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EXECUTION OF AUCTIONS FOR MORTGAGE RIGHTS BY KPKNL AFTER THE SLEMAN RELIGIOUS COURT RULING NUMBER 709/PDT.G/2022/PA.SMN

Abi Hamdalah Sorimuda Harahap* and Rasji
Universitas Tarumanagara, Indonesia
Email: Abi.hrp@gmail.com

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Abstract

One of the objectives of land reform is to hold a fair and equitable distribution of the livelihoods of the peasants in the form of land so that with this distribution a fair and equitable distribution of results can be achieved. The purpose of this land reform is realized through the determination of the minimum area and maximum area of agricultural land ownership with certain rights by one family or legal entity. Prohibition of agricultural land ownership in absentee is a prohibition on ownership of agricultural land located outside the area where the owner lives. One of the efforts to prevent absentee land ownership is the existence of an Electronic Identity Card. However, the implementation of the transfer of rights based on the sale and purchase of agricultural land, with the implementation of the E-KTP, was not carried out perfectly. This research aims to examine the implementation of the absentee sale and purchase of agricultural land rights using E-KTP in Bangli Regency. The research method used is empirical legal research and the research locations were held in Bangli Regency, PPAT and the Bangli Regency Land Office. The results of this research showed that the implementation of an E-KTP nationally, still cannot overcome the ownership of agricultural land in Bangli Regency by people who have addresses outside the Bangli Regency sub-district and still carry out the process of changing addresses so as not to cause absentees.

Keywords: Mortgage Right; KPKNL

1. INTRODUCTION

Auctions are an important public and private function. Minister of Finance Regulation No. 93/PMK.06/2010, 106/PMK.06/2013, and 213/PMK.06/2020 which gives authority to KPKNL to carry out various activities, including execution auctions, serves as the basis for the auction itself.

Litigation is a very real risk when conducting auctions, especially execution auctions. Based on the State Wealth Media Bulletin Edition IV of 2013 Number 14, a total of 2,458 bills were submitted to DJKN/KPKNL, of which more than 1,500 were the result of auctions for the execution of Article 6 Mortgage Rights. Both before and after the auction, different claims or objections were raised. The plaintiff's purpose in filing the lawsuit

before the auction was to delay it. In addition, the reasons for post-auction litigation and objections are very diverse. (Halim, 2014)

The plaintiff's petition constitutes an unlawful act (PMH) in several auction objection lawsuits. In essence, the plaintiff's lawsuit is a legal action against the law as stated in the lawsuit/petition (PMH). Actions that violate decency, religion or etiquette other than those that directly violate the law are considered unlawful, according to Wirjono Prodjodikoro.

Based on the provisions in article 1365 of the Civil Code, it is stated that (Utami et al., 2019):

"Every act against the law that causes doubt in another individual requires the person guilty of causing the loss to

compensate for this loss”.

Based on the formulation of this article, a behavior is said to be against the law if it completes 4 elements, namely:

This behavior must be against the law (onrechtmatig);

This behavior must result in losses;

This behavior must be carried out through mistakes;

Between the behavior and the losses that arise there must be a causal link.

A lawsuit against the law will first declare actions such as contract binding, credit agreements, debt amounts, or confiscation as unlawful acts before declaring the auction haram if the relevant act is not explicitly stated in the decision or application. An act that is legally flawed, because it is a continuation of previous acts that are considered unlawful. (*Putusan Pengadilan Negeri Bukittinggi Nomor 13/Pdt-Plw/2016/PN.Bkt.*, n.d.)

One of the reasons for the need for auction institutions in the context of law enforcement is to carry out or carry out court orders or conflict resolution mechanisms based on law. Auctions produce the value of an item that is disputed in a court decision or collateral that is legally disputed, such as when the District Court or the State Receivables Affairs Committee (PUPN) resolves a bad credit dispute with a bad credit resolution institution.

The seller in an execution auction does not actually own the item; but rather through a power of attorney that can be granted by the creditor bank, the State Receivables Affairs Committee (PUPN), or the District Court. Because the owner of the merchandise does not have the freedom to grant this power of attorney, litigation often occurs involving the owner of the goods, both the debtor and a third party, due to auction sales that are not voluntary on the part of the owner.

The law only allows parties to defend their rights or interests by filing a lawsuit in the hope that the court will determine the law regarding the conflict they face, if their rights are violated by the act of buying and selling at an auction conducted through an auction office (Mashdurohatun et al., 2022).

The majority of judicial decisions, whether initial, appeal or cassation, relate to PMH in general. The judge considered PMH in a broad sense because it violated the rights of the auctioneer and the owner

of the goods, and the price was not fair or appropriate because it was not objective. Additionally, sellers are legally required to maximize their auction selling rates, which ultimately works against social propriety. (*Putusan Pengadilan Negeri Bukittinggi Nomor 13/Pdt-Plw/2016/PN.Bkt.*, n.d.)

In a number of decisions, through the granting of the petitum, the plaintiff linked the PMH to a broader meaning, namely that the implementation of the auction violated the rules, but the court did not immediately declare that the auction minutes were null and void according to the rules or even the implementation of the auction itself was null and void. (*Putusan Pengadilan Agama Sleman Nomor 709/Pdt.G/2022/PA.Smn.*, n.d.)

In terms of research carried out by the author, namely in the PMH lawsuit case at the Sleman Religious Court where there was a lawsuit by the Debtor regarding the cancellation of the execution of the Mortgage Rights carried out by KPKNL at the request of the Creditor (Nugraha putra & Waluyo, 2023), in this case namely Bank BPRS MAM. Where in the lawsuit, the principal of the lawsuit is that the Debtor asks the Sleman Religious Court to cancel the execution of the Mortgage Rights due to an unlawful act committed by the Creditor.

Meanwhile, according to the creditor, the debtor himself is in default as evidenced by the creditor giving SP (warning letter) several times to the debtor to fulfill his achievements, in this case paying the amount of arrears. However, the fact is that even though SP (warning letters) have been given several times, the Debtor has not carried out his obligations, instead the Debtor has filed a lawsuit at the Sleman Religious Court. Because of the lawsuit at the Sleman Religious Court, KPKNL canceled the execution of the mortgage rights (Aeny & Arpangi, 2021).

With the various problems in the field, concrete actions must be taken so that mortgage rights holders can have their rights protected in relation to the execution of mortgage rights auctions, where according to Law no. 4 of 1996 concerning Mortgage Rights, the only technique for executing Mortgage Rights is by auction. However, on the other hand, the Minister of Finance issued regulations regarding the auction execution regulatory mechanism which tend to be contradictory to the regulations above. (Vide Law No. 4 of 1996 concerning Mortgage Rights).

Based on the background of the problem above, the authors conducted research on the Execution of Auctions for Mortgage Rights by KPKNL After the Sleman Religious Court Ruling Number 709/PDT.G/2022/PA.Smn. The purpose of this study is to understand (1) How the mortgage rights auction is executed after the religious court decision number 709/PDT.G/2022/PA.Smn and (2) what legal remedies can be taken by the Mortgage Rights Holder against the lawsuit against the auction execution in court.

2. METHOD

The type of research carried out in this research is normative research. Normative legal research is researching that images law as a perspective discipline, where in this case it only looks at law from the perspective of its norms, which of course is perspective in nature. (Marzuki, 2017; Utama, 2022) In this research, the approaches used are the statutory approach, the conceptual approach and the historical approach. The type of data used in this research is divided into 3 (three), namely Primary Legal Material, Secondary Legal Material and Tertiary Legal Material (Pangestu et al., 2021).

3. DISCUSSION

Legal Protection for Mortgage Rights Holders

Bad credit is something that a bank will definitely face every time it provides credit. Throughout Indonesia, banks and mortgage rights institutions were welcomed with joy upon its establishment, in accordance with Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (Mumpuni & Arly, 2022). In essence, the Mortgage Rights Law functions as a legal basis that regulates the determination of mortgage rights over land. It is hoped that this will provide better legal protection for creditors who own mortgage rights over land and buildings, as well as facilitate the implementation of mortgage rights in the event that the debtor's fulfillment of his responsibilities constitutes a betrayal of trust (Herwastoeti, 2024; Soraya, 2021).

Article 20 of the Mortgage Rights Law regulates three different ways of implementing mortgage rights: private sales, which are carried out according to the agreement of each party; execution on one's own authority, which is based on article 6 of the Mortgage Law and is known as parate execution; and three

executor titles based on the law "FOR JUSTICE BASED ON THE ALMIGHTY GOD" which is carried out using parate executie institutions in accordance with the Civil Procedure Law.

It all depends on the debtor's willingness to cooperate. The options for resolving bad credit mentioned in article 20 UUHT do not always function as intended by mortgage holders. Simplicity and certainty of implementation are two great characteristics of mortgage rights. If the debtor defaults on the terms of the agreement, the mortgage right holder can exercise the mortgage right without first seeking approval from the mortgage rights provider or a local court decision. Functions as collateral for the debtor's debt, and where the bank can come directly and request that the Head of the Auction Office hold an auction for the Mortgage Rights object in question, specifically in accordance with article 6 letter e of this Regulation. Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Guidelines for Implementing Article 6 of the Mortgage Rights Law is implemented through auction (UUHT).

When the Mortgage Law was first introduced, the execution of a grosse mortgage deed could only be completed through execution in the District Court, which required a lengthy process and relatively higher execution costs compared to the Mortgage Execution Parate. This idea, known as parate execution, is a breakthrough in this process.

The rights in question are regulated in article 6 of the UUHT which in full states: "If the debtor breaks the contract, then the first Mortgage Right holder has the right to sell the Mortgage Object under his own control through a public auction and take payment in the amount of his receivables from that sale." The holder of mortgage rights is given rights based on the promise and power of the mortgage rights giver over the credit they receive.

In reality, the ease of implementing mortgage rights under the Mortgage Law—especially mortgage rights under Article 6—does not always meet expectations; debtors with bad credit cannot use Article 6. One of the challenges faced by creditors is conflict; For example, debtors or other parties may feel that they will not agree to the bank auctioning their collateral. Even to the point of suing in court, debtors are reluctant to hand over the items to be auctioned at the auction.

In the Civil Case Decision Number 709/PDT.G/2022/PA.Smn, for example, involving the Defendant Bank BPRS MAMS and Co-Defendant I, Yogyakarta State Property and Auction Service Office (KPKNL) and Plaintiff Ir. H. Wibowo Agung Sanyoto. In summary, the main argument of the lawsuit is that the plaintiff does not agree with the approach of Bank BPRS MAM which is to auction off property rights certificates which are the basis for credit guarantees.

In a healthy banking system, banks must be able to reduce the possibility of negative events occurring before providing credit, rather than only focusing on repairing bad credit. Provision of credit that is not appropriate or planned by parties who wish to utilize the credit facilities provided by the bank, without ruling out the possibility of involving bank employees, is an early sign of bad credit.

Bad credit will even cause new problems if it is not handled thoroughly and appropriate steps are taken. Another problem faced by mortgage rights holders as creditors when using mortgage rights as a means of guaranteeing bank credit is the implementation of mortgage rights. If the debtor defaults (fails to fulfill the terms of the agreement), then the credit received becomes bad. A number of problems arise when banks try to resolve bad loans; the implementation of the mortgage rights article is not implemented as expected; the existence of legal demands or resistance from the debtor or collateral owner may hamper the process of implementing mortgage rights; This is because they have to wait for a decision or decision from the Chairman of the local District Court which has permanent legal force. As a result, the aim of mortgage rights as a guarantee system that is easy to implement cannot be fulfilled.

In fact, bank credit can be given with or without collateral. Unsecured credit poses a risk to the bank's position because it will be difficult for the bank to cover losses on unsecured loans if the debtor has a bad credit history. Due to the existence of collateral covering all negative credit, banks are in a relatively safer position in terms of credit collateral.

Bad credit often occurs in the banking industry, because the main risk associated with providing credit is default. Therefore, each bank needs to handle bad credit in a different way. In handling negative credit cases, PT. BPRS MAM Bank has undoubtedly developed a unique

approach. PT. The bad credit management technique carried out by Bank BPRS MAM includes several stages determined based on the classification of arrears, starting from the first day of arrears and continuing until the bank declares the credit has been paid in full.

Based on an interview with Yulianto S.E.M. Ak, Director of Bank BPRS MAM, the stages of handling bad credit (NPL) are as follows: (Yulianto S.E.M. Ak., 2023)

Banks send warning letters (SP 1, SP 2, and SP3),

Carrying out billing, which takes the form of dividing the billers whose billing is to be carried out, designing the billing, implementing the billing, reporting the findings of the billing.

Savings on installments (Restructuring) namely in the main form of installments, increasing the infrastructure for the installment period, repayment of half of the main installments, increasing installment infrastructure, limiting interest arrears and decreasing credit interest rates.

Settlement of problematic installments, in this case it can take the form of settling installments through cash-in techniques, handing over collateral, settling problematic installments through legal channels and settling problematic installments in civil lawsuits.

If the credit guarantee is implemented to pay off bad debts, then the implementation of the mortgage right becomes the subject of problems that give rise to legal demands or rejection of the implementation of the mortgage right. Although the implementation of mortgage rights is strictly regulated in civil procedural law and mortgage rights law, this does not rule out the possibility of irregularities in the implementation process, such as if it is carried out against the law or in a way that is not permitted by law.

According to Article 8 paragraph 3 Rv, a lawsuit must be submitted in writing and the plaintiff must consider 3 (three) factors in addition to the material requirements of the case as follows:

A complete explanation of the parties filing the lawsuit, including their place of residence, identity and line of work.

The basis of the lawsuit (*fundamentum petendi*) includes a legal description, namely the existence of rights in a legal relationship, as well as a description of

events, namely an explanation of the case.

The judge must make a decision regarding what the plaintiff is demanding (petitum). The principal claim can be divided into two, namely the major claim which is the main claim, and the subsidiary claim which is a reserve claim if the judge rejects the original claim.

A third party, who was not originally a party to the case, can take extraordinary legal measures to refuse the implementation of the mortgage right if he believes that the goods in dispute or being examined in the case really belong to the third party and are only interested in doing so. Actions like this are known as resistance in civil procedural law.

One of the advantages of mortgage rights is that their implementation is easy and guaranteed, making it a strong land security rights institution. Considering the General Explanation number 9 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, it is deemed necessary to specifically include provisions regarding the implementation of Mortgage Rights in Law Number 4 of 1996 which regulates the implementation Mortgage right. Parate institutions as referred to in Article 224 HIR and Article 256 Rbg, even though the provisions regarding execution in general have been regulated in the applicable Civil Procedure Law. If the debtor defaults, the creditor is given legal protection through the execution of the Mortgage Rights object. 3 (three) categories of execution are distinguished based on the provisions of Law Number 4 of 1996:

Underhand Execution

In terms of marketing through public auctions, it is assumed that it will not result in the highest rates, it is possible that marketing of mortgage objects can be carried out using private techniques. Execution of executorial title Parate Execution of Mortgage Rights. The basic principle of execution parate is also contained in the body of the Mortgage Law in article 20 paragraph 1 which states that if the claimant breaks his promise, that is based on:

The right of the owner of the initial mortgage right to sell the object of the mortgage right as intended in Article 6, or

Executorial Title obtained on the mortgage rights certificate as intended in Article 14 paragraph (2), the object of the Mortgage Rights is sold through a public auction based on the procedures stipulated

in the provisions of the Law in order to pay off the mortgage owner's debt through the right of priority over other claimants.

Execution Based on Executorial Title

A court judgment or ruling is generally required before an executor's lien can be enforced. In the context of credit practices in the banking industry, debtors and creditors have various legal relationships that begin when credit is disbursed and continue until the loan is considered paid off by the bank. Legal actions related to the execution of collateral have this relationship as the basis or basis for credit if the debtor has experienced problems in receiving credit. The execution of mortgage rights can be protected by one type of legal relationship between the creditor and the borrower, including the following:

Credit agreement

A credit agreement is a written contract that outlines the terms and conditions under which the creditor will provide credit facilities to the debtor. Both the debtor and creditor acknowledge and agree to comply with all the conditions stated in the credit agreement by signing it.

Power of Attorney for Mortgage Rights (SKMHT)

A special power of attorney to encumber an object with a mortgage right (SKMHT) is a power of attorney given to the recipient by the person giving the mortgage right who acts as the power of attorney. To implement the Mortgage Right, the power of attorney must be valid, that is, it must be made by a public official who is expressly appointed to make the deed. As regulated in UUHT Article 15 paragraph 1, a Power of Attorney to Encumber Mortgage Rights (SKMHT) requires that the SKMHT be made with a Notarial Deed or PPAT. In other words, the decision can be made with a PPAT deed in addition to a Notarial deed, even though it must be made with an Authentic deed. The conditions that must be met for a Power of Attorney to encumber Mortgage Rights granted by a Notary or PPAT are: Article 15 paragraph 1 UUHT:

Deed of Granting Mortgage Rights (APHT)

The granting of mortgage rights is carried out through APHT over PPAT in accordance with the applicable laws and regulations in a standard format and form.

Mortgage Rights Certificate.

The existence of an "executorial title"

gives rise to an executorial decree, a compulsion. (Setiawan, 1991) The executorial title of the Mortgage Rights Certificate contains irah-irah through the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD" as stated in article 14 paragraph 2 of the Mortgage Rights Law, has exact executorial power through a judicial decree which has attained permanent legal force (*inkracht van gewijsde*).

Ratio Decidendi Sleman Religious Court Decision Number 709/PDT.G/2022/PA.SMN.

For completing the bad installments made by PT. Bank BPRS MAM did not proceed as expected, a number of problems arose as the bad debts were resolved, two forms of resistance were encountered on the part of the Bank in relation to the execution of mortgage rights, regarding the form of this resistance in the form of:

Resistance before the auction
(Postponing the Auction)

Resistance after the auction (Cancelling the Auction)

This opposition usually takes the form of a lawsuit filed under civil procedural law in the local district court by the debtor or collateral owner. In this scenario, the bank is positioned as a defendant or co-defendant in the lawsuit; However, this does not rule out the possibility of banks acting as plaintiffs in ordinary civil lawsuits.

The legal activities of banks to resolve bad debts and hold auctions for the implementation of mortgage rights are usually the reasons behind civil lawsuits launched against banks by debtors, debt guarantors, or other parties. The Bank continues to maintain that its legal actions as the holder of mortgage rights are correct and in accordance with the provisions of laws and regulations, even if the debtor, third party or collateral owner believes otherwise. suitable.

In reality, court decisions of first instance are not always the result of settlement of bad debts against legal claims or resistance to the implementation of mortgage rights which are followed through civil procedure laws and regulations. Ordinary legal remedies and extraordinary legal remedies are two categories of legal remedies that exist in civil procedural law. Appeals, cassation, and *verzet* (opposition to *verstek*

decisions) are examples of ordinary legal remedies; Judicial review and *derden verzet* are examples of extraordinary legal efforts.

In general, a judge's decision which has permanent legal force, i.e. no further legal action is taken, is the only way to resolve bad credit due to legal demands or resistance to the implementation of mortgage rights. This decision essentially becomes the basis for holding an auction for the execution of mortgage rights objects.

Every legal action will certainly give rise to legal consequences, this also applies to confiscation issues. Confiscation carried out by the court has legal consequences, namely that the owner of the object whose object has been determined to be the object under confiscation, no longer has the right to transfer the property that has been confiscated. This means that with the decree of confiscation, the owner of the object has lost part of the rights to his own object.

As a result of losing some of these rights, the owner of the object can no longer transfer the object by selling or pledging it to another party. If the owner of the object transfers the object that has been declared confiscated, then legally he has committed an action that is contrary to the law. In the sense of carrying out actions outside the authority to act. Such provisions can be threatened with two legal sanctions, namely civil law and criminal law.

The consideration of the Panel of Judges who could not accept the Plaintiff's lawsuit was responded to by the Plaintiff's Legal Counsel, namely Advocate Nazarullah Herzaputra, SH. Which stated: "In principle, we respect the decision of the Panel of Judges who have not been able to accept our lawsuit, but according to procedural law, if the lawsuit cannot be accepted, the Plaintiff can file a new lawsuit again at the Sleman Religious Court or submit an appeal to the Yogyakarta Religious High Court. However, on the one hand, we realize that there are obligations that must be carried out by the Defendant, but on the one hand, there are regulations that allow parties who have the right to file a lawsuit related to the delay in auction execution. So, we do not mean to disrespect the legal process related to Mortgage Rights held by Bank BPRS MAM, but we actually respect the legal regulations issued by the related party, in this case the regulations of the

Minister of Finance and all parties must respect these regulations. This means that as long as there is no decision regarding the object of dispute, the object is still in *aquo status*”.

On the one hand, the Bank feels that this lawsuit is actually very detrimental to them because they have paid quite a lot of administrative fees for registering the auction execution with KPKNL and also have to pay operational costs during the trial. Even though the Bank holds the Mortgage Rights, there are Ministry of Finance regulations regarding the auction implementation mechanism, where if there is a lawsuit in court, the auction execution must be cancelled/postponed until there is a court verdict that has permanent legal force (*inkracht van gewijsde*).

On the other hand, the Yogyakarta KPKNL explains that they cannot possibly refuse anyone's request for an auction execution as long as the conditions specified are appropriate and complete, but the KPKNL also cannot carry out an auction execution if there is a lawsuit in court because there must be no court decision stating otherwise in the meantime. The auction object has been sold so it will cause new problems in the future.

The purpose of *parate executie* is to settle creditors' claims against debtors, in accordance with the Mortgage Law Number 4 of 1996. Legal protection of creditor receivables is the basis of *parate executie*, namely facilitating repayment.

In the context of the process of selling collateral rights objects under one's own authority, without prior confiscation of the collateral and without executory confiscation and without a court order, the application of *parate executie*, as well as the ease, speed and low cost of returning creditors' receivables. Compared with execution based on executorial title, it reflects the embodiment of the principle of legal protection. To expedite the repayment of its debts, the bank can legally use its power to carry out *parate executie* as a creditor. Articles 20 and 21 of the Mortgage Rights Law regulate the implementation of mortgage rights.

If the debtor defaults, the mortgage right holder is obliged to sell the mortgaged goods first, in accordance with Article 6 UUHT. This is stated in UUHT Article 20 Paragraph 1 Letter A. Both the transfer of rights and the implementation of rights for creditors holding first mortgage rights are important events that

occur if the debtor defaults, as shown by the factors listed in Article 6 UUHT. The contents of Article 6 UUHT can be said to be comparable to the Civil Code Paragraph 1178(2). Public sales of collateral are governed by the equality of the two. In contrast to Article 1178 paragraph (2) of the Civil Code which regulates sales under one's own authority, Article 6 UUHT gives creditors the legal right to sell pawned goods through auction if the debtor is in default. This means that the creditor who holds the first mortgage right is the first to be given that right.

The decision of the Panel of Judges which could not accept the Plaintiff's lawsuit actually indirectly meant that the Panel of Judges won for the Plaintiff. Even though the lawsuit was not accepted, the decision of the Panel of Judges by not accepting the Plaintiff's lawsuit actually gave the Plaintiff time to own and control the collateral object, while the Defendant, in this case, the Bank, could not execute the object because the decision did not have an executorial nature and made the object as *status aquo*.

The Plaintiff's Attorney explained that they asked the Bank for time to resolve the issue of their obligations. However, the Bank refused to give time so the Plaintiff filed a lawsuit in Court to obstruct the execution at KPKNL. Based on this decision, the separate executive function was not carried out as required in Article 6 UUHT and Article 1178 paragraph (2) of the Civil Code. The implementing agency's objectives cannot be implemented effectively if the decision is in favor of the debtor. By offering convenience, fast settlement and cheap recovery of creditors' receivables with first mortgage rights, *parate executie* seeks to speed up the recovery of creditors' receivables. As a result of the cancellation of the execution auction, creditors are not harmed by this function.

As stated in article 6 UUHT, the aim of implementing mortgage rights is to facilitate the transfer of rights to creditors holding mortgage rights to exercise rights on their own initiative if the debtor defaults. (Usman, 2009) In the case of multiple mortgage rights holders, the rights listed in Article 6 UUHT are an expression of the priority stance of the holders. This right arises because of a promise from the mortgage right holder to sell the goods if the debtor breaks the agreement.

Mortgage rights are carried out by

means of a public auction, with the mortgage rights grantor not needing to provide additional approval, then receiving payment of receivables from the sale first from other creditors. The mortgagee retains ownership of the remaining sale proceeds. The mortgage right holder can request directly that the state auction house sell the mortgage item in question at a public auction if the debtor violates the terms of the agreement.

The drafters of the UUHT prohibit the execution of Mortgage Rights objects that deviate from the customs stated in UUHT Article 20 Paragraphs (1), (2), and (3). The right of lien is considered "null and void" if the giver and holder of the mortgaged property executes the object of the right of lien in a manner different from that specified in Article 20 paragraphs (1), (2), and (3).

As stated in Article 21 UUHT, further protection is provided for the interests of creditors holding mortgage rights, in addition to making implementation easier. Mortgage rights holders can still use all the rights they have obtained in accordance with UUHT provisions even if they are declared bankrupt. Apart from the impact of bankruptcy of the mortgage right holder on the object of the mortgage right, this provision further solidifies the priority position of the mortgage right holder. To pay off the debt, the mortgage right holder has the right to sell the mortgage object first through auction. The remainder is part of the mortgage lender's bankruptcy case.

Mortgage rights can also be exercised by the mortgage right holder directly through a public auction institution (auction office), where the proceeds from the sale are used to pay off the holder's debts. Partial execution can be carried out through a public auction without consulting the court at all (especially for holders of first mortgage rights). This clause removes the suspicion that every execution carried out through an auction agency requires court approval.

This assumption is actually incorrect, because the Civil Code also accepts the model of promises carried out through auction institutions, completely free from court interference. Creditors can execute mortgage rights in retaliation for their rights if the first mortgage right holder sells the mortgage object or the executorial right stated in the mortgage rights certificate. Added the sentence "To uphold justice and foster faith in God

Almighty, the decision of the chairman of the district court must be obeyed so that it can be followed".

In accordance with the executorial title stated in the certificate of mortgage rights, the execution carried out by the creditor who owns the mortgage right to pay off the debtor's debt is auctioned to the public. This is a form of ease of execution offered by UUHT to creditors who own mortgage rights.

Whether the auction sale is carried out with or without a district court decision, in practice there are often challenges in implementing execution auctions. Litigation (in judicial institutions) and non-litigation (in non-judicial institutions) are two ways for creditors who own mortgage rights whose auction objects have been canceled to obtain legal protection. Article 6 or 14 paragraph (2) UUHT provides a legal basis that can be requested in court. This is in accordance with the objectives stated in the explanation of Article 20 UUHT paragraph (1) which states that the method of implementing mortgage rights as intended in Article 20 UUHT is a form of convenience provided by the Mortgage Rights Law. to creditors holding mortgage rights in the event that execution is required. Namely Alternative Dispute Resolution (ADR) as a non-litigation route.

Considering that winning the auction for the pawned goods is very important to repair bad credit, the cancellation of the auction execution by the court stems from the absence of legal protection for the auction winner which needs to be guaranteed by statutory regulations. The purpose of selling a mortgage object is actually the creditor's ability to collect the debtor's debt when purchasing the collateral object.

Legal certainty regarding the auction winner for collateral needs to be maintained. Liens are imposed for lawful purposes only; otherwise, the creditor cannot collect the debtor's debt, and the auction will be canceled by court order. The principle of *right de préférence* is not fulfilled if the auction is canceled because the creditor is unable to collect payment on the debtor's debt, and the sale is deemed to have never occurred. If the court decides that the auction act is valid and has permanent legal force, which allows the auction buyer to have control over the auction items purchased at auction, then legal protection is given to bidders who have good intentions.

Goods obtained through auction will

return to their original ownership rights, namely the property of the plaintiff, namely the debtor, third party, or defendant who executed the goods, among other things due to the legal consequences of canceling the auction. If a decision declares an auction invalid or invalid and the plaintiff is the debtor, then the goods are returned to the debtor, but remain as collateral as they were before the sale.

In addition, the rights of auction participants to goods and auction results are also affected by the legal consequences of canceling the auction. Physical and legal termination of the auction object will occur if the auction decision is deemed to violate the law and is null and void. The legal representative of the owner of the goods as seller, such as a creditor bank, execution defendant, or mortgage right holder, will then return the auction proceeds.

4. CONCLUSION

Based on the results of the discussion described above, the conclusions that can be drawn in this research is one way for creditors to obtain legal protection is by exercising mortgage rights over land and objects related to it. In this way, creditors can be guaranteed to receive their money back if the debtor violates their agreement (default). Legal and non-legal obstacles hinder the correct and smooth implementation of mortgage rights.

Apart from that, the main reason for Debtors to file a lawsuit is to delay the execution of the auction, not because of juridical reasons or because of errors in the auction procedure, while in the Mortgage Law itself only third parties can file a lawsuit in court.

Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions is contrary to Law Number 4 of 1996 concerning Mortgage Rights where in the Minister of Finance's regulations regulate the cancellation of auction execution due to a lawsuit in court, meanwhile in the Mortgage Rights Law there is nothing that regulates this, whereas in the Mortgage Rights Law the only way to sell Mortgage Rights is by executing an auction. And in the auction execution there are also no rules governing the cancellation of the mortgage rights execution through a court lawsuit.

Based on what described above, the author can convey in this research is that

The District Court must be used to enforce mortgage rights to ensure that every grant of debt or credit agreement is always supported by the posting of a gross debt acknowledgment deed or mortgage rights certificate which has the same executorial power as the court decision, thereby preventing the emergence of new legal problems regarding mortgage rights.

Judges/Heads of District Courts must make efforts to further improve their services. For example, they must make it easy for creditors to apply for execution of mortgage rights under uniform conditions, and they must provide advice and counsel to creditors when they choose to apply for execution of mortgage rights through the District Court. Most importantly, this should not be delayed unless there is a strong legal reason to do so.

Amendment to Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines for Organizing Auctions; This regulation has given rise to several legal actions related to delays in the implementation of mortgage rights.

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