

## **Settlement of Bad Loans with Guarantee of Dependent Rights at Banks and Auction Houses Based on the Law on Dependent Rights No.4 of 1996 (Case Study: Decision No.550/Pdt/2019/PT MDN)**

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### **Abstract**

The interaction between economic development and the banking sector, particularly in the provision of credit, is crucial, with the resolution of non-performing loans (NPLs) being a significant issue. This study, titled "Resolution of Non-Performing Loans with Collateral Rights in Banks and Auction Houses," aims to investigate the mechanisms for resolving NPLs through the execution of collateral rights as stipulated by Law No. 4 of 1996. Utilizing Verdict No. 550/Pdt/2019/PT MDN as a case study, the research employs normative and legal analysis methods to explore the implementation of collateral rights in the auctioning of collateral assets when debtors default on their loans. The findings reveal the legal procedures and effectiveness of collateral execution in mitigating NPLs. The study concludes that the proper application of collateral rights laws can significantly aid in resolving NPLs, with implications for improving banking sector stability and credit recovery processes.

**Keywords:** Auction, Bad Credit, Legal Procedures, Mortgage Rights

### **Introduction**

In Indonesia, credit agreements in the banking sector are governed by Bank Indonesia Circular Letter No. 02/643/UPK/Pemb. Dated October 20, 1966, Juncto Circular Letter of Bank Indonesia Unit I No. 2/539/UPK/Pemb. Dated October 8, 1966, Juncto Cabinet Presidium Instruction No. 15/EK/10 dated October 13, 1996. Based on Law No. 10 of 1998, credit agreements often include material guarantees, positioning the creditor as a preferred creditor. (Anwar et al., 2023; Catalán et al., 2020; Chandera et al., 2018) Djunaedah Hasan defines a guarantee as a means of protection for creditors, ensuring the repayment of the debtor's debts or the performance of an obligation by the debtor or guarantor (Arafah et al., 2024). Guarantees in Indonesian law are affirmed in Article 1131 of the Civil Code, which states that all material possessions of the debtor, both movable and immovable, present and future, are liable for all the debtor's engagements (Viphindrartin et al., 2021). Providing a guarantee is an absolute condition for applying for credit due to the bank's prudence principle. According to Article 8 of

Law No. 10 of 1998 on Banking, credits must adhere to the prudential principle due to the high risks involved (Badriyah et al., 2021).

In insurance law, the insured object is always tangible and can be valued in money, like a house, boat, or vehicle (Nys et al., 2014; Sukmaningrum et al., 2023). Scheltema describes an intangible "interest" as the principal of coverage, which can be the object of insurance (Ramadhania, 2023). If there is no interest in the insured object, the insurer is not required to pay compensation (Article 250 of the Criminal Code) (Nainggolan et al., 2023).

The Right of Dependency (Hak Tanggungan) is a security right over land as stipulated in Law No. 5 of 1960 concerning Basic Agrarian Law for the repayment of certain debts, giving priority to specific creditors over others (Hardiyanto, 2021). Article 20 of Law No. 4 of 1996 on the Right of Dependency states that creditors can sell the object through a public auction if the debtor defaults (Wibowo, 2023).

The auction process for the Right of Dependency, governed by KPKNL, follows the concept of Parate Executive, allowing creditors to sell the object without court approval (Wibowo, 2023). Despite proper procedures, auctions often face lawsuits from debtors or others claiming harm. These lawsuits can occur before or after the auction execution (Meckelburg & Wardana, 2024; Neilson, 2022).

From a banking perspective, every credit issued involves risk, necessitating security components like guarantee agreements (Chandera et al., 2018). If the debtor fails to meet obligations, the guarantee is used for repayment (Badriyah et al., 2021; Dobriev, 2021). In case No. 550/Pdt/2019/PT, the debtor failed to repay despite restructuring efforts, prompting the creditor to auction the collateral (Fianto et al., 2018). The debtor contested the auction, alleging bad faith and procedural irregularities, and filed objections related to the auction process (Cassimon et al., 2011; Fianto et al., 2018; Mazumder & Rao, 2023).

Based on the explained background, the author formulated a study entitled "Settlement of Bad Loans with Guarantee of Dependent Rights at Banks and Auction Houses based on Law Number 4 of 1996 concerning Dependent Rights (Case Study: Decision No.550/Pdt/2019/PT MDN)." This research aims to provide solutions to previously identified problems. The objectives of this research are to provide a comprehensive understanding of the legal procedures and processes involved in the auction of debtor assets based on Law Number 4 of 1996 concerning Dependent Rights (UUHT) and to describe the mechanisms for resolving non-performing loans (NPLs) through the utilization of collateral rights in credit agreements. By examining these aspects, the study aims to elucidate the practical application of collateral execution in mitigating NPLs and to offer insights that could enhance the effectiveness of credit recovery practices. This research seeks to contribute both theoretically and practically, serving as a valuable reference for future academic work and providing actionable knowledge for banking professionals, legal practitioners, and policymakers.

The purpose of this study is to understand the process and procedures in the implementation of the debtor's asset auction based on Law Number 4 of 1996 concerning

Dependent Rights, as well as to describe the settlement of bad loans with the guarantee of dependent rights in credit agreements. Theoretically, this research is expected to be a reference source for writing other scientific papers related to the topic, as well as a forum for developing new insights, information, and perspectives. Practically, this research is expected to broaden the author's insight into the procedure for settling bad loans with guaranteed dependents, as well as contribute to the development of more in-depth science in the university environment and for future researchers.

## **Research Methods**

This research employs a normative-empirical legal approach to provide an in-depth understanding of the settlement of bad loans with the guarantee of dependent rights in banks and auction houses, as stipulated by Law No. 4 of 1996 concerning Dependent Rights. The combination of normative and empirical elements is crucial for comprehensively analyzing both the theoretical legal framework and the practical implementation of laws related to credit agreements and collateral execution. The normative approach focuses on the analysis of existing legal regulations, judicial decisions, and relevant literature to establish a theoretical foundation. This aspect of the research ensures a thorough understanding of the legal principles and statutory provisions governing dependent rights and the auction process. It also helps identify any legal inconsistencies or gaps that might affect the practical execution of these laws.

On the other hand, the empirical approach involves the collection and analysis of primary data through direct interactions with stakeholders involved in the execution of collateral object coverage. This method provides insights into the real-world application of the legal provisions and highlights any practical challenges faced by banks and auction houses in the settlement of bad loans. The choice of a normative-empirical approach is driven by the need to bridge the gap between legal theory and practice. By integrating empirical data, the research can offer a more nuanced understanding of how legal provisions are implemented and the effectiveness of these implementations in achieving the intended outcomes.

Data collection is conducted through purposive sampling techniques, which involves selecting respondents who are directly involved in the process of collateral execution. This method ensures that the data collected is relevant and specific to the research objectives. The purposive sampling technique is particularly suitable for this study as it allows for the selection of key informants, such as banking professionals, legal practitioners, and officials from auction houses, who can provide valuable insights based on their expertise and experience. The research specification is descriptive-analytical, aiming to provide a comprehensive overview of legal and policy arrangements related to the execution of debt collateral. The descriptive aspect of the study focuses on documenting the existing legal procedures, while the analytical component evaluates the effectiveness and challenges of these procedures.

The data analysis is conducted using a qualitative approach, emphasizing an in-depth exploration of research events and processes. This method allows for a detailed

examination of the practical aspects of collateral execution and the identification of any discrepancies between the theoretical legal framework and actual practice. The writing systematics are organized into five chapters: introduction, literature review, research methodology, findings and discussion, and conclusion. This structure ensures a logical flow of information, guiding the reader from the background and theoretical framework to the empirical findings and final conclusions.

## **Results and Discussion**

### **A. Analysis of the Procedure for Implementing the Debtor's Asset Auction according to Law Number 4 of 1996 concerning Dependent Rights.**

#### **1. Auction of Objects of Dependent Rights Based on the Law and Constitutional Court Decision Number 21/PUU-XVIII/2020**

Based on Article 26 of the UUHT, which reads:

"As long as there are no laws and regulations regulating it, taking into account the provisions in Article 14, the regulations regarding the execution of hypotheses that exist at the beginning of the entry into force of this Law apply to the execution of the Right of Dependency."

Article 26 explains that as long as there is no regulation regulating the object of the right of dependency and its execution, the regulation uses mortgage provisions and/or uses Article 224 of the Criminal Code. The object of mortgage and credietverband only includes land rights and does not include objects attached to the land, such as buildings, plants, and everything on the land. The matter regarding the separation of land with its contents refers to the horizontal principle, which explains that the ownership of land rights apart from the rights to goods on the land is separate and can be two different subjects. The nature of this horizontal separation principle is adopted from customary law rights but is maintained according to the needs of the community in today's era. However, from the explanation based on the Law on Dependent Rights, the objects that can be encumbered with Dependent Rights are the rights to land and objects related to land. In articles 4 to 7 of the Law on Dependent Rights Number 4 of 1996, it is explained that the rights to land that can be encumbered by the Dependent Rights are as follows:

- 1) Proprietary.
- 2) Right of Use.
- 3) Building Use Rights.
- 4) According to applicable provisions, the Right to Use State Land must be registered and, by its nature, can be transferred.
- 5) Rights - Rights to land and buildings, plants, and works that have existed or will exist as one unit with the land and belong to the land-right holder. In this case, the burden must be expressly stated in the Deed of Grant of Dependent Rights concerned.

The object of the right of dependency, according to the interview mentioned above, is a guarantee related to an individual is guarantee handed over to the creditor

in the form of debtor assets as a profit item for the repayment of the debt and receivables credit agreement, according to Mrs. Cosinta in the regulation from the OJK regarding credit guarantees that have been implemented at BANK CIMB Niaga, the current guarantee of the right of dependency should not only be land but land that includes buildings in one unit and in one owner's name.

According to Prof. Boedi Harsono in his book on Indonesian Agrarian Law, which includes a set of land law regulations which states that basically land rights can be used as collateral objects, but if land rights can be used as collateral objects, the debts and receivables must meet several conditions as follows:

- a) It can be valued in money because the debt that is guaranteed is in the form of cash.
- b) Including rights registered in the general register because they must meet the publicity requirements.
- c) It has a transferable nature because if the debtor is injured, the promise of the object that is used as collateral for the debt will be sold in public.
- d) Requires appointment by law.

Based on the description of Article 6 and Article 20 paragraph (1) of the UUHT, it can be understood that in the execution of the object of the right of dependency is an authority given by the law related to the holder of the right of dependency to execute the sale of collateral assets through the public auction method, in authority given by the law, the execution through this auction does not require approval from any party so that in its implementation in executing through this execution parate must comply with the existence of an agreement regarding default, as stipulated in Article 1178 paragraph (2) of the Criminal Code so that it is an implementation of an agreement and is equipped with a gross mortgage deed that is "For Justice Based on the One Godhead."

Based on an interview from Mr. Fandy Novitzo Adistyo S.H., M.Kn, Grosse, the mortgage deed was made by the Notary also with the standard irah-irah "After being read in front of the parties, I am a notary to sign this deed," from this provision the object of the right of dependency has legal certainty to carry out its execution. The article on the execution parate also explains that the execution of the auction of the object of guarantee is not related to the executory title, which means that the subject matter is separated and can not only be carried out through the executory title alone so that it does not require an execution fiat from the chairman of the court.

Apart from efforts to parate the execution of the object of the Dependent Rights, it can also be based on the executory title as in the certificate of the right of dependents. The certificate of the right of dependency can be the basis for the execution of the Right of Dependency. In addition to serving as a debt acknowledgment and proof of the existence of the right of dependency, the certificate of right of dependency is also helpful as a basis for the execution if the debtor is injured in the promise. With what can be used as evidence that the debtor defaults in fulfilling its contractual obligations, the holder of the certificate of dependent rights can submit

an application for execution to the Chairman of the Court concerned as the basis. The execution will be carried out on order and with the leadership of the Chairman of the District Court through a public auction conducted by the KPKNL.

Based on Article 14 and Article 26 of the UUHT, the certificate of the right of dependency and the deed granting the right of dependency have the power to carry out the execution based on the executory title. In this case, the creditor requests the determination and implementation of the auction from the chairman of the court and acts as the seller as follows the civil procedure law in the implementation of the execution of the hypothec era as long as no new provisions have been made regarding the execution of the right of dependency. In an interview with Mas Kevin, he said that the provisions of Article 14 paragraphs (1) and (2) of the Law on the Rights of Dependents make the provisions of Article 6 of the Law on the Rights of Dependents seem to be uncertain, because the certificate of the Rights of Dependents is affixed with irah-irah or an executive title. So, it is as if the execution is subject to Article 224 of the HIR, which must go through the assistance of the court.

If you look deeper, Article 224 does not require execution through the court, and this article stipulates that if the execution cannot be carried out voluntarily by the debtor and creditor, then the creditor can ask for court assistance. In essence, the certificate of dependent rights has the same executory force as a court decision that has permanent legal force and can be carried out voluntarily. In other words, the holder of the guarantee of the right of dependency can execute the guarantee of the right of dependency that he or she controls in a situation as if there had been a court decision with permanent legal force. It should be remembered, in principle, that the execution of a new engagement can be carried out if there is a court decision with permanent legal force.

But just like a court ruling, in practice, it can be executed or executed voluntarily, but sometimes the debtor (who receives the sentence) does not want to carry it out voluntarily, so the creditor (who is justified by the judgment) has to ask the court for help. Actually, Article 11 paragraph (2) letter e of the UUHT provides an option for the problem of voluntary execution or self-execution (parate execution) by creditors, namely by being expressly agreed that the debtor gives the right to the holder of the right of dependency to sell the object of the right of dependency himself if the debtor defaults. However, in practice, there will always be debtors who do not voluntarily admit that they have defaulted and voluntarily give up their bail to be executed. For this, creditors must finally ask for court help.

The Constitutional Court's decision, hereinafter referred to as Constitutional Court Number 21/PUU-XVIII/2020, is explained regarding the application for a test case, material testing of the phrase "executory power" and the phrase "the same as a court decision that has obtained permanent legal force" in Article 14 paragraph (3) and the word "injury of promise" in Article 20 paragraph (1) of Law Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land (Dependent Rights Law) against The 1945 Constitution of the Republic of Indonesia (1945 Constitution).

The Constitutional Court has the authority to test laws that are not in accordance with the 1945 Constitution or, in its application, are not of much benefit to the broader community, and the Constitutional Court also has judicial power in the courts of first instance to the court of the last level and the decisions handed down by the Constitutional Court are final, which is the legal basis for the authority of the Constitutional Court is Article 24 paragraph (2) of the 1945 Constitution stating that:

"Judicial power is exercised by a Supreme Court and the judiciary under it in the general judicial environment, the religious judicial environment, the military judicial environment, the state administrative, judicial environment, and by a Constitutional Court."

Article 24C paragraph (1) of the 1945 Constitution states that:

"The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to test the Law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, 2 decide the dissolution of political parties, and decide disputes over the results of general elections".

Article 9 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations states that:

"In the event that a law is suspected to be contrary to the Constitution of the Republic of Indonesia in 1945, the test is carried out by the Constitutional Court."

From the legal foundations of these authorities, the Constitutional Court was formed as an institution that safeguards the state constitution (The Guardian of Constitution), which has the right to provide interpretation of the provisions of articles in the law in accordance with the foundation of the fundamental values of state law, namely the constitution and its implementation in society is also helpful and can protect its subject reasonably. Then, regarding the testing of Article 14 paragraph (3) and Article 20 paragraph (1) of the Law on the Rights of Dependency against the 1945 Constitution, the Constitutional Court is fit and authorized to examine, adjudicate, and decide on the application for testing.

The conclusion from the description of the judge's consideration and the result of the Constitutional Court judge's decision, the legal concerns are clear that the norm of Article 14 paragraph (3) of the Law on the Right of Dependency does not eliminate the debtor's constitutional rights because the components that are the nature and characteristics of the right of dependency are inseparable from the criteria inherent in the right of dependency which is a formal condition that is fundamental and absolute. Meanwhile, the conditional application of the phrase "executory power" and the phrase "the same as a court decision that has obtained permanent legal force" desired by the Petitioners is an additional condition whose implementation can be supported in the space of freedom of contract, which is one of the conditions for the validity of an

agreement. That is, the existence or absence of a credit agreement in a state of force (overmatch/force majeure) in the agreement, in fact, does not reduce the debtor's constitutional right to be able to pursue legal remedies by filing a resistance or lawsuit in court by postulating the existence of a force majeure (overmatch/force majeure) and this can also be the basis of a creditor's reason, or execution through the assistance of the chairman of the district court or the auction office to delay the execution of the guarantee of dependent rights.

From the arguments submitted by the Constitutional Court, it is clear that concerns about the position of debtors in general and their implementation can be supported to be included in the substance of the agreement before the parties make a credit agreement. By adding a clause in terms of the deal which has been agreed upon by the parties, which is a form of actualization of the principle of freedom of contract, which is one of the conditions for the validity of an agreement referring to article 1320 of the Civil Code which has been explained, then based on article 1337 of the Civil Code as long as it does not conflict with morality, public order, and the laws and regulations of the agreement binding the parties who make the agreement, In other words, the engagement agreement can be the basis of rules or guidelines for the parties who make it (Pacta Sunt Servanda Principle).

Thus, if a problem arises in the future for the sake of legal certainty, then the parties who feel that their rights are aggrieved can resolve the issue until the court has a broader scope in resolving civil disputes. So that in the context of the Petitioners' application in the material test, before there is a plan to implement the execution of the dependent rights, the parties, especially the debtor, can get legal certainty and justice by resolving both deliberations and legal efforts against the lawsuit/lawsuit to get a court decision before the execution of the dependent rights is carried out so that there is legal certainty in its implementation. Likewise, if the debtor and the creditor do not make a compelling circumstances clause as one of the clauses in the agreement, it does not mean that the debtor loses his right to the opportunity to exercise his rights until he files a resistance/lawsuit in court.

The process of self-defense of the debtor, and if it comes to legal remedies for resistance/lawsuit, then it can also be the basis for postponing the execution by creditors, including those through the assistance of the chairman of the district court and/or the auction office. Even if the covenant agreement between the debtor and the creditor does not explicitly stipulate the circumstances of force as already explained, the creditor, whether using the fiat of execution assisted by the court or the right of parate of execution, will still go through the process and stages of not arbitrarily utilizing the power of law to waive the rights of the debtor, Within its scope, the parate of execution must also carry out stages without ignoring rules and regulations, for example giving a warning letter (ammaning), then the stage of summons, restructuring, to the stage in the execution of confiscating collateral assets to submitting a letter of application to the government auction institution, namely KPKNL.

From the process of these stages, it can be seen that the debtor is always involved in every implementation, especially in the early stages. The debtor has the opportunity to defend himself before leading to execution using the parate method of execution or fiat execution from court assistance. Furthermore, apart from the stages of execution described above, the execution auction can also be carried out by auction under the hands agreed by both parties based on Article 20 paragraph (2) of the UUHT if the method benefits both parties at a higher price, then the creditor does not hesitate to agree to the agreement as long as the debtor does have the intention to make a good faith repayment.

It needs to be emphasized based on the description explained based on the Constitutional Court's decision regarding this material test, the debtor's concern regarding the absence of the meaning of the phrase "executive power" that regulates the authority of the creditor in the execution of the guarantee with fixed legal force with the phrase "the same as the court decision" or by parate the execution which is detrimental to the debtor, because in the process of its implementation using conditions, what is often given from the debtor's point of view is not Reasoned. Moreover, these considerations can also answer that the problem is not in the debtor's constitutional rights but in the application of clauses in the credit treaty agreement, as already mentioned. Besides that, based on Article 1865 of the Criminal Code, the debtor can take maximum legal remedies even in the absence of the agreed clause.

## **B. Analysis of the Procedure for Implementing the Debtor's Asset Auction according to Law Number 4 of 1996 concerning Dependent Rights.**

### **1. Stages and Positions of UUHT and PMK Number. 27/PMK.06/2016 in the Implementation of the Auction.**

In practice, bad loans cannot be avoided even though banks have applied the principle to first screen prospective debtors, analyze the financial statements of prospective debtors, look at the ability and capacity of prospective debtors, and the economic conditions of prospective debtors. The situation where the debtor is unable to pay the bank credit on time is no longer common. After the creditor or the bank gives a warning letter to the debtor, it is undoubtedly expected to produce results through settlement with a negotiation process in the context of settling the debt. However, these warnings often do not give results, so the last step to resolve bad loans that can be done by creditors is to auction the debtor's assets that have been pledged with liens in accordance with the certificate of lien rights.

The implementation of the execution auction can only be carried out by class I auction officials who are domiciled in KPKNL. The procedure for executing the right of dependency begins with an official notification to the debtor, as it has been explained that the creditor will provide an opportunity for the debtor to make payments to avoid auctioning his assets. Banks have legal rights to assets that are collateral for the execution of the auction, which must be based on PMK No.106/PMK.06/2013 concerning Auction Implementation Guidelines to avoid

errors in the auction implementation process. The following are the stages of the auction carried out by KPKNL:

## **2. Pre-Auction Stage/Auction Preparation**

The pre-auction stage (before the auction transaction occurs) is the handling of orders, which includes collecting and recording goods, assessing goods, and marketing. Several things must be carried out in the preparation of the pre-auction for the smooth implementation of the auction. This is to avoid the possibility of legal disputes in the future. Some of the activities include preparations which include the completeness of documents and application letters containing auction requirements according to the type of auction which is then submitted to the head of KPKNL to get a schedule for the auction to be held, in the schedule KPKNL gives freedom in determining the time and place related to its implementation as long as the place is still in the KPKNL work area and is also carried out on KPKNL working days, then in submitting an application based on PMK No.27/PMK.06/2016 and No. 213/PMK.06/2020 the auction implementation must be preceded by an announcement as one of the legal requirements as the legal basis for the auction itself, the seller submits proof of the announcement that has been announced through the national official mass media and/or published in the provincial or regency/city daily newspaper containing the seller's identity, the type and number of auctions, the time and place of the auction, the specifications of the goods that are specifically for movable goods, the location intended for the type of immovable goods, the limit value of the goods, the time and place to see the goods to be auctioned, the period for the obligation to pay the auction by the buyer and the bidding method of each type of auction.

## **3. Auction Implementation Stage and Post-Auction**

The auction hall, as the applicant and attorney of the owner of the goods, can enter into a civil agreement with the Class I or Class II Auction Officer in accordance with PMK No.27/PMK.06/2016. Auction officials have essential duties in the implementation of the auction, including reading the auction minutes, leading the auction in an orderly, fair, safe, and smooth manner, and determining the auction winner. Before the auction begins, the auction participants or their proxies are allowed to submit bids, which are then collected by auction officials to determine the winner. After the auction, the auction hall carries out the process of shipping goods and managing the renaming of goods in accordance with applicable regulations.

The payment process is an essential stage in the auction. Buyers must pay off the auction amount and auction duties within a maximum of five working days after the auction is held. If the buyer does not pay within the specified deadline, a warning letter will be issued to pay off within 24 hours. If the payment is still not made after the warning letter, the buyer's status will be canceled and reported to the DJKN. Payment must be made in the form of cash or cheque/giro accompanied by proof of payment. This entire process is regulated by PMK No.106/PMK.06/2013.

In the execution of the auction to guarantee dependent rights, PMK is the legal basis for regulating the auction implementation procedure. Although the law does not explicitly regulate the implementation of auctions, PMK is often used to regulate auction procedures, including registration requirements, implementation periods, and the distribution of sales proceeds. The position of PMK in auction execution depends on the applicable positive law, where PMK can have valid legal force if it is based on the authority granted by higher laws and regulations.

### **C. Analysis of Bad Loan Settlement with Guarantee of Dependent Rights in Credit Agreement between the Debtor, the Bank, and the Auction House.**

#### **1. Authentic Deeds**

Based on Article 1868 of the Civil Code, an authentic deed is a document that is made in accordance with the standard of form set by law and attended or made in front of authorized public employees. To be considered authentic, a deed must meet two main conditions: it must conform to the format prescribed by law and be witnessed and legalized by an authorized public official. If an authentic deed is made by an unauthorized official or does not meet the provisions of the law, it will not be considered valid. In the context of civil law, an authentic deed has evidentiary solid power in the eyes of the law and cannot be rejected in court as long as it meets specific requirements. There are three levels of evidentiary power in an authentic deed, namely external, formal, and material evidentiary power. The power of outward proof states that a document that physically looks like a deed will be considered an authentic deed until there is evidence to the contrary. Formal power of proof provides guarantees about the correctness of the date, contents, and signatures in the deed but is only guaranteed between the parties involved. Meanwhile, the power of material proof provides verification that the parties are really present and explains something stated in the deed (Septianingsih et al., 2020).

#### **2. Deeds Under Hand**

The deed under hand, in accordance with Article 1874 of the Civil Code, is a document that is directly signed by the parties involved, including letters, lists, or other documents, without the intervention of public officials. It is usually used in agreements such as sales, rentals, etc., which are signed by all parties involved without the need for the intervention of public officials. There are formal and material requirements that must be met, including legal information in the deed and the purpose of its use as evidence. The validity of the deed, both authentic and underhand, depends on the fulfillment of the conditions of the validity of the agreement. Notaries have an important role in the preparation of a deed of agreement, providing legal certainty and the highest power of proof, especially in banking transactions and asset guarantees. Although not always necessary, the use of notary services is usually advised by parties in need. The reason why banks

require the creation of a deed with a notary is so that the deed has sufficient executory power.

**D. Analysis of Bad Loan Settlement with Guarantee of Dependent Rights in Credit Agreement between the Debtor, the Bank, and the Auction House.**

Regulations related to credit extension, restructuring, and execution efforts through debtors refer to the provisions regulated by Bank Indonesia and the Financial Services Authority (OJK). Bank Indonesia, through Regulation No. 14/15/PBI/2012 Article 52, sets the criteria for credit restructuring, while OJK, through Regulation No. 11/POJK.03/2015 regulates various efforts to rescue bad loans. These rescue efforts can be carried out through various means, such as rescheduling, re-requirements, restructuring, and rescue through legal channels. However, the sale of the object of guarantee of dependent rights by the debtor on the basis of good faith is not specifically regulated in the law, so this can be a legal debate. In practice, the sale of the collateral object can be made with the approval of the creditor, which is advantageous if both parties have good intentions. If done in good faith, this sales process has advantages such as cheaper costs, faster processes, high potential selling prices, good social impact, and smaller potential lawsuits. However, this process still requires the agreement of all relevant parties and the transfer of rights in accordance with the established procedures.

**E. Analysis of Bad Loan Settlement with Guarantee of Dependent Rights in Credit Agreement between the Debtor, the Bank, and the Auction House.**

The settlement of bad loans through the execution of guarantees carried out by HSBC Bank and Balai Auction Mandiri is a complex process, especially in the context of legal efforts carried out in execution procedures. In the legal analysis of the District Court Decision No.380/Pdt.G/2018/PN MDN and the High Court Decision No.550/Pdt/2019/PT MDN, it was revealed that the auction process for the execution of dependent rights did not succeed in getting a bidder, making the auction a failure. However, this does not eliminate HSBC Bank's right to execute, which has again raised debate related to the legal procedures and provisions governing the execution process. Although the plaintiff argued that HSBC's action was unlawful because it was considered to violate the legal provisions that require fiat execution from the court, Article 6 of the UUHT has affirmed that the holder of the right of dependency has the authority to carry out the execution in a parate manner. Therefore, despite the debate regarding the interpretation of the law, the Medan District Court Decision and the Medan High Court Decision still maintain the validity of the execution process carried out by HSBC Bank, considering that the bank has made all efforts to resolve bad loans with debtors.

**Conclusion**

Based on the Case Study of Decision No.550/Pdt/2019/PT, the legal relationship between the debtor and the Bank through a deed of agreement for the provision of banking facilities in the form of a loan of 4 billion Rupiah. In such cases, the debtor is

often not on time to pay loan obligations and interest. Even though restructuring has been carried out, the debtor is still unable to pay off his debt. Creditors provide warning letters and asset auction notices. In the ruling, the creditor's actions were considered to be in bad faith, giving rise to a discussion about the concept of Fiat Executive. The researcher suggests that banks should have strong policies and procedures for providing loans, conducting proper risk analysis, and managing credit effectively to avoid bad loans. Debtors also need to maintain payment obligations and implement good financial management. The government also needs to update the rules in accordance with the problems in the field to create fair legal certainty for all parties.

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