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Legal Consequences of Auction of Mortgage Right With Lower Limit Value Than the Value of Property Appraisal by the Appraisal Team (Study of Jakarta High Court Decision Number 516 / PDT / 2017 / PT.DKI)

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ABSTRACT

Auction is a common thing by creditors if the debtor is a breach of contract. The creditor conducted the auction to get the repayment of the debt. The auction must be under the auction procedures in force in Indonesia. Each auction will have a different legal effect for each party. Thus, here will be explained about the legal consequences of the auction execution of mortgage rights that use a limit value lower than the value of the property valuation by the appraisal team.

Keywords: guarantee law, mortgage, auction law, parate execution, limit value

1. INTRODUCTION

Indonesia economic development and national development are moving fast, which causes increased industrial and trade activities. Therefore, the capital sector in business development also increased. Not every entrepreneur has enough capital to develop their businesses. In everyday life there are many alternatives to obtain venture capital, one of them by conducting transactions in the form of credit or loans.

In granting credit facilities by banks, before loan money or credit facilities are given to credit loan applicants, the two parties first enter an agreement, the contents of the agreement in practice have been prepared and determined in advance by the bank, then after done the delivery of money which depends on the nature or credit type required by the credit applicant. The agreement entered before the credit agreement is called a preliminary consensual obligation, in which the parties commit themselves to surrender the guarantee and then receive a sum of money. [1]

A covenant is an event where one person pledges to another person, or where two people pledge one another to do something. Based on the interests of each party that need each other, then an agreement arises. [2] According to Prof. Subekti, an agreement means an accord between two parties. Based on the

agreement, understanding means something desired by one party, also desired by the other party, which meet an agreement. [3]

In providing credit or financing banks have a big risk, so that in every loan or financing bank must apply the principle of caution known as "the five C of credit analysis" or known as the 5 C principle, namely: character, ability, capital, collateral, and business development of the prospective debtor. In principle, "the five C of credit analysis" can provide information in the form of good faith (willingness to pay) and the ability to pay the debtor in fulfilling his performance by returning the loan money along with interest and other costs. [4] Collateral is one aspect that can protect banks against risks that may appear in carrying out bank credit activities. The collateral obtained by the bank from its debtor is a certainty for the bank to get a credit return if the debtor defaults. Collateral provided by the debtor can be in the form of material collateral, namely goods or objects and/or individual collateral, in the form of a debt insurance pledge. [5]

One object that can be used as collateral to get a credit facility is land burdened with Mortgage Rights. Land is a debt repayment collateral that is most favored by financial institutions that provide credit facilities, because land is easy to sell, prices continue to rise, have proof of rights, are difficult to embezzle and can charge with mortgage rights that

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give privileges to debtors. "In Article 1 paragraph 1 of Law Number 4 of 1996 on Mortgage Rights along with Movable Objects Related to Land (referred to as UUHT), states that "Mortgage rights are guarantee rights charged to land rights, as referred to in Basic Agrarian Law, the following or not the following other objects which are a unity with the land, to pay off certain debts." [6] 3

As proof of ownership rights, the existence of a mortgage right which is issued by the land office under the applicable laws and regulations must prove it. To issue a mortgage right, 10 must go through loading mortgage rights carried out through 2 (two) stages, namely; the stage of granting 11 mortgages by the Land Deed Makers Officer (PPAT); and the registration stage by the land office. Under Article 13 paragraph 5 of the UUHT, mortgage rights are born on the day they register the land book. The mortgage right has a function 12 as a grosse acte hypothec that has an executorial power as referred to in Article 14 of the UUHT which contains the terms of "FOR JUSTICE BASED ON ALMIGHTY GOD" that gives the executorial power the same as a court decision with permanent legal force. [7] 1

Basically, the creditor holding the mortgage rights has a special position compared to other creditors because if there were a default from the debtor, then based on Article 6 of the UUHT the creditor holding the first mortgage right may sell through public auctions on debtor collateral. Selling through auctions of collateral objects must be under the procedures and legislation in force in Indonesia.

Auctions arrangements have existed since the Dutch East Indies era, namely Vendu Reglement contained in Staatsblad 1908 number 189 amended by Staatsblad 1941 number 3 or known as the Auction Act and Vendu Instructie (Auction Instructions) contained in Staatsblad 1908 number 190 as last amended with Staatsblad 1930 Number 85 or known as Auction Instructions. Vendu Reglement is the highest auction regulation and still applies today. Therefore Vendu Reglement is often referred to as the auction Act. Vendu Reglement has implementing regulations, namely Vendu Instructie Ordonantie, known as auction instructions. Along 1 with the times, auction rules were made, namely Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Bidding Implementation Guidelines (referred to as PMK Number 27/PMK.06/2016) which was promulgated on February 22, 2016. The valid 2 of PMK Number 27/PMK.06/2016 resulted in Regulation of the Minister of Finance Number 106/PMK.06/2013 on Amendment to the Regulation of the Minister of Finance Number 93/PMK.06/2010 on Guidelines for Implementing 3 to become invalid as stated in the closing provisions of Article 99 PMK Number 27/PMK.06/2016 [8]

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Although the UUHT has determined that the creditor holding the mortgage rights has a rank over other creditors, the repayment process with the object of collateral does not always run smoothly and easily, because the creditor when faced with the problem of bad credit (default) often with all kinds of things settlement process and problems in an effort to take fulfillment of receivables. Guarantees held by the debtor must be executed by the creditor, when 6 debtor has a breach of contract or default [9]

In fact, there are still various obstacles and problems related to the sale of mortgage rights objects at auction. These problems can occur before the auction; during implementation; and after they complete the auction. Problems related to the sale of Mortgage Rights objects in an auction may involve administrative order issues at the Office of State Assets and Auction Services or it could be because of a rebuttal or a lawsuit against the sale of Mortgage Rights objects at auction.. 6

In carrying out the auction execution of the object guarantee security as referred to in Article 6 of the UUHT 6 there is the potential for a lawsuit or rebuttal. The claim or rebuttal can be submitted before the auction intended to delay the auction and can also submit after the auction, which has various motives that become the background of the lawsuit. One of them 2 because of illegal acts committed by the creditor. In Article 1365 of 2 the Civil Code, the notion of Unlawful Acts is any act that violates the law and brings harm to others, obliging the person who caused the loss because of his mistake to replace the loss. 2

In principle, we cannot cancel any auction that has been carried out under applicable regulations. However, the law in Indonesia allows parties whose rights are impaired by the conduct of the sale and buy of auctions through the auction office, can defend their rights or interests by suing in court to get a legal certainty. [11]

One motif that became the basis for suing over an auction that has been completed is because the plaintiff feels disadvantaged if the plaintiff's collateral object is sold at a limit value is not under applicable statutory provisions, such as being sold at a lower limit value than the 9 value of property valuation by Appraisal. The limit value is the minimum price of the item to be auctioned and determined by the Seller. In Article 43 of PMK No. 27/2016 it 9 said that each auction requires a limit value, the determination of the limit value is the responsibility of the seller who refers to the provisions in Article 44 paragraphs 1, 2, and 3; and Article 45 letter b PMK No. 27/2016. The auction should be under the provisions of the applicable limit value. [12] 18

Based on Article 44 paragraphs 1, 2, and 3 of the Minister of Finance Regulation Number 27/PMK.06/2016 Concerning, the Bidding

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Implementation Guidelines (hereinafter referred to as PMK No. 27/2016) states that: [13]

- (1) Seller sets a Limit Value, based on:
 - a. appraisal by the Appraiser; or
 - b. assessment by the Estimator.
- (2) Appraisers as referred to in paragraph 1 letter a are parties who conduct an independent evaluation based on their competency.
- (3) The appraiser as referred to in paragraph 1 letter b is a party originating from the Seller, who make the assessment based on methods that can be accounted for by the Seller, including curators for art and antique or ancient objects.

Furthermore [3] in Article 45 letter b PMK No. 27/2016 explains that the Limit Value determined by the Seller must be based on the assessment results of the Appraiser in terms of: [2] Article 6 UUHT Execution Auction, Fiduciary Execution Auction, and Bankruptcy Execution Auction with a Limit Value of at least Rp.1,000,000,000.00 (one billion rupiah).

1. One example of the case of the auction of execution of Mortgage Rights that is experiencing problems is in the case of decision number 516/PDT/2017/PT.DKI where in the decision the Plaintiff (Johny Mallato) disputed the auction of the execution of his collateral object which was sold with a limit value not followed the appraisal assessment report, which was carried out on March 20, 2014, in relation to the tender implementation procedure, according to him Defendant I (PT Bank Yudha Bhakti) and Defendant II (KPKNL Bogor) had violated the rules in conducting auctions so Johny Mallato requested that Auction Minutes No. 257/2014 dated April 4, 2014 issued by Defendant II (K28 NL Bogor) became null and void.

2. **LEGAL REMEDIES THAT CAN BE CARRIED OUT BY THE HOLDER OF THE MORTGAGE AGAINST THE OBJECT OF THE MORTGAGE RIGHT THAT FAILS IN THE AUCTION PROCESS**

7. Definition of Underwriting Rights based on Article 1 number 1 of Law Number 4 of 1996 concerning Underwriting Rights on land [21]ng with objects related to land, Underwriting Right is a guarantee right which is imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Rules on Agrarian Principles. According to Tintin Surtini in the auction regulations there are auction principles that must be applied, i.e.:

- a. The Principle of Openness (transparency), in this principle requires the auction to be carried out transparently, the auction is announced through newspapers, advertisements, brochures/invitations, so that people who have an interest can take part in the auction. This relates to the disclosure of information from the

seller, the auction office and what items will be auctioned.

- b. The Principle of Certainty, is a principle that guarantees legal protection existence for interested parties in the auction. Each auction will issue an auction minutes which is an authentic deed of transfer of rights to the goods and is the basis of the delivery of the goods, without the auction minutes the auction will become invalid.
- c. The principle of Efficiency (efficiency), this principle provides [11]h auction that the process is fast because it is done at the time and place that has been determined, thus the transaction occurs to get cost and time efficiency because goods can be quickly converted into money.
- d. The Principle of Competitiveness is to determine the auction price competitively and not arbitrarily to get the highest bid, this principle prevents the auction attendant from taking part and the price that occurs is the best price formation in the auction.
- e. Principle of Accountability, every auction can be held accountable for its implementation by auction officials to [2]e public governed by law and realized in the minutes of the auction which is an authentic deed.

Mortgage has the characteristics as stated by Salim HS, namely: [23]

- a. Giving preferred position to the holder or known as droit de preference [8]is means that the mortgage right holder may take precedence in obtaining repayment from other creditors for the sale of objects burdened with mortgage rights;
- b. Always follow the object that is guaranteed in the hands [8]whoever that object is called droit de suite. This means that objects used as objects of a mortgage are still burdened by the mortgage, even if the object changes hands. It affirms this feature in Article 7 of the UUHT that even though the object of the Underwriting Right has been transferred to another party, the creditor [12]o holds the Underwriting Right may still sell it through a public auction if the debtor is in default;
- c. Fulfill the principle of specialty and publicity so it can bind third parties and provide legal certainty for interested parties. The principle of specialist means objects which are burdened with mortgage rights must be specifically appointed. In APHT, it must clearly state what the burdened object is in the form, location, extent [8] boundaries and proof of ownership. The principle of publicity means that the public must know the encumbrance, therefore APHT must be registered.
- d. Easy and certain in execution [20] or offer convenience for creditors in the execution of execution. Can be executed as a judge's

decision whose permanent and certain legal powers.

It can be concluded that with guarantees in the form of mortgage provide a legal certainty to the creditor of the mortgage right, because if the debtor defaults, the mortgage right holder can easily make a sale or auction of the object used as the collateral.

In PMK Number 27/PMK.06/2016 Auction is the sale of goods open to the public with a written or/or verbal price quote that is increasing or decreasing to reach the highest price, which is preceded by Announcement of the Auction. In general, the definition of auction can be interpreted as a sale in public led by auction officials by offering a price openly or verbally, closed or in writing.

Execution of a mortgage is one of the legal remedies regulated in Article 20 of the UUHT. What is meant by execution of a mortgage is if the debtor breach of contract, then the object of the mortgage is

sold through a public auction by the creditor of the mortgage right according to the method specified in the legislation in force and the creditor of the mortgage right must take all or part of the proceeds to repay the debt. Guaranteed by the mortgage, with rights take precedence over other creditor.

The basis for executing the object of mortgage is Article 20 of the UUHT:

- a. The right of the first mortgage right holder to sell the object of mortgage right as referred to in Article 6 of the UUHT.
- b. Executorial title in the Mortgage Right Certificate, as referred to in Article 14 paragraph (2) UUHT.

The auction of mortgage execution guarantee is carried out by the bank to debt repayment if the debtor does not have the good intention to pay obligations. However, in an auction, the execution of guaranteed object of mortgage rights can occur. To provide legal certainty for creditors as holders of mortgage rights, Regulation of the Minister of Finance Number 27 / PMK.06 / 2016 concerning Guidance for Tender Implementation provides an explanation of the efforts that creditors can make for objects of mortgage rights that fail in the auction process regulated in article 47, which contain:

"In the re-auction, the seller can change the limit value with the following conditions: a. Shows the results of the valuation is still valid, in the event that the limit value at the previous auction is based on the appraisal; or b. Shows the results of the assessments that are still valid, in the event that the limit value at the previous auction is based on the estimation by the estimator".

In decision number 516 /PD/2017/PT.DKI, the Bank conducted an auction of execution based on Article 6 of the UUHT where the auction was conducted twice, first, the auction request was submitted to the Depok District Court and because there were no auction participants the auction of

execution of the mortgage¹⁷ was canceled. Second, the request for auction the Office of State Assets and Bogor Auction Services to (Bogor KPKNL). The second auction request submitted to the Bogor KPKNL by PT Bank Yudha Bhakti is an effort he can do to get his debt repayment. Where, from the second auction request, the object of collateral was successfully auctioned in the amount of Rp. 857,000,000 (eight hundred and fifty-seven million rupiah), the amount is enough to pay the amount of the debt of Mr. Johny Mallato in the amount of Rp. 690,832,011,57 (six hundred ninety million eight hundred thirty-two thousand eleven point fifty-seven cents). So the case between Mr. Johny Mallato and PT Bank Yudha Bhakti is only natural if PT Bank Yudha Bhakti as a financial institution that provides credit facilities is auctioning off objects used as collateral if Johny Mallato breach of contract.

Based on an interview conducted by the author with a guarantee law lecturer, Mr. Gunawa Djajaputra, he said that the effort that can be done by the creditor (bank) is to do the auction again until the object is sold and the bank has to repay its debt. Then Ms. Anita Dewi said if the highest price had been set but at the time the auction was not sold, then the limit value would be lowered at the second bid. If it still doesn't sell, it will continue to be lowered until it touches the Liquidation Value.

According to the author, it can be concluded that in decision number 516/PDT/2017/PT.DKI, PT Bank Yudha Bhakti as an institution that carries out banking activities has the duty to maintain the stability and smoothness of the velocity of money in the bank. So as a form of legal remedy¹⁸ that can be done by PT Bank Yudha Bhakti as the holder of the mortgage rights for the object of mortgage rights that failed in the auction process is by re-auctioning, besides that PT Bank Yudha Bhakti can reduce the limit value of the collateral object at the re-auction. This was done because the auction for the execution of collateral objects was taken as a last resort to the settlement of a bad credit. According to the author, another thing creditors can do is to renegotiate the debtor by providing the opportunity to sell under the hand to get a higher price. This can be done to expect that the debtor does not feel disadvantaged over the sale of collateral.

3. AS A RESULT OF THE LEGAL TENDER FOR THE EXECUTION OF THE OBJECT GUARANTEE RIGHTS THAT USE THE LIMIT VALUE IS LOWER THAN THE VALUE OF THE PROPERTY VALUATION BY THE APPRAISAL

¹⁹ According to Syarifin, legal consequences are all consequences that occur from all legal actions carried out by legal subjects to legal objects or other consequences caused by certain events by the relevant law that have been determined or considered as legal consequences. Thus the authors

conclude that the legal consequences are the consequences caused by legal actions or by events that have been regulated in the law considered as legal consequences.

The legal consequence of conducting the auction is that it results in the object's transfer of a collateral object auctioned from the seller to the winner of the auction. The legal consequence of conducting an auction using a limit value lower than the value of the appraisal property results in the auction being invalid if it is done at the first auction. A claim arising from a debtor who feels aggrieved because the object of the collateral is auctioned off is not based on the value of the appraisal conducted by the appraisal team, generally will sue the creditor for the illegality of the auction procedures conducted, so the debtor in his petition asks the judge to declare the auction null and void by law.

Each auction must be under auction procedures in Indonesia, the auction procedure for mortgage rights, first, the seller or owner of the goods submit a written request to the auction office / auction hall / auction official class I. After the seller or owner of the goods submits auction application along with the required documents, auction officials will examine the legality of the auction object, namely the suitability of the data from the auction document which shows that the auction applicant may sell the auction object and the auction object can be traded.

After the legality of the object and subject of the auction is examined, the auction official will determine the time of the auction, starting from the date, day and time of the auction by taking into account the schedule at the auction and seller's place. Then, after the auction time has been set, the seller or owner of the goods will announce in the newspaper according to the applicable laws. Furthermore, for bidders who are interested, deposit a security deposit or bank guarantee under applicable laws. Then the auction is conducted by being led by the auction official. The person who wins the auction must pay the results of the auction to the auction office / auctioneer / auction officer II then the money from the auction will deposit to the state treasury and the net proceeds of the auction will deposit to the owner of the goods or seller.

Each auction requires a limit value, except for the voluntary non-execution auction of movable property belonging to the private sector without a limit value (Article 43 paragraph 3 of PMK Number 27/PMK.06/2016). In Article 45 letter b PMK No. 27/2016 explains that the Limit Value determined by the Seller must be based on the assessment results of the Appraiser in terms of Article 6 UUHT Execution Auction, Fiduciary Execution Auction, and Bankruptcy Execution Auction with a Limit Value of at least Rp.1,000,000,000.00 (one billion rupiah). The limit value is the minimum price of the item to be auctioned, which is determined by the seller/owner of the item. Limit values are open/not

confidential. The limit value is one requirement of the seller.

Determination of the limit value is the responsibility of the seller/owner of the goods. Determination of the limit value by the seller/owner of the goods is based on the assessment by an independent appraisal or appraiser or estimator by the appraiser/assessment team. With a bank as a creditor of Article 6 UUHT, the limit value must be determined based on the results of the appraiser's assessment. It must include the limit value in the auction announcement if it is an execution auction, a mandatory non-execution auction and a voluntary non-execution auction on immovable property. The limit value is a guideline for auction officials to hold or release the item being auctioned. In the re-auction, the seller or the owner of the goods can change the limit value by mentioning the reasons that can be accounted for. The limit value is made in writing and submitted to the auction official no later than the auction begins.

Based on decision number 516/PDT/2017/PT.DKI, PT Bank Yudha Bhakti conducted an auction against the collateral object owned by Mr. Johny Mallato, because as a debtor of PT Bank Yudha Bhakti he had been negligent in fulfilling his obligations or breach of promise in fulfilling the contents of the credit agreement. The auction conducted by PT Bank Yudha Bhakti was not intentionally lowering the price of the limit but in this case PT Bank Yudha Bhakti as the seller may reduce the limit value of the collateral object that was previously assessed by the appraisal team because the first auction was conducted because there were no bidders.

According to Mr. Gunawan, in the world of banking practice the objects being auctioned are not always sold, if that happens it can be said that the auction failed, if the auction fails then the effort that can be done by the creditor (bank) is to re-auction until the object is sold and the bank gets repayment of the debt. With auction failure, the bank may reduce the limit value, meaning that the creditor holding the mortgage rights may and legally if conducting an auction of Article 6 UUHT execution with a limit value lower than the appraisal team assessment at the beginning, because in the legal principle of guarantee it is said that the creditor is entitled to repay his debt from the sale of collateral objects.

Based on the description above, it can be stated that the legal consequences of the auction actions carried out by PT Bank Yudha Bhakti are legally valid because everything is in accordance with applicable auction procedures. In Article 4 of PMK No.27/PMK.06/2016 it is stated that it cannot cancel the auction conducted under the valid auction procedures in Indonesia. It can be concluded that the legal consequences of the auction conducted by PT Bank Yudha Bhakti are legal and cannot be

canceled. It's just that in this case, according to the author, although PT Bank Yudha Bhakti as a creditor has conducted an auction execution according to procedures and the bank may pay off its debts, but with or without realizing it sometimes it actually makes the debtor very disadvantaged. As Mr. Johny Mallato remained as a disadvantaged party ¹⁹ cause of the auction result, the collateral object ²⁰ in the form of land and buildings, according to him, was very cheap.

4. CONCLUSION

From the description above it can be concluded that the sale through auction is the last effort the creditor can do holding ²⁵ the mortgage right to get debt payback. The auction itself must be in accordance with the procedures and procedures for the auction regulated in Minister of Finance Regulation Number 27/PMK.06/2016 concerning Bidding Procedures. The auction referred to in the PMK is an auction based on Article 6 of the UUHT. The value of the limit in the auction's conduct is determined by the seller, the seller who is the holder of the mortgage rights in determining the value of the limit must not be arbitrary, which can cause detrimental to the party whose collateral ¹⁹ auctioned. If the first auction is conducted with a limit value lower than the limit value set by the appraiser, then it can be categorized as an act against the law and the auction becomes invalid and null and void by law. In the event of auction failure, the seller ³¹ try to reduce the limit value, which will be lower than the limit value determined by the appraisal team, which is then conducted by the second auction. The rights granted by the law to reduce the value of the limit can use creditors to attract buyers' interest, but for debtors it causes losses because the value of the collateral object becomes low.

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