

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

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Abstract: Every financial transaction in Sharia Banking is required to include a guarantee. This thing is to save the bank funds when customer does a default. The Sharia Bank based on Law number 4 of 1996 concerning the Mortgage rights have the rights to confiscate customer guarantees that have matured and there is no good willingness to pay. However, in practice, banks cannot carry out execution practices to make sales directly. Banks have to go through a long formal procedure to withdraw funds from the customer guarantees, and often encounter various kinds of obstacles. Researchers use two data sources, namely a primary data and secondary data. Methods of data collection, researchers conducted interviews and documentation observations. Data analysis by following the steps namely data display, data reduction, data editing, data analysis, and drawing conclusions. Testing of the validity of data in this research is triangulation of data sources and triangulation of methods.

Keywords : The Execution of Auction; Mortgage right; Productive Financing; Default

INTRODUCTION

National development is a sequence of sustainable development efforts that cover all aspects of the life of the society, nation and country, to carry out the task of realizing national goals as formulated in the Preamble to the 1945 constitution, namely to realize a prosperous society. Therefore national development must be carried out in all fields of life. In order to achieve a successful in national development, the capital factor is very essential. Indonesia is as a developing country, In fact, the population of small and medium enterprises (SMEs) Indonesia until mid-

2012 reached 51.26 million or 99.9% of the total companies in Indonesia. Small and medium enterprises (SMEs) almost 99.9% represent Indonesian business people.¹

This condition clearly illustrates that SMEs are the backbone of the economy in Indonesia. SME business players need access to the financial institution that can provide loan facilities, either for working capital or investment.² For those needs, it is necessary to have a party who will act as a creditor in charge of providing the funds for debtors. From the relationship between the creditor and the debtor, then creates a loan agreement or an agreement to provide credit facilities.

The current economic development in Indonesia has resulted in an increasing level of economic needs. The necessities of life and the income received by the community are sometimes very different. The income that a person receives is sometimes insufficient to meet the needs of the daily life so that humans have to find ways, so that their economic needs can be met. In fulfilling the needs of the daily life, everyone is always trying to find the ways to fulfill their economic needs, both basic needs and other needs. And if at certain time a person really needs additional funds or costs to meet other needs, then one way to get these additional costs are by borrowing money or debt.³

Basically, the provision of financing facilities can be done by anyone, as long as the person concerned has the ability to do so, through a loan agreement between the lender (creditor on one hand) and the loan recipient (debtor on the other hand). But in practice, the debtor always agrees to the loan agreement by the creditor even though the interest is very high. This is because the creditor has a higher position than the debtor.⁴ Creditor is usually has made a one side loan agreement (standard agreement) so that the debtor can only choose to agree or reject it (take it or leave it). To avoid the oppression of the debtor, it is determined that the only institution which can legally provide credit facilities are Bank Financial Institutions (LKB) and Non Bank Financial Institution (LKBN) and other individual parties on the condition that the provision of credit facilities must not be accompanied by very high interest rate.

Lending activities or credit activities are closely related to the existence of guarantees. The definition of guarantee in this case a special guarantee, not a general guarantee as regulated in article 1131 of the civil code of law. In the world of Banking, Banks are prohibited for giving a credit to someone without sufficient guarantee. The provision of article 24 of Law No.14 of 1967 concerning Banking principles expressly states that the Commercial Banks are prohibited from providing

¹Lutfi Walidani and Habib Adjie, "Legal Protection of Creditors Against the Execution of Mortgage (Analysis of the Decision of the Supreme Court of the Republic Indonesia Number 2859K/PDT/2011)," *Law and Civil Society* 8, no. 2 (2018): 117, <https://doi.org/10.26623/humani.v8i2.1377>.

²Luh Putu Ari Tiarna Dewi, "Execution of Bankruptcy Mortgage," *Acta Comitatus* 5, no. 1 (2020), <https://doi.org/10.24843/ac.2020.v05.i01.p09>.

³I Dewa Gede Agung Dhira Natsya Ora and Dewa Gde Rudy, "The Position of the Banking Institution as the Purchaser of the Mortgage Execution Auction on the Guarrantee" *Acta Comitatus* 6, no. 02 (2021), <https://doi.org/10.24843/ac.2021.v06.i02.p08>.

⁴Riza Purnomo Hadi, "Mechanism of Execution of Fiduciary Guarrantees After the Constitutional Court's Decision in the case of Debtors in Default (Study at the BPR Bank Office in Sampang Regency)," *The Scientific of Law* 26, no. 16 (2020).

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

credit to anyone without sufficient guarantee.⁵ Similarly, in Article 8 of Law No.10 of 1998 concerning amendments to Law No.7 of 1992 concerning Banking, it is stated that in providing credit, commercial banks must have confidence based on in-depth analysis of the debtor's ability and ability to repay loans in accordance with having promised. In the banking world, to secure loans, collateral is considered as a powerful tool. The bank as a creditor is always guided by the *CommanditeringsVerbood* principle which means that the bank does not want to bear the debtor's business risk with the credit provided.⁶

if it is connected with the nature of each rights holder, it is said that the debtor entrusts the authority over an item to the creditor for the creditor's own interest (as a guarantee for the fulfillment of the engagement by the creditor). This mortgage right is needed because sometimes there is an unilateral cancellation of the contract by the person who owes the debt to the debtor. And in the current era, bad loans often occur in the banking world, the existence of non-performing loans or will certainly have an abnormal impact on banking performance. This abnormal condition triggers the need for time to return to normal conditions.

In practice, the jammed of a credit is caused by two elements, firstly, from the banking side in carrying out the analysis is careless so that what should have happened, could not be predicted or miscalculated. Secondly, on the side of the customer intentionally not paying his obligations or willing to pay but unable to, for example, the credit being financed, experience a fire, flood, failure in his business, prolonged illness, demise, so that the ability to pay the credit does not exist.⁷

The economic activities can be carried out by everyone, both individual legal subjects and legal entities. The economic activities is an activity to run a business in the economic field which is carried out in the following ways : At first, it is carried out continuously and uninterruptedly or continuous activities. At second, it is carried out openly and legitimately not illegally in accordance with applicable regulations. At third, These activities are carried out in order to obtain benefits for themselves and others.⁸ With the development of those activities, it is also felt the need for sources of funds to finance the business activities. The relationship between the growth of economic activity or the growth of business activities is closely related to the financing sector. One of the sources of funding needed to meet business need is obtained through lending and borrowing activities. Lending activities can be carried out to banking institutions and other financial institutions. This is because the banking sector or other financial institutions are business partners for other non-financial service companies.⁹

⁵Mohamad Nur Yasin, "Pragmatisme of Islamic Banking in Completing the execution of Mortgage Objects (Study of Decision No. 116/Pdt.Plw/2015/PN.Kpn)," *AL-IHKAM: Journal of Law & Social Institution* 12, no. 1 (2017): 42–64, <https://doi.org/10.19105/al-lhkam.v12i1.1144>.

⁶Supianto, *Fiduciary guarantee law* (Jember: Garudhawaca, 2015), p. 10-11.

⁷Kasmir, *Bank and financial institution* (Jakarta: PT Rajawaliapers,2010), p.128.

⁸Tauratiya Tauratiya, "Overmacht: Juridical Analysis of Delays in Implementation of Achievements due to Pandemic Covid-19," *The Scientific Journal Mizani: Legal Discourse, Economic and Religion* 7, no. 1 (2020): 49, <https://doi.org/10.29300/mzn.v7i1.3094>.

⁹Supianto, *Fiduciary guarantee law*,p.9-10.

Today, the society cannot be separated from the important role of banking, from saving, borrowing, to conduct financial transactions, all of which use bank services. Bank comes from the Italian language, namely *banco* which means *bench*. This bench is used by bankers to serve their operational activities to customers. The term bench officially and popularly became a bank.¹⁰

As time goes by, Sometimes, something unexpected or even unimaginable happens, thus making a debtor unable to carry out his achievements including natural disaster such as floods, landslides, earthquakes, volcanic eruption, and the current covid-19 pandemic, which is a global disaster. Which affects all countries in the world, from the health sector to the economic sector.¹¹ In many cases of bad loans due to natural disasters, the banking position is often in a dilemma. Like the fruit of simalakama, on the one hand, banks must think about their fate in order to survive and not violate applicable regulations, but on the other hand, banks are required to provide a sense of humanity to customers who experience a destiny that is not desired by all parties. On the other hand, a bank which is established and operates must follow a set of rules and regulations that have been set by the relevant and authorized parties as part of the official intensity in a country.¹²

In the agreement of credit, in general, the rights and obligations of the parties include the debtor's right to receive the delivery of an amount of money as agreed in the credit agreement and the credit's obligation to submit the amount of money as agreed in the credit agreement. Beside that, there is a creditor's right to receive back the amount of money plus interest and the debtor's obligation to return the amount of money plus interest as agreed in the credit agreement. As long as the parties still carry out their rights and obligations in accordance with the agreement, then problems will arise if the debtor makes negligence (default) in returning the amount of money that he has borrowed in accordance with what has been agreed in the credit agreement. Moreover, in the execution of the guarantee/collateral (in the form of Land), problems often arise because the process is long and convoluted.

DISCUSSION

Implementation on Execution of Auction on Mortgage Rights for Productive Financing Due to Default because of Pandemic Impact at Bank Sulselbar Syariah Maros Branch

Mortgage has *paratexecutie* power which is the right for the creditors to execute mortgage rights on land without the knowledge of the defaulting debtor. Because the agreement is an accessory agreement or an additional agreement from the credit agreement which is the main agreement. This accessor agreement is carried out after the main agreement has been signed out by the parties. Thus, the agreement has given to rise to rights and obligations that must be fulfilled by each party. The debtor has an obligation to make installment or repayment of the receivables or the accessor agreement. It is not uncommon that the debtor has

¹⁰Malayu S.P. Hasibuan, *The Basics of Banking* (Jakarta:PT Bumi aksara, 2004), p.1.

¹¹M. Aqim Adlan, "Settlement of Non Performing Loans in the Islamic View" *An-Nisbah: Sharia Economic Journal* 2, no. 2 (2016): 145–86.

¹²M. Aqim Adlan, "Settlement of Non Performing Loans in the Islamic View," *An-Nisbah: Sharia Economic Journal* 2, no. 2 (April 2016): p. 145–186.

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

defaulted or has bad credit. A loan can be classified as a non performing loan when it is included in the category of substandard, doubtful and loss based on the business prospects, performance and ability to pay of the debtor.

In handling non-performing financing customers at Bank Sulselbar, the Maros Syariah Branch, they have made appropriate efforts through administrative warning letters and disbursement of solutions through deliberation. Bank Sulselbar Maros Syariah Branch offers strategies to ease the financing of customers who have difficulty meeting their obligations in installments. The results of the interview stated:

"In practice, banks have several alternative solutions for financing problems or defaulting debtors that can be carried out based on the ability and good faith of the debtor. The alternative settlements can be grouped into compromised settlements and non-compromised settlements. As an example of alternative compromised settlements that can be carried out by banks are restructuring of financing (restructuring) or rescheduling (rescheduling) for debtors who still have business prospects and the ability to pay.¹³

Problem financing should be resolved in a family way, especially in the midst of a pandemic, many businesses have closed and not a few have gone bankrupt, causing the loss of one's job or business. In the interview, stated that :

"In resolving non-performing financing, we will give a warning to troubled customers by giving a written warning. If a letter of reprimand is not obtained, then a deliberation is carried out with the problematic customer, but if it cannot be resolved with a family approach then we as debtors will carry out the execution of the guarantee from the customer."¹⁴

In the next stage, if the bank and the customer are unable to find a bright spot related to financing problems, the final step will be the execution of the guarantee. From the results of the interview by Sutrisno as a Financing Analyst:

"The top of the pyramid of a problem financing settlement is through the execution of guarantees. Bank Sulselbar Syariah Branch Maros will execute guarantees if the defaulting customer no longer has good faith to fulfill his obligations, even though in the execution stages later we as the bank will continue to provide opportunities for customers to sell their own assets to be used to complete their achievements."¹⁵

The stages of the non-performing financing settlement strategy have been implemented by the Bank Sulselbar Maros Syariah Branch to provide convenience to customers, especially those directly affected by the pandemic. But on the other hand, to maintain the financial resilience of banks, it is necessary to make more efforts to

¹³Sutrisno (35 tahun), legal officer bank Sulselbar maros, Interview by researcher on date 15th Juli 2022

¹⁴Sutrisno (35 tahun), legal officer bank Sulselbar maros, Interview by researcher on date 15th Juli 2022

¹⁵Sutrisno (35 tahun), legal officer bank Sulselbar maros, Interview by researcher on date 15th Juli 2022

customers to immediately complete their defaulting. So that the estuary of solving problem financing is through the execution of guarantees. Execution of Collateral is an execution imposed on financing guarantees as an effort to handle non-performing financing. The execution of this guarantee is the culmination of the pyramid of non-performing financing settlement stages. The execution of this guarantee is carried out on default financing customers where the customer is no longer cooperative or no longer has good faith to fulfill his obligations.

The implementation of the execution of mortgage rights at Bank Sulselbar Syariah Maros Branch has been carried out in accordance with juridical principles and does not violate existing rules. The results of the interview stated:

“The steps taken by Bank Sulselbar Syariah Branch Maros when a customer defaults is to provide a warning letter to the customer. Furthermore, if the customer does not pay the debt in the second month, then the bank will issue a warning letter 1 (SP 1) and if it is ignored, there will be a rescheduling for the issuance of warning letter 2 (SP 2) even up to a warning letter (SP 3) with a grace period 1 week each in each Warning Letter”.¹⁶

After the Notice of Auction is issued and given to the customer. However, the object of the mortgage is not directly auctioned, but the bank as the creditor will take several approaches to the customer, namely asking the customer to sell the object of the mortgage under the hand within 3 months, with the expectation of getting the highest price to be able to pay off the debt, which is also called execution under hand. If the underhand execution does not provide the highest price or there is no buyer, the creditor or bank will register the object of the Mortgage at the State Property and Auction Service Office or abbreviated as KPKNL.

After that, the State Property and Auction Service Office will schedule the auction. The Mortgage Object will be auctioned through a predetermined auction schedule and led by the Auction Officer to get the auction winner. If the winner of the auction has been obtained, the object of the Mortgage becomes the property of the winner of the auction. In addition, the Bank will also consider alternative settlements by accepting voluntary delivery of the debtor's collateral as the fulfillment or payment of the debt.

“In the banking world, the delivery of the debtor's collateral is known as foreclosed collateral. However, if the debtor no longer has the ability to pay and is not cooperative with the bank to resolve his non-performing loans or the debtor is in default. This effort is basically a last resort made by the bank, considering the process requires a fairly large handling fee and a relatively long settlement time. This AYDA effort is carried out by the bank which pays the non-performing loans owned by the customer first, after that they will resell it so that the transfer of collateral (collateral) can be carried out”. Furthermore, because customers with warning letters and also their own

¹⁶Yusran,(40 years) As the head of the Maros sulsebar bank branch, interview by the researcher on July 15, 2022

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

execution by the bank did not go well, so we submitted a request for security to the Giri Winning Religious Court”.¹⁷

The bank submits an application for security (aanmaningke) to the Religious Courts and the Religious Courts will carry out security. Thus, the execution can be carried out by the Head of the District/Religious Court if there is a request from the winning party in the case to the Head of the District/Religious Court so that the Court's Decision which has legal force can still be carried out properly. Before carrying out the execution of a Court Decision which has permanent legal force, the Head of the District/Religious Court shall give a warning (aanmaning) to the losing party in the case so that within 8 (eight) days after the Head of the District/Religious Court has issued a warning (aanmaning), the losing party in the case must comply with the Court's Decision and if 8 (eight) days have passed and it turns out that the losing party in the case does not want to implement the Court's Decision, then the Head of the District/Religious Court may order the Registrar/Religious Court's Registrar to carry out an execution confiscation of the object of the land in question. and can then request the assistance of state/police tools to assist in security in the case of the emptying of the object of the land in question.

“Because of this authority, the creditor, namely Bank Sulselbar Syariah Maros Branch, submitted a request for execution of Mortgage Rights, namely the application for Aanmaning, Execution Seizures and Auction Guarantees against the customer as the debtor. This was done because the debtor did not fulfill its obligations and had previously been warned many times and deliberation had been carried out but the debtor still did not fulfill its obligations, then the debtor had defaulted. If the warning (reprimand) is not successful, the Religious Court will execute if it has been executed, the bank submits an auction with the Religious Court submitting an auction request to the KPKNL because the Religious Court does not have Auction Rights”.¹⁸

The auction implementation system from 2017 until now uses a Close Bidding system where the auction and bidding system takes place in a closed manner. When you want to register an auction at the KPKNL, there are several document requirements that must be met by Bank Sulselbar Maros Syariah Branch as the auction applicant.

After completing the required documents and registering the auction, the KPKNL or the auction official will determine the date, day and time of the auction. After that, Bank Sulselbar Syariah Maros Branch must advertise the auction announcement in daily newspapers or newspapers.

If it comes to the time when the auction has been determined, but the customer is still unable to pay off his outstanding obligations, then the auction will be held. When the auction takes place in a closed system, those who are obliged to

¹⁷Yusran,(40 years) As the head of the Maros sulselbar bank branch, interview by the researcher on July 15, 2022

¹⁸Yusran,(40 years) As the head of the Maros sulselbar bank branch, interview by the researcher on July 15, 2022

attend the auction are the auction registrar, witnesses and auction officials. During the auction process, all parties present at the auction cannot know whether the auction was successful in the sense that there was a buyer or failed because there was no buyer. If at the time of the auction there is no buyer, Bank Sulselbar Syariah Maros Branch must re-register the auction by repeating all the registration stages.

The auction begins with a written (closed) bid from the participants, then if the highest bid from the participant has exceeded the stipulated auction limit, then the participant with the highest bid is appointed as the winner of the auction, but if the bid has not exceeded the auction limit, the bid is continued with bidding. open up and up until the highest price is obtained above the auction limit. If even at this stage the highest bid has not exceeded the auction limit, then the auction will be repeated within a period of approximately one month and this has cost implications. (referring to PMK Number 27/PMK.06/2016 concerning Auction Implementation Guidelines).

After the winner is appointed, a payment is made where the proceeds from the sale are used to settle existing financing. After that, the winner of the auction will receive the Minutes of Auction to transfer the name to the National Land Agency (BPN). Employment of the auction object is carried out if necessary by asking the local Muspida for assistance. The last process is the Transfer of Name Process, processed by BPN.

a. *Aanmaning (Carrying out the Warning)*

After receiving the request for execution of Mortgage from the Petitioner (Bank), the Head of the Religious Court, ordered the bailiff/substitute bailiff to summon the debtor who broke his promise to be reprimanded (*aanmaning*), and this warning should be carried out 2 times and within 8 days must fulfill its obligations i.e. paying its debts voluntarily.

In this *Aanmaning*, if the customer is willing to fulfill his obligations to the bank by paying cash or selling collateral voluntarily where the proceeds from the sale are used to pay off obligations (implementation of Article 6 of the Mortgage Law), then the request for execution can be revoked by the bank. Meanwhile, if the customer is not willing to fulfill the obligations, the next stage will be carried out, namely Execution Seizure.

b. *The Confiscating of Execution*

If the Debtor is unable to fulfill his obligations voluntarily, then the Chairman of the Religious Courts orders that the land of the object of Mortgage to be confiscated by the Registrar or his Substitute with the assistance of 2 witnesses who meet the requirements to carry out the execution in accordance with the order of the decision and the execution is stated in the minutes of execution (Article 29 paragraph (4) R.Bg).

The Registrar or his Substitute who has made the confiscation shall make a Minutes of the Confiscation and notify the intention of the person whose goods are confiscated if he is present at that time. If the confiscated is in the form of immovable property (land) that has been registered at the land registration office, the official report of the confiscation is notified to the head of the land registration office concerned. However, if the confiscated land has not been registered, the minutes of the confiscation will be announced by the Registrar/Substitute. Then ask the local Village Head/Lurah to announce it as widely as possible in that place in a way that is commonly used in that area. The period of confiscation of execution is 8 (eight) days.

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

If within this period the customer is not willing to fulfill his obligations, then the next process is the submission of an auction application.

c. The Sales of Auction

The request for the auction was followed up by the PA with the issuance of a Stipulation of Auction signed by the Chair of the PA and at that time the PA took care of the SKPT (Certificate of Land Registration) to the BPN (State Land Agency), a request for NJOP (Tax Object Compulsory Value) to the PBB Office (Earth Tax) and Building) and announce the auction in the Mass Media 2 (two) times. This pre auction period lasts for approximately 35 days. At this stage, the customer (the respondent for execution) can file a rebuttal/objection to the auction to be held. If there are objections, the auction is postponed and a hearing is held to examine whether the reasons submitted can be accepted or rejected. If the reasons are acceptable, the judge may decide to cancel the auction. However, if it is rejected, the auction process will be carried out.

The auction of immovable property in the form of land belonging to the debtor which is used as collateral is carried out through the assistance of the State Property and Auction Service Office (KPKNL) in the area concerned. The auction sale proceeds will be used to pay bills to the bank/creditor, after the auction fee has been paid/issued in advance and if there is an excess, the money will be returned to the debt guarantor/debtor customer.

Obstacles in the Execution of Mortgage Funding for Productive Financing Due to Default at Bank Sulselbar Syariah Branch Maros

1. The Agreement on Employment of Mortgage Collateral is Not Effective

The Liability Law has explained that the debtor must empty the object of his mortgage guarantee at the time of default and the auction is about to be executed. However, in reality there are still many debtor customers who still occupy the object of the guarantee and are reluctant to make a vacancy.

"If the customer defaults, then the mortgage collateral is emptied. In the deed of granting mortgage rights, UUHT provides an opportunity for the parties to make an agreement, one of which is an agreement to empty the mortgage collateral. However, the fact is that the execution of this agreement was not effective. There were many incidents in the execution of the mortgage collateral that had not been emptied."¹⁹

To carry out the emptying execution first by the execution applicant, considering that usually auction enthusiasts cannot see and examine the auction object because it is still controlled by the owner. Thus, the solution that can be taken is to carry out emptying before the auction sale is carried out. Meanwhile, the execution fee for the emptying is temporarily paid by the execution applicant which will be replaced by the amount of money issued by the executing respondent when the auction object has been legally sold.

2. The Lawsuit by Third Parties

¹⁹Yusran,(40 tahun) As the head of the Maros sulselbar bank branch, interview by the researcher on July 15, 2022

The objectives of the opposition to the execution proposed by the executed party are to: 1. Postpone the execution, 2. Cancel the execution by declaring the decision to be executed to be non-binding, 3. Reduce the value of the amount to be executed. However, from all these objectives, not all of the resistance put forward by the executed parties can be granted. However, it is permissible to delay execution if the resistance to execution uses a case that can be applied on a case-by-case basis.

"In conducting a mortgage auction, the debtor does not accept if the object of the mortgage is auctioned by the creditor so that the debtor makes a counterclaim to the court."

If factual and fundamental reasons are found in the resistance, the Head of the District Court may grant a postponement of execution until the decision on the resistance, obtains a permanent legal decision. On the other hand, if the resistance being executed does not have any underlying reasons, it is forbidden to grant a postponement of execution.

3. Imperfect Bonding of Mortgage

In practice, the binding of mortgage collateral by the bank has not been done perfectly. Collateral is not registered at the land office to obtain a mortgage certificate and the bank simply asks for a certificate to provide mortgage rights to the customer and no deed of mortgage granting to a PPAT/notary is made.

4. Interference from Third Parties When Executing

In carrying out the execution, there will generally be interference from third parties. A third party appears and confirms that the mortgage collateral has a third party and does not have a customer and performs mass mobilization to prevent execution.

"Usually to block the execution of customers/executed parties, they intentionally mobilize their masses by blocking the road from mortgage collateral so that members of the execution cannot go to the location and burn car tires to hinder security officers and the masses are deliberately drunk to invite chaos and chaos. by shouting and berating security officers at the time of execution."

With such a large number of people rather than security officers carrying out their duties for the sake of execution, they can run safely, making conditions conducive. With conditions like this, the execution of the execution and the security personnel are made difficult, so that the execution cannot be carried out and even has to be postponed, because if the execution is still running, the execution becomes the target of the masses who support the executed party. Therefore, the delay in carrying out the execution is intended to avoid unwanted situations.

5. The second, third and so on mortgage holders fight

It often happens that when the execution is carried out at the request of the First Mortgage holder, or at the time of confiscation of execution, the second, third, and so on, fight back with the argument that the second, third and so on are also entitled to the object confiscated by the execution. Considering that the debtor who made the promise has made the object of execution as collateral to the second, third and so on. Against problems like this, the Mortgage Law does not regulate it, but the solution can be done through civil procedural law materials

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

6. Inconsistency of Auction Price Opinion between the Customer and the Auction Officer

The discrepancy between the opinion of the executed party and the auction official regarding the auction price is another reason that hinders the execution of the mortgage. According to the execution party, the agreed price was far below the market price or low and the auction official had carried out his duties in an open and good manner. KPKNL does not have the authority to open a price determination, but as an auction applicant, the bank has determined the price. This discrepancy of opinion usually makes the executed party express an objection and the mortgage collateral is not executed.

“The problem regarding the auction price limit is one of the problems that is often encountered when an execution auction is to be run. The debtor customer as the owner of the collateral object feels that the collateral object is sold at a price limit below the market price, thereby harming the customer. Actually, an analysis of the price of the object of the customer’s guarantee has been carried out when the mortgage deed is binding before the financing funds are disbursed. However, problems like this can be caused by several things, among others, due to an element of intent on the part of the customer himself, such as the condition of the collateral that has been damaged and is no longer perfect as when the mortgage was binding.”²⁰

7. Legal Obstacles in the Elucidation of Article 20 paragraph 1 UUHT

Paragraph 1 of Article 20 UUHT states that: "The right of the first mortgage holder to sell the object of the mortgage as referred to in article 6". Explains that: "if the customer defaults, as the first mortgage holder can sell the mortgage object through a public auction on his own power and the proceeds of the sale are taken as settlement of his receivables"

“The conclusion that can be drawn from the description above is that as the holder of the mortgage, the bank can sell the object of the mortgage and the proceeds of the sale are taken as repayment of the receivables. If the proceeds of the sale are greater than the debt, the remainder of the sale becomes the right of the executed party. It can be seen that the repayment of debt is taken from the sale of the mortgage object, which has the maximum execution value of the mortgage as contained in the mortgage certificate.”

According to the researchers themselves, sometimes the bank gets a value greater than what is contained in the mortgage certificate, because the price opening is carried out by the lender and during that time the executing party must agree to it is a condition of imposing mortgage rights, so that the bank can get a value that exceeds what contained in the certificate of mortgage.

8. No Auction Objects Sold

The auction object has not been sold/the auction has no interest due to several things. In the event that there is no bidding in the auction as mentioned above, the auction official will issue a decree for a re-auction, which is based on the

²⁰Yusran,(40 Years) As the head of the Maros sulsebar bank branch, interview by the researcher on July 15, 2022

Application for Re-Auction submitted by the Auction Applicant to the Auction Office.

“However, in the event that even though the re-auction has been carried out several times and the object of execution has not yet been sold, in practice, usually the solutions that can be taken are: a. The limit value is gradually decreased so that the highest buyer price is reached, and the re-auction as referred to can be carried out even though only 1 (one) bidder is participating.”²¹

Analysis of Islamic Law Against the Execution of Auctions for Productive Financing Mortgages Due to Default Affected by the Pandemic

In the concept of muamalah fiqh, buying and selling by auction is known as ba'imuzayadah, which is defined as a method of selling goods and or services based on the highest bid price. Auctions in muamalah fiqh are indeed categorized as a form of buying and selling, but there are general differences. Buying and selling has the right to choose, may exchange in public and vice versa, while auctions do not have the right to vote, cannot be exchanged in public, and the implementation is carried out specifically in public.

The sale and purchase of the auction model (muzayyadah) in Islamic law is permissible. Buying and selling at auction does not include the practice of usury although it is called bai 'muzayyadah from the word ziyadah which means additionally as the meaning of usury, but the additional meaning here is different. In muzayyadah, the increase is the offer of more prices in the sale and purchase contract carried out by the seller or if the auction is carried out by the buyer, what increases is the decrease in the bid. Meanwhile, in the practice of usury, additional unlawful means are additions that are not agreed in advance in the loan-borrowing contract of money or other usury goods.

In Islamic legal literature, the sale of collateral objects by financial institutions that provide loans to debtors without their knowledge is allowed. According to the fuqaha, the application can be carried out in two cases where the debtor is delaying the payment of his debt obligations and the amount of the creditor's debt can be covered (repaid) if the object is sold.

According to Muhammad and Abu Yusuf (classical economists) it is permissible to sell assets (objects of mortgage) of the debtor if the qadhi (judge) has issued a decision against him and there is no justification for delaying the sale. The sale in all cases must be carried out with the knowledge of the qadhi, and attended by the parties in the market for the goods to be sold, the sale can also be carried out by auction or get the highest possible price according to the market price at the time of the auction.

In accordance with the description above, payment of debts decided by the qadhi by selling the object of collateral that is in the hands of the creditor to pay off the debtor's debts by force or not, is a permissibility in Islamic law, because these are the most important rules in the court system to protect the benefit and welfare of the people. rights of creditors. The sale of these goods is in line with the current auction, in which the sale decided by the qadhi in positive law is called an execution

²¹Yusran, (40 Years) As the head of the Maros sulselbar bank branch, interview by the researcher on July 15, 2022

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

auction.

The provisions for the implementation of the guarantee execution auction in fiqh muamalah are almost the same as the auction practices carried out by Islamic banking institutions in Aceh through the KPKNL. Although the law used is still conventional, in its implementation, the auction of the execution of customer guarantees at Islamic banking institutions in Aceh has adopted many Islamic legal values. However, in practice both KPKNL and bank management still face various obstacles in the execution of the execution auction. These constraints can affect the implementation of auction sales and the results of auction sales.

As a reference in carrying out the duties of the Religious Courts, there are 14 points which are the main guidelines in carrying out tasks in the field of execution of Mortgage which are contained in Book II as mentioned above. The main points include the following:

1. Article 1 point 1 of Law Number 4 of 1996 states that; Mortgage rights on land and objects related to land, hereinafter referred to as "Mortgage Rights" are guarantees imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, whether or not the following other objects which are an integral part of the property, for the settlement of certain debts, which give priority to certain creditors over other creditors.
2. The granting of mortgages is preceded by a promise to provide mortgages as collateral for the settlement of certain debts, which are set forth in and are an inseparable part of the debt agreement in question or other agreements that give a rising to the debt, and the granting of mortgage rights is carried out by making the deed of granting mortgage rights by the Land Deed Making Officer (PPAT) (Article 10 paragraphs (1) and (2) of Law Number 4 of 1996).
3. The granting of mortgage rights must be registered at the land office, and as evidence of the existence of mortgage rights, the land registration office issues a Mortgage Certificate containing irah-irah "For the sake of Justice Based on the One Godhead" (Article 13 paragraph (1), Article 14 paragraph (1) and (2) Law Number 4 of 1996).
4. The Mortgage Certificate has the same executorial power as a court decision that has permanent legal force, and if the debtor is in breach of contract then based on the executorial title contained in the Mortgage Certificate, the mortgage holder requests the execution of the Mortgage Certificate to the Head of the Religious Courts/ the competent Syar'iyah Court. Then the execution will be carried out like the execution of a decision that has permanent legal force.
5. Upon agreement of the giver and the holder of the mortgage, the sale of the object of the mortgage can be carried out privately, if so that the highest price will be obtained that benefits all parties (Article 20 paragraph (2) of Law Number 4 of 1996).
6. The underhand sale can only be carried out after 1 (one) month has elapsed since it has been notified in writing by the giver and/or the mortgage holder to the interested parties and announced in at least 2 (two) newspapers in circulation. in the area concerned and/or local mass media, and no party has expressed objections (Article 20 paragraph (3) of Law Number 4 of 1996).

7. The procuration imposing a mortgage must be made with a notarial deed or a deed of the official making the land deed (PPAT), and must meet the following requirements: a) It does not contain the power to carry out other legal actions than to impose a mortgage. b) Does not contain the power of substitution. c) State clearly the object of the mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor, if the debtor is not the giver of the mortgage.
8. The execution of mortgage rights is carried out like the execution of court decisions which have permanent legal force.
9. The execution begins with a warning and ends with the auction of land encumbered with mortgage rights.
10. After an auction is conducted on the land which is encumbered with mortgage rights and the proceeds from the auction are handed over to the creditor, the mortgage encumbered with the land will be confiscated and the land will be delivered cleanly and free of all burdens to the auction buyer.
11. If you do not want to leave the land, then the provisions contained in Article 200 paragraph (11) HIR/Article 218 paragraph (2) RBg shall apply.
12. This is different from a sale based on a promise to sell on its own power based on Article 1178 (2) BW, and Article 11 paragraph (2) letter e of Law Number 4 of 1996 which is also carried out through an auction by the State Auction Office at the request of the holder first mortgage. This promise only applies to the first mortgage holder. If the holder of the first mortgage has made a promise not to be cleared (Article 1210 BW and Article 11 paragraph (2) letter j of Law Number 4 of 1996, then if there are other mortgages and the proceeds from the auction are not sufficient to pay all the mortgages that burden the land concerned, the unpaid mortgage will still burden the parcel in question, even though it has been purchased by the buyer from a legal auction. So the auction buyer acquires the land with the burdens of the mortgage that have not been paid. The auctioneer must still leave the land and if he disobeyed, he and his family would be expelled by force.
13. In the event that the auction has been ordered by the Chairperson of the Religious Court/Syar'iyah Court, then the auction can only be suspended by the Chairperson of the Religious Court/Syar'iyah Court and cannot be suspended for any reason by officials of other institutions, because the auction is ordered by the Chairperson of the Religious Court/ Syar'iyah Court and implemented by the State Auction Office, is in the context of execution, and is not a decision from the State Auction Office.
14. The auction sale of fixed objects must be announced twice (2) times with an interval of fifteen (15) days in the newspaper published in that city or the city adjacent to the object to be auctioned (Article 200 paragraph (7) HIR/217 RBg).

In general, guarantees in Islamic law that use sharia contracts are divided into two: guarantees in the form of people (personal guarantees) often known as kafalah and guarantees in the form of property known as rahn. However, in the operational practice of Islamic banks, if the collateral is in the form of a plot of land, the financing contract uses the Mortgage Guarantee Law. This is because the regulation on the use of land rights guarantees in financing Islamic banks does not yet exist in sharia provisions. Until now, rahn is used for collateral stored in Pawn transactions while

EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

kafalah only refers to Bank Guarantees (transferring the responsibility of someone who is guaranteed by adhering to the responsibilities of others as guarantor/Islamic bank)

The existence of guarantees is recognized in Islamic law. For guarantees given by other parties for obligations/achievements that must be carried out by the guaranteed party (debtor) to the party entitled to receive fulfillment of obligations/achievement (debtor) it is called kafalah. While guarantees related to objects/assets that must be given by the debtor (the debtor) to the creditor (the debtor) is called rahn. As a comparison, in the system prevailing in Indonesia, guarantees are classified into two types, namely material guarantees (materials) and immaterial guarantees (individuals, borgtocht). Material guarantees have "material" characteristics in the sense of giving precedence over certain objects and have the inherent nature of following the object in question. Meanwhile, individual guarantees do not give precedence over certain objects, but are only guaranteed by a person's assets through the person who guarantees the fulfillment of the engagement in question.

The Mortgage guarantees that are always used in Islamic banking even though they do not violate Islamic rules, there must still be arrangements in Islamic law that can be called "Sharia Mortgages", so that habits that have occurred in society and Islamic banking that use mortgages can be abandoned and use collateral sharia because it is in accordance with the contract, namely sharia. So there is a need for legal arrangements regarding guarantees that are appropriate or based on Islamic law. Islamic law must also have legal rules regarding guarantees. One of them is rahn, so the author believes that there is no official legal product issued by the government to stakeholders (policy makers) to issue rules for the use of Ar-Rahn as a sharia transaction guarantee institution that accommodates all contracts or contracts using sharia financing facilities, as well as procedures for handling risks that include it. One of them is the execution arrangement of the guarantee if the debtor reneges on the agreement.

CONCLUSION

In every financing activity, Islamic bank management always requires its customers to include collateral as collateral for financing. If the customer's financing runs smoothly until the payment stage, then the customer's collateral will be returned to the customer. However, if the customer defaults, does not fulfill the promise in accordance with the contract, and does not pay off his obligations, then the collateral will be sold through auction sales at the KPKNL as the official institution with the power to conduct auction transactions. The money from the sale of the auction is used to cover the remaining debt obligations of customers to Islamic banks. The rest will be returned to the customer. Constraints faced by the bank in carrying out the execution of the guarantee are several of them: the agreement to empty the mortgage collateral does not work effectively, lawsuits by third parties, imperfect binding of mortgage rights, interference from third parties during execution, second, third and so on. fight, discrepancy of opinion on auction price between customer and auction official, legal obstacle in the explanation of article 20 paragraph 1 UUHT, auction object is not sold. The legal provisions regarding this execution auction are Law No. 4 of 1996 concerning Mortgage and Regulation of the Minister of Finance

Number 27 / PMK 06/2016 as implementing regulations. Although it still uses conventional legal rules, in practice the law has adopted many provisions of Islamic law and is in accordance with the concept of muamalah fiqh. However, the execution of the guarantee auction in its implementation often encounters various kinds of obstacles that interfere with the execution of the execution auction both directly and indirectly. These obstacles obscure Islamic values that uphold the concepts of benefit and justice

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EXECUTION OF AUCTION ON MORTGAGE RIGHTS FOR PRODUCTIVE FINANCING DUE TO DEFAULT BECAUSE OF PANDEMIC IMPACT AT BANK SULSELBAR SHARIA MAROS BRANCH : ANALYSIS OF ISLAMIC LAW

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