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**AUCTION FOR THE EXECUTION OF OBJECT OF
GUARANTEE OF LIABILITY IN SETTLEMENT OF NON-
LOAD LOANS ON HOUSE OWNERSHIP
(STUDY OF THE SUPREME COURT DECISION NUMBER 128
K/PDT/2016)**

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ABSTRACT

Home Ownership Credit (KPR) is the most chosen alternative provided by many banks, allowing someone to get it with payments in installments, it can even be done in the long term. However, the implementation of credit payments did not proceed in accordance with the credit agreement, namely not making installment payments on loans that had been financed by the plaintiff which was recorded until December 17, 2014 as many as 25.08 installments (\pm 25 months or 2 years 1 month) which was then the Defendant I determined the debts of the Plaintiffs as bad loans and by Defendant I (PT BTN (Persero) TBK Bukittinggi Branch it was submitted/through the Bukittinggi State Property and Auction Service Office (KPKNL) (Defendant II) to conduct the auction. The results obtained that the execution of the auction of the object of credit guarantee against housing loans (kpr) which has been filed by the Supreme Court Decision No.128 K/Pdt/2016 can be carried out by the creditor (Bank) which in this case has fulfilled the following steps: stages prior to the auction.

Keyword: Mortgage, Auction Execution, Guarantee Object

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INTRODUCTION

Home Ownership Credit (KPR) is the most chosen alternative provided by many banks, hereinafter referred to as KPR. KPR allows someone to get a payment in installments, it can even be done in the long term.¹ Many banks offer mortgage

¹ Siti Malikhatun Badriyah, R. Suharto, H.Kashadi, Muhammad Shafiyuddin Wafi, "Implikasi Hukum Penggunaan Surat Kuasa Membebaskan Hak Tanggungan Sebagai Jaminan

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products to the public. Nevertheless, almost every bank sets criteria and requirements for prospective mortgage customers, while the general requirements are:²

1. Indonesian citizens;
2. Aged between 21 to 60 years at the end of the credit agreement;
3. Fixed income;
4. Has worked for at least 2 years;
5. Willing to open an account at the bank concerned.

The implementation of the provision of financing is generally carried out by entering into a contract/agreement. The agreement consists of a main agreement, namely a debt agreement and an additional agreement in the form of a guarantee agreement by the debtor.

Broadly speaking, there are 2 (two) forms of guarantees, namely personal guarantees and material guarantees. In practice, collateral that is often used is material security, one of which is land that is used as collateral or called Mortgage Rights. The provision of guarantees with Mortgage is given through the Deed of Granting Mortgage (APHT) which is preceded and/or by making a Power of Attorney to impose Mortgage (SKMHT) which is an integral part of the financing contract agreement.³

The existence of this mortgage as regulated in Law No. 4 of 1996 concerning Mortgage has characteristics that provide legal protection for creditors (banks). Therefore, the bank as a creditor in providing credit to debtors who are guaranteed with mortgages will be safe in returning the credit.⁴

Mortgage distribution from a bank here must be selective in assessing the feasibility proposed by the debtor. Banks as institutions that collect and distribute funds to the public in the form of credit have a major role in realizing public welfare. This is because credit is very helpful for the community in meeting the needs of clothing, food and housing. As one of the main human needs, the housing sector.⁵

Dalam Perjanjian Kredit Pemilikan Rumah”, *Law, Development & Justice Review*, Vol 2, No. 1, 2019, p. 62.

² Budi Santoso, *Tanah Dan Rumah Bagian 4 Mengkredit Rumah*, Gramedia, Jakarta, 2008, p. 43.

³ Marnita . Marnita . “Eksekusi Jaminan Hak Tanggungan Sebagai Upaya Penyelesaian Pembiayaan Bermasalah (Studi pada PT Bank Muamalat Indonesia Cabang Lampung)”, *Fiat Justisia Journal of Law* , Vol. 10, 2016, p. 526.

⁴ Yustiana Yustiana, “Eksekusi Hak Tanggungan Terhadap Kredit Macet Bank”, *Jurnal Ilmiah Hukum*, Vol. 22, No. 1, 2020 , p. 78-79.

⁵ Prisilia Purwardhani, “Efektifitas Penyelesaian KPR Macet Melalui Parate Eksekusi Lelang (Case Study of PT Bank Tabungan Negara (Persero), Tbk Solo Branch Office)”, *Journal of Repertorium* , Vol 6, No, 1, 2019, p. 2.

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Banks generally use the object of mortgage guarantees because the objects that are guaranteed are immovable objects in the form of land and buildings that are certified, which have no risk of being lost, damaged and whose selling value is increasing.⁶ This mortgage guarantee is intended to provide legal certainty to banks and debtors. Certainty for the bank is the certainty to receive the repayment of principal and interest from the debtor.⁷ As for the debtor, it is the certainty to return the loan principal and the specified interest.⁸

Mortgage rights are not a stand-alone agreement. Its existence is due to the existence of another agreement, which is called the principal agreement. One of the main agreements for a mortgage agreement is a credit agreement that creates a guaranteed debt.⁹

One of the agreements agreed between the bank and the customer during the credit period is the time period, with this long enough period of time it can cause various problems, usually the problem is caused by the debtor. Liability in an agreement can arise in the event of a condition called default.¹⁰ This default is a condition where one of the parties does not carry out their rights and obligations, usually the debtor does not fulfill the obligations that are the rights of the creditor. There are 4 (four) types of default that may be committed by one of the parties to the agreement, namely:¹¹

- a) Does not do what it is determined to do;
- b) Carry out what was promised but not as promised;
- c) Did what was promised but was too late;
- d) Doing something that according to the agreement should not be done.

Based on the search results, an execution auction case was found for the object of collateral experiencing bad credit between Arman and Masni Yunarsih as the debtor or the plaintiff and the creditor or the defendant, namely PT. BTN Bukittinggi Branch Office in the form of collateral object is Certificate of Ownership Number 223/Kelurahan Pakan Labuah, Letter of Measurement/GS 10 April 2007 Number 10/PL/2007 with an area of 160 m². The initial form of the agreement made by Arman and Masni Yunarsih as the debtor or the plaintiff and

⁶ Yoice Irene Lamtiur, "Tinjauan Yuridis Atas Tindakan Debitur yang Menolak Pengosongan Barang Jaminan yang Dieksekusi oleh Bank", Thesis, Notary Masters Study Program, University of North Sumatra, Medan, 2016, p. 10.

⁷ Salim HS, *Op. Cit.*, h. 28.

⁸ *Ibid.*

⁹ Offi Jayanti, Agung Darmawan, Offi Jayanti, Agung Darmawan, "Pelaksanaan Lelang Tanah Jaminan Yang Terikat Hak Tanggungan *Auction Of Land Collateral Which Bound By Mortgage Rights*" Kanun Jurnal Ilmu Hukum, Volume 20, Number. 3, 2018, p. 459.

¹⁰ Racmadi Usman, *Pasal-pasal Tentang Hak Tanggungan Atas Tanah*, Djambatan, Jakarta, 1999, p. 77.

¹¹ R. Subekti, *Hukum Perjanjian*, PT. Intermasa, Jakarta, Intermasa, 1979, p. 45.

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the creditor or the defendant, namely PT. BTN Bukittinggi Branch Office which is a housing loan application through PT. BTN Bukittinggi Sub-Branch Office with a KPR system whose payments are made within a period of 15 (fifteen) years.

METHOD

The method is the process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge. Thus the research method can be interpreted as a process of principles and procedures for solving problems encountered in conducting research.¹²

The nature of the research used in this research is descriptive analytical, which is descriptive research, which is intended to provide data that is as accurate as possible about certain conditions or symptoms.¹³ With this type of normative legal research research, which is legal research conducted by researching library materials or secondary data (in addition to sociological or empirical legal research which mainly examines primary data).¹⁴

While the source of the data used in this study comes from secondary data which is supported by primary data taken from informants in this study, namely Mr. Andrianta Tarigan who is the *Branch Shared Service Unit Head* at PT. BTN Jalan Pemuda branch. Furthermore, the data collection technique is carried out through library research activities, namely by analyzing court decisions related to the object of research, namely the Supreme Court Decision Number 128 K/Pdt/2016 and also carried out with *field research*, namely by conducting interviews with *informant*.

DISCUSSION

Implementation of Execution Auction Object of Credit Guarantee Against Home Ownership Loans (Kpr) What Has Been Filed At the Bukittinggi District Court

Execution is the implementation of court decisions that have permanent legal force.¹⁵ The executorial title is not only contained in court decisions, but also in authentic deeds with the executorial title known as the *grosse acte* which reads "For the sake of Justice Based on the One Godhead" as referred to in Article 224 HIR/258 RBg.¹⁶ However, the term execution is also found in the field of guarantee law.¹⁷

¹² Lukman Hadi Darmanto, *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2007, p. 9.

¹³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Penerbitan Universitas Indonesia, Jakarta. 2005, p. 10.

¹⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. 17th edition. Jakarta. 2018, p. 13-14.

¹⁵ Salim HS, *Op. Cit.*, h. 188..

¹⁶ RM Anton Suyatn *Op., Cit.*, p. 54.

¹⁷ *Ibid*

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The execution of the object of guarantee is the exercise of the rights of the creditor holding the right of guarantee against the object of the guarantee by selling the collateral if the debtor defaults.¹⁸The creditor as the holder of the mortgage has the convenience of carrying out the execution of the mortgage if the giver of the mortgage breaks his promise, it is regulated in Article 20 paragraph (1) of the UUHT.

The execution of the Mortgage Right can be carried out by the mortgage holder on his own power through a public auction in accordance with Article 6 UUHT in conjunction with article 20 paragraph 1 letter (a).¹⁹ that the implementation of the auction based on Article 6 UUHT is the authority given by law (*ex lege*) to the holder of the first mortgage to make a sale through a public auction of assets that are used as collateral if the debtor is in default.

The execution of the auction is inseparable from the minutes of the auction because the minutes of the auction are the minutes of the auction made by the Auction Officer which is an authentic deed and has perfect evidentiary power.²⁰Minutes of auction are made by a class II auction official of the Ministerial Regulation! Finance of the Republic of Indonesia Number 189/PMK.06/2017 hereinafter abbreviated as PMK No. 189/ PMK.06/2017. The implementation of the auction for the execution of the object of credit guarantees against home ownership loans (KPR) that has been filed in the Bukittinggi District Court, namely the claim of the plaintiffs cannot be accepted (*niet ontvankelijke verklaard*) so that it directly states that the execution of the object of guarantee carried out is legally valid with the issuance of the minutes auction Number 230/2014, September 24, 2014.

As for the execution of the object of collateral in question, namely the Notification of the Mortgage Auction Plan on September 24, 2014 by Defendant I PT. Bank BTN (Persero) Tbk. The Padang Branch Coordinator AMD submitted through Defendant II, the State Property and Auction Service Office (KPKNL) has complied with the pre-auction procedures applicable to PT. Bank BTN (Persero) Tbk. Where it is known that on August 26, 2014 based on Letter Number: 157/AMD-PDG.VIII/2014 addressed to the Plaintiffs, the Plaintiffs have submitted a notification of the Plan for the Implementation of the Auction through the State Assets Service Office and the Auction of the Plaintiffs' Debt Guarantee Mortgage

¹⁸ *Ibid*

¹⁹ Ministry of Finance of the Republic of Indonesia, *Lelang Pasal 6 Uuht Dan Lelang Berdasarkan Title Eksekutorial*, <https://www.djkn.kemenkeu.go.id/Kanwil-Sumut/Baca-Artikel/12694/Lelang-Pasal-6-Uuht-Dan-Lelang-Berdasarkan-Title-Eksekutorial.Html>, Accessed September 24, 2021.

²⁰ Article 1 paragraph (32) Regulation of the Minister of Finance of the Republic of Indonesia Number 2 13 /PMK.06/ 20 20 concerning Auction Implementation Guidelines.

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to Defendant I on 24 September 2014 at PT. BTN (Persero) Tbk Sub-Branch Office Bukittinggi Jalan A. Karim Number 1 Bukittinggi.

PT. BTN (Persero) Tbk Bukittinggi Sub-Branch Office has given warning letters according to applicable procedures by providing Warning Letter I, Warning Letter II and Warning Letter III to the Plaintiff's address in accordance with the Credit Agreement No. 00009-01-01-003714-6 and not as stated by the Plaintiff in his lawsuit. (Photocopy of Letter Number 01/M/AMD-PDG/V/2014, dated 8 May 2014, Regarding Confirmation of Mortgage Installment Payments, from PT Bank Tabungan Negara (Persero) to account number 00009-01-01-003714-6, in the name of Arman, hereinafter marked TI.4 T-IV) and has also made auction announcements through sticky media (TV) and print media (T-VI Photocopy of Second Announcement of Mortgage Execution Auction, dated September 10, 2014, hereinafter marked).

Based on the theory of legal certainty in reviewing the execution of the auction of the object of credit guarantee against the Home Ownership Credit (KPR) which has been filed in the Bukittinggi District Court. So first, it is explained that the theory of legal certainty is actually interpreted as a condition where the law is certain because of the concrete power of the law in question. The existence of the theory of legal certainty is a form of protection for justice (seeking justice) against arbitrary actions, which means that a person will and can obtain something that is expected under certain circumstances.²¹

Based on the theory of legal certainty above, it is known that during the auction of the execution of the object of credit guarantee against the Home Ownership Credit (KPR) which had been submitted through the Supreme Court Decision No.128 K/Pdt/2016, that the Plaintiff stated that Defendant I had committed an act against the law, because the actions of Defendant I who submitted an auction through the office of Defendant II had violated *the Pacta Sunt Servanda Principle* . The Plaintiff in his lawsuit also argued that the Notification of the Mortgage Auction Plan on September 24, 2014 by Defendant I PT.BTN (Persero) Tbk. The Padang Branch Coordinator AMD submitted through Defendant II at the State Property and Auction Service Office (KPKNL) is contrary to the law which is an unlawful act and is null and void because:

- a. The auction can only be carried out after 1 (one) month has passed after being notified in writing by the Mortgage Rights holder, while the Notice of Auction Plan dated August 26, 2014 which will be carried out by the Auction Plan on September 24, 2014, means less than 1 (one) month;

²¹Mario and Aditya, *Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum*, Crepido Journal, Vol. 1, No. 1, 2019, p. 14.

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- b. It must be announced in at least 2 (two) newspapers circulating in the local area, and no party objected, while there was no notification at all and did not give the Plaintiffs/other people an opportunity to object to the limited time;
- c. Therefore, the Notice of Tender Plan dated September 24, 2014 which will be implemented by Defendant II must be declared null and void. *Vide* Article 20 of Law Number 4 of 1996 concerning Mortgage Rights. Article 20 paragraph (2): By agreement of the giver and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hands if thus the highest price can be obtained that benefits all parties.

Looking at the case above, it can also be seen that if the implementation of this auction a lawsuit or rebuttal to the court from the debtor is addressed to the creditor or Bank BTN as the seller, KPKNL as the intermediary for the auction. Therefore, there are still people who are less interested in participating in the auction because the process is quite vulnerable to legal remedies such as lawsuits. This should be a concern for the relevant parties to conduct education so that the public knows the process that needs to be done in order to get legal protection. Many factors can lead to a lawsuit or objection, one of which occurs because the debtor may not want to hand over the object that has been auctioned off to the auction winner voluntarily . /2016.

The Obstacles Experienced by the Auction Winner Against the Object of the Mortgage Execution Auction

In general, in practice, the implementation of mortgage execution auctions sometimes encounters obstacles. These barriers are juridical barriers and non-juridical or sociological barriers. The juridical barriers are contained in UUHT and the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Auction Implementation Guidelines, while non-juridical or sociological obstacles are the absence of auction enthusiasts, collateral goods have not been registered, the limit value is smaller than the debtor's debt, the existence of claims from third parties; there is a lawsuit from the debtor or execution; the auction buyer does not make the auction payment (default) or the auction buyer cannot enjoy the auction object.

In practice, not every mortgage execution auction runs as it should, but there are obstacles in the execution of mortgage execution auctions. The inhibiting factors in general that are usually faced by creditors, especially in the settlement of

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Home Ownership Loans (KPR) that have been sued by debtors based on the results of interviews, are as follows:²²

1. Bad Faith

The debtor has bad intentions, which is in accordance with the results of the evaluation and identification carried out by the creditor of PT. State Savings Bank (BTN), it is known that the debtor is actually able to fulfill his obligation to settle his credit to the Bank as a creditor, but the debtor intentionally does not resolve his credit problem or deliberately runs away or delays the time of credit payment.

2. Financial Management Debtor customers experience economic problems, where the debtor cannot manage his economy so that he experiences a failure which causes the debtor to find it difficult to fulfill his obligations to resolve his credit problems to PT. State Savings Bank (BTN) as creditor. Weaknesses of debtors in planning, organizing and controlling resources to achieve targets effectively and efficiently.

3. Customers Experiencing Termination of Employment, Debtors who work in a private company are terminated, so they have no more income to make credit/mortgage installments at PT. State Savings Bank (BTN).

The inhibiting factors specifically in this case based on the decision of the Supreme Court no. 128K/Pdt/2016 namely, as follows, The owner of the goods does not leave and vacate the auction object for the execution of the mortgage. In the Supreme Court's decision Number 128 K/Pdt/2016, the plaintiff considered that Defendant I for Cassation as a Bank that assists Small and Medium Enterprises should provide guidance and understanding to its customers, but in good faith had given a letter in the form of notification of the Auction Implementation Plan through the Office State Property Service and Auction/Defendant for Cassation II which should first provide:

- 1) Guidance and at the same time provide a way out for its customers;
- 2) Give subpoenas to customers in order to pay credit installments and at the same time see the situation and condition of their customers;
- 3) That the term of the credit agreement is for 180 months, where
- 4) The Plaintiff for Cassation still has the opportunity to pay the installments with the intention of paying.

The Property Owner considers that the object of the auction of the execution of the mortgage is based on the law of confiscation and the execution of the confiscation of execution must go through the determination of the district court. In

²² Based on the results of an interview with Mr. Andrianta Tarigan , *Branch Shared Service Unit Head* PT. BTN, On 07 June 2021.

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the decision of the Supreme Court Number 128 K/Pdt/2016, the action of Defendant I for Cassation submitted/to Defendant II for Cassation and planned an auction of mortgage/guarantee Rights Certificate Number 223/Kelurahan Pakan Labuah, SU/GS dated April 10, 2007 Number 10/PL/2007 covering an area of 160 m² on behalf of Arman, S.Pd. with the announcement that the auction of the execution of Mortgage Rights Number 157/M/AMDPDG.VIII/2014 dated August 26, 20014 was invalid or had violated the rules because it was contrary to the Credit Agreement No.00009-01-01-003714-6 dated October 27, 2010 for a period of 180 month, which is contrary to the Decree of the Minister of Finance of the Republic of Indonesia Number 93/PMK.06/2010 dated April 23, 2003 "Concerning Instructions for Auction Implementation", therefore the Plaintiff for Cassation requests the Chairman of the Bukittinggi District Court to "cancel" the holding of the auction for the execution of the rights. the dependents.

Legal Protection for Parties Debtors and Creditors In Credit Settlement Loss of Home Ownership (KPR) Related to the Judgment Supreme Court Number 128 K/Pdt/2016

According to Philipus M. Hadjon, interpreting legal protection as protection for the people as a preventive and repressive government action, that legal protection as protection of dignity and respect, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. rooted in Pancasila and the concept of the rule of law.²³

Legal protection is something that will prevent and maintain legal objects through applicable rules and norms. Legal protection serves to fulfill human rights fairly so as to avoid unlawful and arbitrary behavior from the government and authorities.²⁴ Legal Protection for Home Ownership is how about the creditor right after they pay the credit but they can't get their right. The legal protection itself is divided into two, namely;²⁵

1. Preventive Legal Protection

Legal protection where the people are given the opportunity to raise objections or opinions before a government decision gets a definitive form. Preventive legal protection can also be interpreted as prevention carried out by the government before a violation occurs in the form of laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation.

2. Repressive Legal Protection

²³Satjipto Rahardjo, *Op. Cit*, h. 54 .

²⁴Winahyu Erwiningsih, "Perlindungan Hukum Tenaga Kerja Wanita", *Jurnal Hukum Universitas Islam Indonesia*, No. 3, Vol. I, 1995, p. 23

²⁵Burhan Sidabariba, *Op . Cit., h . 29*, citing the opinion of Philip M. Hadjon

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Repressive legal protection aims to resolve disputes. The handling of repressive legal protection can be done through the General Court and the Administrative Court. The form of repressive protection can be in the form of sanctions such as fines, imprisonment and additional penalties given if a violation has occurred.

Preventive legal protection for auction buyers of mortgage execution is a form of protection given to auction buyers before a dispute occurs related to the object of the mortgage execution auction object. Based on Article 42 of *the Vendu Regulation*, it states that " *the auction buyer has the right to obtain a quote from the minutes of the auction as a deed of sale and purchase from the object of the auction of execution of the mortgage* ".

The excerpt of the minutes of the auction will be used as a deed of sale and purchase for the purpose of changing the name of the auction object for the execution of mortgage rights if the object being auctioned is immovable property. In addition to excerpts from the minutes of auction, auction buyers are provided with preventive legal protection in Article 25 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Auction Implementation Instructions which states that " *An auction that has been carried out in accordance with the provisions of the legislation cannot be cancelled.*

An auction that has been carried out in accordance with applicable regulations and won by an auction buyer with good intentions, then the auction cannot be canceled and the auction buyer who has good intentions must be given legal protection. Preventive legal protection for auction buyers of mortgage executions is also regulated in Article 13 paragraph 1, paragraph 2 and paragraph 3 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Auction Implementation Guidelines regarding the seller's responsibility in the event of a civil claim and/or criminal charges arising from non-compliance with laws and regulations in the field of auction and claims for compensation for losses arising from the invalidity of the goods and documents required by the auction.

Meanwhile, repressive legal protection is legal protection that is in nature to resolve disputes that occur by returning to the situation before the violation of legal norms occurred. Repressive legal protection in the form of claims for rights to parties deemed detrimental. This can happen if one of the parties feels that their interests have been harmed. Repressive legal protection for auction buyers execution of mortgage rights is an attempt by auction buyers to obtain legal protection which is carried out through the judiciary.

In the event of a rebuttal, the auction buyer may file a legal action in the form of an appeal and cassation. This is regulated in point 9 of the Circular Letter

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of the Supreme Court Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court which states that it provides protection for buyers who have good intentions, even though after the transfer of rights it is known that the seller is a person who are not entitled.

Therefore, the auction buyer can submit an application to the Head of the District Court to carry out the execution of the object of the mortgage execution auction.

In the Supreme Court Decision Number 128 K/Pdt/2016 , the plaintiff filed a lawsuit that Defendant I had committed an unlawful act as regulated in Article 1365 of the Civil Code. Based on Article 1365 of the Civil Code states that:

Every act against the law (*onrechtmatige daad*) , which brings harm to another person, obliges the person who due to his fault issued the loss, to replace the loss.

The definition of unlawful acts is expanded to fulfill a sense of justice. The definition of unlawful acts includes actions that are contrary to decency and appropriateness, conflict with one's own obligations determined by law and contrary to the rights of others. An act that can qualify as an unlawful act requires the following conditions:²⁶

- a. Contrary to the legal obligations of the perpetrator;
- b. Contrary to the subjective rights of others;
- c. Contrary to decency; and
- d. Contrary to propriety and prudence.

Based on Article 1365 of the Civil Code regarding unlawful acts, it must meet the elements so that an act can be said to be an unlawful act. The elements contained in Article 1365 of the Civil Code include:²⁷

- a) The act must be against the law, meaning that an act is said to be against the law if it is contrary to:
 - 1) The rights of others; or
 - 2) its own legal obligations; or
 - 3) Good decency, or
 - 4) Obligations that must be heeded in the association of community life regarding other people or objects.
- b) The act must cause a loss, meaning that the loss caused by an unlawful act can be in the form of:

²⁶ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum*, Kencana, Jakarta, 2018, p. 122.

²⁷ P. N. H. Simanjuntak, *Hukum Perdata Indonesia*, 3rd Printing, Kencana, Jakarta, 2017, p. 304-305.

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- 1) material loss;
- 2) immaterial losses.

Thus, the losses incurred due to unlawful acts are not only limited to losses aimed at property wealth, but also losses aimed at the body, soul and human honor. The act must be done with a mistake, meaning that an error can be intentional and negligence .

The act must have a causal relationship (cause and effect) meaning that there must be a causal relationship (cause and effect) between the unlawful act and the loss. This causal relationship is concluded in Article 1365 of the Civil Code which states that an act due to a mistake causes a loss. Thus, the loss must arise as a result of one's actions. If there is no action (cause), then there is no loss (consequence).

In the Supreme Court's Decision Number 128 K/Pdt/2016 , the judge rejected the cassation on the grounds that the reasons for the appeal as contained in the cassation memorandum could not be justified and *Judex Facti* had been correct and correct in its considerations and did not misapply the law, because it is in accordance with Civil Procedure Law, has been terminated and has obtained legal status. In addition, regarding the assessment of objections to the execution auction plan, it is in the form of resistance, not filing a lawsuit again because based on the judge's decision regarding the subject matter of the evidence, the results of which are appreciative of a fact, which cannot be considered in the examination at the cassation level, because the examination at the cassation level cannot be considered. The cassation only relates to an error in the application of the law, a violation of the applicable law.

There is negligence in fulfilling the conditions required by the laws and regulations which threatens the negligence with the cancellation of the decision in question or if the court is not authorized or exceeds the limits of its authority, as referred to in Article 30 of Law Number 14 of 1985 as amended and added to Law Number 5 of 2004 and the second amendment to Law Number 3 of 2009. Based on this, Defendant I has fulfilled the elements of an unlawful act contained in Article 1365 of the Civil Code

Legal protection given to debtors prior to the implementation of the auction for mortgage collateral objects, namely *Rescheduling* (re-scheduling), *Reconditioning* (reconditioning) and *Restructuring* (rearrangement). Meanwhile, legal protection for creditors as holders of Mortgage Rights is the provision of Article 6 of the HT Law which stipulates that creditors can sell the auction of the debtor's assets and take repayment of their receivables from the proceeds of the sale if the debtor defaults.

The bank as the creditor holding the first Mortgage has the right to sell the object of the Mortgage on its own power through a public auction. The direct

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execution of guarantees through this auction is one of the attractions of UUHT because the process is much faster than the general execution process. The execution of the Mortgage object which is carried out by auction basically does not require an execution permit from the court considering that the sale is carried out based on Article 6 of the UUHT.

CONCLUSION

The execution of the auction for the execution of the collateral object against the Home Ownership Credit (KPR) is still carried out even though there has been a lawsuit from the debtor because based on Article 6 of the Mortgage Law, namely if the debtor breaks his promise, the first mortgage holder has the right to sell the mortgage object on his own power. through a public auctioneer and take repayment of its receivables from the proceeds of the sale. Second, the obstacles experienced by the auction winner against the object of the Mortgage execution auction namely the Property Owner does not leave and vacate the object of the mortgage execution auction and the Property Owner considers that the object of the Mortgage Execution Auction is based on the law of confiscation and the execution of the confiscation of execution must go through a District Court Decision. Third, the legal protection given to the debtor prior to the auction of the mortgage collateral object, namely the issuance of a warning letter I, warning letter II, warning letter III, if there is no response from the debtor, the creditor provides an opportunity for non-litigation settlement, namely rescheduling return), Reconditioning and Restructuring (rearrangement). Meanwhile, legal protection for creditors as holders of Mortgage Rights is the provision of Article 6 of the HT Law which stipulates that creditors can sell the auction of the debtor's assets and take repayment of their receivables from the proceeds of the sale if the debtor defaults.

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