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Legal Force of Auction Minutes Using Deed of Command Against Credit Guarantees at PT BPR LSE Manggala Batam Which Is Controlled by a Third Party

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Abstract. *This study aims to determine and analyze the legal force of auction minutes using a deed of command against credit guarantees at PT BPR LSE Manggala Batam which are controlled by third parties and to determine and analyze the obstacles and constraints faced by PT BPR LSE Manggala in implementing auctions using deed of command against credit collateral controlled by third parties and to find out examples of deed of command. The research method used in this thesis is an empirical approach method. The specifications of this research use descriptive. The type of data used in this study is primary data which includes Law Number 5 of 1960, Law Number 4 of 1996, Law Number 10 of 1998, Law Number 2 of 2014, Civil Code, Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023, Regulation of the Minister of Finance of the Republic of Indonesia Number 86 of 2024 and related regulations regarding auctions and banking collateral and secondary data consisting of books and other supporting documents. Research data collection using interview techniques and document or library material studies.The data analysis method used in analyzing the data is qualitative analysis. The results of the study can be formulated that there are stages in the process of resolving problematic loans by PT BPR LSE Manggala until the collateral is taken over (AYDA) from a third party and the sale is carried out. The implementation of the auction is contained in the Auction Minutes which contain temporary purchases by the bank with a De Command Deed. The auction minutes and the de command deed as authentic deeds have perfect legal force for the parties involved in the auction and the actual buyer who will be appointed by the bank. Obstacles and constraints in the form of internal and external factors include costs, administrative requirements, third parties who do not want to vacate the collateral, debtors who delay the execution time and the uncertain time period for each administration process while the collateral must be sold within 1 (one) year if it passes then the bank is declared the actual buyer.*

Keywords: *Auction; Command; Loans; Performing.*

1. Introduction

The continued growth of the Indonesian economy is inseparable from the role of banking institutions in Indonesia. Functionally, there are two types of banks: commercial banks and conventional rural banks, both based on Sharia principles. The existing Rural Bank changed its name to Bank Perekonomian Rakyat (BPR Rakyat) based on Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector and Financial Services Authority Regulation Number 62/POJK.03/2020 concerning Rural Banks.

People's Economic Banks, also abbreviated as BPRs, continue to grow, particularly in providing credit services. To bolster confidence, banks require collateral as an alternative in the event of future default, which can be used to settle the loan. According to Salim HS, the law on collateral is as follows:[1]"The entirety of the legal rules that regulate the legal relationship between the giver and recipient of collateral in relation to the imposition of collateral to obtain credit facilities."

Hermansyah is of the opinion that in terms of type, there are 2 (two) types of guarantee, namely:[2]Personal Guarantee and Material Guarantee. Regarding credit guarantees, especially for immovable objects with proof of ownership in the form of a building use rights certificate or a property rights certificate, the guarantee binding is in the form of a mortgage right, as referred to in Article 1 Paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.[3]hereinafter referred to as Mortgage Rights, is "a guarantee imposed on land rights, as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, along with other objects that are an integral part of the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors."

OnIn implementing this agreement, the bank will require the fulfillment of an agreement containing the rights and obligations of the creditor and debtor in accordance with the agreement agreed upon by both parties. Failure to fulfill the agreement will result in a legal event of default/break of promise. The forms of default that are often committed by debtors are:[4]a. not achieving anything at all

[1]Salim HS, 2016, Development of Guarantee Law in Indonesia, PT. Raja Grafindo Indonesia Persada, Jakarta, p. 6.
[2]Hermansyah, 2009, Indonesian National Banking Law, Revised Edition, Kencana, Jakarta. Pages 74-75
[3]Article 1 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land
[4]Hendri Raharjo, 2009, Contract Law in Indonesia, Pustaka Yustisia, Yogyakarta, p. 80-81

or achieving something but it is no longer useful or cannot be repaired, b. late in fulfilling the achievement, c. fulfilling the achievement poorly or not as it should be and d. doing something but according to the agreement it is not allowed to be done.

To save the loan credit so that it does not become a problem, the bank has several solutions, namely:[5] 1. Rescheduling, 2. Reconditioning and 3. Restructuring. If the credit rescue stages above are not achieved, the Mortgage Law provides convenience for creditors holding mortgage rights to execute the mortgage object, namely based on the provisions of Article 20 paragraph (1) letters a and b of the Mortgage Law. If the debtor is not willing to voluntarily hand over through a deed of power of attorney made by a Notary, then currently the settlement effort that many banks take is an auction at the State Assets and Auction Service Office, abbreviated as KPKNL. The implementation of the auction refers to the provisions of Article 6 of the Mortgage Law Number 4 of 1996 concerning Mortgage Rights.Auctions are a sales method that is different from sales methods in general, so the auction procedure is regulated in special laws and regulations (lex specialis).[6]

The auction at KPKNL has a drawback if there are no auction participants, thus through this auction the bank tries to become an auction participant with the aim of optimizing bank expenses in the auction process. The implementation of the auction where BPR banks can participate as buyers of auction objects with certainty and have legal force to be implemented can only be carried out by BPR banks after the issuance of the Constitutional Court Decision Number 102/PUU-XVIII/2020, with the ruling changing the phrase "General Bank" in Article 12A paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking so that it now reads:[7]"Commercial Banks and Rural Credit Banks can purchase part or all of the collateral, either through auction or outside the auction based on voluntary surrender by the collateral owner or based on the power to sell outside the auction from the collateral owner in the event that the Debtor Customer does not fulfill his obligations to the bank, with the provision that the purchased collateral must be disbursed as soon as possible." Furthermore, in 2023 the capacity of BPR banks as auction participants is contained in Article 87 paragraph (1) and (2) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Auction Implementation Guidelines, in the form of temporary

[5]Muhammad Djumhana, 2012, Banking Law in Indonesia, PT. Cipta Aditya Bakti (Sixth Edition), Bandung, p. 487
[6]Fx Ngadijarno, and Laksito, Nunung Eko et al. No Year. Auction Theory and Practice. BPPK Auction Textbook. Jakarta. Accessed from BPPK, Accessed on June 29, 2025 at 14:50 WIB
[7]Article 12A of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking

purchases through a Deed of Command and valid for only 1 (one) year if it passes then the bank automatically becomes the actual buyer.

Through an auction using a deed of command, a temporary copy of the Auction Minutes Deed will be issued to the bank until the actual buyer is found within 1 (one) year from the date of the auction. Provisions regarding the Auction Minutes are regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 86 of 2024 concerning Auction Minutes. The Auction Minutes Deed is an authentic deed made by the auction official as referred to in Article 1 paragraph (34) of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Instructions and Article 1 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 86 of 2024 concerning Auction Minutes, namely:[8]"minutes of the auction implementation made by the Auction Official which is an authentic deed and has perfect evidentiary power". Meanwhile, the Deed de command is a form of legal discovery carried out by a notary in his function as a public official authorized to make an authentic deed, which is ordered to be made through the Regulation of the Minister of Finance regarding the implementation of auctions, so that the premise and content of the deed refer to any changes in regulations regarding the implementation of auctions.

A deed of command is a form of notary authority in making authentic deeds as regulated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, abbreviated as UUJN. An authentic deed made by a Notary means that an authentic deed is perfect evidence of what is made in it. By proving an authentic deed, it is hoped that legal truth can be achieved and can guarantee protection for the rights of the parties in the case in a balanced manner.[9]

One of the BPR banks that uses a deed of command in the auction process at the Batam State Assets and Auction Service Office (KPKNL) is PT BPR LSE Manggala. This is an alternative solution to problematic credit that cannot be carried out through mediation efforts with collateral controlled by a third party while the debtor's whereabouts are unknown. Through the deed of auction minutes using the deed of command, the bank can continue the application for the execution of vacancy at the Batam District Court to facilitate the sale of collateral. However, in practice, auctions using the deed of command do not always run as they should, there are several problems both internal and external factors. Based on this background, the author is interested in researching "The Legal Force of

[8]Article 1 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 86 of 2024 concerning Auction Minutes

[9]Pricilia Yuliana Kambey, 2013, “The Role of Notaries in the Criminal Justice Process,” Lex et Societatis 1, no. 2;: 27–38, https://doi.org/https://doi.org/10.35796/les.v1i2.1747. Accessed on February 25, 2025, at 10:14 PM WIB

Auction Minutes Using the Deed of Command Against Credit Collateral at PT BPR LSE Manggala Batam Controlled by a Third Party".

2. Research Methods

The research approach method used in this thesis is an empirical research method.Empirical legal research, also known as sociological legal research, examines law conceptualized as actual behavior, an unwritten social phenomenon experienced by everyone in social relationships. This research uses a descriptive approach, providing a description or explanation of the object being studied. Data sources come from primary and secondary data. Data collection methods include interviews and library research. The data analysis method used is qualitative analysis.

3. Results and Discussion

3.1. Legal Power of Auction Minutes Using a Deed of Command Against Credit Guarantees at PT BPR LSE Manggala Batam Controlled by a Third Party

Auction using a deed of command is one of the legal efforts taken by PT BPR LSE Manggala Batam in resolving problem loans since the issuance of Constitutional Court Regulation Number 102/PUU-XVIII/2020. This decision is an effort to resolve credit for PT BPR LSE Manggala for several credit facilities that have been in default for several years. The steps for handling problem loans carried out by PT BPR LSE Manggala in accordance with the bank's SOP are tolerance for collection periods, issuing verbal and written warnings in the form of warning letters starting from warning letters 1, 2 to 3, summons to mediate regarding credit settlement, summons, voluntary surrender and finally litigation efforts through auction at the State Assets and Auction Service Office (KPKNL).

Based on Article 1 number 6 of PMK RI No. 122 of 2023 concerning Instructions for the Implementation of Auctions, what is meant by an execution auction is:[10] "Execution Auction is an auction to implement a court decision or ruling, other documents that are equivalent to it, and/or to implement provisions in statutory regulations." In sales through this auction, the bank has the right to sell without requiring the consent of the debtor because the debtor is in default, this is stated in Article 6 of the Mortgage Rights Law (UUHT).

Based on Article 79 of PMK RI No. 122 of 2023, there are special requirements that must be met by the Bank when becoming an auction participant, namely the existence of a deed of command. Furthermore, in Article 87 Paragraph (2) of PMK No. 122 of 2023 regarding the procedures for purchasing collateral, namely the bank will purchase collateral through an auction by first submitting to the

[10]Article 1 number 6 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Instructions for the Implementation of Auctions

Auction Officer a statement that the purchase will be made for another party who will be appointed later within a period of 1 (one) year from the date of the auction. Thus, the deed of command is a link between the provisions regulated in Article 12 A of the Banking Law and PMK RI No. 122 of 2023.

The implementation of an execution auction using a deed of command requires the services of a notary in the form of a temporary deed of command during the auction process so that the bank can take over the collateral (AYDA) without having to go through the courts. The settlement of problematic loans is regulated in OJK Regulation Number 1 of 2024 concerning the Asset Quality of Rural Banks, which explains that settlement of problematic loans can be carried out through collateral takeover by choosing between credit settlement or Foreclosed Collateral (AYDA). Based on the explanation in POJK No. 1 of 2024 concerning the Asset Quality of Rural Banks, AYDA is an asset obtained by Rural Banks (BPR) through auction or outside of auction to settle the loan.[11]For example, in the settlement of bad credit collateral in the names of debtors with the initials KS, AP, PI, and YS, the credit collateral had been held by a third party for years.

Based on an interview with Mr. Niko, the series of auction flow processes using a deed of command at PT BPR LSE Manggala Kota Batam is as follows:

a. Application for Independent Assessment Through the Public Service Office (KJPP) with an independent assessment period of 1 (one) year;

b. Application for Auction Recommendation Permit to the Batam Free Trade Zone and Free Port Authority abbreviated as BP Batam, this is a mandatory requirement for auctions in Batam City, this is because land in Batam is under the Land Management Rights (HPL) of BP Batam so that all land rights transfer transactions must obtain permission and approval from BP Batam with a validity period of the recommendation permit for 1 (one) year and for the permit application there are several document requirements that must be fulfilled by the bank;

c. Auction Application at the State Assets and Auction Services Office (KPKNL) of Batam City consists of 3 stages, namely pre-auction, auction implementation and post-auction;

d. The execution of vacating the premises at the Batam District Court consists of several stages of application, determination of the aanmaning hearing, coordination and determination of the execution schedule, implementation of the vacating execution and handover of the object and minutes of execution;

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[11]Riko Adi Setiawan and Sulistio Adiwinarto, "Resolving Problematic Credit Using the Ceiling Method at Rural Credit Banks (BPR), Journal of Law and Citizenship, Vol. 5, No. 10, 2024, p. 295, accessed on 08/06/2025 at 11:20 WIB

e. Foreclosed Assets (AYDA);

f. Collateral Sales Process by Bank, if it is not sold within 1 (one) year then the bank is the actual buyer.

In the Foreclosed Asset (AYDA) mechanism, a deed of command serves as the legal basis for banks to take over collateral assets. Based on the theory of legal certainty, the existence of a deed of command ensures that every collateral takeover action has a clear and accountable legal basis. This deed provides legal protection to creditors and prevents potential disputes with debtors or third parties. In terms of regulations, the AYDA mechanism and auctions are regulated by Financial Services Authority Regulation (POJK) No. 1 of 2024 and Regulation of the Minister of Finance of the Republic of Indonesia (PMK) No. 122 of 2023 concerning auctions. Furthermore, according to Mrs. Mildarestuti, SH, M.Kn as Notary & PPAT of Batam City, the deed of command made by this notary will also function as:

a. requirements for processing Land and Building Acquisition Tax (BPHTB) for buyers appointed later by the bank;

b. requirements for processing sales tax and BPHTB tax validation at the Batam City Public Service Office (KPP);

c. requirements for arranging quotations from auction minutes to buyers appointed by the bank based on a letter of appointment issued by the bank;

d. requirements for obtaining permission to transfer rights to BP Batam for buyers appointed by the bank;

e. Requirements for processing the change of name on a certificate at the National Land Agency Office in Batam City.

In the implementation of an auction using a deed of command, this deed is mentioned in the body/contents of the Auction Minutes. The implementation of auctions in PMK RI No. 122 of 2023 concerning Auction Implementation Guidelines is a regulation that replaces PMK RI No. 213 of 2020, as an effort to improve auction services to be more efficient, effective, transparent, accountable, simple, modern, and guarantee legal certainty, including adapting to the development of electronic transactions. In the process, auctions not only involve the release of rights to goods or assets, but also require a number of official documents to ensure that the transactions that occur are legal or carried out in accordance with applicable provisions, can be accounted for, and do not cause problems in the future.

One of these documents is the auction minutes, the auction minutes themselves are minutes of the auction implementation made by the Auction Official and are authentic deeds that have perfect evidentiary power. This document contains the entire series of auction processes, starting from the object being auctioned, the reason for the auction, the time and place of the auction, the bidding process, the determination of the winner, to the identities of the parties involved. The provisions governing the auction minutes are regulated in the Regulation of the Minister of Finance Number 86 of 2024 which explains in detail the form of auction minutes, procedures for making, archive management, and various administrative and legal aspects related to auction minutes (hereinafter referred to as PMK RI No. 86 of 2024).

This regulation provides guidance to Class I and II Auction Officials in making auction minutes, which are deeds authentic and has perfect evidentiary power and also accommodates technological developments by introducing electronic auction minutes. Auction minutes consist of three main parts as stipulated in Articles 4, 5, and 6 of PMK No. 86 of 2024 concerning Auction Minutes, namely:[12]

a. Head Section of Auction Minutes contains information containing the identity and basic information regarding the implementation of the auction. This section functions as the official opening and identification of the auction minutes document.

b. The body of the auction minutes is the core of the auction minutes, containing a complete description of the auction process. This body section records all stages of the auction chronologically and in detail, thus serving as authentic evidence. auction implementation.

c. The footer of the auction minutes. The footer of the auction minutes serves as official validation of the auction minutes and guarantees the document's validity as an authentic deed with perfect evidentiary force. This footer is important because it provides formal legitimacy to the auction minutes as an official legal document.

Based on the 3 (three) main parts of the auction minutes above, it can be concluded that the clause explaining the chronology and details of all stages of the auction including the temporary purchase clause of the auction object by the bank through a deed of command is contained in the body of the auction minutes, so that the body of the auction becomes authentic evidence of the implementation of the auction. The original auction minutes and their attachments are then collected in the form of auction minutes, which are state archives and official documents that must be completed no later than 6 (six) working days after the auction is carried out. It can be concluded that the auction minutes are official documents made by the Auction Officer as minutes of the auction implementation and have legal force as an authentic deed and proof of transfer of rights for buyers of auction results. Therefore, it is important

[12]https://www.djkn.kemenkeu.go.id/kpknl-jayapura/baca-artikel/17755/Memahami-Arti-Ptingnya-Risalah-Lelang.html

for the Auction Officer to compile the auction minutes carefully and accurately. Thus, the auction minutes can ensure that the auction is carried out in accordance with applicable provisions and can be accounted for.

3.2. Obstacles and Constraints Faced by PT BPR LSE Manggala in Carrying Out Auctions Using Deeds of Command Regarding Collateral Controlled by Third Parties

Auctions are a last resort for banks to resolve problem loans. However, PT BPR LSE Manggala faces several obstacles and constraints in the auction process, both internal and external, including:

1) Internal Factors

Internal factors are factors that exist within the scope of the bank, including:

a. Administration Fee

The costs required include the cost of completing the auction requirement documents, independent assessment costs from KJPP, recommendation permits from BP Batam, auction applications at KPKNL from the first auction to the second or third auction using a deed of command, applications for execution of eviction at the District Court, to renovation/repair of collateral in the collateral sales process.

b. The change in nomenclature from a rural credit bank to a people's economic bank resulted in an auction requirement at the KPKNL requiring a mortgage revision at the Batam City National Land Agency Office. The issue here relates to the uncertainty of how long the processing time will be, which in practice takes quite a long time, around 2-3 months.

2) External Factors

a. A third party refused to clear the collateral, either before or after the auction, through mediation conducted by the bank and the legal team. Although the bank was declared the auction winner, this occurred during the eviction process for the third party occupying the credit collateral, with debtors identified as KS, PI, and AP.

b. The presence of the Debtor who is still trying to delay the time in the auction process until the execution is carried out. The bank's legal representative then mediates with the debtor so that the debtor's family vacate the collateral because the bank has been determined as the auction winner, but until the aanmaning process the debtor still asks for time from the Chief Justice so that the execution of the vacate execution is postponed on the grounds that he will pay off the credit until then given time but the debtor still has no certainty to complete the credit and the court sets the execution schedule and the execution is attended by the debtor and his legal representative.

c. The time period for each processing process is uncertain both before and after the auction.

4. Conclusion

Auction minutes using a deed of command have perfect legal force for the bank and for the actual buyer who will be appointed later after the collateral is sold. The temporary purchase clause through a deed of command by the bank is emphasized in the body/content of the auction minutes which states that the purchase is temporary until the actual buyer is appointed by the bank. So these two deeds are authentic deeds that have perfect legal force for the bank and for the later buyer appointed by the bank and as a basis for the transfer of rights. The obstacles and constraints faced by PT BPR LSE Manggala in using a deed of command in the auction, are obstacles related to the mechanisms and procedures as well as resistance that must be passed so that the auction process can run until the collateral is sold because the bank is only given 1 (one) year from the auction to sell the collateral. Related to this research, the bank should have an SOP related to the practices that have been carried out by auctions using a deed of command and the need for special regulatory rules regarding auctions in Batam City because they must obtain approval from BP Batam recommendations, this is related to the administrative requirements that must be met and the time in processing the permit.

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