



Auction for the Execution of Dependent Rights Related to Customers in Default at
Bri Kalianda
(Case Study of Supreme Court Decision Cassation Number: 310/K/Pdt/2023)

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Abstract

The bank as a creditor cannot be harmed by bad credit. Efforts to avoid bad credit are carried out by taking anticipatory steps in the form of a guarantee mechanism for debt repayment. This mechanism is an anticipatory step in the event of bad credit by the debtor. The problem formulation in this research is (1) Does the auction execution have to meet the on-rechtmatige daad? (2) What are the legal consequences of the auction for the execution of mortgage rights in the Cassation Decision Number: 310/K/Pdt/2023? (3) What are the obstacles in carrying out the auction for the execution of mortgage rights? The method used in this research is descriptive normative, with data sources obtained from laws, books, journals, articles, etc. The results of this research are the conditions for an unlawful act, namely, firstly, there is an unlawful act, decision Number 310/K/Pdt/2023, the plaintiff is a bad credit debtor, which is an unlawful act. Since August 2018, the debtor has been in arrears in carrying out his obligations to make credit payments in installments, secondly there is an error, namely he has committed a default (default) on working capital credit, thirdly there is a loss, there is causality. The legal consequences of the Auction for the Execution of Mortgage Rights in the Cassation Decision Number: 310/K/Pdt/2023 do not conflict with applicable law, and have met standard requirements. The implementation of the auction in decision 310 K/Pdt/2023 has been carried out by KPKNL Bandar Lampung in accordance with the provisions of the regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK/06/2016/ Concerning instructions for implementing the auction and based on the auction minutes number 255/20/2020/ dated 16 April 2020 there was an auction winner, namely Ms Eva.S. *Judex Facti*/ Tanjong Karang District Court in this case does not conflict with the law and/or statute, so there are no obstacles in carrying out the auction, because the plaintiff has defaulted (breach of contract).

Keywords: *Mortgage Execution Auction; Default (default)*

Introduction

Article 8 paragraph (1) of the Banking Law No. 10 of 1998 (hereinafter referred to as the Banking Law) emphasizes that banks are obliged to carry out an in-depth analysis, which is then explained in the Elucidation to Article 8 paragraph (1) of the Banking Law that bank confidence is formed from the results

of an assessment carried out. Pay close attention to the character, abilities, capital, collateral and business prospects of debtor customers, known as the Five C analysis¹.

The explanation of this article contains the provision that the bank must carry out a careful assessment of the character, abilities, capital, collateral and business practices of the debtor to fulfill its achievements. If one day the debtor defaults, the bank can take the object of collateral to pay off the debt.² Starting from the explanation of Article 8 of the Banking Law above, if a debtor breaks his promise, the bank can basically take the guarantee provided by the creditor as repayment of the debt.

In Article 1131 of the Civil Code, it is stated that all property of the debtor (debtor), both movable and immovable, whether existing or new in the future, is borne by all obligations made by him. This means that all of a person's assets become collateral for all of his debts. If when the debt is due and he fails to fulfill his obligations to his creditors, that person's assets can be confiscated and auctioned off, the proceeds of which are then used to fulfill obligations or pay debts to his creditors.

The provision of collateral objects in a credit agreement is carried out by the debtor as the Collateral Owner, but in practice this is not always the case³. Providing a collateral object to a creditor in a credit agreement can also be carried out by a third party as the Collateral Owner, where if the debtor does not carry out its obligations properly towards the creditor (default) and even the payment is stalled, then the collateral object which belongs to the Collateral Owner needs to be executed.

Providing credit facilities always requires collateral, this is for the security of the credit provision in the sense that receivables from the lending party will be guaranteed by collateral.⁴ Mortgage Rights as a type of security right have been regulated in Indonesian positive law, namely Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, hereinafter referred to as UUHT.

The use of land as collateral for credit, both for productive and consumptive credit, is based on consideration of land because it is considered the safest and has relatively high economic value.⁵ This guarantee of using land is called a Mortgage Guarantee. Mortgage rights have executorial power, the binding force of which is the same as a court decision. So that if in the future the credit disbursed has problems and ends up going bad, then the creditor can execute the collateral that has been encumbered with the mortgage right. However, by filing a lawsuit against (verzet) against the execution of mortgage rights, while the execution process is underway, the execution can be delayed so that the bank cannot immediately complete the execution in order to pay off the debt, and this is currently happening frequently in the same community. -sama wants to get his rights

As happened in the Kalianda district court decision Number 23/Pdt.G/2020/PN Kla. At the start of the case, the plaintiff on behalf of Denny Prayogi borrowed money from a creditor with a principal amount of IDR 180,000,000.00 (one hundred and eighty million rupiah), with credit payments paid every 6 (six) months, ending on February 15 2022, the type of collateral is land and buildings located in Sidomulyo Village, Sidomulyo District, South Lampung Regency, with proof of ownership of the

¹Trisadini Prasastinah Usanti and Leonora Bakarbesy, 2013. Banking Law Reference Book: Guarantee Law, Surabaya, Revka Petra Media, Page. 13.

²Mulyati, E., & Aprilianti Dwiputri, F. (2018). Prudential Principles in Analyzing Material Collateral as Security for Banking Credit Agreements. *Acta Diurnal Journal of Notarial Law*, 1(2), Pages 134-148

³Etty Mulyati, Fajrina Aprilianti Dwiputri. Prudential Principles in Analyzing Material Collateral as Security for Banking Credit Agreements. *Journal of Notary and Patriarchal Law*: 10(2), Pages 1-13

⁴ Etty Mulyati, Fajrina Aprilianti Dwiputri. Prudential Principles in Analyzing Material Collateral as Security for Banking Credit Agreements. *Acta Diurnal. Journal of Notarial Law and PPAT* Volume 1, Number 2, June 201

⁵Syarief Toha, Pujiyono. 2017. Problems in Implementing Credit Takeovers with Mortgage Guarantee. *Repertory Journal*:4(2), Pages 1-15

collateral being Certificate of Ownership No. 563/Sidomulyo, covering an area of 678 (six hundred and seventy eight) square meters.

So the credit in question becomes delinquent. In fact, according to the deed of approval for opening credit number 10 dated 15 February 2018, the appellee is obliged to pay as described above on schedule and in the exact amount. Not only that, based on the bank statement, it is known that the appellee has also failed to pay interest obligations on time, which should be paid every month, but the appellant has never made any payments at all since August 2019, so in fact the appellant has not made any payments to date. payment of installments, both interest and principal, shows that there is no good faith at all on the part of the appellee to carry out his obligations.

Due to the arrears in payment by the plaintiff, the appellant has issued reminder letter 1 dated 1 March 2019, warning letter II on 15 March 2019, and warning letter III dated 24 February 2020. Even though the appellant has been given 3 warning letters, the appellee still not completing his credit obligations by ignoring the warning letter and not having good faith to settle his credit. So the appellant as the holder of mortgage rights has the right to auction the execution of mortgage rights

The mistake made by the plaintiff in decision Number 310/K/Pdt/2023 was that he had committed a breach of contract (breach of promise), the appellee had not fulfilled his obligations as a debtor in making installment payments according to the schedule agreed upon in the credit agreement to the appellant. Thus, the appellee can be categorized as a bad debtor or defaulter,⁶ where this is also clearly stated in the appellee's evidence submitted through exhibit P13 in the form of an OJK SLIK, where the notes very clearly show that the appellee has been recorded as a bad credit debtor with collectability status 5

The plaintiff was proven to have defaulted on the Working Capital Credit Agreement in accordance with the Credit Agreement Deed Number 10 dated 15 February 2018, because he had exchanged his credit installment payments and had been warned three times, in accordance with the provisions of article 6 of the Law of the Republic of Indonesia number 4 of 1996 concerning Rights. The defendant's dependents have the right to sell at auction the object of mortgage rights under their own authority to collect repayment of their receivables from the proceeds of the sale, and this has been carried out by KPKNL Bandar Lampung in accordance with the provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK/06/2016 concerning Instructions for Implementing Auctions and based on auction minutes Number 255/20/2020 dated April 16 2020, there was an auction winner, namely sister Eva. S, it is correct that the Plaintiff's claim is rejected in its entirety

The legal consequences of the Auction for the Execution of Mortgage Rights in the Cassation Decision Number: 310/K/Pdt/2023 do not conflict with applicable law, and have met standard requirements. If viewed from its legal nature, this statutory regulation is a material regulation which provides the meaning that the Mortgage Rights Holder has the right to sell the object of mortgage rights under his own authority through a public auction, which means without having to first ask for fiat from the head of the court.

The auction case of Denny Prayogi borrowing money from a creditor, namely BRI Kalianda Branch Office, with the type of collateral, namely land and buildings, has reached the cassation stage. Notification of cassation decision Number: 23/Pdt/G/2020/PN/Kla Jo 21/Pdt/2021/PT/Tjk jo/310/K/Pdt/2023 has been won by PT. Bank Rakyat Indonesia. The verdict of the Supreme Court of the Republic of Indonesia dated March 15 2023 reads:

⁶ Nasution, K., Fauzi, A., & Ramlan, R. (2022). Legal Perspective of Encumbrance of Mortgage Rights on Certificates of Ownership of Flat Units as Banking Credit Guarantee: Legal Perspective of Encumbrance Right Mortgage on Certificate of Ownership Right of Flat Units as Banking Credit Guarantee. *DOCTRINE: JOURNAL OF LAW*, 5(2), 237–267

- 1) Reject the cassation petition from cassation applicant Deni Prayogi;
- 2) Sentencing the cassation applicant to pay court costs at the cassation level in the amount of IDR 500,000 (five hundred thousand rupiah)

The results of the decision Number: 23/Pdt/G/2020/PN/KIa have also been won by PT. Bank Rakyat Indonesia. Then Decision 21/Pdt/2021/PT/Tjk jo/310/K/Pdt/2023 was also won by PT. Bank Rakyat Indonesia. The creditor decided that the plaintiff was unable to pay the installments of his debt according to the specified maturity date, so defendant I (PT. Bank Rakyat Indonesia) executed the mortgage guarantee belonging to the plaintiff to defendant II (State Property and Auction Service Office/KPLNL) which was carried out at auction by using the assistance of Defendant I. Based on the description of the problem above, the objectives of this research are: (1) To analyze the execution auction, it must meet the *onrechtmatige daad* (2) To analyze the reasons why customers object to the execution auction? (3) To analyze the legal consequences of the auction for the execution of mortgage rights in the Cassation Decision Number: 310/K/Pdt/2023. The method used in this research is descriptive qualitative, data sources were obtained from legislation, books, journals, the internet and others.

Discussion

1. Execution Auction That Fulfills *Onrechtmatige Daad*

In an auction, only certain officials can auction the object of execution, in Minister of Finance Regulation Number 27/PMK.06/2016 concerning Auction Implementation Instructions (PMK Auction Implementation) Auction Officials consist of, Class I Auction Officials are authorized DJKN employee auction officials. carry out execution auctions, mandatory non-execution auctions and voluntary non-execution auctions and Class II Auction Officials are private auction officials who have the authority to carry out voluntary non-execution auctions. *Onrechtmatige Daad* must fulfill the cumulative elements, namely the existence of actions (*daad*), mistakes (*schuld*), losses (*schade*), and causality (*causality*).⁷ This act (*daad*) can be declared as an act that is against the law (*onrechtmatige daad*), then the conditions that must be met are: violating applicable regulations, there is an error (*schuld*), there is a loss (*schade*), there is causality or a cause and effect relationship.

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PT BRI (Persero) did not immediately carry out the execution but the execution was carried out because of the default committed by Deni Prayogi. In this case, Deni Prayogi did not fulfill his obligations and for this action PT BRI (Persero) has given warnings in the form of warning letters 3 times to Deni Prayogi so that he can immediately fulfill the obligations in the agreed agreement. The warning letter given by PT BRI (Persero) starts on the following dates:

- a. The first warning letter was on March 1 2019
- b. Second warning letter dated March 15 2019
- c. The third warning letter is dated February 24 2020

⁷ Christian, J. H. (2019). Juridical Study of Unlawful Acts as Factors in Cancellation of Auctions on Guaranteed Objects. *Lex Scientia Law Review*, 3(2), 205-218.

In this decision, PT BRI (Persero) carries out execution based on Article 6 UUHT (Execution Parate) that if the debtor breaks his promise, the holder of the first mortgage right has the right to sell the object of the mortgage right under his own authority through a public auction and collect the receivables from the proceeds of the sale.

PT BRI (Persero) carries out execution based on the power obtained by law if the debtor (Deni Prayogi) defaults as stated in Article 6 UUHT. If it is seen that the law gives the power to carry out executions then there is no longer any need for approval or determination from other agencies, so that PT BRI (Persero)'s actions no longer require a decision from the Chairman of the District Court.

Execution carried out by PT BRI (Persero) also no longer requires Deni Prayogi's approval, due to the power of attorney obtained by the Debtor from the creditor as contained in Article 11 paragraph (2) letter e UUHT, namely the promise that the first Mortgage Right holder has the right to sell on his own authority. object of mortgage rights if the debtor breaks his contract. Then the promise in Article 11 paragraph (2) letter e UUHT was revealed in the SKMHT as well as the APHT

To assess whether an act (daad) can be declared an act that is against the law (onrechtmatige daad), the conditions that must be met are:

- 1) Act (daad) In broad terms, the definition of an unlawful act is that the act violates applicable regulations. Actions in this case are divided into 2, namely actions that appear active and inactive. In the PMH, there are no elements that indicate "agreement or agreement" and there are also no elements that indicate "permissible causes". In auction cases, onrechtmatige daad is usually referred to in a sense where there is a determination of a limit value or auction price that is too low below the selling value of the tax object so that it is contrary to the principles of propriety, the principle of fairness and also violates the owner's rights to the goods.

Apart from that, it also conflicts with the legal obligation for creditors as sellers to optimize the auction selling price (limit value) in accordance with the PMK, which ultimately also conflicts with decency in society.⁸The expansion of the definition of onrechtmatige daad also means that the act does not only violate written laws and regulations, but also includes violations of rights, obligations, morality and norms.

In decision Number 310/K/Pdt/2023, the plaintiff is a bad credit debtor, which is an unlawful act. Since August 2018 the debtor has been in arrears in carrying out his obligations to make credit payment installments, this can be seen from the appellee's account, namely account number 050201500884156, which is as follows:

- a. For obligations amounting to Rp. 20,000,000, which was due in August 2018, compared to only paying IDR 16,999,500 in September 2018
- b. For obligations amounting to Rp. 20,000,000, which was due in February 2019, compared to only paying IDR 10,000,000 in March 2019
- c. For obligations amounting to Rp. 20,000,000, which was due in August 2019, compared to only paying IDR 15,000,000 in September 2019
- d. For obligations amounting to Rp. 20,000,000, which is due in February 2020 (no principal payment).

So the credit in question becomes delinquent. In fact, according to the deed of approval for opening credit number 10 dated 15 February 2018, the appellee is obliged to pay as described above on schedule and in the exact amount. Not only that, based on the bank statement, it is known that the appellee has also failed to pay interest obligations on time, which should be paid every month, but

⁸Fuady, Munir. 2013. Unlawful Actions-Contemporary Approaches. Aditya Bakti's image. Bandung. Page 10.

the appellant has never made any payments at all since August 2019, so in fact the appellant has not made any payments to date. payment of installments, both interest and principal, shows that there is no good faith at all on the part of the appellee to carry out his obligations.

Due to the arrears in payment by the plaintiff, the appellant has issued reminder letter 1 dated 1 March 2019, warning letter II on 15 March 2019, and warning letter III dated 24 February 2020. Even though the appellant has been given 3 warning letters, the appellee still not completing his credit obligations by ignoring the warning letter and not having good faith to settle his credit. So the appellant as the holder of mortgage rights has the right to auction the execution of mortgage rights

- 2) The existence of an error (schuld) The second condition that must be fulfilled is the existence of an error (schuld), in this case meaning that the perpetrator's actions must contain an element of intention or negligence. The perpetrator can be held responsible for an action if the action contains an element of intent or negligence. In auction cases, most plaintiffs always argue that there were one or more errors (schuld) in the context of making the documents that were the requirements for the auction.

The mistake made by the plaintiff in decision Number 310/K/Pdt/2023 was that he had committed a breach of contract (breach of promise), the plaintiff was said to be in default if the debtor did not fulfill the promised performance at all, or did not fulfill the performance on time, or did not fulfill the performance not feasible. In this decision, the debtor has been in arrears in carrying out his obligations to make credit payments in installments or has not fulfilled his achievements on time.

Based on the facts of what happened, the appellant did not fulfill his obligations as a debtor in making installment payments according to the schedule agreed in the credit agreement with the appellant. Thus, the appellee can be categorized as a bad debtor or defaulter, where this is also clearly stated in the appellee's evidence submitted through Exhibit P13 in the form of an OJK SLIK, where the notes clearly show that the appellee has been recorded as a bad credit debtor with collectibility status.

- 1) Loss (schade) The third condition is that there is loss (schade) to the victim or plaintiff. Losses according to article 1365 Burgerlijk Wetboek Indonesia are divided into two, namely material losses (losses suffered by someone in the form of money or objects) and immaterial (losses suffered by someone in the form of something that cannot be valued in money, such as good name and illness). Having compensation is the most important thing because if there is a loss, then compensation must be made to restore the situation to normal. In auction cases, losses are usually suffered due to the setting of a low limit value, causing the auction object to be sold at an unreasonable price.

In decision Number 310/K/Pdt/2023 the Court sentenced the defendant to pay a fine jointly and severally in the amount of 600,000.00 (six hundred million rupiah) due to the plaintiff's losses.

2) Causality

The fourth condition is the existence of causality or a cause and effect relationship. This causal relationship is aimed at the clause relationship between the act and the loss. In the causal relationship there are several theories, namely the theory of proximate causa and factual causal relationships (caudation in fact) which means that the relationship is a matter of fact or is limited to factually what has happened and is actually suffered by someone (sine qua non). To clarify what actions can be declared as unlawful and can be used as an argument or factor for canceling the auction of collateral objects, in this case the example that will be used is the determination of a low limit value.

In February 2021, paying installments of 80,000,000.00 (Eighty million rupiah), connected with the auction of the object of mortgage rights on April 16 2020, it can be concluded that at the time of the auction the amount of the plaintiff's principal debt to defendant 1 was due is the amount of 80,000,000.00 (Eighty million rupiah). Therefore, if the value of the mortgage asset is compared with the amount of debt that must be paid, according to the panel of judges, the value is not comparable, the value of the mortgage right is much higher than the value of the debt that must be paid.

2. Debtor Objects to Execution Auction Referring to the Contents of Decision Number 310/K/Pdt/2023

The debtor objected for several reasons, namely as follows:

1. This credit is given for a period of 36 months (thirty-six months) starting from February 15 2018 to February 15 2020, not 48 months. As a result of this, this agreement is deemed null and void by law.
2. As long as the customer is a debtor at BRI, the customer has made credit installment payments from February 2018 to February 2019 with a total payment amount of 46,000,000.00 (forty-six million rupiah), and because the customer's business activities have been disrupted, the credit installment payments have been disrupted. in the following month it has not been paid
3. In January 2019, this credit installment also experienced a bottleneck. In such conditions, customers still continue to try to fulfill their obligations. At the end of March 2020, the plaintiff, through his attorney, submitted a request for a postponement of the principal loan payment by filling out a loan service form with a period of 1 year until the tenor expires. However, BRI Bank did not respond to this request because there had already been an auction announcement. BRI Bank even provided a letter with a postdated date of 06 April 2020 Number B.119/KC-XIX/ADK/04/2020 regarding notification of auction execution to customers, whereas the customer felt that he had never signed an auction statement with the defendant, while the customer felt that he had never sign an auction statement letter with BRI Bank.
4. On March 12 2020, the customer came to Bank BRI to pay the arrears amounting to IDR 60,000,000.00 (sixty million rupiah), but Mr. Randy refused on the grounds that it had already been auctioned. If the auction was to be canceled, the customer had to pay the full amount of IDR in full. 149,331,834.00 (one hundred forty-nine million three hundred thirty-one thousand eight hundred thirty-four rupiah), BRI did not provide any time at all for negotiations and unilaterally determined the repayment limit until March 24 2020, while the repayment tenor was in accordance credit agreement deed on February 15 2022.
5. Based on Article 4 of the Decree of the Director of Bank Indonesia number 30/26/KEP/DIR concerning the Quality of Productive Assets in conjunction with Article 12 paragraph (3) of Bank Indonesia Regulation Number. 14/15/pbi/2022 concerning Commercial Bank Asset Quality, the credit quality of the plaintiff still does not meet the criteria of "doubtful" let alone "bad credit". Because the principal and interest installments in arrears have not exceeded the tenor period. Credit restructuring is an improvement effort carried out by banks in credit activities for debtors who experience difficulties in fulfilling their obligations, which is carried out, among other things, through:
 - a. Decrease in credit interest rates
 - b. Extension of credit term
 - c. Reduction of credit interest arrears
 - d. Reducing credit principal arrears
 - e. Additional credit facilities and/or
 - f. Conversion of credit into temporary capital investment

In accordance with the Decision of the Supreme Court of the Republic of Indonesia Number.852/K/Sip/1972, the ruling is that to declare someone has committed a default, an official collection must first be carried out by a bailiff or summons. That because the summons in this case has not been served, the court cannot yet punish the defendants or the appellant for committing a breach of contract. Therefore, the plaintiff's or appellee's claim must be declared inadmissible. So that in accordance with the law, before BRI Bank makes a decision declaring the credit status of a debtor customer as a bad credit debtor, it must first take credit rescue actions as stated above.

6. The actions of Bank BRI and KPKNL do not support the government program which provides loan credit restructuring to customers due to the national outbreak of the Covid-19 virus pandemic.
7. In fact, BRI Bank, based on point 7, is against the law, still making a decision declaring the customer as a bad credit debtor, even deliberately, without the customer's knowledge, requesting the sale of an angunan (land and building) located in Sidomulyo Village, Sidomulyo District, South Lampung Regency with proof of ownership. collateral is a numbered ownership certificate. 563/Sidomulyo, covering an area of 678 names of Denny holders
8. BRI Bank sells customer collateral at a very low liquidation price and does not match the market price, so that customers suffer losses amounting to 600,000,000.00 (six hundred million rupiah),
9. Due to BRI's decision to unlawfully declare customers as bad credit debtors and BRI's actions which deliberately, without the customer's knowledge, applied for the sale of collateral for land and buildings located in Sidomulyo Village, Sidomulyo District, South Lampung Regency with proof of ownership of the collateral being a title certificate. owned by number 563/sidomulyo covering an area of 678 square meters, the name of the holder is Deni Prayogi because KPKNL can be considered an unlawful act or onrechtmatige daad
10. KPKNL in its position and position has acted outside of legal procedures or unlawfully approved the request for the sale of collateral from Bank BRI and carried out the sale on May 18 2020 even though it should first be required to examine the validity of Bank BRI's data before it is processed for sale openly so that it also responsible for the losses suffered by the plaintiff as intended by Article 1366 of the Civil Code.
11. Because the actions of Bank BRI and KPKNL as intended in the above posita can be categorized as unlawful acts or onrechtmatige daad, all letters or deeds or letters of any kind issued for and or on behalf of Bank BRI and KPKNL as far as land and building collateral are concerned located in Sidomulyo Village, Sidomulyo District, South Lampung Regency with proof of ownership of the collateral being Certificate of Title Number. 563/Sidomulyo covering an area of 678 m², the name of the holder Deni Prayogi, namely as a customer, as well as other letters issued as a result of any legal relationship between Bank BRI, KPKNL should be declared invalid and have no binding legal force.
12. All legal actions taken by BRI and KPKNL banks as described above, both acts of controlling sales or execution and administrative actions, have caused both moral and material losses to customers, because the plaintiffs have been prevented from utilizing or taking legal action on the collateral. In order for this decision to be enforceable, it would be appropriate if Bank BRI and KPKNL were sentenced to pay forced money or two elements amounting to 1 million rupiah for each day of delay for Bank BRI and KPKNL to comply voluntarily with the decision in this case.

3. Legal Consequences of Auctions for the Execution of Mortgage Rights in Cassation Decision Number: 310/K/Pdt/2023

Currently, auctions for the execution of mortgage rights based on Article 6 of the Mortgage Rights Law are the main and excellent means for credit settlement by banks, non-banks and even

individuals as creditors/First Rank Mortgage Rights Holders.⁹This is understandable, because at the practical level it is very easy and quick to implement. Once the debtor is in default, the first (I) creditor/mortgage right holder is given the power by law to sell the mortgage object at auction by submitting an auction request to the KPKNL without the need for a court decision.¹⁰It is very different when compared to court execution, which of course takes a long time and costs more to execute. Based on data obtained from the Ministry of Finance, the dominance of mortgage execution auctions can also be seen from the increase in auction developments from year to year. According to data evaluating the development of national auctions in 2015, the frequency of mortgage execution auctions reached 40,977, whereas in 2016 it reached 44,139.

1. Case Overview of Auction for Execution of Mortgage Rights

a. Position of the parties

Plaintiff : DeniPrayogi
 Defendant :PT. BRI Kalianda Branch Office
 : State Property and Auction Services Office (KPKNL) Bandar Lampung

2. Case Position

Deni Prayogi as the plaintiff borrowed money from BRI Kalianda Branch with a credit amount of IDR 180,000,000.00 (one hundred and eighty million), with credit payments every six months, ending in February 2022, type is land and buildings located in Sidomulyo Village, Sidomulyo District, South Lampung Regency, with proof of ownership of collateral and title certificate No.563/Sidomulyo, covering an area of 678 m² (six hundred and seventy eight) square meters in the name of the holder Deni Prayogi.

To guarantee the repayment of the credit, the appellee has submitted collateral in the form of a plot of land in the form of a building with proof of ownership in the form of: Certificate of Ownership (SHM) Number: 536 in the name of Deni Prayogi located in Disomulyo Village, Sidomulyo District, South Lampung Regency which has been tied to a mortgage right of rank 1 No.1770/1770 based on APHT Number 183/III/2018 dated March 14 2018, the deed of which was made by Tumpak Holong L. Tobing, SH., Sp.N Notary PPAT South Lampung.

The appellee did not make installment payments on time and in the correct amount for the Working Capital Credit loan facility amounting to 180,000,0000.00 (one hundred and eighty million). As agreed in the deed of agreement to open credit No.10 dated 15 February 2018 which was made before notary Tumpak Holong L. Tobing, SH.,Sp.N. Loan interest must be paid by those who take out credit every month, the amount of which is calculated based on the daily balance used.

The plaintiff is a bad debt debtor, which is an unlawful act. Since August 2018 the debtor has been in arrears in carrying out his obligations to make credit payment installments, this can be seen from the appellee's account, namely account number 050201500884156, which is as follows:

- a. For obligations amounting to Rp. 20,000,000, which was due in August 2018, compared to only paying IDR 16,999,500 in September 2018

⁹Robiatul Adawiyah. and A. Tulus Sartono. 2020. Legal Protection for Debtors in Credit Loans in Improving Standards of Living. *Legal Issues*, Volume 49 No.4, October 2020, Pages 369-381

¹⁰ Mumammad Septian Adhinata, Armansyah. Power of Execution of Mortgage Rights Confiscated by the State Related to Corruption Based on the Mortgage Rights Law (Analysis of Supreme Court Decision Number 2701k/Pdt/2017) *Imanot Law & Notary Student Journal* (Vol. 2 No. 01,

- b. For obligations amounting to Rp. 20,000,000, which was due in February 2019, compared to only paying IDR 10,000,000 in March 2019
- c. For obligations amounting to Rp. 20,000,000, which was due in August 2019, compared to only paying IDR 15,000,000 in September 2019
- d. For obligations amounting to Rp. 20,000,000, which is due in February 2020 (no principal payment).

So the credit in question becomes delinquent. In fact, according to the deed of approval for opening credit number 10 dated 15 February 2018, the appellee is obliged to pay as described above on schedule and in the exact amount. Not only that, based on the bank statement, it is known that the appellee has also failed to pay interest obligations on time, which should be paid every month, but the appellant has never made any payments at all since August 2019, so in fact the appellant has not made any payments to date. payment of installments, both interest and principal, shows that there is no good faith at all on the part of the appellee to carry out his obligations.

The appellant or previously (Defendant 1) can say that although the appellant as the holder of the mortgage rights on the credit collateral of the appellee or previously the plaintiff had the right to auction the execution of collateral rights, the appellant or previously (Defendant 1) did not immediately execute the mortgage rights on the collateral. even though it was clear that the appellee or before the plaintiff had defaulted as proven by the credit of the appellee or before the plaintiff who sued and was in default. The appellant or previously (Defendant 1) in good faith warned and gave the appellant the opportunity to immediately settle his credit obligations. This is proven by the fact that warning letters have been given 3 times, namely

1. The first warning letter was on March 1 2019
2. Second warning letter dated March 15 2019
3. The third warning letter is dated February 24 2020

in the warning letter, the appellant clearly informs the appellant of the previous plaintiff in detail about the credit arrears that must be settled and if the credit arrears are not paid off by the time specified in the warning letter, then the credit settlement of the appellant or the previous plaintiff will be handed over to legal channels or executions through KPKNL

Even though the appellant was given warning letters three times late, the plaintiff still did not complete his credit obligations, by ignoring the warning letters and not having good faith in completing his credit, the appellant as the holder of mortgage rights had the right to carry out an auction for the execution of mortgage rights.

Article 6 UUHT As the appellant stated above, if viewed from its legal nature, this statutory regulation is a material regulation which provides the meaning that the holder of mortgage rights has the right to sell the object of mortgage rights under his own authority through a public auction which means without having to first ask for Fiat. from the chairman of the court.

The plaintiff was proven to have defaulted on the Working Capital Credit Agreement in accordance with the Credit Agreement Deed Number 10 dated 15 February 2018, because he had exchanged his credit installment payments and had been warned three times, in accordance with the provisions of article 6 of the Law of the Republic of Indonesia number 4 of 1996 concerning Rights. The defendant's dependents have the right to sell at auction the object of mortgage rights under their own authority to collect repayment of their receivables from the proceeds of the sale, and this has been carried out by KPKNL Bandar Lampung in accordance with the provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK/06/2016 concerning Instructions for Implementing

Auctions and based on auction minutes Number 255/20/2020 dated April 16 2020, there was an auction winner, namely sister Eva. S

4. In the Judge's Decision

The Supreme Court read the relevant letters, which are an integral part of this decision, considering that based on the relevant letters, the plaintiff in his lawsuit requested the Kalianda District Court to give the following decision;

1. Accept and grant the plaintiff's claim in its entirety;
2. Declare that the plaintiff is a good debtor and must be protected by law;
3. Declaring Defendant One's decision stating that the Plaintiff is a bad credit debtor is an unlawful act;
4. Punish and require the first defendant to carry out credit restructuring in the Notarial and PPAT deed of Tumbak Holong L. Tobing SH SPN with credit agreement Number 10 dated 15 February 2018 to the plaintiff;
5. States that Defendant II's actions in approving Defendant I's request to sell collateral were an unlawful act. Collateral is one element of providing credit, in the event that based on other elements, confidence can be obtained in the debtor customer's ability to repay their debt. Collateral can be in the form of project goods or collection rights financed with credit (known as principal collateral). In such cases, the bank is not obliged to ask for collateral in the form of goods that are not directly related to the object being financed (additional collateral).¹¹
6. State the letters or deeds issued as a result of any legal relationship between Defendant II and third parties regarding credit collateral in the Notarial Deed Agreement and PPAT Tombak Huluk L. Tobing SH., Sp.N with credit agreement Number 10 dated February 15 2018 is invalid and has no binding legal force
7. Declare that the Notarial deed agreement and PPAT Tobing shspn with credit agreement Number 10 dated 15 February 2018 in article 5 of the non-synchronization of payment terms and number of months of payment tenor is invalid and does not have binding legal force
8. Publicly punishing Defendant 2 to pay a fine jointly and severally in the amount of Rp. 600,000 due to losses to the Plaintiff and Defendant 1, Defendant II complied voluntarily with this decision.
9. Sentenced Defendant 1, Defendant 11 to pay forced money (dwangsom) jointly and severally in the amount of 1,000,000 (one million rupiah) for every day of open delay of one Defendant II complying voluntarily with the decision of this case
10. Sentenced Defendant II to pay the costs incurred in this case.

Defendant I

In Exception

Lack of party lawsuit (Plurium Litis Konsortium)

Defendant II

In Exception

1. That Defendant II rejects all of the plaintiff's arguments, except for those which he expressly admits to be true and Defendant II will not answer the arguments put forward by the plaintiff which are not related to the duties and authority of Defendant II
2. Exception personal standi in iudicio

¹¹Yennie Agustin MR. 2022. Aspects of Intellectual Property Rights on Banking Credit Guarantee Objects. Monograph on the Dynamics of Legal Reform in Indonesia. Media Heritage. Pg 1-29

3. The exception to the claim is unclear or vague
4. The exception is that the lawsuit lacks parties
5. Please issue an exception as a party

Whereas regarding this lawsuit, the Kalianda District Court has handed down decision Number 23/PDT. G/ 2020/PN Kla, dated 29 December 2020, which reads as follows:

In Exception

Rejecting the Defendants' Exceptions

In the Main Case

1. Granted the Plaintiff's lawsuit in part
2. States that Defendant I has committed an unlawful act
3. Declare that the auction minutes number 255/200/2020 dated 16 April 2020 published by Muhammad Nagif as class 1 auction official at the Bandar Lampung KPKNL State Property and Auction Service Office do not have binding legal force
4. Sentenced Defendant 1 to pay court costs amounting to Rp. 3,443,000 rejecting the plaintiff's claim for other than that and the remainder

That at the appeal level the decision was annulled by the Tanjung Karang High Court with decision number 21/pdt/ 2021 PT tjk dated March 1 2021 whose ruling was as follows:

1. Received an appeal request from the appellant or originally Defendant 1
 2. Cancel your District Court Decision and number 23/PDT.G/ 2020/PN Kla., dated 29 December 2020 which is requested to be appealed;
- In Exception

Reject the objections of the original appellant, Defendant 1 and the co-appellee, Defendant II in its entirety;

In the main case

1. Reject the claim from the Appellee or the original plaintiff in its entirety
2. Sentencing the original appellee plaintiff to pay court costs at both the judicial level and at the appeal level set at 150,000 (one hundred and fifty thousand rupiah);

Considering, that after this final decision was notified to the cassation applicant on March 8 2021, the cassation applicant, through his power of attorney, based on a special power of attorney on March 22 2021, submitted a cassation application on March 22 2021, as is evident from the deed of statement of application for cassation number. 23/PDT. G/ 2020/PN Kla junto 21/pdt/2021/PT TJK made by the clerk of the Kalianda District Court, the application was followed by a cassation memo containing the reasons received at the clerk of the district court on April 5 2021.

Considering that the a quo cassation application and its reasons have been thoroughly notified to the opposing party and submitted within the time limits and in the manner specified in law, therefore the cassation application can be formally accepted;

Considering that based on the cassation memorandum received on April 5 2021 which is an inseparable part of this decision, a cassation request is requested that

1. Accept the cassation application from the cassation applicant or the appellee or the plaintiff in its entirety

2. Cancel the decision of the Tanjung Karang High Court number 21/Pdt/PT TJK dated 25 February 2021 in its entirety
3. Strengthening the Decision of Kalianda District Court number 23/Pdt/G/2020/PN Kla dated 29 December 2020 in its entirety.

In Exception

Accept the Exception of the Plaintiff's appeal for cassation/appellant in its entirety

In the main case

1. Accept the cassation petition from the cassation applicant/appellant, the original plaintiff in its entirety
2. Sentencing the cassation respondent or the original appellant, Defendant 1, to pay court costs at three levels of court;

Whereas regarding the cassation memo, the cassation applicants have submitted counter cassation memos on April 19 2021 and April 22 2021 respectively, which essentially reject the cassation petition from the cassation applicant.

Considering that regarding the reasons for the cassation, the Supreme Court is of the opinion that these reasons cannot be justified because after examining the cassation memorandum dated 5 April 2021, the contra cassation memorandum dated 19 April 2021 and 22 April 2021 respectively are linked to considerations of *Judex Facti p.* The Tanjung Karang High Court which annulled the Kalianda District Court's decision did not make a mistake in applying the law by considering the following:

The plaintiff was proven to have defaulted on the Working Capital Credit Agreement in accordance with the Credit Agreement Deed Number 10 dated 15 February 2018, because he had exchanged his credit installment payments and had been warned three times, in accordance with the provisions of article 6 of the Law of the Republic of Indonesia number 4 of 1996 concerning Rights. The defendant's dependents have the right to sell at auction the object of mortgage rights under their own authority to collect repayment of their receivables from the proceeds of the sale, and this has been carried out by KPKNL Bandar Lampung in accordance with the provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK/06/2016 concerning Instructions for Implementing Auctions and based on auction minutes Number 255/20/2020 dated April 16 2020, there was an auction winner, namely sister Eva. S, it is correct that the Plaintiff's claim is rejected in its entirety.

The *Judex Facti*/Tanjung Karang High Court decision in this case does not conflict with the law and/or statute, so the cassation petition submitted by cassation applicant Deni Prayogi must be rejected.

Considering that because the cassation request from the cassation applicant was rejected and the cassation request was on the losing side, the cassation applicant is sentenced to pay the costs of this cassation level case.

Law number 48 of 2009 concerning judicial power law number 14 of 1985 concerning the Supreme Court as amended by law number 5 of 2004 and the second amendment by law number 3 of 2009 and statutory regulations adjudicating 1 rejecting the cassation petition from the cassation applicant, Deni Prayogi, 2 sentenced the cassation applicant to pay the court costs at this cassation level in the amount of 500,000.

The legal consequences of the Auction for the Execution of Mortgage Rights in the Cassation Decision Number: 310/K/Pdt/2023 do not conflict with applicable law, and have met standard requirements. If viewed from its legal nature, this statutory regulation is a material regulation which

provides the meaning that the Mortgage Rights Holder has the right to sell the object of mortgage rights under his own authority through a public auction, which means without having to first ask for fiat from the head of the court.

As the winner of the mortgage rights, the appellant or (formerly defendant 1) then carries out the Auction application procedure through KPKNL by fulfilling all the requirements set by KPKNL and the laws and regulations that regulate it.

The appellant can say that the appellant's auction for the execution of mortgage rights was as a result of the absence of concrete settlement on the credit of the appellee or the plaintiff. So the appellee should have previously realized that the appellee or (formerly the plaintiff) had defaulted on the agreements he had made. An auction for credit collateral is a way out or solution provided by law if the plaintiff is in default, because the mortgage right was intended from the start as credit collateral if the debtor (*in case appellant*) breach of contract/default.

The auction carried out by the appellant or previously Defendant 1 through KPKNL was in accordance with Minister of Finance Regulation number 27/pmk.06/2016 so that there were no unlawful acts committed by the appellant. Based on the legal mortgage holder, the appellant's rights should be protected based on the point mortgage law and the holder of the auction winner also has rights that must be protected as a buyer in good faith.

The customer is proven to have defaulted on the Working Capital Credit Agreement in accordance with Credit Agreement Deed Number 10 dated February 15 2018, because he has exchanged credit installment payments and has been warned three times, in accordance with the provisions of Article 6 of the Republic of Indonesia Law Number 4 of 1996 concerning Rights. The defendant's dependents have the right to sell at auction the object of mortgage rights under their own authority to collect repayment of their receivables from the proceeds of the sale, and this has been carried out by KPKNL Bandar Lampung in accordance with the provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK/06/2016 concerning Instructions for Implementing Auctions and based on auction minutes Number 255/20/2020 dated April 16 2020, there was an auction winner, namely sister Eva. S. With this auction, the land rights will go to the winner of the auction,

BRI has succeeded in collecting the money lent by carrying out the auction of the mortgage rights on Deni Prayogi's loans which have been sold at auction. Deni Prayogi has made the payment. So BRI has succeeded in collecting its collection through auction results, BRI is having difficulty succeeding in obtaining obligations from Deni Prayogi. With this auction, the land rights have gone to the auction winner, the rights to the auctioned land are no longer the responsibility of BRI Bank but have been transferred to the auction winner. BRI has received its debt.

Conclusion

1. *Onrechtmatige daad* must fulfill the cumulative elements, namely the existence of actions (*daad*), mistakes (*schuld*), losses (*schade*), and causality (*causality*). This act (*daad*) can be declared as an act that is against the law (*onrechtmatige daad*), then the conditions that must be met are: violating applicable regulations, there is an error (*schuld*), there is a loss (*schade*), there is causality or a cause and effect relationship.
2. The customer objected to the auction because the customer was still trying to fulfill his obligations. Customers feel that Bank BRI and KPKNL's actions do not support the government's program of providing loan credit restructuring to customers due to the national outbreak of the Covid-19 virus pandemic. In addition, Bank BRI sells customer loans at very low liquidation prices and does not match market prices, resulting in customers suffering a loss of 600,000. ,000.00 (six hundred million rupiah)

3. The legal consequences of the Auction for the Execution of Mortgage Rights in the Cassation Decision Number: 310/K/Pdt/2023 do not conflict with applicable law, and have met standard requirements. BRI has succeeded in collecting the money lent by carrying out the auction of the mortgage rights on Deni Prayogi's loans which have been sold at auction. Deni Prayogi has made the payment, the winner of the auction for the land is Eva S. The rights to the auction land are no longer the responsibility of BRI Bank but have been transferred to the winner of the auction.

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