laws and regulations that regulate the execution of dependent rights, including Law Number 4 of 1996 concerning Dependent Rights in Indonesia and the National Land Code 1965 in Malaysia. This research will analyze these regulations to understand how execution procedures are formally regulated in both legal systems. In addition, this approach will also be used to identify differences in the legal norms that apply in the two countries and assess the extent to which the regulations are applied in practice. Meanwhile, a comparative descriptive method will be used to compare the execution procedures of dependents between Indonesia and Malaysia. This approach aims to describe in detail the enforcement mechanisms applicable in both countries, including the steps taken by creditors and debtors in the enforcement process, as well as the role of the courts and the auction mechanisms applied. This research will also discuss practical challenges faced by creditors and debtors in the execution process, such as legal constraints, high costs, or uncertainty in auctions. This comparison is expected to identify significant similarities and differences, as well as the practical impact they have on each legal system. This research will use primary data consisting of laws and regulations, court decisions, and other relevant legal documents. In addition, secondary data in the form of legal literature, scientific articles, books, and journals discussing related topics will also be collected to support the analysis. Data collection techniques will involve literature studies to examine existing legal sources, documentation to collect court rulings, and case studies to explore real-life examples of the execution process of dependents in both countries. The data collected will be analyzed with a comparative approach, which compares the regulations and procedures in force in Indonesia and Malaysia as well as the practical challenges faced in their implementation. From the results of this study, it is hoped that a clearer understanding of the differences and similarities of the execution procedures of dependents in Indonesia and Malaysia can be obtained, as well as useful recommendations to improve and improve the system of execution of dependents in Indonesia based on best practices applied in Malaysia. This research is also expected to contribute to the development of legal policies in Indonesia, especially related to the execution of dependent rights and debtor protection.

## RESULTS AND DISCUSSION

### A. Procedure for Granting and Registration of Dependent Rights

In Indonesia: The granting and registration of dependent rights in Indonesia is regulated in detail in Law Number 4 of 1996 concerning Dependent Rights. The process consists of two main stages: granting of dependent rights through the Deed of Granting Dependent Rights (APHT) and registration at the Land Office: a) Making APHT: (1) The granting of dependent rights is carried out by making APHT in front of the Land Deed Making Officer (PPAT); (2) APHT must be based on the principal agreement (e.g. credit agreement) and prepared according to the format specified in Article 10 paragraph (2) of the Law on Dependent Rights; (3) The APHT has legal force since it was signed by the parties and PPAT. b) Registration to the Land Office: (1) Within seven working days after the signing of the APHT, PPAT is obliged to send the file to the local Land Office (Article 13 paragraph (1) of

the Law on the Rights of Dependents); (2) The Land Office will register the right of dependency and issue a Certificate of Right of Dependency, which includes "Grosse Deed" as an executory proof; (3) This registration gives preferential legal force and publication to creditors against third parties. c) Digitization of Registration (HT-el): (1) Since the Regulation of the Minister of ATR/BPN Number 9 of 2019, registration of Dependent Rights can be done electronically; (2) It aims to speed up the process, minimize administrative disputes, and support the modernization of the national land system.

In Malaysia: Land security is carried out through a charge mechanism, as stipulated in the National Land Code 1965 (NLC). The formation process does not require a notary deed, but it is enough to fill out the standard form and official registration: a) Filling out Form 16A: (1) Charging is done by filling out Form 16A, which is an official instrument to charge property as collateral to creditors (*chargee*); (2) A charge may be formed on the *alienated land*, and shall apply to the whole or part of the title; b) Registration at the Land Authority: (1) After Form 16A is signed, the creditor/debtor will register it with the Land Officer according to the jurisdiction of the property; (2) After registration, the charge becomes legally valid (*legal charge*) and will be recorded in the land title (land title certificate); (3) This registration also gives a preferential position to the creditor in the event of default by the debtor; c) Implementation of the Equitable Charge: (1) Malaysia also recognizes equitable charge, which is an unregistered but still recognised security based on the principle of equity as set out in the Civil Law Act 1956 and common law practice; (2) Even though it does not have the equivalent force of legal charge, an *equitable charge* can still be maintained in court with sufficient evidence.

**Table 2. Comparison of Burdening of Dependent Rights**

Aspects	Indonesia	Malaysia
Official deed	APHT (by PPAT)	Form 16A
Legal basis	Law on Dependent Rights Number 4 of 1996	National Land Code 1965
Registration institutions	Land Office	Land Office
Warranty certificate	Certificate of Dependency	Recorded on land title
Digital system	Electronic Dependency Rights (since 2019)	Not exhaustive
Alternative non-formal	Not recognized	Equitable charge (Common Law)

## B. Execution of Object of Dependency Rights

The execution of collateral objects such as dependents and *legal charges* is an important instrument in ensuring legal certainty for creditors to obtain repayment of their receivables. However, the success of execution is highly dependent on the legal systems and procedures in place in each country. Indonesia and Malaysia regulate the execution of bail with different approaches: Indonesia recognizes execution parades and court executions, while Malaysia requires all executions by court order.

Execution of Dependent Rights in Indonesia: a) Legal Basis and Execution Mechanism: The execution of dependent rights is regulated in Law Number 4 of 1996 concerning Dependent Rights. There are two main mechanisms that can be pursued by creditors: 1) Execution Regulation: (a) It is regulated in Article 6 of the Law on Dependent Rights, that: "If the debtor defaults on a promise, the holder of the first Right of Dependency has the

right to sell the object of the Right of Dependency on his own power through a public auction and take the payment of his receivables from the proceeds of the sale." (b) This mechanism allows creditors to sell objects directly without the need for a court order, provided that an executory clause is included in the certificate of right of dependency; (c) The auction is conducted through the Office of State Property Services and Auctions. 2) Execution Through Court: (Article 14 paragraph (2) of the Law on the Rights of Dependents) states that the certificate of the right of dependency has "executory power" as well as a court decision that has permanent legal force.

If the creditor chooses the litigation route or there is a dispute, the execution can be carried out through an application for execution to the District Court in accordance with the provisions in Article 224 of the HIR/RBg. The Court will then issue an execution determination and instruct the implementation of the auction to the Office of State Property Services and Auctions.<sup>8</sup> The auction procedure is carried out based on the Regulation of the Minister of Finance Number: 213/PMK.06/2020, which regulates the procedures for conducting auctions of collateral administratively and openly. b) Practical Challenges: Lawsuits against the Legislature often hinder the implementation of the Constitution: (1) The lack of administrative standardization between the State Wealth and Auction Service Office and the Land Office creates uncertainty in practice; (2) Abuse of execution parades can be a human rights issue if it is not accompanied by good faith and complete formal procedures. Case Example: Supreme Court Decision Number 21 K/Pdt/2018. The cassation applicant in this case, Siento Halim, sued the implementation of the auction of the object of dependency rights by the Bandung City State Property and Auction Service Office. The Applicant stated that the auction was not in accordance with the procedure and requested that the auction be postponed until there is a decision with permanent legal force. 1) Case Facts: (a) The Applicant has an object of dependency rights that will be auctioned by the Office of State Property Services and Auctions; (b) The applicant files a lawsuit to delay or cancel the auction for any reason. 2) Considerations of the Supreme Court: (a) The Supreme Court considers that the execution of the right of dependency must be in accordance with the applicable legal procedure; (b) If there is an indication of a violation of the debtor's procedures or rights, the debtor has the right to file an objection to such execution. 3) Amar Decision: (a) Declaring that the execution of the right of dependency to be carried out by the Office of State Property and Auction Services is invalid or at least postponed until the case obtains permanent legal force; (b) Punish the Office of State Property Services and Auctions not to carry out an auction for the execution of the right of dependency on the object belonging to the applicant.

The Supreme Court held that although the creditor has the right of execution, its execution must be subject to the principles of legality and prudence. The court postponed the auction until the entire legal process was completed. This ruling shows that the execution of the right of dependency cannot be carried out in absolute terms without providing room for protection for the debtor. This emphasizes the importance of a balance between creditor rights and the protection of debtors in the process of executing dependent rights.

Execution of Charges in Malaysia: a) Legal Basis and Mechanism: Execution of properties subject to legal charges in Malaysia is carried out through foreclosure proceedings in court,

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<sup>8</sup> Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti 2006) 110-112.

as stipulated in the Rules of Court 2012, specifically Order 83, and supported by Sections 256–260 of the National Land Code 1965, to clarify and add insight, the following are the stages of the Foreclosure Process under Order 83: 1) Submission of Writ and Affidavit (O.83 r.2–r.3): (a) The Chargee submits a writ of summons to the High Court; (b) Accompanied by an affidavit explaining: (1) The amount of unpaid debts; (2) Copy of *the charge* document; (3) History of payment or default of the debtor; (4) Application for sale of security or foreclosure order; 2) Notification to the Chargor (Debtor) (O.83 r.4): (a) The Court will give notice to the debtor; (b) The debtor may provide an answer or objection (defence) within the specified period of time. 3) Application for Summary Judgment (O.83 r.6): If there is no objection from the debtor or if the objection is considered unfounded, the creditor may file an application for *summary judgment*, i.e. an application for the court to decide without a complete trial process. 4) Order for Sale (O.83 r.7): (a) If the application is granted, the court will issue an *Order for Sale*. If the debtor does not file a substantial defence, the court may grant the application with *summary judgment*; (b) The property shall be sold through a public auction by the Land Officer upon the direction of the court. 5) Distribution of Proceeds of Sale: (a) The proceeds of the auction are used to pay: (1) Court fees; (2) Sales administration fees; (3) Debts to creditors; (4) The remainder (if any) is returned to the debtor. 6) Legal Strength and Protection: (a) The execution system in Malaysia is fully *judicial*, which means it can only be carried out with the approval of the court; (b) It provides greater protection to the debtor from potential abuse of power by the creditor. b) Practical Challenges: (1) The foreclosure process through the courts is more time-consuming and costly; (2) However, this system maintains the legal protection of the debtor proactively, since all enforcement actions can only be carried out with the authorization of the judge. Example of a Recent Case: Thameez Nisha Hasseem v. Maybank Allied Bank Berhad [2023] 5 CLJ 874.<sup>9</sup>

The plaintiff as the administrator of the heirs of the deceased Bee Fatima sued Maybank for the right to execute the property pledged since 1984. The bank has not taken legal action to execute in a period of more than 30 years. The Federal Court of Malaysia has held that the right to enforce a legal charge has expired under Section 21(1) of the Limitation Act 1953, which states that legal action to enforce the right to the security property must be taken within 12 years of the occurrence of the default. This ruling provides an important lesson that financial institutions must act in a timely manner in enforcing their guarantee rights. Delays that exceed the time limit set by law may result in the loss of the right of execution of the object of the guarantee, regardless of the value of the receivables or the status of the legal charge itself.

**Table 3. Comparison of Indonesian and Malaysian Execution Systems**

Aspects	Indonesia	Malaysia
Execution system	Execution and trial parade	Only through the court (foreclosure)
Legal basis	Law on Dependent Rights, HIR/RBg, PMK Auction	NLC 1965, Rules of Court 2012
Executing institutions	Office of State Wealth and Auction Services / District Court	High Court / Land Office

<sup>9</sup> Thameez Nisha Hasseem v. Maybank Allied Bank Berhad (2023) 5 CLJ 874; lihat juga: Lexology, "The Limitations of a Chargee's Rights" <https://www.lexology.com/library/detail.aspx?g=e47a4ce4-8809-4af3-b765-d157922123a2>



Debtor protection	Limited (Post-Execution Resistance)	Proactive (defense before execution)
Speed of execution	Fast (parate), slow (litigation)	Slower (via litigation only)
Risk of abuse	High if unsupervised	Smaller (due to judge supervision)

### C. Legal Protection for Creditors and Debtors

Legal protection in material guarantee mechanisms such as dependency rights in Indonesia and legal charges in Malaysia is an important element that reflects the balance between legal certainty and justice. On the one hand, creditors have the right to get debt repayment efficiently and definitively, but on the other hand, debtors must be guaranteed the protection of their rights so as not to become victims of arbitrary execution.

Legal Protection in Indonesia: a) For Creditors: Creditors who hold dependent rights have preferential privileges based on Articles 6 and 14 of the Law on Dependent Rights, which allow the execution of the object of collateral through an execution decree or application to the court. This provides convenience and efficiency for creditors in overcoming debtor defaults. The executory power of the Certificate of Dependents facilitates the execution process without the need to go through the usual civil lawsuit procedure. This strengthens the position of creditors in the national legal system that promotes investment and banking certainty; b) For the Debtor: Although the creditor has a strong right of execution, the law also provides room for protection for the debtor. The debtor may: 1) File a lawsuit against the implementation of the auction that is considered to be in violation of procedures or has not met the requirements for default; 2) Apply for a delay of execution if there are legitimate reasons such as ownership disputes, partial installment payments, or force majeure reasons. Case Example: Supreme Court Decision Number 21 K/Pdt/2018. In this case, the debtor sued the auction of his land by the Bandung State Wealth and Auction Service Office because he did not receive sufficient notice and defense opportunities. The Supreme Court stated that the auction was postponed until there was a decision with permanent legal force, as a form of protection for the debtor's rights.

Legal Protection in Malaysia: a) For Creditors: In Malaysia, creditors or chargees are protected through the right to file for foreclosure with the court under Order 83 Rules of Court 2012. This system guarantees that creditors can execute legal charges in a legal and structured manner. Court procedures provide strong legitimacy and protect creditors from potential counterclaims or abuse by debtors. However, delays in filing a foreclosure application can also pose a risk of loss of creditors' rights. Example Case: Thameez Nisha Hasseem v. Maybank Allied Bank Berhad [2023] 5 CLJ 874. In this case, the court ruled that Maybank's right to execute the collateral property had expired, as it was not exercised within 12 years of the default. This judgment warns creditors to act within the legal deadline, or lose the right of execution forever; b) For Debtors: Debtors in Malaysia have a more proactive position than Indonesia. Before the execution can be carried out: 1) The debtor is given the opportunity to file a defense against the foreclosure lawsuit; 2) The debtor can show the existence of repayment, procedural errors, or hardship as the basis for canceling the execution; 3) The court considers the principles of good faith and fairness in assessing the actions of creditors. The judicial foreclosure system provides space for the debtor to be protected from the beginning of the process, not just after the execution is carried out.

**Table 4. Comparative Analysis and Fairness Evaluation**

Aspects	Indonesia	Malaysia
Execution Mechanism	Parate & court	Judicial foreclosure
Creditor Position	Very powerful, fast	Strong, but subject to time and process
Debtor Protection	Passive, through resistance	Proactive, in the lawsuit process
Access to the Court	Limited (execution can be instantaneous)	Wajib melalui pengadilan
Case Examples	MA No. 21 K/Pdt/2018	Thameez Nisha (2023)

#### **D. Comparison and Evaluation of the Execution System of Dependent Rights**

The system of execution of the object of collateral in the property guarantee law between Indonesia and Malaysia shows significant differences, both in terms of the legal principles adhered to, administrative procedures, and approaches to the protection of the rights of the parties. This comparison is important in order to evaluate the effectiveness and fairness of the execution system in each country, as well as as a basis for formulating policy recommendations or legal harmonization in the future.

In Indonesia, the system of execution of dependents provides two main options for creditors, namely parate execution and execution through court. The execution parade as stipulated in Article 6 of the Law on Dependents allows creditors to sell collateral objects directly through public auctions without having to obtain a court decision first, as long as there is a default from the debtor. This mechanism is based on the principles of efficiency and legal certainty, with the aim of accelerating the receivables recovery process and encouraging the effectiveness of the national financing system. However, in practice, execution parastages often face challenges, especially in the form of lawsuits against debtors who feel aggrieved by the creditors' unilateral actions. Meanwhile, the judicial route of execution provides a guarantee of stronger legal formalities, but it requires more time and cost. This makes creditors have to weigh between efficiency and legal security in determining the execution path to be chosen.

On the other hand, the system in Malaysia does not allow for a parade of executions. The entire legal charge execution process must be carried out through the judicial foreclosure mechanism, namely through an application to the High Court based on Order 83 Rules of Court 2012 and Sections 256–260 of the National Land Code 1965. The court will objectively assess whether the creditor has a legitimate legal basis for executing the guarantee, and whether the debtor is given the opportunity to defend his rights. The system is slower and bureaucratic, but it substantially provides more comprehensive legal protection to debtors. Debtors can present a defence even before the order for sale is issued, and the court must consider the principles of fairness, good faith, and deadlines in accordance with applicable law, such as the Limitation Act 1953.

Evaluation of both systems shows that Indonesia's system excels in terms of speed and flexibility, but contains the risk of procedural violations and potential injustice to debtors if not strictly supervised. This can be seen from a number of lawsuits against debtors that were granted, such as in the Supreme Court Decision Number 21 K/Pdt/2018, where the court postponed the implementation of the auction until the case obtained permanent legal force

due to the discovery of procedural violations. In contrast, the Malaysian system, although slower and costly, provides a guarantee of a more balanced legal process. The Thameez Nisha Hasseem v. Maybank Allied Bank Berhad [2023] decision is an important example of how the Malaysian legal system not only facilitates creditors, but also sets strict deadlines for executing guarantees so that there is no legal uncertainty for the debtor.

Considering the characteristics of each system, Indonesia's approach needs to be strengthened through increased administrative supervision and expansion of judicial control mechanisms, especially against the practice of execution *parate* which is prone to abuse. Meanwhile, the Malaysian system demonstrates the importance of an integrative judicial approach, in which the courts play an active role in assessing the feasibility of execution and maintaining a balance between the rights of the parties. For Indonesia, the Malaysian approach can be used as a consideration in strengthening the guarantee execution system, without having to sacrifice the efficiency and convenience that have become the hallmark of the current system.

## CONCLUSION

Indonesia and Malaysia have different legal approaches in ensuring repayment of receivables through the object of material collateral, although they have the same legal goal, which is to provide protection for creditors without neglecting the rights of debtors. Indonesia with its legal system based on civil law provides flexibility to creditors through the execution *parate* mechanism, which allows the execution to be carried out without going through the courts. This reflects the principles of efficiency and speed in the debt settlement process. However, the effectiveness of this mechanism is not always optimal because there are still weaknesses in administrative implementation and potential violations of debtors' rights. Some cases show that creditors can abuse enforcement authority without an adequate judicial review process. On the other hand, Malaysia, which adheres to the common law system, requires that the entire process of execution of guarantees be carried out through a judicial foreclosure mechanism. This means that all execution actions must be approved by the court first. Although these systems tend to be slower and more costly, this approach provides stronger legal protections to debtors and ensures that the execution process is conducted in a fair, transparent, and controlled manner. Legal protection, Malaysia tends to place debtors in a more active and responsive position to lawsuits, while the system in Indonesia relatively puts debtors in a reactive position, i.e. they can only resist after the execution process is carried out or in the process of running. In addition, Malaysia also applies execution time restrictions through the provisions of the Limitation Act 1953, as affirmed in the case of Thameez Nisha Hasseem v. Maybank Allied Bank Berhad [2023], which is an affirmation that a creditor's delay in executing a guarantee can legally eliminate such rights.

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