

## **Juridical Study of Liability Execution Auctions Limit Value Below the Value of Loans**

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### **ABSTRACT**

Credit agreements made by banks with customers are a function of banks as channeling funds to the public, besides that banks also function as collectors of public funds. More results obtained from the distribution of funds than the collection is income for the bank which is known as the spread. However, focusing on spreads poses a risk that the customer (debtor) will not be able to collect it so that it is detrimental to the bank, therefore banks must apply the precautionary principle in extending credit to customers. If the debtor cannot be billed, the bank can execute the guarantee provided by the debtor as one of the requirements for obtaining credit, this is to cash the guarantee as a payment for bills that are not paid by the debtor. One way of execution permitted by law is through an auction of mortgage execution by way of registering the auction to the KPKNL and will be carried out by a Class I Auction Officer. In the auction there are two prices, namely the limit price and the auction price, each of which is the minimum bid price. auction offered by the seller (auction requester) and the maximum price of the auction offer given by the auction participant and is the winner of the auction. The problem that often occurs in the implementation of this auction is the determination of the limit price which is considered too low by the debtor so that it is detrimental to the debtor to obtain the maximum value for the auction, resulting in a lawsuit in court for the cancellation of the auction results due to unlawful acts. This happened in the decision of the District Court Number 144/Pdt.Bth/2020/PN Sby where Sri Suarwati et al., as the plaintiffs, filed a lawsuit to cancel the auction of the execution of mortgage rights for alleged unlawful acts to determine the collateral limit value that was too low for the collateral assets. resulting in the defendant being in debt even though the collateral has been auctioned off and released from it. Through the principle of justice, the auction institution should be able to provide happy results for all parties so that the KPKNL as the official State institution holding the mortgage execution auction and the Class I Auction Officer must be active and not only based on procedural completeness, but also be able to read the auction that will be submitted. the implementation of whether there is a violation of law in it because the deed of the minutes of auction issued is included in the authentic deed.

Keywords : Guarantee execution auction, Auction limit value, Auction cancellation

### **ABSTRAK**

Perjanjian kredit yang dilakukan oleh bank dengan nasabah merupakan fungsi dari perbankan sebagai penyalur dana ke masyarakat, selain itu bank juga berfungsi sebagai penghimpun dana masyarakat. Hasil lebih yang diperoleh dari penyaluran dana dibandingkan penghimpunan tersebut adalah penghasilan bagi bank yang dikenal dengan spread. Akan tetapi berfokus terhadap spread memberikan resiko tidak dapat ditagihnya nasabah (debitur) sehingga merugikan bank, oleh karenanya bank harus menerapkan prinsip kehati-hatian dalam menyalurkan kredit kepada nasabah. Apabila debitur tidak dapat ditagih maka bank dapat mengeksekusi jaminan yang diberikan oleh debitur sebagai salah satu persyaratan perolehan kredit, hal tersebut untuk menguangkan jaminan itu sebagai pembayar atas tagihan yang tidak terbayar oleh debitur. Salah satu cara eksekusi yang diizinkan oleh undang-undang adalah melalui lelang eksekusi hak tanggungan dengan cara pendaftaran lelang ke KPKNL dan akan dilaksanakan oleh Pejabat Lelang Kelas I. Dalam lelang terdapat dua harga yakni harga limit dan harga lelang yang masing-masing adalah harga minimum penawaran lelang yang ditawarkan oleh penjual (peminta lelang) dan harga maksimum penawaran lelang yang diberikan oleh peserta lelang dan merupakan pemenang lelang. Permasalahan yang seringkali terjadi dalam pelaksanaan lelang ini adalah penentuan harga limit yang dianggap terlalu rendah oleh debitur sehingga merugikan debitur untuk memperoleh nilai maksimal atas lelang

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mengakibatkan terjadi gugatan pembatalan hasil lelang dengan pasal perbuatan melawan hukum. Salah satu gugatan tersebut adalah perkara di Pengadilan Negeri Surabaya dengan perkara Nomor 144/Pdt.Bth/2020/PN Sby yang dilakukan oleh Sri Suarwati dkk., selaku penggugat melakukan gugatan pembatalan lelang eksekusi hak tanggungan atas dugaan perbuatan melawan hukum untuk penetapan nilai limit jaminan yang terlalu rendah terhadap aset jaminan yang mengakibatkan tergugat tetap bertanggung hutang meskipun barang jaminannya telah dilelang dan dilepas darinya. Melalui prinsip keadilan, seharusnya lembaga lelang dapat memberikan hasil yang membahagiakan bagi semua pihak sehingga KPKNL sebagai lembaga resmi Negara penyelenggara lelang eksekusi hak tanggungan dan Pejabat Lelang Kelas I harus bersikap aktif dan tidak hanya berlandaskan kepada kelengkapan prosedural semata, tetapi juga mampu membaca lelang yang akan dilaksanakannya apakah ada pelanggaran hukum di dalamnya karena akta risalah lelang yang dikeluarkannya adalah termasuk dalam akta otentik

Kata Kunci: Lelang eksekusi hak tanggungan, Nilai limit lelang, Pembatalan lelang

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## **INTRODUCTION**

The country's economic growth is marked by the development of community businesses which result in increased capital requirements by the business community, the additional capital can be done through own capital (internal) or using capital from outside parties (external). One of the external capital is to obtain a loan or credit at a banking institution. Banking institutions play a role as a positive catalyst for driving the wheels of the economy, because with the disbursed funds, it is hoped that the community's business will progress so that it becomes bigger and can then develop and give birth to new businesses. The function of banking institutions is to attract and collect public funds that currently have excess funds by giving rewards in the form of interest income and distributing these funds to people in need in return for obtaining certain fees that must be obeyed and paid by the debtor as one of the terms of the loan. (Ismail, 2010) The collection of public funds by banks is to accept public deposits in the form of savings and time deposits and in return the bank gives interest to customers, while the distribution of funds to the public is a bank's business activity to provide and lend funds to the public in the form of credit (debt) and for that the bank will withdraw rewards in the form of interest and administrative expenses. (Abdulkadir Muhammad and Rilda Murniarti, 2000) Banks as business entities also need profits as is done by business entities in general, the profits obtained by banks are the difference between interest income and administration compared to the interest expense paid to depositors. To obtain these benefits, banks need borrowing customers who are larger than depositors because if the depositor is greater than the borrower, the bank will experience a minus (loss) known as Negative Spread.

The principle of prudence must always be carried out by banks in relation to the distribution of these funds, even though banks as business entities are required to obtain large profits. So that banks do not easily release these funds to the public who are at risk of default and ultimately result in losses. As part of the implementation of the precautionary principle, careful analysis of customers, especially regarding their ability to pay. For this reason, when the bank will provide loans to borrowing customers, the bank must research and analyze in advance whether the customer is able and can repay the loan, in order to avoid the occurrence of non-performing loans. The process for researching and analyzing is commonly referred to as the 5'c of credit analysis or the 5 C's principle. (Uswatun Hasanah, 2017)

To provide legal protection to the parties for credit agreement transactions, a guarantee institution is needed that is able to cover the rights and obligations of the parties in this credit agreement so as to reduce the possibility of agreement failure (default) so that the legal function is to provide certainty, and legal protection for people who need. One of the elements of the 5'c of credit as a parameter of bank prudence is the provision of collateral (collateral) by the debtor; the provision of the collateral is solely

intended to bear or guarantee payment or settlement of the credit agreement, the debtor is generally required to provide a guarantee in the form of collateral that can be valued in money, of high quality, and easily liquidated with a minimum value of the amount owed to it. With the intention that if the debtor is unable to repay the debt in the future, the collateral can be disbursed to cover the repayment or repayment of the remaining debt. (Djoni S. Gazali and Rachmadi Usman, 2010) This is in accordance with Article 1131 of the Civil Code (KUHPer.) that state:

"All the debtor's property, both movable and immovable, both existing and new in the future, are borne by all individual engagements".

Collaterals used by banks are generally material guarantees, namely guarantees that give absolute rights to an object to use and are not limited to the transfer of the collateral from the original owner of the rights (the debtor) to the creditor. The characteristics of material guarantees include direct attachment to the object, can be maintained by the holder, always follows the object and can be transferred. Material collateral can be classified into 2 (two) namely in the form of movable objects and immovable objects. (Herowati Poesoko, 2013) The recording or binding of credit guarantees is carried out based on the object of the object and there is a law that regulates it, if the collateral is in the form of movable objects, then the encumbrance or binding is carried out using a pledge, fiduciary, and cessie. If the collateral is in the form of a ship with a certain weight, the encumbrance or binding is by using a mortgage, whereas if the collateral is in the form of land and buildings, the encumbrance or binding is carried out by using Mortgage on the land. (Rachmadi Usman, 2001)

In this research, the researcher will raise about material guarantees related to land and buildings where to submit them through the creation of Mortgage Rights. In accordance with Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT) that Mortgage Rights are collateral rights over land for repayment of certain debts, which give priority to certain creditors over other creditors. other. In the sense that if the debtor is in default, the creditor holding the Mortgage has the right to sell through a public auction the land that is used as collateral according to the provisions of the relevant legislation, with prior rights over other creditors. The stages for the imposition of mortgage rights are divided into two stages of activity, namely:

1. Granting of mortgage, which is preceded by a debt agreement with land and building collateral, through the making of the Deed of Granting Mortgage by the Land Deed Making Official (PPAT); and
2. Registration of the mortgage right to the Land Office, based on Article 13 paragraph (5) of the Mortgage Law (UUHT)

Mortgage rights will move from the date the Mortgage land book is registered. (Kartini Muljadi and Gunawan Widjaja, 2005) The advantage of the mortgage certificate is that it can function as a *grosse acte hypotheek* and legally has executive power because there are the same orders as court decisions. namely the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD" so that the certificate is then interpreted as having the same executive power as a court decision. In addition, the execution of mortgage objects that must be carried out through auction has advantages compared to other sales methods such as sales by buying and selling, renting and exchanging because they are considered to contain various positive things, namely: (F.X. Sutardjo, 2007).

1. Fair, because the auction must be conducted openly or transparently and objectively, its implementation is led by the Auction Officer as a public official who is authorized by law;
2. Quickly, the auction can be carried out after being announced to the public so that the object and the rules of the auction can be known in advance so that at the time of the direct auction a

transaction can be held and the winner will be obtained immediately. Payment for this auction fee is made in cash.

3. Realizing a fair price, due to a competitive and transparent bidding system. The limit price or auction limit is determined by the seller based on a fair and appropriate price in accordance with market value and all participants are given the widest possible access to submit bid prices;
4. Legal Certainty, the results of the auction will be made an authentic deed called the Minutes of Auction by the Auction Officer which is a state acknowledgment of the legality of ownership of the object of the auction and if you want to change the name, the winner of the auction will only show the deed of the minutes of the auction.

Regarding the advantages of implementing a fair auction, this is directly a translation of one of the legal principles of auction, namely "Justice" which means that in the process of implementing the auction, it must be able to fulfill a proportional sense of justice for each interested party. This principle is to prevent the occurrence of partiality of the auction official to certain auction participants or to side only with the interests of the seller. Especially in the execution of the execution auction, the seller may not determine the limit price arbitrarily which results in harming the executed party. (Rachmadi Usman, 2016)

Minister of Finance Regulation Number 93/PMK.06/2010 concerning Auction Implementation Guidelines explains the prices created in the auction, namely:

1. Limit value is the minimum price of the goods to be auctioned and determined by the Seller/Owner of the Goods.
2. Auction Price is the highest bid price submitted by the auction participant which has been ratified as the winner of the auction by the Auction Officer.

The determination of the limit value is proposed by the seller/owner of the goods (the Auction Applicant) and is the power of the Auction Applicant, but related to the Principle of Justice, the Auction Officer also has the power to examine, question and evaluate the value because in this case the Auction Officer is the person who was given special authority by law to carry out the sale of goods by auction. So as a burden from this authority, the Auction Officer is sworn in to always prioritize the Principle of Justice in every decision he makes. So that the limit value proposed by the Bid Applicant before it is approved for publication must be evaluated on its validity because Fair here does not only concern formal principles but also concerns material principles, although material justice is often considered biased by some people.

Related to this research, which took the decision of the Surabaya District Court Number 144/Pdt.Bth/2020/PN Sby as the object of research where in this case there was a lawsuit over the implementation of the Mortgage Execution auction by the Surabaya State Property and Auction Service Office (KPKNL) on the object of the auction. in the form of land and buildings located in Kenjeran Village, Surabaya and Kalisari Village, Surabaya. The case involves:

1. Sri Sudarwati, Heru Siswanto, Tri Wariyanti, Lilis Listyorini, Febriana Wurjaningrum, Noviana as Plaintiffs;
2. Trisno Father Santoso, Octavianus, Stevie Lianto, Willy Hindranata, Sherly Dian Meirawati, PT. Bank Danamon Indonesia Tbk Surabaya Branch (Bank Danamon), Hendra Wijono, KPKNL Surabaya as Defendants; and
3. Siswari, Sudarnoto, Sri Mulyarini as Co-Defendants.

Whereas this case began with the provision of Working Capital credit in the form of a checking account amounting to Rp. 2,500,000,000 (last) and a Term Credit for 36 months in the amount of Rp. 1,500,000,000, which was given by Bank Danamon to Sudarnoto and Sri Mulyarini (debtor) with Collateral in the form of a plot of land and building located in Kenjeran Village, Surabaya with an area of 140 m<sup>2</sup> with

a Building Use Rights Certificate (SHGB) No. 174 on behalf of Sri Mulyarini and a plot of land and building located in Kalisari Village, Surabaya with an area of 242 m<sup>2</sup> with Certificate of Ownership (SHM) No. 854 on behalf of Siswari. So that the amount of credit received by the debtor is Rp. 4,000,000,000.-. Due to the debtor being unable to fulfill the payment obligations, Bank Danamon then performed the Transfer of Billing Rights (Cessie) which was notarized by the Deed of Sale and Purchase Agreement of Receivables Number 26 dated 25 April 2019 by Notary Sherly Dian Meirawati, S.H.

Due to the absence of the ability to pay, the holder of Cessie then conducted an auction of the object of the collateral with the auction value won amounting to Rp. 2,480,000,000, - so that the Plaintiffs considered this to have violated the sense of justice where with the auction, the rights of the Plaintiffs to the object the auction has been lost and they still have to bear the difference in the remaining debt because the auction price is smaller than the debt obtained, so the Plaintiffs then filed a lawsuit to the Surabaya District Court for cancellation of the auction with lawsuit Number 144/Pdt.Bth/2020/PN Sby.

Studying the subject matter and the judge's decision on the lawsuit, the researcher is interested in researching the issue of auction price below the value of the debt related to the auction of Mortgage execution and taking the research theme, namely Juridical Study, Juridical Study of Mortgage Execution Auction whose Limit Value is Below the Debt Value.

## **RESEARCH METHOD**

The type of research used in this research is normative juridical research that examines objects using secondary data sources as research base data. (Soerjono Soekanto, 2004)

The research in this paper will be carried out by means of library research. A literature study is conducted to find out as much as possible the opinions and or concepts of experts who have conducted research or writing beforehand regarding acts against the law. Then the data collection technique is carried out by collecting materials in the form of books and other library materials that have to do with the problem of unlawful acts both in criminal law and in civil law.

The approach method in this research is carried out by using a legal approach (statue approach) and a case approach (case approach) through studies and cases based on laws and regulations. (Zainuddin Ali, 2010)

The data used in this paper is secondary data obtained from primary, secondary and tertiary legal materials. Sources of legal materials needed are in the form of:

1. Primary legal materials: materials sourced from laws and legal regulations related to the theme of this research, including:
  - 1) UU no. 4/1996 concerning Mortgage on Land and Objects Related to Land.
  - 2) UU no. 5/1960 concerning Basic Agrarian Regulations.
  - 3) KMK No. 40/PMK.07/2006 concerning Instructions for Auction Implementation.
  - 4) PMK No. 93 of 2010 concerning Auction Implementation Guidelines, and
  - 5) Vendu Reglement Staatsblad 1908:189 concerning Auction Rules
2. Secondary legal materials: materials that can provide an explanation of primary legal materials such as books and literature that can be used as guidelines for discussing unlawful acts.

Tertiary legal materials, namely, materials that provide guidance on primary legal materials and secondary legal materials. For example law dictionaries and websites.

## **RESULTS AND DISCUSSION**

## **Determination of The Limit Value for the Execution of Liability Rights Below the Value of Debt**

Auction as an alternative method of selling goods by the State Property Service and Auction Office (KPKNL) which aims to determine a fair price for an item and is part of the national civil law system has various good characteristics and has advantages compared to other sales methods, such as openness, freedom, accountability, providing legal certainty, quickly and efficiently. The purpose of the sale through auction is to sell in general the confiscated property of the defendant, and from the proceeds of the sale the money will be paid to the plaintiff in the amount stipulated in the decision. (Luluk Tri Utami, 2017)

The word auction comes from the Latin word *auktion*, which means a gradual increase in price, in other words, the submission of prices is carried out in stages through the struggle of more than one person. Therefore, the auction must be carried out in front of many people (with an upper bid from each participant) and for that it must be led by a competent official, namely the auction official. The auction institution which is regulated through the legal system is intended to meet the needs of the community for the fair and transparent execution of ownership rights as well as to provide protection and legal certainty. The legal system in Indonesia classifies auction as a special method of sale whose process is different from buying and selling in general, so that it is regulated separately from the *Vendu Reglement* so that it is a special law (*lex specialis*). This specificity is partly due to the transparent nature of transactions and must be led by a public official, namely an independent and professional auction official. (Ngajarno, F.X. Nunung E. laksito, 2006).

In accordance with the origin of the word, it can be concluded that auction is a sale of goods which is carried out openly and to the public through price offers by participants in writing or verbally with the bid value increasing to achieve the highest price. One of the obligations of holding an auction is that it must be preceded by an auction announcement so as to be able to create a collection of buyers as a feature of the auction. The principle contained in the auction is the principle of openness, namely all people have the same right to know the plan and participate in the auction and win the auction. The principle of justice implies that in the auction process each participant has the same position so that each has the right to submit bids without any intervention from other parties. The principle of legal certainty requires that the auction results have full legal force so that the auction winner can exercise his full rights over the auction object he won. The principle of efficiency requires that the auction be carried out quickly and at a relatively low cost because the implementation is in one place and the time of the transaction has been determined. (Indrilistiani, 2007) Due to its specificity, auctions are regulated separately from the legal rules of ordinary buying and selling and were originally intended for the public. This means that anyone can take advantage of the services of the state auction unit to sell goods by auction which is reflected in private and public functions. (Sutardjo, 1993)

Some of the advantages of auctions compared to ordinary buying and selling transactions, namely: (F.X. Sutardjo, 2007).

1. Fair, because the auction is open or transparent and objective, where all citizens have the same rights to participate in the transaction and can monitor the course of the transaction so that there is social control and security, because the auction is witnessed, led, and carried out by the Auction Officer as a given public official authority by law that is professional and independent;
2. Quickly, the auction is carried out within the specified time and at the specified place so that the process of submitting a price offer only occurs at that time and at a certain place so that the winner of the auction can be obtained instantly;

3. Realizing a fair price, due to a competitive and transparent bidding system. Bidders submit a minimum price according to the limit and then bidders will take turns submitting their bids until the highest bidder is declared the winner;
4. Legal certainty, the auction results will be made in an authentic deed called the Minutes of Auction by the auction official and with the Minutes of Auction the auction winner has full rights based on the law against the auction object won.

### **Mortgage Execution Auction**

Execution is an achievement by the losing party to the winning party due to the judge's decision in the Court so that the fulfillment of the execution and how it is carried out is regulated in the execution law. Regarding mortgage rights, if there is an execution decision by a judge, it can be ascertained that there has been a default on the debtor's obligations from one of the contents of the agreed agreement and the execution rights are in accordance with Article 6 UUHT stated "If the debtor is proven to be in breach of contract, then the creditor as the holder of the HT has the right to dispose of the HT object under his own control through an auction and to take payment of the receivables from the results of the relinquishment of the right and only in the amount of the invoice value".

Execution of Mortgage Rights is not an act of real execution where there are execution officers, objects of execution and owners of the executed goods, which then there are forced actions and refusals, but the execution in this case is related to sales through auction of Mortgage objects carried out by KPKNL and led by Officials. Class I Auction, then the proceeds are paid to the Creditor holding the Mortgage, and if there is more left then the excess is returned to the Debtor. UUHT provides a way for creditors holding Mortgage Rights if the debtor defaults or defaults, based on Article 20 paragraph (1) letters a and b of the UUHT, the creditor has the right to execute the Mortgage Guarantee through 3 (three) ways: (1) Parate execution; (2) Title Executive; and (3) Underhand sales.

The three executions of Mortgage above each have differences in their implementation procedures, as referred to for parate execution because defaulters usually carry out their own executions through the Office of the Wealth and State Auction Service (KPKNL) and the implementation is shorter, executorial title or based on a Certificate of Mortgage issued. subject to the Civil Procedure Law as regulated in Article 224 HIR/258 Rbg, in its implementation it must go through the determination of the Head of the Court, it takes a short time, while the execution of the sale under the hands of the implementation must meet several requirements, including an agreement between the Mortgage Provider (debtor) with Mortgage holders (creditors) and creditors can directly request the implementation of the auction sale to the KPKNL/Auction Officer. (M. Yahya Harahap, 2005)

After the enactment of Law No. 4 of 1996, the bank as a creditor rarely conducts auctions through the Court even though there is an addendum to conduct auctions to court, but with the MARI decision No. 3210 K/Pdt.G/1984 and Book II MARI 2007 edition Guidelines for the Supreme Court 3 of the Republic of Indonesia which requires fiat execution through the Court. In fact, the creditors in carrying out the auction process without going through the Court, so that it has an impact on the interest of the auction buyer, because there are often many obstacles when emptying the auction because the auction does not go through the Court. So the procedure for implementing an auction that already has an addendum (agreement) that chooses to go to court is still through the fiat execution of the head of the court where the object of the Mortgage is located. (Herowati Poesoko, 2013).

## **Determination of the Limit Value of the Mortgage Execution Auction below the Debt Value**

The execution of mortgage rights through an auction held by the Auction Officer is expected to fulfill a sense of justice for the parties (creditors and debtors) however, often there are many problems during and after the auction, for example an auction with a limit value setting below the market value and /or debtor's debt. The determination of the limit value is the right of the auction seller as referred to in Article 35 to 40 of PMK No. 93/2010, and Article 21 of the *Vendu Reglement Staatsblad* year 1908:189, which states that the determination of the auction limit is one of the requirements and is not confidential and is included in the auction announcement.

Determination of the limit value is carried out based on the results of the assessment from the appraiser with the auction limit value set with the lowest limit equal to the liquidation value so that the auction office has the authority to reject the auction application if it is not in accordance with the predetermined legal regulations. This is considered the right step to be able to better ensure the achievement of justice for the parties, especially for debtors whose ownership rights will be auctioned (Ria Desmawati Rianto, 2017).

The existence of a limit value in the auction is expected to encourage more aggressive bidding, not only as a risk compensation for not selling the auction object. Determination of the auction limit price that is not in accordance with the market price, resulting in the auction price being biased from a sense of justice, resulting in the limit price being unable to be a good measure in fulfilling a sense of justice. (Munir Fuady, 2013) In addition, the lower limit price than market prices result in the contribution of income to the regional treasury being not maximal. Therefore, it is very important to always set a limit price according to market conditions based on SPI (Indonesian valuation standard).

The determination of the limit value as a standard minimum value in auction sales aims to determine the lowest price limit for bids by auction participants so that if an auction offer is below the limit value, it can be immediately rejected. So that the auction cannot be carried out if there is no minimum price offer in accordance with the limit value and furthermore, the auction can be postponed or canceled if the auction applicant so desires. (M. Yahya Harahap, 2005)

Finally, the determination of the limit value is still controlled by the seller because the assessments from independent appraisers and internal appraisers only provide a general description of the limit value that can be set for the object of the guarantee. The opinion given is considered by the seller in terms of setting the limit value. The absence of a method for determining the exact limit value regulated in the law is a weakness in the law regarding the implementation of auctions.

And an Auction Officer is not entitled to determine the value of the auction limit because normatively he is tasked with holding auctions and is authorized to ratify the highest bidder as a buyer in accordance with applicable laws and legal regulations. So, if it is found that the limit value is set too low from the market value and shows a discrepancy in the normal price of the auction object, the auction official is only authorized to request the basis for submitting the limit value and then asks whether the procedure for determining the limit value is in accordance with the law. And to reduce this risk, it is necessary to establish definite and clear legal norms for the auction limit value, especially the auction for execution of mortgage rights.

The problem is that not all of the limit values reflect the market value or the estimated value of the auction object, so it seems that the determination of the limit value is the seller's policy so that the object can be immediately released from control and the receivables can be paid off. Several circumstances are often used as reasons for sellers to set a low limit value, including:



1. The value of the object of the mortgage has decreased/no longer matches the value when it was agreed upon.
2. The value of the object of mortgage is less than the total amount of principal and interest.
3. Objects sold are low on fans.

In the case of the auction limit value which is set below the selling value of the tax object (NJOP) or market value, it can be validated if the auction object has held repeated auctions but there are still no interested parties, but the seller must notify the debtor in advance about setting the limit value below NJOP or the market value, but before that, the debtor must be given the opportunity at least 3 (three) months to sell the auction object himself so that the owner obtains the appropriate value for the goods.

Based on PMK No. 27/PMK.06/2016 concerning Auction Implementation Guidelines (PMK PPL), the limit value must be determined based on the results of an assessment by an independent Appraiser (Article 1 Number 2 of the Regulation of the Minister of Finance, 2014), where the lowest auction limit value must be in accordance with the liquidation value determined presented in the Independent Appraiser's assessment report and the report is presented as a condition for submitting an auction, and based on the Independent Appraiser's report, the auction office has the right to reject applications that are not in accordance with the stipulated legal rules.

The basis of the independent appraiser's valuation used in the appraisal for auction purposes as referred to in the Exposure of the Draft Indonesian Appraisal Standard 336 (SPI 336) is the Market Value and Liquidation Value. Seller can determine Market Value as the first priority (upper limit) and Liquidation Value as the last alternative (lower limit) to set the Limit Value. In point 5.3 in the Exposure of the Draft Indonesian Valuation Standard 336 (SPI 336), the Market Value and Liquidation Value are discussed by the Appraiser in an appraisal report simultaneously, so that the seller can determine the Limit Value.

In determining the Market Value or Liquidation Value, the Appraiser needs to use an analysis or opinion of the exposure time that can be realized against the conditions of the two values in opinion. In the event that market conditions are uncertain or change significantly in a short time, the seller needs to reconsider. In uncertain market conditions, the Appraiser is required to be careful in analyzing the valuation carried out, the results can be expressed as an indication of Market Value or an indication of Liquidation Value. PMKPPL requires:

1. For limit price
  - 1) The limit price (reserved price) is the minimum price for auction items in an auction.
  - 2) The auction price is the highest bid price by the bidder and must be paid by the auction winner.
  - 3) The limit price is open/non-confidential and must be stated in writing and clearly in the auction announcement (for execution auctions).
  - 4) The limit price can be open/non-confidential or can be closed/confidential according to the wishes of the Seller/Goods Owner for a voluntary non-execution auction.
  - 5) KPKNL or Class II Auction Officer is not responsible for the auction limit value (Article 44 paragraph (4)).
2. Limit value limit:
  1. For the Voluntary Non-execution Auction for goods in the form of land and/or buildings is a minimum of Rp. 1,000,000,000.00 (one billion rupiah), the previous rule does not provide a limit (article 45 letter a).
  2. Specifically for the Execution Auction of Article 6 UUHT, Execution of Fiduciary Guarantee and Execution of Bankrupt Assets to Rp. 1,000,000,000.00 (one billion rupiah), the previous rule is Rp. 300,000,000.00 (three hundred million rupiah) (article 45 letter b).

3. The limit value for the Execution Auction of Article 6 UUHT, Execution of Fiduciary Guarantee and Execution of Bankrupt Assets is set at the lowest equal to the liquidation value (article 49).

PMK PPL has stated that the seller is fully responsible for the amount of the auction limit value for the execution of the mortgage by referring to the liquidation value contained in the independent appraiser's report. However, a problem arises when the liquidation value in the Independent Appraiser's report turns out to be below the value of the debt in arrears, this results in the value of the debtor's debt being still not sufficient and for that the debtor remains insured even though his collateral has been released so that the term "it has fallen is still overwritten. ladder". Is this what is desired in the conduct of the auction? Which indicates the seller's arbitrariness in the execution.

PMK PPL only regulates the implementation of the auction without any power to prevent losses from the debtor, this results in the unclear responsibility of the seller in the event that it has been arbitrarily applied to the debtor in implementing the auction limit value. Even though the seller as the proxy of the creditor has argued about the liquidation value obtained from an independent appraiser, but again that the appointment of an independent appraisal is from the seller so that the debtor does not have any power to try to influence the work of the appraiser.

Whereas the auction rules do not specifically stipulate the amount of the limit value of the auction object, but only a limitation is given that the lowest limit value is the same as the liquidation value made by an independent appraiser or appraiser. So if the limit value has no basis, it can be sued as an act against the law because it has deviated from the stipulated legal rules.

### **Legal Consequences for Too Low Limit Value**

One of the terms of the auction is the determination of the limit value (in this case the auction of mortgage execution), because it becomes the basis for the lowest price proposed by the auction participant at the time of the auction and also becomes a guideline by the auction official to hold and release the object of the auction, if not available. bidders who submitted higher bids (Tista, 2013).

Article 1 point 28 PMK PPL states that the right to determine the limit value is the seller, in this case for the non-execution auction process the mortgage is the creditor as the recipient and the holder of the mortgage. In article 44 paragraph (1) as stated above that to determine the limit value, the creditor must consider: (a) Assessment from an independent appraiser; and/or (b) Appraisal by an appraiser (an expert from the seller who is tasked with conducting an appraisal based on an appraisal method that can be accounted for by the seller, including in this case the curator and appraiser for art objects and antiques or ancient objects).

The lowest limit assessment produced by the appraisers/estimators is then used as the limit value by the seller or bidder, because PMK PPL only regulates the implementation of the assessment by the appraiser, therefore there is no obligation for the Appraiser and/or Appraiser to impose the value that has been made so that used as the limit value. Article 45 PMK PPL stipulates that the seller must base the determination of the limit value in terms of: (a) Non-execution auction of goods in the form of land and/or buildings, then the limit value is at least IDR 1,000,000,000 (one billion rupiah); (b) Execution auctions in accordance with Article 6 UUHT, fiduciary execution auctions, and bankruptcy estate auctions, the limit value is set at least Rp. 1,000,000,000 (one billion rupiah).

PMK PPL can also be interpreted that for the value of the mortgage under Rp. 1,000,000,000 (one billion rupiah), the limit value must be the same as the liquidation value. The problem that often occurs is the use of an appraisal method that cannot be made firm because it is the authority of an independent appraiser and as a result the Debtor feels aggrieved and then takes legal action by suing the court in the

country where the domicile of the Creditor is located. Purnama Sianturi (Purnama T. Sianturi, 2008) studied the lawsuit over the limit value, which is a large part of the lawsuit for the cancellation of the auction, where it happened because of the standard agreement treatment in the implementation of the credit agreement. Banks as creditors should pay attention to several things before the credit agreement is effectively enforced for the parties, namely informing and/or providing adequate warnings to customers regarding the existence and application of important clauses in the agreement before or at the signing of the credit/financing agreement, formulating in clear sentences, and provide sufficient opportunity for the debtor to know the contents of the agreement. (Johannes Ibrahim in Ni Luh Putu Widyantini, 2013)

Law No. 8 of 1999 concerning Consumer Protection, Article 18 paragraph (2) has stated that business actors are prohibited from intentionally making and placing standard clauses whose location and shape are difficult to see or cannot be read clearly or whose disclosures are difficult to understand. This is the most important thing in legal protection for debtors, because not all debtors understand the legal language and the legal consequences that will be received in the event of a breach of contract and therefore, due to "misunderstanding" then if there is an event of default then it should not be a pure mistake debtor, (May H.M. Munte and Santi Pebrina Sitorus, 2014) although to say that for the error there was a contribution from the bank as a creditor, the debtor is always imprisoned with a statement that he knows and accepts the contents of the signed agreement.

For this reason, Indonesian law has provided space for citizens who feel that their legal rights have been harmed in the auction process to file legal remedies to the court so that they can prove where the error is. And for the problem of setting a low limit value, the article in accordance with this lawsuit is about unlawful acts (PMH). This article on PMH is not only for actions that directly violate the law, but also for actions that directly violate decency, religion, and manners where the act is considered to violate the law even though indirectly. (Purnama T. Sianturi, 2008). Research from Purnama Sianturi on PMH's lawsuit related to the auction, among others:

1. A lawsuit based on the occurrence of error/negligence by the debtor in relation to the debtor's ownership of the collateral goods;
2. Claims on the basis of the occurrence of errors/negligence of the debtor on the terms of activities in the credit agreement include binding/agreements that are defective/illegitimate, mortgage rights;
3. The lawsuit on the basis of the error/negligence of the institution/execution institution, as the legal representative of the creditor (District Court, PUPN) includes acts regarding coercion/confiscation/SP3N/Blocking;
4. A lawsuit on the basis of an error/negligence in connection with the implementation of the auction and the consequences of the auction include the act of auction, unreasonable price, emptying;
5. Claims on the basis of other errors/omissions. (Bahder Johan Nasution, 2012)

### **Principles of Legal Justice in Determining Auction Limit Value Study on Decision on Lawsuit Cancellation of Auction Number 144/Pdt.Bth/2020/Pn Sby.**

The legal consequence of the auction by setting an inappropriate limit value as mentioned above is the granting of the right to sue in court as an effort by the government to provide legal justice to its citizens, so that citizens (in this case the debtor) can obtain their legal rights fairly and fair. One of the lawsuits against the auction and the object of research is the Surabaya District Court Decision No. 144/Pdt.Bth/2020/PN Sby dated November 9, 2020, in which the case involves:

1. Plaintiff/Denier  
Sri Sudarwati (as Defender I), Heru Siswanto (as Defender II), Tri Wariyanti (as Defender III), Lilis Listyorini (as Defender IV), Febriana Wurjaningrum (as Defender V) and Noviana (as Defender VI)
2. Defendant/Defendant  
Trisno Romo Santoso (as Defendant I), Octavianus Stevie Lianto (as Defendant II), Willy Hindranata (as Defendant III), Notary Sherly Dian Meirawati (as Defendant IV), PT Bank Danamon Indonesia Tbk Surabaya Branch Office (as Defendant V), Notary Mr. Hendra Wijono (as Opponent VI), Head of the Office of State Assets and Auction Services (as KPKNL) Surabaya (as Opponent VII).
3. Co-Defendant / Defendant  
Siswari (as Co-opponent I), Sudarnoto (as Co-opponent II) and Sri Mulyani (as Co-opponent III).

That the material of the lawsuit is a lawsuit for cancellation of the auction due to the determination of the limit value which is too low and is considered unreasonable so as to injure the legal rights of the objectors. For completeness, the legal case began with receiving a loan from PT Bank Danamon Indonesia Tbk Surabaya Branch Office (BDI) to Sudarnoto and Sri Mulyani in the form of:

1. Working Capital Credit Facility in the form of Current Account Credit in the amount of Rp. 1,700,000,000,- (one billion seven hundred million rupiah) with a loan term of 12 months; and finally, the facility was changed to Rp 2,500,000,000,- (two billion five hundred million rupiah).
2. Term Credit Facility in the amount of Rp. 1,500,000,000,- (one billion five hundred million rupiah) with a loan term of 36 months.

That this loan facility is guaranteed by:

1. Certificate of Building Use Rights Number 174, Situation Picture No. 15892/1995 in the form of a plot of land on which a building is located which is located in Ex. Kenjeran, Surabaya City, covering an area of 140 m<sup>2</sup> on behalf of Sri Mulyani.
2. Certificate of Ownership Number 854, Picture of Situation No. 10379 of 1984 in the form of a plot of land on which a building is located which is located in Ex. Kalisari, Kec. Sukolilo, Surabaya City, covering an area of 242 m<sup>2</sup> on behalf of Siswari (formerly a joint property between Drs. Soedarmadji Harijono (late) and his wife Siswari).
3. Personal loan in the name of Siswari (formerly a joint property between Drs. Soedarmadji Harijono (late) and his wife Siswari).

Because the debtors (Sudarnoto and Sri Mulyani) were in default, there was a transfer of claim rights (Cessie) and mortgage rights to third parties based on the Deed of Sale and Purchase Agreement No. Receivables. 26 dated April 25, 2019 drawn up before Notary Sherly Dian Meirawati, S.H. and finally an auction of the mortgage was held on August 8, 2019. That the value of the transfer of receivables in the deed was considered so low that it was suspected that there was malicious intent to control the debt guarantee with a value below the market, so that the transfer could therefore be considered invalid/null by law. This is evidenced by the results of the highest bidding in the auction for the two guarantees amounting to Rp. 2,480,000,000 (two billion four hundred eighty million rupiah), while the value of the debt is Rp. 4,000,000,000 (four billion rupiah). the difference that results in the debtor still having debt to the creditor while the collateral has been auctioned off by the creditor. So that the objectors filed a lawsuit to cancel the auction because there was an alleged unlawful act by setting a guarantee limit value that was too low, so for that reason the legal product related to the auction must be declared null and void.

During the trial process, the parties have made legal efforts as well as possible and each has shown the arguments and supporting evidence related to the case, and after conducting a study, research and evidence, the panel of judges decided to: Reject exceptions and conventions from the opponent

1. Rejecting the claim from the Defendant
2. Punish the Dissenters to pay court fees

Reviewing the judge's decision based on the considerations taken when it is associated with theories, concepts and principles of applicable laws and regulations, namely:

### **Exception Misplaced Party**

The Defendants stated that Siswari, Sudarnoto, and Sri Mulya Rini as co-participants against I, II and III were wrong because these parties were part of the heirs of Drs. Soedarmadji Harijono (late) so it should be considered as part of the Objectors. The judge's consideration is that placing the parties is the right of the objector so that there is no misplaced term or lack of parties, therefore the exception for the wrong placement of parties cannot be an excuse.

Based on the classification of the position of the defendant/opponent and co-opponent, it is not officially regulated in the laws and regulations, but in judicial practice it depends on a case by case basis. The difference between a Defendant and a Co-Defendant is that the Co-Defendant only submits to the content of the judge's decision in court because this Co-Defendant has not done anything (a deed)

Retnowulan Sutantio and Iskandar Oeripkartawinata said that in practice, the term Co-Defendant is used for people who do not control the disputed goods or are not obliged to do something, only for the sake of completeness of a lawsuit must be included. Those in the petition are only asked to submit and obey the judge's decision. 1642 K/Pdt/2005 in which the Supreme Court is of the opinion that it is "included as the party being sued or at least as a Co-Defendant. This happens because of the necessity of the parties in the lawsuit to be complete so that without suing the others, the subject of the lawsuit is incomplete. However, once again, the placement of Co-Defendants in making the lawsuit is seen in the case-by-case context and how the judge considers this.

### **Demands for Payment of Lack of Debt to the Debtor**

Whereas in the execution of the mortgage execution auction, the highest bid obtained was Rp. 2,480,000,000 (two billion four hundred and eighty million rupiah) so that according to the creditor, the remaining outstanding debt was Rp. 3,907,342,689.58 (three billion nine hundred seven million three hundred forty-two thousand six hundred and eighty-nine points fifty-eight), so that the debtor is therefore asked to pay the debt shortfall (principal + interest + penalty).

The panel of judges considered that the claim was unfounded because with the auction and cessie, the claim rights from BDI as the creditor bank had shifted so that if the cessie value was below the debt value, it was the responsibility of the creditor bank as the party that transferred the claim rights. Therefore, the demand for the remaining payment was rejected by the panel of judges.

Based on Article PMK PPL which states that "In the execution of Article 6 UUHT execution auction, fiduciary execution auction, and bankruptcy estate execution auction, the limit value is set at least equal to the liquidation value", where the liquidation value should be adjusted to, at a minimum, equal to the debt value. which is in arrears by the debtor so that the fair principle in the law of auction can be fulfilled without harming the two parties. However, what often happens is that creditors continue to impose auctions with a "liquidation" value, which according to them is the result of calculations from an Independent Appraiser and/or Appraiser so that they base it on that value. Because the auction value is below the value of the debt, the debtor still has a debt to the debtor while the guarantee for the debt has been transferred by the creditor, but the creditor continues to collect debt repayments based on Article 1311 of the Civil Code

which reads "All objects of the debtor, both movable and immovable. move, both those that already exist and those that will only exist in the future, become the responsibility for all individual engagements.

Article 1311 of the Civil Code has a different spirit from the law of auction, because Article 1311 of the Civil Code covers debt transactions without a process of releasing collateral such as auctions, where in that article the substance is an agreement that fails to pay (default) so the creditor can request payment or fulfillment receivables with debtor assets both current and in the future, which is usually due to bankruptcy.

Whereas in this opinion, the judge saw the reason from the creditor bank where he felt that even though the material security that followed the debt had been released, he could still collect the lack of debt, it did not make sense, because when the creditor bank transferred the claim rights and mortgage rights to a third party. then the agreement between the creditor bank and the debtor is null and void because one of the parties has acted against the contents of the agreement, namely transferring the collateral.

Therefore, in this case, the judges' consideration was correct because each party was seated in their respective positions. So that there is no action that can harm each party.

### **Auction Cancellation Lawsuit due to Too Low Auction Value**

That due to a default by the debtor (Co-Defendant) resulted in the creditor transferring his claim rights through the sale and purchase agreement (Cessie) which was notarized by Notary Sherly Dian Meirawati, S.H., with deed No. 26 dated April 25, 2019, where the value of the transfer is less than the value of the claim on the creditor. This raises suspicions about the existence of malicious intent (*mensrea*) in the form of an intentional transfer of collateral with a low value so that the auction value of the mortgage guarantee does not match the value of the debt and/or market value, so that the collateral asset can be purchased at a cheap price. And this is detrimental to the interests of the debtor to obtain the maximum value of the collateral assets so as to help the economic difficulties of the plaintiffs

The judge's consideration of the lawsuit is that the implementation of the agreement has been carried out as well as possible, and from the statements of the Plaintiffs the procedure for the transfer of receivables and the implementation of the auction has been carried out in accordance with the laws and regulations in force in Indonesia, so it is impossible to cancel the auction. And for this reason, the Plaintiffs cannot show evidence of illegal acts committed during the process of transferring receivables up to the auction, so that there is not enough reason to cancel the results of the auction or even the deed of transfer of receivables.

Whereas the auction price which is below market value has been carried out by the Defendant in accordance with the value stated in the deed of transfer of receivables so that in this case the holder of the mortgage object cannot be charged with an unlawful act and the Defendant argues that he has carried out the procedure in accordance with the provisions of the legislation. , so the reason the price was too low was rejected by the panel of judges.

The auction limit value for the execution of the mortgage is determined by the seller, while for a voluntary auction, the owner of the auction item sets the limit price and the amount of the determination is free. The limit value is made with the aim that the goods to be auctioned can at least fulfill the purpose of the auction, namely to protect the debtor/owner of mortgaged goods from the evil intentions of the buyers to play with the price of the goods. So that prospective buyers/auction participants will buy with a minimum value according to the price determined by the seller. If the participant bids below the limit value according to the rules, it will be rejected automatically. If the auction cannot be carried out in accordance

with the specified limit value, the auction process can be postponed or canceled if the seller wishes. (M. Yahya Harahap, 2005)

In addition to the legal study of the case with the Surabaya District Court Decision Number 144/Pdt.Bth/2020/PN Sby for the auction cancellation lawsuit, there are also similar previous cases concerning the lawsuit for determining the low limit value, namely:

1. Case No. 274/Pdt.G/2013/PN.Bdg. regarding the lawsuit against the law by H. Arifin Marahayu and M. Tio Agung Santika to PT. Bank Mega Tbk for the auction with a limit value below the NJOP for the object of collateral so that the auction must be cancelled. The judge's decision in this case is to reject the lawsuit for cancellation of the auction and authorize the sale and purchase of the auction.
2. Case No. 75/Pdt.G/2011/PN.Yk. regarding the lawsuit against the law by Ir. Thomas Eddy Susanto and Diana Listyorini Surya Sunandar to PT. Bank Bukopin for conducting an auction with a limit value below the market value so that the auction must be cancelled. The judge's decision on this case is to cancel the sale and purchase of the auction.

For the implementation of the auction which is deemed not to fulfill the sense of justice, the lawsuit that can be submitted to the court is regarding the article against the law because it is reasonable to suspect that an act committed by the creditor that deviated from legal principles to the detriment of others. The act against the law is regulated in Article 1365 of the Civil Code where this article formulates the law being opposed is the norm, both legal norms and/or other norms that apply in society. The conditions for an unlawful act are: (Rosa Agustina, 2003).

1. Someone must do something (Er moett een daad zijn verricht);
2. The act is against the law (Die daad moet onrechmatig zijn);
3. The act must cause harm to another person (De daad moet aan een ander schade heb bentoeg gebracht);
4. The act was due to a fault that could be inflicted upon him (De daad moet aan schuld zijn te wijten);
5. There is a causal relationship between actions and losses.

That the auction is basically to provide a sense of justice for the seller and the buyer through a transparent and open bargaining mechanism, so that in the event that a limit value is determined below the market price or the agreed fair price, the act can be presumed to be against the law so that the settlement must also be done through legal channels.

In the auction rules it has been stated that in order to be able to conduct an auction, the creditor must give a written warning to the debtor and give the debtor time to release his assets in order to reach the desired price, so this is sometimes considered as "fairness" in auctions by most people (especially creditors), if it turns out that within the stipulated time limit the debtor is unable to release according to the price he wants, the creditor based on Article 6 of the UUHT will revoke the debtor's right to further withdraw the release process by the creditor. And for that creditor will try to sell it in the form of execution of mortgage rights, both parate and auction, so that the debtor's obligations in arrears can be paid off. While the principle of "fairness" here is not only that but justice must be carried out thoroughly both before the auction until the completion of the auction, where creditors and debtors can start with mediation regarding the settlement of obligations and the assistance process for releasing mortgages, it is hoped that the same meeting point can be reached. It's mutually beneficial for both parties and that's the true spirit of "fairness".

Sometimes the judge in deciding this case is only based on formal evidence, where if the procedures carried out are in accordance with the law, in this case the creditor's actions cannot be blamed because they have met the specified requirements. While the article against the law is only interpreted to the

positive law so that if it is in accordance with the procedure then there is no law that is deviated so that the lawsuit against the law is not fulfilled. Meanwhile, if the judge is careful, then the act of determining a low limit value can be considered an act against the law because it has injured a person's right to the right to a decent living.

In legal case no. 144/Pdt.Bth/2020/PN Sby, the judge's decision to reject the lawsuit on the grounds that there is no appropriate argument for the unlawful act, then the judge is a positivist judge, where the decision taken is only based on the completeness of formal evidence and not material element for the occurrence of the case, thereby harming the debtor as the owner of the mortgage object.

Based on the study of the case above, the judge's decision to reject the lawsuit can be considered as a conciliatory decision, because the judge firmly rejected the lawsuit and the defendant's reconvention because the auction results were not sufficient to pay off the debts of the Co-Defendants. So in this case the justice given by the judge is to place the case in accordance with the law of the engagement where there is a guarantee used to bind the parties, so that if the guarantee has been released by one of the parties, the engagement between the two is null and void and if there is a loss after the event is cancelled. by law, the loss cannot be re-engaged.

### **Application of the Principle of Legal Justice in a Limit Value that is Too Low**

One of the principles of auction law is fairness which implies that the auction must provide a proportional sense of justice for all interested parties. Proportional here means in accordance with the responsibilities of each actor so that it is in accordance with the established procedures. and KPKNL and Auction Officers are prohibited from siding with one party and are obliged to enforce the auction rules in accordance with the legislation, as well as sellers and debtors must also be professional so that there is no malicious intent to try to outsmart the other party solely for their interests. One of the things related to the principle of justice is the debtor's right to obtain the auction limit value in accordance with the condition of the auction object, so that the seller cannot arbitrarily set the limit price for the auction object. (Rachmadi Usman, 2016)

The study of the principle of legal justice in the auction is mainly related to the procedure for conducting the auction on whether it is in accordance with the rule of law? If it is found and it can be proven that there has been malpractice on the auction, the auction results can be canceled by law. For this reason, in an execution auction, debtors and creditors must pay attention to procedures for proper execution so that they do not harm both parties, including in this case the auction organizers. Therefore, if the auction has been carried out in accordance with the procedure, it can be ascertained that all parties have clearly obtained their respective portions and no one feels that their rights have been oppressed by the other party. And that is the function of making the rule of law, namely to protect one's rights from the exercise of the rights of others and there is no partiality in it and no one is benefited or harmed (John Rawls, 2011)

According to the pure procedural justice theory proposed by John Rawls. Rawls said that an adequate theory of justice must be formed with a contractual or procedural approach (through legislation), where the principles of justice that are chosen as the guidelines for a rule are really the result of mutual agreement of all free, rational, and independent persons. equal. Through this contractual/procedural approach, a theory of justice is able to guarantee the implementation of rights and at the same time distribute obligations fairly for everyone. So that justice will be achieved properly if all parties obey and carry out what has been outlined/determined, therefore justice and procedure are a complementary and inseparable relationship.



In an auction, the procedure that must be completed and adhered to is starting from the registration of the auction until the publication of the minutes of the auction because the highest bidder is already there, and all of that has been regulated in laws and ministerial regulations as implementing regulations. Included in this is the determination of the auction limit value, that in accordance with the rules for the lowest limit value it must be the same as the liquidation value determined by an independent appraiser, so if it turns out that the limit value is below the liquidation value, the principle of legal justice has been automatically injured and efforts must be made for that law to cure it. Based on the analysis, even though the creditor only needs to pay off debts through the auction results of the collateral object, the creditor is still obliged to pay attention to the appropriate value for the auction object, at least the limit value is below the appropriate market price (above the liquidation value) and other than that on the basis of the approval of the debtor as the owner of the dependent object, because the results of the execution auction will be paid by the auction winner to the creditor as the debtor's debt repayment then the remaining, if any, will be given back to the debtor as the owner of the object. But if the object is auctioned with a value that falls below the market price, so that the liquidation value should also look at the value of the debtor's debt, of course it will cause losses to the debtor. If the execution of the mortgage right turns out to be obtained at an auction value below the value of the debt, the auction can be reported to the Court and imposed as an unlawful act because there is an indication that it intentionally harms the debtor, which then the judge can cancel the auction because the auction process is unfair and the procedure violates the applicable rules, and after that in practice the judge can ask that the appraiser used by the seller can be held accountable in court for having determined the auction price based on the interpretation of its value. So that the Court can cancel the value of the execution carried out below the market price (if the value is too far from the market price, even though in PMK PPL the minimum is the same as the liquidation value) and the legal basis that can be used is Article 1365 of the Civil Code which reads every action who violates the law and causes harm to another person obliges the person who caused the loss because of his fault to compensate for the loss. Because as long as the creditor executes the object of the dependent within reasonable limits, there is no problem, but as long as the creditor conducts an auction for the execution of the object outside the limit, the execution auction can be canceled because it causes adverse effects to the debtor.

The implementation of the mortgage execution auction is carried out by the KPKNL as a government agency that has the authority based on the provisions of the applicable laws so that the execution auction is carried out according to a procedure. Because the government authorized to conduct the auction is the KPKNL, of course the KPKNL must conduct an execution auction in accordance with applicable rules such as applying the provisions of Article 6 of the Mortgage Law which states that the limit value must be determined by the seller based on the results of an independent appraiser. So that the determination of the execution auction set by the KPKNL can run according to certain limits, namely the limits according to the regulations such as implementing the regulations of the Minister of Finance, Mortgage Regulations and the Civil Code, and prior to the auction, the articles in the regulations must be considered. This applies so that there is no loss between the creditor and the debtor. And for this reason, KPKNL does not only act passively as long as the procedures have been fulfilled without further checking for compliance, because the responsibility of the KPKNL is actually not only as an auctioneer but also as a government tool to create prosperity and justice for the people

## **CONCLUSION**

Determination of the limit value is the right of the auction seller where it is regulated in Article 35 to 40 of the Regulation of the Minister of Finance Number 93/2010, and according to Article 21 Vendu

Reglement Staatsblad year 1908 number 189 which is one of the seller's requirements and is not confidential and included in the auction announcement. The limit value is made as a manifestation of the legal principle of auction, namely justice where by determining the limit value, the seller is not expected to be deceived by the buyer's offer and the price created is a joint decision. In the auction, the determination of the limit value is the right of the seller, where the mechanism is not clearly stated but based on the Regulation of the Minister of Finance No.27/PMK.06/2016 concerning Auction Implementation Guidelines (PMK PPL), the limit value must be determined by the Seller based on the the results of the assessment by an independent appraiser, in order to avoid erroneous assessment of the value by the seller due to the incompetence and incompetence of the seller. Whereas in PMK PPL it has been stated that the lowest limit value must be equal to the liquidation value of the assessment results from an independent appraiser with the hope that the value is generated and issued by a competent party so that the objectives of Justice can be achieved. If there is a limit value setting that is not in accordance with the PMK PPL rules, the debtor as the owner of the mortgage object can file a lawsuit for cancellation of the auction, before the auction process is carried out. Because the limit value must be notified in advance to the debtor.

That the determination of the limit value which is below the market value when viewed from the perspective of the principle of justice, is related to the fulfillment of the auction procedure by the seller. In this case, whether the seller has correctly carried out the procedure or is it only interested in closing the value of the bill. The principle of legal justice is to provide proportional and proportionate rights and obligations for creditors and debtors, which can only be assessed from the application of procedures in accordance with statutory regulations. In the case of case 144/Pdt.Bth/2020/PN Sby, the judge tried to do justice through his capacity as a case breaker by rejecting all claims, provisions and recommendations from each of the Plaintiffs and Defendants so that even though the auction price created was very low, it was already considered settlement to creditors where the value is far above the auction value.

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