

## Legal Protection of Defaulting Debtors against the Auction of Mortgage Rights below Market Value



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**ABSTRACT:** The auctioning of mortgage rights below market value is a highly detrimental action for the debtor, as the debtor does not participate in determining the auction limit price. This thesis research utilizes two (2) court decisions as research material: Decision Number 402/Pdt/2017/PT Smg and Decision Number 5513/Pdt.G/2019/PA Jr. The objective of this research is to determine the legal protection measures available to debtors whose mortgage rights are auctioned below market value and to explore the legal remedies that debtors can pursue. The type of research in this thesis is normative with a prescriptive nature. The legal materials used in this research include primary and secondary legal materials. The technique for collecting legal materials is through literature study, and the analysis of legal materials is conducted using syllogistic deduction.

**KEYWORDS:** Mortgage right, non-performing loan, auction.

### I. INTRODUCTION

Credit is one of the most common banking instruments in society. The numerous activities to meet needs cause people to rely on credit provided by banks. Bank loans are not granted gratuitously. Land is usually used as collateral based on Law Number 4 of 1996 on Mortgage Rights. Before agreeing on the loan amount requested by the debtor, the bank as the creditor will assess the market value of the land as the basis for granting the loan. The principle is that the value of the collateral should be greater than the loan provided, known as the Loan to Value Ratio, as explained in Bank Indonesia Regulation Number 18/16/PBI/2016).

In reality, many people who apply for bank loans are not always able to objectively assess their ability to repay the loan. As a result, issues such as overdue loan payments often arise. The impact of these problematic loans is detrimental to both the bank and the borrower. The bank incurs losses because the disbursed funds are not returned, and interest income is lost. In other words, the bank loses the opportunity to earn interest, ultimately leading to a decrease in overall revenue. From the debtor's perspective, the loss occurs due to the difficulty of obtaining credit approval in the future because of their history of overdue loan payments.

In the event of a defaulted loan, based on Article 6 of the Mortgage Law (UUHT), the bank as the holder of the mortgage has the authority to sell the mortgaged property. The sale process by the bank, in accordance with the provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023, falls under the category of execution auction. It is important to note that an execution auction can only be conducted by the State Property and Auction Service Office (KPKNL) as a Class I auction official. For the auction to take place, the seller is required to set a reserve price. Determining the reserve price is the seller's responsibility according to Article 55 of the Regulation of the Minister of Finance Number 122 of 2023. The basis for the determination of the reserve price by the seller must at least be based on the appraisal and valuation report as regulated in Article 56 of PMK Number 122 of 2023 for the execution auction of mortgage rights. If the auction of the mortgage rights has been conducted but the property remains unsold, a re-auction will be held and the reserve price may change as explained in Article 58 of PMK Number 122 of 2023. In the implementation of the execution auction of mortgage rights, the reserve price is set within a range where the highest is equal to the market value and the lowest is equal to the liquidation value. In reality, many banks conduct mortgage right auctions at values below market price, causing losses to the debtor. As in the cases in Decision Number 402/Pdt/2017/PT Smg and Decision Number 5513/Pdt.G/2019/PA Jr, which have legal issues to be discussed in this legal research, this situation clearly disadvantages the debtor, especially those whose collateral is to be auctioned.

### II. RESEARCH METHOD

This author used normative legal research as their research methodology. Normative legal research, also referred to as library legal research, is legal study done by examining secondary data or library materials. The author uses a theoretical and conceptual strategy to search through library items in order to accomplish this. Both a conceptual and a statutory approach are used in the study

## Legal Protection of Defaulting Debtors against the Auction of Mortgage Rights below Market Value

methodology. The kind of research done is library research, which uses normative law and literature as the primary sources of data and information. On the other hand, the descriptive qualitative approach is a technique for providing a summary of present occurrences that is grounded in reality. The primary source of data is laws and regulations; other sources include books and literature. Data review is done by consulting previously established facts or other sources, which are then linked to relevant legal requirements. Qualitative analysis of the data was employed in this study. Qualitative analysis is to demonstrate that there is a difference between what ought to be and what really exists.

### III. RESEARCH RESULTS

#### Case Position

##### 1. Decision Number 402/Pdt/2017/PT Smg

Court Ruling Number 402/Pdt/2017/PT SMG between Amaliyah Khasanah as the plaintiff against PNM Ullam Unit Jatibarang occurred in early November 2012. The plaintiff needed money for wedding shop capital amounting to IDR 35,000,000.00 (thirty-five million rupiah) and sought a loan from PNM Illam Unit Jatibarang, Brebes. On November 30, 2012, the plaintiff applied for a loan of IDR 35,000,000.00 (thirty-five million rupiah) from the bank with the collateral of a vacant yard located in Luwungragi Village, Bulakamba District, Brebes Regency with Certificate Number 00544, covering an area of 281 m<sup>2</sup> (square meters) under the name of Hajah Haryati. The loan agreement period was for 36 months, from November 30, 2012, to November 30, 2015. The plaintiff made installments for 13 months, after which she experienced economic difficulties, causing a default. Then, suddenly, the plaintiff discovered that the collateral with Certificate Number 00544 under the name of Hajah Haryati was to be auctioned. The plaintiff did not know that the mortgage had been auctioned on August 22, 2014. The plaintiff claimed to have never received any notification from PNM Ullam Unit Jatibarang about the auction. The plaintiff only found out from someone else around August 2015 that Certificate Number 00544 under the name of Hajah Haryati had been auctioned. The auction price of the plaintiff's mortgage was IDR 62,000,000.00 (sixty-two million rupiah). This price was very low because the market price of the plaintiff's land was IDR 2,000,000.00 (two million rupiah) per square meter. The area of the plaintiff's land was 281 square meters, and the fair market price was around IDR 562,000,000.00 (five hundred sixty-two million rupiah). Therefore, the plaintiff suffered a loss because the auction price was far below the market value, while the plaintiff's debt was IDR 35,000,000.00 (thirty-five million rupiah).

##### 2. Decision Number 5513/Pdt.G/2019/PA Jr

Court Ruling Number 5513/Pdt.G/PA JR between Renny Puji Astuti as the plaintiff against PT Bank Muamalat Tbk, Jember branch, occurred in early September 2011. The plaintiff was a debtor at PT Bank Muamalat Tbk, Jember branch, and received a payment facility of IDR 633,000,000.00 (six hundred thirty-three million rupiah) with an administrative fee of IDR 35,000,000.00 (thirty-five million rupiah) paid by the plaintiff, with collateral in the form of a Mortgage Certificate Number 180, covering 778 square meters, under the name of Renny Puji Astuti, located in Antirogo Village, Sumbersari District, Jember Regency. The loan term was 180 months with installments of IDR 7,600,000.00 (seven million six hundred thousand rupiah) starting from October 2011 until September 2026. During the loan period, the plaintiff was only able to make full payments for 15 months from October 2011 to December 2012 due to a drastic decline in the plaintiff's business, which caused payment difficulties. Although the plaintiff faced difficulties in making payments, she still acted in good faith, expected to continue until February 2018. In February 2018, the plaintiff received three warning letters from the defendant. After receiving these warnings, the plaintiff made a verbal request to the defendant to allow payment of installments to reduce the principal debt, but the defendant never responded to the plaintiff's request. The plaintiff also tried to sell her assets through social media platforms such as Facebook and OLX. There were several offers, but none were realized. In 2019, the plaintiff's assets were auctioned twice by the defendant but with no success. The plaintiff submitted two requests to the defendant to prevent or at least delay the auction as she was still trying to sell the assets at market value to repay the debt. In December 2019, the plaintiff received a letter from the defendant numbered 684/R/KC Jember-SRT/IX/2019, dated September 16, 2019, stating that the defendant intended to conduct a third auction on Wednesday, October 23, 2019, through the Jember State Property and Auction Service Office with a reserve price of IDR 600,000,000.00 (six hundred million rupiah). The price per square meter around the plaintiff's house was approximately IDR 1,500,000.00 (one million five hundred thousand rupiah). However, in 2011, before the disbursement, the defendant had assessed the plaintiff's collateral at IDR 750,000,000.00 (seven hundred fifty million rupiah). The auction price set by the defendant was significantly different and caused the plaintiff to incur losses.

#### Comparison of the two rulings.

Decision Number 402/Pdt/2017/PT Smg	Decision Number 5513/Pdt.G/2019/PA Jr
Plaintiff:	Plaintiff: - Renny Puji Astuti, 47 years old, Muslim, housewife, residing at Jl. Pangandaran 30

## Legal Protection of Defaulting Debtors against the Auction of Mortgage Rights below Market Value

<p>- Amaliya Khasanah, a housewife, residing at Luwungragi Village, RT 004 RW 001, Bulakamba District, Brebes Regency.</p>	<p>RT.002 RW. 002, Antirogo, Summersari District, Jember Regency.</p>
<p>Defendant:</p> <ol style="list-style-type: none"> <li>1. Bank PNM ULLAM Jatibarang Unit, headquartered at Menara Taspen Floor 10, Jalan Jenderal Sudirman Kavling 2, Jakarta, with its Micro Capital Service Unit located at Jalan Raya Kemiri Amba, in front of Jatibarang Gas Station, Jatibarang District, Brebes Regency.</li> <li>2. KPKNL Tegal Auction Office, located at Jalan KS Tubun Number 12, Randugunting, Tegal Selatan, Tegal City.</li> <li>3. Iip Apadin, residing at Sitanggal Village RT 07 RW 05, Jalan Raya Sitanggal, Larangan District, Brebes Regency.</li> <li>4. Wiryanto, 42 years old, entrepreneur, residing at Luwungragi Village RT 03 RW 08, Bulakamba District, Brebes Regency.</li> <li>5. Oni Setyawan, residing at Jalan Jenderal Sudirman Number 131, Brebes.</li> <li>6. Brebes Regency Land Office, located at Jalan Yos Sudarso Number 3, Brebes.</li> <li>7. Heir of the late Hj. Haryati, residing at Siwuluh Village RT 002 RW 004, Bulakamba District, Brebes Regency.</li> </ol>	<p>Defendant:</p> <ul style="list-style-type: none"> <li>- PT. BANK Muamalat (Persero) Tbk Jember Branch, located at Jalan P. B. Sudirman No. 35, Jember, East Java.</li> </ul>
<p>Main issue:</p> <ul style="list-style-type: none"> <li>- The auction of the mortgage guarantee certificate number 00544 in the name of Hj. Haryati by the creditor was conducted at a price below the market value, amounting to Rp. 62,000,000 (sixty-two million rupiah).</li> </ul>	<p>Main issue:</p> <ul style="list-style-type: none"> <li>- The auction of the mortgage guarantee certificate number 180 in the name of Renny Puji Astuti was conducted at a price below the market value, amounting to Rp. 600,000,000 (six hundred million rupiah).</li> </ul>
<p>Court's decision:</p> <ol style="list-style-type: none"> <li>1. Accepts the appeal petition from the appellant, who was originally the plaintiff.</li> <li>2. Affirms the decision of the Brebes District Court Number 9/Pdt.G/2017/PN Bbs.</li> <li>3. Orders the appellant, who was originally Plaintiff I, to pay the court costs incurred at both levels of court, which at the appellate level is set at Rp. 150,000.</li> </ol>	<p>Court's decision:</p> <ol style="list-style-type: none"> <li>1. Grants the defendant's exception.</li> <li>2. Declares the plaintiff's lawsuit inadmissible.</li> </ol> <p>Orders the plaintiff to pay court costs amounting to Rp626,000 (six hundred twenty-six thousand rupiah).</p>

## Legal Protection for Debtors with Defaulted Loans Against Collateral Auction Prices Below Market Value

Mortgage Rights is a form of security rights that involve the collateralization of a debtor's debt. This right is one type of security right alongside mortgages, pledges, and fiduciaries. The general purpose of security rights is to provide priority to certain creditors, namely the holders of the security rights, in the event of a contract breach, thereby giving them precedence over other creditors (Sjahdeni:2019). Law Number 4 of 1996 concerning Mortgage Rights in Article 1 paragraph 1 states that a mortgage right is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are an integral part of the land, for the settlement of a specific debt, providing a preferential position to a particular creditor over other creditors. Law Number 4 of 1996 concerning Mortgage Rights in Article 4 paragraph (1) specifies the objects that can be subject to Mortgage Rights, including:

## Legal Protection of Defaulting Debtors against the Auction of Mortgage Rights below Market Value

- a) Ownership Rights
- b) Right to Cultivate
- c) Right to Build

An auction is the sale of goods held in public with increasing bids, with agreement on the increasing price, or with price registration, where people are invited or previously notified about the auction or sale, or an opportunity is given to the bidders or buyers to place bids, agree on a price, or register (Harahap:2009). An auction itself differs from the procurement of goods and services by the government, commonly referred to as a tender, because a tender is the process of purchasing or obtaining goods and/or services, which begins with planning the needs and continues until the completion of all activities to obtain the goods and/or services. Although both are conducted in public and preceded by an announcement, the definition of a tender is different from that of an auction (Simanjutak:2021).

Article 6 of Law Number 4 of 1996 concerning Mortgage Rights grants the right or authority to the first mortgage holder to sell the object of the mortgage, either privately or through an auction. This is reinforced in Article 20, paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights. In the auction sale of Mortgage Rights through the KPKNL, determining the reserve price is mandatory and must be included as stipulated in Article 55, paragraph (1) of the Minister of Finance Regulation Number 122 of 2023. In setting the reserve price, the KPKNL has no authority to assess whether the reserve price is considered appropriate or not. Article 55, paragraph (2) of the Minister of Finance Regulation Number 122 of 2023 explains that the determination of the reserve price to be auctioned is the responsibility of the seller. The seller, in setting the reserve price, must be based on Article 56, paragraph (1) of the Minister of Finance Regulation Number 122 of 2023:

- a) Report of the appraisal results by the appraiser;
- b) Report of the estimation results by the estimator;
- c) Self-estimated price.

In the sale of mortgage rights through KPKNL, if the mortgage object intended for sale remains unsold, according to Article 58 of PMK Number 122 of 2023, the seller may adjust or lower the price of the mortgage object to be auctioned. Selling mortgage rights to resolve non-performing loans is a common practice to address overdue debts. The issue arises when creditors holding mortgage rights determine the limit value. Many creditors conduct auctions based directly on the liquidation value of the remaining debt, causing harm to the debtor due to the sale price being below market value. Debtors often feel they do not have the opportunity to determine the limit value or are not informed about the auction process for the mortgage object. Additionally, there are no regulations governing how to set the limit value when selling; this lack of regulation leads to many creditors auctioning mortgage rights below market value or selling directly based on the liquidation value of the debt. Ideally, sales should first be conducted at the market value of the mortgage rights, and if the mortgage rights remain unsold, the price can be gradually reduced. In the implementation of auctions through KPKNL, KPKNL itself is not obligated to check or assess the limit value set by the seller or creditor. According to Article 33 of the Regulation of the Minister of Finance Number 122 of 2023 regarding Auction Regulations, the auction officials are only authorized to check the completeness and suitability of auction documents and the formal legality of the auction subject and object. Auction officials or KPKNL have no authority to assess whether the limit value determined by the auction applicant or seller aligns with market value. The issues described are cases examined in the two rulings that will be discussed in this research. Both judges rejected the lawsuits filed by the plaintiffs. The evidence presented by the plaintiffs clearly shows that the auction price of the mortgage rights estimated by the creditors caused losses to the plaintiffs. When related to the theory of legal certainty that is fair, according to sociological jurisprudence, a theory proposed by Roscoe Pound, it emphasizes that judicial considerations underpinning judicial decisions in the decision-making process should not be limited to normative and textual legal texts alone but must also include justice (Chritiani & Herliana:2021).

In Decision Number 402/Pdt/2017/PT Smg, which is the result of an appeal between Amaliya Khasanah (the Appellant, originally the Plaintiff) and PNM ULLAM Unit Jati Barang (Respondent I, originally Defendant I), KPKNL Tegal (Respondent II, originally Defendant II), IIP Apadin (Respondent III, originally Defendant III), Oni Setyawan (Respondent V, originally Defendant V), Brebes Land Office (Respondent VI, originally Defendant VI), and the heirs of the late Hj. Haryati (as Co-Respondent, originally Plaintiff II), the Semarang High Court judge ruled:

- 1) Accepting the appeal request from the appellant.
- 2) Upholding the decision of the Brebes District Court Number 9/Pdt.G/2017/PN Bbs dated July 4, 2017.
- 3) Ordering the appellant to pay the court fees amounting to Rp.150,000 (one hundred fifty thousand rupiah).

The Semarang High Court's decision reinforces Decision Number 9/Pdt.G/2017/PN Bbs, which states:

IN EXCEPTION:

- 1) Rejecting the exception of Defendant I, Defendant II, and Defendant VI.

ON THE MERITS:

- 1) Rejecting the Plaintiff's claim in its entirety.
- 2) Ordering the Plaintiff to pay the court fees amounting to Rp.2,465,500 (two million four hundred sixty-five thousand five hundred rupiah).

## Legal Protection of Defaulting Debtors against the Auction of Mortgage Rights below Market Value

The judgment by the High Court is considered inaccurate. This is because the actions taken by the creditor caused a loss to the debtor due to the auction of the Mortgage Right being conducted at a price of Rp.62,000,000.00 (sixty-two million rupiah), whereas the market value of the Plaintiff's house should have been Rp.562,000,000.00 (five hundred sixty-two million rupiah). The auction conducted by Defendant I through Defendant II resulted in a loss for the Plaintiff amounting to Rp.500,000,000.00 (five hundred million rupiah). Moreover, according to the Plaintiff's testimony, Defendant III, as the winner of the auction, came to the Plaintiff's house to request a signature for vacating the land at 12:30 AM, causing the Plaintiff to be in a state of fear and forcing them to sign.

The auction sale conducted by the creditor has been proven to result in a loss for the creditor, due to the sale or determination of the limit being below the market value. Article 55 paragraph (2) of the Minister of Finance Regulation Number 122 of 2023 explains that the determination of the auction limit price is the authority and responsibility of the seller/creditor. The determination of the auction by the seller/creditor must be based on the following reports:

- a) The appraisal results by an appraiser.
- b) The assessment report by an estimator.
- c) The self-estimated price.

Auction sales below market price can be classified as an Unlawful Act as defined in Article 1365 of the Indonesian Civil Code, any unlawful act that causes harm to another person obliges the person who, due to their fault, caused the harm to compensate for the damage. If we look at the case decided in Decision Number 402/Pdt/2017/PT Smg, the price set by Defendant I harmed the Debtor. Ideally, in setting the auction price, the market price should be used. Only when there are no bids should the price be gradually lowered. Normatively, there are no specific regulations governing the principles of auctions, but if we examine the clauses in auction-related legislation, the auction principles can be inferred. These principles include the principle of openness (transparency), the principle of competition, the principle of justice, the principle of legal certainty, the principle of efficiency, and the principle of accountability. Therefore, it is necessary to question the basis on which the creditor sets the auction price directly based on the liquidation value.

In the case decided in Decision Number 5513/Pdt.G/2019/PA Jr between Renny Puji Astuti and Bank Muamalat Jember Branch, due to the auction sale of the Plaintiff's mortgage collateral at a price below the market value of Rp. 600,000,000 (six hundred million rupiah), where the market value was Rp. 1,150,000,000 (one billion one hundred fifty million rupiah), the verdict was delivered as follows:

### IN THE EXCEPTION:

- 1) Granting the Defendant's exception.

### IN THE MAIN CASE:

- 1) Declaring that the Plaintiff's lawsuit is inadmissible.
- 2) Sentencing the Plaintiff to pay court costs amounting to Rp. 626,000.00 (six hundred twenty-six thousand rupiah).

In the rejoinder submitted by the Defendant, the Defendant argued that the lawsuit filed by the Plaintiff lacked parties (*plurium litis consortium*). In the exception plea presented by the Plaintiff, the Defendant in this lawsuit argued that the position of KPKNL is very important to be seated as a party, as it aims to obtain information and explanations regarding the implementation of the auction of the Mortgage Right requested by the Defendant. Indeed, in conducting the auction of the Mortgage Right through KPKNL, KPKNL is only authorized to check the documents to see if any are missing. What the Plaintiff is suing is the determination of the auction price below the market value, which causes harm to the Plaintiff. The limit value is determined by the Defendant. This is regulated in Article 55 of the Minister of Finance Regulation Number 122 of 2023, which clearly states that the determination of the limit is decided by the seller, in this case, the Defendant.

## IV. CONCLUSION

Based on the results and discussions, it can be concluded that the legal protection for defaulting debtors against auction prices below market value, as seen in Decision Number 402/Pdt/2017/PT Smg and Decision Number 5513/Pdt.G/2019/PA Jr, is still inadequate. In these two decisions, the judges deemed that the auction conducted by the creditors was in accordance with the law but did not evaluate whether the pricing of the Mortgage Right set by the creditors was appropriate. Consequently, there is still no clear legal protection for debtors whose Mortgage Rights are auctioned below market value. There is a need for regulations on setting the auction limit value because, up until now, many sellers, banks, or creditors holding Mortgage Rights have set the auction limit value based directly on the liquidation value rather than the market value first, causing harm to the debtors.

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## Legal Protection of Defaulting Debtors against the Auction of Mortgage Rights below Market Value

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