MITIGATING CREDIT RISK IN BANKING: DETERMINING LIMIT VALUES FOR AUCTIONING MORTGAGE RIGHTS COLLATERAL IN ACCORDANCE WITH AUCTION REGULATIONS

Lastuti Abubakar[1], Tri Handayani[2]

[1, 2] Faculty of Law, Universitas Padjadjaran
✉ corresponding email: lastuti.abubakar@unpad.ac.id

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ABSTRACT

The Auction Implementation of Guidelines Regulation confirmed that the execution auction of collateral objects related to Mortgage Rights is a method designed to protect the rights of all parties involved. One of the key principles is the requirement to establish a limit value for mandatory auctions, including those related to Mortgage Rights. However, the current practices of execution auctions do not align with regulatory expectations that seek to ensure optimal pricing and a fair and legally certain process. Debtor objections to the determination of Limit Value and low selling prices have led to legal disputes against creditors. Therefore, an examination is essential to understand how risk mitigation can be achieved through the establishment of limit value. This study adopts a normative juridical approach with a descriptive-analytical research specification. The findings reveal that Articles 55-60 of Auction Implementation Guidelines Regulation outline the obligation to establish a limit value and provide criteria for determining that value. The establishment of limit value can function as a risk mitigation tool for Bank creditors, allowing them to adhere to prudential principles while providing legal certainty and protection for debtors, ultimately facilitating the attainment of the best possible price for their collateral objects.

Keywords: Credit Risk Mitigation; Limit Value Determination; Auction of Collateral Objects.

INTRODUCTION

A prudential banking principle is a fundamental principle that must be applied in both conventional and Sharia Banking activities[1]. This principle is closely related to the Banking function as an agent of development, where Banking serves as a driver of the national economy and an alternative financing source for busines sector. This function becomes more pronounced during economic downturns. For instance, during the COVID-19 pandemic, the stressed real sector conditions have led to increased banking risks. One of the risks that arises is credit risk. Credit risk has the potential to rise due to the weakening ability of debtors to fulfil their credit obligations. Therefore, the Financial Services Authority (OJK) has issued countercyclical policies since early March 2020 to ensure the smooth functioning of the banking intermediary role.[2]

In the provision of credit/financing, there are principles manifest in the obligation of banks to conduct credit analysis (the 5 C's analysis of credit) to ensure that debtors have good intentions and the capability to repay. This obligation is regulated in Article 8 and the explanation of Article 8 of Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 on Banking (Banking Law), last amended by Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (Financial Sector Development Law). For Sharia Banking, this obligation is stipulated in Article 23 Paragraphs (1) and (2) of Law Number 21 of 2008 on Sharia Banking, also amended by the Financial Sector Development Law. This analysis includes Character, Capacity, Capital, Collateral, and Conditions of Economic, conducted before credit/financing is granted.[3]

In practice, collateral is one of the 5 Cs extensively used by banks to secure the credit/financing they provide. Collateral, particularly material collateral, is a crucial mechanism for securing credit extended to debtor customers in the event of potential default.

[1] Lastuti Abubakar, "Implementasi Prinsip Kehati-Hatian Melalui Kewajiban Penyusunan Dan Pelaksanaan Kebijakan Perkreditan Atau Pembiayaan Bank," *Rechtidee* 13, no. 1 (June 29, 2018): 62–81, https://doi.org/10.21107/ri.v13i1.4032.
[2] Otoritas Jasa Keuangan, "Roadmap Pengembangan Perbankan Indonesia 2020-2025," *Ojk.Go.Id*, 2021, https://www.ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/-Roadmap-Pengembangan-Perbankan-Indonesia-2020---2025.aspx.
[3] Hamonangan, "Analisis Penerapan Prinsip 5 C Dalam Penyaluran Pembiayaan Pada Bank Muamalat KCU Padangsidempuan," *Jurnal Ilmiah Manajemen, Ekonomi, & Akuntansi (MEA)* 4, no. 2 (2020): 454–66, https://journal.stiemb.ac.id/index.php/mea/article/view/518.

This arrangement offers the bank, as the creditor, legal assurance that the credit provided is safeguarded and will be repaid as agreed[4].

The provision of collateral in credit/financing simultaneously serves as a risk mitigation effort by the bank against potential credit risks that may arise in the future. According to Financial Services Authority (OJK) Regulation Number 18/POJK.03/2016 on Commercial Bank Risk Management and OJK Regulation Number 65/POJK.03/2016 on Sharia Bank Risk Management, one type of risk that banks must manage is credit risk, including the risk of non-performing loans. This is because there is a simultaneous influence between credit risk and non-performing loans on the level of profitability[5]. Mortgage Rights are the most preferred type of collateral among creditors. In addition to being a tangible form of collateral, Mortgage Rights have economic value that is almost always advantageous. The tangible nature of Mortgage Rights provides absolute rights, meaning they can be asserted against anyone. They possess the droit de suit characteristic, allowing them to follow the object wherever it is located[6]. For banks, this collateral is expected to provide certainty and legal protection if the debtor defaults. Banks can execute Mortgage Rights to obtain repayment. Referring to Article 20 of Law No. 4 of 1996 on Mortgage Rights (Law on Mortgage), there are three methods for executing Mortgage Rights: 1) Through Parate Executie as regulated in Article 6; 2) Executorial title contained in the Mortgage Rights certificate as stipulated in Article 14 (2); and, 3) with the agreement of the grantor and holder of the Mortgage Rights, it can be done privately, with the condition of obtaining the highest price. Of these three methods, methods 1 and 2 must be conducted through execution auctions.

Despite explicit legal provisions on the creditor's right to seek debt repayment through execution, especially through Parate Executie, practical challenges have been identified. One such challenge is debtor resistance through the legal system, particularly concerning auction prices that may not align with the debtor's and creditor's expectations[7]. One legal issue in

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[4] Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 2 (August 12, 2018): 134, https://doi.org/10.24198/acta.v1i2.112.

[5] Muhamad Redza Safitra and Hendra Sanjaya Kusno, "Pengaruh Risiko Kredit Dan Kredit Macet Terhadap Profitabilitas Pada Masa New Normal," *Jurnal Ilmiah Akuntansi Dan Keuangan* 12, no. 1 (June 21, 2023): 11–22, https://doi.org/10.32639/jiak.v12i1.203.

[6] Yogi Gantika Gandawidura, "Perlindungan Hukum Kreditor Pemegang Hak Tanggungan Peringkat Kedua Dalam Pelaksanaan Eksekusi," *Jurnal Poros Hukum Padjadjaran* 1, no. 1 (2019): 73–86, https://jurnal.fh.unpad.ac.id/index.php/jphp/article/view/245.

[7] Nur Rizki Siregar and Mohamad Fajri Mekka Putra, "Tinjauan Hukum Kekuatan Eksekutorial Terhadap Permohonan Lelang Eksekusi Hak Tanggungan Atas Debitur Wanprestasi," *Jurnal USM Law Review* 5, no. 1 (2022): 128–43, https://d1wqtxts1xzle7.cloudfront.net/106762439/2504-libre.pdf?1697741226=&response-content-disposition=inline%3B+filename%3DTinjauan_Hukum_Kekuatan_Eksekutorial_Ter.pdf&Expires=1743753921&Signature

execution auctions is the determination of the Basic Price or Limit Value for the auctioned object, which often becomes a point of contention for debtors as the owners of the collateral[8].

The Limit Value is a critical component in the execution of an auction. For the Seller, it defines the minimum price they are willing to accept for the auction item. Conversely, for the Auction Participant, it represents the maximum amount they are prepared to offer for the purchase of the auction item. Understanding these values is essential for facilitating a fair and transparent auction process. The ideal outcome for the seller in an auction is to achieve a successful sale of the auction item and ideally surpass the predetermined limit value, which serves as a benchmark for the auction's success. However, it is crucial for all parties involved—including bidders, auctioneers, and potential buyers—to grasp an important distinction: in particular execution auctions involving material collateral, the auction item itself is classified as collateral rather than a representation of debt.

The set limit value is intended to reflect the intrinsic worth of the goods, grounded in their market viability, rather than any outstanding financial obligations associated with the debtor. As such, it becomes evident that selling items categorized as material collateral can be particularly challenging, often complicating efforts to command prices that align with market expectations. Understanding these nuances is essential for all stakeholders, enabling more informed decision-making and fostering realistic expectations throughout the auction process.

It is essential to remember that the principles embedded in all laws governing tangible collateral affirm that the collateral remains the property of the debtor. Even legal clauses explicitly state that agreements transferring collateral ownership back to the debtor are null and void, as outlined in Article 1154 of the Civil Code; Article 1178(1) of the Civil Code; and Article 33 of Law No. 42 of 1999 on Fiduciary. The interpretation of the Mortgage Rights Law acknowledges that execution can only be carried out based on Article 20, thus limiting creditor ownership of collateral as a resolution for non-performing loans.

Debtors anticipate not only debt settlement but also residual value from the collateral. Therefore, setting a Reserve Value in execution auctions becomes a risk mitigation strategy in

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[8] Yekti Mumpuni and Ibnu Arly, "Juridical Study of Liability Execution Auctions Limit Value Below the Value of Loans," *Khazanah Hukum* 4, no. 1 (2022): 61–79, https://journal.uinsgd.ac.id/index.php/kh/article/view/17765.

the Mortgage Rights execution process. As per Article 1 Number 27 of the Minister of Finance Regulation No. 122 of 2023 on Auction Implementation Guidelines, the Limit Value is defined as the minimum value of goods to be auctioned and is determined by the seller. In the context of execution auctions of bank-secured credit objects, the seller is the bank as the creditor. There are two distinct interests in the execution auctions of collateral objects. From the seller's perspective (the bank), executing the collateral aims to settle the debtor's debt. Meanwhile, from the debtor's standpoint, executing the collateral is expected to yield the best (highest) price. Therefore, execution auctions must adhere to applicable rules to prevent mutual harm and ensure the protection of both creditors and debtors[9].

The difference in these interests is what often triggers problems in practice. Issues commonly arise during the execution auction process of collateral objects, such as the set Limit Value becoming the substance of a debtor's lawsuit or execution subject, claiming not to be involved by the Seller (Bank); the potential for reporting to law enforcement because the Limit Value is deemed too low, disadvantaging the debtor; and, critically from a national financial perspective, the potential legal claims related to state losses due to suboptimal auction sale values. Meanwhile, in determining the Reserve Value, several issues arise: the auctioned object is sold in its actual condition (as is); the item sold is old, not new; there are cost and validity period constraints for the appraisal report; the Limit Value, as the basis for the sale value, can stimulate buyers; and, from a national financial perspective, the Limit Value must generate an optimal auction sale value[10].

Given the problems encountered in the practice of executing collateral objects with Mortgage Rights, the issues to be examined and analyzed are whether the regulations and models for determining the auction limit of Mortgage Rights collateral objects can be an optimal risk mitigation strategy for banking. Additionally, the study aims to determine if the regulations governing the determination of the Reserve Value can provide legal certainty and protection for both creditors and debtors.

To examine and analyze these issues, a normative juridical approach will be employed, focusing on secondary data in the form of primary legal materials, such as legislation, and

[9] Putri Reyvita Ridha Sabila et al., "Perlindungan Hukum Bagi Debitur Terhadap Eksekusi Hak Tanggungan Akibat Kredit Macet," *JURNAL EDUCATION AND DEVELOPMENT* 11, no. 1 (December 27, 2022): 275–79, https://doi.org/10.37081/ed.v11i1.4456.

[10] Mohammad Akyas and Vina Anggraini, "Penetapan Nilai Limit Dalam Lelang Eksekusi Hak Tanggungan: Mungkinkah Dibawa Ke Ranah Pidana?," *Djkn.Kemenkeu.Go.Id*, 2024, https://www.djkn.kemenkeu.go.id/artikel/baca/16820/Penetapan-Nilai-Limit-Dalam-Lelang-Eksekusi-Hak-Tanggungan-Mungkinkah-Dibawa-ke-Ranah-Pidana.html.

secondary legal materials, including legal journals and other relevant publications, textbooks written by legal experts, and recent seminar findings related to the research topic. Meanwhile, the research specification utilized is descriptive-analytical, aiming to describe the analyzed research results in a qualitative juridical manner. This article examines the regulatory framework and practices governing auctions for the execution of collateral objects. It addresses the establishment of limit values as a measure to mitigate the risks associated with the auctioning of credit collateral objects. The discussion will culminate in a conclusion that provides responses to the identified issues.

RESEARCH OUTCOME AND DISCUSSION

1) Auction Execution of Mortgage Objects in Banking Credit

The Mortgage Law clearly stipulates the position of the bank as the creditor and holder of the mortgage right. In essence, the bank, as the holder of the mortgage right, has the authority to execute the mortgage object if the debtor fails to pay or breaches the agreement. There are three methods that a bank, as a creditor, can use to execute the mortgage right. Firstly, through "Parate Executie," regulated in Article 6 of the Mortgage Law. Article 6 stipulates that "if the debtor breaches the agreement, the first holder of the mortgage right has the right to sell the mortgage object independently through a public auction and collect its receivables from the proceeds of the sale. The right granted by this article is often referred to as the Parate Executie right, which means executing or taking what is rightfully theirs without the intervention of a judge[11]. The second method is through an Executory Title found in the mortgage certificate, as regulated in Article 14 Paragraph (2), carried out through a public auction. The third method is the agreement between the grantor and the holder of the mortgage right, where the sale of the mortgage object can be conducted privately if it will result in the highest beneficial price for all parties, as regulated in Article 20 Paragraph (2) of the Mortgage Law. Article 20 Paragraph (3) specifies that a private sale can only be conducted after one month from the written notification by the grantor and/or holder of the mortgage right to interested parties, announced in at least two newspapers circulating in the relevant area or local mass media, and if there are no objections raised by any party. The provisions in Article 20 of the Mortgage Law manifest

[11] Rumawi Rumawi et al., "Parate Executie Dalam Fidusia Menurut Ratio Decidendi Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 3 (August 30, 2022): 554–79, https://doi.org/10.31078/jk1933.

the convenience provided by the law for creditors holding the mortgage right in the event of execution[12].

In order to exercise the Parate Executie right, the execution of the collateral object must be carried out through a public auction. This is regulated in Article 20 Paragraph (4) of the Mortgage Law, which states that "any agreement to execute the Mortgage Right contrary to the provisions of paragraph (1), paragraph (2), and paragraph (3) is void." According to Article 1 Number 1 of the Finance Minister Regulation (PMK) on Auction, an auction is defined as "the sale of goods open to the public with written and/or oral bidding that increases or decreases to reach the highest price, preceded by an auction announcement." Therefore, execution through auction is considered the best practice to meet the interests of both creditors and debtors, as it ensures the best possible price. Based on PMK 122 of 2023 on Auction Guidelines, execution auctions aim to achieve a more efficient, effective, transparent, accountable, modern, and legally certain auction, responding to the development of trading transactions through electronic systems by regulating electronic auctions. Execution through auction ensures that a bona fide buyer will have full rights to the auctioned object both formally and physically, even in the face of resistance from security holders[13].

The implementation of mortgage execution auctions conducted by the State Auctioneer (KPKNL), there are often lawsuits from debtors or other parties who feel their interests are harmed. Civil lawsuits are usually filed in the form of objections before or after the auction. Most lawsuits arise due to debtor dissatisfaction with the execution of the mortgage auction requested by the respective bank to the KPKNL. Debtor objections are usually related to the appraisal process and the determination of the auction limit for the execution. There is still a gap between the expected conditions and the current conditions regarding the collateral assessment process. The assessment of collateral objects is expected to comply with applicable laws and regulations, and there should be no third party with malicious intent that could influence the assessment or limit determination. Currently, in some cases, auction prices are significantly below the market-based appraisal price. Debtors feel aggrieved if the sale price does not correspond to the appraisal or estimated value[14]. According to PMK 122/2023, debtor

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[12] Muhammad Affandi, "Perlindungan Hukum Bagi Kreditur Dalam Eksekusi Perjanjian Kredit Dengan Jaminan Hak Tanggungan," *Lex Patrimonium* 1, no. 1 (2022): 1–20, https://scholarhub.ui.ac.id/lexpatri/vol1/iss1/10/.
[13] Yosia Hetharie, "Legal Status of Execution of Liability Auction Winner through Parate Executie," *Damhil Law Journal* 3, no. 2 (November 30, 2023): 155, https://doi.org/10.56591/dlj.v3i2.1939.
[14] Deity Yuningsih et al., "Penerapan Asas Keadilan Terhadap Penetapan Limit Pada Proses Pelelangan Hak Tanggungan Di Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKLP) Kota Kendari," *Halu Oleo Legal Research* 4, no. 2 (2022): 149–67, https://journal.uho.ac.id/index.php/holresch/article/view/41.

concerns should be minimized, as the DJKN Appraiser or a Public Appraiser determines the Limit Value for the Execution Auction. It is important to adhere to the established assessment standards throughout this process. Internal Bank appraisers are responsible for managing credits valued at less than IDR 10,000,000,000.00, and it is crucial to note that the potential for litigation may arise more frequently from these internal assessments. It is not uncommon for the limit value established for collateral objects to be set inadequately low, which may result in unlawful actions by the Seller in determining this value. Such actions are categorized under the legal concept of "onrechtmatige daad" (unlawful acts) and can serve as a foundation for the judge to evaluate whether an unlawful act has transpired. This assessment may subsequently influence the judge's decision regarding the cancellation of the auction, making it an important consideration in the judicial process[15]. In general, lawsuits and rejections of the implementation of mortgage auctions are efforts by debtors to postpone or cancel mortgage auctions for 2 reasons, namely unlawful acts and breach of contract. The large number of civil lawsuits against the implementation of mortgage auctions is the main problem of mortgage auctions. According to case data at the Bandung KPKNL, in civil cases there is no law that prohibits the filing of lawsuits, in fact, basically the court is not allowed to reject lawsuits that come in[16]. As such, banks must provide comprehensive guidelines that must be meticulously followed during the assessment process.

Another issue arises when the party subjected to the auction still occupies or controls the physical possession of the auctioned item that has been sold. According to regulations, ownership of the auctioned item transfers to the winning bidder immediately after the sale agreement is concluded. If the debtor still occupies the auctioned item, the winning bidder requests the issuance of the auction deed for the purpose of eviction, which will be submitted to the District Court or Religious Court for assistance in eviction. The execution of this eviction begins with a request submitted to the Head of the local District Court by the winning bidder as the rightful owner. Based on this request, the head of the District Court proceeds by summoning the execution defendant. The costs for the eviction process are difficult to predict, and the process from the eviction request to the actual eviction has no definite timeframe and often takes a long time, resulting in a lack of legal certainty for the buyer to obtain their rights.

[15] Kristina Sibange Bange and Sukirno Sukirno, "Perlindungan Hukum Terhadap Debitur Dalam Proses Lelang Dengan Nilai Limit Rendah," *Notarius* 16, no. 1 (April 27, 2023): 94–107, https://doi.org/10.14710/nts.v16i1.42200.
[16] Verri Octavian, "Legal Protection of Auction Winners Against the Execution of Dependent Rights," *Advances In Social Humanities Research* 2, no. 6 (June 2, 2024): 798–813, https://doi.org/10.46799/adv.v2i6.251.

Subsequent impacts include: 1) Reducing public interest in participating in auctions for properties still occupied by previous occupants; 2) The public tends to buy houses through means other than e-auction; 3) The potential for auctions to remain unsold, leading to unmet auction targets[17].

Another legal issue arises when the debtor is declared bankrupt. As the mortgage holder, the creditor's right to execute the mortgage object is regulated by Article 6 of the Mortgage Law, which grants the right to sell the mortgage object independently (parate executie) or through Article 14 paragraph (2) of the Mortgage Law based on an executory title. The execution using these two methods must be conducted through public auction. In practice, the creditor's right is hindered by objections from the curator on the grounds that more than 2 (two) months have passed since the commencement of insolvency. Article 55 paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) stipulates that creditors holding pledges, fiduciary guarantees, mortgages, or other property security rights can execute their rights as if bankruptcy had not occurred. Furthermore, Article 56 paragraph (1) of the Law on Bankruptcy Law stipulates that the creditor's execution right is suspended for a maximum period of 90 (ninety) days from the date the bankruptcy declaration decision is pronounced. Article 59 paragraph (1) determines that creditors holding security rights as regulated in Article 55 paragraph (1) must exercise their rights within a maximum period of 2 (two) months from the commencement of the insolvency situation as regulated in Article 178 paragraph (1) of the Bankruptcy Law. Based on these articles, the creditor's right to execute the mortgage object, which should be done immediately, must be postponed for 90 days. However, the execution must be carried out within 2 months after insolvency. If the creditor executes their right beyond the specified period, the curator will file an objection. Therefore, the creditor must pay attention to the timeframe for exercising their right. From the perspective of collateral law, especially movable collateral, there is erosion of the absolute property rights of the collateral holder, which has droit de suite and droit de preference. Meanwhile, the execution mechanism regulated in the provisions of the Bankruptcy Law aims to obtain the best price in the bankruptcy estate's sales process. The difference in interests must be well mitigated by creditors to avoid losing their rights. The different approaches in the policy of executing movable collateral rights in the legal regimes of collateral

[17] Muhammad Teguh Ariyanto, "Kendala Dan Permasalahan Pengosongan Setelah Pelaksanaan Lelang Eksekusi Hak Tanggungan," *Djkn.Kemenkeu.Go.Id*, 2022, https://www.djkn.kemenkeu.go.id/kpknl-bukittinggi/baca-artikel/15185/Kendala-dan-Permasalahan-Pengosongan-setelah-Pelaksanaan-Lelang-Eksekusi-Hak-Tanggungan.html.

and bankruptcy are often interpreted as legal disharmony[18], leading to multiple interpretations and resulting in legal uncertainty. According to the legal analysis, the bank, as the collateral holder, is safeguarded against potential losses that may occur during the standstill period if a legal act negatively affects the creditor. Creditors have the right to sue for the cancellation of transactions or legal acts under the principles of Actio Pauliana, as outlined in Article 1341 of the Civil Code.

2) Mitigating the Risk of Auctioning Credit Collateral through the Determination of Limit Values

The provision of collateral in credit agreements should be viewed from the creditor's perspective because collateral aims to ensure that the debtor will make payments. Guarantees, especially in banking credit/financing agreements, are established for the benefit of the bank, not the debtor. The bank must ensure that the credit/financing runs smoothly and complies with the principles of prudence[19] Therefore, collateral in credit agreements serves the interests of the bank, not the debtor[20]. If the debtor fails to make payments or breaches the agreement, the creditor can execute the collateral to recover the debtor's outstanding debt. However, this does not mean that the debtor's interests as the owner of the collateral object are disregarded.

As one type of agreement, the mortgage right collateral agreement must still adhere to the principles of agreements, including the principle of balance in contract law. This principle of balance is an addition to the existing principles in contract law intended to harmonize legal institutions and the fundamental principles of contract law known in the Civil Code, which is based on the thinking and background of individualism on the one hand and the mindset of the Indonesian people on the other[21].

The principle of balance in contracts, especially commercial contracts, applies throughout the contract formation process to contract execution to ensure a fair negotiation

[18] Irfan Ferdiansyah Muis, Isis Ikhwansyah, and Tri Handayani, "Kedudukan Kreditur Separatis Terkait Jaminan Hak Tanggungan Yang Masuk Dalam Boedel Pailit Debitur," *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (May 25, 2022): 277–88, https://doi.org/10.23920/jphp.v3i2.784.
[19] Lastuti Abubakar and Tri Handayani, "Perkembangan Regulasi Pranata Jaminan Saham Panpa Warkat (Scripless) Sebagai Objek Jaminan Di Pasar Modal," *JUSTITIA JURNAL HUKUM* 2, no. 1 (April 25, 2018), https://doi.org/10.30651/justitia.v2i1.1715.
[20] Husnia Hilmi Wahyuni and Purwanto Purwanto, "Analisis Hukum Terhadap Jaminan Kredit Dalam Perspektif Pencegahan Kredit Macet," *Binamulia Hukum* 13, no. 2 (December 2, 2024): 297–311, https://doi.org/10.37893/jbh.v13i2.954.
[21] Herlien Budiono, *Ajaran Umum Hukum Perjanjian Dan Penerapannya Di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2014).

process, equal rights, and a guaranteed distribution of rights and obligations in proportion[22]. Herlien Budiono in Mariam Darus interprets this principle of balance as requiring both parties to fulfil and execute the agreement. This principle of balance is a continuation of the equality principle. Creditors have the power to demand performance and, if necessary, seek settlement through the debtor's assets. However, creditors bear the burden of executing the agreement in good faith. Thus, the strong position of the creditor is balanced by the obligation to consider good faith, ensuring a balanced relationship between the creditor and the debtor[23]. Based on this principle, in the process of resolving credit/financing, the rights and obligations of both parties, namely the Bank as the creditor and the debtor as the owner of the collateral, need to be considered.

The auction of the execution of mortgage rights, as a means for the bank to obtain debt repayment from the debtor, must be carried out with caution, considering the potential risks that may arise in the auction process and execution. To achieve the optimization of auction results, it is necessary to conduct an efficient, fair, transparent, and accountable auction. Therefore, in addition to considering the general principles and principles of contract law as the legal basis for credit and collateral, the implementation of the mortgage right auction execution must also adhere to the following principles:[24]

a. **Transparency Principle**; this principle is manifested in the auction regulations, requiring that the auction process must be preceded by an "auction announcement" as a source of accurate, honest, and non-discriminatory information about the auction.
b. **Justice Principle**; this principle requires the parties to fulfil and implement the terms of the auction as stated in the auction certificate, which has the power to demand fair performance from the parties and assumes the obligation to carry out the terms of the auction certificate in good faith. Unwritten provisions of this principle include honesty, without deception, and not concealing anything detrimental.
c. **Legal Certainty Principle**; this principle emphasizes that auction implementation is based on legal regulations. The auction certificate serves as an authentic act of transferring rights (*Acta van Transport*) over the goods and as the basis for the delivery

[22] Erni Herawati, "Perkembangan Asas Keseimbangan Dalam Perjanjian," *Binus.Ac.Id*, 2018, https://business-law.binus.ac.id/2018/07/05/perkembangan-asas-keseimbangan-dalam-perjanjian/.
[23] Mariam Darus Badrulzaman, *Hukum Perikatan Dalam KUH Perdata Buku Ketiga: Yurisprudensi, Doktrin, Serta Penjelasan* (Bandung: PT Citra Aditya Bakti , 2015).
[24] Ria Juliana Siregar, "Pelaksanaan Lelang Terhadap Penerapan Prinsip Keadilan Di Indonesia," *Visi Sosial Humaniora* 3, no. 2 (December 28, 2022): 189–97, https://doi.org/10.51622/vsh.v3i2.1116.

of the goods. Without the auction certificate, such auction implementation lacks legal certainty about what transpires. Therefore, the auction certificate, as a legal figure providing legal certainty, must be clearly actualized in the laws governing auctions.

d. **Efficiency Principle**; this principle ensures quick and easy sales services conducted at predetermined times and places. Buyer confirmation is done on the spot, and payment settlement is fully made, with low costs. This principle also guarantees that auctions become the best medium in the buying and selling process, as the potential for the best price will be more easily achieved due to creating a competitive atmosphere, both technically and psychologically. Thus, it will establish a fair, conducive, and competitive auction environment.
e. **Accountability Principle**; this principle requires that the conducted auction be accountable to the Auctioneer, Seller, and Buyer, to all interested parties, and to the public.

In the Academic Draft of Law on Auction, several other principles are stipulated for the auction implementation. In addition to the principles mentioned above, some principles in the Draft of Law on Auction are:[25]

a. **Competitive Principle**; in the conduct of auctions that require the gathering of auction participants at the same time, it will create competition in the prices offered for the same object, thus achieving optimal prices.
b. **Proportionality Principle**; this principle requires a balance between rights and obligations. A proportional attitude is needed to moderate the interests of each legal perspective.
c. **Legal Protection Principle**; this principle requires that auctions provide legal certainty for stakeholders in the auction implementation. Every auction implementation is documented with an auction execution document prepared by the Auctioneer.
d. **Beneficial Principle**; this principle aims for the auction to benefit auction service users and the general public. The auction benefits the Auction Applicant as a means to reach practical agreements. Additionally, for the Auction Winner, it serves as a means to obtain desired goods and/or services at a fair price.

[25] Lusiana Puspitaningrum and Aditya Wirawan, "Konstruksi Akta Lelang Digital (Digital Signature) Di Indonesia," Journal Indonesia Rich 1, no. 1 (2020): 1–14, https://irich.pknstan.ac.id/irj/article/view/3.

e. **Effectiveness Principle**; this principle ensures that the auction is conducted quickly as it is held at a predetermined place and time, with buyers being confirmed on the spot. This principle will be further realized as auctions can also be conducted with electronic transaction concepts[26].

Based on the principles underlying the aforementioned auction implementation, the determination of the limit value for the execution auction object is one of the realizations of these principles. Through the establishment of a limit value, both the seller and the buyer will obtain a certain price; legal certainty regarding the selling price in the execution auction, and a sense of justice for all parties involved.[27] The determination of the limit value simultaneously upholds the principle of equality for all parties before the law. According to Article 55 Paragraph (1) of Regulation No. 122/2023 on the Implementation Guidelines for Auctions (PMK on Auction), every auction must have a 'limit value'. Furthermore, Article 55 Paragraph (2) emphasizes that the determination of the limit value is the authority and responsibility of the Seller. This provision is logical because, in the concept of buying and selling, the seller determines the price. Moreover, if left to the buyer, it would disadvantage the seller and the debtor as the owner of the goods. Therefore, the determination and announcement of the limit value are mandatory to avoid any party being disadvantaged and to align with the principle of equality. The limit value as referred to in Article 55 Paragraph (1) is determined by the Seller based on: a. the appraisal report by the Appraiser; b. the estimation report by the Estimator; or c. the seller's own estimated price. The Appraiser mentioned in point a is a government appraiser at the Directorate General of State Assets (DJKN) or an independent public appraiser. Referring to Government Regulation No. 27/2024 on the Management of State/Regional Assets, a Government Appraiser is a Civil Servant appointed by the Minister of Finance with the task, authority, and responsibility to conduct an appraisal, including independent appraisals. An Independent Public Appraiser is an appraiser who has obtained a license from the Minister to provide services as regulated in the Minister of Finance Regulation No. 101/2014 on Independent Appraisers. Meanwhile, the Estimator (Internal Appraiser) is an Internal Bank Appraiser according to the Financial Services Authority Regulation (OJK) appointed by the

[26] Saparuddin Siregar and Sylviana Siregar, "Analisis Pelaksanaan Lelang Online (E-Auction) Di Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL) Kota Medan," *Khidmatussifa: Journal of Islamic Studies* 2, no. 1 (December 30, 2022): 17–30, https://doi.org/10.56146/khidmatussifa.v2i1.66.
[27] Herzie Riza Fahmi, Tunggul Anshari Setia Negara, and Endang Sri Kawuryan, "Dasar Pertimbangan Penetapan Nilai Limit Objekt Lelang Eksekusi Hak Tanggungan," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2019): 310–20, https://journal2.um.ac.id/index.php/jppk/article/view/8513/5410.

Seller to conduct estimations based on justifiable methods. To adhere to the principle of openness, the PMK Auction also stipulates that the limit value is open and must be announced in the auction announcement. This is to ensure accurate, honest, and non-discriminatory information.

Article 51 of PMK on Auction regulates the range of limit values for the execution auction of collateral objects. The Range of Limit Values for collateral objects, based on Article 6 of the Mortgage Law, is at the highest equal to the market value and the lowest equal to the liquidation value. These two measures of limit values still have the potential for differing interpretations if not properly understood. According to Article 57 of PMK 22/2023, the basis for determining the limit value for values exceeding 10 billion Rupiah is Appraisal, while for values below 10 billion Rupiah is Estimation. The Seller establishes the Limit Value based on the Market Value as the priority (upper limit) and the Liquidation Value as the last alternative. The Market Value and Liquidation Value are opined by the Appraiser in the appraisal report simultaneously. The validity period of the appraisal or estimation report used as the basis for setting the Limit Value is a maximum of 12 months from the date of the appraisal or estimation until the auction date. Despite all the issues in practice, the determination of the Limit Value regulated in the PMK on Auction is an effort to minimize the risks arising from the execution auction of the mortgage right. From the bank's perspective, setting the Limit Value based on regulations is the bank's effort to comply with prudential banking principles. The bank can be accountable for the execution process and results because the execution auction mechanism is carried out according to procedures and regulations. Determining the limit value for auctions is a complex process that frustrates various stakeholders. Below, we explore several perspectives on this matter: a. Civil Perspective: It can be disheartening for debtors to feel excluded from the decision-making process when determining the limit value in auctions. Many individuals perceive that they have not been afforded a fair opportunity to participate, even though regulations may not necessitate their involvement. Debitor merasakan adanya ketidakadilan dalam proses eksekusi[28]. This situation can lead some to consider legal action, and there have indeed been instances where courts have acknowledged these grievances, resulting in the cancellation of auctions. This highlights the importance of ensuring debtors feel their voices are respected and valued; b. Seller Perspective: Sellers encounter obstacles when

[28] Bachtiar Marbun, Budi Santoso, and Yunanto Yunanto, “Principles of Justice in Enforcement of Mortgage Rights According to the Indonesian Legal System,” in Proceedings of the 2nd International Conference Changing of Business Law (ICOCLB 2024) (Atlantis Press, 2025), 58–64, https://doi.org/10.2991/978-2-38476-356-6_7.

the limit value is too low. Such a situation may lead to potential legal complications and raise concerns regarding fairness and integrity within the auction process. Sellers may fear that establishing a low limit could give rise to perceptions of favoritism toward certain bidders, undermining trust in the auction environment.

In summary, establishing limit values presents challenges that can leave sellers and auction officials feeling exposed and uncertain[29].Strong legal protections for all parties involved must be established to promote a fair and supportive auction environment.

The determination of the Limit Value for the execution auction object is entrusted to independent appraisers, while still considering the rights of the debtor as the owner of the collateral. As long as the principles of execution auction are followed and there is good faith from all parties, the risk of loss due to the execution auction, both for the bank and the debtor, can be avoided. However, considering that PMK 123/2023 does not explicitly regulate the determination of the basis and limit value that can be used to produce an objective assessment and meet the justice of all parties, further strengthening of the regulation on this execution auction is still needed.

The regulations set forth in PMK 123 of 2023 provide a clear framework for determining the limit value and establishing a basis of value that ensures objective assessments and upholds fairness for all parties involved. The Indonesian Appraisal Standards (SPI) issued by MAPPI as a Public Appraiser organization have provided guidelines regarding this value basis. This value basis is essential to bridge the expectation gap between the debtor as the owner of the collateral and the auction price. Based on SPI Edition VII/2018, two value bases can be used: Market Value and Liquidation Value. Market Value is defined as the estimated amount of money that can be obtained or paid for the exchange of an asset or liability on the valuation date, between a willing buyer and a willing seller, in a freely binding transaction, with reasonable marketing, where both parties act on their understanding, prudence, and without coercion (SPI 101-3.1). Meanwhile, Liquidation Value is an amount of money that may be received from the sale of an asset in a relatively short period to meet the marketing period in the Market Value definition. In some situations, Liquidation Value may involve a seller who is not interested in selling and a buyer who buys knowing an unfavorable situation for the seller (SPI 1-2-3.5.b).

[29] Rahma Dona and Yoni Agus Setyono, "Execution Of Mortgage Rights Through Auction Implementation Without Court Decision (Study Of Supreme Court Decision Number 3600 K/Pdt/2020)," *International Journal of Social Service and Research* 4, no. 11 (November 27, 2024): 1–10, https://doi.org/10.46799/ijssr.v4i11.1104.

Valuation practices often face various challenges that warrant careful consideration. A primary concern involves establishing the accurate fair value, which is influenced by the assessments conducted by Public Appraisers in accordance with relevant regulations. It is important to note that the appraiser may be an internal member of the Seller's team or an external party appointed by the Seller, tasked with conducting the appraisal using a method that is both transparent and defensible. This situation raises pertinent questions regarding the consistency of valuation results, particularly whether discrepancies can arise for the same auction item at either the same or different times, and, importantly, the credibility of such outcomes. Variations in valuation results can arise from several factors, including the integrity and expertise of the individuals involved, market fluctuations within the property sector, and specific challenges related to the property being appraised. Additionally, common issues in valuation practices stem from the limited status and authority of appraisers, which do not mandate adherence to public standards; the suboptimal functioning of institutions, which often rely on other relevant sectors for support; the absence of comprehensive national property transaction data; the unreliability of existing data references; and a general lack of legal protection for both appraisers and the community at large. Addressing these challenges is crucial for enhancing the credibility and effectiveness of valuation practices[30]. Based on the evaluation conducted, the regulation establishing the Limit Value in PMK 122/2023 adequately adheres to the principles of transparency, efficiency, and fairness in the Auction process. However, to enhance the efficiency of the Auction, particularly in relation to the interests of creditors and debtors, it is recommended to engage a public appraiser for Auction objects valued below IDR 10,000,000,000.00. This approach may help mitigate the potential for disputes or lawsuits from debtors or third parties.

CONCLUSION

Establishing a limit value is fundamental to the execution auction mechanism for collateral objects. The regulations outlined in PMK 122/2023 provide comprehensive governance of these execution auctions, underlining the importance of accurately determining

[30] Javerson Simamora, Nanda Dwi Rizkia, and Hardi Fardiansyah, "The Urgency of Ratifying the Appraiser Law in the Context of Providing Legal Protection for Public Appraisers in Indonesia," *Indonesian Journal of Contemporary Multidisciplinary Research* 2, no. 4 (July 31, 2023): 703–18, https://doi.org/10.55927/modern.v2i4.5110.

the limit value. This limit acts as a benchmark, ensuring that the true worth of the collateral is effectively represented during the auction.

In practice, debtors frequently exercise their right to dispute assessments related to collateral objects, mainly when appraisals fall short of their expectations or perceived value. Such disputes can result in significant delays and complications in the auction process. The regulatory framework established in PMK 122/2023 has been meticulously designed to address these challenges, fostering a sense of security. It incorporates specific guidelines for assessing collateral value, offering a structured approach to mitigate the risks associated with inaccurate valuations. This framework promotes transparency and fairness in the auction process, enabling creditors and debtors to navigate the complexities of asset liquidation more effectively. By ensuring precise determination of the limit value, the regulation aims to enhance the integrity of the auction mechanism while protecting the interests of all parties involved.

This regulation establishes a fair and equitable framework for the bank, acting as the creditor and the debtor, who retains ownership of the collateral during the auction process. By strictly adhering to the principles and objectives outlined in PMK 122/2023, the limit value can be optimized to secure the highest possible price. This approach benefits creditors by maximizing their recovery. It simultaneously serves the interests of debtors by ensuring that the collateral is sold at a price that genuinely reflects its market value. The effectiveness of this regulation hinges on the meticulous application of the relevant principles and provisions that govern the valuation process throughout the auction.

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About Author(s)

Dr. Lastuti Abubakar S.H., M.H. is a permanent lecturer at the Faculty of Law, Padjadjaran University. She is actively researching in the fields of Banking Law, Capital Market Law, Guarantee Law, Agreement Chief, Sharia Economics, and Commercial Law. Her writings have been published in various journals and proceedings at both national and international levels. She completed her undergraduate education at the Faculty of Law, Padjadjaran University, then earned a Masters in Law at Padjadjaran University, and continued her Doctor of Law program at Padjadjaran University.