



## Implementation of Land Auctions as Guarantee for Debt Repayment

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### Abstract

Execution is the creditor's ultimate step. If the debtor fails to comply with the conditions of Law No.4 of 1996 respecting Mortgage Rights over Land and Related Objects, an auction or execution may be held. The fundamental challenge in this study is how to conduct an auction of mortgage rights on property as collateral for debt repayment. What are the hurdles to auctioning mortgage rights on land as collateral for debt repayment? This research is classed under Survey or Empirical Law. Meanwhile, the character of this study is descriptive. The research focuses on auction implementation at Bank BPR Wonogiri and BKK Wonogiri. The results of this research is that the auction process carried out by Bank BPR Wonogiri, if the debtor is in default, is carried out at a public auction through the State Property and Auction Service Office or by selling privately. Auctioning mortgage rights is a bit hampered because in the current situation it is difficult to find buyers and auctions are lacking. The findings of this study indicate that if a debtor is in default, Bank BPR Wonogiri conducts a public auction through the State Property and Auction Service Office or sells privately. Auctioning mortgage rights is complicated by the existing difficulty in finding purchasers and the scarcity of auctions. The obstacles faced were that when executing the promise, it did not work effectively, there was a third lawsuit, the binding of the mortgage was not carried out perfectly, interference from third parties during the execution and disagreements regarding the auction price between the debtor and the auction official.



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### A. INTRODUCTION

The distribution of funds is carried out by creditors or banks as financial intermediary institutions to people (debtors) who need capital, then stated in an agreement as a legal basis between the parties (creditors and debtors). The existence of a loan and borrowing agreement is absolutely necessary for the guarantee institution to provide certainty for the return of the debt (Maghribi & Ispriyarso, 2022). Providing credit by the Bank to debtors is carried out as one of the bank's efforts to gain profits. However, in providing bank credit to customers, banks act carefully and believe that debtors will be able to pay off their debts in accordance with the agreement (Yustiana, 2020). This modern credit has several objectives, namely firstly to provide profits to creditors obtained through interest in conventional credit agreements or in the form of margin in financing agreements, on the other hand profits are also obtained by customers, especially if the credit is

intended to support the continuity of the debtor's business (credit is carried out for the purpose of investing in the expansion and development of the debtor's business), or at least in general with credit the debtor can easily obtain the objects needed, secondly aims to encourage national development in various sectors, with credit it will increase the amount of tax revenue, open or expand job vacancies, increasing the number of goods and services needed by society, increasing the amount of foreign exchange and so on (Heriawanto, 2019).

In the financing agreement, if the debtor is unable to carry out its achievements and pay off the debt, then the collateral handed over by the debtor when executing the agreement can be an alternative for repayment of the debtor's debt (Ni Made Mirah Dwi Lestari, I Nyoman Putu Budiarta, 2022). Objects of collateral for mortgage rights are often found in civil lawsuits that occur as a result of auctions which cause losses for the debtor over the object of collateral for his mortgage rights due to the determination of the auction limit value which reaches a value below the market price, this is very detrimental to the debtor because of his failure to participate in determining the appropriate price. appropriate to his wealth (Haddina & Budhiawan, 2023).

As a creditor, banks require collateral for movable or immovable objects to provide credit (Aisyah et al., 2023). The collateral value usually exceeds the amount of credit distributed to the debtor, and each nominal loan will be subject to loan interest. To minimize risk, banks must trust the debtor's good faith, their ability, and their commitment to repay their loans in accordance with the credit agreement. This is because the basic credit philosophy is *credo*, which means belief (Rizkianti, 2024). Before providing credit, financial institutions are required to evaluate the moral integrity, financial capabilities, investment capital, collateral and future business potential of prospective credit recipients. Collateral or encumbrances used by banks can take the form of various kinds of assets, including goods, projects or receivables. Financial institutions may also require additional collateral. The obligation to perform from the debtor and the right to performance from the creditor in the debt and receivable relationship can be carried out properly if each party fulfills its obligations. Deviations occur when debtors in debt and receivable relationships that can already be collected (*opeisbaar*) do not fulfill their obligations voluntarily.

The mortgage right granted is to guarantee the repayment of the creditor's receivables. In other words, the mortgage right is an accessory to certain receivables (Junaeni et al., 2022). Without receivables whose repayment is guaranteed, according to the law there is no mortgage. In the Mortgage Rights Law, the execution *parate* provisions refer to the provisions of Article 20 that if the Debtor defaults, the holder of the first mortgage right has the right to sell the object of the mortgage right through a public auction and collect the receivables from the proceeds of the sale (Wintang & Suwondo, 2022). The Mortgage Rights Certificate

has the same executorial power as a court decision which has permanent legal force and is valid as a substitute *big act Hyphoteekas* far as land rights are concerned (Asuan, 2021).

Guarantee is a form of protection that the debtor must offer to guarantee repayment to ensure security and legal certainty, especially if after the agreed period of time the debtor does not fulfill the agreement or is unable to pay the debt, resulting in default. This default can then have an impact on the auction of goods pledged as collateral to creditors. Land is an item recognized as having significant economic value. Current laws regarding auctions may not always be able to address social situations. Only excerpts from auction minutes signed by the auction officer, whether voluntary auctions or executory auctions, can be used to record the transfer of rights through auction (Wibowo & Wardiono, 2020). Execution carried out by creditors cannot be separated from efforts to fulfill and return creditor rights (Jufri et al., 2020). Creditors in carrying out the execution must go through a public institution, namely an auction institution. Auction institutions are legal institutions that are currently needed by the wider community. The auction institution itself has one of the functions of carrying out execution auctions if problems arise between creditors and debtors within the scope of collateral. (A. S. Ningsih et al., 2019) Legal protection for creditors in the auction for the execution of mortgage rights in the context of resolving bad credit has been provided by Law Number 4 of 1996 concerning Mortgage Rights (Nona Halawa, 2022).

The bad debt settlement procedure involves an execution auction occurring after the failure of previous credit settlement attempts. The execution auction procedures are carried out on the subject of debt repayment guarantees in accordance with applicable laws and regulations if the debtor is still unable to pay his obligations. Legal authority over mortgage certificates has the same executorial title as a court decision (Haddina & Budhiawan, 2023). To hold auctions, the government established KP2LN to be used as an auction sales place. Auctions are used as a sales technique aimed at helping creditors get their money back. The case occurred according to researchers Warsito et al when the court decision is in the form of an auction, however, conflicts can arise if the auction is held on the basis of the land guarantee/mortgage being used as the basis for debt repayment (Warsito & Sudarwanto, 2020). However, even though mortgages/land have been regulated based on Law regulations. Number 4 of 1996, there are still gaps that may cause problems. Such a dispute occurred in a Supreme Court Decision No.1180/K/Pdt/2017. This case relates to a decision regarding the execution of an auction for 3 HM Certificates. No.1123/Kebon Jeruk, HM.No.1124/Kebon Jeruk and HM.No.1151/Kebon Jeruk.

This research is different from previous research because the author focuses on examining the implementation of land auctions as collateral for debt repayment

at BPR Wonogiri and BKK Wonogiri which are used as research sites. In order to obtain research data, researchers conducted interviews in the field or empirically and then carried out descriptive explanations. So to get research results, researchers use a problem formulation, namely: *First*, Implementation of land auctions as collateral for debt repayment. *Second*, Obstacles in implementing land auctions as collateral for debt repayment. This research aims to ensure that people understand the law and are aware of their rights and obligations, it is important to educate them on the issue of execution through legal education with appropriate organizations. To ensure that the executed party knows their rights and obligations and does not obstruct the execution process, the executed party must provide guarantees of execution voluntarily, sincerely and without coercion and approach the executed party (Nurdin, 2022).

## B. RESEARCH METHOD

Empirical legal type research, namely research carried out on site with the aim of collecting information and data needed for research using interviews (Ghani & Tanawijaya, 2023). This research is descriptive in nature, namely by describing the conditions related to the legal or non-legal propositions that have been obtained (Soerjono Soekanto & Mamudji, 2014). Research was conducted at Bank BPR Wonogiri and BKK Wonogiri. The data collection technique uses interviews, namely questions and answers between the interviewer and the informant (sample) aimed at obtaining information related to the problem by asking directly to the Head of the BPR Wonogiri and BKK Wonogiri Bank Branches. Data analysis was used to adapt a qualitative approach.

## C. RESULTS AND DISCUSSIONS

### Carrying Out Land Auctions As Colateral For Debt Repayment

PT BPR BKK Wonogiri (Perseroda) is the result of a merger of 12 PTs. BPR BKK Wonogiri Regency based on the BI Governor's Decree No.7/17/KEP.DpG/2005 dated 8 December 2005, granting a merger permit (business combination), and Kep. Governor of Central Java No.503/78/2005 dated 30 December 2005 concerning Approval of Business Merger Permit for PT BPR BKK Wonogiri (Perseroda). The results of the merger began operations on January 2 2006 and were formalized. achieve performance worthy of its name, and PT BPR BKK Wonogiri (Perseroda) always upholds the principles of transparency and the principle of prudence. Initially, BPR did not have the authority to take over collateral in accordance with Article 12A paragraph 1 of the Banking Law. Then it was changed with the Constitutional Court Decision Number 102/PUU-XVIII/2020 that BPRs are equal to other commercial banks so that they can take over collateral for bad loans (Romlah et al., 2023).

To meet the creditor's requirements, the land used as collateral must be handed over to the bank. Assets are encumbered with debt repayment guarantees as a means of repaying debts, indicating that part of the land was specifically handed over to the bank. The debtor has the right to provide collateral to the creditor to ensure that the debtor pays off the debt on time. If the debtor defaults, the creditor has the right to sell the mortgaged land and claim that the income will be used to pay the debtor's debts (Suyadi & Prastiyo, 2022). In Romania, this is also implemented as a basis for justice for creditors which has a strong legal basis and has proven its effectiveness (Bosneanu, 2022).

In reality, banks often require collateral when lending money to provide credit and financing options to consumers and debtors. Banking serves the purpose of taking deposits from customers and returning funds to them in the form of loans and financing (Koto & Faisal, 2021). There are two categories of customers: savings customers and non-savings customers. Saving customers are those who entrust their money to banking services based on a binding agreement (Soemitro, 2015). Collateral (guarantee) is used by the debtor to guarantee the debtor's debts, meaning that it usually takes the form of a certificate which is used as collateral for the debtor's debt before it is paid off first by the debtor/customer (Sun & Perbawa, 2023). In addition, if the goods used as collateral have been sold, given away and are no longer the property of the guaranteed goods, the creditor still has the right to sell the collateral with the aim of paying off the receivable. This shows that creditors have a strong position in receiving claims preferentially compared to other creditors.

To gain confidence, before providing credit, the bank must carry out a careful assessment of the debtor's character, abilities, capital, collateral and business prospects. In Law. No. 10 of 1998 related to banking, regulating loans given by banks carries risks, therefore banks must comply with credit protection and enforcement regulations in their implementation (A. Ningsih, 2021). Loan arrangements between banks and borrowers are regulated by collateral rights. The collateral agreement between the creditor and the debtor is a pledge carried out by binding a certain item despite the debtor's ability to provide security and legal certainty for the credit agreement (Usanti & Shomad, 2015). Providing credit requires collateral to replace debt payments in the future if the debtor breaks his promise even if he fails to pay. If the debtor/customer breaks his promise because he does not pay it off after going through the summons procedure based on the debt repayment guarantee, then the mortgage certificate has executorial power, whether or not it is agreed to in the deed of encumbrance of the debt repayment guarantee (Nona Halawa, 2022).

Mortgage Rights are a form of debt repayment guarantee, with pre-emption rights, with the object (collateral) in the form of land rights regulated in the basic agrarian regulations. The debt repayment guarantee certificate is essentially a gross

deed stating, "For the sake of justice based on faith in God Almighty." Thus, debt repayment guarantees can be implemented through public auctions in accordance with Law No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Therefore, even if the debtor defaults, the BPR still has the right to execute the mortgage certificate (Fitra, 2020). This law is the same as the contents of The Civil Code of the Netherlands article 260 where a mortgage or collateral gives the right to transfer or sell the debtor's property to another party when the debtor cannot fulfill his loan obligations (Agustina et al., 2022).

The various objects of mortgage rights are: 1) "ownership rights (HM), 2) business use rights (HGU), 3) building use rights (HGB), 4) use rights on state land, 5) flats which standing on freehold land, 6) building use rights and use rights granted by the state as well as Ownership Rights on Flat Units (HMSRS) whose buildings are built on freehold land, and 7) building use rights and use rights granted by country in accordance with the provisions of Article 27 UUHT." <sup>3</sup> The HT object must be registered. The nature of the HT object is transferable (Article 4 paragraph (2) UUHT). Credit guarantees have a function such as securing credit repayment, if one day the debtor is in default. (Siregar & Mekka Putra, 2022) According to the legal system in force with the new Law on Mortgage Rights, land rights can certainly be used as mortgage collateral, namely: Ownership rights, business use rights and building use rights. But now in the new UUHT it turns out that there are certain use rights, namely those that must be registered which, according to their transferable nature, have also been made objects to be burdened with mortgage rights (Filia Rumengan, Anna S. Wahongan, 2021).

This gives the creditor the right to demand fulfillment of his receivables (verification rights and execution rights) against the debtor's assets which are used as collateral objects. Article 1238 of the Civil Code (Civil Code) explains that a debtor is said to have committed negligence or default if he does not carry out his obligations and has been reprimanded but still does not fulfill his obligations within the specified time. Article 15 paragraph (3) UUJF confirms that if the debtor breaks his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee based on the power he has (Suharyadi, 2022). Guarantee or also known as collateral can be found in Article 1 number 23 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, that collateral is additional collateral handed over by debtor customers to the bank in order to obtain credit or financing facilities. based on sharia principles, where this guarantee or collateral is one of the factors in granting credit, meaning that the debtor's assets can be tied up in an agreement as a guarantee of debt repayment at a later date (Jannah & Badriyah, 2023). This is also stated in Article 6 of the Law. Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, the holder of the first mortgage right has the right to sell collateral objects to pay off debts at auction and collect from the sale to pay off

debts.(Hadisaputro, 2012) This means that if the debtor violates the terms of the agreement, the holder of the debt repayment guarantee has the right to sell the object of the debt repayment guarantee at public auction using his own power of attorney and will be responsible(Yudhatama et al., 2023).

Banking Law Number 10 of 1998 in article 8 regulates that civil lawsuit procedures are excluded by law in collecting receivables through the Grosse Deed institution. This means that in resolving a debtor's default, the creditor can execute the guarantee directly without going to court. The deed grosse institution has executorial power due to the principle of concordance regulated in HIR or Article 224*Regulations* Indonesia. Execution of Mortgage Rights is not a real execution because it is based on the title execution right. Then the mortgage certificate with*Executorial Title* Execution parate regulations apply(Liswara, 2024). In this case, the holder of the mortgage right can directly come to the Auction Office to carry out the auction process for the object that is the mortgage without the debtor's consent(Widyanti, 2020). The implementation of the execution of mortgage rights by auction is sourced from all legal bases through the KPKNL institution as the authorized agency(Widyanti, 2020).

The findings of an interview with one of the debtors of Bank BPR Wonogiri, if there is a financing problem even though it is stuck, the creditor must make remedial efforts in the form of rescue to prevent losses. This rescue is carried out by catching clients who deliberately do not pay off their receivables even though they provide convenience within time limits for payment, especially for disaster victims.

Based on the interview findings, it is clear that finances must be controlled to avoid bad financing. Bad financing is defined as the consumer's non-current repayment. To minimize losses, bad funding must be corrected immediately. To ensure that money is distributed smoothly, effectively and without traffic jams, management needs to be carried out. Based on interview findings, the Head of the Collection Recovery Area of Bank BPR Wonogiri believes that problematic financing is one component of problematic financing. Financing when problems occur, namely: 1) When there is arrears exceeding (exceeding) 90 days to 180 days/6 months it is said to be less smooth; 2) If there are arrears exceeding (past) 180 days to 270 days/9 months, they are said to be doubtful; and 3) If there are arrears exceeding (exceeding) 270 days/more than 9 months, it is called a default. Financing control aims to: protect against bad credit (unsafe), carry out preventive activities and look for solutions so that financing does not get stuck.

Bank BPR Wonogiri handles customers who have difficulties with financing/delays, sends administrative warning letters and carries out settlement negotiations. Bank BPR Wonogiri and Bank BKK Wonogiri Regency are making financial assistance efforts for debtors who have difficulty paying off their obligations in installments, namely:

1. Approach with family. In taking a family approach, Bank BPR Wonogiri carries out warnings to problem debtors by delivering written warnings. If the warning letter does not find a solution then negotiations are carried out with the problematic debtor.
2. Restructuring (Rescheduling). When efforts at a family approach do not produce results, the next stage, namely restructuring, consists of three stages, namely rescheduling, namely Bank BPR Wonogiri extending the payment period based on the debtor's ability to pay. The condition is that Bank BPR Wonogiri provides relief and postpones margin payments, meaning that the margin continues to accumulate, but the margin payment is made when the debtor is able, while still within the installment time limit, and for convenience, the total margin obligation must be paid by the debtor. Restructuring allows Bank BPR Wonogiri to restructure the commitments it has received.
3. Execution of collateral. Collateral execution is the final stage of resolving problem loans. If the customer is in default and cannot pay off his debt, Bank BPR Wonogiri will execute the collateral/guarantee. The Head of the BPR Wonogiri Bank Collection Recovery Area said, apart from the warning, the administration will also give a written warning to the debtor in the form of: Warning Letter 1 contains a notification to the debtor regarding the tasks that must be carried out. When submitting warning letter 1 accompanied by details of the debt, even though a notice of arrears and granting SP 2 is submitted, if warning letter 1 does not find a middle ground, even though there has been a settlement and no changes have been made. Warning Letter 2 serves as a reminder and warning. If warning letters 1 and 2 are not effective, warning letter 3 is issued. Warning letter 3 provides a firm warning that the collateral will be confiscated and executed. In the event that warning letters 1, 2 and 3 are sent, the debtor must provide proof of receipt. Marketing handles shipping in person or through the post office, among other methods. If the debtor is not at home, it can be handed over to the village head or approved community representative.

If the customer still fails even after receiving three warnings, Bank BPR Wonogiri will confiscate the financing collateral to pay off the customer's obligations. So bad financing is handled with a financing guarantee offered by the customer to the creditor, stating that if the customer fails to pay the loan within a mutually agreed time period, the creditor can confiscate it or the collateral can be auctioned off and used as debt repayment. Act. used to guarantee payment of debts on property and land-related assets. No. 4 of 1996 related to regulating the position of creditors as holders of collateral for debt repayment (Lubis & Harahap, 2023).

In his interview, the Head of the Collection Recovery Area of Bank BPR Wonogiri stated that if the restructuring does not result in savings financing, the bank will use a direct auction of KPR collateral sourced from UUHT to handle bad loans. Article 6 Execution of debt repayment guarantees when a customer violates



a promise can be carried out in two ways: public auction, namely by selling collateral for debt repayment guarantees. Sale of collateral guaranteeing debt repayment in accordance with the process specified in statutory regulations and carrying out the executorial title stated in the certificate of encumbrance (Ningsih, 2021).

The findings of an interview with the Head of the Collection Recovery Area of Bank BPR Wonogiri stated that if the restructuring does not result in savings financing, the bank will use a direct auction of KPR collateral sourced from UUHT to handle bad credit. Article 6 Execution of debt repayment guarantees when the customer is in default, namely in 2 ways: public auction, namely by selling collateral for debt repayment guarantees. The sale of collateral guaranteeing debt repayment in accordance with the statutory regulatory process and the implementation of the executorial title is stated in the debt repayment guarantee certificate (Nurdin, 2022).

The customer experiences default, then the creditor is given the right to carry out parate execution, meaning that the creditor does not need to obtain permission from the customer or a local court order to carry out the execution (Jayanti & Darmawan, 2018). Article 6 Law on Debt Repayment Guarantees. In accordance with the Circular Letter from the Ministry of Finance of the Republic of Indonesia, the State Receivables and Auctions Agency, in carrying out the KPKNL execution, things must be taken into account, namely:

1. If the customer breaks his promise, the creditor as the holder of the debt repayment guarantee has the right to sell the debt repayment guarantee at a public auction and pay the debt. This agreement must be included in the mortgage documents.
2. Creditors as holders of mortgage rights function as auction applicants.
3. KPKNL will hold the auction.
4. Notification auction procedures regarding execution auctions
5. Carrying out an auction does not require a customer permission letter.
6. Determination of the value of the auction limit from the auction body.
7. Involvement of auction houses is based on the provisions of article 6 UUHT.

The Head of the Collection Recovery Area of Bank BPR Wonogiri stated that the sale of collateral would be used to pay off debtors' debts. This includes selling financing collateral to customers who own the collateral. Selling collateral by auction, namely selling collateral at a certain minimum price to pay off the debtor's debts. In an interview with the Head of Collection Recovery Area Bank BPR Wonogiri, he stated that when selling mortgage goods, the bank allows customers to identify consumers and sell them under the bank's control.

Banks give customers a time limit to sell financing collateral, no later than sixty days from the date of the customer's agreement, even though the collateral owner and the bank sell the collateral voluntarily/underhand (Prabandari et al.,

2021). With the approval of the bank, the time limit can be extended for thirty days from the previously determined time limit, and the agreement will become void/invalid if the sale of collateral cannot be completed within the specified time limit.

According to the Head of the Collection Recovery Section at Bank BPR Wonogiri, the sale of collateral is related to guarantees for debt repayment. This can be implemented if one month has passed since providing guarantees for debt repayment to interested parties and no parties have objected. Payment of proceeds from private sales of collateral is made directly from the buyer to the bank, and if the proceeds from private sales exceed the value of the customer's obligations and the costs incurred by the bank in connection with the financing settlement process have been carried out. paid, the remaining proceeds from the sale of the collateral become the customer's rights. The bank auctions the land according to the apperition or estimated selling price of the collateral which should be greater than the total loan as mitigation of collateral risk in disbursing financing, but the bank which auctions the land is below the total amount of the debt which of course results in perceived injustice for the customer who should receive transparency. The amount of collateral assessment is in accordance with regulations based on the principle of transparency based on article 2 of the Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector(Fathiyah & Nurhasanah, 2020).

The Head of the Collection Recovery Area of Bank BPR Wonogiri prohibited the auction organizer from participating because it had the potential to cause a conflict of interest. Banks as holders of debt repayment guarantees conduct public auctions through KPKNL. Income from the sale of financing collateral is used to reduce customer loan obligations. In its implementation, it does not require the customer's consent, even though he is the owner of the collateral(Yosa & Ramadita, 2023). In America itself, there has been a discovery that companies that conduct auctions have risks in the auction process by changing public auctions to private auctions which have an impact on the company's profits(Brown Jr et al., 2022). This shows that the conflict of interest in the auction process is real so that an outside party is needed to ensure the auction process takes place.

Execution is the last alternative for creditors to repay debts if the debtor fails. In this situation, Bank BPR Wonogiri has several rules in determining the auction, namely as follows: Even if the customer is in default, the customer has been recorded as having financial problems and has received a 1-3 warning letter. The collateral is valued based on the most recent valuation. And customer guarantees are fully guaranteed. Auctions as a legal institution have been regulated in statutory regulations since the time of the Dutch East Indies Colonial Government, these regulations are contained in the *Vendu Reglement* or VR which was announced in *Staatsblad* 1908 number 189 and changes are still in effect today(Enrawati, 2020).

The aim of the auction is to obtain rights to land so that buyers at the auction can legally control and use the land/mortgage (Puspasari et al., 2020).

As a result of interviews, Bank BPR Wonogiri employees will make efforts to rescue problematic financing, and if these efforts do not find a solution, the financing collateral will be executed in the form of debt repayment guarantees by auctioning debt repayment guarantees. KPKNL, even though the sale is under the hands of the rights holder, even though the debt repayment guarantee is given if there is agreement from both. Based on the author's investigation of research findings, the auction held by Bank BPR Wonogiri was somewhat hampered because buyers were difficult to identify and there were no takers. Creditors must make it easy for clients to pay off their debts with the aim of preventing bad credit (Sarma Silitonga, 2020).

Agreements made between creditors and debtors are credit agreements and mortgage agreements. Collateral depends on the guarantor's ability to obtain bank or non-bank loans (Rizkianti, 2024). Creditors (banks) are given collateral in the form of material which refers to material rights, such as collateral for immovable property in the form of land. To ensure that the collateral imposed complies with statutory regulations, the PPAT must complete and register a debt repayment guarantee deed at the land office. Registration of debt repayment guarantees exemplifies the concept of publicity based on the land rights registration system based on PP.No.24 of 1997. Apart from fulfilling the principle of publicity, the purpose of this registration is to obtain what is called a mortgage certificate, which is a way of resolving bad credit by directly executing the collateral. property of the debtor in default without having to carry out execution through a lawsuit process in the district court (Aryonegoro & Prakoso, 2022).

### **Obstacle In Implementing Land Auctions As Collateral For Debt Repayment**

Obstacles that may hinder the execution are still discovered during implementation. Although the debt repayment guarantee legislation regulates it explicitly and comprehensively, the way it is implemented will ultimately determine the law. appropriate to regulate its use for the general public. There were several requests for debt repayment guarantees for the head of the district court, some were approved, some were rejected. In order to increase insight into repayment of receivables with collateral, there are similarities between the author's research and articles from Bayu Rangga Warsito and Albertus Sentot Sudarwanto that BPR Klaten has debtors who are in default in making payments so the solution is to confiscate collateral using the foreclosed collateral procedure (AYDA). If the payment is due but the debtor has not made the payment, a warning letter will be given, then a telephone call or a visit to his house will be given, after which negotiations will be carried out to resolve the payment problem through litigation or surrender of collateral. A statement letter is used to transfer the collateral object

from the debtor to the bank. These two studies are based on Article 8 of Law Number 10 of 1998 concerning Banking in order to resolve banking problems (Warsito & Sudarwanto, 2020).

From this research, at BPR Klaten there are factors that cause bad credit from debtors, namely internal and external factors. Internal factors include credit analysis officers being less thorough in analyzing credit, lacking personal information from customers, and the bank's low ability to analyze credit applications. Meanwhile, external factors are the bad intentions of the debtor when making credit and the presence of external influences that cause the debtor to be unable to pay the debt. The implementation of AYDA from BPR Klaten itself has obstacles in its implementation, namely the many requirements in the AYDA process, both in terms of costs and Notarial, which has an impact on the BPR's financial deficit and the sale of confiscated collateral assets in the AYDA process takes a long time to sell (Warsito & Sudarwanto, 2020). Meanwhile at BPR Wonogiri, The obstacle in carrying out the land auction process for rebalancing is finding the most difficult buyer. The auction is held at the KBKNL office, and after all requirements are met and inputted into the electronic system, the auction can be carried out. However, what is difficult is finding a suitable buyer for the auction according to interviews from BPR Wonogiri officials.

Based on the results of an interview with the Head of the Collection Recovery Area at BPR Wonogiri Bank, there are several circumstances that may hinder the implementation of debt repayment guarantees through court processes even though auction sales, including: (Pamungkas, 2024)

1. The agreement to vacate the collateral/mortgage guaranteeing debt repayment is not working effectively. Mortgage collateral will be withdrawn if the customer defaults. UUHT provides an opportunity for the parties to reach an agreement in the deed providing guarantee for debt repayment, including an agreement to release mortgage collateral. The execution of this agreement is ineffective, that is the reality. Many cases regarding the implementation of debt repayment guarantees are still unresolved.
2. There is a 3rd Party (Third) lawsuit. If the creditor auctions the debtor's debt repayment guarantee, the debtor files a counterclaim to the court because he does not agree with the creditor auctioning the debt repayment guarantee.
3. The binding of rights to dependents is not perfect. Binding of bank mortgage collateral in practice does not always go smoothly. The bank only asked for a certificate of providing a guarantee for debt repayment to the customer and a deed of providing a guarantee for debt repayment was not made to the PPAT even though it was a Notary Public, and the collateral was not registered at the land office to obtain a certificate of guarantee for debt repayment. The debt repayment guarantee will be revoked if the customer is determined not to comply with the terms of the agreement.

4. Executions are often subject to interference from third parties. Usually there will be third party intervention during the execution process. A third party appeared there, verified that the collateral for repayment of the debt did not belong to the client, and organized a mob to stop the execution. The Head of the Collection Recovery Area at BPR Wonogiri Bank in his interview said that there was a deliberate attempt to prevent the execution of customers by organizing crowds to block the road. Circumstances like this make it impossible for security forces to carry out executions; In fact, it has to be postponed even if it is not implemented at all. The purpose of postponing execution is to prevent undesirable things from happening.
5. Discrepancies in opinions regarding the auction price are determined by the Auction Officer and the debtor. Another factor hindering the implementation of debt repayment guarantees is disagreements between the executed parties and auction officials regarding the auction price. The implementing party stated that the auction organizer had carried out its duties honestly and transparently, and the negotiated price was much lower than the low market price. As an auction applicant, the bank has set a price; KPKNL does not have the ability to do this. The executed party often protests these differences of opinion, thus hampering the execution of the mortgage collateral.
6. Juridical Obstacles. Creditors (banks) to sell mortgage objects in accordance with article 6 are listed in paragraph 1 of article 20 UUHT. explains that: if the customer/debtor is in default, as the first holder of the debt repayment guarantee, he can sell the object of the debt repayment guarantee through a public auction under his own authority and the proceeds of the sale are taken as repayment of the debt.

The explanation above can be concluded that the bank as the holder of the debt repayment guarantee is able to sell the object of the debt repayment guarantee and the income is used to pay the bank's receivables. The executed party will retain ownership of the remaining sales if the sales proceeds exceed the debt. As can be seen, the debt repayment is deducted up to the value of the debt repayment guarantee stated in the debt repayment guarantee certificate from the sale of the debt repayment guarantee object of the executing party. Sometimes the value in the bank exceeds the amount specified in the debt repayment guarantee certificate because of the price.

Obstacles to the auction process itself are divided into legal, economic and social obstacles. In accordance with the contents of Law Number 4 of 1998, only banking bodies can submit auctions to KPKNL, so the public cannot conduct auctions (Yosa & Ramadita, 2023). This is what triggers public ignorance about the auction process. The economic constraints that occur, namely the costs involved in carrying out an auction, mean that the auction institution needs to take into account the results of the auction so that it does not cause losses to the applicant.

The costs that must be covered include market search costs, costs of losses due to low bids, object due diligence, as well as costs for regulations such as taxes so that the government must control regulations so that asset sales are maximized (Macey, 1990). Taxes on auctions are regulated in Government Regulation Number 34 of 2016, which in Article 1 stipulates that income obtained by individuals or legal entities from the transfer of land rights is subject to tax at 2.5% (Lindasari & Amalia, n.d.). This has an impact on buyers who want to make auction purchases but feel disadvantaged due to the taxes they bear. Meanwhile, social barriers lie in consumers' ignorance, resulting in auction items not selling well.

Obstacles In the development of auctions in the world, Paul Milgrom discovered that the rules used during the auction process can have an impact on the auction results. In 1993, telephone auctions influenced market bidding for auctions. Bidding is requested to be held in small areas, which means the area has not been touched by auction activities. This is the same as the current obstacles to auction procurement in Indonesia, the difference is that if ordinary people currently don't know about the website or internet site where auction announcements are located, of course we don't know that a collateral item has been auctioned and this is an obstacle to the auction process finding a buyer. By using the internet nowadays, of course we have more freedom to advertise auctions, but there are obstacles where auction broadcasts do not work optimally because they are not targeted appropriately (Milgrom, 2021).

Revenue from auctions usually comes from online transactions, where data is uploaded electronically. Once the data is verified online, the process is complete, and an official copy is sent to the buyer. However, the purchasing process does not always happen directly, but requires time and effort to find a suitable buyer. Online content allows all levels of society to access information. KBKNL has a platform that allows the public to view and participate in auctions. The public can immediately see information about available auctions and even ask questions directly through the platform. Purchases at auctions can be made directly through the platform, but it can sometimes be difficult for buyers to successfully log in and participate. However, the system remains open for the public to access and participate in the auction process. However, it is practically difficult to do (Wonogiri, 2024).

The difficulty of finding buyers during the auction process has many reasons. One of them is because not everyone is interested in the assets being auctioned. Unlike selling food, selling assets requires a more mature strategy. Sometimes it is difficult to find a suitable buyer, especially if the auction schedule is not suitable or the location is less strategic. Apart from that, the high price of goods is also a determining factor. Buyers will consider strategies, the condition of the goods offered, and the market situation before making a purchasing decision. This makes the sales process more difficult and takes longer. Auction sales cannot be

accelerated because they depend on the buyer's interest, condition of the goods, and so on, so it takes a lot of time (Wonogiri, 2024).

In his interview, the Head of the Collection Recovery Area of Bank BPR Wonogiri said that there are several ways to overcome the challenges in executing debt repayment guarantees as financing collateral, so that banks can be legally protected. These approaches include:

a. Efforts to solve problems/obstacles juridically

The chairman of the district court uses the settlement method outlined in paragraph 1 of article 3 of the Law. debt repayment guarantee to determine the value of money that must be paid by the customer, also called a checking account clause in debt and receivables relations. This method includes determining the amount of debt, collateral and repayment time.

The customer objects to the maximum debt value stated in the mortgage certificate as an effort to prevent the implementation of the debt repayment guarantee. Regarding the resolution of the problem of emptying the mortgage collateral during the implementation of the debt repayment guarantee, the Head of the Collection Recovery Area of Bank BPR Wonogiri emphasized that this is really called an agreement. As the owner of the debt repayment guarantee, the bank sells the mortgage collateral and cuts the sales proceeds if the customer violates the agreement. Consumers must leave the land, buildings, even other mortgage collateral before the execution is complete (Pamungkas, 2024).

In an effort to stop the implementation of the debt repayment guarantee, the customer objected to the maximum debt value specified in the mortgage certificate. Responding to the problem of emptying collateral during the implementation of the debt repayment guarantee, the Head of the Collection Recovery Area of Bank BPR Wonogiri emphasized that this is indeed called an agreement. The bank sells the mortgage collateral as the owner of the mortgage rights, withholding sales proceeds if the client violates the terms of the deal. Before the execution is complete, the customer must hand over the real estate, building, even other mortgage collateral, namely: The persuasive way is to approach the auction winner. He can absorb losses even if significant expenses are incurred by the previous owner as the new owner. As the winner of the auction, he can request execution from the head of the court to carry out the execution order, and if state assistance is needed, the head of the district court applies forced execution (Pamungkas, 2024).

Execution through the courts is the use of government tools to carry out coercive actions with permanent legal force. Efforts and implementation steps have not yet been implemented. The implementation of a court decision functions as a valid and coercive legal action against a defendant who does not want to obey and implement it freely, only if the order has permanent legal force (Khair et al., 2022).

The authority gives the authority to carry out decisions executory, namely decisions from the court that have permanent legal force and are executory in nature, for example land certificates and debt repayment guarantee certificates, if the party loses their rights. The objection decision takes voluntary legal action. Execution of fiat can also be understood as a court's decision to implement that decision (Sarma Silitonga, 2020).

The stages of fiat execution for the object of debt repayment guarantee are:

- 1) Request for warning. By presenting a certificate of entitlement to a dependent to the head of the local district court, the person will be given permission even though the request for execution may result in a warning.
- 2) Examining a file. The head/chairman of the court carries out a check of archives/dossiers of mortgage rights including: Debt agreement, Agreement to provide guarantee for debt repayment, APHT, has been registered at the national land office and certificate of debt repayment guarantee
- 3) Conducting hearings on reminders. The head of the court warned the convict that he had to fulfill his obligation to guarantee the repayment of his debt within a maximum of 8 days voluntarily, namely *aan maning*. This incidental hearing includes court appearances attended by the chairman of the court and the clerk. The minutes regarding *Aan Maning* are genuine.
- 4) Procurement of Confiscation (Confiscation Execution). When the time limit passes and it is discovered that the executor is unable to carry out his responsibilities, the object of the debt repayment guarantee can be confiscated for execution.
- 5) Auction with execution. After *aan maning* and confiscating the execution, the next step is to carry out the execution.
- 6) Emptying. If the person being executed is inhabited land and a house, and the executed person refuses to hand over the house and the land is empty and still in good condition, then pressure must be applied to the executed person and his family. Execution applicants may seek assistance from government officials and the police.

b. Efforts to Solve Non-Judicial Barriers

This effort is carried out in collaboration with the head of the village where the execution is carried out and security officers so that the collateral location can run smoothly, including mobilizing the masses to obstruct the execution process and increasing the number of security officers so that the collateral location can be secured first and the execution process running smoothly (Pamungkas, 2024). To ensure that people understand the law and know what their rights and obligations are, it is important to educate them about execution issues through legal education with relevant organizations. To ensure that the executed party understands their rights and obligations and does not hinder the execution process, it is best for the



executed party to provide guarantees of execution voluntarily, sincerely and without coercion. Approach the executed party.

Efforts to minimize obstacles from the collateral auction process by BPR Wonogiri include marketing auction products using the BPR Wonogiri bank's social media because its social media followers are residents of Wonogiri and its surroundings so that people's doubts about buying auction items are reduced. BPR Wonogiri must carry out auction offers in collaboration with local families to provide information to people who are closer to the collateral object so as to dispel buyers' doubts. Auction marketing can also be done through leaflets posted in auction areas or public areas, property agents, and in places that are likely to be known by the wider public. Solutions to increase the effectiveness of the auction process can include increasing buyer understanding, simplifying procedures, and providing clearer and more transparent information to prospective buyers.

#### D. CONCLUSION

Bank BPR Wonogiri conducts a land collateral auction if the customer is in default. The implementation of the KPKNL auction, the purpose of this auction is to pay off the debts charged to the debtor. Obstacles in the implementation process, such as the ineffectiveness of the promise to vacate the object of debt repayment collateral, the existence of third party claims, the imperfect implementation of the binding of debt repayment collateral, third party interference in its implementation, and differences of opinion between the debtor and the auction officer regarding the auction price, thus the public needs to be aware of the execution carried out by the bank on the credit agreement they made. This is in accordance with the author's aim to provide knowledge about the execution of credit repayments that are common in the community so as not to harm the community itself. Factors that hinder the process of execution of debt repayment need to be considered by the debtor and creditor as a fair execution material between the two.

There needs to be a more in-depth regulation regarding the execution of debt repayment as a juridical basis for creditors and debtors. Creditors (banks) can sell mortgage objects according to article 6 listed in paragraph 1 of article 20 of the UUHT which explains that: if the customer / debtor defaults, as the first holder of the debt repayment guarantee, he can sell the object of debt repayment guarantee through a public auction under his own authority and the proceeds of the sale are taken as repayment of his debt. There should be regulations regarding other executions besides the auction of debt collateral when the debt has reached more than 50% repayment. The right granted by law can be seen as a prerogative because it can directly sell the debt collateral.

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#### COMPETING INTEREST

None.