

## **Legal Protection of Banks as Liability Holders in the Execution of Building Usage Rights on Management Rights That Guarantee Legal and Justice**

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**Abstract:** Based on Article 20 of the Underwriting Right Law, the State guarantees the position of separatist creditors to be able to carry out direct execution of the object of Underwriting Right. However, the Circular Letter of the Minister of State for Agrarian Affairs No. 630.1-3433, which was enforced on September 17, 1998 in conjunction with Article 34 paragraph (7) of Government Regulation no. 40 of 1996 which has been revoked by the promulgation of Government Regulation no. 18 of 2021, Article 13 paragraph (2) provides an obligation for creditors to obtain a recommendation from the holder of Management Rights prior to the auction of the execution of Building Use Rights over Management Rights, making the application for the execution of the Underwriting Right to be potentially unenforceable, because the Management Right holder refuses to provide those recommendations. **Identification of the problem** in this study is how to optimize the legal protection of banks as Underwriting Right holders in the auction of the execution of Building Use Rights over Management Rights with legal certainty and justice? **The research method** used is a normative and empirical juridical approach, using primary data and secondary data. **The research results** of this study are presented in a qualitative descriptive form. The results of the study stated that in order to optimize legal protection in the auction execution of Building Use Rights over Management Rights, it is necessary to amend the Underwriting Right Law, namely Article 10, adding provisions governing the imposition of Underwriting Right Rights on Management Rights require written approval from the Management Rights holders. , and the granting of Underwriting Right rights over Management Rights will be further regulated by Government Regulation, adding an explanation of Article 20, namely written notification to Management Rights holders when an auction of the execution of Building Use Rights over Management Rights will be conducted, amendments to the Regulation of the Minister of Agrarian Affairs No. 18 of 2021, namely Article 49, adding a provision that regulates the time limit for the response of the Management Right holder to the notification letter for the execution of the auction, which is 7 (seven) days.” In addition, it is necessary to amend the Minister of Finance Regulation No. 213/PMK.06/2020, namely Article 26 paragraph (7) in conjunction with attachment B, part 1, point a), point (3) which requires that the recommendation be changed to one that requires notification of the auction implementation from the auction applicant to the Management Right holder, and Revoke the Circular Letter of the Minister of State for Agrarian Affairs No. 630.1-3433, which stipulates a recommendation from the holder of Management Rights on the execution of the auction for the execution of Building Use Rights over Management Rights.

**Keywords:** Execution, Underwriting Right, Recommendation.

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### **Background**

Credit-granting activities (borrowing and lending) have been carried out for a long time in people's lives who have known money as a means of payment (Hermansyah, 2005: 20). Almost all people have made money lending activities something that is indispensable to support the development of their economic activities and to improve their standard of living (M. Bahsan, 2008: 1).

In granting credit, banks are required to adhere to the prudential banking principle as regulated in Article 2 of Law No. 10 of 1998, so that to obtain such confidence, before granting credit, banks must conduct a credit assessment which is an activity to assess the condition of prospective debtors. and guarantees that greatly affect the quality of bank credit portfolios as lenders (Dahlan Siamat, 1995: 99). The assessment that is often carried out by banks is based on the 5C principle, which consists of an analysis of the character (character), capital (capital), capacity (capability), collateral (guarantee), and condition of economy (economic condition) (Kasmir, 2008: 108 ).

One of the 5C principles is collateral (collateral) that can be given in the form of immovable (fixed) objects, such as land and buildings that are tied with Underwriting Right Rights. The binding with the Underwriting Right provides convenience in identifying the object of the debt guarantee, has a clear and definite nature in its execution as regulated in Article 14 paragraph (1), (2) and (3) of the Underwriting Right Law Number 4 of 1996 concerning Underwriting Right. Land and Objects Related to Land. In addition, the debt

guaranteed by the Underwriting Right must be paid first from other claims from the auction results if the object of the Underwriting Right is auctioned by the creditor (Retnowulan Sutantio, 1999: 8).

According to Article 51 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which was enacted on September 24, 1960, land rights that can be used as collateral for credit with encumbrance of Underwriting Right Rights are Ownership Rights, Business Use Rights and Building Use Rights as rights that must be registered and by their nature can be transferred (Herowati Poesoko, 2007: 2).

Prior to the issuance of the Underwriting Right Law, the right of use could not be used as collateral for a debt with the imposition of a Underwriting Right Right. With the issuance of the Underwriting Right Law, based on Article 4 paragraph (2), it is stated that: Even the use of land rights over state lands can be registered and the registered use rights according to their nature and reality can be transferred so that they can be used as debt guarantees with the imposition of Underwriting Right Rights (Rahmad Fahriansyah, 2018: 145).

In addition to the land rights as mentioned above, the land rights above the Management Rights can be guaranteed with Underwriting Right Rights with the recommendation of written approval from the Management Rights holders. Regulations that describe the definition of Management Rights, including the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights which regulate parts of the Land Management Rights can be given to other parties by property rights, building rights or use rights. The grant is made by an authorized official of the National Land Agency, at the suggestion of the holder of the Management Rights concerned. The land rights can be used as collateral for debt with the imposition of Underwriting Right Rights with the recommendation of written approval from the holders of Management Rights.

The regulation regarding Management Rights is reaffirmed in Article 13 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, that every legal act is included as collateral for debts with encumbrances of Underwriting Right Rights on rights to land above the Management Right, requires a written approval recommendation from the Management Right holder and is contained in the land utilization agreement as described in Article 13 paragraph (2) of Government Regulation no. 18 Year 2021.

The existence of this provision results in the creditor not being able to directly execute the Underwriting Right object in the form of the right to use the building above the Management Right, prior to the written approval recommendation from the Management Right holder, resulting in legal uncertainty over the creditor's right to get his debt repaid. This is as happened with Panin Bank, which was constrained in the execution auction process by the Jakarta State Property and Auction Service Office V.

Based on the description above, the problem that will be examined in this research is how to optimize the legal protection of the bank as the holder of Underwriting Right rights in the implementation of the auction of the execution of the right to build on the right of management with legal certainty and justice?

### **Research Methods**

This research is basically a normative juridical research, because the target of this research is law or normative rules in the form of legal principles and legal systems (Soerjono Soekanto and Sri Mamuji, 2007: 10). Normative research in this study is a research that describes or describes in detail, systematically, thoroughly and deeply about the legal protection of banks as holders of Underwriting Right Rights in the auction of the execution of Building Use Rights over Management Rights with legal certainty and justice. This research is descriptive because it describes the applicable laws and regulations and is associated with legal theories in their implementation practices related to the problems to be studied. The data obtained will be analyzed by qualitative analysis.

### **Research Results and Discussion**

PT. Bank Panin, Tbk., as the creditor has provided credit facilities to PT. XXX, domiciled in East Jakarta, as a debtor in the form of Recurring Loans (PB) as stated in the Deed of Credit Agreement Number 16, dated March 12, 2015, with a ceiling of Rp. 15,000,000,000, - (fifteen billion rupiahs). The term of this facility has been repeatedly amended, the latest amendment is stated in the deed of addendum to the revolving loan agreement number 13, dated March 8, 2018, effective from March 12, 2018 until March 12, 2019.

In addition to the Recurring Loan facility, the Bank has also provided a credit facility in the form of an Account Statement, as stated in the credit agreement deed number 17, dated March 12, 2015, with a ceiling of Rp. 15,000,000,000.00,- (fifteen billion rupiahs), a period of 12 (twelve) and ends on March 12, 2016. The term of the RK facility has been amended several times and the latest amendment is stated in the deed of amendment to the credit agreement number 12, dated March 8, 2018, the period is from March 12, 2018 until March 12, 2019. The Recurring Loan facility and Current Account facility, along with changes/additions to the term, are all made notarial.

The collateral for the revolving loan facility and overdraft loan is in the form of a warehouse building with proof of ownership of the Certificate of Building Use Rights Number 00126/Rawa Terate, registered under the name of PT. X4, domiciled in Jakarta, as guarantor, which stands on Management Rights Number 1/Rawa Terate, registered under the name of PT. Jakarta Industrial Estate Pulogadung, domiciled in Jakarta (PT. JIEP), as stated in the Deed of Credit Agreement Addendum Number 35, and Number 36, dated June 26, 2018.

In connection with the Certificate of Building Use Rights No. 00126/Rawa Terate, is above the Management Right, so for the assignment of the Underwriting Right, a written approval recommendation for the assignment of the Underwriting Right is required first from the holder of the Management Right. The recommendation has been issued by PT. JIEP, with its letter number 4135, dated June 5, 2018.

The obligation to have written approval recommendations from the holders of Management Rights in the imposition of Underwriting Right Rights on land rights that stand on management rights is based on Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Rights, which was promulgated on 17 June 1996, Article 34 paragraph (7) which states:

“The transition of Building Use Rights over land with Management Rights must be with written approval from the holders of Management Rights”

and has been revoked with the issuance of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration Units, Article 13 paragraph (2) states:

“Every legal action, including being used as collateral for debt with encumbrance of Underwriting Right rights on Land Rights over Management Rights, requires a recommendation from the Management Right holder and is included in the Land utilization agreement”

juncto Circular Letter of the State Minister of Agrarian Affairs/Head of the National Land Agency 630.1-3433, dated 17 September 1998, stating that:

1. In accordance with the provisions of the Basic Agrarian Law and the Underwriting Right Law (Law Number 4 of 1996), the right to use the building on the land with the Management Right may be encumbered with a Underwriting Right;
2. In Article 34 of Government Regulation Number 40 of 1996 it is determined that the transfer of building use rights on land with Management Rights requires written approval from the holders of Management Rights. In connection with that, considering the possibility of the transfer of the right of use of the building in the context of the execution of the Underwriting RightRight, the imposition of the Underwriting Right on the right of use of the building also requires written approval from the holder of the Management Right which will act as approval for the transfer if later required in the context of the execution of the Underwriting Right.

Encumbrance of Underwriting Right on the warehouse building with proof of ownership Certificate of Hak Guna Bangunan no. 00126/RawaTerate, carried out with the signing of the Deed of Granting Underwriting Right number 267/2018, dated July 12, 2018, and on it a certificate of Underwriting Right rank I (first), number 03011/2018, dated July 25, 2018.

Over time, the credit received by PT. The XXX is in arrears and there is no proper payment so that the debtor is declared in default/broken promise. Based on the default/broken promise, Bank Panin has submitted a request for an execution auction with its letter number 849/SAM/SNY/L/20, dated October 20, 2020, which is addressed to the Head of the Jakarta V State Asset and Auction Service Office for a warehouse building with proof of ownership. Certificate of Building Use Rights No. 00126/RawaTerate which is a debt guarantee of PT. XXX.

The application for an execution auction is submitted based on Article 6 in conjunction with Article 20 of the Underwriting Right Law and the first rank Underwriting Right certificate, number 03011/2018, dated July 25, 2018 in conjunction with the Deed of Granting Underwriting Right number 267/2018, dated July 12 2018, which the certificate of Underwriting Right has the head "For Justice Based on God Almighty", which is attached to the Certificate of Building Use Rights No. 00126/RawaTerate, with an auction limit price of Rp. 35,000,000,000,- (thirty five billion rupiahs).

The process of executing the guarantee of Building Use Rights Certificate No. 00126/RawaTerate encountered problems because the bid application did not attach a recommendation for written approval for the execution of the auction from the holder of the Management Rights, in this case PT. JIEP. To date, this recommendation has never been issued or issued, so that the application for an execution auction submitted has never been accepted by the Jakarta V State Assets and Auction Service Office. The failure to carry out the execution auction resulted in credit on behalf of the debtor of PT. XXX can't be solved.

The recommendation for written approval of the execution auction from the Management Right holder is a mandatory requirement as stipulated in the Circular Letter of the Minister of State for Agrarian Affairs No. 630.1-3433 No. 630.1-3433 juncto Article 34 paragraph (7) Government Regulation no. 40 of 1996 which has been revoked by the promulgation of Government Regulation no. 18 of 2021. Thus, without completing the recommendation for approval from the management right holder in the execution of the auction, the auction application will never be accepted by the State Property and Auction Service Office.

In its development, the Minister of Agrarian and Spatial Planning/Head of the National Land Agency issued a Regulation of the Minister of Agrarian Spatial Planning/Head of the National Land Agency Number 18 of 2021 which took effect on October 27, 2021, in Article 49 it is stated that:

- (1) Any legal action intended to transfer Land Rights over Management Rights, including being used as collateral for debts by being encumbered with Underwriting Right Rights and changes to Ownership Rights on Management Rights lands, requires recommendation/approval of Management Rights holders, except for the transfer of rights due to auction.
- (2) In the context of the transfer of rights due to auction, the auction implementation shall be notified to the holder of the Management Right.

With the enactment of the Minister of Agrarian Regulation No. 18 of 2021, Article 49 paragraph (1) and paragraph (2) state that the recommendation/approval from the Management Right holder is not required in the case of the transfer of rights because the auction and the transfer are only notified to the Management Right holder. With the issuance of the Minister of Agrarian Regulation above, it certainly gives hope for banks as applicants for execution auctions who have difficulty getting approval recommendations from Management Rights holders.

The bank again submitted an auction application for the debt guarantee of the debtor of PT. XXX, however, the Jakarta V State Property and Auction Service Office still requires a recommendation for written approval of the auction from the holder of the Management Rights, in this case PT. JEEP. This is proven when accessing and downloading the auction application through the website of the State Assets and Auction Service Office at [auction.go.id/application](http://auction.go.id/application), it is required to attach or download written approval from the Management Rights holder as stipulated in the Regulation of the Minister of Finance number 213/PMK.06/ 2020 dated December 22, 2020 regarding Auction Implementation Guidelines, Article 26 paragraph (7) states the procedure for submitting an auction application and tender requirements documents as referred to in paragraph (1) is listed in Attachments letter A and letter B which are an integral part of this Ministerial Regulation . In Attachment letter B: Tender Requirements Documents, part 1: Execution tender requirement documents, point a) : General requirements documents : The tender application letter must be accompanied by general requirements documents submitted at the time of the auction application, as follows: point (3) Letter approval from the holder of Management Rights or property rights, in the event that the object of the auction is in the form of land and/or buildings with ownership documents on secondary rights in the form of building use rights or use rights on land Management rights or property rights.

Based on the above case, the provisions of Article 6 in conjunction with Article 20 of the Underwriting Right Law cannot be implemented properly. This is because there is a contradiction between the rules of Article 6 in conjunction with Article 20 of the Underwriting Right Law in conjunction with Article 49 paragraphs (1) and (2) of the Minister of Agrarian Regulation No. 18 of 2021 with the Circular Letter of the Minister of State for Agrarian Affairs No. 630.1-3433 juncto Article 13 paragraph (1) and paragraph (2) Government Regulation no. 18 of 2021. The execution of Underwriting Right Rights in the form of building use rights on Management Rights should be subject to the laws and regulations as regulated in the Underwriting Right Law as a regulation that more specifically regulates the auction of execution of debt guarantee objects. Therefore the legal principle of *lex specialist derogatlegigenerali* (more specific regulations override more general regulations) and the principle of *lex superior derogatlegiinferiori* (laws (laws (norms/legal rules)) that are higher nullify the validity of laws (norms/rules). law) which is lower) (Ridwan HR, 2006: 58).

In addition, both "pure" building use rights certificates (which do not stand on Management Rights) and building use rights certificates are issued by the Land Office, although the issuance is on a different basis, namely the Land Utilization Agreement (SPPT). Likewise, the procedure for making and registering the Deed of Granting Underwriting Right at the Land Office is the same as regulated in the Underwriting Right Law, thus the power and legal consequences that will arise, both pure building use rights and building use rights above Management Rights must be subject to and comply. against the Underwriting Right Law, especially in the case of the execution of the Underwriting Right Rights to pay off debtors' debts to creditors.

Based on this, in order to optimize the legal protection of the bank as the holder of Underwriting Right rights in the implementation of the auction of the execution of the right to build on the right of management with legal certainty and justice, it is necessary to amend the provisions in the legislation. These changes, namely:



1. Menambah ketentuan Pasal 10 dan Pasal 20 Undang-Undang Hak Tanggungan.

- a. In Article 10 of the Underwriting Right Law, additional provisions are embedded between paragraphs (2) and (3), namely:
  - (3) The granting of Underwriting Right Rights over Management Rights requires a recommendation for written approval from the Management Right holder and is included in the Land utilization agreement.
  - (4) The granting of Underwriting Right Rights over Management Rights will be further regulated by Government Regulation.

Based on this, the provisions in Article 10 of the Underwriting Right Law which initially stated that:

- (1) The granting of Underwriting Right is preceded by a promise to provide Underwriting Right as a guarantee for the repayment of certain debts, which are set forth in and are an inseparable part of the relevant debt agreement or other agreements that give rise to the debt.
- (2) The granting of Underwriting Right is carried out by making the Deed of Granting Underwriting Right by the Land Deed Making Official (PPAT) in accordance with the applicable laws and regulations.
- (3) If the object of the Underwriting Right is in the form of land rights originating from the conversion of the old rights which have met the requirements to be registered but the registration has not been carried out, the granting of the Underwriting Right is carried out simultaneously with the application for registration of the land rights in question.

Become:

- (1) The granting of Underwriting Right is preceded by a promise to provide Underwriting Right as a guarantee for the repayment of certain debts, which are set forth in and are an inseparable part of the relevant debt agreement or other agreements that give rise to the debt.
- (2) The granting of Underwriting Right is carried out by making the Deed of Granting Underwriting Right by the Land Deed Making Official (PPAT) in accordance with the applicable laws and regulations.
- (3) **The granting of Underwriting Right Rights over Management Rights requires a recommendation for written approval from the Management Right holder and is included in the Land utilization agreement.**
- (4) **The granting of Underwriting Right Rights over Management Rights will be further regulated by Government Regulation.**
- (5) If the object of Underwriting Right is in the form of land rights originating from the conversion of old rights that have met the requirements to be registered but the registration has not been carried out, the granting of Underwriting Right is carried out simultaneously with the application for registration of the land rights in question.

- b. Adding to the Elucidation of Article 20 paragraph (1) of the Underwriting Right Law related to the execution of Underwriting Right Rights, namely:

“For the object of the underwriting Right Rights in the form of Building Utilization Rights above the Management Rights, the execution of the Underwriting Right Rights shall first be carried out through a written Notification Letter to the Management Rights holders.”

Based on this, the Elucidation of Article 20 paragraph (1) of the Underwriting Right Law which initially stated that:

“The provisions of this paragraph are an embodiment of the convenience provided by this Law for creditors holding Underwriting Right Rights in the event that execution must be carried out.

In principle, every execution must be carried out through a public auction, because in this way it is hoped that the highest price can be obtained for the object of the Underwriting Right. The creditor has the right to take payment of the guaranteed receivables from the sale of the object of the Underwriting Right. In the event that the proceeds of the sale are greater than the receivables, which are at a maximum of the dependent value, the remainder becomes the right of the Underwriting Righte.”

Become:

“The provisions of this paragraph are an embodiment of the convenience provided by this Law for creditors holding Underwriting Right Rights in the event that execution must be carried out.

**For the object of the Underwriting Right Rights in the form of Building Utilization Rights above the Management Rights, the execution of the Underwriting Right Rights shall first be carried out through a written Notification Letter to the Management Rights holders.**

In principle, every execution must be carried out through a public auction, because in this way it is hoped that the highest price can be obtained for the object of the Underwriting Right. Creditors have the right to take payment of guaranteed receivables from the sale of the object of the Underwriting Right. In the event that the proceeds of the sale are greater than the receivables, which are at a maximum of the dependent value, the remainder becomes the right of the Underwriting Righte.”

2. Adding to the provisions of Article 13 of Government Regulation no. 18 of 2021, which is embedded between paragraph (2) and paragraph (3), namely:

“The recommendation as referred to in paragraph (2) is excluded when the Underwriting Right holder carries out the execution of the Underwriting Right”.

Based on this, the provisions of Article 13 of Government Regulation no. 18 Year 2021 which was originally:

- (1) Land Rights over Management Rights in cooperation with other parties may be encumbered with Underwriting Right Rights, transferred, or released.
- (2) Every legal action, including being used as collateral for debt with encumbrance of Underwriting Right Rights on Land Rights over Management Rights, requires a recommendation from the Management Right holder and is included in the Land utilization agreement.
- (3) In the event that the Land Rights over the Management Rights are to be relinquished, the release shall be made by and before the competent authority and reported to the Minister.

Become:

- (1) Land Rights over Management Rights in cooperation with other parties may be encumbered with Underwriting Right Rights, transferred, or released.
- (2) Every legal action, including being used as collateral for debt with encumbrance of Underwriting Right Rights on Land Rights over Management Rights, requires a recommendation from the Management Right holder and is included in the Land utilization agreement.
- (3) **The recommendation as referred to in paragraph (2) is excluded when the Underwriting Right holder carries out the execution of the Underwriting Right.**
- (4) In the event that Land Rights over Management Rights are to be relinquished, the release shall be made by and before the competent authority and reported to the Minister.

In the Elucidation of Article 13 of Government Regulation no. 18 Year 2021 which was originally:

“Article 13

Paragraph (1)

This provision applies to Management Rights which are state-owned/regional-owned assets or non-state/regional-owned assets.

Paragraph (2)

Quite clear.

Paragraph (3)

What is meant by "authorized official" among others is a notary, sub-district head, or head of the Land Office.

Become:

“Article 13

Paragraph (1)

This provision applies to Management Rights which are state-owned/regional-owned assets or non-state/regional-owned assets.

Paragraph (2)

Quite clear.

**Paragraph (3)**

**In order to provide legal protection for Underwriting Right holders who obtain rights in good faith, the execution of Underwriting Right Rights shall first be carried out by means of a written notification to the Management Rights holders.**

Paragraph (4)

What is meant by "authorized official" among others is a notary, sub-district head, or head of the Land Office.

3. Adding to the provisions in Article 49 of the Regulation of the Minister of Agrarian Affairs No. 18 of 2021 which is embedded between paragraph (2) and paragraph (3), namely:

- (3) **The time limit for the response of the Management Right holder to the notification letter as referred to in paragraph (2) is a maximum of 7 (seven) days.**
- (4) **In the event that the time limit of 7 (seven) days as referred to in paragraph (3) has elapsed and the holder of the Management Right has not provided a response, the notification is deemed to have been received.**

Another thing is the addition of provisions in Article 1 of the Minister of Agrarian Regulation No. 18 of 2021 by adding provisions:

**“Day is 24 (twenty four) hours.”**

Based on this, the provisions of Article 49 of the Regulation of the Minister of Agrarian Affairs No. 18 Year 2021 which was originally:

- (1) Any legal action intended to transfer Land Rights over Management Rights, including being used as collateral for debts by being encumbered with Underwriting Right Rights and changes to Property Rights on Management Rights lands requires recommendation/approval of Management Rights holders except for transfer of rights due to auction.
- (2) In the context of the transfer of rights due to auction, the implementation of the auction shall be notified to the holder of the Management Right.
- (3) The recommendation/approval of any legal action as referred to in paragraph (1) shall not be subject to tariffs and/or annual mandatory fees and other fees.
- (4) In the case of the transfer of Land Rights over Management Rights due to inheritance, the recommendation/approval of the Management Right holders is not required.

Become:

- (1) Any legal action intended to transfer Land Rights over Management Rights, including being used as collateral for debts by being encumbered with Underwriting Right Rights and changes to Property Rights on Management Rights lands requires recommendation/approval of Management Rights holders except for transfer of rights due to auction.
- (2) In the context of the transfer of rights due to auction, the implementation of the auction shall be notified to the holder of the Management Right.
- (3) **The time limit for the response of the Management Right holder to the notification letter as referred to in paragraph (2) is a maximum of 7 (seven) days.**
- (4) **In the event that the time limit of 7 (seven) days as referred to in paragraph (3) has elapsed and the holder of the Management Right has not provided a response, the notification is deemed to have been received.**
- (5) The recommendation/approval of any legal action as referred to in paragraph (1) shall not be subject to tariffs and/or annual mandatory fees and other fees.
- (6) In the case of the transfer of Land Rights over Management Rights due to inheritance, the recommendation/approval of the Management Right holders is not required.

4. Amend the provisions in Article Regulation of the Minister of Finance No. 213/PMK.06/2020”), Article 26 paragraph (1) and paragraph (7) in conjunction with attachment B: Execution Auction Requirements Documents as follows:

Part 1, General Requirements Documents:

- a) The bid application letter must be accompanied by general required documents submitted at the time of the auction application, as follows:
  - (1) A copy/photocopy of the Decision Letter on the Appointment of the Seller/Seller's Letter of Assignment/Seller's Power of Attorney, unless the auction applicant is an individual
  - (2) List of items to be auctioned, limit value and security deposit
  - (3) Letter of approval from the holder of Management Rights or property rights, in the event that the object of the auction is in the form of land and/or buildings with ownership documents on secondary rights in the form of building use rights or usage rights over Management Rights or property rights.

Become:

- (1) A copy/photocopy of the Decision Letter on the Appointment of the Seller/Seller's Letter of Assignment/Seller's Power of Attorney, unless the auction applicant is an individual
  - (2) List of items to be auctioned, limit value and security deposit
  - (3) Notification of the execution of the auction execution from the Applicant to the Management Right holder in the event that the object of the auction is in the form of land and/or building with ownership documents on secondary rights in the form of building use rights or usage rights over Management Rights or property rights.
5. To revoke the Letter of the Minister of State for Agrarian Affairs Number 630.1-3433, dated September 17, 1998 so that there is no legal conflict with the Regulation of the Minister of Agrarian Affairs No. 18 of 2021 and the Underwriting Right Law.

The author is of the opinion that the need for revocation and amendment of the provisions in the abovementioned regulations is due to several reasons, namely:

### **1. Philosophically Using the Theory of the Rule of Law**

Earth, water and space, including the natural resources contained therein, are controlled by the state as an organization of power for the entire people, as stipulated in Article 2 paragraph (1) of the Basic Agrarian Law as an elaboration of Article 33 paragraph (3) of the 1945 Constitution. This phrase controlled by the State gave birth to the concept of the State's Right to Control over agrarian resources, which is to achieve the greatest prosperity of the people in the sense of nationality, welfare and independence in an independent, united, sovereign, just and prosperous Indonesian society and legal state (Suriansyah Murhaini, 2015: 3).

The definition of controlled in Article 2 paragraph (1) does not mean owning, because the state according to the legal conception of land does not act as the owner of the land. The definition according to Article 2 paragraph (1) is an understanding that authorizes the state to:

- a. "Regulating and administering the designation, use, supply and maintenance of land;
- b. Determine and regulate legal relations between people and land;
- c. Determine and regulate legal relations between people and legal actions regarding land."

To be able to meet the various needs of the population for land for land that is permanent, the government seeks to optimize the designation and use of land in various ways, including by issuing land regulations such as regulations for providing land for the benefit of individuals and legal entities on state lands and/or rights lands with the aim of achieving as much as possible for the prosperity of the people and social justice for all the people of Indonesia.

### **2. Juridically Using Legal Assurance Theory**

Indonesia adheres to a state of law which has the consequence that all legal actions must be based on written and unwritten laws. Because of the strong influence of the civil law legal system, written law is the main law in an effort to provide legal certainty (Nimatul Huda, 2005: 37).

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. In Article 5 of Law No. 12 of 2011 concerning the Formation of Legislation, the principles for the formation of laws and regulations have been regulated, and Article 6 paragraph (1) of Law no. 12 of 2011 concerning the Establishment of Legislations, it is explained that the content of the legislation.

Based on these provisions, of course Article 49 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights must not have the slightest legal loophole that has the potential to not be implemented, such as not there is a clear time limit for the response and or the issuance of a rejection letter from the holder of the Management Rights for the execution of the auction.

### **3. Sociologically Using Distributive Justice Theory**

Priority rights (preferent) in Article 11 paragraph (2) letter e of the Underwriting Right Law, which regulates new creditors can execute the object of Guaranteed Underwriting Right only if the debtor is in default. Article 11 paragraph (2) letter c of the Underwriting Right Law regulates the right of the creditor to manage the object of the Underwriting Right based on the determination of the Head of the District Court whose jurisdiction covers the location of the object of the Underwriting Right if the debtor is seriously in breach of contract.

Based on the above provisions, it is clear that the creditor cannot act arbitrarily in terms of executing the object which is the object of the guarantee of the Underwriting Right and of course the debtor is obliged to



surrender the object which is the object of the guarantee of the Underwriting Right in case of breach of contract. Therefore, the form of non-arbitrariness of the creditor in carrying out the execution of the object of the Underwriting Right Right to the Right of Building on the Right of Management is to send a notification letter to the Holder of the Management Right. However, as the author finds, there needs to be a time limit for the Management Right Holder to respond to the notification of the execution of the Underwriting Right object, as an effort to create legal certainty.

The above provisions are a manifestation of distributive justice as stated by Aristotle that the distribution of goods and awards to each person is in accordance with his position in society, and requires equal treatment for those who are domiciled according to the law (Barkatullah, 2007: 60-61).

Based on the distributive justice, Bank Panin as the holder of the Underwriting Right may conduct an auction of execution of the Underwriting Right object to retrieve its receivables from the debtor based on the provisions of Article 6 of the Underwriting Right Law, which is about the execution parate where the holder of the Underwriting Right guarantee certificate has a priority position as creditors than other creditors. Then Article 20 paragraph (1) letter b of the Underwriting Right Law based on the strength of the Underwriting Right Guarantee certificate which has the same executorial power as a court decision that has permanent legal force.

### **Conclusion**

The conclusion in this study is an effort to optimize the legal protection of the Bank as the holder of Underwriting Right in the execution of the auction of the execution of the right of building on the Management Right with legal certainty and justice by adding the provisions of Article 10 and adding an explanation of Article 20 of the Underwriting Right Law, amendments to the Regulations. Minister of Agrarian No. 18 of 2021 with the addition of the provisions of Article 49 which regulates "The time limit for the response of the Management Right holder to the notification of the auction as referred to in paragraph (2) is 7 (seven) days." If the holder of the Management Right refuses to carry out the auction execution, the creditor can apply for a court order for the auction to be carried out.

In addition, it is necessary to amend the Regulation of the Minister of Finance No. 213/PMK.06/2020, Article 26 paragraph (1) and paragraph (7) in conjunction with attachment B, part 1, point a), point (3) which requires the recommendation as an auction requirement to be a notification of the auction implementation from the auction applicant to the right holder Management, and Revocation of Circular Letter of the Minister of State for Agrarian Affairs No. 630.1-3433, September 17, 1998.

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