



AUCTION LIMIT VALUE SETTINGS FAIR EXECUTION OF MORTGAGE RIGHTS

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Abstract:

Investment development always requires sufficient funds to meet planned needs, but not all of these funding needs can be met by entrepreneurs themselves. To meet these funding needs, entrepreneurs must seek solutions by borrowing funds from other parties, either unsecured or secured loans. Collateralized loans are generally made with financial institutions, in this case banks, acting as creditors, and entrepreneurs, acting as borrowers, commonly referred to as debtors. In essence, the auction price limit for mortgage execution can be seen from its status and function. The lower and upper limits are absolute requirements that must be present when submitting an auction application. Legislation prohibits mortgage execution auctions without a limit.

Keywords:

Law, price, legislation

1. Introduction

Investment development always requires sufficient funds to meet planned needs, but not all of these funding needs can be met by entrepreneurs themselves. To meet these funding needs, entrepreneurs must seek solutions by borrowing funds from other parties, either unsecured or secured loans. Collateralized loans are generally made with financial institutions, in this case banks, acting as creditors, and entrepreneurs, acting as borrowers, commonly referred to as debtors.

Lending money between entrepreneurs and banks is generally conducted through a loan agreement, commonly known as a credit agreement. The parties involved in the agreement are referred to as the creditor, the owner of the funds, and the debtor, the borrower. Credit is generally based on the creditor's trust in the borrower, assuming the borrower has the ability to manage the loaned funds and repay the loan in accordance with the agreed terms and conditions in a timely manner. To guarantee the repayment of the loan, collateral is attached to the loan agreement, typically in the form of an object with economic value exceeding the value of the loan.

According to Subekti, collateral serves to provide a sense of security (*zekerheid*) to creditors that their receivables will be repaid, thus providing collateral as a safeguard against the execution of debt obligations. In credit agreements, this sense of security is necessary, given that creditors cannot guarantee that debtors will repay their debts. Meanwhile, R. Setiawan argues that credit collateral serves as a means of guaranteeing economic debt repayment.

With collateral, creditors are assured that their debts can be met using the collateral's value if the debtor fails to fulfill their obligations.

A similar opinion was expressed by Mariam Darus Badruzaman, who stated that the primary function of collateral is as a legal protection tool for creditors. If the debtor defaults, the creditor has the right to obtain repayment through the execution of the collateral. Furthermore, R. Setiawan argues that credit collateral serves as a means of guaranteeing economic debt repayment. With collateral, creditors are assured that their debts can be met using the collateral's value if the debtor fails to fulfill their obligations. Munir Fuady emphasized that credit guarantees not only function as a credit security tool, but also as a risk control instrument for financial institutions in distributing funds to debtors. .

Considering the collateral function, if a debtor defaults on their obligations, the creditor auctions the collateral to settle the debt. However, there is no definitive provision regarding the minimum sale value (auction value limit), so banks, as creditors, often sell collateral at below market value. Creditors adhere solely to the principle that the proceeds from the collateral sale can be used to settle the debtor's debt. This principle is certainly detrimental and unfair to the debtor, as the debtor is certain to suffer a loss. Based on this background, the research question that arises is: What is the concept of reconstructing the auction limit regulation for collateral that satisfies the sense of justice for debtors who default on their credit obligations?

2. Research Method

This research is a normative legal study, focusing on the analysis of positive legal norms related to the rules and legal principles related to bank credit.

3. Discussion of Research Results

3.1. Preferential Rights of Mortgage Holders

Collateral is essentially anything given to a creditor to instill confidence that the debtor will fulfill their obligations. Collateral generally takes the form of tangible or intangible objects with economic value. Collateral serves as a means of securing debt repayment in the event of default by the debtor. Sri Soedewi Masjchoen Sofwan defines collateral as a specific object specifically designated as collateral for debt repayment and granting the creditor priority (preferential rights) over other creditors.

The position of the holder of preferential rights is based on the following characteristics: First, it grants the holder priority or precedence over the object of the mortgage. This position is stated in the explanation of Article 4 of the UUHT which states: "if the debtor defaults on the promise, then the creditor holding the Mortgage Right on Land and Objects related to the Land has the right to sell the land used as collateral through a public auction, according to the provisions of the relevant laws and regulations, with "preemptive rights over other creditors..." The sentence "preemptive rights over other creditors..." gives the understanding that the creditor obtains priority rights over concurrent creditors; Second, it is a property right, meaning that the mortgage right follows the object wherever it is and in the control of whoever the object is, does not remove the rights of the holder of the collateral object; Third, it fulfills the principles of specialization and publicity, thereby binding third parties and providing legal certainty to interested parties. Publicity aims to inform the public that the assets are encumbered by a mortgage. Fourth, it is easy to enforce, meaning that if the debtor defaults, the creditor, in selling the collateral, does not need to file a lawsuit and wait for a court decision, but rather directly conducts an auction sale of the collateral. Fifth, the mortgage cannot be divided except by prior agreement. Sixth, the mortgage is an accessory agreement. This means that the mortgage is attached to the principal agreement, namely the credit agreement. If the credit agreement, due to the debtor's debt, is fully paid, the mortgage agreement also terminates.

Based on the description above, the function of the mortgage collateral is to repay the debtor's debt. This is accomplished by selling the collateral through a public auction. In general, the sale of collateral is the process of selling collateral objects by the creditor holding the first collateral, with the aim of paying off his receivables. The auction sale is based on the preferential rights granted by law to creditors, and is carried out openly so that anyone can participate in the auction. The legal basis for the execution rights of creditors holding collateral rights is regulated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT), which stipulates: "If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object at his own power through a public auction and take the repayment of his receivables from the proceeds of the sale." Article 6 of the Mortgage

Law embodies the material rights of the Mortgage Right, which grants a special (preferential) position to the creditor. Therefore, the right to sell under one's own authority is a means of legal protection against the risk of default by the debtor. The special (preferential) right for the first creditor provides the right to be prioritized in the repayment of the debtor's debt from the proceeds of the sale of collateral belonging to the defaulting debtor. The remaining proceeds from the sale of collateral are given to concurrent creditors proportionally, and if the proceeds are used to pay off the debtor's debt, then the concurrent creditor does not receive repayment from the proceeds from the sale of collateral belonging to the debtor.

The position of the creditor holding the mortgage is prioritized (preferential), while other parties suing the debtor/collateral provider are only in the position of concurrent creditors. Concurrent creditors cannot derogate the rights of the preferred creditor which are prioritized, which is why only an equal seizure is permitted to be placed on the land that has been used as collateral, not a security seizure. The rights of the preferred creditor are prioritized by the Mortgage Certificate which has executorial power. The position of the creditor holding the mortgage as a preferred creditor obtains legal protection. This is reflected in the Circular Letter of the Supreme Court Number 07 of 2012 which firmly stipulates that mortgage holders who act in good faith must be protected even if it is later discovered that the mortgage provider is an unauthorized person. Furthermore, this legal protection is emphasized in the Circular Letter of the Supreme Court Number 5 of 2014, which applies the Supreme Court Circular in all general courts in Indonesia. Based on the 2 (two) Circular Letters of the Supreme Court, preferred creditors are rights holders who act in good faith..

3.2. Execution of Mortgage Rights

Furthermore, regarding the preferential rights of mortgage holders, as regulated in Article 20 paragraph (1) of the Mortgage Law, the following is formulated: If the debtor defaults, the mortgage holder has the right to sell the mortgage object: a). on his/her own authority through a public auction (parate execution) and collect the receivables from the proceeds; or b). based on the executorial title of the Mortgage Certificate (which contains the words "For the Sake of Justice Based on the One and Only God") through execution by the court.

The essence of this article is that the mortgage holder has the right to sell the mortgage object based on the executorial title stated in the mortgage certificate. The mortgage object is then sold through a public auction to settle the mortgage holder's receivables. However, if there is an agreement between the debtor and the mortgage creditor, the sale of the mortgage object can be carried out privately to obtain a higher price. A sale through a public auction by a creditor aims to secure its rights, selling the mortgaged property related to land through a public auction in accordance with statutory provisions. If the debtor defaults on its promise or performance, the mortgage can be enforced through three methods: a) private sale; b) parate execution; c) executorial title.

a) Private mortgage execution is a simple method, but it must be agreed upon between the debtor and the creditor holding the mortgage to obtain a high price, as the collateral is often sold through a public auction below market value. The mechanism for selling a mortgage underhand (outside of a public auction) provides the debtor with the opportunity to find their own buyer. Therefore, the price obtained may be close to or above the market price. This is because the debtor is more knowledgeable about the characteristics of the collateral. The debtor is given the opportunity to sell the collateral themselves by law, allowing them to offer and find buyers before the collateral is sold at auction. If the debtor does not sell themselves, or if there is no agreement between the creditor holding the mortgage and the debtor, the debtor can use the provisions of Article 6 of the UUHT to request assistance from the State Assets and Auction Service Office (KPKNL) or an auction house to sell the collateral by auction without going through the courts. If the proceeds from the sale exceed the value of the debtor's debt, the debtor will profit.

b) Execution under the creditor's own power (parate executie) is the power to sell collateral arising from the principle of collateral rights as objects that provide certainty regarding the repayment of the creditor's receivables. The creditor holding the collateral's own sale is more cost-efficient, as it eliminates bureaucratic, lengthy, formal, and costly court procedures. A sale under the parate executie mechanism is not merely an ordinary sale, but rather an execution mechanism that arises from the collateral rights themselves, allowing the creditor to act immediately if the debtor fails to fulfill his obligations. .

c) Execution based on executorial title, is the execution of collateral belonging to the bankrupt debtor carried out, if the defaulting debtor fails to carry out a sale privately or a sale under his own authority, then the creditor can submit a request to the court to carry out execution based on a mortgage certificate that has an executorial title. Execution

based on an executorial title is regulated in Article 224 HIR / 258 R.Bg. The next process is that the court will give a warning to the debtor to pay the debt and interest. If the debtor has paid the debt and interest, the auction will not continue, on the other hand, if the debtor still does not fulfill his obligations, and then the head of the court will order the clerk or bailiff to carry out an execution seizure and the court will ask the KPKNL to carry out an auction of the collateral to which the mortgage is attached.

3.3. Concept of Limit Value for Mortgage Auction Execution

Mortgage auctions are concerned with determining the sale value of the mortgage. In mortgage auctions, the sale value is crucial for the debtor, as it relates to the debtor's assets. Debtors naturally desire a fair price, at least in line with or close to market value. However, mortgage creditors generally disregard the debtor's interests and sell collateral based on the principle that the proceeds from the sale will repay the debtor's debt. This sale of mortgaged assets is certainly not in accordance with the debtor's sense of justice, as sales are often conducted far below market value, while the auction buyer benefits.

In this regard, the determination of the auction limit value by the seller or auction applicant is very necessary, because the seller or auction applicant has the absolute right to sell the mortgage object as the holder of the preferential right. entitled. In Article 1 paragraph 27 of the Minister of Finance Regulation No. 122/2023, the auction limit value is given as "the minimum value to be auctioned and determined by the seller." Based on this regulation, the auction applicant can submit an auction price or auction limit value with the lowest price or liquidation value. The auction applicant who submits the lowest price in the auction does not cause the mortgage auction to be canceled, because it does not violate the provisions of the laws and regulations.

It is normatively required that every auction must have a limit value. Determining the limit value is not the responsibility of the Class 1 Auction Officer or the Auction House, but is generally the responsibility of the seller or auction applicant, in this case the creditor.

Article 59 of Minister of Finance Regulation Number 122 of 2023 stipulates: "In the implementation of auctions for the execution of mortgage objects in accordance with Article 6 of the UUHT, auctions for the execution of fiduciary objects, auctions for the execution of pledged goods, and auctions for the execution of bankruptcy estates, the limit value is set with a maximum range equal to the market value and a minimum range equal to the liquidation value." Generally, auction applicants, in this case the creditor holding the mortgage, prefer to use the liquidation value and rarely the market price, with the principle of quickly obtaining repayment of their receivables.

Determining the limit value of the mortgage object to be sold is the absolute authority of the appraisal assessor, and may not be intervened by any party, including the debtor who owns the collateral object, even by the auction official. This independence of the appraisal results is stated in Article 60 paragraph 6 of the Minister of Finance Regulation Number 122 of 2023, which stipulates that: "First-class Auction Officials are not authorized to review the value stated in the assessment or appraisal report as referred to in paragraph (1)." Furthermore, in the case of an execution auction, Article 1 of the Minister of Finance Regulation Number 122 of 2023 concerning Technical Instructions for Auction Implementation, provides an understanding that an execution auction is an auction to carry out the sale of goods based on a court decision/ruling, a document that has the same legal force as a court decision/ruling, or to implement provisions in statutory regulations. An execution auction functions as a method of selling goods carried out to fulfill statutory provisions..

3.4. Implementation of Execution Auction

The execution auction is preceded by an application submitted by the creditor to the State Assets and Auction Service Office (KPKNL) by attaching the required documents, including a mortgage certificate and proof of the debtor's default. Based on this application, the KPKNL then makes an open auction announcement to the public. The purpose of this announcement is to ensure the principles of publicity and transparency, with the hope that all interested parties will participate in the auction, hoping to obtain the highest bid. If the auction bidding deadline has expired, the auction will be conducted in accordance with the provisions of laws and regulations regarding auctions.

The proceeds from the auction sale are then used to settle the debts of the creditors holding the mortgage, and any remaining balance is returned to the debtor as the owner of the collateral. This auction mechanism is expected to provide legal certainty, efficiency in settling creditors' debts, and to provide balanced legal protection for both creditors and debtors. According to Boedi Harsono, parate execution in mortgage rights is intended to provide

convenience and legal certainty for creditors in obtaining settlement of their debts without going through lengthy court procedures, as long as formal and material requirements are met. .

A similar opinion was also expressed by Sri Soedewi Masjchoen Sofwan who stated that public auctions are the sales means that best guarantee price objectivity, because they are carried out openly and competitively, thus still providing legal protection for debtors. Thus, the implementation of auctions through the procedures stipulated in the Regulation of the Minister of Finance Number 122 of 2023 concerning Technical Instructions for the Implementation of Mortgage Auctions, not only functions as a means of effective execution of mortgage rights, but also as a legal protection instrument that guarantees certainty, openness, and fairness in the relationship between creditors and debtors.

In relation to the practice of execution auctions often exploited by creditors holding mortgage rights by ignoring the interests of the debtor, and only based on the principle that the important thing is that the creditor's receivables are paid off, it is a form of injustice for the debtor. In this regard, changes must be made to the legislation with the concept of determining upper and lower limits with a mechanism that provides legal protection for debtors. The concept offered through this research is to make changes to the procedure for determining the value of the mortgage execution limit, namely: a). adding provisions related to the debtor's involvement in the procedure for determining the limit value, and b). providing the opportunity for debtors to be able to object or rebut the determined limit value. Because the determination of the sales limit determined by the applicant or mortgage holder is only based on the liquidation value which is often too low or far below the market price. So this provision must be replaced with a new concept, namely, by determining the lowest fair value, which is determined through 3 options with the provision of finding the highest value from the options, namely: a). based on the Taxable Object Sales Value (NJOP), b). determined as low as 70% of the market price, and c). based on the value of the guarantee or mortgage.

4. Conclusion

In essence, the auction price limit for mortgage execution can be seen from its status and function. The lower and upper limits are absolute requirements that must be present when submitting an auction application. Legislation prohibits mortgage execution auctions without a limit. The auction limit serves as a means of transparency and legal protection for debtors. A fair reconstruction of the mortgage execution limit regulation is achieved by reconstructing the procedure for determining the mortgage execution limit, namely: a). increasing debtor involvement in the limit value determination procedure, and b). debtors can object or rebut the limit value. Unfair liquidation values due to their too low values must be removed and replaced with a new concept. The lowest fair value is determined by 3 options and the highest value used is determined among: a). Taxable Object Sales Value (NJOP), b). 70% of the market price, and c). the value of the guarantee or mortgage.

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