

THE LEGAL PROTECTION FOR DEBTORS IN THE EXECUTION OF MORTGAGE AT THE SEMARANG STATE ASSETS AND AUCTION SERVICE OFFICE

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Abstract

One of the goals of national development in the field of economics and law is to create a just and prosperous society in accordance with Pancasila and the 1945 Constitution. One of the legal actions taken by the community for the smooth running of its business activities is to make loans or credit to financial institutions. The loan is accompanied by the provision of Mortgage on the collateral object. In the process of lending and borrowing activities from creditors to debtors, problems or defaults can occur in the future, making it possible for an auction process to be carried out. The purpose of this article is to find out and analyze the auction process by State Assets And Auction Service Office (KPKNL) in Semarang City based on Regulation of The Minister of Finance of The Republic of Indonesia (PMK) No. 213/PMK.06/2020 and to see whether the process is in line with the Indonesia Mortgage Rights Law and how the protection provided for the default debtor is. The writing method used by the author is an empirical juridical approach. The empirical juridical approach is to identify and conceptualize law as a real and functional social institution in a real-life system. The mortgage auction process done by the KPKNL Semarang based on the above regulations is appropriate and protects the debtor's rights properly.

Salah satu tujuan pembangunan nasional dibidang ekonomi dan hukum adalah untuk mewujudkan masyarakat yang adil dan sejahtera sesuai dengan Pancasila dan Undang-Undang Dasar 1945. Salah satu perbuatan hukum yang dilakukan oleh masyarakat demi kelancaran kegiatan usahanya adalah dengan melakukan pinjaman atau kredit ke lembaga keuangan. Pinjaman tersebut disertai dengan pemberian Hak Tanggungan atas benda jaminannya. Dalam prosesnya kegiatan pinjam meminjam

dari kreditur kepada debitur ini dapat terjadi masalah atau cedera janji kedepannya, sehingga memungkinkan untuk dilakukannya proses lelang. Penulisan artikel ini bertujuan untuk mengetahui dan menganalisis proses lelang oleh Kantor Pelayanan Kekayaan Negara dan Lelang (KPKNL) di Kota Semarang berdasarkan PMK No. 213/PMK.06/2020 dan untuk melihat apakah proses tersebut sudah sejalan dengan Undang-Undang Hak Tanggungan serta bagaimana perlindungan yang diberikan bagi debitur wanprestasi tersebut. Metode penulisan yang digunakan penulis ialah pendekatan yuridis empiris. Pendekatan yuridis empiris ialah mengidentifikasi dan mengkonsepsi hukum sebagai institusi sosial yang riil dan fungsional dalam sistem kehidupan yang nyata. Proses lelang hak tanggungan yang dilakukan oleh KPKNL Semarang berdasarkan peraturan tersebut diatas sudah sesuai dan melindungi hak debitur dengan baik.

Keywords: auction, mortgage, default, collateral

Introduction

The need for capital for the community continues to increase. One way to get capital is through make collateral of land ownership certificates. The guarantee of the land certificate must be tittled with Mortgage Rights, this is regulated in Laws of The Republic Indonesia Number 4 Year 1996 regarding Mortgage Rights to Land and Objectives Related to Land hereinafter referred to Indonesia Mortgage Rights Law. Mortgages are goods that are used as collateral to pay off debts from the Debtor. One form of collateral that is widely used as collateral in credit agreements is mortgage rights.¹ Land rights are often used as collateral because in general land rights have a high value or price and continue to increase. Collateral is a form of protection that must be given by the debtor to guarantee the repayment of the debt for security and legal certainty, especially if after the agreed period, the debtor does not extend his debt or default.²

In accordance with its purpose, collateral in the form of movable or immovable property is not to be privately owned by creditors³, because the loan agreement or credit agreement is not a sale and purchase agreement that results in the transfer of ownership of an item, but the collateral is used to pay off debts in the manner stipulated in applicable regulations, i.e. goods are sold at auction where the proceeds are to pay off debtors' debts, and if there is any residual, the

1 Isti'ana and Nandang Kusnadi, "Existence of Religious Court in Indonesia as the Executor Mortgage Right of Islamic Bank Financing," *International Journal of Multicultural and Multireligious Understanding* 6, no. 2019 (6AD), <https://doi.org/doi.org/10.18415/ijmmu.v6i6.1364>.

2 Badriyah Harun, *Penyelesaian Sengketa Kredit Bermasalah* (Yogyakarta: Pustaka Yustisia, 2010).

3 Wilda Prima Putri, "Perlindungan Hukum Terhadap Bank Sebagai Pemegang Jaminan Kebendaan Terkait Pelunasan Hutang Oleh Debitur (Studi Kasus Putusan No.50/Pailit/2010/PN.Niaga.JKT. PST)," *ADIL: Jurnal Hukum* 9, no. 2 (May 2019): 35–60, <https://doi.org/10.33476/ajl.v9i2.827>.

proceeds will be returned to the debtor.⁴

The Party in accordance with Mortgage Rights in Article 8 until Article 9 of Indonesia Mortgage Law are: 1) *Grantor Mortgage*, can be individuals or legal entities, which have the authority to do legal actions against the object of Mortgage; and 2) *Mortgage holders*, consisting of individuals or legal entities that are domiciled. On the way to return the funds that have been borrowed, there are debtors who default. Default debtor's is those who have bad loans. So, to fulfill the creditor's rights, it must lead to auction of mortgage rights. In Article 6 of Indonesia Mortgage Right Law, state "*it is stipulated that the Mortgage holder has the right to sell the Mortgage right object through a public auction without requiring further approval from the Mortgage grantor and subsequently repaying his receivables from the sale earlier than other creditors*". The remainder of the sale proceeds remain the right of the Grantor Mortgage. This is based on the priority aspect in the mortgage right. Mortgage rights take precedence for creditors holding mortgage rights.⁵

In accordance with Article 6 of Indonesia Mortgage Right Law jo Article 20 paragraph 1 letter (a), the implementation the Mortgage Right can be carried out by the holders of the mortgage right on their own power through a public auction. This means that the auction under Article 6 Indonesia Mortgage Right Law is an authority given by the law (*ex lege*) to the first mortgage right holder to sell through a public auction of assets used as collateral if the debtor in default. Thus, the law gives creditors the authority to carry out the execution of the Mortgage Right without requiring the approval of any party. With this provision, there must be legal protection for objects of mortgage rights in the auction process for default debtors.

The implementation of the auction at the KPKNL must be in accordance with Regulation of The Minister of Finance of The Republic of Indonesia (PMK) Number 213/PMK.06/2020 Concerning Instructions for Implementing Auction. This is the latest regulation regarding Auction's Guideline. PMK No 213/PMK.06/2020 revoke the PMK No. 90/PMK.06/2016 and PMK No 27/PMK.06/2016. The aim is writing this article are to analyze is PMK 213/PMK.06/2020 in line with Indonesia Mortgage Law in ruling the auction's process of Mortgage Rights? In its considerans, it was explained that the PMK revision was carried out to improve services to realize more efficient auctions, auctions, effective, transparent, accountable,

4 Achmad Chosyali and Tulus Sartono, "Optimalisasi Peningkatan Kualitas Kredit Dalam Rangka Mengatasi Kredit Bermasalah," *LAW REFORM* 15, no. 1 (May 2019): 98–112, <https://doi.org/10.14710/lr.v15i1.23357>.

5 M. Yasir, "Aspek Hukum Jaminan Fidusia," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 3, no. 1 (June 2016): 75–92, <https://doi.org/10.15408/sjsbs.v3i1.3307>.

simple, modern and to ensure legal certainty, and to respond to the development of trading transaction models through electronic systems, it is necessary to improve the provisions regarding the implementation of auctions.

In order to give comprehensive, analyze to solve the issues, author interest to make brief research in KPKNL in Semarang because the achievement of KPKNL Semarang. Recently, KPKNL Semarang Receives Appreciation for Achievement of Key Performance Indicators (IKU) State Revenue Sourced from BMN Management (state property) in 2021.

Research Methods

Legal research is the process of locating the law that applies to the question raised by the facts of the case.⁶ Legal research and analysis are interrelated, and performing legal research usually involves the use of analysis principles. The research method that used in writing this research is empirical legal research.⁷ Empirical Legal Research is a legal research to obtain data from primary data or directly from the community.⁸ An Empirical Legal Research is to identify and conceptualize law as a real and functional social institution in a real-life system.⁹ The primary data in writing this article is an interview with an auction officer from KPKNL Semarang and legal sources used in analyzing the issues in this article are Laws of The Republic Indonesia Number 4 Year 1996 regarding Mortgage Rights to Land and Objectives Related to Land and Regulation of The Minister of Finance of The Republic of Indonesia Number 213/PMK.06/2020 Concerning Guidelines For Implementing Auction.

The Regulations for the Implementation of Auction for Mortgage Rights

The definition of Mortgage based on Article 1 number 1 of Law Number 4 of 1996 concerning Mortgage Rights and Land Related Objects (Indonesia Mortgage Right Law) is: *“Mortgage Rights along with objects related to land,*

6 Paramita Prananingtyas and Hari Sutra Disemadi, “Legal Consequences of Dualism Regulations on Micro Waqf Bank as a Sharia Microfinance Institutions in Indonesia,” *Varia Justicia* 16, no. 1 (2020): 1–14, <https://doi.org/doi.org/10.31603/variajusticia.v16i1.3205>.

7 Laurensius Arliman S, “Peranan Metodologi Penelitian Hukum Di Dalam Perkembangan Ilmu Hukum Di Indonesia,” *Soumatara Law Review* 1, no. 1 (May 2018): 112–32, <https://doi.org/10.22216/soumlaw.v1i1.3346>.

8 Kornelius Benuf and Muhamad Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Gema Keadilan*, 2020.

9 KPKNL Semarang, “KPKNL Semarang Mendapat Apresiasi Atas Capaian IKU Penerimaan Negara Yang Bersumber Dari Pengelolaan BMN,” 2021, <https://www.djkn.kemenkeu.go.id/kpknl-semarang/baca-berita/24549/KPKNL-Semarang-Mendapat-Apresiasi-Atas-Capaian-IKU-Penerimaan-Negara-yang-Bersumber-dari-Pengelolaan-BMN.html>.

hereinafter referred to as Mortgage Rights, is a guarantee right which is imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, whether or not following or not along with other items which are an integral part of the land, to pay off certain debts to other creditors.” In addition, Article 51 of the Indonesia Basic Agrarian Law (BAL), has confirmed guarantees of land, which states that the mortgage rights that can be charged to ownership rights, business use rights, and building use rights in Article 25, Article 33, and Article 39 are regulated by law..

According to Kartini Muljadi and Gunawan from the formulation of Article 1 number (1) of Indonesia Mortgage Right Law, it can be seen that basically a mortgage is a form of guarantee of debt repayment, with preemptive rights, with the object of collateral in the form of rights to land regulated in the BAL.¹⁰ According to Budi Harsono, the definition of mortgage is the control of land rights, containing the authority for creditors to do something about land that is used as collateral. But not to be physically controlled and used, but to sell it if the debtor defaults and takes from the proceeds wholly or partly the payment of the debtor's debt to him..¹¹

The provisions of Article 4 of Indonesia Mortgage Right Law state that: 1) Land Rights that can be encumbered with mortgage rights are a) Right of ownership; b) Cultivation Rights; and c) Building rights; 2) In addition to land rights as referred to in paragraph (1), Use Rights on State land which according to the applicable provisions must be registered and by their nature transferable can also be encumbered with Mortgage Rights; 3) Imposition of Underwriting Rights on the Right to Use over the Property Rights will be further regulated by Government Regulation; 4) Mortgage rights can also be charged to land rights including buildings, plants, and works that already exist or will exist which are one unit with the land, and which are the property of the holder of the land rights whose burden is expressly stated in the Deed of Granting the Underwriting Right concerned; and 5) If the building, plants, and works as referred to in paragraph (4) are not owned by the holder of land rights, the encumbrance of such Mortgage Rights can only be done by signing as well as on the Deed of Granting the Mortgage Rights concerned by the owner or the owner authorized by it by an authentic deed.

10 Kartini Muljadi and Gunawan Widjaja, *Hak Tanggungan* (Kencana Prenada Media, 2005).

11 Uswatun Hasanah and Mohammad Amir Hamzah, “Protection Of Debtor Customer's Rights As Consumers In The Execution Of Mortgage Object Auction In Indonesia,” in *Proceedings of the 1st International Conference on Social Sciences (ICSS 2018)* (Paris, France: Atlantis Press, 2018), 1307–10, <https://doi.org/10.2991/icss-18.2018.275>.

However, please note that not every land right can be used as a debt guarantee, the land rights must meet the following conditions:¹² 1) Can be valued in money; 2) including the rights registered in the public register (publicity requirements); 3) has transferable nature; and 4) requires appointment by law.

Mortgage Rights as a Credit Collateral at the Bank

Provisions in Article 1 number 2 of Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking (Indonesia Banking Law) states that: *“Banks are business entities that collect funds from the public in the form of deposits and distribute them to the community in order to improve the lives of many people.”*

According to Indonesia Banking Law banks are divided into two types i.e commercial banks and rural banks. Commercial banks according to Article 1 number 3, as follows: *“Commercial Banks are banks that carry out business activities conventionally and or based on Sharia Principles which in their activities provide services in payment traffic”*. Whereas the Rural Bank (BPR) according to Article 1 number 4, as follows: *“Rural Credit Banks are banks that carry out business activities conventionally or based on Sharia Principles which in their activities do not provide services in payment traffic”*.

It means that in day-to-day activities banks in general always try to collect as many funds as possible from the public in the form of savings and then manage these funds to be channeled back to the public in the form of loans or credit. Other than that, Article 1 number 11 of Indonesia Banking Law states: *“Credit is the provision of money or bills equivalent to that, based on a loan agreement between the bank and another party, which requires the borrower to repay the debt after a certain period of time with interest”*.

So, to be able to carry out lending, there must be an agreement between the bank as a creditor and the customer as a debtor called a credit agreement. In providing credit to the public, the Bank must feel confident that the funds lent to the people will be returned on time as well as the interest and with the terms agreed upon between the bank and the customer as stated in the credit agreement.

To find out the ability and willingness of customers to repay loans on time, in a loan application, banks need to review or analyze credit applications, including

12 Neni Chona'ah, “Hak Pakai Atas Tanah Negara Sebagai Obyek Jaminan Hak Tanggungan,” *Jurnal Hukum Dan Kenotariatan* 2, no. 2 (2018): 235–46, <https://doi.org/doi.org/10.33474/hukeno.v2i2.1507>.

(5C Principles): character, capacity, capital, collateral, condition of economy.¹³ In addition to applying the 5C principle also applies what is called the 5P principle, as follows party, purpose, payment, profitability, protection.¹⁴

Protection of credit by debtors is the most important thing for creditors. For this reason, protection from group companies or guarantees from companies (holding), or personal guarantees is very much considered.¹⁵ Among the five principles, one of the most important things to consider is the collateral. Collateral is goods submitted by the debtor to the bank as the creditor as collateral for repayment of the credit received.

In making credit agreements, banks generally will not give credit without regard to the collateral given by the debtor to guarantee the credit obtained. Even though Article 1131 of the Indonesia Civil Code states that all debts of movable and immovable people, both existing and future will be borne by individuals, but often people are not satisfied with publicly formulated guarantees. Therefore, banks need to request that certain objects can be used as collateral that is legally bound. Thus, if the debtor does not keep his promise or breach of contract (default), then the bank can exercise its rights by getting a higher position than other creditors to get the repayment of the debt.¹⁶

Land is collateral for debt repayment that is most preferred by financial institutions that provide credit facilities. Because of, the land is easy to sell, prices continue to rise, have certificate to proof of the rights. The land is also difficult to embezzlement and can be encumbered with Mortgage Rights that give privileges to creditors.¹⁷ In BAL, land collateral rights called Mortgage Rights are regulated in Article 25, Article 33, Article 39, Article 51, and Article 57. In Article 25, Article 33 and Article 39 of the BAL it is stipulated regarding land rights that can be used as collateral for debt. With the issuance of the Indonesia Mortgage

13 Hari Sutra Disemadi, "Risk Management in The Provision of People's Business Credit as Implementation of Prudential Principles," *Diponegoro Law Review*, 2019.

14 Debora Damanik and Paramita Prananingtyas, "Prudential Banking Principles Dalam Pemberian Kredit Kepada Nasabah," *Notarius* 12, no. 2 (2019): 718–730, <https://doi.org/doi.org/10.14710/nts.v12i2.29011>.

15 Muhammad Sabir and Rifka Tunnisa, "Jaminan Fidusia Dalam Transaksi Perbankan (Studi Komparatif Hukum Positif Dan Hukum Islam)" 2, no. 1 (2020): 80–97, <https://doi.org/doi.org/10.24252/mh.v2i1.14284>.

16 Ayup Suran Ningsih and Hari Sutra Disemadi, "Breach of Contract: An Indonesian Experience in Akad Credit of Sharia Banking," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 2019, <https://doi.org/10.18326/ijtihad.v19i1.89-102>.

17 Fani Martiawan Kumara Putra, "Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tanggungan," *Yuridika* 28, no. 2 (September 2013): 1–37, <https://doi.org/10.20473/ydk.v28i2.1760>.

Rights, it is very meaningful especially in creating a unification of national land law, especially in the field of land rights. The Mortgage Rights is a strong collateral right for immovable property in the form of land, which is used as collateral, because it gives a higher position (priority) to the creditor who holds the mortgage right compared to other creditors.

Thus, from the description above it can be felt that the issue of collateral is very important in the context of implementing credit. In applying for a loan of funds, there are no creditors who want bad credit.

The Procedure When Bad Credit (Default) From Debtor Happened

The settlement procedure in the event of a bad credit is the debtor will collect by phone if there is bad credit for 1 month, and the alternative that is done if it cannot be contacted is that the BPR will come to the debtor's house. However, if after visiting his house there is no good intention to make payments, the creditor will give a warning letter 1 to the debtor, this warning letter is given a maximum of 3 times, then if after the creditor issues a third warning letter and there is still no-good faith to carry out payment, the creditor will execute the collateral object guaranteed by the creditor when applying for a loan.

Execution of the collateral object is carried out in negotiation with the debtor regarding the way the object was executed. In this case, it is determined whether the collateral object is to be sold together or entered an auction hall. The difference is that if it is through a joint sale, it is the debtor who determines the price, but if through the auction hall, the creditor is entitled to determine the price.

In addition to the problem of bad credit, we also ask about the procedure if the debtor dies before the debt is paid off. When the debtor dies, the heirs will usually contact the creditor to settle the debt. Repayment can be done in two ways, namely closing the repayment and installments, if it will be done in installments (installments), then it must be done behind the name of the heirs who will repay the debt.

The Implementation of Auction Process by the State Assets And Auction Service Office (KPKNL) in Semarang

At present, economic growth and the progress of trade transactions often lead to problems, so that legal settlement¹⁷ is needed for the problems that arise, with the aim of supporting to keep going forward and developing accelerated economic development.¹⁸The funds needed to accelerate economic development are not

18 Siti Dhurotun Muniroh and Ubaidillah Kamal, "The Indication Of Unfair Business Competition Practice In The Implementation Of Public Procurement Auction Using E-Tendering," *Journal of Private and Commercial Law*, 2018, <https://doi.org/10.15294/jpcl.v2i2.15700>.

small, various credit facilities provided by banking institutions are generally used by economic actors ranging from individuals, legal entities, business entities, the private sector and the government.¹⁹ The presence of Indonesia Mortgage Rights Law is an appropriate policy for the availability of legal instruments in facing a development challenge in the economic field, especially in the field of credit to banking institutions.

The law is expected to have protection and legal guarantees in credit activities if it is found that the debtor does not meet the achievements of the agreement he made or default, then an auction will be held on the object that is guaranteed for his debt to settle debtor debt to creditors. In the legal system and banking system in Indonesia, the existence of land as collateral is justified in accordance with Indonesia Mortgage Rights Law. With the enactment of the Law, the regulation concerning the imposition of mortgage rights on land rights is regulated therein. And the mortgage is the only collateral agency for national land rights written in the law.

Land is considered to have relatively high economic value and is stable so that it is used as collateral in a debt agreement.²⁰ The bank considers that land as collateral will be easy in terms of sales and the price will continue to increase and have a clear proof of ownership. Based on Authors thoughts and analyzes, if the debtor fails the promise, then the land guarantee has several methods of execution. *First*, the execution is carried out based on a promise to sell an object on its own power or through an auction as written in Article 6 Indonesia Mortgage Rights Law. Then the *second* is an execution based on the executorial title written in the mortgage certificate. *Third*, execution through underhand sales based on an agreement between the buyer and the holder of the mortgage rights.

In accordance with Article 6 of Indonesia Mortgage Rights Law, the execution of mortgage rights is carried out by the Grantor Mortgage through a public auction on his own power. This means that the first mortgage right holder is entitled to conduct a public auction of collateral if the debtor has been defaulted without the approval of any party including the debtor though.²¹ If there is no statutory

19 Ayup Suran Ningsih, Duhita Driyah Suprapti, and Nurul Fibrianti, "The Importance of Applying the Membership Value Toward Savings and Loans Cooperatives in Indonesia," *Srivijaya Law Review* 3, no. 2 (2019): 225–234, <https://doi.org/doi.org/10.28946/slrev.Vol3.Iss2.235.pp225-234>.

20 Jatmiko Winarno, "Penyelesaian Kredit Macet Dengan Jaminan Sertifikat Hak Milik Atas Tanah Menurut Undang-Undang Nomor 04 Tahun 1996 Tentang Hak Tanggungan," *journal independent*, 2016, <https://doi.org/10.30736/ji.v4i1.46>.

21 Achmad Busro, Dewi Sulistianingsih, and Muhammad Shidqon Prabowo, "Legal Protection For Creditors In Fidusia Agreements In Indonesia," in *3rd Annual International Seminar and Conference on Global Issues (ISCoGI 2017)*, 2019, 51–56.

regulation that governs it, by considering the provisions in Article 14 Indonesia Mortgage Law, the regulation regarding *hypoteek* execution that is in effect when this Law comes into force applies to the execution of Mortgage Rights. Based on the statement in the article, the execution of the mortgage based on the executorial title is carried out by the Chief of the Indonesia State Court by following the Indonesia Civil Procedural Law such as the execution of *hypoteek*, as long as no new provisions have been made for this matter. Then the Chief of the State Court will issue the determination of the auction and submit a request for the auction to the Office of State Assets and Auction Services.

The institution authorized to conduct mortgage auctions is The Office of State Assets and Auction Services (KPKNL) is under the Directorate General of State Assets (DJKN) is a state auction house that also holds the Minister of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Guidelines For Implementing Auction, besides that the KPKNL also takes into account the provisions in several Article s on the Mortgage Rights Law in the case of auctioning collateral objects. Based on the definition that written in Article 1 of the Indonesia Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines For Implementing Auction, it is known that Auction is the sale of goods that are open to the public with a written and/or verbal price offer that is increasing or decreasing to reach the highest price, which is preceded by an Auction Announcement..

Then the auction according to the regulation was carried out bargaining activities by several people in order to create the best price. But if an auction is only conducted by one person, then it is said to be an ordinary sale and purchase.²² Because if the auction is only attended by one person, then there is no bargaining according to these regulations and this can allow fraud to occur which can result in debtor losses due to the absence of bargaining by several bidders to create the best price desired by the debtor.²³

The update regulation about auction is the auction can be held without the parties come to auction office. It is written in Article 1 (12) of the Indonesia Minister of Finance Regulation (PMK) Number 213/PMK.06/2020, that an auction without participants is an auction that not physically attended by the bidder

22 Pujiyono and Syarief Toha, "Legal Protection For New Creditors In The Implementation Of Credit Takeover With Mortgage Guarantee," *Yustisia Jurnal Hukum* 6, no. 1 (June 2017): 99–113, <https://doi.org/10.20961/yustisia.v6i1.11506>.

23 Nur Putri Hidayah, Isdian Anggraeny, and Dwi Ratna Indri Hapsari, "Credit Dispute Resolution with Mortgage Right Warranties on Conventional Banking," in *Proceedings of the International Conference on Law Reform (INCLAR 2019)* (Paris, France: Atlantis Press, 2020), 24–28, <https://doi.org/10.2991/aebmr.k.200226.005>.

on the spot implementation of the auction or carried out through the application auction or e-marketplace auction platform.. This is because it aims to conduct a brief and efficient auction, and the regulation is still applied in the auction at the Office of State Assets and Auction Services (KPKNL) and private auction centers, and especially from march 2020 until now is still in Covid 19 pandemic. One type of auction is an auction based on existing laws and regulations, one of which is an auction due to mortgage rights²⁴ where the debtor defaults so that the collateral object is auctioned based on what is already in the credit agreement between the creditor and the debtor. The auction object for security of mortgage can only be done at the KPKNL and cannot be done through a private auction hall, because only the KPKNL has the authority to conduct auctions related to mortgage rights.²⁵

The Indonesia Mortgage Rights Law provides several methods of execution for mortgage rights, but in practice banking institutions as creditors or holders of mortgage rights often execute guarantees through auctions. However, based on author research and observation, before deciding to auction an object of collateral, the banking institution must go through several processes related to the debtor. Before deciding the auction, the bank must first try to keep charging the debtor. After that, some negotiations are carried out and of course the debtor gives authority to sell the collateral object on their own. If after negotiations the debtor remains unable to pay or does not want to sell the collateral itself, the bank will conduct an auction. Until now, banks felt that the auction was the safest way to execute compared to underhand sales. Because the provisions are always upheld is that the auction is final and can only be canceled by a court decision.²⁶

Related to the regulation which state that the auction allows without physically attend of the parties, in our interviewed with the representative of the KPKNL Semarang is first because of Covid 19 pandemic but also to achieve the efficiency of aution. Moreover, in Article 20 PMK No 213/PMK.06/2020 state *“if the presence of the Seller and/or witnesses from the Seller is carried out through electronic media, the Seller must first submit a written application to the Head of the KPKNL or Class II Auction Officer no later than 1 (one) working day prior to the*

24 Jamilus, “Persoalan Dalam Pelaksanaan Eksekusi Sertifikat Dan Hak Tanggungan,” *Jurnal Penelitian Hukum De Jure*, 2017.

25 Yagus Suyadi And Puji Prastiyo, “Pelaksanaan Eksekusi Sertipikat Hak Tanggungan Dalam Upaya Penyelesaian Kredit Macet Di Pengadilan Negeri,” *MIZAN, Jurnal Ilmu Hukum*, 2019, <https://doi.org/10.32503/mizan.v8i1.500>.

26 Achmad Busro et al., “Quo Vadis Copyright As Fiduciary Guarantee In Indonesian Legal Arrangement,” *Journal of Legal, Ethical and Regulatory Issues* 21, no. 2 (2018): 1–12.

action.” Futhurmore, in Article 20 (6) PMK No 213/PMK.06/2020 regulated that the parties should obey the rules below if the choose to do the auction through electronic media: a) show a copy of the letter appointment as a Seller and his/her identity legitimate; b) show the original document of ownership to the Auction Officer, for goods which based on the provisions of the legislation require ownership documents; c) read a stamped statement that the Seller is responsible for the authenticity of the ownership documents and is willing to submit the original ownership documents to the Buyer in accordance with the provisions if the goods are sold; and e) introduce the witness and show his/her valid identity, in the event of an auction, the presence of a witness from the Seller is required.

Other than that, PMK No 213/PMK.06/2020 also allow auction with one (1) participant, it is state in Article 23 “*The auction is still held even though it is only followed by 1 (one) Bidder.*” Through interview with KPKNL officer, he stated that it is because KPKNL aims to conduct a brief and efficient auction, and the regulation is still applied in the auction at the Office of State Assets and Auction Services (KPKNL) and private auction centers. One type of auction is an auction based on existing laws and regulations, one of which is an auction due to mortgage rights²⁷ where the debtor defaults so that the collateral object is auctioned based on what is already in the credit agreement between the creditor and the debtor. The auction object for security of mortgage can only be done at the KPKNL and cannot be done through a private auction hall, because only the KPKNL has the authority to conduct auctions related to mortgage rights.²⁸ Moreover, the auction allows only one person to be an auction participant, based on our confirmation with the representative of the KPKNL in Semarang is the bank cannot do anything else and can only follow these rules because it has been written in the PMK Number 213/PMK.06/2020. In author thought, even it regulated in PMK, the commen sense in community is the auction is an activity that is open to the public²⁹ where in the activity there is a bargaining process until the best price is expected for an object being auctioned. The next question is 1 (one) participant can conduct the best price?

27 Jamilus, “Persoalan Dalam Pelaksanaan Eksekusi Sertifikat Dan Hak Tanggungan.”

28 Suyadi and Prastiyo, “Pelaksanaan Eksekusi Sertipikat Hak Tanggungan Dalam Upaya Penyelesaian Kredit Macet Di Pengadilan Negeri.”

29 Marnita Marnita, “Eksekusi Jaminan Hak Tanggungan Sebagai Upaya Penyelesaian Pembiayaan Bermasalah (Studi Pada PT Bank Muamalat Indonesia Cabang Lampung),” *FLAT JUSTISIA* 10, no. 3 (2017): 525–544, <https://doi.org/10.25041/fiatjustisia.v10no3.791>.

The Protection of Default Debtor's in Mortgage Rights as Collateral Objects

In the Regulation of the Minister of Finance PMK No 213/PMK.06/2020 it clearly enough regulate legal protection for debtors on mortgage as collateral objects auctioned. It regulates in Article 27, Article 49, 51. *First*, let us discuss Article 27 it stated that

"In the term of prior to the auction of the object of Mortgage there is a lawsuit from a party other than the debtor/owner of the guarantee and/or the husband or wife of the debtor/owner of the collateral related to the ownership of the object to be auctioned, the Execution Auction of Article 6 of the Indonesia Mortgage Rights Law (UUHT) does not can be implemented."

Furthermore, in Article 27 (2) PMK No 213/PMK.06/2020 regulated the parties are: a) the legal heir, whose argument is that the claim regarding the process of installing mortgage rights is carried out after the testator as the owner of the guarantee dies accompanied by valid evidence; b) other parties who have ownership documents other than ownership documents that are bound by rights dependents; or c) the party who entered into a notarial sale and purchase agreement before the encumbrance of the mortgage right.

Not only in Article 27, in Article 51 also regulated that the limit price for mortgage rights should set with the highest range equal to the market price and the lowest equal to the liquidation price. Moreover, in Article 49 state that the limit value set by the seller must be based on the report on the assessment results by the professional and accredited appraiser for the limin price minimum 5 five billion rupiah. So, it is clearly concluded that PMK No 213/PMK.06/2020 gives the protection to debtor's object and it is in line with Indonesia Mortgage Rights Law.

Legal protection for debtors related to collateral object auctioned can be found in the Indonesia Mortgage Rights Law precisely in Article 12 which is written that *"a promise that gives the right to the mortgage right holder to have the object of the mortgage right if the debtor is in default, null and void"*. In the elucidation of this article, this provision is held in order to protect the interests of debtors and other mortgage holders, especially if the value of the mortgage right object exceeds the amount of the guaranteed debt. Mortgage holders are prohibited from automatically becoming the object owner of the mortgage right because the debtor is in default. However, it is not prohibited for the right-holders to become the purchaser of mortgage rights if they are through the procedures set out in Article 20. In practice based on author research, this is applied by banking institutions, which before deciding to auction an object of collateral, first meet

and negotiate with the debtor to collect back the remaining debt and after that if still unable to pay, the bank will give authority to the debtor who sells himself the object of the collateral.

However, if the two things are refused to be done by the debtor, then the last resort that must be taken by the bank as the creditor is an auction. So, if the debtor fails to promise, the creditor does not necessarily immediately conduct an auction for the object of the guarantee. Because the auction is the last resort to be taken by the bank to settle debts from the debtor. In addition to what is written in Article 12, the protection of the debtor is written in Article 20 provisions (5) Indonesia Mortgage Rights Law, states *“until the announcement for auction is issued, the sale as referred to in paragraph (1) can be avoided by paying off the debt guaranteed by the mortgage right along with the costs executions that have been issued”*.

In practice, based on the statement of the resource person who is an auction official at KPKNL Semarang, Mr. Dany Kuryanto, said that the auction can be canceled even 5 minutes before the auction announcement is issued if the debtor repays the entire remaining debt to the creditor. This has happened at KPKNL Semarang, which includes proving that there is still debtor protection in matters related to auctions.

Requirements that must be met for the auction of mortgage rights at the Office of State Assets and Auction Services (KPKNL) based on the PMK No 213/PMK.06/2020 regarding the Bidding Implementation Guidelines, as follows: 1) *There is bad credit*, 2) *Meet the conditions violated in the Credit Agreement and in (APHT) Deed of Granting Mortgage*, 3) *Attach evidence of previous agreements such as APHT and Credit Agreement between the Debtor and Creditors*, 4) *Statement from the Debtor that has defaulted with a written attachment of bad credit*, 5) *Written debt details and calculation of the limit price of an object to be auctioned. If the value of an object is more than 1 billion, then the calculation must use the Public Appraisal Service Office (KJPP)*.

Based on the requirements for filing an auction on mortgage rights written above in conducting an auction on the object of a mortgage right, the debtor must know and be told by the creditor that the guarantee will be auctioned, it is regulated in Article 1 that auction should announced in prior notice, without prior notice auction can not be done. Written in condition number 4 that *“statement from debtor that has defaulted with written attachment of bad credit”*, it is concluded that the debtor know because he must obtain a statement from the debtor if the debtor’s collateral items will be auctioned at the KPKNL.

Conclusion

Default of Credit with the mortgage rights as collateral can lead to auction. The Auction only can be done by State Official Auction (KPKNL). The Authority of The Creditor to propose an auction if debtor in default or bankrupt regulated in Indonesia Mortgage Rights Law. Even though, The Creditor has the rights to propose an auction, the creditor must follow and obey the law regarding the procedure to do the auction. If there are some requirements that the creditor cannot fulfilled, then the auction cannot be done. The protection of default debtor rights over the auction process can be seen through the terms and conditions that must be fulfill by creditor or the person who propose the auction. One of the requirements states the debtor must know because he must obtain a statement from the debtor if the debtor's collateral items will be auctioned at the KPKNL and if the value of an object is more than 5 billion, then the calculation of the object must use the Public Appraisal Service Office (KJPP) and the most important is if there is a lawsuit the auction of mortgage rights can not be done. The mortgage auction process carried out by the KPKNL Semarang based on the above regulations is appropriate and protects the debtor's rights properly.

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