

## Legal Protection for Liability Right Holders in Liability Execution Claims

Anita Christiani<sup>1</sup>, Sundari<sup>2</sup>, Monica Dewi Widianingsih<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, Universitas Atma Jaya Yogyakarta, Indonesia

[anita.christiani@uajy.ac.id](mailto:anita.christiani@uajy.ac.id), [sundayustitia@yahoo.co.id](mailto:sundayustitia@yahoo.co.id), [monicadwrt@gmail.com](mailto:monicadwrt@gmail.com)

### Abstract

*Mortgage as a guarantee agreement gives the creditor the right to execute the collateral object himself. The execution of one's own power is regulated in Article 6 of the Mortgage Law. This means that the execution of the Mortgage object can be carried out without the approval of the Debtor or the court fiat. However, in reality the Mortgage Law has not fully provided legal protection to Mortgage Holders in terms of the execution of Mortgage Rights. The purpose of this research is to find out and examine the juridical factors that cause resistance in the execution of Mortgage objects and to find out and examine how the legal protection is given to Mortgage Holders. The type of research in this study uses normative legal research, through a statutory approach. In data management and conclusion drawing is done by thinking process or reasoning deductively. The results of the research and discussion show that the juridical factors that cause resistance in the execution of Mortgage Rights are that the Mortgage Holder does not carry out the proper procedures, namely stating the creditworthiness of bad debtors and refusal of credit restructuring. Economic factors are also the cause of resistance due to the low auction value, the debtor still feels capable of carrying out his achievements and the debtor wants to sell the object of the mortgage. Legal protection for Mortgage Holders as Preferred Creditors has not been fulfilled and the Mortgage Law does not regulate conditions such as resistance and/or lawsuits from Mortgage Providers.*

### Keywords

execution; lawsuit; mortgage; auction; parate execution; legal protection; credit restructuring.



## I. Introduction

Economic development is the most important part in the national development of a country so that it can develop. National development carried out is an effort by the state in terms of realizing welfare for its citizens. The state through its government in this case has duties and responsibilities so that national development aimed at the welfare of its citizens can be realized. That is, a country absolutely has an obligation to prosper every citizen. In its development, a country through the Government as a state administrator, continues to make various plans in the form of a planned, directed and continuous work program. This is done for the realization of welfare for every citizen. One of the facilities that have a strategic role in harmonizing and balancing the elements of the development trilogy is banking. This strategic role is the main function of the Bank as a vehicle that can collect and distribute public funds effectively and efficiently. Based on the principle of economic democracy, the Bank supports the implementation of national development in order to increase the distribution of development. Equitable development results in economic

growth and national stability towards increasing people's living standards. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Economic growth is still an important goal in a country's economy, especially for developing countries like Indonesia (Magdalena and Suhatman, 2020).

Banks that are part of a banking institution that runs its business by collecting funds from the public in the form of savings. The deposit funds are then distributed by the Bank to the public in the form of credit loans and/or other forms. This aims to improve the standard of living of the people, in accordance with the definition of the Bank in Article 1 number 2 of the Banking Law. Credit is the most important business activity of the Bank. The term credit itself comes from the Roman "credere" which means to believe or "credo or creditum" which means I believe. The definition of credit is regulated in Article 1 number 12 of the Banking Law which reads:

"Credit is the provision of money or an equivalent claim, based on an agreement or loan agreement between the Bank and another party which requires the borrower to repay the debt after a certain period of time. certain amount of interest, compensation or profit sharing;

Based on the definition of credit above, it can be said that a credit loan is given by the Creditor (Bank) to the Debtor if there has been an agreement or agreement on the credit agreement. Considering that the Bank in carrying out its business adheres to the principle of prudence, the Bank must carefully manage funds which are deposits from customers. The funds are channeled back to the public in the form of credit loans with the aim of maintaining the health of the Bank. Bank health includes maintaining and maintaining public trust, carrying out bank and intermediation functions, as well as smooth payment traffic. Therefore, the Bank must feel confident that the funds lent to the public will be returned on time along with the interest and on terms that have been mutually agreed upon by the Bank and the Customer concerned in the credit agreement.

A credit agreement is an agreement or agreement made based on an agreement between the two parties, namely the creditor and the debtor, so that a credit loan can be implemented. The credit agreement is made by the Bank as a creditor who has a higher bargaining position. The customer as a Debtor is only given the opportunity to approve or disapprove of the credit agreement. This means that credit loans can be given if the Customer or Debtor has earned the trust of the Creditor. There are several elements contained in the definition of credit, namely:

- a. Trust;
- b. Deadlines;
- c. Degree of risk
- d. The achievement or object of credit is not only given in the form of money, but can also be in the form of goods or services.

Banks must have a vision and mission that favors the community in terms of lending. So that the Bank also gains the trust of the public to keep the money held in the bank. This is intended so that the community participates in realizing prosperity in society. In addition, the distribution of credit funds by creditors (banks) must pay attention to the principles in a credit grant. These principles are intended so that Creditors can know the ability and willingness of the Debtor (Customer). The goal is to be able to return the loan funds in accordance with the specified time. The principles that need to be considered by the Bank are: (1) Character (Personality); (2) Capacity (Ability); (3) Capital (Capital); (4) Collateral (collateral); (5) Condition of Economy (Munir Faudy, 2002:21-22). Of the five principles above, the most important principle is the collateral in a credit

agreement. Collateral provided by the Debtor as a guarantee of repayment to the Creditor (Bank). The collateral submitted should be higher in value than the credit loan submitted.

In the explanation of the Mortgage Law, it is explained that if the Debtor breaks his promise, then as the first Creditor, the Mortgage Holder has the right to sell the object of the Mortgage through a public auction according to the provisions of the relevant laws and regulations. With the right of precedence over other creditors. That is, if the Debtor can no longer fulfill his performance (default), then the Creditor as the Holder of the Mortgage object has the right to sell the Mortgage object through a public auction which is the authority of the State Property and Auction Service Office (KPKNL). The sale of the object of Mortgage as a legal consequence of the non-performance of the performance which is the responsibility of the Debtor. Furthermore, in Article 20 of the Mortgage Law which regulates more clearly regarding the execution. The execution is based on Article 6 of the Mortgage Law, on its own power or based on the executorial title contained in the Mortgage Certificate. The Mortgage Certificate which contains the statement with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD" has the same executive power as a court decision that has obtained permanent legal force based on Article 14 paragraph (3) of the Mortgage Law. This Mortgage guarantee agreement provides a special position for Creditors to obtain debt payments from the Debtor because of their prevelegiance rights. Article 1134 of the Civil Code regulates prevelegiance or privileges. Prevelegiance right is a right that is granted to a creditor, whose fulfillment takes precedence over other creditors solely based on the nature of the receivables. It can be said that this position provides legal protection to the Creditor as the Mortgage Holder.

Mortgage as a guarantee agreement gives the creditor the right to execute the collateral object himself. Execution on its own power or parate executive is regulated in Article 6 Jo. Article 20 paragraph (1) of the Mortgage Rights Act. This means that the execution of the Mortgage object can be carried out without the approval of the Debtor or the court's fiat. In addition to parate execution, against the guarantee of Mortgage, the execution of Mortgage objects can also be carried out through fiat execution in the District Court based on Article 14 paragraph (2) and paragraph (3) of the Mortgage Law. However, in reality this Mortgage Law has not fully provided legal protection to Creditors, especially in terms of the execution of Mortgage Rights. This is related to the number of debtors who are in default. However, when the Creditor wants to execute the object of the Mortgage, it is constrained due to a legal process or a lawsuit filed by the Debtor against the object of the Guarantee of the Mortgage. This happened in the case of Bank NISP's auction against its customer, Koo Ay Tjen. Koo Ay Tjen then filed a lawsuit or resistance against the execution plan by Bank NISP. The execution was carried out by Bank NISP because Koo Ay Tjen had not paid off his debt since May 2008 in the amount of Rp. 400,000,000,-. After the May payment arrived at the auction, Koo Ay Tjen has made efforts starting from the post-May 2008 payment, requesting the abolition of fines and interest, to bringing the party who wants to buy the collateral for the Mortgage object but Bank NISP refuses. With this reason, Koo Ay Tjen filed a challenge or a lawsuit to the District Court because according to him the auction was not carried out through a court order, although the opposition submitted by Koo Ay Tjen was later rejected by the Panel of Judges. Therefore, this problem is examined by the author in the form of legal research entitled "Legal Protection for Mortgage Holders in Lawsuit Execution of Mortgage Rights".

## **II. Research Method**

The type of research conducted is normative legal research, namely research conducted by examining secondary data. Normative research has an object of study related to the rule or rule of law. Normative legal research is research that is carried out or focuses on positive legal norms in the form of laws and regulations relating to the execution of Mortgage Rights in terms of a normative point of view.

## **III. Result and Discussion**

### **3.1 The Juridical Factors of Occurrence of Resistance in the Execution of Mortgage**

Execution of the Mortgage is carried out like the execution of a Court decision which has permanent legal force. The execution begins with a reprimand and ends with the auction of land encumbered with mortgage rights. Execution of mortgage under Article 6 Jo. Article 20 of Law no. 4 of 1996 concerning Mortgage Rights, explains that the Mortgage Holder can execute the object of the Mortgage directly. The Mortgage Holder carries out execution without the need for approval from the Debtor. However, the Mortgage Law with all its conveniences, in practice there are legal problems. The legal problem experienced by the Mortgage Holder is the difficulty of obtaining repayment of the receivables with the execution mechanism of the Mortgage with the execution parate. The Mortgage Holder who will carry out the execution parate, is faced with resistance and/or a lawsuit from the Mortgage Provider. The grantor of the Mortgage Rights aims to delay the auction or at least inhibit the interest from selling the auction. The efforts made by the Mortgage Provider are one of the causes of the lack of auction enthusiasts. The resistance and/or lawsuits from the Mortgage Provider also hinder the control of the Mortgage object by the Auction Winner. (Interview of Sleman District Court Judge, Mr. Kun Triharyanto Wibowo, SH, M. Hum., on November 24, 2021).

These varied efforts provide legal uncertainty to the object of guarantee that is charged with the Mortgage Rights. As a result of resistance and/or lawsuits in the execution of the Mortgage, the Creditor as the Beneficiary of the Mortgage becomes a party who is very at risk of experiencing losses. The risk in question is the risk of the counterparty fulfilling its obligations. In other words, credit risk is a risk of loss caused by the inability (default) of the debtor to pay his debts, both principal and interest or both. The following are some examples of resistance along with the background of the filing of a lawsuit or resistance from the Debtor or a third party.

#### **a. The Permata Bank case (Decision Number 107/Pdt.G/2016/PN.Bgr )**

Bogor District Court Decision 107/Pdt.G/2016 is an example of a case related to the object of mortgage. In the decision, it was stated that Alm. Usman Yusuf owns a plot of land and a house building on the land in accordance with SHM No. 2602/Pabaton with Letter of Measurement No. 709/1985 dated December 2, 1985 on behalf of the late. Usman Yusuf. The land area is 362 m<sup>2</sup> which is located on Jl. Dadali/A. Yani No. 23 Bogor Ex. Tanah Sareal Kec. Bogor City Sareal Land which in this Court Decision is the object of dispute. Usman Yusuf died on June 27, 1993 in accordance with Death Certificate No. 474-3/44. TS dated June 30, 1993. Thus, Usman Yusuf has an heir in accordance with the Certificate of Inheritance which is registered in the Register by the Camat Tanah Sareal 593/16 - KTS dated January 15, 2013. The heir is Hj. Komalaningsih as the wife of the late. Usman Yusuf, Ika Anggraini bint M. Usman Yusuf, Eko Ardiansyah bin M. Usman Yusuf, Wahyudi Pratama bin M. Usman Yusuf, M. Vicky Dewandah bin M. Usman Yusuf



who are the Plaintiffs. In this case the Plaintiffs are against the Defendants, namely Rahmat Putra Jaya (Defendant I), Ramlis Sidi Rusli Taher (Defendant II), Budi Harsono (Defendant III), Ny. Masnah Sari, SH (Defendant IV), Bogor City Land Office (Defendant V), PT. Bank Permata, Tbk, formerly PT. Universal Bank, Tbk/PT. Bank Bali, Tbk (Defendant VI), James Herman Rahardjo (Defendant VIII), Dede Munajat, SH (Defendant VIII), State Auction Office/Bandung State Auction Receivables Agency (Defendant IX), Danny Sihanouk Demita (Defendant X). Previously, the Plaintiffs had filed a lawsuit at the Bogor District Court Number 73/Pdt.G/2013/PN.Bgr, in which the case in the lawsuit had the same parties, the same object and the same subject matter as the a quo case. Then on May 7, 2009 the Panel of Judges of the Bogor District Court made a verdict on Case No. 73/Pdt.G/2013/PN.Bgr. In the Exception, Defendant VI or PT. Bank Permata, in the Principal Case stated that the Plaintiffs' claim was unacceptable and sentenced the Plaintiffs to pay court fees.

This Permata Bank case resulted in a loss to Bank Permata because the Bogor District Court Judge's Decision Number 107/Pdt.G/2016/PN.Bgr decided that the Credit Agreement between Budi Harsono and PT Bank Universal had no legally binding force. Whereas in this case, Permata Bank was not proven to have committed an unlawful act. Regarding the implementation of the auction of disputed objects conducted by Bank Permata, it is in accordance with the provisions for the execution of mortgage rights and also the provisions of the instructions for implementing the auction. The decision of the Bogor District Court judge certainly gave a loss to Bank Permata in a credit agreement because Bank Permata was the Mortgage Holder.

#### **b. The case of Koo Ay Tjen and Bank NISP**

Koo Ay Tjen is a customer of Bank NISP who fought against the planned auction execution. Koo Ay Tjen is an old customer of Bank NISP. Koo Ay Tjen owes the bank, with the current remaining debt of around Rp 400,000,000. The debt was previously paid by Koo Ay Tjen in an orderly and smooth manner. However, when his business encountered difficulties, the payment of the debt faltered. May 2008 was the last deposit paid by Koo Ay Tjen. After the payment of debts had stalled, Koo Ay Tjen made a post-May 2008 payment and was rejected by Bank NISP on the grounds that Koo Ay Tjen's account had been closed. Then, Koo Ay Tjen contacted Bank NISP to apply for the elimination of fines and debts. This was also rejected by Bank NISP, which then conducted an auction without court fiat. During the auction, Koo Ay Tjen had brought in someone to buy the guarantee at a low price, but Bank NISP refused. The opposition against Bank NISP was filed because Koo Ay Tjen was disappointed with the actions of Bank NISP in rejecting the various efforts made by Koo Ay Tjen. Moreover, because of the auction conducted by Bank NISP without going through a district court.

#### **c. Decision No. 172/Pdt.G/2020/PN.Smn**

Sofyan Hendra and Etika Suryawati are the Plaintiffs who filed a lawsuit against PT Bank Rakyat Indonesia (Persero) Tbk, cq Adisucipto Yogyakarta Branch Office, State Property and Auction Service Office (KPKNL) Yogyakarta and In the main case, the Plaintiffs explain:

- That the Plaintiffs are debtors who borrowed money from PT Bank Rakyat Indonesia (hereinafter referred to as PT BRI) with a total initial loan of Rp. 1,500,000, - ( one billion five hundred million rupiah) in 2013, then the Plaintiff made a top up to Rp 2,000,000,000,- (two billion rupiah); Whereas the loan which was initially secured was 3 (three) parcels of land belonging to the Plaintiffs, but at this time 1 (one) parcel of

land has been sold as collateral to pay off some of the arrears to PT BRI of approximately Rp. 1,000,000,000 (one billion rupiah);

- Whereas the other 2 (two) parcels of land are still being used/guaranteed to PT BRI;
- Whereas the 2 (two) plots are:
  1. A plot of land with Ownership Rights Number 7309, covering an area of 101m<sup>2</sup>, on behalf of Etika Suryawati (Plaintiff 2), which is located in Sidoarum, Godean, Sleman.
  2. A plot of land and building with Ownership Rights Number 6124, covering an area of 123m<sup>2</sup>, on behalf of Sofyan Hendra (Plaintiff 1), located in Sidoarum, Godean, Sleman.

In proving this case, the Plaintiffs who only attach Identity Cards do not meet the requirements specified in Article 1866 of the Civil Code, namely at least two pieces of evidence. Having a minimum of evidence in the trial is an important requirement in filing a resistance and/or lawsuit. So that every lawsuit that goes to court has evidence that will strengthen the resistance and/or lawsuit of the parties in court. The Plaintiffs in the main case stated that the lawsuit was filed due to the low auction value. Against a low auction value which the auction value is not the authority of the Yogyakarta KPKNL, in accordance with the provisions of Article 44 in PMK No.27/PMK.06/2016 concerning the instructions for implementing the auction which regulates:

Article 44 paragraph (1) to paragraph (3):

(1) Seller determine the limit value, based on:

- a. assessment by the Appraiser; or
- b. appraisal by

(2) The Appraiser as referred to in paragraph (1) letter a is a party that conducts an independent assessment based on its competence.

(3) The appraiser as referred to in paragraph (1) letter b is a party originating from the Seller, who performs an appraisal based on a method that can be accounted for by the Seller, including the curator for art objects and antique or ancient objects.

Article 44 clearly shows that the auction value is not the authority of the KPKNL. In this case, the KPKNL only carries out its duties as a state institution assigned to auction. So that the Plaintiffs should not make KPKNL as Defendant II in this case. KPKNL which only conducts auctions based on the seller's request and also cancels the auction based on the seller's request and by the Auction Officer. The articles in PMK No.27/PMK.06/2016 concerning Auction Implementation Guidelines which regulate the cancellation of auctions include Article 28 paragraph (1) and Article 29.

Article 28 and Article 44 PMK No.27/PMK.06/2020, indirectly stipulates that, all decisions related to the auction, are made by the auction applicant. KPKNL is only an institution that carries out the execution auction process. Therefore, it is necessary to pay attention to the factors that cause resistance and/or lawsuits in the execution of Mortgage Rights, which consist of juridical factors and economic factors. Juridical factors that cause the Mortgage Provider to file a fight and/or lawsuit, because the Mortgage Holder does not carry out the proper procedures and credit restructuring. The Mortgage Holder, before executing the Mortgage, needs to determine the Mortgage Provider in a state of default. The Mortgage Provider who is determined to have defaulted, will receive a collection effort and three (3) warning letters or subpoenas.

Mortgage holders also file a fight and/or lawsuit based on economic factors. The economic factors in question are:

1. Low auction value;
2. The mortgage giver still feels capable of carrying out his achievements, even though the deadline has passed;
3. The Mortgage Giver wants to sell the Mortgage object himself.

The Mortgage Provider who files a fight and/or lawsuit against the object of execution because the auction value is too low. Although in PMK No.27/PMK.06/2020, it has been stipulated regarding the determination of the limit value. In the execution auction there are still Mortgage objects that are sold not according to the actual value of the object. Thus, the Mortgage Provider objected to the low auction value. The determination of the limit value on the object of execution is determined by the Appraiser or Appraiser of the Auction Applicant/ Mortgage Holder. The Auction Applicant should consider the principle of justice for all interested parties, especially the Mortgage Provider who is the owner of the object to be executed. The determination of the limit value must be based on the principle of justice, so that no interests of the parties are sacrificed. The determination of the limit value as regulated in Article 44 PMK No.27/PMK.06/2016, is determined by the Appraisers and Appraisers of the auction applicant, then the auction applicant should prioritize the value of justice in determining the limit value.

### **3.2 Legal Protection for Mortgage Holders**

#### **a. Legal protection**

Protection according to the Big Indonesian Dictionary is an act (knowing the rules) to protect and protect legal subjects, based on applicable laws and regulations (Ministry of Education and Culture, 2010). Legal protection can also be interpreted as all efforts that guarantee legal certainty to provide protection to the public in general (Ellia Wuria Dewi, 2015: 30). Mortgage holder is an individual or legal entity domiciled as a debtor based on Article 9 of the Mortgage Law. The Mortgage Holder or Creditor in this case is the Bank. In the Mortgage Law, it has been clearly regulated regarding the rights granted to the Mortgage Holder to provide legal certainty and protection to the Mortgage Holder. In accordance with the purpose of the enactment of the Mortgage Law, it is sufficient to provide protection for creditors as parties who have the potential to experience the greatest losses in terms of credit agreements if the debtor is in default or in default.

Article 6 of the Mortgage Law is in line with Article 1178 paragraph (2) of the Civil Code on Mortgages, based on Article 6 of the Mortgage Law, it explains that in the case of the Deed of Granting Mortgage it has been agreed that the first Mortgage Holder has the right to sell the object of the mortgage right if the debtor is in breach of contract, the creditor holding the first mortgage can directly sell the object of the mortgage on his own power by means of an auction through the Office of the State Assets and Auction Service (KPKNL). Article 14 paragraphs (1), (2), (3) of the Mortgage Law provides protection for Creditors regarding the issuance of Mortgage certificates. Article 14 paragraphs (1), (2), (3) of the Mortgage Law reads:

- (1) As evidence of the existence of a Mortgage Right, the Land Office issues a Mortgage certificate in accordance with the applicable laws and regulations.
- (2) The Certificate of Mortgage as referred to in paragraph (1) contains rah-irah with the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD".
- (3) The Certificate of Mortgage as referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for the grosse mortgage deed as long as it concerns land rights.

As proof of the existence of Mortgage Rights, the Land Office issues a Mortgage Certificate. The issuance of this certificate serves to protect Creditors who want to sell the object of Mortgage by using a Mortgage Certificate. This Mortgage Certificate has the same power as the judge's decision.

Article 20 of the Mortgage Law provides protection for the Creditor holding the Mortgage, where the Creditor has the right to apply for execution and conduct an auction

of the Mortgage object in order to fulfill the rights of the Creditor if the Debtor defaults or defaults. Creditors have the right to sell the object of Mortgage through public auctions or underhand sales.

The protection given to the Mortgage Holder in the Mortgage Law only regulates the protection that will be given if the Creditor breaks his promise, namely by execution. Execution of the object of Mortgage in which the Creditor will get a debt refund after the execution auction. Meanwhile, legal protection for Creditors if there is a resistance or lawsuit filed by a third party, resulting in the Creditor being a party that has the potential to suffer losses, namely by canceling the credit agreement. Even though the Mortgage Law has provided an execution mechanism based on its own power without obtaining prior approval from the Debtor, execution by court fiat with executorial power on the Mortgage certificate and under-hand sales by mutual agreement. However, the purpose of the execution mechanism has not been effective in its implementation. In practice, creditors who should receive repayment of a receivable are delayed due to resistance and/or lawsuits. If it is based on the principle of justice, creditors should easily get their rights to debt repayment as long as it is in accordance with the agreement and in accordance with the laws and regulations. However, this is not the case, because it collides with the existence of human rights, one of which is the submission of opposition and/or lawsuits by the Debtor. Thus, creditors will experience losses due to increasingly bad loans, no settlement of bad loans and no other efforts that can be made by the Bank, except following the case process.

#### **b. Application of the Mortgage Law The Mortgage**

Law is a strong guarantee institution that can be imposed on land rights. Previously, the provisions regarding Mortgage Rights had been regulated in Article 51 of the Basic Agrarian Law. However, its application as a guarantee institution has not been effective due to the absence of laws and regulations that fully regulate this mortgage guarantee institution. After a long wait, the Law on Mortgage was enacted in 1996. With the enactment of this Law, certain creditors were given legal standing and certainty over other creditors. The purpose and objective of the establishment of this statutory regulation is to facilitate and simplify the implementation of the determination to authorize Creditors to manage the object of the Mortgage, the determination of matters relating to the application for the clearing of the object of the Mortgage, and the deletion of the Mortgage. To guarantee legal certainty as well as to provide protection to interested parties and the strongest is easy and sure in the execution of its execution, if the Debtor breaks his promise.

Legal certainty provided for Creditors in the Mortgage Law is the position as a Preferred Creditor or a preferred position, as regulated in Article 1 number and Article 4 paragraph (1) letter a in the explanation of the Mortgage Law. The position as a preferred creditor is given after the Mortgage certificate is issued. Although the position of the Preferred Creditor has been granted, the Mortgage Certificate only provides protection when the Debtor is in default but does not provide protection regarding the opportunity for the Debtor to file a lawsuit according to Dr. Surach Winarni, at an interview on December 17, 2021. The lawsuit filed by the Debtor against the object of Mortgage based on the above case descriptions was filed on the basis of a lawsuit against the Law as an action by the Debtor to delay the execution process.

In the Law of Rights. Collateral contains three (3) execution methods that can be carried out by the Creditor if the Debtor is in default or in default. The choice of execution in this Mortgage Law is given to guarantee the position of the preferred Creditor and the



position of the Debtor so that no party is harmed. In accordance with Article 6 of the Mortgage Law which regulates the right as a preferred creditor who can sell the object of the mortgage with his own power and take repayment of his receivables before other creditors. Article 6 is carried out if the Debtor has been declared in breach of contract or in default by giving a written warning or summons in advance by the Creditor. The sale of the object of Mortgage by the Creditor in Article 11 paragraph (2) letter e, which reads:

"a promise that the first Mortgage Holder has the right to sell on his own power the object of the Mortgage if the Debtor breaks the promise"

Based on Article 11 paragraph (2 ) letter e is to give the authority to carry out the execution as referred to in Article 6 without having to first request or obtain execution fiat from the court. Execution based on the executorial title of the Mortgage certificate as regulated in Article 14 paragraph (3) which reads:

"The Mortgage Certificate as referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for gross. akte Hypotheek as long as land rights"

In contrast to the execution under Article 6 by parate execution or on its own power and without a court order. Execution based on the strength of the Mortgage Certificate, the Mortgage Holder submits an application for the execution of the Mortgage Certificate to the competent Head of the District Court. Furthermore, the execution can also be carried out by selling under the hands on the basis of the agreement of both parties as regulated in Article 20 paragraph (2) and paragraph (3). The purpose of this underhand sale is to obtain the highest price from the object of the Mortgage without harming the other party. Sales under the hands on the basis of the agreement of these two parties in its implementation is the power to sell. Based on the explanation in the interview Dr. Taufiq El Rahman, SH, M.Hum., this power to sell is based on the agreement of both parties, which gives the power to sell to the Bank, where there is no written agreement on this power to sell, so that the Bank sometimes commits fraudulent behavior towards the price of the Mortgage object. which has been agreed with the Debtor. Implementation of Mortgage When looking at the number of objects of Mortgage being sued by the Debtor and third parties when it will be executed by KPKNL, the provisions of the Mortgage Law have not been fully implemented. Where are the debtors or third parties who file an execution lawsuit because they feel they are still able to carry out their achievements even though they are stuck or have objections when the object of the Mortgage will be executed. Even though it is clear that the Debtor has breached his promise so that the Creditor must carry out executions to get his receivables repaid.

#### IV. Conclusion

Regarding the results of the research based on the formulation of the problem raised, it can be concluded as follows:

1. The juridical factors that cause resistance in the execution of the Mortgage are the Mortgage Holder/Creditor not carrying out the proper procedure, namely stating the credit credibility of the Mortgage Giver has failed as basis for execution. The second juridical factor is the refusal of credit restructuring proposed by the lender who has good intentions. In addition to juridical factors, resistance in the execution of Mortgage is also caused by economic factors, namely the auction value is too low, the Mortgage Provider still feels capable of carrying out his achievements and the Mortgage Giver wants to sell the Mortgage object himself. The legal basis for the resistance and/or lawsuit filed by the Mortgage Provider is an unlawful act. The purpose of filing a

- challenge and/or lawsuit is to delay the execution time. So that the Mortgage Provider has a deadline to be able to make payments before the Mortgage object is executed.
2. The legal protection given to the Mortgage Holder when referring to several laws and regulations, the protection provided to the Mortgage Holder in practice does not provide legal certainty as a preferred Creditor, and in the Mortgage Law it does not regulate the conditions that may occur, namely the existence of resistance and/or lawsuits filed by the Mortgage Provider against the object of the Mortgage. Against several cases of resistance that have been described above, the judge's consideration in rejecting the resistance or the lawsuit is not based on his position as a preferred creditor. However, based on the evidence that was lacking at trial. Thus, the judge's decision shows that the position of the creditor is not considered by the judge in giving a decision on the case of resistance submitted by the Plaintiffs.

## References

- Arba, M., dan Mulada, DA, (2020), Hukum Hak Tanggungan, Cetakan Pertama, Sinar Grafika Offset, Jakarta Timur.
- DNY, Perlawanan Eksekusi Lelang Bank NISP Kandas, <https://www.hukumonline.com/berita/a/perlawanan-eksekusi-lelang-Bank-nisp-kandas-lt4c594a3da06e6?page=all>, diakses 17 November 2021.
- Fransisca Kusuma Aryani, dan Gunawan Djajaputra, Perlindungan Hukum Bagi Kreditor Pemegang Hak Tanggungan Terhadap Sengketa Agunan yang Mengakibatkan Batalnya Perjanjian Kredit, Jurnal Hukum Adigama, Volume 1, Nomor 1, Tahun 2018.
- Kitab Undang-Undang Hukum Perdata.
- Magdalena, S., Suhatman, R. (2020). The Effect of Government Expenditures, Domestic Investment, Foreign Investment to the Economic Growth of Primary Sector in Central Kalimantan. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). Volume 3, No 3, Page: 1692-1703.
- Masjchun, SS, (1998), Himpunan Karya Tentang Hukum Jaminan, Liberty, Yogyakarta.
- Peraturan Bank Indonesia Nomor 14/15/PBI/2012 tentang Penilaian Kualitas Aset Bank Umum.
- Peraturan Menteri Keuangan Republik Indonesia Nomor 213/PMK.06/2020 tentang Petunjuk Pelaksanaan Lelang. Berita Negara Republik Indonesia Tahun .2020 Nomor 1601.
- PN.Stabat, Pengertian Eksekusi Hak Tanggungan, <https://www.pn-stabat.go.id/2015-06-06-01-33-28/eksekusi-hak-tanggungan.html>, diakses 17 November 2021.
- Putusan Pengadilan Negeri Bogor Nomor 107/Pdt.G/2016/PN.Bgr.
- Putusan Pengadilan Negeri Sleman Nomor 172/Pdt.G/2020/PN.Smn.
- Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). Volume 3, No 1, Page: 276-286
- Sobana, DH, (2016), Hukum Perbankan di Indonesia, Cetakan Pertama, CV Pustaka Setia, Bandung.
- Sutedi, A., (2018), Hukum Hak Tanggungan, Cetakan Ketiga, Sinar Grafika, Jakarta.
- Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda yang Berkaitan Dengan Tanah. Lembaran Negara Republik Indonesia Tahun 1996 Nomor 42, Tambahan Lembaran Negara Republik Indonesia Nomor 3632.