



ISSN: 0975-833X

Available online at <http://www.journalcra.com>

International Journal of Current Research
Vol. 10, Issue, 11, pp.75303-75308, November, 2018

DOI: <https://doi.org/10.24941/ijcr.33059.11.2018>

**INTERNATIONAL JOURNAL
OF CURRENT RESEARCH**

REVIEW ARTICLE

GOOD GOVERNANCE IN THE IMPLEMENTATION OF BANKING CREDIT GUARANTY AUCTION WITH SECURITY RIGHT AND ITS OBSTACLES IN INDONESIA

***I Gusti Agung Ayu Gita Pritayanti Dinar, I Ketut Westra and I Ketut Tjukup**

Student of Doctoral Program at Faculty of Law, Udayana University, Bali, Indonesia.

ARTICLE INFO

Article History:

Received 10th August, 2018
Received in revised form
28th September, 2018
Accepted 29th October, 2018
Published online 29th November, 2018

Key Words:

Good Governance, Auction,
Obstacle, Credit Guaranty,
Security Right.

ABSTRACT

Nowadays, non-performing loan ("NPL") and the settlement of such NPL in banking sector in Indonesia still constitute as crucial issues. This article aims to: (1) find out provisions on Good Governance in relation to auction process over guaranty with security right attached to it in relation to NPL settlement in banking sector in Indonesia; as well as (2) to dig deeper the obstacles in settling NPL through auction institution. This is a normative legal research that uses primary and secondary legal sources through literature study as well as supporting data from various articles and cases. The large number of NPLs in the banking sector is followed by the increment of NPL settlement that uses auction institution in executing credit guaranty, one of them with security right, to pay off debtor debts to the bank. Auction institution is chosen by bank as it is faster and easier than using writ of execution available in the District Court. The existing provisions on Good Governance in auction already adequate; however, there are still obstacles to implement auction over guaranty with security right attached to it in banking sector in relation to NPL problem, ranging from the period before the auction, at Court, at auction, and in executing the guaranty with security right.

Copyright © 2018, I Gusti Agung Ayu Gita Pritayanti Dinar et al. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: *I Gusti Agung Ayu Gita Pritayanti Dinar, I Ketut Westra and I Ketut Tjukup. 2018. "Good Governance in the Implementation of Banking Credit Guaranty Auction with Security Right and Its Obstacles in Indonesia", International Journal of Current Research, 10, (10), 75303-75308.*

INTRODUCTION

The debtor ability to pay and the weakening demand for credit in banking has begun to be felt in mid 2017. This greatly affects bank performance especially the increment of the Non-Performing Loan ("NPL") ratio. Some published financial statements even show that some banks have NPL above 5%, which means that these banks shall immediately clean up their problematic assets (CNBC Indonesia, 27 July 2018). Of the 11 industrial sectors financed by banks in Indonesia, the financing sector for the ownership of home stores and office houses occupies the highest level of NPL which is amounted to 5,11% or IDR 1,33 trillion of the total NPL available from the sector (Databox, 27 August 2018). In addition, data from the Financial Services Authority ("OJK") shows that the ratio of NPL is still quite high as recorded in October 2017 at 2,96% and in July 2018 at 2,67% (gross). The above condition obviously shows that banks need to immediately settle their NPL. Cleaning the problematic assets by selling credit guaranty provided by the debtor is one of the examples. This NPL settlement is usually done by selling guaranty as agreed upon by the debtor with direct sale to the buyer.

Aside from that, the other way to clean the problematic assets is by conducting an auction of the credit guaranty through auction institution. Therefore, Security of Law plays important role in overcoming banking credit problems. Guaranty submitted by the debtor is preventive measure in settling credit because a bank is expected to cover bank receivables. From juridical perspective, this guaranty constitutes as acquittal of debt from the debtor. The existence of credit guaranty surely protects the creditor. There is legal principle in the Security of Law regime where the creditor cannot ask for a promise to own the guaranty provided by the debtor as acquittal of debt to the creditor. It means that creditor is not allowed to immediately sell the existing guaranty as acquittal of debt. This is to avoid the occurrence of injustice in the event where the guaranty exceeds the debtor's debt value. If the guaranty is sold, the result of the sale must first be used as acquittal of debt and the rest must be returned to the debtor. Auction is widely used by banks in resolving their NPL, especially for credit that has guaranty with security right attached to it. Therefore, the use of auction in settling NPL problem leads to a long queue at the auction office. Many obstacles occur in relation to such auction. Thus, this article elaborates the provisions on Good Governance in relation to auction process over guaranty with security right attached to it in relation to NPL settlement in banking sector in Indonesia and digs deeper the obstacles in settling NPL through auction institution in Indonesia by using

***Corresponding author: I Gusti Agung Ayu Gita Pritayanti Dinar**
Student of Doctoral Program at Faculty of Law, Udayana University,
Bali, Indonesia.

normative legal research with primary and secondary legal sources.

RESULT AND ANALYSIS

Good Governance in the Implementation of Banking Credit Guaranty Auction: Sustainability of national economic development definitely requires the role of banking institution in addition to the roles of government, society and other related parties. In Indonesia, healthy economy is important in achieving a just and prosperous society in accordance to *Pancasila* and the 1945 Constitution of the Republic of Indonesia (“the 1945 Constitution”). According to Article 1 number 2 of Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking (“Banking Law No. 10/1998”), Bank acts as mediating institution that collects funds and channels these funds in the form of credit and/or other forms to the public to improve the living standards of the common people. In carrying out its function as a credit distributor, bank must implement the prudential banking principles. This is due to the existence of public funds in the form of deposits that must be accounted for by the bank. The existence of NPL is undeniable. Loans that are not managed properly will create risks that will cause a decrease in bank’s health and financial difficulties. In the end, it will dramatically affect the country’s economy and public confidence in banking industry.

Two banking strategies related to NPL are as follows:

1. Stay strategy which means the debtor is fostered to engage business with the bank. In this case, the debtor has liquidity difficulties in the short term and the bank still has trust in the debtor; and
2. Out strategy which means the bank does not want to continue its relationship with the debtor.

The strategy to break off relationship can be done in two ways, namely through:

a. Negotiation

Negotiation is a process where both parties (creditor and debtor) meet to find a solution to NPL problem properly so as to produce a win-win solution;

b. Litigation

Litigation is an effort taken by the banking sector in the event a deadlock happens in negotiating the settlement of such NPL.

There are three options that can be conducted by bank in this process, namely:

- i. Submit a claim to the District Court. In this option, the bank chooses to submit claim towards the debt and guaranty with security right certificate or fiduciary *grosse* certificate attached to it for a writ of execution request to the Chairman of the District Court;
- ii. Submit auction to the state auction unit which is now known as State Receivables and Auction Affairs Agency (“KPKNL”) against guaranty with security right attached to it. If it stuck, the settlement can be reached through *parate executie* carried out by holder of the security right on its own power in front of auction officials;

- iii. Submit auction to the Auction house where the bank carried out *parate* executions through the mediation of the Private Auction Center (Yunus Adhi Prabowo, 2015, p.2-3).

In this article, the auction option to settle NPL in banking sector will become the main discussion. In practice what happen is the existing auction system is more advanced than the existing regulations. Such condition happens due to the easy process of auction hence causes high price. Auction is formulated as a system of selling to the public. So it is quite clear that auction is implied as an act of public sale which shall meet justice in order to achieve balance on the price, value and certainty of ownership of an item auctioned. The factors of believe, but not to make believe, and prudent are also required to be present in an auction (Ignatius Ridwan Widyadharma, 1999, p. 38). Auction is very helpful for banks in settling NPL. In banking, auction is expected to settling the NPL in optimal and efficient ways; therefore, the bank will soon be able to improve its performance or bank’s health towards a healthier condition. *Vendu Reglement Staatsblad* of 1908 No. 189, a Dutch auction regulation, is still used as legal basis of auction in Indonesia. In addition, the provisions on the use of auction in Indonesia can be found in various Indonesia legal instruments, for example: Law No. 1 of 2004 on State Treasury; Indonesian Civil Code; Indonesian Criminal Procedure Code; Indonesian Criminal Code; Law No. 49 Prp. of 1960 on State Receivables Affairs Committee; Law No. 19 of 1997 on Warrant Based Tax Collection jo. Law No. 19 of 2000 on Amendment of Law No. 19 of 1997 on Warrant Based Tax Collection; Law No. 4 of 1996 on Security Right; Law No. 42 of 1999 on Fiduciary Guaranty; Law No. 37 of 2004 on Bankruptcy; and Law No. 10 of 1998 on Banking. As for the property auction, the legal basis for its procedures can be found in specific regulations, namely: Auction Regulation/*Vendu Regulations* (stb. 1908 No. 189); Auction Instruction/*Vendu Instructie* (stb 1908 No. 190); and Government Regulation No. 44 of 2003 dated 31 July 2003 on Tariff for Non-Tax State Revenues that applies to Finance Department.

Legal bases for auction are then further regulated under several legal instruments, such as: Regulation of the Minister of Finance of the Republic of Indonesia No. 93/PMK.06/2010 dated 23 April 2010 on Auction Implementation Guidelines; Regulation of the Minister of Finance of the Republic of Indonesia No. 176/PMK.06/2010 dated 30 September 2010 on the Auction house; Regulation of the Director General of State Assets No. PER-03/KN/2010 dated 5 October 2010 on Technical Guidelines for the Implementation of Auction; Regulation of the Minister of Finance of the Republic of Indonesia No. 45/PMK.06/2013 on the Implementation of the Identifying Service Users Principle for the Auction house; Government Regulation of the Republic of Indonesia No. 1 of 2013 dated 1 February 2013 on Types and Tariff for Non-Tax State Revenues; Regulation of the Minister of Finance of the Republic of Indonesia No. 176/PMK.06/2010 of 2010 on Auction house as amended by Regulation of the Minister of Finance of the Republic of Indonesia No. 160/PMK.06/2013 of 2013; Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016 dated 22 February 2016 on the Guidelines for Auction Implementation that entered into force on 22 May 2016; and Regulation of the Minister of Finance of the Republic of Indonesia No. 90/PMK.06/2016 on Guidelines for Auction Implementation with Written Offers Without the

Attendance of the Bidder Through the Internet. Before moving further to the next discussion, it is important to understand the definition of auction as already provided though legal instrument and scholars. One of the definitions can be found in Article 1 Sub 17 of Law No. 19 of 2000 on Amendment of Law No. 19 of 1997 on Warrant Based Tax Collection, "Auction is the sale of goods in public by means of bidding whether verbally and/or in writing through an effort to collect interested parties or prospective buyers. Another definition of auction is given by Christopher L. Allen, an auctioneer from Australia, where he states that, "The sale by auctions involves an invitation to the public for the purchase of real or personal property offered for sale by making successive increasing offers until, subject to the sellers reserve price the property is knocked down to the highest bidder". Another example, Mr. M.T. G. Maulenberg, a Dutch auction expert from the Department of Marketing and Agricultural Market Research of the University of Wageningen, points out that, "Auction is an intermediary between buyers and sellers. The main objective is price discovery". However, the general definition of auction currently used in Indonesia is as a method of selling goods in public carried out by or auction system in front of auction officials by establishing competitive prices through open/verbal or closed/written/electronic price quotes that are preceded by auction announcement (Adwin Tista, 2013).

Auction is held at a certain time and place. It must be preceded by an auction announcement and must be attended by the auction participant, auction applicant, auction guide and auction official. Auction in Indonesia must be carried out before the auction official from the KPKNL unless otherwise specified by government regulation. Therefore, there are some elements attached to the definition of auction, namely: sales of goods (tender for the procurement of goods and/or services is not included in this definition); performed before the public by announcing it through the mass media; the buyer is unknown; bidder with the highest price will be designated as the buyer; conducted through a special bidding method; as well as conducted at a certain time and place. The purpose of auction is to sell the guaranty provided by the debtor as quickly as possible regardless to the guaranty being sold. Normally, the seller basically promotes, offers and delivers the goods; however, this cannot be done by the KPKNL because of certain limitations. The establishment of the Auction house is to fulfil various elements of auction that cannot be carried out by the KPKNL. The Auction house opens pre-auction and post-auction services which include the delivery of goods and funding. An auction must be preceded by an auction announcement made by the seller and not by the Auction Office.

Moving forward to related issue on auction is the execution of security right payment. This execution constitutes as execution of guaranty whose object is land or object related to land. The existence of security right prioritizes certain creditors (plaintiff/applicant) against other creditors. It is noted that security right certificate contains executorial title the following words "For the sake of justice based on belief in the Almighty God". This means security right certificate has the same executorial power as a court decision that has obtained permanent legal force. It applies as a substitute for *grosse* of mortgage deed insofar as it relates to land rights (See Article 40 paragraph (1) of Law No. 4 of 1996 on Security Right). The following are the examples of land status that can be designated as the object of security right: (1) Ownership Right;

(2) Right of Cultivation; (3) Right to Build (*Ibid*). There are three types of security right execution, namely: (a) execution through court; (b) execution based on of one's own power; and (c) execution through private sales. Execution through court is carried out based on the executorial title of the security right certificate (Article 14 of the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016). Execution through court is carried out based on request from the security right holder for a Stipulation of the Chairman of the District Court or Religion Court which later is followed up with an execution process that applies to decision that already had permanent legal force. Meanwhile, execution based on one's own power is carried out based on promise or clause, promised by the debtor/grantor of the security right/defendant to the creditor/holder of security right/plaintiff in the Deed of Granting Security Right/ plaintiff in the Deed of Entitlement (APHT), which contains statement in the event the debtor is injured, the holder of security right has the right to sell object of the security right through public auction without requiring further approval from the grantor of the security right (M. Yahya Harahap (D), 2013, p.198). This type of execution only applies to the first holder of security right (Article 11 paragraph (2) of Law No. 4 of 1996 on Security Right). It is enough to submit a request to the local KPKNL to carry out a public auction on the land in case of execution based on of one's own power.

The discussion of Good Corporate Governance (GCG) in relation to settlement of NPL in banking sector through auction in Indonesia is relevant. As noted, Good Governance has emerged in the world as a world response to the crisis that hit the United States with several major cases that harm the world community. To avoid conflicts of interest between stakeholders and other parties, the idea of implementing Good Governance or GCG arises in controlling the company. World Bank defines GCG as collection of laws, regulations and rules that must be fulfilled to encourage the performance of company resources to work efficiently, to produce long-term sustainable economic value for shareholders and the surrounding community as a whole (H.N. Tangkilisan, 2003, p.12). Similar to the definition given by World Bank, the Organization for Economic Corporation and Development ("OECD") defines corporate governance as system by which business corporations are directed and control. The corporate governance structure specifies the distribution of right and responsibilities among different participant in the corporation, such as the board, the managers, shareholders and other stakeholder, and spells out the rule and procedure for making decision on corporate affairs. By doing this, it also provides the structure through which the company objectives are set and the means of attaining those objectives and monitoring performance (Siswanto Sutojo and E Jhon Aldridge, 2005, p.2). In addition, GCG is recognized to protect the company from unfavourable conditions. In many cases GCG has been proven to improve company performance up to 30% above its normal rate of return (J. Emirzon, 2006). Five basic principles of Good Governance compiled mainly by the OECD are as follows: (1) Transparency refers to information disclosure, both in the decision making process and in disclosing material and relevant information about the company. It serves to ease outside parties to analyse company actions both in fundamental economic and non-financial aspects. This transparency measures how well management provides information as is, accurate and on time both in terms of providing the audited data, general reports and press releases (S. Sukamulja, 2005);

(2) Accountability refers to clarity of function, structure, system and accountability of company organs so that company management is carried out effectively. Individual or group in a company which role is making decision must be accountable both for his/her/their decision and action. Existing mechanism and effectiveness must be based on accountability; (3) Responsibility refers to conformity (compliance) in the company management towards sound corporate principles and applicable Laws and Regulations. Some examples of this principle are becoming responsible for behaviour, taking corrective action and taking action against mismanagement. Management is responsible for corporate stakeholders so that the company stays in the right direction; (4) Independence refers to a situation where the company is managed professionally without any conflict of interest that is not in accordance with the applicable Laws and Regulations and sound corporate principles. This condition is needed to avoid potential conflicts of interest that may arise from a CEO or majority shareholder; and (5) Fairness refers to fair and equal treatment in fulfilling the stakeholder rights that arise from agreements and applicable Laws and Regulations. The system built must be balanced for all parties within the company for now and for the future. Therefore, all groups must be accommodated and respected.

In relation to the above explanation, the governance of a State-Owned Enterprise (“SOE”) must lead to the control of GCG in question. The obligation to implement GCG principles consistently and make it as operational standard in SOE (<http://bpkp.go.id/dan/konten/299/Good-Corporate.bpkp>) clearly stipulated in the Decree of the Minister of State-Owned Enterprise No. Kep-117/M-MBU/2002 dated 1 August 2002 on the Implementation of Good Corporate Governance Practice in State-Owned Enterprise (“Decree of the Minister of State-Owned Enterprise”) which has been refined with the Regulation of the State Minister of State-Owned Enterprise No. PER-01/MBU/2011 on the Implementation of Good Corporate Governance in State-Owned Enterprise (“Regulation of the State Minister of State-Owned Enterprise”). The implementation of GCG principles aims to achieve a healthy and transparent business climate in order maintain company’s existence in the middle of the tight competition. To avoid confusion and bridge the differences in understanding, the Government of the Republic of Indonesia through the Decree of the Coordinating Minister for Economics, Finance and Industry No. Kep-10/M.EKUI/08/1999 has formed the National Committee on Corporate Governance Policy or KNKCG (“Decree of the Coordinating Minister for Economics, Finance and Industry”). KNKCG itself in carrying out its duties has issued GCG Guidelines since 2001.

In order to achieve outcome that is in accordance with the basic principles of GCG, the strategic role of auction manager in the development of current auction is urgently needed in order to, for example, avoid conflict of interest in its implementation. The GCG principles are values that become benchmarks in determining whether an action is feasible or not. These principles constitute as moral and propriety based filters for a company or institution in running the business. After discussing the definitions of auction and GCG, it is further necessary to elaborate whether the auction principles used as the basic pattern of regulation that applies in Indonesia already adopted the GCG principles or not. Analysis from the Transparency principle. Transparency is understood as an aspect related to information disclosure meaning that there

must be disclosure on material and relevant information on auction. Transparent auction rules are the most important thing, meaning that nothing is hidden and people are treated equally to compete in buying the goods. The public has the same opportunity to obtain information, in this case information on the existence of an auction activity. In addition, this principle aims to create fair competition. With the competition, it is expected that the best and highest price of auction goods will be formed. Furthermore, the built in control of community on auction activity, for example: the public can file a protest upon objection and get access to information on price that is fair through announcement, also reflects the accountability aspect in implementing the auction. The auction participant may request an explanation from the auction official and/or the goods owner or the auction applicant regarding, among other things, the price, goods, and time of the auction. The auction official is obliged to provide information related to auction time, auction object and so on. Auction must be preceded by an auction announcement made by the seller, not by the Auction Office. If no auction announcement is made, then the auction that has been carried out will become legal error and prone to claim. Furthermore, if it is true that an announcement has not made, then the auction will likely be cancelled. Legal bases of the auction announcement can be found under Chapter III of the ninth part of the Regulation of the Minister of Finance of the Republic of Indonesia No. 93/PMK.06/2010 dated 23 April 2010 on Auction Implementation Guidelines. Auction announcement is made through daily newspapers published at the place where the good is located. This announcement has purpose to let public knows on the auction activity and to give the aggrieved party the opportunity to verify the objection. Since the enactment of the Regulation of the Minister of Finance of the Republic of Indonesia No. 106/PMK.06/2013, an auction can be offered in several ways, namely: (1) written bidding without the necessity of auction participant to be present at the auction place, namely e-mail offer, internet applications, or postal letter (*surat tromol pos*); (2) verbal and/or written bidding where the auction participant must be present at the auction place to submit his offer; and (3) bidding that uses combination of previous types. These options provide more services to auction participant according to the condition and situation of each participant.

Analysis from the Accountability principle. As mentioned previously, accountability refers to clarity of function, structure, system and accountability of company organs so that company management is carried out effectively. Auction must be made before the auction official because auction official is a public official appointed by the Minister of Finance. As stated in the dictum in the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016, this regulation exists to improve auction services, to realize the implementation of a more efficient, effective, transparent, accountable, fair auction and to guarantee legal certainty. More details arrangement under the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016 can be found in the following articles: (a) Auction execution of confiscated goods in Article 45 Indonesian Criminal Procedure Code and Compulsory Non-Execution Auction in the form of rotten/damaged/expired goods which can be carried out outside working days and hours (Article 24); (b) Block criminal from investigating agency or public prosecutor cancel plans for execution of auction (Article 30 letter b); (c) Cancellation of auction after the auction begins can only be done by the

auction official in the case of force majeure and technical disturbances that cannot be addressed at the auction without the presence of participant (article 31); (d) Extending the coverage of auction participant; therefore, the participant must show their Taxpayer Registration Number at the time of auction (article 34 paragraph (2)); (e) The guaranty over auction offer can not be applied to the auction of timber and other forest products from the first hand as well as the auction for voluntary non-execution of movable goods (article 34 paragraph (5)); and (f) The guaranty over auction offer is set at 20% to 50% of the Limit Value from previously was set at 20% to 100% of the Limit Value (article 38). Analysis from the Accountability principle. As already noted, responsibility refers to conformity (compliance) in the company management towards sound corporate principles and applicable Laws and Regulations. Some provisions in the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016 which reflect this principle are as follows: (a) Obligation of seller to conduct *aanwijzing* for auction of movable goods with limit value above IDR 1 billion (article 20); (b) Dispensation on the auction place is given specifically for compulsory non-execution auction in the form of timber and other forest products from the first hand (article 23); and (c) Announcement of auction for compulsory and voluntary non-execution of movable goods is possible without using newspapers if the auction is carried out with offer conducted through the internet and announced through online media (article 60).

Analysis from the Independence principle. This principle is needed to avoid potential conflicts of interest between the parties. The auction minutes must not be in favour of one of the parties. So, auction official must be independent. Some provisions in the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016 which reflect this principle are as follows: (a) Determination of the limit value is not the responsibility of the KPKNL or Class II-Auction Official (article 44 paragraph (4)); and (b) Limitation of value limit that must use the Rating Report.

Analysis from the Fairness principle. In terms of legal certainty, auction is carried out by public official (government) who sell for and on behalf of the state; therefore, there must be certainty to protect the people. For example, certainty about the cancellation of the implementation of the auction that is about to be carried out can only be done at the request of the seller or provisional stipulation or decision from the general judiciary institution.

Obstacles to Auction in Relation to NPL Settlement in Indonesia: There are many obstacles can be found in overcoming NPL in Indonesia's banking practice. These obstacles ranging from the period before the auction to the execution of auctioned goods. The below discussion will further explain such matter. The first obstacle can be found in the period before the auction. The example is on the guaranty provided by the debtor. It is often seen that the third party files for objection over the guaranty as such; therefore, a very long mediation process is needed in its resolution. Another example is the debtor is very uncooperative in resolving the NPL; thus the bank obviously need longer time to resolve its NPL portfolio. Next is the debtor with bad intention. This type of debtors often looks for ways to dodge and procrastinate if the bank invites them to solve the problem.

In the worst case, sometimes the debtors also disappear so their whereabouts are unknown. Bank is expected to settle its credit problem at this stage before an auction is conducted or before a claim brought before the court. It is noted that this stage is a long process that leads to additional cost. The second obstacle can be found at court period. The bank still desires to settle its NPL although it has to go through the court. To avoid the loss, inevitably the bank must get back the funds that have been disbursed through credit in any way, including the court process. NPL will impact the health of the bank itself. In the end, the bank will experience further problems, namely not being able to return the public funds that they have collected. Bank will spend more money because beside official cost there is also unexpected cost in this court process, although in the end it will be borne by the debtor. It could be that, as a result, the amount of debt, interest, penalties and cost of court process will be higher than the value of the sale of guaranty provided by the debtor. Another obstacle is if another party objects the guaranty that is to be executed. This obstacle will further extend the time needed and the cost incurred in this process. The third obstacle can be found at auction period. For example lack of interest from participant or no offer over the auction; therefore the expected best price is not reached. The lack of interest from the participant happens perhaps due to lack of sufficient information to the public, for example the announcement was not made through newspapers or media that was widely seen by the public. In addition, the lack of promotion carried out by the auction institution is also one of the reasons. The last but not least obstacle can be found during the period of the execution of the guaranty with security right attached to it (Imma Indra Dewi Windajani, 2011, p. 129-131). The Parties that have not conducted the execution of security right give privilege to the creditor as well as the executorial title in the Security Right Certificate is not properly utilized by the bank, so there is no fast and cheap execution process. Another example, the debtor does not keep his promise in leaving empty the object of security right. Also, the commitment process over the guaranty with security right is not done perfectly. On the other hand, the parties do not understand the existence of authentic deed in credit commitment. The perfection of an authentic deed lies in its creation process (*verlijden*) that is based on proper and correct requirements. Therefore, there are two main elements must be fulfilled, namely: (1) technical requirements from the bank must be fulfilled correctly as save in; and (2) technical legal requirements in creating notarial deed must be fulfilled as a save out (Ida Bagus Agung Putra Santika, 2018, p.3-4). The auction price formed by the auction official and the price originated from the debtor are incompatible; therefore, the debtor will submit an objection related to the price that will result in the obstruction of the execution of the auctioned object. Resistance from other parties, usually related to the truth of ownership of the auctioned object, also impedes the execution of auctioned object. The majority legal cases handled by the KPKNL are cases against the ownership of auctioned object (KPKNL Denpasar, 2018, p. 2-6). The types of claim that often arise in the realm of auction for execution of security right are as follows: no payment waivers; the debt that has not been due; auction that is legal error in nature and invalid; and the value of the guaranty exceed the amount of the debt.

Conclusion

GCG principles have been regulated in the Laws and Regulations related to auction over guaranty with security right

attached to it. It can be seen in various auction-related legal provisions, for example provisions of property auction, auction procedures, as well as other implementing regulations. There are still obstacles to implement auction over guaranty with security right attached to it in banking sector in relation to NPL problem, ranging from the period before the auction, at Court, at auction, and in executing the guaranty with security right. The government is therefore expected to develop a more varied auction with the implementation and object that are in line with the development of time in the future. Another suggestion is to make bank guarantee as auction bail; therefore, good governance that further improves the quality of services to the community can be achieved. As for the electronic auction, more promotion from the auction institutions is needed so that the auction is more effective and efficient.

REFERENCES

- Adwin Tista, 2013. *Al' Adl*. Volume V No.10.
Auction Instruction/*Vendu Instructie* (stb 1908 No. 190)
CNBC Indonesia.27 Juli 2018.*Wah, Bank-Bank Ini Punya NPL di Atas 5%*
Databox.27 Agustus 2018.*Rasio Kredit Bermasalah 11 Sektor di Atas NPL Perbankan Nasional*. <https://databoks.katadata.co.id/datapublish/2018/08/27/juni-2018-npl-kredit-pemilikan-rukorukan-tertinggi>. Accessed on 10 October 2018
Decree of the Coordinating Minister for Economics, Finance and Industry No. Kep-10/M.EKUIIN/08/1999
Emirzon, J. 2006. Regulatory Driven Dalam Implementasi Prinsip-Prinsip Good Corporate Governance Pada Perusahaan di Indonesia. *Jurnal Manajemen & Bisnis Sriwijaya*, 4(8), 93-114.
Government Regulation No. 44 of 2003 dated 31 July 2003 on Tariff for Non-Tax State Revenues
Government Regulation of the Republic of Indonesia No. 1 of 2013 dated 1 February 2013 on Types and Tariff for Non-Tax State Revenues
<http://bpkp.go.id/dan/konten/299/Good-Corporate.bkp>. Accessed on 10 October 2018
<https://www.cnbcindonesia.com/market/20180727120010-17-25694/wah-bank-bank-ini-punya-npl-di-atas-5>. Accessed on 10 October 2018
Ida Bagus Agung Putra Santika.2018.*Aspek Hukum Perikatan Perjanjian Kredit Dan Jaminan Sebagai Upaya Preventif Dalam Menghadapi Gugatan Atas Pelelangan Jaminan Beditur Bermasalah*. Paper on Panel Discussion of Perbarindo DPD Bali, OJK Denpasar Office
Ignatius Ridwan Widyadharma.1999.*Hukum Jaminan Fidusia*. Badan Penerbit Universitas Diponegoro: Semarang
Imma Indra Dewi Windajani.2011.Hambatan Eksekusi Hak Tanggungan di Kantor Pelayanan Kekayaan Negara. *Mimbar Hukum Edisi Khusus*.November.129-131
Indonesian Civil Code
Indonesian Criminal Code
Indonesian Criminal Procedure Code
KPKNL Denpasar, 2018. *Deskripsi Singkat Penanganan Gugatan Lelang Eksekusi Hak Tanggungan*. Paper on Panel Discussion Perbarindo DPD Bali. OJK Denpasar Office
Law No. 1 of 2004 on State Treasury
Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking
Law No. 19 of 1997 on Warrant Based Tax Collection
Law No. 19 of 2000 on Amendment of Law No. 19 of 1997 on Warrant Based Tax Collection
Law No. 37 of 2004 on Bankruptcy
Law No. 4 of 1996 on Security Right
Law No. 42 of 1999 on Fiduciary Guaranty
Law No. 49 Prp. of 1960 on State Receivables Affairs Committee
Regulation of the Director General of State Assets No. PER-03/KN/2010 dated 5 October 2010 on Technical Guidelines for the Implementation of Auction
Regulation of the Minister of Finance of the Republic of Indonesia No. 93/PMK.06/2010 dated 23 April 2010 on Auction Implementation Guidelines
Regulation of the Minister of Finance of the Republic of Indonesia No. 176/PMK.06/2010 dated 30 September 2010 on the Auction house
Regulation of the Minister of Finance of the Republic of Indonesia No. 45/PMK.06/2013 on the Implementation of the Identifying Service Users Principle for the Auction house
Regulation of the Minister of Finance of the Republic of Indonesia No. 176/PMK.06/2010 of 2010 on Auction house as amended by Regulation of the Minister of Finance of the Republic of Indonesia No. 160/PMK.06/2013 of 2013
Regulation of the Minister of Finance of the Republic of Indonesia No. 106/PMK.06/2013
Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016 dated 22 February 2016 on the Guidelines for Auction Implementation
Regulation of the Minister of Finance of the Republic of Indonesia No. 90/PMK.06/2016 on Guidelines for Auction Implementation with Written Offers Without the Attendance of the Bidder Through the Internet
Regulation of the State Minister of State-Owned Enterprise No. PER-01/MBU/2011 on the Implementation of Good Corporate Governance in State-Owned Enterprise
Siswanto Sutojo & E Jhon Aldridge, 2005. *Good Corporate Governance*.PT. Damar Mulia Pustaka: Jakarta The 1945 Constitution of the Republic of Indonesia
Sukamulja, S. 2005. Good Corporate Governance di Sektor Keuangan: Dampak GCG Terhadap Kinerja Perusahaan (Kasus di Bursa Efek Jakarta). *Benefit: Jurnal Manajemen dan Bisnis* 8(1). 1-25
Tangkilisan, HN. 2003. *Mengelola Kredit berbasis Good Corporate Governance*.Balairung & Co:Yogyakarta
Vendu Reglement Staatsblad of 1908 No. 189
Yahya Harahap, M. 2013.Ruang Lingkup Permasalahan Eksekusi Bidang Perdata. Sinar Grafika: Jakarta
Yunus Adhi Prabowo, 2015. *Peranan Balai Lelang Dalam Eksekusi Hak Tanggungan (Studi Kasus: Bank Mandiri Dan Nisp)*.Thesis. Program Pasca Sarjana Kenotariatan Universitas Pancasila
