



Implementation of the Auction of Mortgage Rights at Banking Institutions at The Semarang District Court

Sherly Sulistiorini

Nur Suryani Siwi, Aniek Tyaswati Wiji Lestari, Universitas 17 Agustus 1945 Semarang, Indonesia

* Corresponding Author: Sherly Sulistiorini

Article Info

ISSN (online): 2582-7138

Volume: 05

Issue: 06

November-December 2024

Received: 13-10-2024

Accepted: 18-11-2024

Published: 14-12-2024

Page No: 1666-1669

Abstract

Banking institutions require collateral in providing credit for capital security and legal certainty. This collateral is a form of trust given to the creditor that the debtor will be able to fulfill its obligations. However, unfortunately, not all debtors are able to fulfill their obligations (come into default). In accordance with the agreement/contract, the Banking Institution is permitted to auction collateral after obtaining a valid decision from the District Court. If the losing party does not voluntarily implement the judge's decision, execution is mandatory. There are several stages of execution that must be passed by the applicant and respondent in accordance with applicable regulations, namely the Execution Guidelines issued by the Supreme Court in 2019. In its implementation in the field, several obstacles were encountered, both from third parties and natural disasters. In this study, the research method used is descriptive analytical and analyzed according to secondary and primary data.

DOI: <https://doi.org/10.54660/IJMRGE.2025.6.4.351-354>

Keywords: Guarantee, Execution, Auction

1. Introduction

The role of banking is crucial for today's society. This is because banking institutions are partners with direct relationships with the public. It can be said that banking institutions are the driving force of the economy because their role is crucial for increasing economic development, economic growth, and public welfare ^[1].

Currently, for the public, banking institutions not only function as institutions for storing money, but also as an alternative credit loan for both personal and business needs on various scales ^[2]. (Riani, 2022). Of course, in practice, these loans require collateral. Banking institutions require collateral when granting credit for capital security and legal certainty. This collateral represents a form of trust given to the creditor that the debtor will be able to fulfill the obligations arising from the contract, which can be assessed financially ^[3].

In practice, banking institutions sometimes face the risk of losses arising from a debtor's failure to fulfill its obligations under the terms of the credit agreement. If a loan has developed into a non-performing loan, the banking institution must immediately seek a way to rescue the loan. If rescue efforts have been implemented and the loan continues to develop into a non-performing loan, the banking institution is required to take action to recover the non-performing loan from the debtor, which can be implemented either through legal (litigation) or extralegal (non-litigation) processes ^[4].

¹Dwiastuti, Ninuk. 2020. The Influence of Bank Credit on Economic Growth and Its Relationship with the Welfare of Regency/City Communities in West Kalimantan Province. Annual Academic Journal of Economics and Development Studies Vol 5 No 7 2020.

²Riani, Tiya, Yana Ulfah. 2022. The Effect of Credit Loans on Profitability Levels, Sales Promotion, and Business Development in MSMEs. Journal of Accounting and Finance Volume 19 Issue 1 Pages 176–180, 2022.

³Suharto. 2020. Auction of Mortgage Execution. 2019. Law, Development & Justice Review No. 2 Pages 183 – 193 of 2019.

⁴Jufri, Supriadi, Anwar Borahima, Nurfaidah Said. 2020. Implementation of Mortgage Rights Execution Auction Through Auction House. Scientific Journal of World Law Volume 4 Number 2, April 2020.

When a dispute resolution outside the courts cannot be reached, the last resort for banking institutions is to file a lawsuit. Once a judge has made a decision, he or she must always strive to ensure that the decision is as fair as possible and acceptable to the public, especially the disputing parties. A decision that has permanent and binding legal force (in kracht van gewijsde) is a form of law that is permanent and certain between the disputing parties^[5].

After a verdict is issued, if the losing party does not voluntarily comply with the judge's decision, execution is a mandatory legal option. The winning party may file a bail application with the Chief Justice of the District Court. This execution may be carried out by force upon the Chief Justice's order. The execution is carried out by the Court Clerk, assisted by a Bailiff or Execution Officer appointed by the District Court, with two witnesses present.

Dynamics in the field have led to several factors that create obstacles in the execution process. These obstacles result in longer execution times, higher costs for applicants, and increased effort.

Based on this thinking, the author will discuss several issues as follows:

1. How is the execution of the mortgage auction carried out at the Banking Institution at the Semarang District Court?
2. What are the obstacles that arise in the implementation of the auction of mortgage rights at the Banking Institution at the Semarang District Court?
3. What are the efforts to overcome obstacles that arise in the implementation of mortgage auction execution at Banking Institutions at the Semarang District Court?

2. Discussion

a. Implementation of Mortgage Auction Execution at Banking Institutions at the Semarang District Court

In credit transactions at banking institutions, the borrower is generally required to provide collateral for the loan to the guarantor. This collateral is typically in the form of goods, either movable or immovable. This material collateral is a form of credit/debt guarantee that arises from and originates from an agreement/contract. This collateral exists because it is agreed upon by the creditor and debtor, and takes the form of a Mortgage Right^[6].

The Mortgage Law provides convenience for creditors holding mortgage rights if the debtor defaults on their promise or performance, based on Article 20 paragraph (1) letters a and b of the Mortgage Law. If there is a default in the credit agreement/contract, then based on a valid court, execution can be carried out. Execution itself is a decision that is punitive and must be carried out. Furthermore, if there is an execution originating from mortgage rights, then the collateral holder may conduct an auction sale of the collateral from the guarantor to pay off his obligations^[7].

In Indonesia, the decision process for breach of contract is carried out in the District Court based on the location of the plaintiff's domicile. The Semarang District Court is one of the first-instance courts established by presidential decree and acts as one of the judicial authorities for those seeking justice. In simple terms, the auction execution procedure is guided by the principles of civil law, the stages of which are based on

the 2019 Supreme Court Execution Guidelines. These guidelines are also used by the Semarang District Court in carrying out its judicial process.

This research processed data regarding case number 261/Pdt.G/2022/PN Semarang. The stages of execution are as follows, according to the case:

1. Submitting an Execution Application to the Chief Justice of the District Court

The execution of a court decision in a civil case must be carried out in accordance with the request from the party requesting the execution. This request is submitted in the form of a Letter of Request for Execution addressed to the Chief Justice of the Semarang District Court. Thus, it can be said that the court (judge) is passive and, on the basis of the opposing party, the court (judge) carries out its duties in accordance with applicable civil procedural law. The request is then followed up with a Letter of Request for Follow-up Execution of the Execution addressed to the Chief Justice of the District Court as the leader of the execution.

In this study, this case was carried out based on a request from PT. BPR Hidup Arthagraha Semarang Branch against Mr. IS and Ms. NS as stated in the lawsuit with lawsuit registration number 261/Pdt.G/2022/PN Semarang.

2. Warning to the Executed to Comply with Court Decisions (aanmaning)

The next step is for the Chief Justice of the District Court to issue a Letter of Aanmaning Determination. In this study, the Letter of Determination issued by the Chief Justice of the Semarang District Court, number 34/AHT.Eks/2023, was issued by the Semarang District Court.

The Aanmaning Determination Letter contains an order to the Court Clerk, or if unable to do so, to appoint a Bailiff, to summon the defendant to attend an incidental hearing. The hearing's agenda is to remind/admonish the defendant to comply with the verdict within a maximum of 8 (eight) days. If the deadline is not met, the execution can proceed to the next stage, namely the Execution Seizure.

The Execution Seizure in case number 261/Pdt.G/2022/PN Semarang was carried out through Decree Number 34/AHT.Eks/2022/PN Smg concerning the Execution Seizure Order dated February 14, 2023.

3. Execution Seizure

After the warning deadline has passed and the defendant fails to comply with the mandatory ruling, the Chief Justice of the District Court will issue an order to the Clerk or Bailiff to carry out the actual execution or vacancy. This order is evidenced by a Letter of Determination of Execution Order or Letter of Vacancies. In this study, the Semarang District Court issued Letter of Assignment Number 34/AHT.Eks/2022/PN Smg dated February 23, 2023, and assigned a Bailiff with the initials RR to carry out the Execution Seizure.

However, in principle, if the deadline has passed, the court still provides an opportunity for the defendant to carry out the decision voluntarily for the sake of flexible law enforcement and the defendant does not need to incur costs related to the execution.

⁵Shonigiya, Nabila Pramesti, Marjo, Lapon Tukan Leonard. 2020. Implementation of House Evacuation Execution at the Surakarta District Court. Diponegoro Law Journal Volume 9 Number 2 of 2020.

⁶Ibid., p. 418

⁷Suharto, Op.Cit., p. 185

Before the execution seizure is carried out, the Clerk or Bailiff is required to send a Seizure Notification Letter addressed to the executed party or their heirs at least 5 (five) days before the execution seizure. The Seizure Notification Letter is also addressed to the local Village Head/Head with the aim of the Village Head/Head being able to attend the seizure execution process. This has also been implemented by Bailiff RR, as the Bailiff appointed by the Semarang District Court, through a letter with Number 149/JR.St/2023/PN Smg. Until the specified deadline, the letter was still heeded by the seizure applicant.

4. Execution Implementation

The Head of the District Court through the Letter of Determination of Execution Seizure orders the Clerk or Bailiff with the assistance of 2 (two) witnesses to carry out the seizure of the property belonging to the execution applicant and the implementation of the execution seizure is proven by the existence of a report of the Execution/Evacuation Minutes or the Minutes of Execution Seizure. After the Letter of Determination of Execution Seizure, the applicant for seizure will be charged for the costs of carrying out the seizure which are contained in a separate bill.

In case 261/Pdt.G/2022/PN Semarang, the Minutes of Execution Seizure have been reported by Bailiff RR with Number 34/AHT.Eks/2022/PN Smg dated February 24, 2024. In the same case, the applicant for seizure was charged a seizure implementation fee of Rp1,110,000 (one million one hundred and ten thousand rupiah). This fee was issued through a bill from the Semarang District Court and has been paid.

5. Execution Auction

After the confiscation process is carried out, the goods that are the object of the confiscation are entrusted to the party requesting the execution, and may not be transferred first. After the Execution/Evacuation Report or the Execution Seizure Report, the execution applicant can submit a Letter of Request for Follow-up Execution Implementation addressed to the Head of the High Court. The contents of the Letter of Request are so that the Head of the District Court can immediately carry out an Execution Auction for the goods that have been confiscated. After the Letter of Request is received, the Head of the District Court is obliged to issue an Auction Sale Determination Letter.

The auction is held to fulfill debt/obligation payments. This payment is obtained from the proceeds from the auction sale of the goods/assets of the defendant in execution, in accordance with a legally binding court decision. Based on the previous application, the Head of the High Court can issue a Determination Letter for the Implementation of an Execution Auction. This letter contains an order addressed to the Clerk to submit a Notification Letter for the Implementation of an Auction and a Request Letter for an Execution Auction addressed to the local KPKNL.

In this study, the auction was conducted via the website www.lelang.go.id which began airing in accordance with the Auction Notification Letter issued by the Semarang District Court on May 11, 2023. The procedures for participating in the email auction can be seen in the "Procedures and Procedures and Usage Guide" menu on the domain.

b. Obstacles Arising in the Implementation of Mortgage Auctions at Banking Institutions at the Semarang District Court

The implementation of mortgage auctions at banking institutions at the Semarang District Court is often marred by various obstacles in the field. These obstacles include:

1. There is resistance

Resistance typically occurs during the execution of a seizure. This occurs when another party claims that the seized property belongs to them. If this continues, it's possible that a mass gathering will occur to delay or cancel the execution.

2. There is a request for judicial review

A judicial review is essentially an extraordinary legal remedy and does not suspend execution unless the Chief Justice of the District Court or the Supreme Court issues an order suspending execution. A judicial review is acceptable if the grounds for the review are supported by comprehensive evidence.

3. Destruction of Execution Object/Natural Disaster

In the event of the destruction of the execution object, there is a risk in the execution process if the process takes too long. What needs to be noted in this obstacle is that the process of destroying the object does not involve any element of intent/force merger.

4. Efforts to Overcome Obstacles Arising in the Implementation of Mortgage Auctions at Banking Institutions at the Semarang District Court

There are several things that can be done to overcome obstacles in implementing the execution of mortgage auctions at banking institutions at the Semarang District Court, including:

- Good coordination between the court and the execution officers is essential to ensure the execution can be carried out without disruption. The Semarang District Court should conduct on-site negotiations to prevent crowd mobilization.
- Try to maintain communication and mediate with various parties, so that all obstacles can be resolved amicably and without execution.
- Increase security, both in terms of the number of personnel and safety equipment.

3. Conclusion

1. The submission of collateral from a loan applicant to a banking institution constitutes a promise of credit coverage arising from a credit (debt) agreement. This collateral is then referred to as a Mortgage Right. If the debtor fails to fulfill their obligations, the banking institution can auction the collateral in accordance with applicable regulations.
2. The execution of the Mortgage Auction at a Banking Institution in the Semarang District Court was based on the Debtor's non-performing loans. Furthermore, the banking institution was required to take steps to recover the non-performing loans from the debtor through a valid court decision.
3. Stages of the Execution of Mortgage Auctions at Banking Institutions include:

- a. Submitting an Execution Application to the Chief Justice of the District Court
- b. Warning to the Executed to Comply with Court Decisions (aanmaning)
- c. Execution Seizure
- d. Execution Implementation
- e. Execution Auction
4. In its implementation, several obstacles were found, such as resistance, requests for judicial review and the destruction of confiscated objects.
5. Efforts that can be made to overcome these obstacles include improving coordination, negotiation and security of officers

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