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THE ROLE OF NOTARIES IN AYDA BY RURAL BANKS TO RESOLVE NON-PERFORMING LOANS

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Abstract: This research is intended to analyze the credit agreement in the Indonesian banking sector can be done through authentic deeds or underhand deeds. The author uses Socio Legal Legal Research Methods or commonly used with the term empirical juridical research. Empirical legal research, namely data obtained directly from the community as the first source through field research. Credit agreements that are regulated through authentic deeds have the advantage of strong evidentiary power, because the authentic deed is made before a notary or authorized employee according to the law in the place where the deed is issued. On the other hand, agreements arranged through underhand deeds between banks and debtors still have legal validity but are not as strong as authentic deeds because they do not have authorization from authorized officials and are not supported by witness signatures. Concerning collateral in the form of a mortgage certificate, the making of which is carried out by a Land Deed Official (PPAT) and a mortgage certificate issued by the Land Office as proof of mortgage rights in accordance with Article 14 paragraph (1) of Law No. 4 of 1996. In the implementation of non-performing loan settlements, the role of notaries as authentic deed makers is very important. After the settlement of bad debts between banks and customers through an alternative settlement process, namely the Debtor's Juridical Agreement and the Debtor's Juridical Mandate (AYDA) to obtain strong evidence, it is necessary to make an authentic deed by a Notary. This is based on Article 1866 of the Civil Code which regulates evidence, which includes written evidence, evidence with witnesses, suspicion, recognition, and oaths. The findings and conclusions obtained by the researcher in the form of suggested

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changes in Article 12 Paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking are the importance of replacing the phrase "commercial bank" with "every bank" to conform to the principles of the 1945 Constitution of the Republic of Indonesia. It is hoped that this change can provide equality in authority and freedom for all banks in taking over collateral through an auction process to resolve non-performing loans faced by these banks.

Keywords: *Bank Credit; Role of Notary; Debtor's contract*

INTRODUCTION

In the context of lending credit at the People's Economic Bank (hereinafter referred to as BPR), the debtor is required to provide a guarantee, which is documented in the deed of credit agreement. This guarantee serves as collateral to ensure debt repayment in case the debtor *defaults*. Collateral is essential to cover the bank's losses from unpaid credits, as non-performing loans can jeopardize the bank's liquidity, potentially leading to financial distress or even bankruptcy. According to Indonesian Civil Law, a Credit Agreement is a type of Borrowing and Lending Agreement, governed by Articles 1754-1769 of the Civil Code (KUHPer). Article 1754 defines Borrowing and Lending as an agreement wherein one party provides a consumable good to another, with the expectation of receiving an equivalent quantity of the same kind and condition in return.¹

Previous studies on credit agreements highlight the risks associated with lending activities by banks, emphasizing the need for sound credit principles to maintain financial stability and public trust. The guidelines for credit and financing are outlined in Bank Indonesia Regulation Number 7/2/PBI/2005 and its amendments, which stress the importance of asset quality assessment and management. Furthermore, the Decree of the Board of Directors of Bank Indonesia (BI) Number 23/69/KEP/DIR mandates banks to monitor and maintain asset quality. Despite these regulations, non-

¹ Yan Li dkk., "'Credit Use' and Cost of Discredit: The Supreme People's Court and Zhima Credit Cooperating to Punish 'Lao Lai,'" dalam *Inclusive Finance in China*, ed. oleh Yan Li dan Lin Wang (Singapore: Springer Singapore, 2021), 321-55, https://doi.org/10.1007/978-981-16-1788-1_9.



performing loans remain a significant issue,² necessitating robust legal frameworks and notarial practices to mitigate risks. Prior research has often focused on the legal mechanisms for collateral execution and the role of notaries in authenticating credit agreements. However, there remains a gap in understanding the nuanced legal protections for creditors and the effectiveness of current practices in preventing disputes and ensuring compliance with credit terms.

This research aims to bridge the gap by examining the role of notaries in providing legal protection to creditors during the resolution of non-performing loans through Asset-Liability Management (AYDA) processes.³ Unlike previous studies, this research will specifically analyze the practical and legal challenges faced by notaries in authenticating credit agreements and executing collateral, offering new insights into the effectiveness of these legal instruments in safeguarding creditor rights.

The urgency of this research stems from the increasing incidence of non-performing loans in the banking sector, which threatens financial stability and the overall health of the economy. By scrutinizing the legal processes and notarial practices involved in credit agreements and collateral execution, this study seeks to propose improvements that can enhance the legal protection of creditors, thereby fostering a more secure lending environment.

The primary legal issues to be addressed include the adequacy of existing legal frameworks governing credit agreements and collateral execution, the role of notaries in mitigating risks associated with non-performing loans, and the legal remedies available to creditors in cases of debtor default. Additionally, the research will explore the implications of recent regulatory changes and court decisions on these processes.

² Hari Sutra Disemadi, "RISK MANAGEMENT IN THE PROVISION OF PEOPLE'S BUSINESS CREDIT AS IMPLEMENTATION OF PRUDENTIAL PRINCIPLES," *Diponegoro Law Review* 4, no. 2 (1 Oktober 2019): 194, <https://doi.org/10.14710/dilrev.4.2.2019.194-208>.

³ Hagni Wijayanti dkk., "Optimization of Asset Liability Management on Textile and Garment Companies Using Goal Programming Model," dalam *Proceedings of the 8th International Conference on the Applications of Science and Mathematics*, ed. oleh Aida Mustapha dkk., vol. 294, Springer Proceedings in Physics (Singapore: Springer Nature Singapore, 2023), 15-24, https://doi.org/10.1007/978-981-99-2850-7_2.



The objectives of this research are to, Evaluate the effectiveness of current legal frameworks in protecting creditors' rights during the resolution of non-performing loans and Analyze the role and responsibilities of notaries in authenticating credit agreements and executing collateral.

THEORETICAL BASIS

The theories used as an analysis knife in this research include:

Economic analysis of law is a branch of legal philosophy. Legal philosophy divides its attention into five parts, namely: *law as reason*, *law as will*, *law as custom*, *laws and values*, and *law as politics*.⁴ The approach used in the theory of economic analysis of law in its achievement is to use the Utilitarianism approach. This was explicitly stated by H. L. A. Hart, who explained that the economic analysis of law was inspired by utilitarianism.⁵

In the book *Economic analysis of law* written by Richard Posner explains that economics is an approach to understanding behavior, based on the assumption that individuals have goals and tend to choose the best way to get them. The concept that individuals tend to choose the best way to fulfill their personal interests has the implication that humans respond to the incentives around them. If the conditions around the individual change and make the individual increase his/her personal interest by choosing an alternative option, then the individual will definitely do so.⁶

Richard Posner, a leading figure in the economic analysis of law, developed the concept that law should be analysed based on economic principles. In his book 'Economic Analysis of Law,' Posner states that law is a means to understand human behaviour. The basic assumption in this

⁴ Beverley Brown dan Neil MacCormick, "Law, philosophy of," dalam *Routledge Encyclopedia of Philosophy*, 1 ed. (London: Routledge, 2016), <https://doi.org/10.4324/9780415249126-T001-1>.

⁵ H. L. A. Hart, *Essays on Bentham: studies in jurisprudence and political theory* (Oxford [Oxfordshire] : New York: Clarendon Press ; Oxford University Press, 1982).

⁶ Richard A. Posner, *Economic Analysis Of Law*, vol. 4 (USA: Harvard University Press, 1994).



approach is that individuals act rationally, have goals, and will choose the best way to achieve those goals.⁷

Posner argues that laws should be designed to create incentives that encourage efficient behaviour and reduce social costs. In the context of credit agreements and non-performing loan resolution, this approach means that legal rules should encourage loan repayment and reduce the risk of non-performing loans. Thus, an efficient law is one that maximises economic welfare by minimising transaction costs and encouraging compliance with credit agreements.⁸

Resolution of non-performing loans through Collateral Acquisition (AYDA) is one of the mechanisms used by banks, including BPRs, to deal with non-performing loans. AYDA is a process where the bank takes over the collateral pledged by the debtor as a last resort if the debtor fails to fulfil its obligations. This process is governed by various rules and regulations, including the Financial Services Authority Regulation (POJK).

From the perspective of legal economic analysis, AYDA can be seen as an efficient mechanism to resolve non-performing loans. By repossessing collateral, banks can reduce the risk of loss and recover some or all of the unpaid loan value. This is in line with the principle of utilitarianism, as the main objective is to maximise economic welfare by reducing the costs arising from non-performing loans.

However, the implementation of AYDA also faces various legal and practical challenges. For example, the collateral takeover process must be conducted in accordance with applicable legal provisions to ensure legality and fairness for all parties involved. In this case, the role of a notary is crucial to ensure that all documents and processes related to the AYDA are done correctly and legally.

The role of a notary in AYDA includes the creation and ratification of credit agreement deeds, collateral takeover deeds, and other documents related to the process. In addition, notaries can also provide legal advice to

⁷ Richard A. Posner, "The Social Costs of Monopoly and Regulation," *Journal of Political Economy* 83, no. 4 (August 1975): 807-27, <https://doi.org/10.1086/260357>.

⁸ Richard A. Posner, "A Theory of Negligence," *The Journal of Legal Studies* 1, no. 1 (January 1972): 29-96, <https://doi.org/10.1086/467478>.



banks and debtors regarding their rights and obligations in accordance with applicable regulations.

RESEARCH METHODS

The research method used in this writing uses socio-legal legal research methods or commonly used as empirical juridical research. Empirical legal research, namely data obtained directly from the community as the first source through field research, empirical research is research in the form of activities that have occurred in the community, including having experience in this field, with this research as a separate form or another.⁹ Then, the author uses a case approach and legislative approach. To collect primary data needed in this research, the author uses a structured interview method to obtain information from related parties. Case study, there is no single definition including in social science there is a broad definition.¹⁰ Secondary data collection will be carried out through document studies and laws and regulations regarding the role of notaries and Collateral Taken Over (AYDA).¹¹ Because in this study the author wants to conduct research on the facts that occur in the field about the Role of Notaries in Efforts to Settle Problematic Credit.

RESULTS AND DISCUSSION

The Unitary State of the Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945) guarantees certainty, order, and legal protection. The guarantee of certainty, order, and legal protection in society requires writing as a form of action, agreement, and legal provisions that have the strongest and fullest evidentiary power. The conception of the Indonesian rule of law is that the

⁹ F.C. Susila Adiyanta, "Hukum dan Studi Penelitian Empiris: Penggunaan Metode Survey sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (8 November 2019): 697-709, <https://doi.org/10.14710/alj.v2i4.697-709>.

¹⁰ Patricia Hentz, "Overview of case study research," *Nursing Research Using Case Studies: Qualitative Designs and Methods in Nursing*, 2016.

¹¹ Nur Aini Rakhmawati dkk., "Konsep Perlindungan Hukum Atas Kasus Pelanggaran Privasi Dengan Pendekatan Perundang-Undangan Dan Pendekatan Konseptual," *Justitia Jurnal Hukum* 3, no. 2 (2019), <https://doi.org/10.30651/justitia.v3i2.2545>.



power exercised by the Indonesian government must be based on and derived from the provisions of the law because it avoids the arbitrary use of power by the State authorities. The rule of law is a system of state based on the prevailing law that is justified based on a constitution, where both those who are ordered and those who rule must be subject to the same law.¹²

or intangible assets that are used as collateral for loans submitted by debtors to creditors. Creditors in this case are lenders such as banks or other finance companies. Creditors will only receive proof of ownership of assets such as vehicle BPKB and house certificates during the credit period. This aims to minimize the risk of the debtor failing to pay the ongoing credit. If the debtor has fully paid off the debt, the proof of ownership of the asset will be returned to the debtor. Another case, if a condition is found that requires the debtor to default with certain criteria, the collateral will be transferred from the debtor to the creditor.

This definition is emphasized by the definition of collateral based on Banking Law Number 10 of 1998 Article 1 paragraph 28, concerning Amendments to Banking Law Number 7 of 1992, which states that collateral is the ability, confidence or ability of customers to pay off their obligations as promised.¹³

In general, collateral can be distinguished based on its form and can be divided into two types, namely tangible collateral and intangible collateral. Tangible collateral is a type of collateral that can be seen by the eye and if possible can be carried by prospective debtors when applying for a loan. Types of tangible collateral are divided into two, namely movable collateral and immovable collateral. Examples of moving collateral are motorized vehicles and machinery. Meanwhile, an example of immovable collateral is the land on which the business location is located or the large machinery that is used as collateral by the prospective debtor when applying for a loan. Meanwhile, intangible collateral is an asset with economic value and not physically visible that is used as collateral when

¹² M. Yasin Soumena, *Membangun tatanan negara berdasarkan ideologi dan konstitusi*, Cetakan I (Banguntapan, Bantul, DI Yogyakarta: Samudra Biru, 2018).

¹³ Republik Indonesia, *Undang-Undang RI Nomor 10 tahun 1998 Jo. Undang-Undang RI Nomor 7 Tahun 1992 Tentang Perbankan, Tambahan Lembaran Negara Republik Indonesia Nomor 37*.



applying for a loan or financing. Examples of intangible collateral are deposits, securities, bonds, intellectual property rights, and so on.¹⁴

Collateral takeover in an effort to resolve bad credit often experiences disputes between debtors who own collateral and banks as creditors, in article 12 paragraph (1) of the banking law which states that:

"Commercial Banks may purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission by the collateral owner or based on the power to sell outside the auction from the collateral owner in the event that the Debtor Customer does not fulfill its obligations to the bank, provided that the purchased collateral must be disbursed immediately."

The text of the article is the basis for every takeover regulation carried out by banks in taking collateral from customers who experience bad credit. Settlement of bad credit using a collateral takeover system certainly cannot be carried out by banks carelessly, the provisions for takeover have been regulated in several articles of legislation which means that with the takeover of collateral there must be no parties who are harmed, be it debtors or customers or banks as creditors.

The settlement of bad debts experienced by commercial banks using collateralized assets can be implemented since the enactment of the banking law. However, the article does not mention that BPRs have the right to take over collateral in the event of bad debts, which hampers the right of BPRs to settle bad debts using AYDA by auction.

The problem in the banking law is found in Article 12 Paragraph (1) of Law Number 7 of 1992 concerning Banking due to the word "commercial bank" which can be interpreted differently or multiple interpretations, therefore the Constitutional Court issued decision number 102 / PUU-XVIII / 2020 regarding article 12 Paragraph (1) which is considered contrary to several applicable regulations and also the 1945 Constitution.

¹⁴ Dennis Tan Kurniawan, "Memahami Pengertian Agunan, Prinsip, dan Jenis-Jenisnya," 2022, https://www.gramedia.com/literasi/agunan/#google_vignette.



Constitutional Court Decision number 102/PUU-XVIII/2020 regarding article 12 paragraph (1) which is considered contrary to several articles in the 1945 Constitution which can be described as follows:¹⁵

a. Article 28D paragraph (1) of the 1945 Constitution, Chapter XA on Human Rights

The article of the Basic Law states that,

"Everyone is entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law".

That Article 12 paragraph (1) of the Banking Law which can be interpreted with two different and conflicting interpretations by the implementing agency of the Banking Law, namely Bank Indonesia / OJK is in conflict with the Directorate General of State Assets (DJKN) where on the one hand Bank Indonesia in Bank Indonesia Regulation Number 13/26 / PBI / 2011 concerning Amendments to Bank Indonesia Regulation Number 8/19 / PBI / 2006 concerning Productive Asset Quality and the Establishment of Provision for Elimination of Productive Assets of Rural Banks, Article 1 number 10 states,

"Reposessed collateral (AYDA) is an asset obtained by BPR in the context of credit settlement, either through auction, or outside the auction based on voluntary submission by the owner of the collateral or based on a power of attorney to sell outside the auction from the owner of the collateral in the event that the debtor has been declared bad debts, with the obligation to immediately disburse it."

This is also regulated in the Financial Services Authority Regulation (POJK), POJK No. 33/POJK.03/2018, dated December 27, 2018, Article 1 Point 11 which reads:

"Reposessed collateral, hereinafter referred to as AYDA, is an asset obtained by BPR for credit settlement, either through auction, or outside the auction based on voluntary submission by the collateral owner or based on

¹⁵ Republik Indonesia, *Undang – Undang Dasar 1945*, t.t.
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a power of attorney to sell outside the auction from the collateral owner, in the event that the Debtor has been declared bad debt"¹⁶

While on the other hand by DJKN with the Affirmation Letter of the Directorate General of State Assets, Directorate of Auctions, Ministry of Finance of the Republic of Indonesia Number S-407/KN.7. On the other hand, the Directorate General of State Assets, Directorate of Auctions, Ministry of Finance of Indonesia No. S-407/KN.7/2012, has an important characteristic regarding the different interpretations, which are between the implementing institutions of the Banking Law, namely BI/OJK, which gives the interpretation that the Rural Banks are allowed to take over the collateral of their customers' bad debts through auction, the same as Commercial Banks, while the DJKN prohibits the Rural Banks which only allow Commercial Banks; whereas there is no rule at all in the law or other regulations that distinguish or prohibit the Rural Banks from taking over the collateral of their customers' bad debts through collateral auction. What distinguishes Commercial Banks from People's Economic Banks is only related to the activities of providing services in payment traffic, as referred to in Article 1 point 3 and Article 1 point 4 of the Banking Law; such distinction is a distinction in the scope of business which is the right of freedom of each legal subject, not a distinction as a fundamental right, so that the distinction of treatment is improper, unfair and asymmetrical.

The phrase "Commercial Bank" in Article 12 paragraph (1) of the Banking Law is an ambiguous norm that results in the Applicant's constitutional rights being deprived, namely recognition of human rights as legal subjects of private legal entities as guaranteed in the Constitution, in carrying out banking economic business activities similar to Commercial Banks. The Applicant also lost the right to certainty of legal protection, because Article 12 paragraph (1) is an ambiguous norm that can deprive the right to certainty of legal protection to take over collateral through auction which threatens the smooth continuity of the Applicant's business activities. The Applicant is also disadvantaged because it is treated unfairly in taking

¹⁶ Otoritas Jasa Keuangan, *Peraturan Otoritas Jasa Keuangan, NOMOR 33/POJK.03/2018 Tentang Kualitas Aset Produktif Dan Pembentukan Penyisihan Penghapusan Aset Produktif Bank Perkreditan Rakyat*.



over the collateral of its customers' bad debts which should be treated the same as Commercial Banks and not different before the law by the state, even though both are banks and under the same legal umbrella as stipulated in the Banking Law Article 1 point 2 of the Banking Law reads:

"Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the lives of many people".

The purpose of taking over collateral by both Commercial Banks and Rural Banks as stipulated in Article 12 paragraph (1) actually has the same purpose, namely the purchase of collateral by banks through auctions is intended to assist banks to accelerate the settlement of the obligations of their Debtor Customers. In the case of a bank as a buyer of its Debtor Customer's collateral, the bank's status is the same as other non-bank buyers.

Collateral takeover is to accelerate the settlement of bad debts through auctions in collateral auctions where there are no interested auction buyers who are legally carried out by the auction office, so that liquidity is not disturbed. With the existence of different interpretations also harming the Applicant from unfair treatment, differential treatment even though the same legal subject, therefore it is deemed necessary for the article to be tested to avoid confusion in its interpretation and meaning because it is contrary to Article 28D paragraph (1) of the 1945 Constitution.

b. Article 28H paragraph (2) of the 1945 Constitution, Chapter XA on Human Rights

Contrary to Article 28H paragraph (2) of the 1945 Constitution because the article explains that,

"Everyone is entitled to special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice."

The word Commercial Bank in Article 12 Paragraph (1) is multi-interpretive in its treatment of legal subjects and private legal entities that have the same category between People's Economic Banks and Commercial Banks. The article causes BPR not to have the right to participate in buying collateral through the auction process, BPR does not get the same rights as commercial banks, BPR is entitled to the same rights as commercial banks, namely to participate as a participant in collateral auctions for bad credit



customers, and the right to the same benefits, namely equally entitled to be able to utilize to take over collateral through the auction of customer collateral, to be the same as Commercial Banks, so that there is no unfair benefit that only sacrifices the People's Economic Bank in the settlement of bad credit.

With the aim of achieving equality and justice among legal banking business actors in Indonesia becomes illusory. According to John Rawls, there are several principles of justice, which are often referenced by several experts, namely:

- a. Freedom to participate in political life (right to vote, right to elect).
- b. Freedom of speech (including freedom of the press).
- c. Freedom of religion (including religious belief).
- d. Freedom to be oneself (a person).
- e. Freedom to keep private property.¹⁷

Therefore, the phrase "Commercial Bank" in Article 12 paragraph (1) of the Banking Law is deemed necessary and appropriate to be tested to avoid confusion in its interpretation and meaning so that it does not conflict with Article 28 H paragraph 2 of the 1945 Constitution.

c. After the enactment of the Constitutional Court Decision Number 102/PUU-XVIII/2020

In the decision of the Constitutional Court (MK) Number 102 / PUU-XVIII / 2020 which allows banks to take over collateral from debtors who have bad credit by auction method and also coupled with the legal basis for the takeover carried out by BPR is regulated in Articles 27 and 28 POJK Number 33 / POJK.03 / 2018.

Article 27 describes the takeover provisions carried out by BPRs, namely:

- (1) BPR may repossess collateral to settle loans that are of bad quality.
- (2) The acquisition of collateral as referred to in paragraph (1) shall be temporary.

¹⁷ Pan Mohamad Faiz, "Dimensi Judicial Activism dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 13, no. 2 (1 Januari 1970): 406–30, <https://doi.org/10.31078/jk1328>.



- (3) Acquisition of collateral as referred to in paragraph (1) must be accompanied by a statement letter of collateral surrender or power of sale letter from the Debtor, and a certificate of repayment from BPR to the Debtor.
- (4) BPR shall value the collateral at the time of acquisition to determine the net realizable value.
- (5) The valuation of AYDA as referred to in paragraph (4) shall be carried out:
 - a. for AYDA with a value of up to a maximum of Rp500,000,000.00 (five hundred million rupiah) may be carried out by an internal appraiser of BPR; and
 - b. for AYDA with a value of more than Rp500,000,000.00 (five hundred million rupiah) must be carried out by an independent appraiser.
- (6) The valuation of AYDA as referred to in paragraph (4) shall be carried out for each collateral.
- (7) BPRs shall conduct periodic revaluation of the Assets in accordance with financial accounting standards and BPR accounting guidelines, provided that:
 - a. in the event that the value of AYDA decreases, BPR shall recognize the decrease in value as a loss; and
 - b. in the event that the value of AYDA increases, BPR is prohibited from recognizing the increase in value as income.

Meanwhile, Article 28 explains the obligations of BPR in the implementation of AYDA, including the following:

- (1) BPR must make settlement efforts against the Collateral as referred to in Article 27 paragraph (1) within 1 (one) year from the acquisition of collateral.
- (2) If the BPR is unable to make settlement efforts against AYDA as referred to in paragraph (1), the value of AYDA for the types of collateral as referred to in Article 17 paragraph (1) letter c, letter e up to letter g recorded in the BPR's statement of financial position must be taken into account as a deduction factor for the BPR's core capital in the calculation of CAR by



- a. 50% (fifty percent) of the value of AYDA for AYDA owned for more than 1 (one) year up to 3 (three) years
 - b. 75% (seventy five percent) of the value of AYDA for AYDA owned for more than 3 (three) years up to 5 (five) years; and/or
 - c. 100% (one hundred percent) of the value of AYDA for AYDA owned for more than 5 (five) years
- (3) If the BPR is unable to make efforts to settle the AYDA as referred to in paragraph (1), the value of AYDA for the type of collateral as referred to in Article 17 paragraph (1) letter h recorded in the BPR's statement of financial position must be taken into account as a deduction factor for the BPR's core capital in the calculation of CAR by:
- a. 50% (fifty percent) of the value of AYDA for AYDA owned for more than 1 (one) year up to 2 (two) years; and/or
 - b. 100% (one hundred percent) of the value of AYDA for AYDA owned for more than 2 (two) years.
- (4) BPR must document the efforts to settle AYDA as referred to in paragraph (1).

According to the Financial Services Authority Regulation, BPRs are required to apply the accounting treatment for the acquisition of AYDA in accordance with financial accounting standards and accounting guidelines for BPRs. The Financial Accounting Standard applicable to BPRs so far is the Statement of Financial Accounting Standards (PSAK) 31 on Banking Accounting PSAK 31 which applies to all banks which aims to require entities to provide disclosures in the financial statements that enable users to evaluate their assets.

- a) The significance of the financial instrument to an entity's financial position and performance; and
- b) The nature and extent of risks arising from financial instruments to which the entity is exposed during the period and at the reporting date, and how the entity manages those risks.

With the enactment of PSAK 50 on Financial Instruments: Presentation and Disclosure PSAK 50 and PSAK 55 on Financial



Instruments: Recognition and Measurement, which replaced PSAK 31, the accounting standards for banks refer to the applicable PSAK.

The application of PSAK 50 and PSAK 55 for BPRs is deemed incompatible with the operational characteristics of BPRs and requires large costs compared to the benefits obtained, so BPRs need appropriate financial accounting standards. The Financial Accounting Standards Board - Indonesian Institute of Accountants (DSAK-IAI) in addition to issuing PSAK 50 and PSAK 55 also issued the Financial Accounting Standards for Entities Without Public Accountability (SAK ETAP). DSAK-IAI in SAK ETAP states that SAK ETAP can be applied to entities that have significant public accountability, as long as the competent authority regulates the use of SAK ETAP which is used as a financial accounting standard for BPRs using SAK ETAP.¹⁸

The bank offers two ways / options in selling collateral to be repossessed, this is done so that the debtor as the owner of the collateral does not feel that the collateral he owns is forcibly taken over by the bank, therefore the bank provides options by submitting collateral voluntarily or by auction to shorten the sale time of the collateral.

Collateral that is submitted voluntarily by the collateral owner or based on the power to sell outside the auction, usually the debtor is given the opportunity by the bank to sell the collateral used as collateral in accordance with the period determined by the bank. Sales made outside this auction, debtors are usually assisted by the bank to make sales by helping to find buyers or by advertising the collateral, the price is determined by agreement between the bank and the debtor in accordance with market prices in the area where the collateral is located.

Debtors have a time limit to sell the collateral voluntarily, if the collateral has not been sold past the specified time limit, the bank will take over the collateral and sell it at auction because it can be categorized as a factor in reducing core capital. Auction sales are chosen by banks because auctions have a significant role in meeting the needs of the community, by prioritizing the principle of openness, the principle of competition, the

¹⁸ Bank Indonesia, *Surat Edaran Bank Indonesia No. 11/37/DKBU - Penetapan Penggunaan Standar Akuntansi Keuangan bagi Bank Perkreditan Rakyat*, 2010.



principle of justice, the principle of legal certainty, the principle of efficiency, and the principle of accountability. The advantages of the sale and purchase method through auction include:

(1) Safe

In terms of security, the auction system is more guaranteed because the auction is witnessed, led, and carried out by auction officials as public officials appointed by the government. Auction officials will first examine the legality of each item to be auctioned through the process of checking documents to the relevant agencies, this is done to provide certainty to prospective buyers so that no problems occur in the future. Auction officials will not carry out the auction if there are documents or auction procedures that are not fulfilled.

(2) Fair

Auction activities are carried out by inviting the public and announced through an auction announcement so that the implementation is open and objective. Moreover, the auction is carried out by auction officials as independent public officials and is carried out in accordance with applicable regulations so as to ensure justice for the auction actors.

(3) **Competitive**

The typical auction bidding method, namely with increasing prices to reach the highest price, supported by the same rights and obligations of bidders, without any priority of certain bidders or restrictions on bidders, as well as a wide marketing network, will create bidding competition with free competition between bidders. With more participants / prospective buyers present, the price formed can reach the optimal price because the bidding system in the auction is competitive.

(4) Fast and Efficient

Sale through public auction is one example of a sale that is carried out in a relatively short time, because in the process of auction activities, an auction announcement is first held to gather prospective auction buyers. In addition, auction payments must be made within 5 working days in cash, making it more efficient



than sales using a credit payment system. The auction system is also faster and more efficient because it will reduce storage costs, maintenance costs, and marketing costs.

(5) Legal certainty

Every auction is made minutes called Minutes of Auction which is an authentic deed and valid as perfect evidence. The auction official will also provide an Excerpt of the Minutes of Auction which applies as a Sale and Purchase Deed (acte van transport) and is used to change the name so that there is no need for a Sale and Purchase Deed made by a Notary / PPAT.

Although it has various advantages as previously described, the method of buying and selling through auctions also has several disadvantages, including:

(1) Goods Sold as Is

In every auction, the auction official always mentions a clause that the goods being auctioned are sold as they are, with all defects and shortcomings. These defects and shortcomings can be different for each item, sometimes the level of damage is so severe that only certain parts remain. In the case of motor vehicle auctions, for example, not all vehicles are equipped with documents such as BPKB and STNK and it is not uncommon for the condition of the vehicles sold to be severely damaged.

(2) Short Survey Time

An auction is a sale that is conducted in a relatively short time. Prospective buyers only have a little time to survey the auction object because they have to follow the auction process that has been determined. For this reason, prospective buyers should make the best use of the time provided to see the auction object and examine the attached documents carefully.

(3) Additional Costs

Beyond the limit value price stated in the auction announcement, there are additional costs that need to be incurred by the auction buyer. These additional costs include buyer's auction fees, income tax, transfer fees, renovation costs, and the cost of obtaining ownership documents if the goods purchased are not



equipped with these documents. In addition, in the case of a mortgage execution auction, sometimes the debtor still occupies the auctioned house, so the auction buyer must incur costs for vacating.

(4) Legal Issues

Legal problems can occur after buying an auction item, especially if the item is the object of a mortgage execution auction. The problem arises because in the case of an execution auction, the owner of the goods does not voluntarily surrender the goods he owns. For example, a house that is sold for the purpose of paying off bad credit by a bank, the debtor as the owner of the house may file a lawsuit so that the auction is canceled. The auction buyer can also be sued in the lawsuit.

(5) Prone to Fraud

Like any other method of buying and selling, buying and selling through auctions is not free from the risk of fraud. Prospective auction buyers should always be wary of fraudsters posing as auction organizers, dishonest sellers, and even other prospective buyers.

In the context of AYDA by banks through auctions, the seller is the bank as the holder of the Mortgage Rights who has the authority to sell the object of Mortgage Rights based on the provisions of Article 6 of the UUHT as well as the bank also acts as a buyer.¹⁹ This is supported by the economic theory of analysis of law, where the concept of the theory explains that everyone will try to get the most profit possible by spending capital and risk as little as possible.

The buyer is the bank, which means that it takes over the debtor's collateral by becoming a participant in the auction. Thus, banks have the same rights and obligations as other auction participants. However, Article

¹⁹ Cecillia Kurniawaty, Lastuti Abubakar, dan Mohamad Akyas, "Kepastian Hukum Penundaan Pembayaran BPHTB Dalam AYDA Lelang Dalam Perspektif Hukum Perbankan Dan Undang-Undang Nomor 1 Tahun 2022 Tentang Hubungan Keuangan Antara Pemerintah Pusat Dan Daerah," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 6, no. 1 (2022): 15-32, <https://doi.org/10.23920/acta.v6i1.912>.



79 PMK 213/2020 determines that there are special conditions that must be met by banks when they become auction participants, namely the existence of an *acta de command*. The deed must be made notarially which contains a statement that the purchase by the bank is carried out for another party who will be appointed later within a period of 1 (one) year starting from the date of the auction.²⁰

Just like in commercial banks, the People's Economic Bank (BPR) certainly gives a deadline given by the bank in a voluntary sale determined by the price of the collateral used as collateral with the amount of the loan provided, in accordance with article 40 paragraph (2) POJK Number 1 of 2024 concerning Asset Quality of People's Economic Banks, the statement of financial position as a deduction factor for core capital of BPR in the calculation of the ratio (KPM) of:²¹

- a. 15% (fifteen percent) of the value of AYDA for AYDA owned for more than 1 (one) year up to 3 (three) years;
- b. 50% (fifty percent) of the value of AYDA for AYDA owned for more than 3 (three) years up to 5 (five) years; and/or
- c. 100% (one hundred percent) of the value of AYDA for AYDA owned for more than 5 (five) years.

Regulations issued by the Financial Services Authority (OJK) and Bank Indonesia Regulations that have been passed can be used as a basis by BPRs in taking over collateral by auction and also strengthened by the decision of the Constitutional Court Number 102 / PUU-XVIII / 2020 which can be used as preventive legal protection by BPRs if they want to resolve bad debts by taking over collateral that has been pledged.

CONCLUSION

Article 12 paragraph (1) of Law No. 10 of 1998 on the Amendment to Law No. 7 of 1992 on Banking, which refers to the term "Commercial Bank", is considered controversial due to the possibility of various interpretations, which may result in legal uncertainty and inequality in the treatment of

²⁰ Kurniawaty, Abubakar, dan Akyas.

²¹ Otoritas Jasa Keuangan, *Peraturan Otoritas Jasa Keuangan Nomor 1 Tahun 2024 Tentang Kualitas Aset Bank Perekonomian Rakyat*, 2024.



financial institutions, especially Rural Banks (BPR). This has national implications for the collateral auction process, as well as potential differences in treatment standards between BPRs in different regions. To ensure legal equality and protection of human rights, it is important to clearly regulate the authority and obligations of BPRs in handling bad debts, including the acquisition of collateral through auctions. Therefore, a clear clarification is needed in the law regarding the roles and authorities of "commercial banks" and BPRs in the auction process, to ensure consistent interpretation and fair treatment at all levels.

Therefore, the researcher would like to suggest that replacing the phrase "commercial bank" with "every bank" in Article 12 Paragraph (1) of Law Number 10 of 1998 on the Amendment to Law Number 7 of 1992 on Banking will ensure equality for all financial institutions. Thus, every bank will have the same right to purchase collateral through auction, providing fair protection and equal opportunity in dealing with bad debts.

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