

## The Settlement of Bad Loans and Executions on Warranty Bound by Liability

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**Abstract.** *This study aims to determine and analyze 1) How is the settlement of bad loans on guarantees tied to mortgages? PT. Bank Mandiri (Persero) Tbk Tegal Area, 2) How is the execution of Mortgage carried out at PT. Bank Mandiri (Persero) Tbk Tegal Area and. This research method uses approach empirical juridical, namely seeing the workings of law in society. The data used are primary data, namely data obtained directly from the field by conducting interviews, as well as secondary data in the form of library research. The data analysis used is a qualitative analysis which draws conclusions deductively. The results of this study indicate that 1) The stages carried out by PT Bank Mandiri (Persero) Tbk Tegal Area to resolve non-performing loans according to Bank Mandiri Credit Policy (KPBM) as outlined in the Standard Operating Procedures for Credit Collection and Recovery (SOP CCR), by dividing it into 3 (three) stages, namely: the peaceful settlement stage, the coaching stage, and the credit rescue stage. 2) Execution of mortgage right in PT Bank Mandiri (Persero) Tbk Tegal Area experienced several obstacles that arise, so that in practice the applicable regulations have not been effective, this is due to there is non-compliance with a rule, namely Article 11 paragraph (2) letter (j) Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related By Land (UUHT) that is the promise that the grantor of the Mortgage will vacate the object of the Mortgage at the time of execution of the Mortgage.*

*Keywords : Bad; Collateral; Credit; Mortgage.*

### 1. Introduction

One of the functions of banking is to channel public funds or commonly referred to as providing credit. Supporting the sustainability of the wheels of financing

companies, both banks and non-banks, namely from the receipt of interest income obtained from lending.

According to the Banking Dictionary, credit is the provision of money or equivalent claims based on an agreement or loan opportunity between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest.<sup>1</sup>

In carrying out credit activities, prospective customers must meet the principles that aim to avoid losses for the bank due to the emergence of non-performing loans. These principles are:

1. *Character*
2. *Capacity*
3. *Capital*
4. *Collateral (Guarantee)*
5. *Condition*

Agreements that generally exist in banks consist of 2 (two) types, namely:

1. The principal agreement is a credit/debt agreement.
2. Additional agreement (accessoir), usually a binding guarantee agreement.

The guarantee binding agreement is required by the bank to guarantee that if in the future the debtor defaults or fails to fulfill its obligations, the guarantee submitted to the Bank can be used as a substitute for repayment<sup>2</sup>.

The uses of credit guarantees are to: 1. Give the bank the right and power to get repayment of the collateral if the debtor defaults, namely to repay the debt at the time specified in the agreement. 2. Ensuring that the debtor participates in transactions to finance his business, so that the possibility of leaving his business or project at the expense of himself or his company can be prevented or at least the possibility of doing so can be minimized. 3.

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<sup>1</sup> <https://kbbi.web.id> accessed on September 30, 2021 at 22.00 WIB

<sup>2</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. JURNAL AKTA: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

Provide encouragement to debtors to fulfill their promises, especially regarding repayment in accordance with agreed terms so that the debtor and/or third parties who participate in guaranteeing do not lose the assets that have been guaranteed to the bank.<sup>3</sup>

We recognize two types of credit guarantee rights in practice in society, namely:

1. An individual guarantee (personal guarantee) is "always an agreement between a debtor (creditor) and a third person, which guarantees the fulfillment of the debtor's obligations (debtor)" (Subekti, 1989:15).
2. Material guarantees (*persoonlijke en zakelijke zekerheid*), namely "All debtor property, both movable and immovable, both existing and new will exist in the future, become dependents for all individual engagements" (Article 1131 of the Civil Code).

According to the 1996 Mortgage Law, the mortgage guarantee institution is used to bind the object of credit guarantee in the form of land or objects related to land. The most common object used as collateral in a credit facility is land, because land is the safest and has a relatively high economic value. Land guarantee institutions in the form of Mortgage Rights in bank loans are considered the safest and most effective, this is based on considerations of ease in identifying the object of the guarantee itself.

The definition of mortgage rights is based on Act No. 5 of 1960 as Basic Agrarian Regulations. In Act No. 5 of 1960 what is meant by the definition of mortgage right is not found, other than Article 51 which states that the mortgage rights that can be imposed on the Ownership Rights, Business Utilization Rights and Building Use Rights mentioned in Articles 25, 33, and 39 are regulated by law. With the enactment of Act No. 4 of 1996, it is the only institution of land guarantee rights in the written National Land Law. Mortgage rights as one type of material rights, which are limited in nature, which only gives authority to the right holder to settle his receivables in advance from other creditors.<sup>4</sup>

In relation to the implementation of credit, it is necessary to pay attention to the classification of types of credit (collectibility) according to the provisions of Article 12 paragraph (3) Bank Indonesia Regulation No. 14/15/PBI/2012

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<sup>3</sup>C.S.T.Kansil and Christine S.T.Kansil, (2002), *Pokok-Pokok Pengetahuan hukum Dagang Indonesia*, Jakarta: Sinar Grafika, p. 320

<sup>4</sup>Boedi Harsono, (2003), *Hukum Agraria Indonesia*, Jakarta: Djambatan, p. 419.

concerning Asset Quality Assessment of Commercial Banks, credit quality is divided into 5 collectibility, namely<sup>5</sup>:

- a. Smooth credit
- b. Credit in special mention
- c. Substandard credit
- d. Doubtful credit; or
- e. Bad credit

The number of non-performing loans or non-performing loans (NPL) in a bank will result in disruption of the liquidity of the bank concerned. Non-performing loans (NPLs) in a bank are basically risks that inevitably arise in every lending by banks. Bad credit occurs if the bank has difficulty asking for installments from the debtor for some reason.<sup>6</sup>Bad credit is what every bank is very worried about, because it will disrupt the bank's financial condition, and can even result in the cessation of bank business activities.<sup>7</sup>

One of the efforts taken by banks and is the last effort to resolve non-performing loans is the Execution of Mortgage Auction (application of Article 6 of Act No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land), which reads: "If the debtor is in default, the holder of the first Mortgage has the right to sell the object of the Mortgage on his own power through a public auction and take repayment of his receivables from the proceeds of the sale." The procedure for its implementation is regulated in Minister of Finance Regulation No.27/PMK.06/2016 concerning Auction Implementation Guidelines.

Various kinds of execution according to the Mortgage Law, namely:

1. Mortgage Execution Parate, The first mortgage holder can sell the mortgage object with his own power as referred to in Article 6 of Act

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<sup>5</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

<sup>6</sup>Mewoh F.C, Sumampouw H.J and Tamengkel L. C, 2016. "Analisa Kredit Macet (PT. Bank Sulut Tbk di Manado)", dalam *Jurnal Administrasi Bisnis Universitas Sam Ratulangi* Volume. 4 No.1, p. 1

<sup>7</sup>I Ketut Sukawati Lanang Putra Perbawa, S.H, M. Hum, 2016. "Penyelesaian Kredit Macet dalam Perbankan", in *Jurnal Advokasi Universitas Mahasaraswati Denpasar*, Volume 6 No. 1, p. 1

No. 4 of 1996;

2. Execution of Mortgage Execution Title, The mortgage holder can sell the mortgage object through a public auction;
3. Underhand voluntary sales.

Implementation of Mortgage Execution Auction at PT. Bank Mandiri (Persero) Tbk Tegal Area, that throughout 2020 the success rate was small so it did not reach the target set by the bank and experienced several obstacles.<sup>8</sup>Based on this information, the writer wants to analyze whether or not a mortgage execution auction is used as an effort to settle loans at PT. Bank Mandiri (Persero) Tbk Tegal Area.

The factors that become obstacles in the implementation of the auction also need to be known for future improvements so that the mortgage execution auction can be used as a way to reduce non-performing loans at PT. Bank Mandiri (Persero) Tbk Tegal Area and also other banks. Based on this description, the author wants to examine more deeply about these problems and conduct research as follows :

1. How is the settlement of bad loans on guarantees tied to Mortgage at PT. Bank Mandiri (Persero) Tbk Tegal Area?
2. How is the execution of Mortgage carried out at PT. Bank Mandiri (Persero) Tbk Tegal Area?

## 2. Research Methods

This research method uses the approach empirical juridical. The empirical juridical approach is used because this research was conducted to obtain legal knowledge empirically by using trying to see the law in a real sense or it can be said to see, researching how the law works in society. The specification of this research is descriptive by presenting factual information or data in a systematic and accurate manner regarding the settlement of bad loans and the execution of mortgage rights in PT. Bank Mandiri (Persero) Tbk Tegal Area. Sources of data and data collection methods using primary data obtained by means of interviews with resource persons who are considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic. The data that has been obtained is analyzed qualitatively which is described in quality in the form of coherent, orderly, logical, and non-overlapping sentences so as to facilitate understanding of the analysis results.

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<sup>8</sup>Interview, Unit supervisor RRCR (Regional Retail Collection & Recovery) PT. Bank Mandiri (Persero) Tbk Tegal Area, between October 2020 to February 2021

### 3. Results and Discussion

#### 3.1 Settlement of Bad Loans at PT. Bank Mandiri (Persero) Tbk Tegal Area

In operational implementation rescue and settlement of non-performing loans, banks cannot be separated from the risks they face, so that existing risks must be minimized as possible so that operational activities run safely, quickly, precisely, accurately and in accordance with the provisions of applicable laws and regulations. Bank Mandiri compiles the implementing regulations in the SPO (Standard Operating Procedures) Credit Collection & Recovery which aims to be a guideline in carrying out non-performing loan management for all credit segments.

The non-performing credit management work unit at PT. Bank Mandiri (Persero) Tbk Tegal Area is a Regional Retail Collection & Recovery (RRCR) as regulated in Bank Mandiri's SPO. Debtors managed by the RRCR unit are debtors with Non Performing Loans (NPL)/starting collectibility of 3 (three), namely the substandard category with age in arrears ranging from 1 (one) day to more than 90 (ninety) days.

The stages carried out by PT Bank Mandiri (Persero) Tbk Tegal Area to resolve non-performing loans are divided into 3 (three) stages, namely:

1. Peaceful settlement stage

In this stage, PT. Bank Mandiri (Persero) Tbk Tegal Area issued a warning letter to debtors. A warning letter is a warning made by PT. Bank Mandiri (Persero) Tbk Tegal Area to the debtor made under the hand to inform the debtor to comply with the provisions of the credit agreement. The warning letter contains:

- a. Information regarding the maturity of principal and interest payments.
- b. Warning to debtors to pay their debts in accordance with a predetermined amount in accordance with the request of PT. Bank Mandiri (Persero) Tbk Tegal Area.
- c. Deadline information for debtors to make payments.

Giving a warning letter from PT. Bank Mandiri (Persero) Tbk Tegal Area to debtors is carried out in 3 (three) stages, namely:

- 1) The first stage, PT. Bank Mandiri (Persero) Tbk Tegal Area gave the first warning letter to debtors. This first warning letter is given to the debtor after a deadline of 14 (fourteen) days since the credit granted is classified as non-performing credit collectibility. If there is no

response from the debtor on the first warning letter, PT Bank Mandiri (Persero) Tbk Tegal Area will continue in the second stage.

- 2) In the second stage, PT Bank Mandiri (Persero) Tbk Tegal Area gave a second warning letter to the debtor. The second warning letter is given to the debtor after the 14 (fourteen) day deadline for the first warning letter because there has been no response. If there is no response from the debtor on the second warning letter, then PT Bank Mandiri (Persero) Tbk Tegal Area will proceed to the third stage.
- 3) In the third stage, PT Bank Mandiri (Persero) Tbk Tegal Area gave a third warning letter to the debtor. This third warning letter is given within a deadline of 14 (fourteen) days since the second warning letter is given because there has been no response.

Juridically, this warning letter does not actually have legal consequences forcing the debtor to fulfill his obligations to pay the debt, meaning that the debtor who has been given a warning letter does not respond or ignore the warning letter, then PT Bank Mandiri (Persero) Tbk Tegal Area cannot force it, but The warning letter is expected to provide psychological pressure and embarrass the debtor as well as a warning of further legal action if there is no response. In this case, the debtor is expected to be able to settle his debt or has shown good faith to settle his obligation to pay his debt.

Since the issuance of the three warning letters did not receive a response from the debtor, the next amicable settlement step taken by PT Bank Mandiri (Persero) Tbk Tegal Area was to summon the debtor with the aim of discussing the solution to the settlement of bad credit facilities by adjusting the debtor's ability, business conditions and other matters in order to settle the credit.

## 2. Development Stage

The coaching stage is an activity carried out by PT Bank Mandiri (Persero) Tbk Tegal Area in managing non-performing loans in order to obtain maximum results in accordance with the purpose of providing credit. The guidance carried out by PT Bank Mandiri (Persero) Tbk Tegal Area is carried out for 6 (six) months with the aim of providing time and opportunity for debtors so that within that deadline the debtor can improve financial management and support business activities to earn income. At this stage, PT Bank Mandiri (Persero) Tbk Tegal Area helps and also oversees the business development of debtors who have received the credit facility.

Guidance for bad debtors aims as follows:

1. Strive for the smooth running of the debtor's business, namely by:
  - a. Strive for the debtor's business to achieve effective and maximum targets as planned so that it is expected to achieve maximum profit. This is done directly to the location or place of the debtor which includes all sales turnover, the level of work activity and the level of product sales so that PT Bank Mandiri (Persero) Tbk Tegal Area can assess the business feasibility of the debtor. In this case, PT Bank Mandiri (Persero) Tbk Tegal Area can pay great attention to the smooth running of business activities and become a partner to help solve problems faced by debtors in running their business.
  - b. In an effort to expedite the debtor's business, credit requirements that are deemed unsupportive or unsupportive can be reviewed as long as the interests of PT Bank Mandiri (Persero) Tbk Tegal Area are still guaranteed.
  - c. Activate the debtor's account by ensuring that all business transactions are channeled through the account.
  - d. Convincing the debtor that PT Bank Mandiri (Persero) Tbk Tegal Area is really interested in the smooth running of the debtor's business so that it can fulfill its obligations to PT Bank Mandiri (Persero) Tbk Tegal Area.
2. Efforts to secure the interests of PT Bank Mandiri (Persero) Tbk Tegal Area through the following methods:
  - a. Ensuring that the interests of PT Bank Mandiri (Persero) Tbk Tegal Area are truly guaranteed, namely the repayment of principal debt, loan interest and other debtor obligations.
  - b. Ensure that the credit guarantee value is still sufficient to cover the debt, including the validity of the letters and/or deeds as proof of ownership.
  - c. Other credit provisions are to be fulfilled by the debtor properly, along with the submission of business activity reports and financial reports.

If the efforts made in the coaching stage by PT Bank Mandiri (Persero) Tbk Tegal Area during the period of 6 (six) months have not yet yielded results, there is no progress in efforts to repay the arrears on credit and the debtor is still in



condition, then PT Bank Mandiri (Persero) Tbk Tegal Area will carry out the next process, namely the credit rescue process.

### 3. Credit Rescue Stage

The credit rescue phase is an effort by PT Bank Mandiri (Persero) Tbk Tegal Area to prevent the possibility of further losses on credit through managing customer relationships. This credit rescue action is carried out in the management of non-performing loans that have prospects in their business with the aim of minimizing the possibility of losses for PT Bank Mandiri (Persero) Tbk Tegal Area. Rescuing loans that have been disbursed so that they become smooth or improve the quality of debtor credit and improve the quality of the debtor's business.

Credit rescue carried out by PT Bank Mandiri (Persero) Tbk Tegal Area must be carried out by assessing the extent to which the debtor's business activities in credit rescue can be developed to fulfill its obligations to PT Bank Mandiri (Persero) Tbk Tegal Area.

For debtors who are considered to still have prospects and good faith in completing their obligations, credit rescue can be carried out by:

#### 1. *Rescheduling* (Rescheduling)

Namely an effort to save credit by making changes to credit terms with regard to the repayment schedule or repayment period including the amount of repayment deposit and/or credit interest payments.

The basic consideration for PT Bank Mandiri (Persero) Tbk Tegal Area to reschedule is the belief that the debtor is only experiencing temporary liquidity difficulties, the debtor is still cooperative and has good intentions and still has business prospects. Rescheduling by PT Bank Mandiri (Persero) Tbk Tegal Area to debtors is an extension of the repayment period of 12 (twelve) months.

#### 2. Reconditioning (Return Requirements)

That is the act of saving credit by making changes to part or all of the terms which are not limited to changes in the installment payment schedule and/or credit period, but these changes without providing additional credit or changing the maximum credit balance.

Reconditioning action is given by PT Bank Mandiri (Persero) Tbk Tegal Area to debtors who are considered to still have good faith to pay off their obligations. And the guarantee controlled by PT Bank Mandiri (Persero) Tbk Tegal Area still covers its credit debt.

During the implementation of this reconditioning, the collectibility of credit became doubtful and led to the collectibility of non-performing loans. Therefore, the form of reconditioning carried out by PT Bank Mandiri (Persero) Tbk Tegal Area is to provide interest arrears relief at a value which according to the considerations and calculations of PT Bank Mandiri (Persero) Tbk Tegal Area is the most profitable for him. Reconditioning is carried out for a period of 12 (twelve) months. The objectives to be achieved in the implementation of rescheduling and reconditioning are:

- a. Improve the condition of the debtor's credit which is heading towards a loss so that it is active again and can be resolved as well as possible without having to execute the object of collateral for credit settlement.
  - b. Loan repair, which means looking for efforts that can improve the debtor's finances so as to allow for new sources of credit repayment and provide opportunities for debtors to return to active business.
  - c. Fostering debtors as well as possible for the interests of both parties.
3. *Restructuring* (Rearrangement)

That is a rescue action by changing the terms of the credit agreement in the form of providing additional credit or making changes to part or all of the arrears of interest into new loan principal.

The basic considerations of PT Bank Mandiri (Persero) Tbk Tegal Area in conducting restructuring are that the debtor still has good faith, the business prospects can still run well, the debtor is experiencing financial difficulties because the interest expense given is too heavy.

The form of restructuring carried out by PT Bank Mandiri (Persero) Tbk Tegal Area is by changing interest rates and their calculations. Factors that support the implementation of restructuring are in terms of the debtor's business still running well, production facilities are still good, business management is at a professional level and this is a determining factor for the debtor that can increase the debtor's ability to repay the credit he received.

The restructuring action was taken because the financing for the credit object exceeded the debtor's capacity (over financing) and the mortgage object controlled by PT Bank Mandiri (Persero) Tbk in the Tegal area was still able to cover the debtor's credit. The period for implementing the restructuring is 12 (twelve) months.

4. Credit Guarantee Object Execution Stage

Based on the considerations of PT Bank Mandiri (Persero) Tbk Tegal Area, it is no longer possible to save bad loans and become smooth again through peaceful efforts, with development efforts, rescue efforts and the absence of good faith and uncooperative debtors so that the loans disbursed remain constant in the condition of bad collectibility, PT Bank Mandiri (Persero) Tbk Tegal Area takes credit settlement actions by executing the object of credit guarantee. This stage of action is a form of PT Bank Mandiri (Persero) Tbk Tegal Area's efforts to recover payments for the loans it has disbursed. Within a period of 3 (three) months after the credit is classified as bad collectibility, PT Bank Mandiri (Persero) Tbk Tegal Area as the holder of the mortgage/first-level creditor can immediately execute the object of the collateral tied to the mortgage without prior notification to the debtor. The object of collateral tied to mortgage rights is in the form of land with ownership rights or building use rights through public auctions.

According to Kelsen, law is a system of norms. Norms are statements that emphasize aspects of "should" or *das sollen*, by including some rules about what must be done. Norms are the product of deliberative human action. Laws that contain general rules serve as guidelines for individuals to behave in society, both in relation to fellow individuals and in relation to society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these regulations create legal certainty.<sup>9</sup>

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and is logical.

### 3.2 Implementation of Mortgage Execution at PT. Bank Mandiri (Persero) Tbk Tegal Area

The last effort made by the bank to save its assets is by conducting a Mortgage Execution Auction. Prior to the execution of the Mortgage Rights, the debtors who are included in the non-performing loans have been given a warning letter. A warning letter is a notification letter from the creditor to the debtor in an effort to keep the debtor informed about his credit status, so that he can carry out his obligations, namely paying off his debts.

Based on the results of the interview with Mr. Rosi as Supervisor in the RRCR Unit (Regional Retail Collection & Recovery), at Bank Mandiri the debtor is given

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<sup>9</sup>Peter Mahmud Marzuki, (2008), *Pengantar Ilmu Hukum*, Jakarta: Kencana, p.158

a warning in advance, namely by sending a warning letter 3 (three) times, as well as a statement of immediate maturity (the debtor is considered a default, then if after the 3rd Warning Letter there is no response, not cooperative or unable to pay the debt, then the auction process can be run.

PT Bank Mandiri (Persero) Tbk Tegal Area conduct the sale/execution of the object of the Mortgage in the following manner:<sup>10</sup>

1. Parate *execution* namely the implementation of executions carried out directly through the Office of the State Assets and Auction Service (KPKNL) without going through a process or court assistance.
2. By order of the District Court.
3. Sales by the debtor with the knowledge of the Bank as the creditor.

In practice, PT Bank Mandiri (Persero) Tbk Tegal prefers to settle bad loans by parate execution.<sup>11</sup> Execution of the object of Mortgage at a state bank on its own power (parate execution) on the grounds that the debtor is in default can be carried out through the State Auction Institution (KPKNL) based on Government Regulation Number 33 of 2006 concerning Procedures for the Elimination of State or Regional Receivables.

The reasons for PT Bank Mandiri (Persero) Tbk Tegal chose to execute the object of Mortgage through a public auction (parate execution), namely:<sup>12</sup>

1. Protect and facilitate creditors in an effort to get their receivables repaid. The creditor as the holder of the mortgage can sell the object of the mortgage through a public auction without requiring further approval from the debtor as the provider of the mortgage and without an execution order from the head of the district court.
2. It is hoped that a fair price or at least close to fair price can be obtained by conducting an open auction.
3. The existence of offers at the time of the auction is expected to provoke other participants to try to get the auction object by adding

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<sup>10</sup>Rosi, Interview, Unit supervisor RRCR (Regional Retail Collection & Recovery) PT. Bank Mandiri (Persero) Tbk Tegal Area, 16 September 2021

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

bids.

The operational procedure for the auction of Mortgage at PT Bank Mandiri (Persero) Tbk Tegal Area is based on the Standard Operating Procedure for Credit Collection and Recovery (SPO CCR) which refers to the Ministry of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Auction Implementation Guidelines jo. The Minister of Finance Regulation Number 27/PMK.06/2016 is as follows:

1. Application for collateral appraisal to the Public Appraisal Service Office (KJPP) to find out the current value of the debtor's assets to be auctioned
2. Submission of application to the nearest State Property and Auction Service Office (KPKNL) where the collateral is located.
3. The State Property and Auction Service Office (KPKNL) submits a registration application to the BPN in accordance with the location of the collateral for a Land Registration Certificate (SKPT).
4. The completed bid application file from the Bank and has been verified by the State Assets and Auction Service Office (KPKNL) will then be published on the date of the auction by including the collateral data, auction limit and auction guarantee deposit.
5. The Bank then issues a Notice of Auction to the debtor.
6. Prospective bidders can deposit the auction guarantee a maximum of 1 (one) day prior to the auction, this applies to the amount of the guarantee deposit more than IDR 20,000,000.00 (twenty million rupiah), for the guarantee deposit with the amount up to IDR 20,000,000.00 (twenty million rupiah) can be made on the same day or before the auction starts.
7. The auction winner is determined based on the highest bid from several potential applicants, if there is only 1 (one) auctioneer, it is determined as the winner of the auction as long as the bid meets the specified conditions.
8. The winner of the auction is given 5 (five) working days to pay off the shortfall in accordance with the bid minus the security deposit that has been deposited.

9. The State Property and Auction Service Office (KPKNL) then publishes the Minutes of Auction and submits it to the auction winner for the process of changing the name of the certificate.

Announcement of auction as regulated in Article 54 paragraph (1) Ministry of Finance Regulation (PMK) Number 213/PMK.06/2020 at least contains:

- a. Seller ID
- b. The day, date, time and place of the auction.
- c. Type and quantity of goods
- d. Location, area of land, types of land rights, and presence/absence of buildings, specifically for immovable property in the form of land and/or buildings.
- e. Specification of goods (specifically for movable goods).
- f. *Aanwijzing* time and place, in the event that the Seller performs *aanwijzing*.
- g. The auction bid guarantee includes the amount, time period, method and place of deposit.
- h. Limit Value, except for Voluntary Non-execution Auctions for movable goods.
- i. How to bid auction.
- j. Term of the Auction Payment Obligation by the Buyer
- k. The domain address of the KPKNL or the Auction Hall conducting the auction through the auction application or the KPKNL electronic mail (e-mail) address or the Class II Auction Officer or the Auction Hall conducting the auction with an auction bid via electronic mail (e-mail).
- l. Additional conditions, in the event the seller submits.

In the application for land or land and building auction must be accompanied by a Land Certificate (SKT) from the local land office.

Application PT Bank Mandiri (Persero) Tbk Tegal to conduct an auction for the object of the mortgage, as stated by Ahmad Amrullah that based on:<sup>13</sup>

- 1) The first mortgage holder to sell the mortgage object on his own power, this is based on the provisions of Article 6 and Article 11 of Act No. 4 of 1996.
- 2) The executorial title contained in the mortgage certificate with the words "For Justice Based on the One Godhead".

As described in Article 6 of Act No. 4 of 1996 concerning the Mortgage Law, namely if the debtor is in default, the first mortgage holder has the right to sell the object of the mortgage through a public auction and take repayment of his receivables from the proceeds of the sale. This article explains that the mortgage holder has the right to parate execution, meaning that the mortgage holder does not need to obtain approval from the mortgage provider (the debtor), nor does he need to request a determination from the local court if he is going to carry out the execution of the mortgage which is the debt guarantee for the debtor in the event of an execution in case the debtor defaults.

In terms of the sale of the mortgage object, according to Ahmad Amrullah stated that the bank also provides an opportunity for the debtor to find a buyer and sell the mortgage object with the supervision of the bank, this underhand sale aims to achieve a high selling price as expected together.<sup>14</sup>

The auction carried out by the KPKNL includes execution and non-execution which includes auctions of goods belonging to the central or regional government, BUMN or BUMD, Customs, Mortgage, Fiduciary, booty, findings of wood and forest products, and others which are government agencies or a business entity whose shares are owned by the government, in addition the KPKNL also conducts auctions voluntarily.<sup>15</sup>

The management of receivables handled by the KPKNL is carried out after receiving the submission of an application for the management of bad debts from PT Bank Mandiri (Persero) Tbk Tegal Area to the KPKNL equipped with the necessary materials and information. This submission is legal according to

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<sup>13</sup>*Op.cit.*

<sup>14</sup>*Ibid.*

<sup>15</sup>I Made Soewandi, (2005), *Balai Lelang, Kewenangan Balai Lelang dalam Penjualan Jaminan Kredit Macet*, Yogyakarta: Yayasan Gloria, p. 27

law, if the management is declared to have been received by the KPKNL in writing.<sup>16</sup>

In the event that an auction will be conducted by the KPKNL, based on the provisions of Article 17 of the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Auction Implementation Guidelines, the seller is required to:

1. The seller submits or shows the original document of ownership to the Auction Officer no later than before the auction.
2. Excepted from the provisions as referred to in paragraph (1), the Seller may not submit or show the original documents for the execution auction which according to the laws and regulations can still be carried out even though the original ownership documents are not controlled by the seller.
3. In the event that the seller submits the original ownership documents as referred to in paragraph (1) to the Auction Officer, the Auction Officer is obliged to show it to the bidder before the auction begins.
4. In the event that at an auction with the presence of participants and the seller only shows the original documents of ownership as referred to in paragraph (1). The seller shows the bidders before the auction starts and makes a stamped statement.
5. The stamped statement as referred to in paragraph (4) contains the original statement that the ownership documents are in the possession of the seller and will be submitted to the buyer in accordance with the provisions of the legislation.

The following are the rights and obligations of bidders and bidders, namely:

1. Bidders' Rights
  - a. View documents regarding ownership of goods
  - b. See the goods or objects to be auctioned
  - c. Request auction quotes

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<sup>16</sup>*Interview*, Ahmad Amrullah Unit supervisor RRCR (Regional Retail Collection & Recovery) PT. Bank Mandiri (Persero) Tbk Tegal Area, September 17, 2021



- d. Obtain the goods and documents if they are referred to as the winner of the auction.
2. Bidders' Obligations
- a. Deposit auction security deposit if required for it.
  - b. Present at the auction or his proxies.
  - c. Fill in the offer letter on stamp duty with clear letters and no scribbles.
  - d. Paying auction fees and poor money in terms of winning the auction
  - e. Obey the rules for conducting the auction
3. Auction Applicant Rights
- a. Choose how to bid auction
  - b. Determine the terms of the auction if deemed necessary
  - c. Receive auction proceeds
  - d. Request a copy of the auction minutes
4. Obligations of the Auction Applicant
- a. Submit an auction application to the State Assets and Auction Service Office
  - b. Reviewing the necessary conditions
  - c. Setting a reasonable limit value for the price of the goods to be auctioned
  - d. Paying the seller's auction fee
  - e. Submit the goods and their documents to the designated winner through the State Property and Auction Service Office (KPKNL).
  - f. Adhere to auction rules.

As stated in Article 19 of Act No. 4 of 1996 concerning Mortgage Rights, then to the buyer the rights are given as follows:

1. The purchaser of the mortgage object, either in a public auction on the orders of the Head of the District Court or in a voluntary sale and purchase, may request the mortgage holder so that the object he buys is cleared of any mortgage burden that exceeds the purchase price.
2. The cleaning of the mortgaged object from the burden of the mortgage as referred to in paragraph (1) is carried out with a written statement from the mortgage holder which contains the release of the mortgage that burdens the object of the mortgage that exceeds the purchase price.
3. If the object of mortgage is burdened with more than one mortgage and there is no agreement between the holder of the mortgage on the clearance of the object of the mortgage that exceeds the purchase price as referred to in paragraph (1), the buyer of the object may submit an application to the Head of the District Court who its legal area includes the object of the mortgage concerned to determine the clearance and at the same time stipulate the provisions regarding the distribution of the proceeds from the auction sale among the debtors and their rank according to the prevailing laws and regulations.
4. The request for clearing the object of mortgage that burdens him as referred to in paragraph (3) cannot be made by the buyer of the object, if such purchase is made by voluntary sale and purchase and in the Deed of Granting the Mortgage concerned the parties have expressly agreed that the object of the mortgage is not will be cleared from the burden of the mortgage as referred to in Article 11 paragraph (2) letter f

Auction bids in the event of an execution auction must be made directly at the time of the auction, all valid bidders or their proxies at the time of submitting the bid must be present at the auction venue. If the auction price has been agreed on the object of the goods being auctioned, the winner of the auction will be determined, where payment of the auction price is made in cash or cash or check/giro no later than 3 (three) working days after the auction as referred to in Article 82 paragraph (5) PMK Number 213/PMK.06/2020. After receiving the payment by the treasurer of the State Assets and Auction Service Office (KPKNL), the net proceeds from the auction

sale are handed over to the seller in this case. PT Bank Mandiri (Persero) Tbk Tegal Area in lieu of paying off the debt.

The following are the advantages for banks or creditors or applicants for auction execution in relation to the settlement of bad debts through the State Property and Auction Service Office (KPKNL), among others:

1. The agreement between the bank as the proxy of the debtor or the owner of the goods as stated in the Power of Attorney to impose Mortgage or other power of attorney with the auction office to sell the collateral goods belonging to the debtor can take place transparently while still being supervised by the auction official.
2. The maximum price is created because the limit price is determined by the bank as the seller or auction applicant, and the auction office only carries out transactions for the goods to be sold at auction.
3. The creation of time efficiency, the auction office will actively seek potential buyers, so it doesn't take too long to cash out collateral that has been sold at auction, and maintenance costs can be saved in such a way.

The advantages of the execution of mortgages carried out by auction compared to direct sales or without going through the auction, namely:

1. Objective, namely the auction is open to the public, led by an independent KPKNL official for the benefit of all parties, especially to protect the interests of debtors, creditors, and auction winners.
2. Safe, meaning that the auction is led and/or carried out and witnessed by the auction official as a public official appointed by the government.
3. Fast, meaning that the auction is always preceded by an auction announcement that requires participants or potential buyers of the auction at the same time to have deposited a security deposit. The auction winner must pay the auction in cash so that time and costs are more efficient.
4. Realizing fair prices, because the auction system is competitive and transparent and the limit price is determined by the seller or

bidder.

5. Legal certainty, meaning that the auction led by the auction official produces an authentic deed called the auction minutes. This auction minutes can be used by the auction winner as proof of the acquisition of rights and as a basis for reversing the name of the auction object to be in the name of the auction winner.

Some of the advantages of conducting auctions through KPKNL, namely:

1. Safe, because the auction is witnessed and carried out by the auction official
2. Creating a reasonable offer price
3. Be more thorough, because in the auction system there is an obligation to auction officials to examine the formal truth regarding the subject and object of the auction
4. Fair, because it is open
5. There is legal certainty, because after the auction, the auction official makes a report of the auction.
6. Faster and more efficient, because the auction is preceded by an announcement so that the auction participants can gather at the time of the auction and payment is made in cash

From the results of the interview above, it can be seen that the auction process for the execution of mortgage rights carried out by the KPKNL was carried out after the KPKNL received the submission of the application for the management of bad debts from PT Bank Mandiri (Persero) Tbk Tegal Area equipped with the necessary materials and information. After all the necessary requirements are completed, the KPKNL immediately conducts an auction of the mortgage object.

#### **4. Conclusion**

Process mortgage execution auction as an effort to resolve non-performing loans at PT. Bank Mandiri (Persero) Tbk Tegal Area which experienced several obstacles in its implementation when viewed from the perspective of theory of legal effectiveness according to Soerjono Soekanto, which becomes a benchmark for effectiveness in law enforcement there are 5 (five) factors, namely: Legal Factors, Law Enforcement Factors, Supporting Facilities or Facilities

Factors, Community Factors, and Cultural Factors, it can be concluded is not yet effective, in terms of each auction support system most of the potential for errors or obstacles, especially the non-compliance with a rule, namely Article 11 paragraph (2) letter (j) Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related By Land (UUHT) that is the promise that the grantor of the Mortgage will vacate the object of the Mortgage at the time of execution of the Mortgage so that resulted in the delay or low level of effectiveness of the auction, as the results of the auction in 2020 the success rate was small, it did not reach the target set by management or in the performance assessment set by Bank Mandiri as measured by KPI (Key Performance Indicator) the result was category 1 or very bad.

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