

Legal Protection for Creditors after the Implementation of the Auction of Mortgage Rights whose Selling Value has not been Paid Off the Debtor's Remaining Debt

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Abstract. *This study aims to determine and analyze the Legal Protection of the feasibility value of credit guarantees made after the Auction Decision No. 136/75/2019 dated 03 May 2019 at PT. Bank Mandiri Raha Branch, and to find out and analyze legal remedies that can be taken by creditors to obtain repayment of the remaining post-auction debt on collateral objects of Tangungan Rights. The research approach method used in this thesis is a sociological juridical legal research method. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the BW Civil Code (Burgelijk Wetboek); Act No. 4 of 1996; Act No. 10 of 1998 Act No. 37 of 2004; Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Guidelines for Auction Implementation, as well as secondary data containing books and other supporting documents. Collecting research data using interview techniques and study of documents or library materials. The data analysis method used in analyzing the data is analysis. The results of the study show that the legal protection of the eligibility value of credit guarantees, namely the creditor must still pay attention to the appropriate value for the mortgage object according to market prices. The legal remedy that can be taken by creditors to obtain post-auction settlement of the remaining debt on the mortgage object is by filing a bankruptcy petition at the Commercial Court.*

Keywords: Agreements; Credit; Execution; Mortgage.

1. Introduction

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in the context of improving the people's standard of living.¹ Fundraising or often referred to as funding is one of the fundamental things in the banking world because it is customers who entrust their funds to be deposited in the bank. The

¹Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking.

function of the bank is to collect funds from the public and distribute funds (lending) to the public, in this case the bank provides loans (credit) to the public. In other words, banks provide funds for people who need them.

According to Kasmir in his book, argues that the function of the bank is as a financial intermediary between people who have excess funds and people who lack funds.²In principle, new banks provide credit, if the bank has gained confidence about its customers. This belief is based on the results of an in-depth analysis of the good faith of its customers. To obtain this confidence, an assessment is made of the character, ability, capital, collateral and business prospects of the debtor. In the world of banking, the five factors assessed are known as "The five of credit analysis".³

This assessment is carried out so that the bank avoids the risk of loss which can be fatal for the company. It is certain that one of the superior banking products is the provision of credit, in which credit is one of the main businesses of a bank which has a fairly high risk, but on the other hand it certainly contributes a large amount of income to the bank. Therefore, the provision of credit facilities must be carried out in accordance with SOP (Standard Operational Procedures) by understanding the basics of credit and implementing it according to credit rules and policies. In granting credit, of course there will be several phases that will be passed, starting from the application made by the customer to the credit disbursement.

Judging from the collateral provided by the customer at the time of taking the credit facility in the form of a certificate of mortgage rights, of course, at large credit facility limits, guarantee binding will be carried out through partner Notary Services through the binding of APHT (Deed of Granting Liability Rights). Of course, from the notary binding that was carried out, it is legal in the eyes of the law to transfer the authority of the land as collateral to the bank. Which indirectly occurs a temporary transfer of rights from the customer to the bank regarding the receipt of credit facilities received by the customer. At some moments there is a risk of failure of payment by the debtor so that there are not a few credit problems or even jammed caused by one thing or another at a certain time.

Banks still often experience the risk of loss because the collateral auction process that occurs does not match the credit facilities that have been received by the debtor. In reality, after obtaining the auction winner from the auction sales process, the proceeds are used to pay debts from debtors. There are several

²Kasmir, (2015), *Fundamentals of Banking*, Jakarta: PT. Raja Grafindo Persada, p.4.

³Gatot Supramono, (2009), *Banking and Credit Problems: A Juridical Review*, Jakarta: Rineka Cipta, p.158.

cases in which the auction price meets the withdrawal limit at the bank and there is also the opposite, namely the auction price is not sufficient to cover the withdrawal limit at the bank. So that changes to the collateral object that will be auctioned result in losses for the bank, namely a decrease in the price of the auction object, so that the results of the auction have not fulfilled the debtor's debt, the creditor also asks the debtor to be responsible for the settlement of the debt.

The problem that occurs is due to the emergence of problem loans that result in bad credit where the debtor is no longer able to repay the remaining debt. In this context, the bank suffered losses as happened to Bank Mandiri Raha Branch, in the credit agreement No: MMU.Rha.0226/iX/2016 dated 25 September 2021. Against debtors with Bank Mandiri Raha Branch which was carried out in Raha on September 25, 2015. In the process of payment made by the debtor to the bank, a default occurred, so that the collateral required at the time the credit facility was approved was carried out at the Auction Agency. After the auction has been carried out, the collateral settlement that has been carried out by the auction body cannot cover the debtor's credit limit to the creditor. In this case, the neighbor debtor is responsible for unpaid debts to the debtor. Related to this, creditors must get legal protection because they have not received payment from the auction of collateral objects.

2. Research Methods

The research approach method used in this journal is the sociological juridical research method. The research specifications are using descriptive analysis, then the data sources come from primary data and secondary data. The data collection method used is by interviewing and studying documents or library materials. The data analysis method used in analyzing the data is qualitative analysis.

3. Results and Discussion

3.1. Legal Protection of the Eligibility Value of Credit Guarantees made after the Auction Decision Number: 136/75/2019 at PT. Bank Mandiri Raha Branch

The credit granting system plays an important role in the operational activities of a bank, one of its very important activities is the implementation of a good credit granting system in the bank's business in the field of providing credit services to customers. Before providing credit loans to customers, banks must carry out a careful assessment, bearing in mind that the funds disbursed are not only from the bank itself but also from public funds so that the principle of prudence is needed through further and accurate analysis.

The bank's assessment of credit guarantee assessment has basic criteria by taking into account the principle of prudence. The bank's assessment of the assets to be used as collateral is used as a guide in providing credit. A strong basis by taking into account all aspects of existing risks, including financial risks and market risks. Which is based on the theory of legal certainty according to Gustav Radbruch, the relationship between justice and legal certainty needs to be considered. Because legal certainty must be maintained for harmony within the state, positive law must always be maintained for harmony within the state, positive law must always be obeyed.⁴

Guarantee legal protection relating to the determination of the limit value. The limit value is the minimum value of the Goods to be auctioned and determined by the Seller.⁵In the case of the Mortgage Execution Auction, the creditor/seller has the authority to determine the limit value. The limit value set by the seller must be based on the assessment of the appraiser regulated in Articles 43 to 50 of PMK Number 213 of 2020. The law must provide protection for all parties according to their legal status because everyone has the same position before the law. Law also has interests that are useful for dealing with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected.⁶

Determining the selling price of the collateral object is very influential, because it can be detrimental to the debtor customer, but the bank only thinks of one party because the bank only wants the debtor's collateral object to be sold quickly so that it can pay off its debt to the bank. Thus, the sale of collateral can run quickly and easily, so that problems that arise between the creditor and the debtor will be resolved quickly, but it does not rule out the possibility that the price for the collateral object is sold below the market price or below the average.

Based on the research that has been done, it can be seen that there are several obstacles to the execution of Mortgage rights carried out by Bank Mandiri, including disagreements about the auction price that has been formed between the debtor and the auction official who has been determined by Bank Mandiri Raha Branch. From one point of view, the debtor as the owner of the Mortgage Right feels that the agreed price is far below the market price in general. This happens because the determination of the price limit for the Mortgage object is not the authority of the KPKNL (Office for

⁴Ibid.

⁵Regulation of the Minister of Finance Number 213/PMK.06/2020 Concerning Instructions for Conducting Auctions.

⁶Usman Rachmad (1998), *Articles Concerning Mortgage Rights on Land*, Jakarta: Djbatan Publishers, p. 110-112.

State Assets Auctions and Auctions), but has been determined by the Raha Branch of Bank Mandiri.⁷So based on the theory of legal protection by Philipus M. Hadjon, the legal protection referred to here is an act of protecting legal subjects with applicable laws and regulations and its implementation can be enforced with a sanction.⁸So that the laws and regulations must be reaffirmed so that all parties get rights and legal protection.

Settlement of discrepancies in the auction limit between the debtor and the auction official is carried out by means of the KPKNL (State Property Auction and Auction Office) trying to give understanding to the debtor that the KPKNL (State Property Auction and Auction Office) has never set an auction price limit for the object of mortgage rights, so the KPKNL (Office for State Property Auctions and Auctions) is only a forum for carrying out auctions and those who determine the limit price for the Mortgage object are the seller/Bank Mandiri, not the auctioneer, because the auctioneer does not have the authority to set the limit price.⁹

The problems described above show the relationship between the theory of legal protection that every legal relationship will give rise to conflicting rights and obligations or each party in a legal agreement will have their own rights and obligations that must be fulfilled. If these rights and obligations are not fulfilled, it will cause harm to one of the parties in the engagement, therefore, to protect and reduce problems, legal protection is needed.

Based on the author's analysis and from what the author relates to the applicable regulations that the legal protection of the eligibility value of credit guarantees made after the auction decision No. 136/75/2019 dated May 3 2019 at Bank Mandiri Raha Branch, namely in the event that the creditor only requires repayment of debts through the auction results of the collateral object, the creditor must still pay attention to the appropriate value for the mortgage object at least below the market price set appropriate and besides that on the basis of the approval of the debtor as the owner of the dependent object because the results of the auction value will be paid to the creditor (repayment of the debtor's debt) then the remainder will be given back to the debtor as the owner of the object. So that the court can cancel the value of the execution carried out below the market price (if the value is too far from the market price) and the legal basis that can be used is Article 1365 of the Civil Code which reads that every act that violates the law and brings harm to others requires the person who caused the loss because of his mistake to

⁷Results of Interview with Ikbal Jawhari, Retail Collection Officer of Bank Mandiri Raha Branch, July 14 2022 at Bank Mandiri Raha Branch Office.

⁸Op. Cit, p. 84.

⁹Ibid.

replace the loss. Because as long as the creditor carries out the execution of the dependent object within reasonable limits it is not a problem, but as long as the creditor carries out an execution auction of the object outside the limits, the execution auction can be canceled because it has consequences that are detrimental to the debtor

3.2. Legal Remedies that can be carried out by Creditors to obtain Repayment of Post Auction Remaining Debt on Mortgage Guaranteed Objects

Settlement of credit is one of the creditor's efforts or actions to get the debtor's debt repaid. The final action "the last action" that will be taken by the bank in terms of credit rescue measures can no longer be used. Settlement of credit is taken by the bank if the bank has decided that it no longer wishes to build a business relationship with the debtor, so that the chain of business relations between the bank and the debtor has been broken. Credit settlement actions can be taken by going through 2 (two) stages of settlement, namely:¹⁰

3.2.1. Settlement of credit through legal efforts outside the Court "out of court settlement"

The final attempt at settlement of credit through the courts by executing credit collateral and or filing a civil lawsuit against the debtor does not always run smoothly. Alternative efforts that can be taken by banks in order to resolve troubled debtors' loans can be taken by taking a persuasive approach to the debtor. Such a persuasive approach is better known as "the informal work out". This persuasive method often results in credit settlements which actually provide a win-win solution for the parties. These actions can be carried out by banks including: Cost Approach, Psychological Approach, Using pressure or third party intervention, and Motivation through a religious approach.

The credit settlement process outside the court can be carried out in various ways, namely; direct billing, disbursement of cash collateral, voluntary sale of collateral, debt collection through third parties, billing through advertising/mass media services, billing from guarantors, debt settlement by third parties.

3.2.2. Settlement of credit through court legal efforts

Settlement of credit by taking legal action through the courts is the final alternative that must be taken by the bank when the debtor's credit cannot be saved anymore. Settlement of credit through legal procedures can be done by carrying out credit settlement through the district court and credit

¹⁰Fajriyah, Nurjanatul, (2006), Legal Protection of Creditors (Banks) and Debtors (Customers) in Bank X's Unsecured Credit Agreements (KTA). Journal of Law and Development, Vol.36 (2), p.5.

settlement through the commercial court.¹¹The implementation of credit settlement through the district court mechanism requires relatively longer time compared to credit settlement through the commercial court route.

3.2.2.1. Settlement of Credit Through Legal Efforts from the District Court

Bad credit with non-fulfillment of the debtor's obligation to pay off his debt to the bank is part of the scope of civil dispute issues, so that if the parties cannot resolve it, the parties can take legal settlement efforts through the courts. Bank efforts to carry out credit settlement actions through the courts often encounter many obstacles.

Settlement of credit through the court will only be taken by the bank if the debtor or debtor's guarantor still has assets that can be used to pay off the debtor's debt or applies to debtors who do not have good faith in paying off their debts to the bank. Settlement of non-performing loans through the courts is the last action taken by most banks. Efforts to settle credit by banks through courts can be carried out in 2 (two) ways, namely:¹²

- a) The bank files a lawsuit against the debtor and/or guarantor because it has defaulted on the credit provided by the bank;
- b) The bank proposes execution of the debtor's credit collateral that has been perfectly bound.

3.2.2.2. Settlement of Credit Through Commercial Court Legal Efforts

Efforts to settle credit by filing a bankruptcy application are regulated based on Law No. 4 of 1998 concerning Bankruptcy which was passed by the DPR on July 24, 1998. If the debtor is declared bankrupt, he will lose the right to manage his assets and these assets will be sold to fulfill obligations owed to its debtors. Application for Bankruptcy and Suspension of Obligations for Payment of Debt (PKPU) is another form as a legal means in settlement of debts. The application for bankruptcy is basically intended as an attempt to carry out a general confiscation which includes all of the debtor's assets for the benefit of the creditors which leads to a guarantee of a mechanism for resolving debt disputes between creditors and debtors in a fair, fast,

Settlement of credit through court institutions is one form of law enforcement carried out by banks as the last action effort in order to

¹¹Retno Wulan S (1997), *Civil Procedure Law in Theory and Practice*, Mandar Maju, Bandung p.10.

¹²Aryani, Fransisca Kusuma. 2011, *Legal Protection for Creditors Holding Mortgage Rights Against Collateral Disputes Resulting in Cancellation of Credit Agreements*. *Adigama Law Journal*, Vol.3 (2), p. 5-8.

obtain the maximum credit return rate. Credit settlement options will only be pursued if efforts to save credit, in this case restructuring, rescheduling or reconditioning (3R) efforts cannot be carried out.¹³

According to the author, the legal remedy that can be taken by creditors to obtain settlement of the remaining post-auction debts on collateralized objects is by filing a bankruptcy petition at the Commercial Court. Which is where the application for bankruptcy is basically intended as an effort to carry out a general confiscation which includes all of the debtor's assets for the benefit of the creditors which leads to a guarantee of a mechanism for resolving debt disputes between creditors and debtors in a fair, fast, open and effective manner through the judiciary in the form of a distribution of wealth the debtor through the curator to fulfill his debt obligations in accordance with the rights of each creditor.

As a final effort to resolve problem loans that can be carried out by banks to minimize as early as possible the losses that must be suffered by the bank, then the problem loans can be written off or written off bills which are decided selectively while still guided by the principle caution.

4. Conclusion

Legal protection of the eligibility value of the credit guarantee, namely the creditor must still pay attention to the appropriate value for the mortgage object at least below the appropriate market price and besides that on the basis of the agreement of the debtor as the owner of the dependent object because the results of the auction value will be paid on creditor (repayment of debtor's debt). The legal remedy that can be taken by a creditor to obtain post-auction settlement of the remaining debt on the mortgage object is by filing a bankruptcy petition at the Commercial Court. Which is where the application for bankruptcy is basically intended as an attempt to carry out a general confiscation that includes all of the debtor's assets for the benefit of the creditors.

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