



Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia

Muhammad Fadhli¹, Mohd Sadad Mahmud¹, Ahmad Azrin Adnan¹, Abd Jamal²
and Ibraheem Alani AbdulKareem¹

¹ Universiti Sultan Zainal Abidin (UniSZA), Terengganu, Malaysia

² Universitas Syiah Kuala, Aceh, Indonesia

*Corresponding Author Email: mohdsadad@unisza.edu.my

Received: 15th February 2021

Accepted: 4th April 2021

Published: 8th April 2021

ABSTRACT

This article review Islamic law quoted from jurists' opinion and legal experts on the use of auction trading theory in the collateral sale. Every financial transaction in Islamic banking required a guarantee. It is intended to save bank funds if the customer defaults. Based on constitutional act Number 4 of 1996 of mortgage rights, Islamic banks have the right to confiscate the asset (guarantees) of a customer who has reached the due date without intention to pay. However, the bank cannot carry out unilateral execution to make direct sales. The formal procedures which banks must follow to disburse funds from customer guarantees are usually long and often meet various obstacles. This article analyzes normatively and empirically the bail auction guarantees implementation on Islamic banking in Aceh based on the Islamic law concept from the al Quran, Hadith, and the scholars' Ijma'. Although conventional law is still used in the auction rules, the implementation of guarantees as applied to Islamic banking has adopted many Islamic laws. However, in the practice, there are still many problems that arise from the Islamic law scope which uphold the philosophy of maslahah and the concept of justice. The paper, therefore, employs qualitative approach and secondary date to investigate Shariah perspective against execution of collateral auctions on Islamic banking institutions in Aceh, Indonesia.

Keywords: Islamic Law, Execution of Collateral, Auctions, Islamic Banking

 OPEN ACCESS

INTRODUCTION

The relationship between the debtor and the creditor as regards loan is often accompanied by a guarantee. This is done to prevent losses from the creditor due to others default and moral hazard actions from the debtor. With the guarantee system, the creditor has the right to both goods and collateral as they are in the control of the creditor and not for settlement of accounts receivable of debtors (Abdullah, 2010). The conventional banking guarantee system is also applied in the provision of financing facilities in the Islamic banking industry. This is because not all financing goes as expected. Distribution of funding for the activities of the community in the form of financing the economy contains the element of risk of failure or also called Non-Performing Loan (NPL). NPL is the constraints that often arise in the implementation of financing by Islamic banks to customers such as non-current financing, financing that the debtor does not meet the promised requirements, and the financing does not keep the instalment schedule. These things have a negative impact on both parties (debtor and creditor; AbdulGaniyy & AbdulKareem, 2020).

A non-performing loan is a potential loss suffered by the bank in relation to the provision of financing facilities to customers. Such risks can occur at any time (Kodithuwakku, 2015). Therefore, preventive measures in the form of guarantees for financing or credit are obligations that must be done to secure

Islamic bank funds, the majority of which are sourced from third party deposits both juridically and physically (Suyatno, 1999; Errico, & Sundararajan, 2002). As a collateral object that is controlled by the bank as its securities, the bank does have the right to unilateral execution, to seize collateral on maturing financing while the debtor does not have the good faith to pay it off. This is based on Law Number 4 of 1996 concerning Mortgage Rights and Execution of Guaranteed Goods, the creditor can immediately request execution of the collateral object if the debtor customer defaults on paying debts, through auction sales execution (Muljadi, & Widjaja, 2007; Nurul Musjtari, Riyanto & Setyowati, 2018).

Based on the concept of collateral from the perspective of Islamic law, Islamic finance and banking may involve collateral as security to protect themselves against the possibility of customers' default. The concept of collateral is rooted in the idea of al-Rahn (pawn/pledge) in fiqh muamalah, the management of the Shariah-compliant bank as the collateral recipient has the right to sell the collateral if the debtor cannot fulfil its obligations as at when due (Ali, & Nu'man, 2008). There are various verses from Quranic text and Sunnah emphasising on collateral in Sural al-Bakarah verse 283: "And if you are on a journey and cannot find a scribe, then a security deposit (should be) taken". Also, in another hadith of the

prophet (SAW) narrated by Aisha wife of the prophet (PBUH) "Allah's Messenger (PBUH) bought food grains from a Jew on credit and mortgaged his armour to him" (as collateral) (Adamu, 2018). Besides, financial institutions have an essential role in expanding the rate of financial development of the society, particularly Indonesia is the country with the biggest Muslim populace on the planet, which is upwards of 213 million individuals or 87 per cent of the entire populace. Financial institutions are exceptionally close to the country's economic activities, starting from basic financial transactions to extremely complex financial traffic both at the international and local levels. Regarding the quick improvement of Islamic banking and finance in the country as well as one of the backbones of the economy, the development of Islamic finance and banking in the country is faster than in the nations particularly Malaysia (Solihah, Widjajaatmadja & Husaeni, 2019). Currently, Indonesia Islamic banking has increased by 40 per cent in the previous five (5) years. Bank Indonesia hopes that market shares Islamic finance can infiltrate the 30 per cent figure in the long haul, while as of August 2019 the financial of Islamic banks have reached Rp 193.98 trillion, and it is predictable that in a long time Islamic banking can reach 30% contrasted to existing financing. One of the prudential standards in financial governance in the operations of the Bank is the collateral as an assurance of the bank to guarantee that the debtors perform the agreed-upon accomplishments in the agreement. In the Islamic Banking Act No. 21 of 2008 in Article 1 (26) described that "Collateral is an additional guarantee, either in the form of movable or immovable objects

METHODOLOGY

This research is based on the qualitative method that makes use of both primary and secondary sources of information. The primary data source encompasses the expert's views obtained through interview. These experts encompass bankers, Shariah scholars. The respondents are considered appropriate due to their experiences and participation in the topic under the study. According to Obikeze quoted in Biereenu-Nnabugwu (2006), the in-depth interview technique of gathering data supports gaining access to processes, structures and it can eventually lead to the discovery of unexpected phenomenon. While the secondary data source utilized for the study encompass published and unpublished material gathered from archives, library, and search engines such as journal articles, books, policy documents, among others. The population of the study is Islamic banking institutions operating in Aceh. Due to its too wide scope, the authors restrict the population of the study to only three Islamic banks, namely Bank Syariah Mandiri, Bank BRI Syariah and Bank Aceh Syariah. The methodology employed for sample size determination is Non-Probability Sampling techniques with Purposive Sampling namely the sample chosen deliberately with various considerations.

RESULT AND DISCUSSION

Definition of Auction in Positive Law

Generally, the term auction derived from the Netherlands language, *vendu*, or auction officially entered into legislation in Indonesia since the year 1908. That is, with the enactment of *Vendu Reglement* (Auction Regulation, Staatsblad 1908 No. 189) and *Vendu Instructie* (auction instructions, Staatsblad 1908 No. 190). In Article 1 of *Vendu*

that are handed over by the owner of collateral to a Sharia Commercial Bank or Sharia Business Unit (UUS), in order to guarantee repayment of the obligations of the recipient customer". In view of this article, a significant assurance is to ensure the interests of Islamic banks from the actions of debtor client that may be inconvenient to the bank. With the collateral Islamic banks can ensure its interests and interests of the client's creditor can be well protected. The management of the Islamic bank can hold the collateral to cover all bills that an indebted person should pay. On other hand, the guarantee is utilized as a guideline for the Islamic bank to ensure that the customers or debt carry out all their obligations and will be sized by the Bank if the customer default to perform his/her obligation as the time given. With the collateral, the customer will have a determined commitment to carry out his/her duties to the Islamic bank (Disemadi, 2019: Solihah *et al.*, 2019). More so, in certain cases bank as the aggrieved parties cannot immediately seize the object of the customer's guarantee let alone sell it. Banks must take formal procedures in confiscating collateral objects, namely having to go through a long process based on the determination of the court and execution through the auctioneer to utilize the guarantee as a way to pay off the debtor's obligations. In practice, banks often face various obstacles, both from the owner of the collateral object and from another party such as the legal system. Based on the statement of the problem discussed on the implementation of guarantee auction of NPL, this study, therefore, proposes to examine the practice of guarantee auction on NPL according to *fiqh muamalah*.

Reglement, the definition of an auction is the sale of goods in public or the sale of goods that are open to the public (Harahap, 2005). The definition is then clarified in Article 1 paragraph 1 of the Regulation of the Minister of Finance Number 27 / PMK 06/2016:

"Auction is the sale of goods that are open to the public either directly or through electronic media by offering prices verbally and/or in writing preceded by an effort to attract interested parties".

For comparison, the definition of the auction was also formulated by several scientists, including Roel, who stated that auctions or general sales as:

"A series of events that occur when a person wants to sell an item or more, both personally and by means of their power, gives the opportunity to those present to make an offer to buy goods or goods offered until at a time when the opportunity disappears" (Fadhli, 2018; Effendi, 1994).

From this understanding it appears that the auction must meet the following elements:

- a) Auction is a way of sale that is done at a given moment and place.
- b) Implemented by announcing it in advance to collect interested parties or bidders.
- c) Implemented by offering or forming a special price, namely by offering a price orally or in writing that is competitive.
- d) Participants who submit the highest bid will be declared be winners or buyers.

According to article 1 No. 4 and 5 of the Regulation of the Minister of Finance No. 27 / PMK 06/2016 which classified auctions into 2, namely the execution auction and non-execution auction. An execution auction is a general sale to carry out or execute a court decision or determination or documents equivalent to a court decision, such as a Mortgage, Mortgage Right or Fiducia Guarantee. Whereas a Non-Execution auction is a general sale outside the implementation of a court decision or determination consisting of the auction of state property/control and voluntary auction of private property (Anwar, Yaswirman & Ulfanora, 2019; Monica, Djaja, 2020; Trisna, 2016). The Regulation of the Minister of Finance No. 27 / PMK 06/2016 also explains that those who have a position to conduct an auction are the Auction Office, which is the Office of State and Auction Financial Services (KPKNL) whose position is within the Directorate General of State Receivables and Auctions (DJPLN) or Office of the Official Class II Auction (Febrianto & Ayunda, 2020).

Therefore, in some case of guarantee auction execution at NPLs in Islamic banking, bank management cannot immediately sell collateral objects for defaulting customers under their control. Even though the collateral item of the customer has been bound by charging the mortgage. Because banks do not have special powers to carry out auction sales execution of customer guarantees except with voluntary sales made by customers.

Procedure for Auctioning Guarantee Executions on Islamic Banking

Regarding the provisions of the imposition of a security interest in the collateral for loans, the state has issued legal regulations to Act No. 4 of 1996 concerning mortgage rights on land and objects related to land. The law regulates collateral between banks and debtors in debt transactions as well as regulations concerning procedures in the event of default (not paying) if the debtor does not carry out his obligations (Patrik, 2006). The most common utilized collateral is land rights due to the price and value tends to increase. The institutional guarantee considered effective and safe by banking institutions is the underwriting right. This is because it is not difficult to recognize the objective of the underwriting right and also is easy and clear in the execution of its execution. Moreover, it must be paid ahead of time from different bills with the returns from the auction of the underwriting right article and the underwriting certificate has executive power. Based on the abovementioned, it is clear that legitimate security is given to creditors via law act No.4 of 1996 concerning mortgage (Andara, Dewi, & Ramadhan, 2020). In practice, if the debtor customer is in arrears to the stage of bad credit, then the bank will send a warning letter to the debtor customer to carry out his obligations in instalment payments as agreed. The warning is usually submitted at least 3 (three) times to meet the conditions for the default of the debtor.¹

If a bank has sent a warning letter but the debtor does not also make payment of his obligations, then the Bank through the

legal provisions as contained in Article 6 and Article 20 of the Indonesian Law No. 4 of 1996 concerning Mortgage Rights, will conduct an auction process against debtors guarantees. The Bank submits an application for the Mortgage Guarantee to the KPKNL (Service Office for State Assets and Auctions) which is one of the work units at the Directorate General of State Property of the Republic of Indonesia's Ministry of Finance.² When the KPKNL acts as a facilitator for the auction, the basis of the legal rules used in Article 14 of the Indonesian Law No. 4 of 1996 concerning Mortgage Rights which implies that the holding of mortgage rights has the same executive power as the court's legal decision that has permanent legal force (*inkracht van gewijsde*).³

KPKNL is only authorized to conduct the auction as requested by the creditor after being equipped with requirements such as documents that must be included in the application. If the application for the auction has been completed by the creditor and are in accordance with the provisions established, the auction process can be carried out in accordance with applicable regulations. For processing auction applications, the head of KPKNL or class II auction officials must examine auction documents and formal legal requirements subject and the object of the auction. The head of the KPKNL or class II auction official must also refuse if the auction requirement document is incomplete or does not fulfil the formal legality as the subject and object of the auction. The auction requirements document is:

- a) Photocopy of the seller's appointment decision, unless the auction applicant is an individual or an agreement/power of attorney to appoint the auction hall as the seller.
- b) List of items to be auctioned.
- c) Letter of approval from the dependent rights holder, in the case of the auction object in the form of land and/or buildings with ownership rights documents for building or use rights on the land.
- d) Written information needed for submission/deposit of net auction results.⁴

Moreso, the requirements document that must be attached to the execution auction according to Article 6 of the Mortgage Rights Act (UUHT) consists of:

- a) Copy of credit agreement.
- b) Photocopy of mortgage certificate and deed of mortgage right.
- c) Photocopy of land certificate burdened with mortgage rights.
- d) Photocopy of debtor details/debtor's liability that must be paid.
- e) Photocopy of proof that the debtor defaults, among others in the form of warning letters.
- f) Statement from the creditor as an auction applicant whose contents will be responsible if there is a civil claim and/or criminal claim.
- g) Photocopy of notification letter of the plan for auction implementation to the debtor by the creditor, which

¹ Interview with Miftahuddin, Deputy Head of Bank Aceh Syariah Branch Meulaboh.

² A copy of Regulation of the Director General of State Assets number 2 / KN / 2017 concerning Technical Guidelines for Implementation of Article 2 and Article 3

³ Interview with Zulfahmi, Area Collection and Recovery Manager of Bank Syariah Mandiri.

⁴ A copy of Regulation of the Director General of State Assets No. 2 / KN / 2017 concerning Technical Guidelines for Implementation article 5

is submitted to KPKNL before the auction is carried out.

- h) Letter of a statement from the creditor that the content states that the limit value is determined based on the assessment result from the seller by mentioning the name of the appraiser, number and date of the appraisal report.⁵

Based on the requirements of the auction request above, the receivables that must be submitted to KPKNL are the state of bad debts and the amount which is definitely legal. So before that, the Bank must have carefully researched the amount of bad credit and the physical condition of collateral and/or debtor/debt guarantor assets. So before handing over problem loans to KPKNL, the Bank must first attempt to collect and if it does not succeed, the credit submitted to the KPKNL must be in the form of bad credit.⁶

The Law of Auction According to Fiqh Muamalah

Auction in fiqh muamalah is categorized as a form of selling transaction, but there are general differences. In selling transaction, there is the right to vote, can be exchanged in public and vice versa, while the auction does not have the right to vote, may not be exchanged in public, and the implementation is carried out specifically in public (Ahmad, 2004). Selling auction models (*muzayadah*) in Islamic law is *mubah* (permissible). Buying and selling by auction do not include the practice of usury even though it is called *al-bai' muzayadah* from the word *ziyadah* which has additional meaning as the meaning of usury, but the additional understanding here is different. In the *muzayadah* increased is a more price offer in the sale and purchase agreement made by the seller or if the auction is carried out by the buyer then the increase is the decrease in the offer. Whereas in the practice of usury the additional in question is an addition that is not agreed upon in advance in the loan and borrowing contract of money or other usury goods (Ibnu Rusyd, 1992).

It's was mentioned by prophet Muhammad saw:

عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ ، قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : " مَنْ يَشْتَرِي هَذَا الْجِلْسَ وَالْقَدَحَ ؟ فَقَالَ رَجُلٌ : يَا نَبِيَّ اللَّهِ ، أَنَا أَخْذُهُمَا بِدِرْهَمٍ ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : مَنْ يَزِيدُ عَلَيَّ دِرْهَمٍ ؟ فَقَالَ رَجُلٌ : أَنَا أَخْذُهُمَا يَا نَبِيَّ اللَّهِ بِاثْنَتَيْنِ ، قَالَ : هُمَا لَكَ

Meaning:

"From Anas, he said, the Messenger of Allah sold a saddle and a bowl of water saying who would buy this saddle and bowl? A man replied I was willing to buy it for one dirham. Then the Prophet said again, who dares to add? So, a man gave him two dirhams, then sold the two items to the man." (At-Tirmizi)⁷

Analysis of Islamic Law on the Execution of Auction on Islamic Banking

In Islamic legal literature, the sale of collateral objects carried out by financial institutions that provide loans to debtors without their knowledge is not permitted. According to the *fuqaha*, this application can be carried out in two modes where

the debtor postpones the payment of his debt obligations and the amount of the creditor's debt can be covered if the object is sold. According to Muhammad and Abu Yusuf (classical economists) allowed to sell assets (object of the mortgage) of the debtor if the *qadhi* (judge) had issued a ruling on this matter and no reason was found to delay the sale. In all cases the sale must be made with the approval of the *qadhi* and attended by the parties in the market of goods to be sold, the sale can also be done by auction or get the highest possible price in accordance with the market price at the time of the auction (Az-zuhaili, 2011). According to the description above, the payment of debts decided by *qadhi* by selling collateral objects that are on the creditor to pay off debtor debts by force or not, is permissible in Islamic law, because this is the most important rules in the court system to protect the benefits and rights of parties, and the creditor. The sale of the item is in accordance with the auction conducted at this time, in which the sale decided by the *qadhi* in accordance with law is called the execution auction. The provision for the auction of collateral in *fiqh muamalah* is almost the same as the practice of auctions conducted by Islamic banking institutions in Aceh through KPKNL. Although the law used is still conventional, but the implementation of the auction for the customer guarantees in Islamic banking institutions in Aceh has adopted many Islamic law values. Nonetheless, in practice, both the KPKNL and the bank management still face various kinds of problems in the execution of the auction. These constraints can affect the implementation of auction sales and the results of auction sales.

Obstacles in auction execution

Based on the results of the research, the authors found various kinds of problems in terms of the auction execution of this guarantee, among others as follows:

- a) Disagreements regarding the auction price limit
Problems regarding auction price limits are one of the problems that are often encountered when an auction of execution is to be carried out. The debtor customer as the owner of the collateral object feels that the collateral object is sold at a price limit below the market price so that it is detrimental to the customer. Actually, an analysis of the price of the object of the customer guarantee has been carried out when binding the deed of rights before the funds are disbursed. However, this problem can be caused by several things, among others because there is a deliberate element of the customer itself, such as the condition of the collateral has been damaged and is no longer perfect as at the time of the mortgage agreement. Natural factors are also the cause of the decline in the price value of collateral objects, such as places and areas that are often flooded, and others. Besides that, it could be as a result of an error from the asset assessment team, an error in giving the license, or the expertise in assessing the price of an object is not yet right.
- b) Resistance to the auction execution

⁵ A copy of Regulation of the Director General of State Assets No. 2 / KN / 2017 concerning Technical Guidelines for Implementation article 6.

⁶ Interview with Febriano Iriawan Ishaq, auction service section on KPKNL.

⁷ Quoted from Sohari Sahrani, Ru'fah Abdullah, Fiqh Muamalah, (Bogor: Ghalia Indonesia, 2011), page 80

According to Harahap (2005) in the case, the purpose of resistance against the execution submitted by the executed party is to:

- i) Postpone the execution,
- ii) Cancelling execution with the stated decision about to be executed non-binding,
- iii) Decrease the value of the number to be executed.

But of all these objections, not all resistance submitted by the executable party can be granted. Nevertheless, it is permissible to postpone execution if the execution resistance uses reasons that can be applied casuistically. If the factual and fundamental reasons are found in the resistance, the Chairman of the Court may grant a stay of execution until the decision of the resistance gains permanent legal decision. Conversely, if resistance is executed at all has an underlying reason, it is forbidden to grant a stay of execution.

c) Debtors do not want to vacate the mortgage
Mortgage Rights Act made it clear that the debtor must discharge their dependence right on a security object at the time of default and when the auction was about to be executed. But in reality, there are still many debtor customers who still occupy the collateral object and are reluctant to make it vacant.

d) Lack of buyers
Another problem that is often encountered when auction execution is the lack of buyer interest, this can be caused by internal factors or external factors. Internal factors are still a dispute when the collateral object is auctioned, so buyers are more careful to buy the auction object that is still in dispute. Among the disputes that often arise are as the author has described above, namely, the debtor does not want to discharge the mortgage and the auction execution still occurs resistance from the debtor. While external factors are the economic condition of the people who are still in difficult economic conditions, so they do not have the ability to buy the object of the auction.

e) Analysis of Islamic Law Against Obstacles to Execution Auction
As a system of life, Islam gives honour to every dimension of human life, including the world of economics. The Islamic economic system seeks to bring alive economic values with the values of faith or ethics. That is, economic activities carried out by humans are built with the dialectics of the value of materialism and spiritualism. The economic activities carried out are not only based on material values, but there are transcendental supports in them so that it will be worth worshipping. Besides, the basic concepts of Islam in *muamalah* (economic) activities are also very concerned with the values of humanism.

Ulama and the *fuqaha* have agreed that the law of every *muamalah* transaction is basically *mubah* (permissible) as long as there is no text which prohibits it. The *fiqh muamalah* asserts that human connection is set with each other both in terms of law and justice personally, society, economics law, international law, criminal law, family law among others. But other principles of *muamalah* must also be applied in every

transaction in Islamic banking. The following are other basic principles that must be applied in *muamalah* transactions:

a) Realizing the benefit

Generally, the meaning of *maslahah* (Public Good) is to maintain the goal of shariah and to gain benefits/avoid harm. According to Dahlan (2010), one of the advantages of Islamic economic theory is that it makes moral a major variable. Therefore, *maslahah* is a goal that must be conveyed in every economic transaction. The execution of the auction of collateral goods carried out in Aceh actually has an element of *maslahah* for both the debtor (customer) and the creditor (Islamic bank). *Maslahah* for the creditor is the ability to withdraw funds quickly and cover losses from the customer's bad debts. Likewise, for the debtor, the auction sale guarantee is the last alternative for him to be able to pay off his debt arrears because the debt is an obligation that must be repaid immediately. But the obstacles that occur in its implementation can obscure the value of the *maslahah*. This is because it can affect the process of conducting auction sales and harm some parties involved in the transaction.

b) Maintain the values of justice

Islam is the complete code of subsistence, existence and the method with more importance on future strategy. It does not just comprehend the need of how to run the financial system of the nation but weights on the need for execution of equity and justice in the right sense and at right time. It places more noteworthy significance on accomplishing harmony through the methods of justice for the populaces of the earth (Sofi & Nika, 2016). The magnitude of maintaining justice in our lives is to confirm equality for all to reach good accomplishment and economic wellbeing. Islamic system tries to realize the principle of justice in daily economic activity by discarding secular and sacred compartmentalization (Baidhaw, 2012). Justice is objectives to be realized by all legal, means. In Islamic law, justice directly is the command of Allah. Which Allah said:

"O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do." (QS: Al-Maidah: 8).

This concept must also be applied in the execution of the auction. Justice issued in the auction is the price limit which should be sold in accordance with the auction price. The nice thing is that no party feels tormented from the auction execution.

CONCLUSION

In any financing activity, the management of Islamic banks always requires customers to include the collateral for the financing. Third-party guarantee and collateral both serve the same objective forms of financing as security for Islamic finance and banking require from the customers during the documentation process before funding. This prerequisite is utilized as a support document to fall upon in the event of a transaction or borrowers' inability/default to fulfil commitments. In Islamic banking, customer's are motivated towards prompt repayment obligations. To feel secured from possible default,

Islamic financial institutions can hold important assets title and other forms as assurance such as liquid asset, gold, land title and other valuable properties. If customer financing runs smoothly until the repayment stage, the collateral items will be returned to the customer. However, if the customer defaults, does not fulfil the promise in accordance with the contract, and does not pay off the obligation, the collateral will be sold through auction sales at the KPKNL as the official institution in charge to conduct the auction transaction. Money from the auction sale is used to cover the remaining debt obligations of the customer to the Islamic bank. The rest will be returned to the customer. The legal provisions concerning this execution auction are law number 04 of 1996 concerning mortgage Rights and Regulation of the Minister of Finance Number 27 / PMK 06/2016 as implementing regulations. Although it still uses conventional legal rules, in practice the law has adopted a lot of Islamic law and in accordance with the concept of fiqh muamalah. However, the auction of the guarantee in its implementation often encounters various obstacles that interfere with the execution of direct and indirect executions. These obstacles obscure Islamic values that uphold the concept of welfare and justice.

REFERENCES

- Abdullah, M. (2010). *Hukum Perdata Indonesia*. Bandung: Citra Aditia Bhakti.
- AbdulGaniyy, A., & Abdulkareem, I. A. (2020). Islamic Banking and Global Financial Crises: A Review of Liquidity Risk Management. *Islam Universalia, International Journal of Islamic Studies and Social Sciences* 2(1), 153-170.
- Adamu, I. Y. (2018). Idea of Collateral and Guarantor in Islamic Bank Financing. *SEISENSE Journal of Management*, 1(5), 49-57.
- Ahmad, A. (2004). *Fikih Lelang Perspektif Hukum Islam Dan Hukum Positif*. Jakarta: *Kiswah*.
- Ali, H. Z., & Nu'man, B. (2008). *Hukum gadai syariah*. Sinar Grafika.
- Andara, D., Dewi, I. K., & Ramadhan, F. M. (2020). Legal Protection of Customers in Credit Agreements with Collateral of Land Rights. In 1st Borobudur International Symposium on Humanities, Economics and Social Sciences (BIS-HESS 2019) (pp. 1061-1066). Atlantis Press.
- Anwar, M., Yaswirman, Y., & Ulfanora, U. (2019). Dispute Resolution of Shariah Economy in Murahabah Financing Contract in Sahabat Mitra Sejati Cooperatives. *International Journal of Multicultural and Multireligious Understanding*, 6(3), 72-78.
- Az-zuhaili, W. (2011). *Al-Fiqh Al-Islami wa Adillatuhu*. Jakarta: Gema Insani dan Darul Fikr.
- Baidhaw, Z. (2012). Distributive principles of economic justice: an Islamic perspective. *Indonesian Journal of Islam and Muslim Societies*, 2(2), 241-266.
- Biereenu-Nnabugwu, M. (2006). *Methodology of Political Inquiry: Issues and Techniques of Research methods in Political Science*. Enugu: Quintagon Publishers
- Dahlan, A. R. (2010). *Ushul Fiqh*. Jakarta: Amzah.
- Disemadi, H. S. (2019). Risk Management In The Provision Of People's Business Credit As Implementation Of Prudential Principles. *Diponegoro Law Review*, 4(2), 194-208.
- Effendi, P. (1994). *Peraturan Lelang*. Jakarta: Esa Study Club.
- Errico, L., & Sundararajan, V. (2002). Islamic financial institutions and products in the global financial system: Key issues in risk management and challenges ahead. International Monetary Fund, IMF Working Paper
- Fadhli, M. (2018). Tinjauan hukum islam terhadap eksekusi lelang jaminan pada institusi perbankan syariah di Febrianto, S., & Ayunda, S. D. (2020). The Implementation of Execution Auction by Creditors on Debtor Rights Guarantee in the Office of State Assets and Auction Services (KPKNL) in Indonesia. *International Journal of Innovation, Creativity and Change*, 10(5), 104-122.aceh. At-tasyri', 39-50.
- Harahap, M. Y. (2005). *Ruang Lingkup Permasalahan Eksekusi Bidan Perdata (kedua)*. Jakarta: Sinar Grafika.
- Ibnu Rusyd. (1992). *Bidayatul Mujtahid Juz II*. Lebanon: Beirut.
- Kodithuwakku, S. (2015). Impact of credit risk management on the performance of commercial banks in Sri Lanka. *International Journal of Scientific Research and Innovative Technology*, 2(7), 1-6.

- Nurul Musjtari, D., Riyanto, B., & Setyowati, R. F. (2018). Parate Execution in Disputes Settlement of Financing Contract with Mortgage Guaranteed On Islamic Banking Practices. *E&ES*, 175(1), 012187.
- Patrik, P. (2006). *Hukum Jaminan, Edisi Revisi dengan UUHT (Undang-Undang Hak Tanggungan)*. Semarang: Fakultas Hukum Universitas Diponegoro.
- Monica, A., & Djaja, B. (2020). Legal Consequences of Auction of Mortgage Right With Lower Limit Value Than the Value of Property Appraisal by the Appraisal Team (Study of Jakarta High Court Decision Number 516/PDT/2017/PT. DKI). In *The 2nd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2020)* (pp. 165-170). Atlantis Press.
- Muljadi, K., & Widjaja, G. (2007). *Seri Hukum Harta Kekayaan: Hak Istimewa. Gadai, dan Hipotek*. Kencana, Jakarta.
- Sofi, S. A., & Nika, F. A. (2016). Concepts of social justice: An Islamic perspective. *European Journal of Business and Management*, 8(4), 19-31.
- Solihah, C., Widjajaatmadja, D. A. R., & Husaeni, U. A. (2019). The Element of "Injustice" in The Process of Executing The Auction of Collateral Items From The Murahabah Financing Contract at Shariah Commercial Bank. *Justicia Islamica*, 16(2), 343-366.
- Suyatno, T. (1999). *Kelembagaan Perbankan*. Jakarta: Gramedia.
- Trisna, Y. (2016). *Analisis Yuridis Eksekusi hak Tanggungan (studi kasus perkara perdata no. 38/pdt. G/2012/pn. Pbr)* (Doctoral dissertation, Universitas Andalas).