

Legal Protection Of The Execution Of Liability Auction

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Abstract

Legal protection for the winner of the auction for the execution of mortgage rights in the event that the auction object is blocked by the National Land Agency is also to find out the reasons why the Jakarta National Land Agency is willing to request a third party to block the auction object for more than 30 days. This study uses a normative juridical approach, the results obtained that Legal protection for auction winners for execution of mortgage rights in the event that the auction object is blocked by the National Land Agency. Very weak, as in this case the auction winner cannot do anything except just wait for the Court's decision to finish. The responsibility of the auction official (KPKNL) for the blocking of the auction object does not exist at all, it even seems to be hands off and blames the Land Office because according to the auction official what is written in the Minister of Finance Regulation number 93 / PMK.06 / 2010 which has been updated number 27 / PMK / 06/2016 has been implemented according to the provisions, there is no responsibility to take care of whether the auction object is blocked or not

Keywords: *Execution; Legal Protection; Mortgage Right;*

1. Introduction

In order to achieve the objectives of Indonesia's national development, namely to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, it is necessary to carry out development in areas such as social, cultural, legal and political, including in this case as well. development in the economic field. In the implementation of development in this economic sector, the capital factor is a requirement that has a very important role.¹ Indonesian people in developing their economic life still need capital. In today's economic development, there are many ways to get what you want, especially for entrepreneurs and people who work in industrial environments, where they are still in the stage of increasing their business,

1. Adrian Sutedi, *Hukum Hak Tanggungan*, Sinar Grafika, Jakarta, 2010, page. 2

so that the capital or financial side becomes the main problem.²

One of the financial institutions that can help provide solutions to these capital problems is banking. In Article 1 point 2 of Law Number 10 Year 1998 concerning Banking, it is stated that: "A bank is a business entity that collects funds from the public in the form of savings and distributes it to the public in order to improve the standard of living of the people at large." The daily activities of the bank in general always try to collect as much funds as possible from the public in the form of deposits, and then manage these funds to be channeled back to the community in the form of loans or credits. To be able to carry out the provision of credit, there must be an agreement or agreement between the bank as a creditor and the customer receiving the credit as a debtor which is called a credit agreement. In providing credit to the public, banks must feel confident that the funds lent to the public will be returned on time with the interest and on terms agreed upon by the bank and the customer concerned in the credit agreement. In making a credit agreement, banks generally will not just give credit without paying attention to the collateral provided by the debtor to guarantee the credit obtained.³

Credit is defined as trust. Likewise in Latin, credit "Crederere" means to believe, the meaning of trust for the lender is that he believes in the recipient of the credit that the credit he has distributed will definitely be returned in accordance with the agreement. Banking credit, which is one of the business activities of conventional banks, has helped many people. This is because banks have a strategic role as driving the national economy through an intermediary function, namely collecting and channeling funds. The principles of providing credit in banking or non-bank financial institutions still refer to the banking rules in the analysis the analysis team provides for the term 5 C Analysis; (1) Character, (2) .Capacity, (3) Capital (4) Collateral (5) Condition.

In connection with the Collateral, namely the collateral that is collateralized, the mortgage is one of the types of material collateral bonds in the Bank's credit guarantee which is secured by a credit agreement in advance as a credit agreement between creditors and debtors. Security rights are collateral rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, as well as other objects which are an integral part of the land which is guaranteed.

For certain debt repayment which gives priority to certain creditors over other creditors. Article 14 paragraphs (1), (2) and (3) of Law Number 4 of 1996 concerning Mortgage, essentially emphasizes that the Certificate of Mortgage which contains irah-irah With the word "For the sake of justice based on Almighty God" has the same executorial power. with a court decision that has

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2. Desiana Mulyawardani, *"Perlindungan Hukum Terhadap Pemenang Lelang Eksekusi Hak Tanggungan Berdasarkan Pasal 6 Undang-undang Nomor 4 Tahun 1996 (Studi Di Kantor Pelayanan Kekayaan Negara dan Lelang Semarang)"*, Artikel Program Pascasarjana Universitas Diponegoro Semarang, 2012, page. 1.
 3. Munir Fuady, *Hukum Perkreditan Kontemporer*, Citra Aditya Bakti, Bandung, 2002, page. 21-22.

obtained permanent legal force.

For auction, the execution according to Article 6 of the Law on Mortgage is carried out by the State Wealth and Auction Service Office as the auction organizer. The State Wealth and Auction Service Office will act as an intermediary for bank credit creditors who will sell the object of mortgage to the prospective buyer who offers the highest purchase price. Finally, the auction official endorses the highest bidder as the winner of the auction for the object of mortgage, which must receive legal protection in the form of legal certainty that the goods he bought through auction will immediately get physical and material rights over the goods.⁴

In practice, often the execution of the mortgage guarantee does not always provide legal protection to the auction buyer of the mortgage object, one of which is that the auction buyer cannot enjoy his right to the object of the auction because of a lawsuit over the execution of the object of mortgage in the form of a lawsuit against the auction buyer, so that the object execution auction of mortgage rights cannot be carried out.

Regulation of the Minister of Finance Number 93 / PMK.06 / 2010 which has been updated Number 27 / PMK / 06/2016 concerning Instructions for Conducting Auctions Article 1 paragraph (1) states that the definition of auction is: "Sales of goods which are open to the public with a written price offer and / or verbally increasing or decreasing to reach the highest price preceded by an auction announcement "

In each auction activity an auction report will be made. Article 35 Vendu Reglement regulates that the auction minutes are the same as the auction minutes which become the authentic basis for the auction sale so that means without the auction minutes, the auction sale is considered invalid. An execution auction is a general sale to implement or execute a court decision or order or documents that are equated with court decisions, such as mortgages, mortgages and fiduciary security.⁵

Minutes of the auction will be given after the auction process and obligations have been fulfilled, so the auction holder / buyer can immediately submit the name of the auction execution object to the Land Office. However, not a few auction winners have not been able to change their names or control the results of the auction they have won, or the land being auctioned for reasons is still controlled by the collateral owner or the owner of the goods (not yet vacated) and there are indications of resistance from the owner or owner of the goods.

The reason for this execution is because the debtor is default or unable to fulfill his performance on time. This execution often creates problems both after conducting the auction

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4. Mohammad Algifarri Sukmaya, Lastuti Abubakar, Tri Handayani, Perlindungan Hukum Bagi Pemenang Lelang Objek Hak Tanggungan Dalam Hal Eksekusi Terhalang Oleh Gugatan Ditinjau Dari Hukum Jaminan, *Jurnal Ilmiah Galuh Justisi*, Volume 8 Nomor 2- September 2020, page.204-229
 5. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Edisi ke-2, Sinar Grafika, Jakarta, 2009, hlm.116

or before the auction takes place. This resulted in the execution of the collateral right to be protracted for years. Whereas the Mortgage Law has given priority to certain creditors over other creditors. With the protracted execution of the mortgage guarantee, there is no legal protection for the auction winner that he will get the object of auction of mortgage rights, both physically and in material rights of auction results. In fact, this can result in no legal certainty in banking credit activities and on a national scale it can disrupt national economic growth. In addition, the duration of the execution of the mortgage guarantee is contrary to one of the characteristics of the mortgage rights stipulated in the Mortgage Rights Law, namely, it is easy and sure to carry out the execution, if the debtor is in default.

The purpose of this research is to find out and analyze Knowing and analyzing legal protection for the auction winner for the execution of mortgage rights in the event that the auction object is blocked by the National Land Agency and analyzing the responsibility of auction officials for the blocking of auction objects by the National Land Agency.

2. Research Method

The method used in this study is a normative juridical research method, namely research that emphasizes the use of secondary data from written legal norms and is supported by interviews with informants and informants. The approach from the point of view of the rules and implementation of the prevailing regulations in society is carried out by examining secondary data first, then followed by conducting research on primary data in the field.⁶

The consideration used in determining the type of this research is an analysis of the provisions in Indonesian positive law governing the auction whether it has provided legal protection to the auction winner for the execution of the mortgage over control of the auction object. The research approach used in this research is the statute approach and the case approach. The statute approach is used to examine how legal protection for the auction winner executes the mortgage rights over control of the auction object as regulated in Indonesian positive law as well as in terms of auction minutes.⁷

3. Result and Discussion.

1. Legal Protection Against Auction Winner Mortgage Execution in the Object of the Auction

Legal protection according to the Indonesian dictionary means things (actions) to protect, while what is meant by law is the entire collection of rules or principles in a common

6. Sri Mamudji, et al., *Metode Penelitian Hukum dan Penulisan Hukum*, cet. 1, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, 2005, page. 22.

7. Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang, 2011, page.57

life; the whole rules regarding behavior that apply in a life together which are enforced with a sanction. Legal protection is the protection of dignity and dignity, as well as recognition of human rights owned by legal subjects based on legal provisions and arbitrariness or as a collection of rules or rules that will protect one thing from other things.⁸

According to Sudikno Mertokusumo, in rights there are four elements in legal protection, namely legal subjects, legal objects, legal relationships that bind other parties with legal obligations and protection. Property rights have a subject, namely the owner, on the other hand everyone is obliged to respect the relationship between the owner and the object he owns.⁹

From the above description, it appears that law enforcement by law enforcement officers is very important so that the law can function to regulate people's lives, protect and secure the interests of the community. In society there are often conflicts or conflicts of interest. Furthermore, Sudikno Mertokusumo stated, among others: Law regulates legal relations, legal relations consist of bonds between individuals and society and between individuals themselves. The bond is reflected in rights and obligations. The order created by the law only becomes a reality when the subject is burdened with rights and burdened with obligations. There is no right without obligation, on the other hand there is no obligation without rights. Rights are interests protected by law, while interests are demands of individuals or groups that are expected to be fulfilled. In essence, the interest contains the power guaranteed and protected by law in exercising it.

Legal protection is one of the elements contained in rights (interests / demands of individuals or groups to be fulfilled), so legal protection is an action that is expected to protect the fulfillment of rights. There are two kinds of legal protection for the people, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent disputes while repressive legal protection aims to resolve disputes.

Sarana Perlindungan Hukum Represif di Indonesia diwujudkan ke dalam bentuk:

a. Courts within the General Court

At this time in practice, if there is an unlawful act committed by the authorities, it will be submitted to the General Court.

b. Government Agencies which are Administrative Appeal Institutions

The definition of legal protection for the people through government agencies which are administrative appeals institutions is a request for an appeal against a government act by a party who feels aggrieved by the action to a higher hierarchical

8. Yelina Rachma Pranamawati, Arief Suryono, Perlindungan Hukum Pembeli Lelang Terhadap Pelaksanaan Eksekusi Hak Tanggungan Yang Risalah Lelangnya Dinyatakan Tidak Sah Dan Tidak Mempunyai Kekuatan Hukum Mengikat oleh Pengadilan, *Repertorium*, Vol 5 No 1 2018, page, 220-235
9. Sudikno Mertokusumo, *Mengenai Hukum (Suatu Pengantar)*, Liberty, Yogyakarta, 1986, page.37

government official or to a government official other than the one who committed the action. The government agency that receives the appeal is authorized to change and even cancel the governmental act.

The principle of legal protection for the Indonesian people rests on Pancasila which is the basis of the philosophy and ideology of our country. By using the Western conception as a framework based on the foundation of Pancasila, the principle of legal protection for the people (in Indonesia) is the principle of recognition and protection of human dignity which is rooted in Pancasila and the principle of a rule of law based on Pancasila.

Recognition and protection of human dignity is said to be rooted in Pancasila because recognition and protection of it is intrinsically inherent in Pancasila and gives a state of law color and style based on Pancasila.

Legal protection for the auction winner is manifested in 3 forms, namely:

a. Minutes of the Auction

Minutes of auction or auction minutes contain all events that occur in the auction sales procession and must be made in each auction activity. Article 77 and clarified 78 to 88 Regulation of the Minister of Finance Number 93 / PMK.06 / 2010 concerning Guidelines for the Implementation of Auctions states:

- a. Auction Officer conducting an auction is obliged to prepare an auction report called Minutes of Auction.
- b. Minutes of the Auction consist of:
 1. The Head;
 2. Body Parts; and
 3. Foot Bag;
- c. Minutes of the Auction are made in Indonesian sentences
- d. Each Minutes of Auction is assigned a serial number.

Article 77 of the Auction Regulations states that the auction official shall be the auction official who is assigned to produce minutes of auction. One of the important functions of a deed is as a means of proof. An authentic deed is a perfect proof tool for both parties and their heirs as well as all the people who get rights from it.

b. Technical Guidance Number 05 / Juknis / D.V / 2007 concerning the Mediation Implementation Mechanism

In addition to dispute resolution through court / litigation, the national legal system is known for dispute resolution through non-judicial / non-litigation institutions as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. One alternative dispute resolution is resolved through a mediation process which is a settlement process based on the principle of a win-win solution which is expected to be satisfactorily resolved and accepted

by all parties.

c. Lawsuit

The plaintiff is a person / legal entity whose interest is in the form of ownership of the auction object being harmed by the auction including the debtor, third party owner of the goods, heirs, one of the parties in the inheritance, the auction buyer. The defendants in the above case include Creditors Bank, PUPN, auction offices, auction buyers, debtors who pledge guarantees from other parties related to legal actions contained in the tender requirements documents, including the Land Office issuing certificates, notaries holding guarantee binding. The main basic principle that is important in our civil procedural law is the principle of point d'internet point of action, which means that anyone who has an interest can file a claim for rights or a lawsuit.

With the explanation above, it can be said that there is no real legal protection for the auction winner at this time, such as in the case of blocking the process of transferring name which was blocked, the Indonesian Land Office did issue Technical Guidance Number 05 / Juknis DV / 2007 concerning the Implementation Mechanism. Mediation is used to resolve disputes in the land sector, but there are several shortcomings when it is related to legal protection for the auction winner for the execution of Mortgage Rights, namely:

- a. The Land Office has a mediation agency to resolve disputes, but it turns out that not in all disputes this mediation institution is applied, because in the case the researcher wrote, the Land Office did not mediate. The Land Office is passive because it feels there is no obligation to mediate unless the parties wish it.
- b. Mediation can last more than 30 days, even for an unknown period of time.

From the results of the discussion, it can be concluded that the winner of the auction who has carried out all of his obligations, it turns out that the right to reverse the name of the object of the auction for the execution of the Insurance Rights that has been won is not certain. There are several provisions that actually protect the interests of the auction winner, namely Article 126 of the Regulation of the Minister of Agrarian Affairs No.3 of 1997. Technical Guidance Number 05 / Juknis / D.V / 2007 concerning the Mechanism of Implementing Mediation, Minutes of Tender, and filing of Lawsuits that can be filed by the Auction Winner. However, it turns out that this provision could be overridden by the Land Office, causing obstruction of the interests of the auction winner.

These provisions should be given more attention and become the main consideration by the Office of Defense in deciding whether a land object will be blocked or not. The Land Office should not only provide information that the land is blocked if there will be a process of changing the name, but if there are demands from a third party and the land object is blocked, the Land Office should immediately notify KPKNL to forward it to the auction winner. In addition, an additional regulation should be made that regulates what steps the injured

party can take if there is a block.

2. Responsibilities of Tender Officials for Blocking the Object of the Auction

Business dynamics with ups and downs have an impact on the sustainability of a contractual relationship, as in this case the authors highlight banking contracts / agreements; what is projected to be smooth, profitable, satisfying, but what is the power of a business prospect that is expected to be bright can sometimes turn out to be loss and break the relationship between the parties in a contract. Contracting parties always expect their contract to end with a 'happy ending', however, it turns out that the contract may encounter obstacles and even lead to contract failure which results in disputes and conflicts on the part of the parties.¹⁰

In a credit extension, the bank or the lender always hopes that the debtor can fulfill his obligation to pay off on time the credit it has received. In practice, not all loans that have been issued by the bank can run and end smoothly. There are also many non-performing loans caused by the debtor being unable to pay off his credit on time as agreed in the Credit Agreement between the debtor and the banking company. The things that cause non-performing loans, for example because the debtor is unable or because of a business decline and business failure which results in reduced business income of the debtor or indeed the debtor does not want to pay because the debtor's character is not good.¹¹

Article 1 paragraph 14 of the Regulation of the Minister of Finance number 27 / PMK.06 / 2016 concerning Instructions for Implementation of Tender referred to as Auction Officer. Person who based on statutory regulations are given special authority to carry out the sale of goods by auction. Article 1, paragraph 1, which reads as Class I Auction Officials are auction officers who are employees of the Directorate General of State Assets, namely Compulsory, and have the authority to carry out the Execution Auction, Voluntary Non-execution Auction.

At this stage, the tender application is carried out in writing to the head of the KPKNL by attaching the tender requirements documents, determining the place and time of the auction, determining auction conditions, implementing announcements, requesting a Land Certificate and depositing a security deposit. Selling by auction submits a written bid application letter to the head of the state assets service office and auction or the head of the Auction Hall, enclosing the tender requirements documents. The request letter is forwarded by the head of the auction hall to the Class II Auction Official or to the Head of the state assets and auction service office to request a schedule for the implementation of the auction. The State Wealth and Auction Service Office may not refuse the auction application submitted to it as long as the

10. Lusya Sulastris, Konstruksi Perlindungan Hukum Debitur dalam Penyelesaian Kredit Bermasalah Dengan Pelaksanaan Lelang Jaminan Hak Tanggungan, *Jurnal Pembaharuan Hukum*, Volume 2 No. 1 Januari-April 2015, page.86-101

11. *Ibid.*

tender requirements documents are complete and have met the legality of the auction subject and object.

The role of auction institutions in our statutory system still seems relevant. This is proven by the functioning of the auction to support law enforcement efforts in civil law, criminal law, tax law, state administrative law, and state asset management law.¹²

Article 16 paragraph 1 of the Minister of Finance Regulation No. 27 / PMK.06 / 2016 concerning Instructions for the Implementation of Auction, states that the seller or owner of the goods is responsible for the validity of ownership of the goods, the validity of the tender requirements documents, the delivery of movable goods and / or the use of auction services by immovable goods, and documents of ownership of goods, in paragraph 2 states that the seller/owner is responsible for civil lawsuits and criminal charges arising from non-compliance with laws and regulations in the auction sector.

Article 9 Regulation of the Minister of Finance 27/PMK.06/2016 concerning Instructions for Implementation of Auctions, it is said that owner of the goods is obliged to show or submit the original ownership documents to the auction official except for the execution auction which according to statutory regulations can be carried out even though the original ownership documents are not controlled by the seller, so it is clear who should be responsible if there is a lawsuit or aggrieved parties are the responsibility of the seller in this case the KospinJASA Pekalongan party.

In Article 22 paragraph 1 Regulation of the Minister of Finance 27 / PMK.06 / 2016 concerning Instructions for Conducting Auctions it is stated that the implementation of auction for land or land and buildings must be equipped with an SKT (Land Certificate) from the local Land Office. When the Land Office issues the SKT (Land Certificate), it should at the same time be able to issue a statement on the position of the land that is in a lawsuit or if the blocking is not requested, this is to avoid problems in the future.

Article 41 Regulation of the Minister of Finance 27 / PMK.06 / 2016 concerning Instructions for Conducting Tenders regulates Article 1 that auction sales must be made by announcing the auction conducted by the seller. Article 43 paragraph (1) and (2) confirms that this Announcement is made through a daily newspaper published at the place of the item to be auctioned, if there is no daily newspaper then the auction announcement will be held in a daily newspaper published in the nearest place or in the capital. The province concerned and circulating in the work area of the state assets service office and auction or the territory of the Class II auction official where the goods will be auctioned.

Article 35 Regulation of the Minister of Finance Number 27 / PMK.06 / 2016 concerning Instructions for Implementation of Auctions, namely article 1 Every time an auction is held,

12. Rachmadi Usman, *Hukum LeLang*, Cet. 1., Sinar Grafika, Jakarta, 2016, hlm. 7

there is a limit price, Article 2 determination of limit prices is the responsibility of the seller / buyer. The limit price is the minimum item price for auction items set by the seller / owner of the goods to be achieved in an auction. The seller / owner of the goods may not indicate a limit price. The limit price setting can be open / not confidential or can be closed / confidential according to the wishes of the seller / owner of the goods.

d. Conclusion.

Legal protection for auction winners for execution of mortgage rights in the event that the auction object is blocked by the National Land Agency. Very weak, as in this case the auction winner cannot do anything except just wait for the Court's decision to finish. The responsibility of the auction official (KPKNL) for the blocking of the auction object does not exist at all, it even seems to be hands off and blames the Land Office because according to the auction official what is written in the Minister of Finance Regulation number 93 / PMK.06 / 2010 which has been updated number 27 / PMK / 06/2016 has been implemented according to the provisions, there is no responsibility to take care of whether the auction object is blocked or not

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