

AUCTION PROCEDURE FOR EXECUTION OF COLLATERAL GOODS

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ABSTRACT

This study aims to analyze the occurrence of unilateral execution auctions for collateral, the procedures and implementation of execution auctions, and the legal protection for customers for execution auctions for collateral. The method used in this study is the statute approach, the conceptual approach. Data collection techniques include document study techniques, observation, and interview techniques. These factors cause unilateral execution auctions because one party defaults on the agreed agreement. The factors that cause default are divided into two, namely, the first internal factor and the external factor. The Mortgage Execution Auction procedure consists of 3 procedures: the Pre-Auction Procedure, the Auction Implementation Procedure, and the Auction Minutes. That legal protection is divided into repressive legal protection and preventive legal protection. In implementing the execution auction of the Mortgage Right collateral object, the Bank has not protected customers. When the KPKNL has approved an auction application for a collateral object of a Mortgage Right, the Bank makes an auction announcement and is late in notifying the customer that the collateral object of the Mortgage Right will be auctioned, the customer can obtain legal protection against losses received from the sale of the Mortgage Right that he owns at a price that is far from the fair and reasonable value.

Keywords: Execution Auction Procedure, Mortgage Rights,

INTRODUCTION

Increasing national development in the economic sector requires sufficient funds, so it requires a vital guarantee institution that can provide legal certainty for interested parties. This can encourage increased community participation in development to create a prosperous, just, and prosperous society.

Sustainable national development activities in the economic sector support the achievement of general welfare. Therefore, sufficient funds are needed. One institution that can channel funds needed by the community to support economic development is a Bank.

According to Article 1 number (2) of Law Number 10 of 1998 Amendment to Law Number 7 of 1992 concerning Banking, a bank is a business entity that collects community funds in the form of savings and distributes them to the community in order to improve the

standard of living of the people. In this sense, savings distributed by banks to the community are in the form of credit.

Banks, as one of the financial institutions, have a significant role in the lives of the community, in this case acting as one form of financial institution that aims to provide credit and other financial services so that banks function as¹

1. Fund trading is a place that can collect and distribute community funds effectively and efficiently. Banks are a place for depositing or storing money as a fund distributor; banks provide credit or buy in the form of securities.
2. An institution that facilitates trade transactions and money payments, where the bank acts as a liaison between one customer and another if both carry out transactions.

In Indonesia, banks, in addition to having these general functions, also have a particular function, namely being directed as an agent of development, namely as an institution that aims to support the implementation of development and its results, economic growth, and national stability²

As explained in Article 21 Paragraph (11) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, credit is “the provision of money or bills that can be equated with it based on an agreement or loan agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with the provision of interest.” It can be interpreted that the provision of credit contains the trust of a person or body that gives something to another person or body that is given, with a binding agreement and must fulfill all obligations that are promised to be fulfilled at the time (in the future)³

Credit is not something foreign anymore. Not only is the term credit known to the public in big cities, but even in remote villages, the word credit has become so popular. Credit is a product and service provided by banks to the public⁴

Banking institutions, as financial institutions, have a strategic role in supporting the economic life of a country. Banking has an essential function in the economy, especially for business actors who need credit to develop their business and banking as a place to store safer money. In its activities, the bank collects funds from the community, and then it is obliged to provide funds in ways that best serve the interests of the community and the interests of the funds. In principle, a new bank decides to provide credit if the bank has obtained confidence in its customers. This confidence is based on an in-depth analysis of the customer's ability to have good faith and willingness to pay their debts to the bank. The bank obtains the customer's good faith from the data submitted by the customer in their credit application. To obtain this confidence, an in-depth analysis of the customer's good faith ability and willingness to pay their debts to the bank is carried out⁵

There are four elements of credit, namely trust, time, achievement, and risk, all of which are interrelated. Credit cannot be given without trust. With the trust given by the bank, a certain period is promised, which is mutually agreed upon for its use or repayment⁶

Banking practices usually assess five aspects of the debtor (the five C's analysis): character, capital, capacity, economic condition, and collateral. The most important thing is that the

¹Muhammad Djuhamna, *Hukum Perbankan di Indonesia*, PT.Citra Aditya Bakti: Bandung, 2000. hlm.83

²*Ibid*, hlm.86

³S. Mantay Borbir dan Iman Jauhari, dkk, *Hukum Piutang Dan Lelang Negara Di Indonesia*, Pustaka BangsaP-ress: Medan, 2002, hlm. 1.

⁴Ginanjar, D.W. *Penyelesaian Sengketa Macet Dengan Jaminan Hak Tanggungan Di Unit Sentra Kredit*Me- nengah: Jakarta Timur PT.BNI (Persero). 2014 *PrivatLaw* Vol.III (5)

⁵GatotSupramono, *Perbankandan Masalah Kredit*, Rineka Cipta: Jakarta, 2009. hlm.35

⁶Johanes Ibrahim, *Kartu Kredit*, PT. Refika Aditama: Bandung, 2004, hlm.8

bank in distributing funds for credit must be based on the existence of a guarantee, where this guarantee is not just a promise to carry out or fulfill its obligations but a guarantee that can be used as a guarantee for the repayment of the debt or credit⁷

A guarantee is a guarantee given by a debtor and/or third party to a creditor because the creditor has an interest in the debtor fulfilling his/her obligations in a contract⁸

Collateral received by the bank can be in the form of land rights or rights to goods. In general, land rights guarantees can provide protection and legal certainty for creditors because they can provide bank security in terms of law and economic value, which continues to increase over time. The land rights guarantee institution, better known as mortgage rights, according to Budi Harsono, as quoted by Salim HS, controls land rights, containing the authority for creditors to do something about the land used as collateral. Nevertheless, it is not to be physically controlled and used, but it is to be used if the debtor defaults and takes all or part of the proceeds to pay the debtor's debt to him⁹

Under the nature of the collateral, collateral in the form of land and buildings is generally preferred by banks because its value tends to be stable in the long term, so in credit transactions by banks, it is dominated by collateral in the form of land and buildings. Thus, it is necessary to have a regulation that regulates the collateral of assets in the form of land and buildings so that there is convenience and certainty for banks in obtaining repayment of credit given to debtors if in the future the debtor is unable to repay his obligations¹⁰

The credit agreement between the bank (creditor) and the customer (debtor) contains the rights and obligations of the parties. The creditor is obliged to hand over the promised money to the debtor and has the right to receive the money at the agreed time. In contrast, the debtor has rights and obligations that are the opposite of the creditor's rights and obligations. Over time, various factors can affect the bank's credit quality to the debtor customer. Internal and external factors can cause the default of the credit provided. Internal factors are closely related to the conditions within the debtor's business itself.

In contrast, external factors are related to the overall economic conditions beyond the debtor's control. Debtor customers cannot do much if the economic situation experiences a recession that affects sales volume and sluggish consumer purchasing power. External factors such as exchange rate fluctuations are also beyond the debtor's control, which can drain foreign exchange from the rupiah owned by the debtor customer.¹¹

A credit guarantee can cover the inability of customers to pay off their credit. The function of a credit guarantee is to protect the bank from losses. With the existence of credit guarantees where the guarantee usually exceeds the credit value, the bank will be safe. Banks can use or sell credit guarantees to cover credit if the credit given is in default¹²

Almost every bank experiences bad credit, aka customers can no longer pay off their credit. Credit jams caused by customers are caused by two things, namely¹³

1. There is an element of intent, meaning that the customer intentionally does not want to pay his obligations to the bank, so the credit given automatically becomes terrible.

⁷Permadi Gandapradja, *Dasar dan Prinsip Pengawasan Bank*, PT. Gramedia Pustaka Utama: Jakarta, 2004, hlm. 21

⁸Hasanudin Rahman, *Aspek-aspek Hukum Pemberian Kredit Perbankan di Indonesia*, Citra Aditya Bakti: Bandung. 1995, hlm. 174.

⁹Salim, H.S, *Perkembangan Hukum Jaminan di Indonesia*, Raja Grafindo Persada Jakarta, 2007, hlm. 7

¹⁰Ahmad, Fauzi, *Eksistensi Hak Tanggungan dalam Kredit*, *Jurnal Ilmu Hukum*, 2010, Vol2, No3: Inovatif

¹¹Jonker Sihombing, *Tanggung Jawab Yuridis Bankir Atas Kredit Macet Nasabah*, PT. Alumni, Bandung, 2009, hlm. 68

¹²Kasmir, *Manajemen Perbankan*, PT Raja grafindo Persada, Jakarta, 2014, hlm.89.

¹³*Ibid*, hlm. 78

2. There is an unintentional element, meaning that the customer has the willingness to pay but is unable to do so because the business being financed is hit by a disaster, such as a flood or fire.

The binding of credit collateral with a mortgage right is carried out when a customer or debtor who receives credit from a bank makes immovable goods in the form of land (land rights) with or without objects that are not related to the land (for example buildings, plants, statues, and so on) as collateral without the debtor physically handing over the collateral to the creditor (bank)¹⁴

Mortgage rights are indivisible (*accessoir*), attached to the object, and have rights (*preferen*) or rights prioritized over other creditors. The nature of these mortgage rights can provide guarantees and protection to the bank as a creditor to obtain compensation if a default occurs. Thus, if the collateral the bank receives has been perfectly bound under the mortgage law, the bank has a priority position compared to other creditors. If the debtor defaults, the first mortgage holder has the right to sell the mortgage object at his discretion through a public auction and take payment of his receivables from the proceeds of the sale. This clause is known as the execution of mortgage rights based on the existence of a default by the debtor on the credit agreement covered by the mortgage right¹⁵

Article 1 number 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/ PMK.06/2016 Concerning Amendments to the Regulation of the Minister of Finance Number: 106/ PMK.06/2013 Concerning Auction Implementation Guidelines, which states that: An auction is a sale of goods that is open to the public with written and/or oral price offers that increase or decrease to achieve the highest price, which is preceded by an auction announcement". The definition of an auction Several definitions of auctions from legal experts have been put forward, as follows¹⁶

1. *Richard L.Hirsberg* states that An auction (action) is a public sale of property to the highest bidder, where the auctioneer acts primarily as an intermediary for the seller.
2. *Roell* formulates the meaning of "public sale" as follows: Public sale is a series of events that occur between the time when someone wants to sell one or more items, either personally or through his power of attorney, by allowing the people present to make an offer to buy the items offered, until the time the opportunity disappears. The opportunity disappears when an agreement is reached between the seller or his attorney and the buyer regarding the price.
3. M. Yahya Harahap stated that Public sales (auctions) are auctions and sales of goods held in public with increasing price offers, with increasing price agreements, or with price registration, or where people are invited or previously informed about the auction or sale, or the opportunity is given to people who are auctioning or buying to bid on the price, agree on the price or register.

The sale of mortgage objects under one's authority is required by law through a public auction. In practice, the institution appointed to carry out public auctions according to the law was KP2LN (State Auction and Receivables Service Office). The creditor was given the right to take payment of the receivables from the sale proceeds before other creditors. For the debtor, he still has the right, namely the right to the remaining sale proceeds, which remains

the right of the grantor of the Mortgage Right (debtor). If reviewed from Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, it is

¹⁴TryWidiyono, *Agunan Kredit Dalam Financial Engineering*, GhaliaIndonesia: Bogor, 2009, hlm. 157.

¹⁵TryWidiyono, *Agunan Kredit Dalam Financial Engineering*, GhaliaIndonesia: Bogor, 2009, hlm. 157.

¹⁶AdrianSutedi, *Hukum Hak Tanggungan*, Sinar Grafika, Jakarta, 2012, hlm. 88

clear that the embodiment of the principle of legal protection is intended for creditors and debtors. In the execution procedure, as referred to in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, the creditor holding the first mortgage right only needs to apply to the auction implementation to the State Auction Office. The creditor's right to sell the object of the mortgage under his power in public has been granted by law to the creditor who holds the first mortgage. This authority is not obtained from the grantor of the mortgage but is already in his own right based on the law itself granting it to him.

Under the provisions of Article 237 Paragraph (2) of the Regulation of the Minister of Finance Number: 128/ PMK. 06/2007, dated October 24, 2007, Chapter XVIII concerning Auctions, in the first section concerning the Order for the Sale of Confiscated Goods, which states, "The Order for the Sale of Confiscated Goods is notified in writing to the Guarantor of Debt and/or Sale of Debt."

Based on the description above, the author is interested in writing a thesis entitled "Legal Protection for Customers Against Execution Auctions of Collateral Carried Out Unilaterally." Based on the background stated by the author above, the main problem of this research is. How is there legal protection for customers against execution auctions of collateral for mortgaged goods?

DISCUSSION

1. Legal Protection for Customers in Execution Auctions for Collateralized Mortgage Rights.

Since the enactment of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, collateral objects on land and objects related to land are no longer included in the mortgage collateral institution but in the Mortgage Guarantee Institution.

Land rights can be the object of a Mortgage Guarantee if they meet two requirements. First, according to its nature, the land rights can be transferred and have a selling value. This is very important if the customer defaults so that the Bank must execute, but the object of the Mortgage Guarantee cannot be transferred and has no selling value, so it will cause losses to the Bank. Second, land rights must be under applicable provisions and registered at the Land Office to have a valid certificate to meet the principle of publicity.

The Mortgage Law has regulated several methods of executing the Mortgage Guarantee object, including public sales/auctions. The mortgage law provides balanced protection for the parties in the auction process.

The legal protection provided by the Law for the Bank as the holder of collateral for property, namely Mortgage Rights, has special privileges, the right to have its interests prioritized, which are protected by the Law in repayment of debts if the customer has defaulted by not making payment of obligations to the Bank¹⁷

In addition, customers as debtors/owners of collateral objects of Mortgage Rights also have rights that must be protected. The Bank needs to pay attention to customer rights based on the provisions in force during the auction of collateral objects of Mortgage Rights so as not to harm one party or to hinder the execution of the auction of collateral of Mortgage Rights. There are two types of legal protection: preventive legal protection and repressive legal protection. Preventive legal protection is a legal protection that protects before undesirable things happen or as a form of prevention before things that can harm the parties happen. At the same time, repressive legal protection is a legal protection that protects if a dispute occurs.

Boedi Harsono mentioned several legal protections for customers, namely:

¹⁷Data Lapangan Diolah Februari 2024

- a. Balanced protection means protection that not only pays attention to the interests of the Bank but also pays attention to the interests of customers.
- b. Speciality Requirements: In addition to containing the identities of the parties, APHT is also required to clearly state which financing is guaranteed and the value of the object of the mortgage guarantee.
- c. Publicity Requirements.
- d. Prohibited promises, as in Article 12 of the UUHT, prohibit granting Mortgage Rights accompanied by promises that if the customer defaults, the object of the Mortgage Rights becomes the property of the Bank. If such an agreement occurs, it is null and void by law¹⁸ One of the provisions the Bank applies in the implementation of the auction execution of

the Mortgage Right collateral object is that the Mortgage Right collateral object must meet the principle of publicity. Fulfilling the principle of publicity aims to protect interested parties, including customers. This principle of publicity determines who the creditor is, which financing and how much, and which object is used as collateral so that the parties can know it. The Mortgage Right collateral object is registered at the Land Office. This is stated in Article 13 Paragraph (1) of the Mortgage Rights Law (UUHT), which states that: "The granting of Mortgage Rights must be registered at the Land Office." The following legal protection the Bank provides is when a default occurs due to the bank customer trying to save problematic financing by revitalizing through rescheduling, reconditioning, and restructuring as in Article 2 letter e POJK No. 1 of 2013 concerning Consumer Protection in the Financial Services Sector which emphasizes that consumer protection implements the handling of complaints and the resolution of consumer disputes in a simple, fast, and affordable manner. In this case, the Bank did not make any mediation efforts with the customer to save their financing so that it continued to run smoothly as before. In addition, before executing the object of the Mortgage Rights guarantee, the Bank had given Warning Letters I, II, and III to the customer. The purpose of giving the letter was so that it had entered the category of less smooth collectability to problematic financing. If the auction was still carried out, the customer knew that the financing facility he received would later have to give the excess auction value to the customer. However, the implementation had not been carried out. The auction application was received from the KPKNL, and the Bank was late in notifying the customer that the object of the mortgage right guarantee had been registered at the KPKNL. Then, the Bank made an auction announcement against the object of the Mortgage Right guarantee owned by the customer.

This is a form of legal protection for customers in the execution auction because the announcement aims to inform the public that the Bank will hold an auction of the customer's collateral object of the Mortgage Right so that auction participants will increase.

Based on the description above, as in POJK No. 1 of 2013 concerning Consumer Protection in the Financial Services Sector in Article 2 letter a, it is emphasized that one of the consumer protections is by implementing the principle of transparency. In this case, the Bank has not implemented this principle to protect customers from the object of the customer's Mortgage Right collateral. The Bank is late in providing information on the settlement of problematic financing through the auction execution ultimately and in a language that customers understand. Applying the principle of transparency has a vital role in banking practices.

¹⁸Muh.Akbar Azis Purnomo, *Perlindungan Hukum Bagi Pemberi Hak Tanggungan yang Bukan Debitur Dalam Perjanjian Kredit*, Unnes Law Journal, Vol.3, No.1, (2014), hlm.66.

Applying the principle of transparency is needed to achieve business continuity at the Bank while still paying attention to the parties' interests. This principle is needed to protect the parties so that business activities at the Bank run objectively and professionally¹⁹

One of the benchmark indicators for the implementation of transparency is the openness of the process. With transparency towards the openness of the process, every aspect and dimension of work will become more apparent so that all information is available for the parties' needs. On the other hand, if the principle of transparency is ignored, it will trigger losses for the parties. In principle, every execution must be carried out through a public auction because, in this way, it can be expected to obtain the highest price for the Mortgage Right object. The creditor has the right to take payment of the receivables guaranteed from the proceeds of the sale of the Mortgage Right object; if the proceeds of the sale are more significant than the receivables, the remainder becomes the right of the Mortgage Right provider or debtor, and the creditor is obliged to provide what is the debtor's right²⁰

Determining the limit value for the collateral object of the Mortgage Right is also an effort to protect customers. Determination of the limit value cannot be done arbitrarily because it can harm customers. As in the Regulation of the Minister of Finance Number. 213 / PMK.06

/ 2020 concerning Auction Implementation Guidelines, which emphasizes that the limit value is the minimum value of the Goods to be auctioned and is determined by the Seller.

It can be seen that the authority to determine the limit value is the Seller. The Bank determines the minimum auction limit value of the liquidation value based on the Bank's internal or external assessment results (Independent Appraisal). In determining the auction limit value, the Bank also considers the components of the customer's obligations, including other costs. As in Article 48 Paragraph (1) of the Regulation of the Minister of Finance Number. 213 / PMK.06 / 2020 concerning Auction Implementation Guidelines states that the limit value is determined based on the appraiser's assessment or the appraiser's appraisal.

When determining the auction limit value at the Bank, the appraiser will assess the object of the Mortgage Right collateral based on the liquidation value. Liquidation value is an amount of money that may be received from the sale of an asset in a relatively short period to meet the marketing period in the definition of market value. In short, liquidation value is a discounted market price due to a relatively short marketing period. Banks can choose an assessment method by referring to the liquidation value when assessing the collateral object of the Mortgage Right to be auctioned. In practice, in the field, the execution of the auction does not obtain the highest price. However, it is carried out by determining a meager limit price that is far from reasonable, so the sales results are meager and tend to be detrimental to the debtor. The selling price measured by the limit value in the execution auction is significant, considering that it concerns the interests of all parties, both creditors and debtors.²¹

In the implementation of auctions, there are auction principles, including the principle of transparency, the principle of competition, the principle of justice, the principle of legal certainty, the principle of accountability, and the principle of efficiency. This principle of justice includes procedural justice, which is expected to guarantee the implementation of rights for all parties and create peace and order. This procedural justice concerns the implementation of auction execution based on the Regulation of the Minister of Finance Number. 213/ PMK.06/2020

¹⁹Abdul Nasser Hasibuan, Rahmad Annam, dan Nofinawati, *Audit Bank non Syariah*, Kencana, Jakarta, 2020, hlm. 71.

²⁰Badriyah Harun, *Penyelesaian Sengketa Kredit Macet*, Pustaka Yustisia, Yogyakarta, 2010, hlm.109.

²¹Data Lapangan Diolah Februari 2024

Concerning Auction Implementation Guidelines. Based on the description above, implementing the auction execution of the object of the mortgage rights guarantee at the bank is not under applicable provisions. Thus, the Bank has not provided legal protection to customers based on laws and regulations, especially in the application of the principle of transparency.

CONCLUSION

Legal protection is divided into repressive legal protection and preventive legal protection. Before the execution of the auction of the collateral object of the Mortgage Right, the Bank provides warning letters I, II, and III to the customer. The letter is given so that the customer knows that the Mortgage Right collateral owned is in the category of less than smooth collectibility to problematic financing. The Bank must provide a notification letter of the execution auction to the customer, but this is delayed so that the customer knows that the collateral has been auctioned when receiving the notification letter. If the auction is still carried out, the excess auction value must be given to the customer, but it has not been implemented in the implementation. The customer has not received legal protection against the losses he received from selling the Mortgage Right he owned. The Bank has not protected customers in the execution of the auction of the Mortgage Right collateral object. This must be given more attention because customers are essential instruments in the banking world. And considering that this concerns the interests of all parties, both the Bank and the customer.

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