

Implementation Of Deposit Rights In Sharia Banking

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Abstract

This research examines the "Implementation of Mortgage Execution in Islamic Banks" with 2 (two) problems, namely: Background behind Sharia Banks carry out the execution of mortgage rights using the legal basis of Law No. 4 of 1996 concerning Mortgage? Has the execution of mortgage rights at Banjarnegara Syariah Bank been able to provide justice and legal certainty for the parties and in accordance with sharia principles? To discuss these problems, empirical normative legal research is carried out. The implications of this research are 1) So that the Sharia Supervisory Board (DPS) more intensely supervises Islamic financial institutions under their supervision, 2) So that the Financial Services Authority (OJK) more intensely supervises Islamic financial institutions under their supervision, 3) So that settlement of disputes on the execution of Mortgage Rights in Islamic Banks in particular and Islamic Financial Institutions in general does not conflict with the basic principles of Islamic economics, 4) In order to guarantee legal certainty for parties entering into agreements with mortgage rights.

1. Introduction

Indonesia is a country with the largest number of Muslims in the world, but economic activities, in this case the majority of banking still refers to the conventional system. In the early 1990s, a Sharia bank named Bank Muamalat appeared, which became the starting point for the banking business and Islamic financial institutions in Indonesia.

Along with efforts to recover the national economy, the development of a sharia-based economic industry that began with Sharia Banking and Baitul Maal Wattamil or Sharia Rural Banks has proven to be part of the national economic solution.

Islamic banks have the task of managing public funds by collecting and redistributing the collected funds¹ to be offered to the community with a number of credit loans accompanied by conditions that can guarantee that bad credit does not occur which can be detrimental to the bank as a creditor. One of the conditions that can be used as collateral for loans in Islamic Banking is in the form of land and or building certificates. In the event of bad credit, the consequence is that the collateral can be used as credit repayment by way of auctioning the object that is the collateral. In practice, banking uses the mortgage deed for legal protection for the bank as a creditor if the debtor does not carry out his obligations according to what was agreed (default). The existence of such mortgage rights provides a sense of security to creditors as well as a

¹The task of banks in general is to carry out 2 (two) activities, namely: Collecting funds from the community or also known as funding and channeling lending funds. cf. <http://accounting.binus.ac.id/2017/06/17/5-lima-pengertian-fungsi-juang-dan-tipe-bank-umum/diunduh> on Sunday 6 December 2020

means of legal protection for creditors². With the reasons and legal basis, article 6 of the Mortgage Law gives authority to Islamic banking as a debtor to be able to carry out executions/parate executions without a court decision.

This creates a problem in practice, the implementation of the execution in accordance with Article 6 of the Mortgage Law does not provide justice for the debtor, because the debtor's position becomes very weak.

Debtors who do not make achievements are not necessarily just negligence caused by the debtor, there are many things that make the debtor not perform according to the agreement.

In this case, because the Bank already has a deed of mortgage rights, the Bank takes a fast way to execute/parate execute on collateral for debtors who do not make achievements or are late in carrying out achievements on credit agreements with the Bank as creditors.

Laws that are expected to play a role in economic development must have an educational function. What is expected in Indonesia is how the law can discipline society and create a healthy business environment.

With the growing rapid growth of Islamic economics in Indonesia, especially in the field of Islamic economics, surely there are one or two or even more problems that arise. This makes the government, in terms of law enforcement, regulate the settlement process in a way that benefits both parties, namely by increasing the authority of the Religious Courts to resolve cases related to the Sharia Economy. The Religious Court is a legal institution that resolves problems based on parties who are Muslim (Islam).

Since Law no. 7 of 1989 concerning the Religious Courts amended by Law no. 3 of 2006. This has positive implications for the development of the institution of the Religious Courts in Indonesia. In Article 49 of Law no. 3 of 2006 affirmed: "The Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people who are Muslim in the field of Marriage, Inheritance, Wills, Grants, Endowments, Zakat, Infaq, Sadaqah, and Sharia Economics."³ Since the amendment, the obligations of the district court have diminished, but this does not rule out the possibility of shari'ah economic disputes being resolved in the district court. However, after the issuance of the amendment, the Religious Courts are now entitled and authorized to handle shari'ah banking disputes. The Religious Courts are no longer only authorized to examine, decide and resolve cases concerning marriage, inheritance, wills, grants, waqf and shadaqah, but are given new authority in resolving sharia economic disputes.

With regard to all of this, there must be justice and legal certainty for creditors and debtors in carrying out sharia economic activities, especially in relation to the execution of collateral in the form of land and or buildings bound by deed of mortgage rights in order to provide justice and legal certainty to the parties who in accordance with sharia principles.

²Amran Saudi, *Sharia Economic Dispute Resolution: Inventions and Principles*, (Jakarta: Prenada Media Group: 2018) edition 1, p. 361

³*Explanation of Article 49 Letter (i) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts.*

2. Methods

This research is a descriptive research aimed at providing data as accurately as possible about humans, conditions or other symptoms⁴. This research is a type of empirical normative legal research. Normative legal research by examining literature or secondary data regarding the execution of mortgage rights which is the basis for settlement of problem loans.

3. Research Results and Discussion

3.1. Execution of Mortgage as collateral for credit in Islamic Banks

Sharia banks as creditors often receive collateral for land or land and buildings which with proof of ownership in the form of a certificate, in this case the binding of collateral can be carried out simultaneously with the process of transferring the name after which the Mortgage is registered by the relevant Land Office.

Because land rights are the main credit guarantee object in addition to other objects related to land, the creditor must always be vigilant in binding them, so that he does not have difficulties in executing or selling the land or land and buildings in the future in order to obtain repayment of his debts.

Land certificates are important for Islamic Banks as collateral in carrying out contracts in addition to knowing who the owner is, also to find out the rights to the land, whether the land is Freehold Land, Building Use Rights, Business Use Rights or Usage Rights, as is known today. State land registered at the Land Office can become the object of Mortgage Rights.

In general, a plot of land is only burdened by one Mortgage Right. However, it can happen that a plot of land is burdened with several Mortgage Rights. The order of position of the holders is determined by the date of registration at the Land Office with the provision that the Mortgage is registered on the same day, the position is determined by the date of making the Deed of Encumbrance of Mortgage by PPAT (Article 5 paragraph (3) UUHT). Collateral in the form of usufructuary rights, building use rights or usufructuary rights, which is very important for the Bank as a creditor to know is the expiration of the validity period of the land rights, and sharia banks should not forget to include a promise in the Deed of Credit Agreement,

It is important for Islamic banks to always pay attention and research continuously if necessary by making a special list regarding when the land rights which are the object of the Mortgage for the credit will end. The aim is that before the expiry of the land rights, sharia banks can easily submit applications for the extension of these rights to the Office of the National Land Agency.

UUHT changes the practice that has been carried out in using a Power of Attorney for Imposing Mortgage Rights. At the time before UUHT came into effect, power of attorney institutions were often used to postpone the imposition of Mortgage Rights. The creditor holding the Power of Attorney imposes Mortgage Rights

⁴Soerjono Soekanto, *Introduction to Legal Research*, UI-Press, Jakarta, 1986, p.10.

which will only be implemented if there are symptoms that the debtor will default. Even though the risk due to the imposition of the Mortgage Right has not been fully borne by the creditor, because such collateral does not give a priority position and does not follow the collateralized object in the hands of whoever the object is, it is deemed necessary not to continue this practice to avoid speculation or manipulation.

In practice in the banking world such a thing is possible, because many Islamic banks are competing to find customers and do not like to be considered as "cruel Islamic banks not in accordance with sharia principles", so in general even though credit has been given to the debtor, the rights The mortgage on the land in question has not been charged, and Islamic banks feel safe enough by holding the land certificate accompanied by an absolute power of attorney to impose Mortgage made by a Notary or PPAT. The Bank feels satisfied, because the Bank assumes that the Debtor cannot revoke the power of attorney, and the power of attorney will not expire in any way. For creditors, having a power of attorney will provide several advantages, namely:

- Creditors are considered creditors who are easy going/flexible/not too rigid.
- A Power of Attorney for Imposing Mortgage can be made quickly and at low cost.

By taking into account the provisions of the UUHT as detailed above, a Power of Attorney for Imposing Mortgage can be made anywhere, as long as it is by a Notary or PPAT. If it is made by a Notary, it can be made by a Notary who is domiciled outside the area where the land in question is located, whereas if it is made by a PPAT/Sub-District Head, it must be the PPAT/Camat in charge of the land in question.

With the existence of a Power of Attorney for Imposing Mortgage Rights, the Bank without the assistance of the Debtor can impose Mortgage Rights on the land. According to Article 15 paragraph (2) UUHT the power of attorney is only valid for 1 (one) month. In connection with this, it should be stated that the method of not immediately imposing Mortgage is actually very dangerous for creditors, because facing an irresponsible debtor, various kinds of problems can arise. It could happen, even though the land certificate is on the Bank's side, then the land is confiscated by the District Court, with conservatoir confiscation or execution confiscation. If this happens and the confiscation has been registered at the Land Office or recorded in the register book provided for this at the District Court, then the Bank will face difficulties. Even though the certificate is in the hands of the Bank with absolute power to impose the Mortgage Right, maybe even when the land is going to be auctioned based on a decision that has permanent legal force in another case, it is handed over by the Head of the District Court to the winning plaintiff. And what if the debtor becomes bankrupt? The bank as the holder of the power of attorney to impose mortgage rights, is not a preferred creditor and cannot enjoy benefits at all like the holder of the first mortgage right, which is highly protected by UUHT. when the debtor becomes bankrupt. The bank as the holder of the power of attorney to impose mortgage rights, is not a preferred creditor and cannot enjoy benefits at all like the holder of the first mortgage right, which is highly protected by UUHT. when the debtor becomes bankrupt. The bank as the holder of the power of attorney to impose mortgage rights, is not a preferred creditor and cannot enjoy benefits at all like the holder of the first mortgage right, which is highly protected by UUHT.

In the UUHT, the function of the Power of Attorney to impose Mortgage is

emphasized as a tool to overcome if the Mortgage giver cannot appear before the PPAT. In principle, the imposition of Mortgage must be carried out by the Mortgage giver himself. Only if absolutely necessary, namely in the event that the grantor of the Mortgage cannot be present before the PPAT, the use of a Power of Attorney to impose Mortgage is permitted.

In line with that, the power of attorney must be given directly by the mortgagee and must meet certain requirements regarding the contents. It is also required that the Power of Attorney for Imposing Mortgage Rights must be immediately followed up by making a Deed for Granting Mortgage Rights within a predetermined time, namely no later than 1 (one) month if the object concerns land that has been registered (certified) or no later than 3 (three) months regarding land that has not been registered, so that the guarantee of land rights burdened with Mortgage Rights can be carried out in real time. Failure to fulfill one of these conditions results in the power of attorney in question being null and void, which means that the power of attorney cannot be used as the basis for making the Deed of Granting Mortgage Rights.

Provisions regarding the use of a Power of Attorney for Imposing Mortgage Rights in the UUHT with the requirements described above will have a positive impact in the context of accelerating the process of registering land rights. Making a Power of Attorney for Imposing Mortgage Rights can be done by a Notary or PPAT with the consideration that the existence of PPAT reaches the sub-district area.

This limitation on the use of a Power of Attorney to impose Mortgage is intended to prevent misuse of a power of attorney that harms the power of attorney or the owner of the land, so that the purpose of protecting the power of attorney and legal certainty as expected in the UUHT can be realized.

Registration of Mortgage is an absolute requirement for the existence of Mortgage which gives priority position to the Mortgage holder. In order to obtain certainty regarding the preferred position for the Creditor holding the Mortgage Right, it is determined that the Deed of Granting Mortgage Rights along with other documents required for its registration must be sent by the PPAT to the Land Office no later than 7 (seven) working days after its signing.

At the time the Deed of Granting Mortgage was drawn up by the PPAT, the Mortgage concerned had not yet been born. The Mortgage was just born when the granting of the Mortgage was registered in the public register at the Land Office. Therefore certainty regarding when the Mortgage Right is registered is very important for Creditors. This moment not only determines the priority position over other creditors who are also holders of mortgage rights, with the same land as collateral.

In order to obtain certainty regarding the time of registration, this Law determines that the book date of the related Mortgage Land is the seventh day after the complete receipt of the documents required for said registration by the Land Office, and if the seventh day falls on the holidays, then the relevant land book is dated the next working day.

Clarity in procedures and schedules for writing off records of mortgage rights as a result of the erasure of mortgage rights, or what we know as roya, is also a very important matter for landowners. Because of this, the UUHT emphasizes that the deletion is a mere administrative process which has no effect on the abolition of the

Mortgage Right. In this regard, at the same time, a clear procedure and schedule for the implementation of the write-off was established and the Land Office was given 7 (seven) working days after receiving the request to carry out the write-off.

To support the implementation of the aforementioned schedule, UUHT also regulates provisions regarding administrative sanctions for officials who violate or are negligent in implementing them.

3.2. Execution Application Process Stage

One of the characteristics of a strong Mortgage Right is that it is easy and certain to execute it, if the Debtor defaults. Although in general the provisions regarding execution have been regulated in the applicable Civil Procedure Code, it is deemed necessary to compare specifically the provisions regarding the execution of Mortgage Rights, namely those governing the *parate executie* institution as referred to in Article 224 of the updated Indonesian Regulation (*Het Herziene Indonesisch Reglement*) and Article 258 Legal Procedure Regulations for Regions Outside Java and Madura (*Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura*).

Thus, the executive power of the Mortgage Certificate is no longer based on Article 224 HIR but is based on the UUHT.

In this regard, the Mortgage Certificate, which functions as a proof of the existence of the Mortgage Right, must be affixed with the words "For the sake of JUSTICE BASED ON THE ALMIGHTY GOD."

ESA", the intention is to provide the same executive power as a Court decision that has obtained permanent legal force. In addition, the Mortgage Certificate is also stated as a substitute for the *Grosse Acte Hypotheek*, which for the execution of the Hypotheek on land is determined as a condition for carrying out the provisions of the articles of the two Regulations above.

In addition to the provisions regarding the execution *parate* mentioned above, the holder of the first Mortgage can also be given authority by the Mortgage giver to sell through auction the object of the Mortgage, if the Debtor defaults. The promise to give this authority is stated in the Deed of Granting Mortgage Rights.

With the existence of the provisions mentioned above, which are binding on all parties, it is hoped that in practice there will no longer be differences in perceptions regarding the procedures for executing Mortgage Rights, especially among law enforcement parties.

In UUHT relating to the Execution of Mortgage is also regulated in Chapter V, namely Article 20 and Article 21.

Article 20 states:

- 1) If the Debtor defaults, then based on:
 - a. The right of the first Mortgage holder to sell the Mortgage object as referred to in article 6 or
 - b. Executorial title contained in the Mortgage Certificate as referred to in article 14 paragraph 2.

Mortgage objects are sold through a public auction according to the procedure specified in the laws and regulations for settlement of

receivables of the Mortgage holder with the right to take precedence over other creditors.

- 2) Based on the agreement between the giver and the holder of the Mortgage Right, the sale of the Mortgage object can be carried out privately if in this way the highest price that benefits all parties can be obtained. Implementation of the sale as referred to in paragraph (2) can only be carried out after the expiration of 1 (one) month after being notified in writing by the giver and/or holder of Mortgage to the party interested parties and announced in at least 2 (two) newspapers circulating in the area concerned and/or local mass media, and no party has expressed any objections.
- 3) Every promise to carry out the execution of the Mortgage in a manner that is contrary to the provisions in paragraph (1), paragraph (2), and paragraph (3) is null and void by law.
- 4) Until the announcement for the auction is issued, the sale as referred to in paragraph (1) can be avoided by paying off the debt guaranteed by the Mortgage along with the execution costs that have been incurred.

From the provisions of this article it can be concluded that the holder of the Mortgage Right to sell the Mortgage object does not need to seek approval from the Mortgage giver and the execution must go through a public auction.

Article 21 states:

If the Mortgage giver is declared bankrupt, the Mortgage holder will still be authorized to exercise all the rights he has acquired according to the provisions of this Law.

From the provisions of Article 21 mentioned above, the object of the Mortgage Right will not be combined with the bankruptcy estate to be shared with other Creditors from the Mortgage giver. So the provisions of Article 21 UUHT provide confirmation regarding the preferred position of the Mortgage Holder. against the object of Mortgage and against other Creditors.

In Article 56 A Law No. 4 of 1998 concerning Bankruptcy, in the event of bankruptcy, the preferred right of the Creditor holding the Mortgage to execute the right or land is suspended for a maximum period of 90 days from the date the bankruptcy decision is issued. Even though the execution of the land rights is suspended, the Curator may not transfer it. Bankruptcy assets that can be used or sold by the Curator are only inventory and or current assets, even though the bankrupt assets are encumbered with collateral rights over the material.

The purpose of this article is for peace opportunities, or to enable the Curator to optimally complete his duties.

In the explanation of Article 20 stated:

Article 20 paragraph (1) explains:

The provisions of this paragraph are a manifestation of the convenience provided by this Law for Creditors holding Mortgage Rights in terms of execution.

In principle, every execution must be carried out through a public auction, because in this way it is expected to obtain the highest price for the Mortgage object.

The creditor has the right to collect the settlement of receivables guaranteed from the sale of the Mortgage object. In the event that the proceeds from the sale are greater than the said receivable which is as high as the mortgage amount, the remainder becomes the right of the mortgagee.

From the explanation of this article, it means that there is a limit to paying off the Debtor's debt to a maximum of the amount stated in the Mortgage Certificate.

Article 20 paragraph (2) explains:

In the event that sales through a public auction are not expected to produce the highest price, by deviating from the principle as referred to in paragraph (1) it is given the possibility of carrying out execution through private sales, provided that this is agreed upon by the giver and the Mortgage Holder, and the terms specified in paragraph (3) is fulfilled. This possibility is intended to accelerate the sale of the object of the Mortgage with the highest selling price. So here it is possible to sell privately the object of the Mortgage on the basis of an agreement between the holder and the giver of the Mortgage.

Article 20 paragraph (3) explains:

The requirements stipulated in this paragraph are intended to protect interested parties, for example the second, third mortgage holders and other creditors from the mortgage holder.

The said announcement can be made through newspapers or other mass media, for example radio, television or through both of these methods. The coverage of newspapers and mass media used must include the place/location of the related Mortgage object.

What is meant by date of written notification is date of dispatch of registered post, date of receipt by courier, or date of dispatch of facsimile. If there is a discrepancy between the date of the notification and the date of the announcement referred to in this paragraph, the period of one month is counted from the later date between the two dates.

From the explanation above it is intended that if there are holders of Mortgage II to III and so on even though it has not yet matured, but by executing the auction sale, these Creditors after knowing the object of Mortgage will be executed then they can participate in the application for execution automatically. together with the first creditor.

Article 20 paragraph (5) explains:

In order to avoid auctioning Mortgage objects, debt repayments can be made before the announcement of the auction is issued.

From the provisions of Article 20 UUHT, it is very important to pay attention to the provisions contained in Article 20 paragraph 2, namely:

Based on the agreement between the giver and the holder of the Mortgage Right, the sale of the Mortgage object can be carried out privately, if in this way the highest price that benefits all parties can be obtained.

To carry it out, the provisions contained in paragraph 3 must be observed, namely that sales can only be made after 1 (one) month has passed since the giver has been notified in writing and/or announced in at least 2 (two) newspapers circulating in the area concerned and / or the local mass media, and no party

expressed any objections.

Also very important is the provision contained in paragraph 4, namely that any promise to carry out the execution of the Mortgage in a manner that is contrary to the provisions of paragraphs 1, 2 and 3 mentioned above, is null and void.

The important thing that needs to be considered in Article 21 UUHT is that this provision further strengthens the priority position of the Mortgage holder by excluding the effect of bankruptcy on the Mortgage object.

Based on the description above, the comments that need to be given to Article 20 UUHT are:

In fact, the sale of the Mortgage object based on a promise to sell the Mortgage object under its own authority, which is owned by the first Mortgage Holder as referred to in Article 6 is not an act of execution. Likewise, if the sale of the Mortgage object is carried out under the agreement of the giver and the Mortgage holder it is carried out privately, if so the highest price that benefits all parties can be obtained. So mentioning the two things mentioned above as execution, as clearly read in Article 20 (4) is not correct.

Execution of the Mortgage can only be carried out based on the Mortgage Certificate, which, like a Judge's decision, uses *irah-irah* for the sake of Justice Based on Belief in the One and Only God, which is carried out on orders and under the leadership of the Head of the District Court in the area where the land is located.

In relation to this execution, it should be noted that it is different from sales based on a promise to sell under their own power, which is if the holder of the first Mortgage also promises not to be cleared, and so if the results of the auction are not sufficient to pay for all Mortgage Rights that burden the object of the Right The mortgage, then the mortgage that is not paid, will remain attached and burden the object of the mortgage that has been purchased by the auction buyer. In executing the Mortgage based on the Mortgage Certificate, the auction buyer will obtain the Mortgage object that has been sold through the auction, free of all burdens. The remaining unpaid bills of the Mortgage holders, will turn into a claim that is not guaranteed by the Mortgage Right and become a concurrent claim against the Debtor's other assets. Against the remaining debt

Debtors whose defaults are not erased, but remain their obligations, on this matter there is already a jurisprudence for the decision of the Supreme Court of the Republic of Indonesia. Civil Case No. 2205 K/Pdt/1996 dated 28 May 1997.

In connection with the Execution of the Mortgage, it is necessary to emphasize what is meant by the execution of the Mortgage as stipulated in Article 11 paragraph (2) j which states:

"Promise that the Mortgage giver will empty the Mortgage object at the time of execution of the Mortgage Right". Regarding what actually meant at the time of execution of the Mortgage was not stated explicitly whether when reprimanded for fulfilling his obligations by the Head of the District Court or when the object of the Mortgage was auctioned or after the object was auctioned. This is very difficult to implement because it is not clear, but in practice what is meant at the time of execution of the Mortgage is starting at the time of reprimand by the Head of the District Court until the object of the Mortgage is auctioned, because after the object

is auctioned and becomes the right of the auction winner, the authority to request the emptying of an object is on the part of the winning bidder, no longer on the District Court as the bidder.

What if the Mortgage giver is not willing to carry out the emptying voluntarily, can he be forced, for example by removing the items in it. If so, who will do the emptying? Is it a Creditor or State Auction Office Officer? Or the Chief Justice of the District Court?

In response to this, creditors and officials at the State Auction Office are clearly not willing to carry out an emptying action, because a problem of vigilanteism can arise.

Therefore, in the context of an execution carried out by order of the Chairperson of the District Court or the Head of PUPN/BUPLN, the emptying of the auctioned object from the auctioned off from the family and the people concerned, can be carried out after the object of the Mortgage is auctioned off.

The implementation is carried out by order of the Head of the District Court where the object of the Mortgage is located, after an application for vacancy from the winning bidder as the holder of land rights, or the land of the new building.

We can also see this in the provisions of Article 200 paragraph (11) HIR, which states:

If the defeated party does not want to leave the immovable property, then the Chairperson of the District Court or the authorized magishaat must issue an order to a person entitled to confiscate, so that if necessary, with the help of the police, the defeated party and his family are ordered to leave/vacate. immovable object.

In the explanation of Article 11 point 12 of Law Number 49 of 1960 concerning the Committee for State Receivable Affairs it is stated that:

Emptying after the collateral object is auctioned is always carried out on orders and under the supervision of the Head of the District Court. In practice, the bailiff at the District Court, if necessary, with the assistance of the police or CPM.

And forced evacuation is only carried out after the person concerned is reprimanded and given 8 (eight) days to carry out voluntary evacuation.

voluntarily (Article 196 HIR), and the mortgagee still does not want to carry out his obligations.

Regarding auctions based on promises to sell on their own power and the sale of Mortgage objects underhand because it is not an act of execution by the District Court, then forced vacancy can only be carried out after the Mortgage giver is sued and based on an immediate decision or based on a Court decision that has legal force still, the emptying execution is executed.

In the auction process, prior to the auction, announcements are made in the newspapers, the announcement must state the day, date and place of the auction, as well as the limit price. After the auction is held, the official of the Auction Office (KP2LN) makes the minutes of the auction, the Registrar or Bailiff who participates in the auction also makes the minutes of the auction. And after the auction is completed, the party whose property is being auctioned must vacate the fixed object (land) in an empty state without any burden to be handed over to the auction winner as the buyer of the goods.

If the auctioneer refuses to surrender voluntarily, then the Head of the District Court concerned issues an order to be vacated to be carried out by the bailiff and if necessary with the assistance of the state apparatus (police).

If the auction has been completed and the goods have been sold, then the results of the auction are given to the party that has won in a civil case or to the creditor as the holder of the Mortgage to pay the bill and the execution costs, and if there are any leftovers or excess, it will be returned to the party who has been subject to the execution. or Debtors who owe.

3.2. The process of selling auction objects Mortgage

Auction is actually a legal term whose explanation is given in Article 1 of the Auction Regulations which provides the following definition:

What is meant by sales in public are: auctions and sales of goods carried out in public with increasing price bids or with decreasing price agreements or with price registration, where the people who are invited or previously notified about the auction, given the opportunity to buy by way of: bidding on prices, agreeing on prices or by way of registration.³⁷

Because here it is called that general sales are sales in public. While the sales are not explained about how the sales are done, so that the officers in carrying out this provision experience difficulties. So the State Receivables and Auction Service Office (KP2LN) provides a definition that can be used in implementing auction regulations.

So that the definition of an auction is the sale of goods that are open to the public either directly before the auctioneer or through electronic media (internet), by way of bidding orally and or in writing which is preceded by efforts to gather interested parties.

In principle, price bidding through verbal auctions is better than writing, because in addition to being more objective, it can also be obtained that the price of goods can be higher than the price/limit value. While bidding is closed or through a sealed envelope, the written bid price cannot be increased again, so that if the highest bid is above the limit price, then the buyer will be determined as the winner of the auction.

The advantages of selling through auctions include:

- Fair because it is open/transparent and objective.
- It is safe because the auction is witnessed/led and carried out by the auction official as a general official who is independent. The auction system requires the auction official to examine the formal correctness of the subject and object of the auction.
- Fast and efficient, because the auction is preceded by an announcement so that bidders can gather on auction day and pay in cash.
- Legal certainty due to the implementation of the auction, the auction official makes the Minutes of the auction which are called minutes of the auction.

Competitive creates a fair price because the auction price formation basically uses an open and transparent bidding system.

Types of auctions:

- a. Execution Auction:

- Trial Execution Auction
 - PUPN Execution Auction
 - Tax Execution Auction
 - Loot Auction
 - Found Items Auction
 - Execution Auction based on Article 6 Mortgage
 - Bankruptcy Price Execution Auction
 - Fiduciary Execution Auction
 - Confiscated Goods Auction under Article 45 of the Criminal Code
- b. Non Execution Auction
- Goods auction for Central/Regional Government (Inventory)
 - Auction of BUMN/BUMD property
 - Auction of timber (forestry) and other forest products.
 - IBRA auction

3.3. Some of the obstacles encountered and efforts to solve them in the execution of Mortgage Rights as credit guarantees for legal protection for the parties.

How good a law is, its usefulness to society will depend on its implementation. Theoretically, the UUHT already regulates strictly and in detail, but in practice there are still many obstacles that can hinder the execution. Where of the many applications for the execution of the Mortgage addressed to the Head of the Religious Court, there are some applications that can be accepted and some are also not acceptable for execution. This is because there are several factors that cause obstacles in the execution of Mortgage Rights in court and in auction sales, both juridically and non-juridically.

1. Juridical Barriers.

Some of the factors that become legal obstacles or obstacles are:

- a. There is an explanation of Article 20 paragraph 1 of the UUHT which can be concluded that the creditor has the right to take settlement of guaranteed receivables from the sale of mortgage objects in the event that the proceeds from the sale are greater than the receivables which are as high as the collateral value, the remainder becomes the right of the mortgagee. From this provision, it means that the debt that must be paid from the proceeds from the auction sale of the object of Mortgage belonging to the Debtor is the highest/maximum in the amount of the collateral stated in the Mortgage Certificate.

Whereas usually the creditor determines a larger amount than what is stated in the mortgage certificate, this is due to the imposition of mortgage rights, there are conditions, that the debtor, insofar as the amount is dependent, must receive bookkeeping from the lender for determining the dependent amount, including interest and fines, so that the amount can exceed that stated in the Mortgage Certificate.

- b. Another obstacle related to the promise contained in Article 11 paragraph (2) j is the promise that the Mortgage giver will vacate the Mortgage object at

the time of the Mortgage execution.

Promises like this by creditors are always included in the mortgage certificate, but most debtors will not voluntarily vacate the mortgage object either when the mortgage object is to be executed, before the auction or after the auction is held.

Another obstacle that often occurs is the existence of resistance by the holder of the Mortgage itself against the execution of the request of the first Mortgage holder. Regarding this matter it is not regulated in the UUHT but is in the Material of Civil Procedure Law.

2. Non Juridical Barriers.

In carrying out the execution of the Mortgage, unexpected obstacles often arise, namely the Executed parties deliberately mobilize their mass to hinder the execution, by means of mobilizing the masses to blockade and block the road and location of the object of execution so that the Execution Team/Executor cannot enter the location as well as obstructing the security forces by setting fire to used car tires and some were deliberately drunk so that the situation became rowdy and chaotic by shouting and swearing at the Executors and security forces, so the situation was not conducive because the number of mob was more than to the security forces in charge of securing the execution. This situation made it difficult for the Executors and the security forces, so it was clear that the execution could not be carried out and even had to be postponed, because if the execution was forced or continued to be carried out, the Executors might become the butt of the supporters of the Executed party. The postponement of the execution is intended to avoid things that are not desirable.

The lack of public knowledge about the law makes it easy to be influenced and provoked by the Execution Respondent.

3. 4. Efforts to solve obstacles in the Execution of Mortgage Rights as credit guarantees for legal protection for the Parties.

1. Efforts to solve juridical barriers.

- a. The first obstacle is based on the provisions of the credit agreement which stipulates the amount of debt and interest and costs related to the credit agreement must be paid by the debtor as debt.

If what is meant here is the amount of debt that must be paid by the Debtor or what is often called the overdraft clause in debt and credit relations, then the Head of the District Court in resolving this problem can rely on the provisions of Article 3 paragraph 1 UUHT which reads as follows:

The debt that is guaranteed for repayment with the Mortgage Right can be in the form of debt that has existed or has been agreed upon a certain amount or at the time the application for execution of the Mortgage Right is submitted can be determined based on a debt agreement or other agreement that gives rise to the related debt and credit relationship, so the Debtor's debt can be in the form of principal debt, agreed interest and agreed penalties.

Although this debt problem is generally related to the problem of the maximum amount of debt referred to in the Mortgage Certificate. Article 20 (1) which in practice is often questioned by the Debtor as the giver of the Mortgage, with reasons or pretexts to paralyze the execution of the Mortgage, but with the provisions of Article 3 paragraph 1 UUHT it is hoped that the Chairperson of the District Court/Judge will not grant the objection, and still carrying out/carrying out executions, so that the interests of creditors in recovering their money can truly be protected.

- b. In solving the problem as the second obstacle related to the promise of the Mortgage giver will vacate the Mortgage object at the time of the Mortgage execution.

Because this has been called a promise, then the Creditor and Debtor arise and obligations that must be carried out if the Debtor defaults, including the Creditor's Right to obtain repayment of his receivables from selling the Mortgage object in the form of land or land and the building and for the Debtor must or is obliged to vacate the land and building before the Mortgage object is executed through an auction sale.

And if the Debtor does not want to voluntarily vacate the Mortgage object, then the Head of the District Court should continue to carry out the execution and submit an application for auction sale of the Mortgage object to the State Auction Office/State Receivables and Auction Service Office (KP2LN). At the request of the Head of the District Court which has been completed with the necessary conditions, the auction is carried out. After the object of the Mortgage is auctioned and has been purchased by the auction winner, vacating can be done in 2 (two) ways, namely:

- By way of persuasion, namely by approaching the new owner, in this case the winning bidder and the old owner or occupant, by providing compensation (compensation, emptying costs or other costs or extending/ renew the lease).
- Second Method The new owner/winner of the auction submits a request for vacancy to the Head of the District Court (as the executor of the execution of the Mortgage) and upon this request the Head of the District Court makes a stipulation letter which order the Registrar of the Secretary/Bailiff of the District Court to carry out the forced vacating of the object of the Mortgage, if necessary with the assistance of the National Police or CPM.

As a legal basis for the Chairman of the District Court in carrying out the execution of vacating the Mortgage object which is his authority is the provisions of Article 200 paragraph (11) HIR and explanation or Article 11 point 12 of Law no. 49 of 1960 as described in the previous chapter. So to empty the object Mortgage is solely the authority of the Chairman of the District Court. In fact, the principle of emptying by the auction winner/buyer via auction is very reasonable, this means doing it after the sale of the auction, and this can also be used to avoid lawsuits. Apart from that, from the

description above, if emptying is done after the collateral object is auctioned, it is very reasonable. because before the collateral object is auctioned, it means that the Property is still with the Debtor giving the Mortgage,

However, in practice it often happens that the Head of the District Court dares to vacate the collateral object before it is auctioned, with the intention of facilitating and attracting auction participants. The debtor as guarantor. To solve the problem/obstacle of resistance by the Mortgage holder himself, the problem of resistance to execution by the Mortgage holder is usually carried out by other Mortgage holders (II, III Mortgage) and so on over land that is guaranteed by the Mortgage that has been confiscated for and for the benefit of the first Creditor or other Creditors, and for that reason the holders of the Second, Third and so on Mortgage Rights filed resistance against the confiscation of execution.

In the face of this kind of resistance the Judge/Chairman of the District Court must refuse because resistance to confiscation of execution can actually only be carried out by a third party on the basis of the argument regarding ownership, the Mortgage Holder is not the owner, so he only has the right to request repayment of his receivables which are also guaranteed for the land confiscated by the execution, and how he applied for the Mortgage Right.

While the proceeds from the execution auction are paid in advance to the holder of the first Mortgage, and the remainder, if any, is paid to other creditors or the remainder is left to other concurrent creditors. So if Creditors II, III and so on know that the land as collateral has been confiscated by another creditor, and he does not immediately participate in submitting the request for execution, he will lose money, because by confiscating the object of Mortgage as collateral by other creditors, it means other debts fall due prematurely. Therefore, rather than the holder of the Mortgage submitting a fight against the confiscation of the execution of the Mortgage, it is better to both apply for the execution, so that if the execution is actually carried out,

2. Efforts to solve non-judicial barriers.

- a. In carrying out the execution, coordination was carried out between the Village Head, the Executor and the relevant security forces before the execution was carried out so that the location of the object of execution was secured/sterilized beforehand from the possibility that the Executed could mobilize mass to obstruct the execution and increase the number of security forces, so that if the location If the executable object has been secured beforehand, the execution can run smoothly.
- b. Conduct socialization of the execution issue to the public through legal counseling with related institutions, so that the community can understand and understand the law so that they know what their rights and obligations are.

Approaching the Execution Respondent, so that the Execution Respondent is aware of what their rights and obligations are, and does not hinder the execution, it is very good if the Execution Respondent finally wants

to hand over the object of execution voluntarily and sincerely, so there is no need for coercion.

4. Closing

That one of the things that makes Islamic Banks carry out the execution of mortgage rights is due to the debtor's delay in making installment payments which is a default debtor. In the presence of default debtors, the step taken by Islamic Banks is by billing the collector Bank, if the debtor still has not carried out his achievements by paying installments, then the next step is the bank as the creditor to provide subpoenas, a minimum of 3 (three subpoenas) in total. If with the subpoena step there is also no achievement from the debtor, then the Bank registers for an auction based on the Mortgage Deed to the KPKNL based on the documents - formal requirements that have been set by the KPKNL. Settlement of mortgage rights is indeed in accordance with laws and regulations, but in practice the Bank often only focuses on Bank profits (profit oriented), does not pay attention to the rights of debtors whose position is weak. And there are no specific regulations made that are in accordance with the basics of Islamic economics. Execution of Mortgage over land and objects related to land is one way for creditors to obtain legal protection, so that through Execution of Mortgage over land and objects related to land can really provide guarantees to creditors to obtain return its receivables if the Debtor defaults (default).).

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