

SETTLEMENT OF NON-PERFORMING LENDING IN SHARIA BANKING THROUGH KPKNL SURABAYA FROM THE PERSPECTIVE OF ISLAMIC LAW

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Abstract: In the face of non-performing lending caused by the absence of potential for recovery of the condition of Islamic Bank customers, the next strategy that can be carried out is through the disbursement of collateral to cover the customer's obligations. This strategy can be carried out with the help of related institutions such as institutions in charge of administering auctions, to resolve this problematic financing. Through KPKNL, customers voluntarily provide collateral and are assisted by the Bank to settle their obligations. However, if the opposite condition occurs, where there is no good faith from the customer, litigation can be taken to settle the customer's obligations. This litigation process takes place in court. In general, a warning letter will be given 3 times, if the customer does not pay attention, then it will be processed through the KPKNL. The auction procedure through the KPKNL will be discussed in this study, including the auction procedure for the object of this research. The analysis conducted by the research shows that the auction process through the KPKNL is as per the provisions and Islamic law regarding the sale and purchase of an object. However, the researchers found a discrepancy with Islamic law regarding the acquisition of auction objects derived from illegal seizure or looting. That is, no valid documents come with the object for auction. Therefore, it contravenes the principle of Islam in the Qur'an.

Keywords: KPKNL, Auction, Object Of Financing Guarantee, Islamic Law

Introduction

Bank, in general, serves as a mediator between those in need of money and those provided for. Principally there are two

types of banks in Indonesia responsible for the same task of raising and distributing money.¹ The existence of Sharia-based banks is governed by Law Number 21 of 2008 concerning Sharia banking regarding the amendment to Law Number 10 of 1998. Fund distribution in conventional and sharia banks certainly have fundamental differences in terms of names, contracts, or transactions. In conventional banks, the term 'credit' is intended for fund distribution, while sharia banking links this term to lending.

Lending serves as a vital function and is one of the banking activities in sharia banks to collect income and back up business sustainability. This expectation requires proper management in sharia banking, or further problems will arise. Lending, in theoretical scope, could be understood as providing money or loans under the agreement of two parties involved, giving rise to the responsibilities of a certain party to pay off the loans within the period as agreed upon and to allow for *nisbah* (profit sharing).² The lending provided by sharia banks must be made under an agreement of the two parties, commonly known as a lending contract. Credit, on the other hand, requires debtors to pay off the loans along with the interest, unlike the lending provided by sharia banks that sets *nisbah* as agreed upon by the banks and debtors.³

Lending must be established according to a contract or agreement, involving the main contract where an agreement on debts is made and collateral is provided by a debtor. The collateral

¹ Sutan Remy Sjahdeini, *Perbankan Islam & Kedudukannya dalam Tata Hukum Perbankan Indonesia*, (Jakarta: Grafindo Persada, 2010), 78-79.

² According to Article 1 point 11 of Law Number 10 of 1998 concerning the Amendment to Law Number 7 of 1992 concerning Banking, formulating merumuskan the definition of lending, Abdul Ghofur Anshori, *Hukum Perbankan Syariah*, (Yogyakarta: Aditama, 2009), 113.

³ Rachmadi Usman, *Hukum Jaminan Keperdataan*, (Jakarta: Sinar Grafika, 2008), 103-104.

provided could refer to either individual collateral or an object including mortgage, land, or building.⁴

The creditors should be legally protected regarding the provision of the collateral in case of non-performing lending. The non-performing lending involves fund distribution that is hampered by problematic repayment of the debt. This issue takes place simply because the debtor fails to meet the requirements set out or the repayment is not made according to the schedule agreed. This will certainly lead to negative impacts on debtors and creditors.

To minimize the likelihood of repayment problems, providing loans in either conventional or sharia-based banks must be preceded by an appraisal performed by marketing staff to find out the representative conditions of a debtor according to the main principles consisting of 5 Cs.⁵ The first principle is Character, intended to assess the characteristics or personality of a prospective client;⁶ Collateral refers to the security provided by the client;⁷ Capacity sees the capability of a client to repay the debt;⁸ Capital represents the capacity of the capital that a client has;⁹ Condition is another term for the financial condition.¹⁰ After all the appraisal with those principles, the repayment conditions can be further categorized into current, special mention, substandard, doubtful, and loss. The category of special mention up to the

⁴ Marnita, "Eksekusi Jaminan Hak Tanggungan Sebagai Upaya Penyelesaian Pembiayaan Bermasalah (Studi Pada PT Bank Muamalat Indonesia Cabang Lampung)", *Fiat Justisia Journal of Law* Volume 10 Issue 3, July-September 2016, 168.

⁵ Diyan Pratiwi, dan Lukman Santoso yang berjudul "Urgensi Implementasi Prinsip 5C Dalam Perjanjian Baku Kredit Perbankan", *Interest*, Vol. 15, No. 1 Oktober 2017, 112.

⁶ Sutan Remy Sjahdeni, *Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia*, (Jakarta: Institut Bankir Indonesia, 1993), 311.

⁷ Bahsan, *Hukum Jaminan dan Hukum Jaminan Kredit*, (Jakarta: PT.Rajawali, 2007), 321.

⁸ Salideho, *Sistem Jaminan Kredit dalam Era Pembangunan Hukum*, (Jakarta: Sinar Grafika, 1994), 119.

⁹ Salim, *Perkembangan Hukum Jaminan di Indonesia*. (Jakarta: Raja Grafindo Persada. 2004), 219-220.

¹⁰ Lailiyah, Ashofatul. "Urgensi Analisa 5c Pada Pemberian Kredit Perbankan Untuk meminimalisir Resiko", *Jurnal Hukum*, volume 29, no. 2, May-August 2014.

category of loss are regarded as problematic repayment.¹¹ The above categorization of the repayment conditions to maintain earning assets must be performed monthly by sharia banks, or sanctions are imposed under Article 56 of Law Number 21 of 2008 concerning Sharia Banking. Moreover, the regulation of Bank Indonesia also requires that the banks assess the health level, and, thus, each lending process requires the provision of collateral or security.¹²

A non-performing loan is part of the risk in lending. Theoretically, lending risk arises from the failure of one party to meet the responsibility.¹³ This problematic lending can happen to every bank, and this risk is triggered by the functional activities performed by banks. However, this risk can also arise from a debtor with bad performance. A client with a bad performance often fails to meet the loan agreement as set out in the contract. That is, banks should not only focus on the financial conditions and the values of the collateral but the characteristics of debtors should also be considered.

Lending service provided by a sharia bank should also be based on the capability to see if a debtor is capable of repaying the debt as agreed, and this appraisal must refer to quality principles of healthy financing to minimize the financing risk possibility.¹⁴ Lending from banks requires security in case of breach of contract on the debtor's side later in the future. The collateral set as security can be executed to cover the unpaid debt if a breach of contract takes place.

¹¹ Sulistiyowati, *Penyelesaian Sengketa Antara Bank Syariah dengan Nasabah Bermasalah Melalui Badan Arbitrase Syariah Nasional (BASYARNAS) Menurut UU No. 30 Tahun 1999*, *Jurnal Islamica*, Vol.9, issue 12, 2014, 209.

¹² The Regulation of Bank Indonesia NO. 22/15/PBI/2020 concerning the Third Amendment to The Regulation of Bank Indonesia Number 19/3/PBI/2017 concerning Short-Term Liquidity Loans

¹³ Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, (Bandung: Citra Aditya Bakti, 1998), 214.

¹⁴ Sova Lusian, Hermanto Siregar, dan Maulana, Nur Ahmad "Analisis Faktor-Faktor yang Menyebabkan Pembiayaan Bermasalah di Bank Pembiayaan Rakyat Syariah XYZ Periode 2009-2013", *Finance and Banking Journal*, Vol. 16 No. 1 June 2014, 116.

The collateral expected by banks is often in the form of a tangible object, provided by a debtor to a creditor in case of breach of contract. Generally, an immovable object provided as collateral involves land or a house,¹⁵ and this collateral should come with a mortgage right according to the Deed of Assigning Mortgage Right (henceforth referred to as APHT). This process is preceded by the issuance of Authorization of Mortgage Right (henceforth referred to as SKMHT).¹⁶ In the lending contract, an agreement is a vital point to determine the implementation of another agreement that follows. A lending agreement sets forth the mortgage right that arises from the agreement made by the bank and its client, not from the provisions in the law. This collateral is juridically specific compared to the collateral governed in Article 1131 of the Civil Code.¹⁷

When non-performing lending takes place, the collateral with a mortgage right is sold in a general auction to cover the unpaid debt. This mechanism follows Article 20 paragraph (1) of Law concerning Mortgage Right, highlighting the auction of the object set as collateral can be performed accordingly to cover the debt. The management of this non-performing lending could involve revitalization with its four alternative measures consisting of rescheduling,¹⁸ restructuring,¹⁹ reconditioning, and management assistance. Several models of risk management in lending can be performed if the client concerned is cooperative and able to repay the debt.

¹⁵ Mortgage Right according to Article 1 Point 1 of Law Number 4 of 1996 concerning Mortgage Right to Land and the Objects related to Land (Mortgage Right Law/UUHT) refers to the right of security embedded in the right to land as intended in law Number 5 of 1960 concerning Basic Agrarian Law. Sutarno, *Aspek-Aspek Hukum Perkreditan pada Bank*, (Bandung: CV. Alfabeta), 2003,144.

¹⁶Sutan Remy Sjahdeni, *Hak Tanggungan Asas Ketentuan Pokok & Masalah yang dihadapi Oleh Perbankan Suatu Kajian Mengenai Undang-Undang Hak Tanggungan*, (Bandung: Alumni, 1999), 213.

¹⁷ Situmorang dan Coermentyna Sitanggang, *Grosse Akta dalam Pembuktian dan Eksekusi*, (Jakarta; Rineka Cipta, 1993), 210

¹⁸ Subekti, *Aneka Perjanjian Kredit*, (Bandung;PT. Citra Aditya Bakti, 1995), 119.

¹⁹ Gatot Suparman, *Perbankan & Masalah Kredit*, (Jakarta: Rineka Cipta, 2009), 111.

Fruitful revitalization will transfer the authority from AM Financing to AM Remedial, which executes the collateral through litigation or non-litigation processes. Negotiation can be considered before the execution between two parties takes place, with the hope that solutions are gained. If the negotiation fails to reach an agreement, litigation is the last resort to take as the procedure of the auction. The general auction of the collateral can be executed in a district court, State Accounts Receivable and Auction Service Office (henceforth referred to as KP2LN),²⁰ and Auction Hall.²¹ Private banks can execute the auction in a Private Auction Hall.²²

An auction practice that takes place in a district court can cause a loss for the client. The process that the party with the mortgage right has to deal with can be lengthy and costly. For granted auction, the court issues a decree of the auction before confiscation of the collateral object takes place. This confiscation is performed by the court where the auctioned object is confiscated and it is then registered to the local National Land Agency and Land Registration Statement (henceforth referred to as SKPT) is

²⁰ Kantor Pelayanan Piutang dan Lelang Negara (KP2LN), Article 30 of the Decree of Indonesian Finance Minister No.102/PMK.02/2008 concerning organization and Work Scheme of Vertical Institution within the Scope of Directorate General of State Asset implies that the main task of the KPKNL is to administer services in state asset, assessment, state accounts receivable and auction. Hartono, *"Perjanjian Jaminan dalam Perjanjian Kredit" dalam Hukum Jaminan Indonesia*, (Jakarta: Proyek ELIPS dan Fakultas Hukum Universitas Indonesia, 1998), 214.

²¹ Article 10 Paragraph (2) of the Regulation of Indonesian Finance Minister Number 118/PMK.07/2005 implies that the business activities in the Auction Hall involve pre-auction and auction services with the auction official class II, the auction of the assets of State-/Regional-Owned Enterprises in the form of Company, and the auction of the assets of banks in liquidation according to the Government Regulation Number 25 of 1999 concerning Revocation of Business Permit, Dismissal, and Liquidation of Bank. Rachmadi Usman, *Hukum Jaminan Keperdatan*, (Jakarta: Sinar Grafika, 2008), 265.

²² The legal basis of sale in auction taking place in Private Auction Hall is governed in the Decree of Indonesian Finance Minister No. 47/KMK.01/1996 on 25 January 1996 and the Decree of the Head of State Accounts Receivable and Auction Service Agency (BUPLN) No.1/PN/1996. Provisions concerning permit, business activities, and the implementation of auction in Private Auction Hall are set forth in the Regulation of Indonesian Finance Minister Number 118/PMK.07/2005 on 30 November 2005 concerning Auction Hall. Ahmad Mujahidin, *Hukum Perbankan Syariah*, (Jakarta: Raja Grafindo Persada, 2016), 321.

requested. Following the issuance of the SKPT, the district court, along with the sub-district office and Public Work Services, will value the auctioned object to set a reasonable price. If the price is agreed upon, the Chief of the Court will set the bottom price for the auctioned object.²³

The auction taking place in a private auction hall is more complicated and far more costly, and the hall could face some hindrances during the conviction of the object set as collateral in the form of auctioned mortgage right because the issuance of the court decision that allows the conviction to take place requires a recommendation letter issued by State Assets and Auction Service Office (henceforth referred to as KPKNL²⁴) despite the auction minute issued by the official of auction class II of KPKNL in the auction taking place in a private auction hall.²⁵

The auction in KPKNL is different.²⁶ The auction conducted according to current regulations cannot be canceled²⁷ or it can be said that the auction taking place in KPKNL holds permanent legal standing unless it is proven otherwise. Article 4 asserts that the auction must go on despite only one buyer

²³ I Made Soewandi, *Kewenangan Balai Lelang Dalam Kredit Macet*, (Yogyakarta :Yayasan Gloria, 2005), 221.

²⁴ Kantor Pelayanan Kekayaan Negara (KPKNL).

²⁵ Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, (Jakarta: Gramedia, 1991), 98.

²⁶ Presidential Decree Number 21 of 1991 integrates the function of auction and its all apparatuses, ranging from the Directorate General of Taxation to the Organizational Structure of BUPN, forming a new organization called State Accounts Receivable and Auction Agency (BUPLN). As follow-up, the Finance Minister decided that the task of the operational section of the state accounts receivable is performed by State Accounts Receivable Administration Office (KP3N), while the operational task of the auction is performed by the State Auction Office (KLN). According to the Presidential Decree Number 177 of 2000, responded to by the Decree of Finance Minister Number 2/KMK.01/2001 on 3 January 2001, BUPLN was upgraded to the Directorate General of the State Accounts Receivable and Auction (KP2LN) which was renamed State Assets and Auction Service Office (KPKNL) with additional function of service in state assets and assessment, Redaksi Media Kekayaan Negara, *Selayang Pandang Jenderal Kekayaan Negara dalam Media Kekayaan Negara Edisi Nomor 01 Tahun 1*, (Jakarta: Direktorat Jenderal Kekayaan Negara, 2010), 5.

²⁷ Harahap, *Hak Tanggungan, asas-asas ketentuan-ketentuan pokok dan masalah yang dihadapi oleh perbankan*, (Bandung: Alumni, 1999), 211.

attending. If no buyers are attending the auction, the auction still has to proceed by issuing an auction deed stating that there is no bid made. In other words, an auction in KPKNL is more practical and efficient than in a private auction hall and a district court. Departing from this issue, this research aims to study the settlement of non-performing lending in sharia banks where the auction is involved with the collateral as the security executed in KPKNL in Surabaya from the perspective of Islamic law.

Settlement of Non-Performing Lending by Bank (Pre-Auction)

Lending risk in sharia banking is a logical consequence of a lending contract for the clients of sharia banks.²⁸ Non-performing lending could spark legal conflicts but the two parties are supposed to settle the conflicts peacefully. As mentioned earlier, revitalization involves rescheduling, reconditioning, and restructuring. When no agreement is made, a litigation process can be taken to settle the non-performing lending.

When a breach of contract takes place due to the condition where the debtor fails to repay the loan, the resolution has to be immediately arranged by the sharia bank concerned.²⁹ Litigation can be the last to consider, and this stage may involve legal institutions to resolve the conflicts. The collateral that is bound in the contract will be confiscated to settle the delayed payment.

The litigation stage usually takes place in a district court that issues a written warning up to three times before the litigation takes place. If, following a written warning, the client is cooperative and shows good faith to participate in the deliberation that is intended to settle the issue, settling the conflicts at court is not necessary. However, when no good faith is shown and the

²⁸ Zainul Arifin, *Dasar-Dasar Manajemen Bank Syariah* (Tangerang: Azkia Publisher, 2013), 72.

²⁹ Eko Sudarmanto, dkk, *Manajemen Risiko Perbankan* (Yogyakarta: Yayasan Kita Menulis, 2021), 127.

revitalization no longer works for this settlement, litigation may take place.

It is important to know that litigation does not need to proceed if the client concerned does hamper confiscation of the collateral, and the repayment of the rest of the loan can be covered by the value of the collateral object auctioned. Litigation in a district court is necessary unless good faith is shown, and evasion is regarded as an act of bad faith, especially when bad faith remains at the third warning.

Following the litigation process in a district court, the decree of confiscation is issued and an auction will take place. If the party concerned refuses to release the object to be confiscated, authorities and bailiffs will perform the confiscation. The auction process in KPKNL, however, will proceed if the court issues a warning and the auction request is submitted to KPKNL.

The auction process in KPKNL departs from the receipt of a request made by a district court or religious court submitted by the bank as a creditor for execution. Following this process, the court will issue a decree concerning *Aanmaning* or a warning to instruct confiscation of the object set as collateral, and the auction request is submitted to KPKNL.³⁰

Auction Procedures in KPKNL

The auction taking place in KPKNL begins with the request made by the object owner (seller), followed by auction scheduling. The auction is announced on printed media such as newspapers and those interested in joining the auction must submit a deposit to the bank account of KPKNL. The auction is led by an authorized body. The final buyer will have to make a payment to KPKNL and pay the duty levied on the auction. The money from the auction will be passed to the party making the request. If this party is represented by a government institution, the money from the auction is deposited in the treasury of the

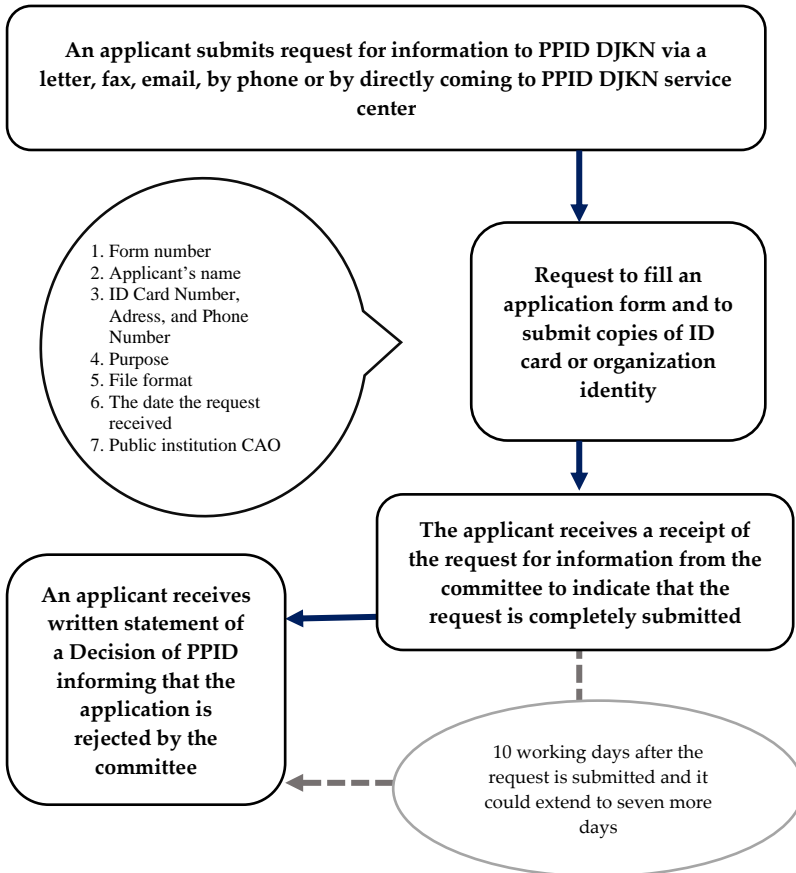
³⁰ In the area of East Java, KPKNL Surabaya

state. The KPKNL is required to submit the document and the excerpt of the minute for further purposes such as title transfer and others.

Offline auction is given through an open house and it requires particular procedures. To execute the auction accordingly, the committee of the auction organizes the event and set the mechanism to manage the coming participants to the showroom in succession. The prospective buyers are only allowed to check the physical conditions and the parts of the object, but they are not allowed to dismantle any parts of the object or anything close that could damage the object. The visitors are not allowed to take or destroy any parts, numbers, labels, or whatever is attached to the auctioned object. The visitors interested in bidding must deposit a certain amount of money as determined, where 1-slip of deposit for a guarantee for 1-lot (see the appendix of lot list and deposit). The participants are required to register to TPPS³¹. The receipt of the deposit should be shown along with the ID card and Company Establishment Certificate (for legal entities).

The deposit can be given in cash and/or transferred to Bank Account... Branch office... Account Number... on behalf of KPKNL.... No later than one working day of KPKNL before the auction begins (1-slip of deposit for 1-lot). Those depositing money for guarantee must show their slip, original guarantee, ID card, or something similar, and 1 (one) set of copied documents to get an Auction Participant Number (NIPL) in the auction hall.

³¹ Tempat Penimbunan Pabean Sementara (TPPS).



Source: Book on Auction Law by Rachmadi Usman³²

Request for Auction from the Owner of Object/Seller

An application made by the seller to request the auction is addressed to KPKNL. The request should come with documents or proof of authority over the auctioned object. The seller is then allowed to set forth requirements in selling the object according to

³² Rachmadi Usman, *Hukum Lelang* (Jakarta: Sinar Grafika, 2016), 12.

the existing provisions of the auction. Complete requirements for fixed object involves the following.

Auction of Mortgage Right /Execution	Voluntary Auction/non-execution	Auction of Fiduciary Execution
Copy of right title	Copy of right title	Copy of proof of ownership (BPKB ³³ , STNK ³⁴ , engine invoice)
copy of mortgage right certificate	Copy of land and building tax receipt	Copy of fiduciary certificate
Copy of credit contract deed	Copy of building permit	Copy of credit contract deed
Copy of Notarial Acknowledgement of Indebtedness	Copy of family card	Copy of Notarial Acknowledgement of Indebtedness
Copy of subpoena/ written warning to the debtor (1 st , 2 nd , 3 rd , and final)	Copy of Marriage Certificate	Copy of subpoena/written warning to the debtor (1 st , 2 nd , 3 rd , and final)
Copy of Land and Building Tax Payment Receipt	Copy of ID card with the name as written on the certificate, ID card of husband/wife	Copy of the ID card of the debtor, the ID card of the Bank director signing the MOU with PT. Balai Lelang Harmoni (henceforth referred to as BLH)
Copy of Building Permit	An original written statement issued by the	Original request statement on the date of auction submitted

³³ Buku Kepemilikan Kendaraan Bermotor (BPKB).

³⁴ Surat Tanda Nomor Kendaraan (STNK).

	owner of the auctioned object, stating that the object is "dispute-free"	to KPKNL
Copy of the ID card of the debtor, the ID card of the Bank director signing the MOU and BLH	The original power of attorney of the auction from owner to BLH	The original power of attorney from the Bank Director to BLH
Copy of auction notification to occupants of the object auctioned	Original sheet agreement of husband/wife	Original copy of details of the last debt along with the responsibility of the debtor
Original sheet of request for the date of auction submitted to KPKNL	Original sheet of auction notification to the occupants of the object auctioned	Original sheet of a statement issued by the bank stating that the object auctioned is "dispute-free"
Original sheet of power of attorney of the auction from the director of the bank to BLH	Two copies of a photo showing the object auctioned	Original sheet of auction notification to the debtor
Original sheet of details of the last debt along with the responsibility of the debtor	The signing of the agreement principles of cooperation between the owner and KPKNL	Original sheet of appointment of an official of the seller from Bank
Original sheet of a		2 (two) copies of a

statement issued by the bank stating that the object auctioned is “dispute-free”		photo showing the object auctioned
Original sheet of appointment of an official of the seller from the Bank		The signing of the agreement principles of cooperation between the bank and the auction hall
Original sheet of auction limit		
Original sheet of work order (SPK)		
Original sheet of auction dispensation (when necessary)		
2 (two) photos showing the object auctioned		
The signing of agreement principles of cooperation between the bank and KPKNL		

Source: Auction terms and conditions at <http://lelang.go.id>

Setting the Date, Day, and Time of auction by KPKNL

This process is executed if the document submission is complete and relevant.³⁵ The time of auction is set as follows:

³⁵ Regarding the venue and the time of the auction event, Article 5 Paragraph 1 *Vendu Reglement* states that whoever performs general sales must report to the auctioneer including the locations of the book holders by informing the specific day or what days sales

- a. The auction takes place during working hours unless it is agreed that the auction will take place outside working hours.
- b. Request for auction is made by the owner of the object auctioned
- c. An agreement of auction can be attached to the request application for auction

Announcement of Auction in newspapers

This step is done to invite more people to join as buyers. Article 42 of the Regulation of Indonesian Finance Minister Number 93/PMK.06/2010 requires auction announcement to include identity, auction schedule, the specification of the object auctioned, venue, a deposit of guarantee money, bottom price, bidding process at auction, and the address of KPKNL. This announcement is intended to boost the interest of the people, in general, to allow for a successful auction to cover the unpaid debt.

Deposit paid by the auction participants to the bank account of KPKNL

The deposit must be received at least a day before the auction takes place. The deposit should be 20% of the lowest price of the object auctioned.³⁶ This deposit is intended to lower the likelihood of breach of contract and to ensure that the participants are prospective buyers.³⁷

The bidding at auction is guaranteed by the bank with the amount reaching Rp. 50,000,000,000 (fifty billion rupiahs).³⁸ This guarantee is intended to:

may be performed. Principally, the venue for the auction has to be within the working areas of KPKNL or the official area of the auction class II where the object lies, Rachmadi Usman, *Hukum Lelang*, (Jakarta: Sinar Grafika, 2016), 12

³⁶ The provision concerning the amount of money deposited for guarantee of the auction is set forth in Article 32 of the Regulation of Finance Minister Number 93/PMK.06/2010

³⁷ Purnama Tioria Sianturi, *Perlindungan Hukum Terhadap Pembeli Barang Jaminan Tidak Bergerak Melalui Lelang*, (Bandung: CV Mandar Maju, 2008), 89.

³⁸ The guarantee of the bank of auction bidding is understood as the guarantee of payment given by the bank to KPKNL or auction hall or the auction official class II as the party

- a. Select the prospective buyers
- b. Ensure that the auction money is given to the winner according to the time agreed.³⁹

The money of guarantee could be transferred to the treasury account of KPKNL, the account of Auction Hall, and the account of auction official class II.

Auction organized by Auction Official of KPKNL

An auction involving several related parties is assisted by *afslager* (auction advisor). The auction participants must do the registration and follow the auction process as per regulations. During the auction process, the bidding is given to determine the winner of the auctioned object according to the regulations set. If a registered participant cannot attend the auction process, he/she can appoint a representative with the original power of attorney.⁴⁰ The winner depends on the bidding made and the decision is in the hand of the seller. However, when it comes to the highest offer but no fixed price is determined, the auctioned object is withheld until the seller releases the object.⁴¹

The price paid by the Auction Winner to KPKNL

The participant declared as the winner of the auction must pay the price set on the auctioned object no more than three days from the day the auction took place. If the participant fails to make the payment within this period, the guarantee money put as a deposit will be forfeited and the participant concerned will be blacklisted. Following the payment, the auction official is required to pass the money to the object owner. However, a dispensation is

receiving the guarantee in case of the likelihood where the auction participant fails to pay for the auctioned object and its duty, *ibid*, 140

³⁹ Ngadijarno, Nunung Eko Laksito dan Isti Indri Listiani, *Lelang: Teori dan Praktik*, Jakarta: Badan Pendidikan dan Pelatihan Keuangan Departemen Keuangan, 277

⁴⁰ An interview with Mr. Firman in auction session, on Monday 8 October 2018

⁴¹ Risman, *Auction Reform : Lelang Indonesia Menuju Era Baru*, (Jakarta, Artikel & Opini Kemenkeu, 2014), 112.

given by KPKNL regarding the relaxation of payment to the buyer with consent and permission from the authority.

The payment is direct and in cash⁴², but some pay it with a cheque. If so, this cheque must be cashed and the money is received by the bank as the seller. The money from the auction must be given to the seller by the auction official not more than a day after the receipt of the full payment of the auction from the buyer is issued. In addition to cash payment, a dispensation can be given with the consent and permission of the Directorate General of State Accounts Receivable and Auction Services.⁴³ Dispensation is given to the winner of the auction to make full payment of the auctioned object before the due date.

Auction Duty paid to the State Treasury by KPKNL

This payment is done by KPKNL as much as 9% for a movable object and approximately 4.5% for an immovable object. The owner of the object auctioned is also subject to 3% of duty for a movable object and 1.5% for an immovable one. This calculation of duty is based on the main price of the auctioned object.⁴⁴

⁴² The principle of the payment of the money earned from the auction in cash is governed in Article 41 Paragraph 1 of the Regulation of Finance Minister in conjunction with Article 27 of the Decree of DJPLN, stating that the payment mentioned above must be paid in cash or by cheque/giro no later than 3 days since the day the auction took place. The term 'in cash' does not always mean physical existence of the money, but it can also be understood as payment by means of cheque or giro. If this is a huge amount of money, it is not practical to pay the money in cash, but payment in cheque or giro is more recommended. An interview with Mrs. Kartini, the General Section of KPKNL Surabaya on Thursday, 16 October 2018.

⁴³ Article 41 Paragraph 2 of the Regulation of Finance Minister opens the possibility of payment based on dispensation. The payment of the auction not in cash is only justified by a written permit issued by the Directorate General of State Accounts Receivable and Auction on behalf of the Finance Minister. The application for this permit is made by the seller to the Directorate General of State Accounts Receivable and Auction before the announcement of the auction is spread. The Directorate of Auction, *Implementasi Security Paper pada pejabat Lelang Kelas I dan II dalam media kekayaan Negara Edisi Nomor 09 Tahun III*, Jakarta: Direktorat Jenderal Kekayaan Negara, 2012, 41.

⁴⁴ Depkeu RI, "Menuju Optimalisasi Pengelolaan Kekayaan Negara, Piutang Negara dan Lelang", dalam Media Kekayaan Negara, Edisi No. 06 Tahun II/2011, Jakarta: DJKN, www.djkn.depkeu.go.id.

Money earned from Auction given to the Applicant of Auction

An applicant can be an institution or a bank. The money earned is used to cover the unpaid debt. The KPKNL will further issue a paper of proof mentioning the auction activities, which is useful for title transfer and other administrative matters in the future.⁴⁵ The original documents are required to process the title transfer for the auction winner.

Obtaining Object auctioned and Submitting Documents to the Owner of the Object

The auctioned object can be obtained within 7 days from the day of the auction by showing the receipt of full payment. The documents are submitted by the auction official to the institution concerned not more than a day after the receipts of full payment and duty payment are issued.⁴⁶

Auction at KPKNL from the Perspective of Islam

In general, the offer made in the auction represents an agreement to use the fund earned from the sold object in the auction to cover the unpaid debt a person has to pay. In a business term, it is known as tender, where an offer is made to a supplier by reducing the price for the expected quality of goods or services. Such an offer can also be made confidentially with an envelope before it is opened simultaneously and the choice is made by considering reasonable price and quality. The term tender is also common in the project with price offers, starting at the lowest price.⁴⁷ However, tender practice is still linked to opening a chance for collusion or bribery for a greater chance to win. Al-Jaziri once said in his book *Al-Fiqh 'Ala al-Madzahib Al-Arba'ah* that *bay'*

⁴⁵ KPKNL does not interfere with the dispute of the third party. The KPKNL only deals with the sale of the applicant's object. The task of the KPKNL is restricted to the process of selling and the submission of complete documents of the ownership held by the applicant. An interview with Mr. Firman on 18 October 2018

⁴⁶ Rachmadi Usman, *Hukum Lelang*, Jakarta: Sinar Grafika, 2015, 153

⁴⁷ Rochmat Soemitro, *Peraturan Jan Instruksi Lelang*, (PT. Eresco, Bandung, 1987), 106

muzayadah activity or auction as the sale-and-purchase activity takes place in a crowd that involves bidding from prospective buyers by offering higher prices than what others offer and this price keeps increasing as more and more buyers offer higher prices before finally contract-making and the transfer of the auctioned object to a winning buyer takes place.⁴⁸

Auction and tender are not far different in terms of the processes involved. However, it is important to highlight that all the processes must adhere to the principles set forth to avoid any likelihood of violations within sharia's scope. Thus, in Islam, some rules set as Islamic principles are listed in the following:

1. Transaction based on willingness
2. Halal auctioned object
3. The existence of the right to the ownership of the object to be auctioned
4. Openness regarding the auctioned object
5. Capability to let go of the object auctioned
6. Transparency of the price as agreed upon
7. Evasion of collusion contravening the principles of Islam

The auction taking place in KPKNL Surabaya did not indicate any violations, either in an online or offline auction. All the process stages of the auction did not show any intervention in selling the object auctioned. No unfair act intended to accelerate the sale of the object was found to benefit the KPKNL Surabaya. In other words, there were no violations that contravened the sharia principles, as viewed from the perspective of Ulama. The main guidelines lie in the practice conducted by the Prophet, where it indicates no fraud and unfair acts to gain personal benefit from the transaction. Sale and purchase transaction is *mubah* (allowed) as long as the requirements are met. The transaction must not indicate any *najasy* and *tadlis* as congruent with the practice once

⁴⁸ Syaikh Abdurrahman Al-Jaziri, *Al-Fiqh 'Ala al-Madzahib Al-Arba'ah*, (Beirut Libanon, Juz. II, 1992), 257.

performed by the Prophet Muhammad.⁴⁹ This is in line with the statement written in the Quran Surah Al-Zalzalah verse 8.

وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

And whoever has done an atom's weight of evil will see it. (QS. Az zalzalah 8)⁵⁰

The money paid as the deposit is intended to ensure that the participants are prospective buyers and to ensure that the winner of the auction should make full payment for the object sold in the auction. This process was also obvious in the auction of KPKNL Surabaya. When a participant fails to win the auction, he/she will receive a full refund of the deposit. On the other hand, if the winner fails to make the full payment of the auctioned object, the money paid earlier as the deposit will be forfeited⁵¹ as a consequence of a breach of contract. The provision concerning the obedience to the agreement made is outlined in the Quran Surah Al-Ma'idah verse 1 "O you who believe! Fulfill your commitments (QS. Al-Maidah ayat 1)"⁵²

The aspect of *gharar* is not allowed in an auction, where the stages of the process are absurd, like a conspiracy among parties in the auction. If this situation emerges, the KPKNL must remain objective by not disclosing the price and the number of participants in the auction.⁵³ Thus, participants will not have any idea about their competitors in the auction, and the process will take place accordingly. Playing the prices is an example of an unfair act that every party in the auction has to be aware of. This is essential to allow for the auction process that complies with the sharia of Islam.

⁴⁹ Ayub Ahmad, *Fikih Lelang Perspektif Hukum Islam Dan Hukum Positif*, (Jakarta: Kiswah, 2004), 66.

⁵⁰ Al- Jumatul, *Al-Quran dan Terjemahannya* (Bandung: CV.Jumalatu, Ali-Art ,2005), 599.

⁵¹ Wawancara Ibu Kartini, pada hari kamis 25 Oktober 2018 di kantor KPKNL Lantai 5 PUKUL 10.15 wIB

⁵² Al- Jumatul, *Al-Quran dan Terjemahannya* (Bandung: CV.Jumalatu, Ali-Art ,2005), 106

⁵³ Bambang Sutiyo, "Penyelesaian Sengketa Bisnis Melalui Online Dispute Resolution dan Pemberlakuannya di Indonesia", *Mimbar Hukum* Volume 20 Nomor 2 Juni 2008, 233-235

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِيَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

“And do not consume one another’s wealth by unjust means, nor offer it as bribes to the officials to consume part of other people’s wealth illicitly, while you know.” (QS al-Baqarah 188)⁵⁴

The main requirement is that the object auctioned must not contravene the principles of Islam. That is, the object must not be gained in a haram way. In reality, some objects auctioned came from illegally seized objects without any supporting documents and clear ownership. Islam implies that an auctioned object must not leave any burden on the owner. In this case, the KPKNL administers the auction based on the procedures by receiving and administering the request made by a Shāria Bank. If all the required documents are collected, the auction can take place accordingly.⁵⁵

قَالَ النَّبِيُّ ص.م. : إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ. (متفق عليه)

“Sale and purchase should involve willingness”
(Muttafaq ‘alaih)⁵⁶

On the other hand, Nakha’i, among other Ulama, believe that sale and purchase are *makruh*, as outlined in the hadith of Sufyan bin Wahab,

سمعت نهي رسول الله صلى الله عليه وسلم عن بيع المزادة

“I heard that Rasulullah SAW forbid the sale and purchase through auction.” (HR Al-Bazzar)⁵⁷

⁵⁴ Al- Jumatul, *Al-Quran dan Terjemahannya* (Bandung: CV. Jumalatu, Ali-Art, 2005), 29.

⁵⁵ Some cases indicate that the objects auctioned were obtained from corruption. When this is the case, a written statement from a court and from a related institution is required, and this will lead to a more rigid and complicated process. An interview with Mr. Firman on Thursday, 25 October 2018 in KPKNL office, the 5th floor Surabaya.

⁵⁶ Muhammad bin ismail Al-amir ash-shan’ani, *Subulus salam syarah bulughul maram*, (Jakarta:Darus sunnah 1995, 723).

⁵⁷ Lihat. Imam As-Suyuthi, *Al-Jami’ Ash-Shaghir*, Juz II/191.

Imam Ibnu Hajar, in his book, believes that this hadith is *dhoif*, meaning that it does not hold any legal ground. Thus, Ulama believe that auction is regarded as *makruh*, not haram.⁵⁸

Following the auction in KPKNL along with the document submission to the winner of the auction, all the price as a result of the sale in the auction is given to the applicant (the bank), while the KPKNL only receives the registration fees and duty paid to the treasury of the state before the money is given to the bank to cover the unpaid debt. Collectability has to be taken into account by the bank. The reality sometimes shows that a transaction that takes a process of auction can indicate something bad, harming the bank's client, considering that the mortgage right could be sold at an unreasonably low price. This unfair deed could lead to the judgment day later in the hereafter.

وَلَا تَحْسَبَنَّ اللَّهَ غَافِلًا عَمَّا يَعْمَلُ الظَّالِمُونَ إِنَّمَا يُؤَخِّرُهُمْ لِيَوْمٍ
تَشْخَصُ فِيهِ الْأَبْصَارُ

"Do not ever think that God is unaware of what the wrongdoers do. He only defers them until a Day when the sights stare." (QS. Ibrahim: 42)⁵⁹

The participant winning the auction could legally buy the object at a low price, and this represents happiness. However, the owner of the asset auctioned has to let go of the asset. That is, the victory in this world will end up with a loss in the hereafter. It is, therefore, advisable for the bank to be wiser in dealing with the auction of the mortgage in KPKNL. Better policies will give rise to an economy relevant to the principles of Islam.

⁵⁸ See Imam Ash-Shan'ani, *Subulus Salam*, Juz III/23; Imam Asy-Syaukani, *Nailul Authar*, (Beirut : Dar Ibn Hazm, 2000), 1045.

⁵⁹ Al- Jumatul, *Al-Quran dan Terjemahannya* (Bandung : CV. Jumalatu , Ali-Art ,2005).404

Conclusion

Financing risk in sharia-based lending is a logical consequence arising from the lending contract for the clients of sharia banks. Problematic lending could lead further to legal conflicts, but a peaceful way of settling the dispute between the two parties is encouraged. The revitalization that can serve as a reference consists of rescheduling, reconditioning, and restructuring. When no agreement is reached, litigation is the last resort to take to help settle the non-performing loan dispute. The litigation process usually takes place in a district court following a subpoena sent three times to the party concerned. If the debtor shows good faith, litigation to settle the dispute is not necessary. On the other hand, an indication of bad faith will lead the case further to litigation in a district court. In the litigation process, the decree of confiscation of the asset to be auctioned and the implementation of the auction is issued. In case of the condition where the client refuses to release the object confiscated, the confiscation process will be taken over by the authority and bailiffs.

In the event of an auction in KPKNL Surabaya, there was no indication of violation in both online and offline auctions. In all the auction stages, ranging from the application to the auction per se, there was no intervention made in the transaction of selling the asset, nor was there any attempt to force quick selling of the asset from the side of the KPKNL Surabaya. This indicates that there are no stages of the process of the auction that contravene the sharia principles, as viewed by Ulama. The aspect of *gharar* or anything absurd is not allowed in an auction, such as conspiracy among the parties involved in the auction. The main requirement to be obeyed in the auction is that the substance of the asset auctioned must not contravene the principles of Islam. Therefore, the property to be auctioned must not be obtained from a haram way. However, in some cases, some auctioned objects were the result of illegal seizure with no valid documents and clear ownership. In the auction in a bank, if the client is regarded as eligible for

auction, the auction will be executed to sell the object fast. This type of auction is considered unfair since it could harm the clients concerned.

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