

The Implementation of Execution Auction by Creditors on Debtor Rights' Guarantee in the Office of State Assets and Auction Services (KPKNL)

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The study entitled "The Implementation Of Execution Auction By Creditors On Debtor Rights Guarantee In The Office Of State Assets And Auction Services (KPKNL) In Indonesia" is motivated by a form of inability of customers / debtors who made late payments of overdue loans. Legal certainty of auction of execution of mortgage rights can be carried out based on Article 20 paragraph (1) letters a and b as well as paragraph (2) UUHT, execution of Mortgage Rights collateral objects can be completed in three ways without a courtesy that can be used by creditors to execute the object of collateral Mortgage Right if the debtor defaults, namely: (1). Execution Parate, (2). Executive Title, and (3). Sales of Mortgage objects under the hand. This research investigates the execution of auctions by creditors against guarantees of mortgage rights of the debtor at the Office of State Assets and Auction Services (KPKNL) Pekanbaru and the execution of the debtor and other third parties against the execution of the auction process by the creditor against the guarantee mortgage rights of the debtor at the Pekanbaru State Assets and Auction Service Office (KPKNL). The method used in this research is observational research conducted by survey. In this study, information was collected from respondents using primary and secondary data. The research is both analytical and descriptive, giving a detailed, clear and systematic account of the research's main problem. The implementation of Auction execution of Article 6 of the Underwriting Right Act is carried out if the debtor is in default (breach of contract), then the Underwriting Right holder has the right to sell the Underwriting Right object through his or her own power through a public auction, namely the Office of State Assets and

Auction Services (KPKNL) Pekanbaru, and take the payment of the receivables from the sale. The auction of the execution of Mortgage Rights guarantees at the KPKNL is the last step taken by the financial institution as a creditor. Before conducting an auction of execution, creditors should negotiate / negotiate (persuasive actions) in advance against the debtor. The debtor and other third parties do not always take for granted the implementation of Article 6 UUHT auction conducted by the financial institution as a creditor. If the debtor and other third parties file a lawsuit, and if the resistance / suit is accepted, the court will process it as an ordinary case.

Key words: *The Execution Auction, Mortgage Rights, Breach of contract.*

Introduction

In order to create a just and prosperous society based on Pancasila and the 1945 Constitution as the goals of the Indonesian State in national development, it is necessary to carry out development in all fields, including in this case development in the economic field. In order to increase developmental activities in the economic sector, large funds are needed, which can be obtained through credit activities by channelling public funds (Adrian, 2012).

Institutions which can provide funds needed by the public are non-banking financial institutions and banks. Article 1 Paragraph (2) of Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking states: "Banks are business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit and or other forms in order to improve the lives of many people" (Adrian, 2012), (Zainal, 2015). In this sense, deposits are distributed by banks to the public in the form of credit agreements. Credit has a special meaning, namely lending money. It is both a product and service provided by banks to the public.

Pursuant to Article 8 of Act Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking, in principle, a new bank can decide to provide credit, if the bank has gained confidence in its customers. This conviction is based on the results of an in-depth analysis of the customer's good faith and the ability and capability (creditworthiness) to repay debt at a later date with the bank. The customer's good faith is obtained by the bank from the data submitted by the customer in his or her credit application. To obtain this confidential information, the creditor will conduct an assessment of the character, ability, capital, collateral, and business prospects of the debtor. In the banking world, the five factors assessed are known as *the five of credit analysis* (Supramono, 2009).

Lending is stated in a credit agreement which is an obligatory agreement that is always equipped with a material guarantee (Herowati, 2013). M. Bahsan argues that "collateral is everything that is received by creditors and submitted by the debtor to guarantee a debt receivable in the community" (Bahsan, 2002),(Salim, 2007). M. Bahsan's statement already includes material and immaterial guarantees and is appropriate in the theoretical study of guarantee law, whereas guarantees submitted to creditors are basically material and immaterial guarantees.

Material guarantees are guarantees in the form of material rights, such as guarantees for movable and immovable objects. Material collateral is an individual guarantee. Guarantees received by banks can be in the form of land rights or rights to goods. Guaranteed land rights are called mortgage rights. In general, mortgage rights can provide protection and legal certainty for creditors because they can provide security to banks as creditors in terms of law and value that can increase from time to time.

The term Mortgage as a guarantee of land rights is part of the reform in the agrarian sector. Mortgage is created by Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) (St. Remy, 1999) previously unknown in the legislation, both in Customary Law and in the Civil Code. In Article 51 of LoGA, it is stated that the Underwriting Right can be imposed on Ownership Rights, Business Use Rights and Building Use Rights which are regulated by law based on the mandate of Article 51 of BAL, Law No. 4 of 1996 concerning Mortgage Rights and land related objects.

In Article 1 point 1 of the UUHT, the definition of Mortgage states:

"Underwriting Right to land along with objects related to land, hereinafter referred to as Mortgage Right, is a guaranteed right which is imposed on land rights as referred to in Law Number 5 Year 1960 concerning Basic Agrarian Regulations, whether or not following or not following other objects which form a unity with the land, to pay off certain debts, which give priority to certain creditors to other creditors. "There are several main elements of Mortgage Rights contained in the definition. The basic elements are as follows (St. Remy, 1999):

1. Underwriting Right is a guarantee right to pay off debts.
2. The object of a mortgage is the right to land according to UUPA.
3. Underwriting rights can be charged only to the land (land rights), but can also be charged along with other objects that are one unit with the land.
4. The debt guaranteed must be a certain debt.
5. Give preferential position to certain creditors .

Mortgage is the control of land rights, containing the authority for creditors to do something about the land used as collateral. However, it is not to be physically controlled and used, but to sell if the debtor defaults and takes the results in whole or in part as payment for the debtor's debt to him (Salim, 2016).

Credit agreements between banks (creditors) and customers (debtors) contain the rights and obligations of the parties. The creditor is obliged to surrender the promised money to the debtor and is entitled to receive the money at the agreed time, while the debtor has rights and obligations which are the opposite to the creditor's rights and obligations.

In granting credit although all matters concerning character, ability, capital, collateral, and business prospects of the debtor or known as *the five of credit analysis* have been carefully examined, these cannot be separated from the possibility of the default debtor, namely not fulfilling its obligations to pay or pay off its debts in accordance with what has been promised to the creditor (bank). In such a case, there is a problem credit which can be a trigger for the occurrence of bad credit.

The Directorate General of State Assets (DJKN) as stipulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 263 / PMK.01 / 2016 concerning Amendment to the Regulation of the Minister of Finance Number 170 / PMK.01 / 2012 concerning Organization and Work Procedures of the Vertical Institution of the Directorate General of State Assets, has 17 (seventeen) DJKN Regional Offices. Each DJKN Regional Office oversees several State Assets and Auction Service Offices which consist of three operational offices.

Pursuant to Article 30 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 263 / PMK.01 / 2016 concerning Amendment to the Regulation of the Minister of Finance Number 170 / PMK.01 / 2012 concerning Organization and Work Procedures of the Vertical Institution of the Directorate General of State Assets it is affirmed that "The Office of State Assets and Auction Services (KPKNL) has the task of carrying out services in the field of state assets, valuations, state receivables and auctions." Based on the above provisions, it can be concluded that in the event of intolerable non-performing loans, state and / or private banks (financing institutions) can submit a tender application consisting of an auction of execution, mandatory non-execution auction, and voluntary non-execution auction and their implementation is held by the Directorate General of State Assets (DJKN) with its operational office, namely the Office of State Assets and Auction Services (KPKNL) in accordance with their respective jurisdictions.

The Office of State Assets and Auction Services (KPKNL) Pekanbaru is one of the operational offices under the Regional Office X of the Directorate General of State Assets

(DJKN) as stipulated in the Minister of Finance Regulation No. 263 / PMK.01 / 2016 concerning Amendments to the Minister of Finance Regulation Number 170 / PMK .01 / 2012 concerning the Organization and Work Procedures of the Vertical Agency of the Directorate General of State Assets. The Office of State Assets and Auction Services of Pekanbaru is located in Pekanbaru which has work areas including, Pekanbaru City, Kampar Regency, Rokan Hulu Regency, Kuantan Singingi Regency, Indragiri Hulu Regency, Indragiri Hilir Regency and Pelalawan Regency.¹

One of the tasks of the KPKNL as the State mediator is resolving bad loans for financial institutions, namely banks, both government and private (creditors as auction applicants). The Office of State Assets and Auction Services (KPKNL) Pekanbaru in resolving bad loans sometimes experiences difficulties or obstacles such as the Pekanbaru KPKNL constrained by limited auction officials, and subsequently there are new regulations that must be adjusted. In addition, external factors which become obstacles for the KPKNL include the following” (1). When the creditor submits an auction request for a credit agreement, there is a change in ownership status from SKGR to Certificate of Ownership (SHM) and / or Building Rights Certificate (SHGB), Certificate of Land Use (SHGU); (2). Addendum, i.e. amendment and / or addition of agreement from principal agreement that is not included; (3). There is no research for the National Land Agency (BPN) to write the letter number, land area, etc. between the APHT and SHT certificates. This results in the Pekanbaru Office of State Assets and Auction Services having to cancel or reject the auction request submitted by the creditor in order to complete the administrative requirements.²

The auction of execution of Mortgage is carried out on the basis of a request from the creditor because the debtor does not meet the subpoena given by the creditor, the creditor has the right to auction the execution of collateral in the agreement between the creditor and the debtor with the Mortgage object. As explained in the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Auction Implementation Guidelines that institutions entitled to conduct auctions are Class I Auction Officers are Bidding Officers of the Directorate General of State Assets Authorities who are authorized to carry out Execution, Mandatory Non-Execution and Voluntary Non-Execution Auctions.

Based on the explanation of Article 8 of Law Number 10 Year 1998 above, if the debtor fails to make a promise, the bank can also take the collateral provided by the creditor as repayment for the debt. However, regardless of whether the implementation can run as easily as that, as the debtor itself also has rights that are respected, the execution process is carried out so that each party, both the debtor and creditor in this case the bank is not

¹ Interview with Prasetya Graha Raharja, Section of KPKNL Auction Pekanbaru, on December 16th, 2017.

² Interview with Arbita Zaini, Section of the Legal and Information of KPKNL Pekanbaru, on 15th, 2017.

disadvantaged by its interests, especially regarding collateral in the form of land that is burdened with Mortgage Rights.

Basically, customers do not want collateral or other objects at auction by the Office of State Assets and Auction Services (KPKNL). They still want collateral not to be sold continue to hope that their debt payments can be extended. Even though banks or non-bank financial institutions have made several summons to customers, banking institutions and non-banking financial institutions have submitted this matter to the Pekanbaru Office of State Assets and Auction Services (KPKNL).

Based on data in the Pekanbaru State Asset and Auction Services Office (KPKNL), the number of mortgage rights auction requests submitted by creditors from January 2017 to June 2017 is 496.

Discussion

Auction is a legal term which is explained by Article 1 of the Bidding Regulation (*Vendu Reglement*) : "What is intended by public sale is auctions and sale of goods held in public by increasing price offers or with decreasing price agreements, or by registering prices, where people who have been invited or have been notified of the auction are given the opportunity for them to buy by way of *bidding price, price agreement or by way of registration*" (Rochmat, 1987).

In 1913 **POLDERMAN**, wrote a dissertation entitled "*Het openbare aanbod*" in which he stated that: (Rochmat, 1987) "General sales are the most profitable means of entering into agreements or agreements or agreements for the seller by gathering interested ones." This view highlights the fact that the purpose of the auction is to gather interested people to make the most favourable agreement for the seller. There are 3 (three) requirements for general sales:

- a. Sales must be as complete as possible;
- b. There is a will to commit;
- c. The other party (buyer) who will enter into / enter into an agreement cannot be appointed in advance.

ROELL argues that general sales are: "a series of events that occur between the time when someone wants to sell something or more goods, both personally and through the power of attorney by giving the opportunity to those present to make offers to buy goods that are offered, to the point where the opportunity disappears."

Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 concerning Guidelines for the Implementation of Auction Article 1 number 1 provided the definition for an Auction as the sale of goods open to the public by offering written and / or verbal prices that are increasing or decreasing to reach the highest price, which is preceded by an Auction Announcement.

Classification of auctions can be seen from the way of bidding, the types of goods auctioned, and auctions due to execution and not execution (Salim, 2007).

a. Classification of auctions by way of bidding

Classification of auctions from this method is a classification based on the method of bidding conducted by auction officials. This offer can be completed by verbal and written agreement

b. Auction classification from the perspective of objects.

Auctions are based on the object of goods / objects to be auctioned by the auctioneer. This auction can be divided into 2 types, namely movable and immovable .

c. Auction classification from the aspect of execution

Auctions are carried out on the basis of a court decision. Auction classification from this aspect is divided into 2 types, namely non-executive and executive. A non-executive auction is an auction without a judge's decision. An auction for execution is an auction based on a judge's decision or the equivalent. The execution can be distinguished by the following:

- 1) Execution in a criminal case, namely the implementation of a judge's decision made by the Prosecutor;
- 2) Execution in civil cases, namely the execution carried out by the Sita.

Article 1 numbers 4, 5 and 6 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 concerning the Guidelines for Conducting Auction to classify auctions as:³

a. Auction Execution

An execution auction is an auction to carry out a court decision or other equivalent documents and / or implement the provisions in the legislation.

b. Mandatory Non-Executive Auction.

A mandatory non-executive auction is an auction to carry out the sale of goods which are required by law to be sold by auction.

³ See Regulation of the Minister of Finance No. 27 / PMK.06 / 2016 concerning Auction Implementation Guidelines.

c. Voluntary Auction Execution.

Voluntary Non-Executive Auctions are auctions of privately owned goods, individuals or legal entities / business entities that are auctioned voluntarily.

Under Article 6 of the UUHT if the debtor fails to promise (default), the first Underwriting Right holder has the right to sell the Underwriting Right object through his own power by public auction and to take the payment off the receivables from the sale. With reference to the formulation of Article 6 of the UUHT, the execution process can be carried out without court interference. In other words, there is no need to request fiat [illegible] execution from the Chair of the District Court. In Article 20 Paragraphs (1) points a and b and Paragraph (2) of the UUHT, the execution of Mortgage Rights collateral objects can be done in 3 (three) ways that can be used by creditors to execute the Guaranteed Mortgage object if the debtor is in default (default), that is:

1. Execution Parate

Execution of Mortgage through the instrument of Execution Parate is an auction of the Mortgage Rights object that does not require the fiat of the Court but can be carried out directly by the State Auction Office. *Parate Execution* means to run alone or take what is rightfully yours without the intermediary of the judge. Selling on its own power means that the sale is carried out in the manner stipulated in Article 1211 of the Civil Code which is undertaken with direct assistance by the State Auction Office without requiring the *fiat* of the Court. The creditor as the petitioner for execution can execute the object of the mortgage right through the Parate Execution (*Beding van eigen matige ver koop*) (Sutarno, 2009) provided that there is a promise that the first Mortgage holder has the right to sell on his own power the Underwriting Right object in the deed of encumbrance.

2. Executive Title

Provisions of the Underwriting Rights Act have adopted mortgages, so that a mortgage deed that has an agreement with the words "For the sake of justice based on the Almighty God" is as stipulated in article 224 HIR / 258 RBg has the same legal force as a permanent court decision.

Developers of the Mortgage Law create exceptions to settle debts not solely through lawsuits but can utilize Mortgage Rights Certificates (SHT) as a legal basis for execution. This is stipulated in Article 14 of the UUHT which determines that Certificates of Underwriting Rights which contain the words "For the sake of justice based on the Almighty God" have the same executorial power as a court decision which has been obtained by permanent legal force and acts as a substitute for grose Hopotic deed regarding land rights. For creditors who have held a Mortgage certificate, if the debtor fails to make a promise, then in order to collect

the accounts receivable the creditor can file an execution directly based on a guarantee without having to file a lawsuit.

3. Execution through the sale of Underwriting Right objects under the agreement of the provider and the Underwriting Right holder.

The execution of the Mortgage Rights object for reasons of breach of contract is not dependent on the maturity of the financing agreement. Article 6 and Article 20 of Law Number 4 of 1996 does not explain the factor of breach of contract, it only confirms it as the basis for the Underwriting Right Holder to exercise his or her right to sell the object of the Underwriting Right. This was repeated again in the explanation of the article which stated that if the debtor fails to make a promise, the mortgage right holder has the right to sell the object of the mortgage right on his or her own authority, if in the Deed of Granting Mortgage Rights (APHT) such a clause is included.

As the Underwriting Right Act does not regulate breach of contract, Article 1243 can be referred to As Article 1763 Civil Code. In the provisions of Article 1243 of the Civil Code, what is meant by default or breach of contract is negligence in fulfilling the agreement, or not submitting or paying within the specified time period, or not performing as promised within the specified deadline. More specifically, Article 1763 of the Civil Code states that it does not repay loans in accordance with the loan amounts within the allotted time.

The sale of Mortgage objects based on Article 6 of the UUHT is basically carried out by auction and does not require fiat execution from the Court, considering that the sale is an act of implementing the agreement. So, in the implementation of the auction, one must pay attention to the following matters:

1. In the APHT a promise must be made that if the debtor fails to promise the first Mortgage holder he or she has the right to sell the object of the Mortgage through his or her own power through a public auction and to repay the debt from the proceeds of the sale;
2. The first creditor holding the Mortgage Rights acts as the auction applicant;
3. Conducting auctions through Auction Officers at KPKNL;
4. The auction announcement follows the procedure for announcing auction execution;
5. Debtor approval is not required to conduct an auction;
6. The limit value is determined by the Seller wherever possible;
7. The auction can involve the Auction Centre in the pre-auction service.

Based on the results of an interview with Prasetya Graha Raharja, S.ST., AK., Auction Services Section at the Pekanbaru Office of State Assets and Auction Services (KPKNL), those who can make a tender application are holders of First Rank Mortgage Rights written in the Mortgage Certificate. Subsequently, the financing institution (bidder) submits a written

request to the Head of the KPKNL, accompanied by general and specific tender requirements which set out the Regulation of the Director General of State Assets Number 2 / KN / 2017 concerning Technical Guidelines for Tender Implementation. The following must be contained in the auction application:

- a. Auction Applicant Agency Identity (agency name and office address).
- b. The type of auction being applied for: Execution Article 6 UUHT Auction.
- c. Name and Position of the Bid Applicant.
- d. If using the Auction Hall service, the name of the Auction Hall must be mentioned in the application.
- e. If the auction is to be carried out using a Land Registration Certificate (SKPT) that has been used before, the Auction Applicant must specify no changes in physical data or juridical data of goods in the form of land or land and buildings in the application letter.
- f. In the event that the tender being applied for is a repeat auction, the fact that it is a repeat auction and the last date the auction was conducted must be stated .

Based on the results of an interview with Prasetya Graha Raharja, S.ST., AK., Auction Services Section at the Pekanbaru State Assets and Auction Service Office (KPKNL), prior to the Pekanbaru KPKNL carrying out auction sales, the Auction Office will examine the validity of the documents or attachments submitted, only after obtaining confidence in them can the auction for the object of the Mortgage be carried out.

The financial institution (auction applicant) must submit a request for auction in writing to the Head of the KPKNL, accompanied by general and specific tender requirements. Documents that are of a general nature are submitted during the tender request, and those of a special nature are submitted: (1). At the time of bidding and (2). At the time before the auction.

General tender requirements submitted at the time of the tender application are regulated by Article 5 of Dirjen No. 2 / KN / 2017 concerning Technical Guidelines for Bidding, namely:

1. Copies / photocopies of the Decree of the Appointment of the Seller or the Proxy ;
2. List of items to be auctioned;
3. Written information needed for submission / deposit of net proceeds of auction in the form of the Auction Applicant's account number;
4. Letter of determination of the limit value from the Seller;
5. Hardcopy and softcopy of photos of auction objects.

Tender requirements specifically regulated in Article 6 Number 5 of Director General Regulation Number 2 / KN / 2017 concerning Technical Guidelines for the Implementation of Auction:

1. Specific documents submitted at the time of the auction request consist of:

2.

a. Copy / photocopy of the Credit Agreement;

Credit agreements that must be attached are initial credit agreements and addendums listed in APHT. In addition, the object to be auctioned must be listed in the Credit Agreement.

b. Photocopy / photocopy of Mortgage Certificate and Deed of Granting Mortgage Rights; The Mortgage Certificate (SHT) and the Deed of Granting Mortgage Rights (APHT) attached in accordance with all Mortgage Rights listed in the Certificate of Ownership (SHM). SHT and APHT are photocopied in full.

c. Photocopy of certificate of land rights that are burdened with Underwriting Rights; (photocopy of the latest certificate);

d. Copy / photocopy of Debt Details / amount of debtor obligations that must be fulfilled;

e. Copies / photocopies of evidence that the debtor has defaulted, including notices;

Notice of at least SP 1 through SP 3 according to rules in Law Number 10 of 1998 concerning Banking and the policies of financial institutions, namely banks, non-banks and co-operatives. Subsequently, the notice is to be attached by enclosing a photocopy of the handover evidence / sending the notice. This is done in order to minimize the demands of the debtor to the KPKNL regarding the absence of notification to the debtor during the auction and post auction.

f. A statement from the creditor as the Bid Applicant whose contents will be responsible in the event of a civil suit and / or criminal charge and will be fully responsible for claims for compensation and / or ransom / forced money that may arise in the future.

Based on the results of an interview with Prasetya Graha Raharja, S.ST., AK., Auction Services Section at the Office of State Assets and Auction Services (KPKNL) Pekanbaru, as a minimum the e Declaration must contain the following clauses:

- AUCTION APPLICANTS are responsible in the event of a civil lawsuit and / or criminal charges that may arise in the future and release the Pekanbaru KPKNL / Auction Officer from all civil claims and / or criminal charges.
- AUCTION APPLICANTS are fully responsible for claims for compensation and / or ransom / forced money that may arise in the future and release the Pekanbaru KPKNL / Bidding Officer from all claims for compensation payments and / or ransom/ forced money. "APPLICANT AUCTION" is replaced by the name of the agency requesting the auction. For example: PT Bank Mandiri Pekanbaru Branch, PT Bank Negara Indonesia CLC Pekanbaru, etc.
- g. Copies / photocopies of the assessment / assessment report or a summary of the assessment / assessment results containing the date of appraisal and valuation.

3. Specific documents submitted prior to the auction consist of:
 - a. Copy / photocopy of notice of the plan to carry out the auction to the debtor by the creditor. In the event that the collateral owner is not a debtor, notification of the bid implementation plan is also conveyed to the collateral owner;
 - b. Proof of auction announcement;
 - c. SKT / SKPT in the case of the object being auctioned in the form of land or land and buildings;
 - d. A copy / photocopy of the Appraisal Report or a summary of the appraisal document containing the date of the appraisal, in the event that the creditor bank will participate as a Bidder; and
 - e. Original statement letter made by Notary in the event that the creditor bank will participate as a Bidder (*Deed de Command*).

Based on the results of an interview with Prasetya Graha Raharja, S.ST., AK., Auction Services Section at the Office of State Assets and Auction Services (KPKNL) Pekanbaru, explained in Article 4 Paragraph (3) Regulation of the Director General of State Wealth Number 2 / KN / 2017 regarding Technical Guidelines for the Implementation of Auction, in the event that the Seller (financing institution) has fulfilled the complete and general tender requirements documents and has met the formal legality of the subject and object of the auction, the Head of KPKNL determines and notifies the Seller about the auction schedule in writing.

Article 6 UUHT auction can be cancelled. The auction to be held can only be cancelled at the request of the Seller or based on the determination or decision of the judicial institution. Cancellation of the auction after the auction has started can only be done by the Bidding Officer in case of:

- a. Forceful circumstances or force majeure; or
- b. A technical problem that could not be overcome during the auction without the presence of the Bidder.

The Office of State Assets and Auction Services (KPKNL) in principle cannot reject the tender application submitted by the auction applicant (financial institution) as long as the auction applicant has fulfilled the complete and general tender requirements and the formal legality of the subject and object of the auction. After the documents are received and declared valid, the Pekanbaru KPKNL will determine the time and place of the auction.

Based on the results of interviews conducted by the author of 6 (six) financial institutions consisting of (1). PT. BTN Syariah Pekanbaru Branch; (2). PT. Bank Mandiri (Persero) tbk Pekanbaru Branch; (3).PT. Bank Panin Pekanbaru Branch; (4).PT. BNI tbk CRLC Pekanbaru Branch; (5).PT. Bank Sahabat Sampoerna; and (6).PT. BPR Fianaka Rezalina Fatma

regarding difficulties / obstacles for financial institutions (tender applicants) in submitting a bidding for Article 6 of the Underwriting Rights Act, *the first* executable title in the Underwriting Certificate does not have a clear legal force in the execution of the Mortgage object implementation. In reality, when it was about to submit the auction request for execution of the Mortgage through the KPKNL Pekanbaru the auction applicant (financial institution) had to be cancelled due to the emptying of the Mortgage object being ignored by the debtor in accordance with the agreement in the APHT when the debtor defaulted, even though there was resistance from the debtor when he or she wanted to empty the Mortgage object to be auctioned. [This paragraph needs further clarification by the author]. Therefore, the request for auction is submitted through the District Court and while the KPKNL does not have the authority to vacate the Mortgage object, the voiding of the object is in the District Court.

Second, some tender applicants (financial institutions) do not carry out binding Mortgages properly. In the practice of binding guarantees of Mortgage, some financial institutions (creditors) admit only up to the Power of Attorney Imposing Mortgage Rights (SKMHT). Some of the financial institutions (creditors) interviewed by the author, in binding guarantees of Underwriting Rights, only asked for SKMHT from the debtor and were not immediately followed by the deed of encumbrance (APHT) made before the Notary / PPAT and did not register it to the Land Office to get the Land Office Mortgage Certificate (SHT). So if the auction applicant (financial institution) only binds guarantees up to the SKMHT, the KPKNL cannot accept requests from the tender applicant due to the non-fulfillment of tender requirements documents that are regulated in Article 6 Number 5 of Director General Regulation Number 2 / KN / 2017 concerning Instructions Technical Implementation of Auctions. In submitting an auction request there must be a copy / photocopy of the Mortgage Certificate (SHT) and the Deed of Granting Mortgage Rights (APHT).

One of the tasks of the KPKNL is to mediate the State in resolving bad loans for financial institutions, both state and private banks (creditors as auction applicants). Auction of execution of Mortgage Rights is carried out on the basis of a request from the creditor because the debtor does not meet the summons and the efforts given by the creditor, the creditor can make an auction request for execution of a guarantee on the agreement between the creditor and the debtor, namely the object of the Mortgage as outlined in Regulation of the Minister of Finance of the Republic of Indonesia Number 27 / PMK.06 / 2016 Implementation Guidelines.

With reference to Article 8 of Law Number 10 Year 1998 above, if the debtor is in default, the bank can take the collateral given by the creditor as a repayment for the debt. However, whether the implementation is in accordance with the laws and regulations and puts forward the principle of justice should be considered, because the debtor him or herself also has rights

that deserve to be respected. How can it be ensured that the process of implementing the execution so that each party, both the debtor and the creditor, does not disadvantage in his or her interests, especially regarding collateral in the form of land that is burdened with Underwriting Rights.

Based on survey results in the author's research, customers do not want collateral or other objects at auction by the Office of State Assets and Auction Services (KPKNL). They still want collateral not to be sold and continue to hope that their debt payments can be extended. Even though banks or non-banking financial institutions have made several summons to customers, the banking institutions and non-banking financial institutions still apply for auctions to the Office of State Assets and Auction Services (KPKNL) Pekanbaru.

It is clearly proved in banking practice that the cause of bad credit is not only due to the debtor, but can also come from the bank as the creditor (Adrian, 2012). This means that several factors influence the occurrence of bad loans, namely issues originating from customers and banks. Thus bad loans can arise due to the following :

Factors originating from the customer (debtor)e:

1. Debtors' willingness to pay their debts is very low;
2. Credit received by customers is misused;
3. Management of customer's business is very weak;
4. The customer is lacks good faith.

Factors originating from banks (creditors are the following:

1. The head of the bank's credit department is inaccurate in assessing the price of the collateral object, so that credit cannot be collected in time.
2. Credit is deliberately left to increase by the bank because the guaranteed land price is predicted to rise and is expected to be covered in time and interest will enter.
3. Other causes of bad credit include delinquency from the bank leadership itself, such as marking r own group companies that are prohibited by Act Number 10 of 1998 concerning Banking.
4. Lending guidance to customers is insufficient.

Fostering creditors for customers (debtors) is the bank's obligation. The bank, as the provider of the credit facility, does not only carry out the signing of the loan agreement and collect instalment payments to the debtor, but also provides guidance and direction.

Banks must provide effective monitoring techniques regarding loans that lead to Non-Performing Loans (NPLs), including debtors or groups of doubtful, substandard and bad

debtors in order to implement restructuring techniques. A bank can settle or rescue a problem loan in the following ways (Hasanudin, 1998):

1. *Rescheduling*, is a change in credit terms only regarding payment schedules or time periods including grace and changes in the amount of credit instalments. This is done when the debtor is given relief in the term of the credit.
2. *Reconditioning*, is a change in part or all of the credit terms that are not limited to changes in the payment schedule, time period, interest rates, postponement of part or all interest and other terms.
3. *Restructuring*, is a change in credit terms relating to:
 - a) Adding bank funds
 - b) The whole or part of interest arrears become the subject of a new credit
 - c) The bank participates in whole or partial of credit convention or takes another partner to counteract the participation.
4. Foreclosure of Collateral is a last resort if the customer has absolutely no good intentions or is unable to pay all his or her debts.

In terms of debtor defaults fulfilling their obligations, the creditor does not necessarily confiscate the guarantee. Act Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 regarding Banking, Article 29 Paragraph (3) stipulates that in granting credit, banks are required to adopt methods that do not harm the bank and the interests of customers who entrust funds to banks (Bahsan, 2010).

Conclusions

Based on the results of the research and discussion that researchers have obtained and presented, the following conclusions can be drawn: The implementation of the auction execution guarantee Mortgage in the Office of State Assets and Auction Services (KPKNL) is the last step taken by the financial institution (creditor) as the recipient of Mortgage Rights for the debtor as the giver of guaranteed Mortgage through Article 6 of Law No. 4 of 1996 concerning Mortgage Rights and Objects Related to Land. According to the provisions in Article 6 of the Underwriting Law, it is stated that if the debtor defaults (breach of contract), then the Underwriting Right holder has the right to sell the object of the Underwriting Right through his or her own power by public auction, namely the Office of State Assets and Auction (KPKNL) Pekanbaru, and take the payment of receivables from the proceeds of the sale. The auction through Article 6 of the Underwriting Rights Act does not need to take place with the assistance of a court of law but can be carried out directly by the State Auction Office commonly referred to as the Execution Parate.



Closing

According to the author, if a debtor defaults/ breaches a promise in paying off his credit it is expected that the financial institution as creditor, , , negotiate (persuasive action) with the debtor before an auction of execution of mortgage rights is held, because the implementation of the auction execution guarantee Mortgage at the Office of State Assets and Auction Services (KPKNL) is the last resort, in order for debtors to have a well-developed awareness about fulfilling their obligations to creditors for loans received.

REFERENCES

- Adrian, S. (2012). *Mortgage Law*, Sinar Grafika, Jakarta.
- Bahsan, M. (2002). *Assessment of the Indonesian Banking Credit Guarantee*, Rejeki Agung, Jakarta.
- Bahsan, M. (2010). *Legal Guarantee and Credit Guarantee of Indonesian Banking*, Rajawali Pers, Jakarta, hlm. 83.
- Bandung, (2015). Islamic University Postgraduate Program, Bandung.
- Code of Civil law.
- Hasanudin, R. (1998). *Legal Aspects of Providing Banking Loans in Indonesia*, PT. Citra Aditya Bakti, Bandung.
- Herowati, P. (2013). *Law Parate Executive Object of Mortgage*, Aswaja Pressindo, Yogyakarta.
- <http://djkn.kemenkeu.go.id/>
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.
- Kausarian, H., Batara, B., Putra, D. B. E., Suryadi, A., & Lubis, M. Z. (2018). Geological Mapping and Assessment for Measurement the Electric Grid Transmission Lines in West Sumatera Area, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 8(3), 856-862.
- Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights and Land Related Items.
- Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Law of the Republic of Indonesia Number 7 of 1992 concerning Banking as amended by Law of the Republic of Indonesia Number 10 of 1998 concerning Banking.

Rachmadi, U. (2008). *Civil Security Law*, Sinar Grafika, Jakarta.

Regulation of the Director General of State Assets Number 2 / KN / 2017 concerning Technical Instructions for Bidding.

Regulation of the Minister of Finance Number 27 / PMK.06 / 2016 concerning Bidding Implementation Guidelines.

Rochmat, Soemitro, (1987). *Rules and Auction Instructions*, Eresco, Bandung.

Salim, H.S. (2016). *Development of Guarantee Law in Indonesia*, Rajawali Pers, Jakarta. hlm. 97.

Salim, HS. (2007). *Development of Guaranteed Law in Indonesia*, RajaGrafindo Persada.

Soerjono, S. (2008). *Introduction to Legal Research*, Universitas Indonesia Press, Jakarta.

St. Remy, S. (1999). *Underwriting Rights Principles, Basic Provisions and Problems Faced by Banking*, Alumni, Bandung.

Stb. 1908 Number: 189 as amended by Stb. 1940, Number 56 concerning Bidding Regulations (*Vendu Reglement*).

Subekti, R. (1989). *Civil Procedure Law*, Bina Cipta, Bandung.

Sudikno, M. (1998). *Indonesian Civil Procedure Law*, Liberty, Yogyakarta.

Supramono, (2009). *Banking and Credit Problems*, RinekaCipta, Jakarta, hlm. 158.

Sutarno, (2009). *Credit Legal Aspects in the Bank*, Alfabeta, Bandung, hlm. 326.

Wirjono, P. (2000). *Violating Laws*, CV Mandar Maju, Bandung.

Zainal, A. (2015). *Introduction to Indonesian Banking Law*, Rajawali Press, Jakarta.