

The Legal Protection for Debtors in the Implementation of Bad Credit Settlement with Guaranteed Objects of Mortgage

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Abstract. *This study aims to find out and analyze the implementation of the settlement of bad loans with mortgage guarantee objects, to find out and analyze legal protection efforts against debtors' assets in the bonds of mortgage certificates to be executed, to identify and analyze weaknesses and solutions for implementing bad loans with objects mortgage guarantee. The approach method in this research is empirical juridical, referring to the literature related to legislation relating to bad loans and research by going directly to the object. The research specification is descriptive analytical, which is a study that seeks to describe in detail the social phenomena whose main problem is without hypotheses and statistical calculations of the required data, the data is taken by methods based on primary data, namely interviews and observations as well as secondary data obtained from literature studies and analyzed qualitatively. The research concluded that the implementation of the settlement of bad loans with the object of guarantee of mortgages was carried out by an auction process through the KPKNL as the last step in efforts to resolve bad loans.*

Keywords: Auction; Credit; Guarantee.

1. Introduction

The national development of a nation includes economic development. In economic development, the role of financial institutions is needed to finance, because economic development really requires the availability of funds. Therefore, the state is obligated to guarantee the existence of financial institutions in financing economic development which is indispensable for the survival of citizens as the objectives of the Republic of Indonesia are stated in the preamble to the Constitution of the Republic of Indonesia. One of the financial

institutions involved in financing economic development is the Bank¹.

The banking business that is most in demand by the public, both individuals and business entities, is credit services. In lending and borrowing transactions at banking institutions, it has been regulated in Act No. 4 of 1996 concerning Mortgage Rights on Land along with objects related to Land, in article 1 number (2) the party giving the debt is called the creditor, (3) the debtor is called the creditor.²The debtor's relationship with the creditor in a debt bond that includes mortgage rights will have its own legal consequences if in the future the debtor defaults, the debtor has no potential ability to pay at all or is called bad credit and cannot pay the debt within the time limit with a predetermined nominal amount. , then a solution was reached for the settlement of bad loans³.

The position of the borrower's assets based on article 1331 of the Civil Code, is entirely a guarantee (debt) for the debt.⁴In the final settlement of the sale of mortgages to pay off debts, there may be material losses for the mortgagee voters, this can happen if the value of the sales transaction is below the market price, while the creditor only targets the repayment of the remaining debt, without regard to the rights of the debtor as the debtor. The giver of the mortgage has the right to the remaining money after payment has been taken. When the mortgage is sold at a high price according to the highest market price, the debtor has the right to the remaining money that has been paid for repayment, but if the remaining credit repayment is not given to the debtor, the settlement of bad loans like this can be said to be an element of Unlawful Acts (PMH) as regulated in article 1365 of the Civil Code⁵.

On the other hand, the settlement of bad loans through auctions and all of its legal consequences has created new problems for debtors, issues are developing among the public that the mortgage auction market has been controlled by certain groups, auctions have harmed the debtor as collateral providers, the determination of the price of the auction object does not pay attention to the selling value on the object of mortgage in the local market. According to the Regulation of the Minister of Finance Number 93/PMK.06/2010 concerning

¹ Gunther Teubner, *Substantive and Reflexive Elements in Modern Law, Law and Social Review*, Volume 17 Nomor 2. Dikutip oleh Teguh Prasetyo dan Abdul Halim Barkatullah, Filsafat, Teori, dan Ilmu Hukum, Jakarta: Raja Grafindo, 2012.

² Ketut Sukawati Lanang Putra Perbawa, *Penyelesaian Kredit Macet Dalam Perbankan*, <https://media.neliti.com/>.

³ Niru Anita Sinaga, Nunuk Sulisrudatin, *Hukum Kepailitan dan Permasalahannya di Indonesia, Jurnal Ilmiah Hukum Dirgantara*, Volume 7 No. 1, September 2016;

⁴ M. Bahsan, (2012), *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Jakarta: Rajawali Pers, p.10.

⁵ Serlika Aprita, Penerapan "Asas Keadilan" Dalam Hukum Kepailitan Sebagai Perwujudan Perlindungan Hukum Bagi Debitor, *Jurnal Hukum Media Bhakti*, Vol.3, No.1, June 2019;

Instructions for Implementation of Auctions Article 35 and Article 36, the determination of the auction limit price for immovable goods should be based on the assessment of a competent (appreciative) appraiser, for sale/auction of movable goods must be based on the results of the auction appraisal by a competent appraiser⁶.

The provisions for the sale of the mortgage object must be complied with by the banking sector because the rights of the debtor as a consumer of banking products, have the right to real information on all consequences of providing credit guarantees by including collateral, the right of the owner of the collateral to receive the remaining proceeds from the auction sale must be notified. Sometimes the remaining debt that becomes arrears is not proportional to the value of the object being requested for auction, the auction price limit is much lower than the actual object price. So there is an impression that creditors/bank financial institutions seem less credible. This is what is interesting to be studied in depth by researchers because of the imbalance between the interests of the creditor and the legal rights of the debtor.

2. Research Methods

The writing of this thesis uses an empirical juridical research approach, referring to the literature related to legislation relating to bad loans and research by going directly to the object. The specification of the research is descriptive analytical, which is a study that seeks to describe in detail the social phenomena that are the subject matter without performing hypotheses and statistical calculations. This writing data collection method is based on primary data, namely interviews and observations as well as secondary data obtained from literature studies and analyzed qualitatively. The research problems were analyzed using Legal Protection Theory, Legal Certainty Theory and Legal Benefit Theory.

3. Results and Discussion

3.1. Implementation of Bad Loans Settlement With the Object of Guaranteed Mortgage

A. Position Case

The default debtor is Ana Nurul Hidayati, Place of Birth in Semarang Regency on February 11, 1982, Entrepreneurial Work, address Bender Vill. Rt./Rw. 03/07 Kalisidi Village, West Ungaran District, Semarang Regency as a Debtor at Bank Danamon KC Ungaran with a credit limit of IDR 150,000,000,- (one hundred and fifty million rupiah), repayment period of 48 months, with installments of IDR4,925,000,-/month. With the approval of her husband, Muh. Asrofi, Teacher's Job, address, address Bender Vill. Rt./Rw. 03/07 Kalisidi Village, Ungaran Barat

⁶ Theresia Anita Christiani, Legal Analysis of Bankruptcy in The Perspective of Legal Purposes, *Jurnal Pembaharuan Hukum*, Volume 8, Number 1, April 2021;

District, Semarang Regency, has been bound by Credit Agreement Number: 0000183/PK/07751/2300/1013, dated 31 October 2013, Customer Identity on behalf of ANA NURUL HIDAYATI CIF11279998, ACC LOAN 3566848333, Bank Danamon KC Ungaran.⁷

For credit guarantees, the debtor submits a HM Certificate. No. 2390 a/n Ana Nurul Hidayati, a land area of 250 m² on which there is a residential house located at Bender Vill. Rt.03 Rw.07 Kalisidi Village, Ungaran Barat District, Semarang Regency with the following boundaries:

North: Asmuni;

East: Village Road;

South: Muzaroah;

West: Kemat.

The certificate described is in the form of land on which there is a residential house building in good building condition occupied by the debtor's family. As the object of Mortgage, Mortgage is bound. Mortgage Certificate (SHT) Rank I (one) No. 764/214/ dated March 3, 2014 Jo. Deed of Granting Mortgage Rights (APHT) No. 37/2014 dated 17 February 2014.⁸

To discuss the results of further research, researchers will use the designation and term Debtor, to refer to the Mortgage Giver/Credit Facility Recipient, Creditor for the lender as the holder of the Deed of Granting Mortgage Rights (APHT). To name the last mortgage holder due to the auction process as the Auction Winner. All efforts to find a payment solution for bad debts and efforts to save assets from the possibility of selling the mortgage object below the fair market price are carried out by the Debtor and the debtor process to settle the debtor's default so that the debtor's loan capital can be repaid by selling the object of the mortgage. Debtor.

Problems begin to arise when the debtor is not smooth in paying installments, then it starts to be late, then the debtor is completely unable to pay the installments, the condition of being unable to pay has been followed up by the creditor by giving verbal warnings, and proper warnings until the last warning, forward the bill forced, until the specified time limit the debtor cannot pay off his obligations, due to the intentional element or negligence of the debtor and the creditor's collection efforts do not produce the desired payment solution, then the debtor is categorized as a default as a legal consequence of a defaulting debtor, the creditor carries out the sale of the mortgage object through the State Asset Management and Auction Office (KPKNL), with the proceeds of the sale as stated in the minutes of auction no.⁹

- Minutes of auction No. 1578/216 dated September 15, 2016, for Mortgage Certificate of Mortgage Certificate (SHT) Rank I (one) No. 764/214/ dated March 3, 2014 Jo. Deed of Granting Mortgage Rights

⁷Interview with Muh Asrofi (husband of debtor) on 17 July 2021

⁸Ibid.

⁹Interview with Suryanto, SH (Debtor Lawyer) on August 14, 2021

(APHT) No. 37/2014 dated 17 February 2014 with the winning bidder: Hazwar Sutedjo, S.Pd.

- Stipulation of the Chairperson of the Ungaran District Court No.3/Pen.Pdt.Eks/2018/PN.Unr, dated July 12, 2018. Regarding the EMPLOYMENT of a plot of land and the building above it in Certificate HM.No.2390/Kalisidi Village, the area is approx. 250 m² registered under the name of HAZWAR SUTEJO, SPd. The real execution applicant is located in Kalisidi, West Ungaran District.
- Notification of Real Execution of Emptying and Submission of Case Number 3/Pdt.Eks/2018/PN.Unr dated September 14 2018, which explains that on Tuesday, September 25, 2018 at 09.00 WIB until Finish is located at the Execution Object in Hamlet Benner RT 03 RW 07 Kalisidi Village, Ungaran Barat District, Semarang Regency, will carry out the implementation of forced emptying and handing over the object of execution based on the stipulation of the Chairman of PN. Ungaran No. No.3/Pen.Pdt.Eks/2018/PN.Unr, dated July 12, 2018 concerning EMPLOYMENT EXECUTION.
- Minutes of Appointment of Execution Number.3/BA.AS Pdt.Eks/2018/Pn.Unr dated 7 December 2018, by the bailiff of the Ungaran District Court based on the stipulation of the chairman of the Ungaran District Court dated 22 November 2018 Number 3/Pen/Eks/2018 concerning the order for the execution of the confiscation of execution, this Minutes shall be notified to the executed Debtor and the winner of the auction as well as the head of the village of kalisidi;

Based on the results of research on the Debtor's efforts to find solutions to bad credit settlements and efforts to save the Assignment of Mortgage so that it can be sold at a fair price¹⁰, with the hope that the proceeds from the sale of the mortgage object after deducting the costs to cover/pay off the debt, the remaining money is returned to the Debtor, the remaining money the proceeds of the auction sale are the rights of the debtor, the rights of the debtor in default, as well as the debtor's guarantee of mortgage rights at auction cannot be obtained properly.

B. Auction Execution

Debtors obtain credit facilities from creditors based on Credit Agreement Number: 0000183/PK/07751/2300/1013, dated 31 October 2013, Customer Identity Ana Nurul Hidayati CIF11279998, ACC LOAN 3566848333, Bank Danamon KC Ungaran. With a credit limit of IDR 150,000,000, - (one hundred and fifty million rupiah) repayment period of 48 months, with installments of IDR4,925,000,-/month.¹¹

¹⁰ Sobandi, The Issue of the Commercial Court Limited Competency in Settling the Commercial Disputes, *Sriwijaya Law Review*, Vol. 3 Issue 1, January (2019);

¹¹Interview with Mr. Asrofi as debtor on September 4, 2021

As stipulated in article 12 (1) of Act No. 7 of 1992 was amended by Act No. 10 of 1998 concerning Banking. To support the implementation of programs to improve the standard of living of many people through the empowerment of cooperatives, small and medium enterprises. Debtors are entitled to credit facilitation from creditors with the following obligations:

- Submit a credit guarantee in the form of a HM Certificate. No. 2390 a/n. Ana Nurul Hidayati, a land area of 250 m² on which there is a residential house located at Bender Vill. Rt.03 Rw.07 Kalisidi Village, Ungaran Barat District, Semarang Regency with boundaries: North; Asmuni, East Jalan Desa, South; Muzaroah, West. Kemat.
- Signing the Deed of Encumbrance of Mortgage with Deed No. Mortgage Certificate (SHT) Rank I (one) No. 764/214/ dated 03 March 2014; jo. Deed of Granting Mortgage Rights (APHT) No. 37/2014 dated 17 February 2014.
- Paying installments of IDR4,925,000,-/month in 48 installments must be paid off on October 13, 2016.

The creditor's obligation is also to comply with all the contents of the credit agreement that has been signed by both parties, to comply with the applicable laws and regulations, as regulated in Article 1320 of the Civil Code jo.1338 concerning the agreement to submit to the agreement that has been agreed upon. With respect to a credit guarantee certificate that has been bound by a deed of encumbrance with executive power, in the future there will be binding juridical consequences.¹²

The creditor notifies the debtor that the mortgage will be sold at auction, and announced in the mass media through the daily afternoon insight and notification from the creditor No.01/SP/LELANG/2016 dated 22 March 2016, that the debtor has defaulted, then the land as mortgage will be auctioned by the Bank on April 20, 2016, the auction will be conducted by KPKNL Semarang. For auction I dated April 20, 2016 with a limit of IDR194,000,000,- (one hundred and ninety-four million rupiah). During the auction on April 20, the debtor represented by his husband witnessed the auction process at the KPKNL Semarang, the auction had no interest: TAP auction results and auction II on 20 June 2016, with a limit of 135,000,000,- the results of the TAP auction.¹³

Third Auction Announcement of Insight daily afternoon newspaper on August 31, 2016, for auction on September 15, 2016. Auction limit is IDR 80,000,000,- (eighty million) won with the winner of the auction IDR 80,000,000,- (eighty million). A copy of the Minutes of auction no.1578/2016 dated 15 September 2016. The auction is now available: Auction Winner Br. Hazwar Sutejo, S, Pd.¹⁴

In the implementation of the third auction, the debtor in a sick condition is treated in the hospital, the debtor's husband cannot witness the auction process,

¹² Interview with Notary Dr. Taufan Fajar Riyanto, SH., M.Kn on May 24, 2022

¹³ Interview with Mr. Asrofi as debtor on September 4, 2021

¹⁴ Interview with Mr. Asrofi as debtor on September 4, 2021

so the auction with a limit that is far from the debtor's debt responsibility and far from the fair price of the mortgage object where the fair price of the mortgage object is around IDR 400,000,000, - (four hundred million rupiah) while the remaining debt of the debtor is. 198,067,133,37,- (one hundred ninety-eight million sixty-seven thousand one hundred and thirty-three rupiahs, point thirty-seven cents).

The irregularity in the third auction was contrary to Article 6 of Act No. 4 of 1996, concerning Mortgage, which stipulates that debtors are in breach of contract, the holder of the mortgage can sell the object of the mortgage through a public auction and take repayment of his debt from the proceeds of the seller.

- The results show that debtors as consumers of financing services from creditors should have the right, to be served correctly, honestly, transparently, without discrimination. The creditor intentionally committed an unlawful act in the third auction on 16 September 2016 by setting an auction limit of IDR 80,000,000,- which is very far from the fair price and is very detrimental to the rights of the debtor, the minutes of auction No.1578/2016 dated September 15, has determined the winner. The actions of the creditor in auction III have eliminated the debtor's right to receive the rest of the money from the auction. The minutes are also kept confidential, not immediately notified to the debtor so that in auction III it is strongly suspected that an unlawful act has occurred as regulated in Article 1365 of the Civil Code Pdt,¹⁵
- That the determination of the auction limit of IDR 80,000,000,- without an assessment basis from a competent appraiser, while the object being auctioned is land and buildings in good condition, without seeing and assessing directly the location of the object it will not produce a definite value for the price of land and buildings to be auctioned. auction I on 20 April 2016 with a limit of IDR194,000,000,- the results of the TAP auction, and the second auction on 20 June 2016, with a limit of 135,000,000,- the results of the TAP auction, all without the basis of the results of an appraisal by an appraiser, although the first auction and II the result was TAP at that time. The plaintiffs witnessed the auction because the limit was still close to the debt repayment figure, in fact the plaintiffs did not object, but with a limit of IDR80,000,000 and won at an auction price of IDR80,000,000,
- Whereas in the third auction the debtor could not witness the auction process, because he was hospitalized at the hospital, it seems that the limit has been lowered without any basis and the price is not fair, in fact on September 16, 2016, land, HM. No. 2390 on behalf of ANA NURUL HIDAYATI/ Kalisidi Village, an area of approximately 250 m² on the object, the local price has never decreased, because the object of the auction is not a movable object or a food commodity/antique object/artwork, if

¹⁵Interview with Suryanto, SH (Debtor Lawyer) on August 14, 2021

suddenly the price of land and buildings is deemed to have dropped and has an effect against the limit price of the object of the auction which should still be priced at IDR 400,000,000,- auction limit of IDR 80,000,000, - with the debt still remains in the amount of IDR IDR 198,067,133.37. The third auction process according to the debtor and according to the legal view, is contrary to local wisdom, arbitrarily and discriminatory as well as inappropriate, creditors can be categorized as having committed unlawful acts with all the consequences, as regulated in article 1365 of the Civil Code Pdt. The debtor is greatly harmed by the implementation of the auction III;

- The creditor also keeps the minutes of auction III secret, in fact the debtor as the owner of the asset/object being auctioned has never been given an official copy of the minutes of the auction, the debtor only knew for sure from the creditor's confession at the lawsuit trial at the District Court, that auction III was on 16 September 2016 with an auction limit of IDR 80,000,000,- minutes of auction No.1578/2016 dated 15 September, with the winning bidder. Debtors were made helpless by painstakingly searching for information on auction III at KPKNL Semarang as the executor, finally with minimal information the debtor believed that there was a winner. With this fact, the debtor has a strong basis for taking legal action, as regulated in Article 1365 of the Civil Code. In the third auction, the elements of illegal acts (PMH) have been fulfilled. The settlement of bad loans has caused new legal problems, land transfers, HM. No. 2390 on behalf of ANA NURUL HIDAYATI/ Kalisidi Village with an area of approximately 250 m² the rights to the winning bidder are legally flawed, while the elements of PMH as referred to in Article 1365 of the Civil Code Pdt, are: 1. Violating the subjective rights of others; 2, Contrary to good decency, and 3. Contrary to propriety.

The purpose and objective of the legal efforts carried out by the debtor in default is to seek legal justice and legal certainty in the auction process conducted by government institutions where the debtor is already aware of the legal consequences of bad credit, namely the execution auction. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law can be implemented properly. Of course, legal certainty has become an inseparable part, this is preferred for written legal norms. Because certainty itself is essentially the main goal of law.¹⁶The legal consequence of the auction is that the debtor will lose his rights, both land rights will be auctioned and his rights as the owner of the collateral that will be auctioned to obtain the remaining money from the auction after being used by creditors to pay the remaining outstanding credit. Justice must be fought for, legal certainty must be passed. with a clean process. Fair is just an abstract concept of value, when a person wants to achieve his or her right to fair treatment, the state and government have organized a judicial system

¹⁶ Gunther Teubner, Op.cit. p. 317-318

that is held in the judiciary, all the final results of the judicial process are called justice and must be accepted by all parties¹⁷.

The fact that the results of the study have shown that the settlement of non-performing loans through a mortgage auction has robbed the owner of the mortgage object's rights, in the author's opinion, it is studied with the Legal Protection Theory, which should have the right to receive the remaining money from the auction after being taken to pay off the remaining mortgage debt, while the remaining debt amounted to 198,067,133.37. auction of mortgage rights over HM land. 2390 on behalf of ANA NURUL HIDAYATI/ Kalisidi village with an area of approximately 250 m², should be able to reach the auction price of IDR 400,000,000,- but the auction starts with a limit of IDR 80,000,000, - and won at a price of IDR 80,000,000,-. The auction limit price and the auction bid price do not provide an opportunity for the debtor to obtain the remaining money according to the price of the mortgage object. In the author's opinion, Reviewing with Legal Certainty Theory, that legal certainty is a guarantee from the government that everyone has the right to get equal treatment before the law (equality before the law), not only as formal legitimacy for the wishes of certain parties on behalf of the government. In this study the debtor has lost his rights without legal protection and does not get a guarantee of legal certainty by not getting the remaining money from the auction.¹⁸On the basis of this right to legal protection, it finally encourages the debtor to seek legal protection through a legal process through a lawsuit at the Ungaran District Court. 33/Pdt.G/2019/PN.Unr which was decided on January 15, 2019 and an Appeal to the Semarang High Court Number 139/Pdt/2019/PT.SMG dated April 8, 2019. For legal efforts made by debtors who have lost his rights as the owner of the collateral auctioned by execution have been carried out in accordance with his rights to obtain legal certainty.

3.2. Legal Protection Efforts Against Debtor's Assets in the Bond of Mortgage Certificate to be Executed

A. Lawsuit for Unlawful Actions Against the Implementation of the Auction

In the third auction, there were indications that there had been a violation of procedures and had fulfilled the elements of an unlawful act (PMH). For the determination of the auction limit not based on the results of an assessment from the KJPP (Property Appraisal Service Office) by a Certified Independent Appraiser, the Settlement of Bad Loans creates new legal problems, land transfers, HM. No. 2390 on behalf of the debtor: Ana Nurul Hidayati, Kalisidi Village, with an area of approximately 250 m², the right to the winning bidder is

¹⁷ Sonyendah Retnaningsih, Perlindungan Hukum terhadap Debitor Pailit Individu dalam Penyelesaian Perkara Kepailitan di Indonesia, *ADHAPER*, Vol. 3, No. 1, January-June 2017;

¹⁸ Awaludin Marwan, *Contemporary Legal Theory An Introduction to Legal Postmodernism*, Yogyakarta: Rangkang Education, 2010, p. 24

legally flawed and must be cancelled. Violate the subjective rights of others, Contrary to good decency, and Contrary to propriety.

Third auction on 15 September 2016. Auction limit is IDR 80,000,000,- (eighty million) won with the winner of the auction IDR 80,000,000. (eighty million). A copy of the Minutes of Auction No.1578/2016 dated 15 September 2016. The auction is now available: Auction Winner Mr.Hazwar Sutejo, S,Pd. The market price for the object of the mortgage, the local price is approximately IDR 400,000,000, consisting of the price of the land and the house above it, by the Creditor together with the KPKNL, it is carried out with an auction limit of IDR 80,000,000 (eighty million Rupiah), an auction with one bidder of IDR 80,000,000,-, won with an auction price offer of IDR 80,000,000, net proceeds after deducting the remaining auction processing fees of IDR 78.800.000,- is used to pay off the debtor's arrears in the amount of IDR 198,067,133, 37- The debtor has a debt of IDR 119,267,133.37, In mathematical calculations, auctions in order to settle arrears of bad credit actually leave debt again. Based on the element of unlawful acts committed by the creditor, the debtor filed a lawsuit for the cancellation of the auction results at the Ungaran District Court, Semarang Regency. With case register No.33/Pdt.G/2018/PN.Unr on 19 April 2018.

The debtor's efforts to seek legal protection by believing in the existence of legal certainty with the benefit of the judiciary. In the process carried out at the judiciary, the debtor submits a demand for justice which is poured in the form of a lawsuit from the Ungaran District Court to ask for justice.

In the author's opinion, on the basis of the entire process of debtor efforts through litigation, new facts have been found that in practice the running of the law in the community who is appointed in the litigation process of the judicial process is not all obtained justice according to their wishes and needs, even the debtor's efforts have been carried out since the beginning of the process either through non-litigation and litigation, the result is legal certainty from the final result of the process in the form of a court decision that has legal force, with all consequences for the debtor and all parties involved.

B. Real Execution Seize Resistance

In the unfinished lawsuit process and there is no legal certainty against the plaintiff's (debtor) lawsuit, the Ungaran District Court has confiscated the Real Execution. With a summons to the chairman of the Ungaran District Court, Semarang Regency, so that the execution of the evacuation is suspended, with a summons dated 15 September 2018, as determined by the chairman of the Ungaran District Court No.3/Pen.Pdt.Eks/2018/PN.Unr, dated 12 July 2018 regarding the EXECUTION of the EMPLOYMENT of a plot of land and the building above it in Certificate HM. the real execution applicant is located in Kalisidi, West Ungaran District, the reason is that the debtor is because the object of execution is in the process of being disputed at the Ungaran District Court with case no. No.33/Pdt.G/2018/PN. Unr on April 19 2018, there has been no decision. Real

Execution Resistance, on the determination of the Chairman of the Ungaran District Court No.3/Pen.Pdt.Eks/2018/PN.Unr, dated July 12, 2018. regarding the EXECUTION of the EMPLOYMENT of a plot of land and the building above it in Certificate HM.No.2390/ Kalisidi Village has an area of approximately 250 m², registered under the name of HAZWAR SUTEJO, SPd. with the fight against Case No. 91/Pdt.G.plw./2018/PN.Ung, September 6 2018. Accompanied by Debtor Blocking, Blocking at the Semarang Regency BPN on HM. 2390/Kalisidi Village with an area of approximately 250 m² registered under the name of HAZWAR SUTEJO, file number 127150/2018 dated 13 September 2018; Jo. Answer to Block from BPN Semarang Regency.No. 2290/200.32.22/XI/2018. 29-11-2018, the block cannot be granted. Block at BPN Semarang Regency on HM. 2390/Kalisidi Village with an area of approximately 250 m² registered under the name of HAZWAR SUTEJO, file number 127150/2018 dated 13 September 2018; Jo. Answer to Block from BPN Semarang Regency.No. 2290/200.32.22/XI/2018. 29-11-2018, the block cannot be granted.

The real execution confiscation challenge proposed by the debtor with case register No. 91/Pdt.G.plw./2018/PN.Ung, dated September 6, 2018, did not receive a response, no investigation was carried out, then the execution continued to be carried out, as stated in the Notice of Real Execution of Emptying and Submission of Case Number 3/Pdt.Eks /2018/PN.Unr on September 14 2018, which explains that on Tuesday, September 25, 2018 at 09.00 WIB until the end, located at the Execution Object in Hamlet Benner Rt.03 rw.07 Kalisidi Village, Ungaran Barat District, Semarang Regency, will be carried out execution of the forced emptying and surrender of the object of execution. based on the determination of the Chairman of the PN. Ungaran No. No.3/Pen.Pdt.Eks/2018/PN.Unr, dated July 12, 2018. concerning EMPLOYMENT EXECUTION. Forwarded Minutes of Appointment Execution Number.3/BA.ASPdt. Due to the decision of the district court in case number 33/Pdt.G/2018/PN.Unr, dated April 19, 2018, the decision rejected the claim of the plaintiff (the debtor), so that the real potential for losses to the debtor actually occurred with the Notification of Implementation Real Execution of emptying and submission of case Number 3/Pdt.Eks/2018/PN.Unr dated September 14 2018, which explains that on Tuesday, September 25 2018 at 09.00 WIB until the end is located at the Execution Object in Hamlet Benner Rt.03 rw.07 Kalisidi Village, West Ungaran District, Semarang Regency. Efforts to obtain legal protection by taking advantage of suggestions for real execution resistance by registering execution resistance in court case register no. 91/Pdt.G.plw./2018/PN.Ung, September 6, 2018.

C. Legal Efforts on Appeal on the Decision of the District Court.

On the Decision of the District Court Ungaran District Court Decision Number: 33/Pdt.G/2018/PN.Unr. On January 15, 2019, the appeal has been declared on January 29, 2019. This legal effort is carried out by the debtor with the Deed of

Statement of Application for Appeal Number. 33/Pdt.G/2018/PN.Unr, January 29, 2019. Through Advocate Suryanto, SH. As a power of attorney, power of attorney No. 12/TP.SH/2/2019 dated February 2, 2019, the debtor is dissatisfied with the Ungaran District Court's decision which has been read On January 15, 2019, the reason for the debtor to file an appeal is based on the following considerations:¹⁹

That the plaintiff/appellate disagrees and is dissatisfied with the decision of the Ungaran District Court which, according to the panel, the main issue is as follows: "Unlawful Acts" in conducting an auction conducted by Defendant II at the request of Defendant I for mortgage rights over land and buildings which stands on it is located in the village of Kalisidi, West Ungaran District, Semarang Regency. With northern borders: Asmuni, East Jl. Desa, South Muzaroah, West: Kemat, recorded in the Certificate on behalf of Plaintiff 1 (Ana Nurul Hidayati) issued by Defendant III, with the winner of the auction for Defendant IV (Hazwar Sutejo).

Furthermore, whether the action of Defendant I who has made an auction sale of the object of dispute at a price far below the normal price is an unlawful act that harms the plaintiff so that the auction of the object of dispute carried out by Defendant II is legally flawed and does not have the power to apply, and what is the price limit? auction of IDR 80,000,000.- (eighty million) is in accordance with the value of the guarantee, while according to the plaintiffs the normal price of the object of the guarantee is estimated at IDR 400,000,000.- (four hundred million rupiah). PN Halim Council. Ungaran who examined and tried the case Number: 33/Pdt.G/2018/PN. Ugr. January 15, 2019, was wrong and inaccurate and incomplete in providing legal considerations to determine the case so that the decision was felt to be unfair and far from a sense of justice and legal certainty, because the legal considerations were only a piece of the problem, incomplete, therefore the Ungaran District Court Decision number 33/Pdt.G/2018/PN. Unr; January 15, 2019, must be canceled and re-examined by the Semarang High Court.

Whereas the plaintiff/complainant objected to the consideration of the panel of judges of the Ungaran District Court in his legal considerations, it was unclear in considering the legal facts in this case, in his decision Defendant 1 had submitted an auction of mortgage rights to Defendant II, on HM land. 2390 in the name of ANA NURUL HIDAYATI/ Kalisidi Village with an area of approximately 250 m² of the remaining outstanding debt of the Plaintiff in the amount of 198,067,133.37, with an auction limit of IDR 80,000,000,- not based on the assessment of the appraiser/Independent Appraiser, but only based on an estimate by the appraiser. The object of the auction is a fixed object in the form of land and buildings that have a selling value, in order to be able to assess land and building assets it should be based on the assessment of an independent appraiser official, if the auction is carried out there are conditions that are not met as stipulated in

¹⁹Ibid.

the auction implementation instructions, as stated in PMK No. 106/PMK.06/2013. 36 paragraph 1 letters a, 2, and 4.a, which stipulates that the determination of the limit on fixed goods/buildings is based on the results of the appraisal from the appraiser, then the auction that does not heed PMK 106/PMK.06/2013 is legally flawed, with all the consequences.²⁰

Defendant II as the executor of the auction has carried out the duties of the auction authority, but does not pay attention to the terms and conditions proposed in the terms and conditions of the auction as stipulated in PMK No. 106/PMK.06/2013. 36 paragraph 1 letters a, 2, and 4.a, Defendant 1 should have attached the results of the evaluation of the auction object from the Independent appraiser/Apreiser on the object of the auction, HM. No. 2390 on behalf of ANA NURUL HIDAYATI/ in Kalisidi Village with an area of approximately 250 m². In fact, Defendant 1 did not show the minutes of the assessment of the independent appraiser and the auction was still being carried out so that Defendant II had participated in the unlawful act, the auction should have reached an appropriate market price with a local price of approximately IDR 400,000,000,- only executed with an auction limit of IDR80,000,000, - and won by one auction registrant IDR 80,000,000, - then it is not appropriate if the auction with a limit of IDR 80,000,000, net auction proceeds IDR 78.800.000,- is used to pay off the arrears of the plaintiffs' debts of IDR 198,067,133, 37- there is still a remaining debt of IDR 119,267,133,37, an auction like this hurts the sense of justice, and robs the Plaintiff of the rights as the object owner to receive the rest of the auction proceeds fairly, such an auction is completely against the law and must be declared null and void, with all the consequences.

Defendant 3 in this case (BPN) has processed the transfer of land rights, based on the abolition of mortgage rights from Bank Danamon Tbk. dated 19-09-2016, with Certificate HM. . 2390 on behalf of Hazwar Sutejo, recorded in Blocking by Plaintiff File Number 127150/2018 dated 13 September 2018, so that all legal actions in the form of transfer of rights can be suspended until there is a Court decision that has permanent legal force and Defendant 4 resolves legal issues with the plaintiffs, with The existence of this Block HM 2390 note, can be legally recognized by Defendant 3 (BPN) of Semarang Regency, it is true that there is a legal defect in the process of transferring rights.

Defendant 4 in this case (the winner of the auction), has never attended the trial or entered the courtroom before the Honorable Panel of Judges, did not submit an oral or written answer, and also did not present a valid representative/proxy, did not submit documentary evidence or witnesses.

The opinion of the researcher from the aspect of legal protection theory, based on the results of the research in the aspect of the debtor's efforts to appeal the decision of the district court, by observing the legal considerations of the panel of judges who examined the civil case of the plaintiff's lawsuit Number: 33/Pdt.G/2018/PN.unr, does not provide legal protection aspects for debtors,

²⁰Interview with Mr. Asrofi as debtor on September 4, 2021

even though the legal considerations weaken the debtor's position as the owner of the collateral that has been auctioned off by materially eliminating all of his rights to obtain the remaining money from the auction after deducting the burden of paying off all debts.

3.3. What are the Weaknesses and Solutions for Implementing Bad Loans with Mortgage Guarantee Objects

Based on the results of research and interviews in this debtor problem, information has been obtained that there are weaknesses in the process carried out by debtors to resolve bad loans, especially for debtors, the objects of this research include; the origin of the object of mortgage, debtor legal responsibility, social responsibility, when there is a business bottleneck managed by the debtor which has an impact on the debtor's inability to pay installments, then the impact of debtor settlement efforts before the auction is carried out, settlement efforts in the auction, legal remedies through the court until it reaches a final and binding decision, it can be submitted as follows;

A. Weaknesses in the Implementation of Bad Loans with Guaranteed Objects of Mortgage include:

- Formally the subject of the debtor is Ana Nurul Hidayati, Place of Birth in Semarang Regency on February 11, 1982, Employment Entrepreneur, address Bender Vill. Rt./Rw. 03/07 Kalisidi Village, Ungaran Barat District, Semarang Regency as a Debitoor at Bank Danamon Ungaran Market Unit with a credit limit of IDR 150,000,000,- (one hundred and fifty million rupiah), repayment period of 48 months, with installments of IDR4,925,000,-/month. Bound by Credit Agreement Number: 0000183/PK/07751/2300/1013, dated October 31, 2013, then known as Customer Identity on behalf of ANA NURUL HIDAYATI CIF11279998, ACC LOAN 3566848333, KCP Danamon Ungaran Market Unit. In reality, the one who has the interest in direct capital assistance is her husband, Muh. Asrofi, Teacher's Job, address, address Bender Vill.
- In fact, the debtor only borrowed his name and borrowed his certificate. The one who has an additional interest in direct business capital is the debtor's husband, Muh. Asrofi, Teacher's Job, address, address Bender Vill. Rt./Rw. 03/07 Kalisidi Village, Ungaran Barat District, Semarang Regency, has a side business of buying and selling motorcycles. To facilitate the disbursement process, the borrower's name uses the name according to the name of the guarantee certificate, namely the HM certificate. No. 2390 a/n Ana Nurul Hidayati, land with an area of 250² on which there is a residential house located at Bender Vill. Rt.03 Rw.07 Kalisidi Village, Ungaran Barat District, Semarang Regency with boundaries; North: Asmuni, East: StreetVillage, South Muzaroah West Kemat.

- As a result of bad credit, then the legal consequences for being responsible for payments and repayments to creditors are entirely on the debtor with the Customer Identity on behalf of Ana Nurl Hidayati, CIF11279998, ACC LOAN 3566848333, KCP Danamon Unit Pasar Ungaran. The creditor sends subpoenas, warnings, notification of auction implementation, announcement of auction, notification of auction 1, 2 and 3, minutes of auction and all documents resulting from tenders and subsequent transitional stages to the debtor. While the use of loan funds is entirely with her husband, in this case there are many possible legal actions that are expected by the creditor to get less response from the debtor.
- For efforts to settle bad loans and fight the process against settlements carried out by creditors to auction mortgages completely not carried out by the Customer/Debtor but carried out by their husbands, efforts outside the auction since and the auction process, after the determination of the winner of the kelang and efforts to execute the emptying, a new lawsuit is made. cancel the auction result submitted by yourself based on an incidental power of attorney from the District Court based on the Decree of the Head of the Semarang District Court Number: 06/IK/2018/PN.Unr, dated 28 May 2018, concerning Permits to Muh. Asrofi, acting as Incidental attorney, only once at first instance court to represent the Plaintiffs; Ana Nurul Hidayati in a civil case lawsuit at the Ungaran District Court No.33/Pdt.G/2018/PN.Unr dated April 19, 2018.
- Accuracy and punctuality in carrying out legal remedies submitted by Insdentil's attorneys do not have the ability to observe opportunities that benefit the debtor, and the process of settling bad loans by creditors which is only guided by debt repayment, does not carry legal interests and the rights of the debtor as the owner of the object of rights. dependents. In particular, on the evidence of the Document that results from the appraisal of the object of the auction from the Appraiser: Kampianus Roman MAPPI:93.8-006 Permission of the Public Appraiser: P.1.09.00134, with the approval of the Debtor Ana Nurul Hidayati, the value of the object: Land Value. IDR97.000,-/meter, Building Value. IDR1.240.000,- The total value of the object is IDR 185.500.000,- Value Indication. 74.300.000.-
- Debtor Ana Nurul hidayati Cq: the incidental attorney was late in taking legal action, the legal efforts were in vain, the opportunity to hold a legal defense of the safety of assets that should have been auctioned at market price, as the mortgagee voter was still entitled to a refund of the remaining sales. Copy of Minutes of auction no.1578/2016 dated 15 September 2016. Auction has been obtained: Auction Winner. Efforts by incidental power of attorney to sue the cancellation of the auction results regarding the permit to Muh.Asrofi, acting as an incidental attorney, with

the determination of the Semarang District Court number: 06/IK/2018/PN.Unr, dated 28 May 2018, to represent the Plaintiff; Ana Nurul Hidayati in a civil case lawsuit at the Ungaran District Court No.33/Pdt.G/2018/PN.Unr dated April 19, 2018.

B. Solution to the Problem of Implementing Bad Loans With the Object of Guaranteed Mortgage

Due to the weakness and lack of legal protection for the lender (debtor), banking transactions ensure legal certainty and balance between the debtor's rights and obligations to the creditor. Money lending transactions at banking financial institutions are required to submit mortgage rights as collateral for debt repayment, if the mortgage rights are in the form of immovable property, they must be tied with a Mortgage Certificate made in the presence of a Land Deed Authorization Officer/Notary, with *Irah-irah* "For the sake of Justice Based on the One God. Maha Esa", a mortgage deed like this has executive legal force, the same as a court decision which has permanent legal force. To minimize the direct loss of the mortgage giver, steps can be taken, including:

- On the subject of the debtor identified as a banking customer, it must be ensured that it is really for the benefit of the debtor himself, to avoid the practice of borrowing names as a credit applicant, it must be ensured that the applicant is a borrower in accordance with the interests of business capital, the initial surveyor officer must ensure that the capital loan must really be for additional business capital, collateral as collateral for debt, there must be a similarity of name between the borrower and the name of the certificate.
- For debt guarantees in the form of certificates not in the name of the debtor when the Mortgage will be tied up, the debtor and the actual owner of the rights must be aware of it, if in the future there is legal action for settlement efforts with the guarantee that no new legal problems arise, the debtor is ready with all the legal consequences. Because the debtor with the identity of the customer as the object of this research is not a financial user, but his name and assets are loaned to be submitted for loan repayment guarantees so that the debtor as a party is not ready for all the risks that arise;
- In the event that the loan applicant/debtor with collateral in the form of land/building is not the same, then the creditor is required to clarify to the actual owner of the object with evidence of an official report on the results of clarification of the truth of the handover of the mortgage, with the hope that if in the future there is an action from the financial institution that gives the mortgage ready;
- For credit loans that are bound by a Mortgage Deed agreement with *Irah-irah* "For the sake of Justice Based on the One Godhead", must include joint protection efforts between the debtor, creditor and or mortgage

owner, because it often happens that the debtor submits collateral for immovable property that is not his own. , then the credit agreement must be accompanied by a regulating clause.

- The debtor's legal efforts to guarantee the fulfillment of legal rights to obtain the remaining sales of assets after deducting repayment so that the credit settlement stage is ensured to be carried out by the creditor according to the agreement, the determination of the auction limit price is ensured in accordance with the local market price as evidenced by legal documents, then legal remedies must participate in overseeing the implementation of the stages of resolving bad loans, both outside the auction and the auction process.
- Legal efforts after the determination of the winner of the auction will result in futility, for that the creditor has the obligation to notify the debtor to appoint an advocate who accompanies the process of settling bad loans or the creditor advises the debtor to use the services of an advocate.

Comparison Table of Weaknesses and Solutions for Implementing Bad Loans with the Object of Guaranteed Mortgage

No	Weakness	Solution
1	Debtors who apply for credit with the object of guarantee of Mortgage are not in their own name.	Mortgage that is proposed as credit guarantee should be on behalf of the Debtor in order to anticipate that the Mortgage will be used as credit guarantee by irresponsible people, which will eventually result in bad credit.
2	The creditor's efforts to collect debts for arrears, which were addressed to the debtor with the customer's identity, did not produce results, because they felt that the debtor had not used his money.	Creditors must fully understand the position of people who affect bad loans, so that they are directly involved in dealing with the law.
3	Legal efforts to stop the auction, seeking legal protection by users of credit loan facilities are not	Legal efforts must be careful, taking into account the time and right of the debtor to proceed

appropriate.	before the auction. Once the auction is successful, it cannot be cancelled.
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4 Litigation legal efforts through the judiciary have expired, so the results are not optimal, legal opportunities have been closed. After the auction and real execution the opportunity for legal remedies is closed.	Accuracy in acting and punctuality of the time given must be utilized as much as possible. Awareness to settle peacefully outside the auction must be proven by realization, rescheduling, there can be other ways to cover debt, not having to sell collateral.
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4. Conclusion

Legal Protection for Debtors in the Implementation of Bad Loans Settlement with Mortgage Guarantee Objects is the supervision of the determination of the auction limit value and the implementation of the auction process for the mortgage guarantee object which is carried out at the KPKNL. If the auction winner has been determined with a selling price below the auction limit value, the debtor has the right to file a lawsuit against the law. Weaknesses in the implementation of bad loans with the object of mortgage guarantees That debt payments by debtors to creditors are based on a deed made before a PPAT / Notary official with an *Irah-irah* "For Justice Based on the One Godhead", then it has executorial power, so that legally creditors have the right to settle payments through auction by filing a simple lawsuit with the title of default.

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