

Legal Protection for Auction Winners Against Objection Lawsuits Regarding Mortgage Rights Objects for which Execution Has Been Requested (Study of Decision Number 72/Pdt.Bth/2019/PN.Kdl)

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Abstract. *This study aims to determine and analyze the implementation of auctions and the protection of auction winners against objections related to mortgage objects that have been requested for execution (study of decision Number 72/Pdt.Bth/2019/PN.Kdl). The research method used is normative juridical. Data was obtained through documentation techniques, namely researchers collecting relevant laws and court decisions. Data analysis was carried out by data reduction, data display, and decision making. The purpose of this study was to examine the auction implementation process against objections related to mortgage objects that have been requested for execution. The results of this study are that the auction implementation has been in accordance with the Regulation of the Minister of Finance (PMK) Number 122 of 2023. The auction object that has been sold is the right of the auction winner. If the debtor still controls the auction object, the auction winner can ask the KPKNL to issue a gross minutes to vacate the auction object and ask the District Court for assistance to send a bailiff. In addition, the objections filed by the opponents to the auction winner are repressive legal protection. In decision No. 72/Pdt.Bth/2019/PN.Kdl, the panel of judges rejected the objections from Pelawan I and Pelawan II. Thus, the vacating of the auction object will continue and provide legal protection for the auction winner for the auction object that has been purchased. Thus, in this study legal protection is present to fulfill the interests of the auction winner.*

Keywords: Auction; Lawsuit; Mortgage; Object.

1. Introduction

Mortgage is a new term in terms of guarantee institutions compared to others. Mortgage was only introduced in Law Number 5 of 1960 concerning Basic Agrarian Principles (UU PA). Article 51 of UUPA states that mortgage rights are imposed on ownership rights, business use rights, and building use rights. Regulations related to mortgage rights and objects related to the land are regulated separately through Law Number 4 of 1996 (Mortgage Law).¹

The definition of mortgage rights, according to Article 1 number 1 of the Mortgage Rights Law, states that mortgage rights are security rights imposed on land rights, with or without other objects that are part of a single entity with the land, for the settlement of certain debts that give the creditor a priority position over other creditors.² Mortgage rights on land rights as referred to in the PA Law are a single entity with the land including or not including other objects that are a single entity with the land. The use of mortgage rights is used for the settlement of certain debts.

The creation of the Mortgage Law as a form of collateral rights on immovable property is intended to meet the needs of practice in making loan agreements or bank credit. The existence of mortgage rights is intended to provide a sense of security to creditors for the repayment of debts that have been given to debtors.³ As part of the collateral rights, the mortgage right gives a preferred position to certain creditors over other creditors (*droit de preference*). The subject of the mortgage right as stated in Article 8 and Article 9 of the Mortgage Law states that the grantor of the mortgage right is an individual or legal entity that has the authority to carry out legal acts against the object of the mortgage right. Meanwhile, the holder of the mortgage right is an individual or legal entity that is positioned as a party to the debt. Therefore, it can be seen that the subject of the mortgage right is the parties who have an interest related to the debt agreement with the guarantee of its repayment.

Based on the provisions of Article 4 paragraph (1) of the Mortgage Law, the object of the mortgage is the right to land that can be burdened with mortgage rights such as ownership rights, business use rights, and use rights over state land. All of these rights can be used or transferred and must be registered according to applicable legal provisions. Mortgage rights as regulated in the Mortgage Law are accessory agreements, namely the existence of mortgage rights due to the existence of a parent agreement. The parent agreement in question is a credit agreement that creates debt by providing collateral to the creditor, namely mortgage rights. This is regulated in point 8 of the explanation of the Mortgage

¹ Syamsiah, D., & Nurviana, R. (2022). Legal Perspective on Execution of Objects Burdened with Mortgage Rights. *Journal of Basic Education and Social Humanities*, 1(3), 563-568.

² House of Representatives. (1996). Law Number 4 of 1996 concerning Mortgage Rights.

³ Winanti, KN, & Saptanti, N. (2024). Legal Protection for Creditors in the Implementation of Electronic Mortgage Registration. *Democracy: Journal of Legal, Social and Political Science Research*, 1(2), 203-222.

Law, which reads as follows:⁴

"Because the right of mortgage by its nature is an accessory to a particular receivables agreement, which is based on a debt agreement or other agreement, its birth and existence are determined by the existence of the receivables whose expansion is guaranteed."

The mortgage right that is used as collateral in debt is closely related to execution, so in the mortgage right it is also attached to execution. Execution is based on the grantor of the mortgage right (debtor) if he does not carry out an achievement as agreed. Based on the provisions of Article 6 of the Mortgage Law, if the debtor is in default, the first mortgage holder has the right to sell the mortgage object at his own power through a public auction and take payment of his receivables from the proceeds of the sale.

The Mortgage Law has given rights to the holder of the mortgage, namely if the debtor defaults on the promise based on Article 6 in conjunction with Article 20, then the execution of the mortgage can be done in three ways, namely: parate executie, executorial title, and private sale. The existence of the parate executie regulation in the Mortgage Law makes it easier for creditors to sell the collateral object used as collateral by the debtor if the promise is defaulted. The hope is of course that the sale can return the entire principal value along with interest, fines owed, and all costs required to cash in the collateral.⁵

Execution is an effort to fulfill the performance by the debtor against the creditor. Generally, execution is carried out after a court decision, but in Article 6 of the Mortgage Rights Law it is stated that execution can be carried out without a court decision, namely through a public auction. In order to be able to carry out the order of Article 6 in conjunction with Article 20 paragraph (1) letter a of the Mortgage Rights Law, namely selling the object of the mortgage right without prior approval, there must be a prior agreement in the form of a clause where the debtor allows this to be done by the creditor, and must be included in the deed of granting the mortgage right in question.

The concept of execution as regulated in Article 6 in conjunction with Article 20 paragraph (1) letter a of the Mortgage Rights Law in the Civil Code is known as parate executie as referred to in Article 1178 paragraph (2) of the Civil Code. Parate executie is an execution carried out by the mortgage holder himself without the assistance of a district court but only with the assistance of an auction office.⁶ With the concept of parate executie, the mortgage holder does not need to ask for prior approval from the mortgage grantor, and does not need to ask for a local

⁴Ibid.

⁵Thamrin, A. (2021). Legal Protection For Creditors In Credit Agreements According To Law Number 4 Of 1996 Concerning Collateral Rights. *Jssha Adpertisi Journal*, 1(2), 1-7.

⁶Hrm Anton Suyatno. (2016). *Legal Certainty In Settlement Of Non-Performing Loans Through Execution Of Collateral Rights Without Court Suit Process*, 1st Ed. Jakarta: Kencana.

court ruling if he will execute the mortgage that is the debtor's debt guarantee in the event that the debtor defaults. The mortgage holder can directly come and ask the Head of the Auction Office to auction the mortgage object in question. In the implementation of the mortgage execution auction carried out by the State Assets and Auction Service Office (KPKNL), lawsuits are often received by debtors or other parties who feel that their interests have been harmed. Civil lawsuits that are carried out are usually in the form of resistance before the auction is carried out or lawsuits filed after the auction is carried out. The majority of lawsuits arise due to debtor dissatisfaction with the implementation of the mortgage auction requested by the Bank concerned to KPKNL.

In the case of Objection Lawsuit Number 72/Pdt. Bth/2019/PN. Kdl, related to the objection lawsuit filed by the Debtor, namely Opponent I (A) and Opponent II (F) against Opponent I (ISK/Auction Winner), Opponent II (PT. BPR RAM), Co-Opponent I (DIRECTORATE GENERAL OF STATE ASSETS attn. CENTRAL JAVA AND DIY YOGYAKARTA REGIONAL OFFICE OF DJKN attn. Semarang State Asset and Auction Service Office (KPKNL)) and Co-Opponent II (KENDAL REGENCY LAND OFFICE) on the grounds that OPPONENT II has sold the auction object of Collateral Mortgage Rights owned by PELAWAN I and PELAWAN II at an auction price far from the general market price, where the ownership of the collateral mortgage auction object has been transferred to the auction winner, namely Opponent I (ISK) and an execution has been requested to the Head of the Kendal District Court to vacate the land and buildings.⁷

Based on the auction conducted as stated in the Grosse Auction Minutes Number: 333/40/2019, in essence an auction was conducted for the object of one plot of land and building along with everything on it in accordance with the Certificate of Ownership (SHM) No. 718 covering an area of +/- 9,430 m² written in the name of F located in Kutoharjo Village, Kaliwungu District, Kendal Regency. After the auction of the object of one plot of land, the name was changed to the name of Defendant I (ISK/Auction Winner).

Opponent I (A) and Opponent II (F) objected to the execution of the eviction of the object of one plot of land. The objection was submitted to the Kendal District Court through Objection Lawsuit Number 72/Pdt. Bth/2019/PN. Kdl on the grounds that the price was far from the general market price, where the ownership of the collateral collateral auction object had been transferred to the auction winner, namely Opponent I (ISK) and an execution request had been made to the Head of the Kendal District Court to evict the land and buildings. Therefore, the Auction Winner/Opponent I (ISK) did not obtain legal certainty and legal protection from the auction results that were won. Therefore, the author is interested in examining the Legal Protection of Auction Winners Against Objection Lawsuits Related to Mortgage Objects That Have Been Requested for Execution (Study of Decision Number 72/Pdt.Bth/2019/PN.Kdl) related to the implementation of the auction as

⁷ Kendal District Court. (2019). Decision Number 72/Pdt. Bth/2019/PN. Kdl.

per the applicable regulations.

2. Research Methods

The type of research used in this study is qualitative with a doctrinal approach. The data sources used are secondary data sources. The data sources in question are obtained from journals, books, or other literature relevant to the research problem. The legal materials used are primary legal materials consisting of government regulations or official state documents, and secondary legal materials consisting of scientific publications that are not related to official state documents. Data were collected using documentation techniques. The data analysis used is the Lexy J. Moleong model consisting of data reduction, data display, and drawing conclusions and verification.⁸

3. Results and Discussion

3.1. Implementation of Auction Regarding Objection Lawsuit Regarding Mortgage Right Objects That Have Been Requested for Execution

According to Article 1 number 1 of the Mortgage Law, a mortgage is a security right that is imposed on land rights, including or not including other objects that are an integral part of the land, for the settlement of certain debts that give the creditor a priority position over other creditors. Creditors can purchase mortgage rights through a public auction. The implementation of mortgage auctions can be carried out based on Article 6 of the HT Law which reads as follows:⁹

"If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object under his own authority through a public auction and to take payment of his receivables from the proceeds of the sale."

Based on Article 4 of the HT Law, land rights that can be subject to mortgage rights are ownership rights, business use rights (HGU), building use rights (HGB), and use rights over state land.¹⁰ In addition, it can also be charged simultaneously with or without everything on the land.¹¹

Granting of mortgage rights can be done if it is preceded by a promise that is used as collateral for the payment of a certain debt.¹² The mortgage agreement is inseparable from the debt agreement that caused the debt. The mortgage agreement is carried out by making a Deed of Mortgage Grant (APHT) by the PPAT

⁸ Creswell, Johnny W. (2014). *Research Design*. United Kingdom: SAGE Publications.

⁹ House of Representatives, Law Number 4 of 1996 concerning Mortgage Rights.

¹⁰Burhan Sidabariba. (2019). *Execution Auction of Mortgage Rights: Ensuring Legal Protection for the Parties*, 1st ed. Jakarta: Papas Sinar Sinanti.

¹¹House of Representatives, Law Number 4 of 1996 concerning Mortgage Rights.

¹²Valayvi, YK, & Djuwityastuti, D. (2016). *Guarantee of Mortgage Rights on Land Owned by Third Parties in Credit Agreements at Banking Financial Institutions Based on Law Number 4 of 1996 Concerning Mortgage Rights*. *Private Law*, 4(2), 164692.

(Land Deed Making Official).¹³ In the APHT, it is mandatory to include several information such as the name and identity of the holder and grantor of the mortgage, the domicile of the parties and the PPAT office according to the domicile, a clear designation of the debts that are guaranteed, the value of the collateral, a clear description of the object of the mortgage. In the APHT there must also be a clause stating that if the debtor does not fulfill the obligation to pay off his debt, because it is based on a debt agreement, the creditor as the holder of the first rank mortgage has the right to sell the object of the mortgage at his own discretion through a public auction and take payment of his receivables from the proceeds of the sale.¹⁴

The defense office is obliged to report the granting of mortgage rights granted. The defense office is also obliged to register the mortgage rights no later than seven days after signing the APHT. The defense office is also obliged to copy the mortgage record on the land title certificate. The mortgage auction is one type of execution auction as stated in Article 6 of the HT Law.¹⁵ Auction objects consist of tangible goods, intangible goods, movable goods, immovable goods, consumable goods, non-consumable goods, tradable goods, usable goods, goods that can be utilized or enjoyed, as well as goods that have economic value and can be sold by auction.¹⁶

An auction as stipulated in Article 1 of the Regulation of the Minister of Finance Number 122 of 2023 is the sale of goods that is open to the public with written and/or verbal price offers that increase or decrease to reach the highest price preceded by an Auction Announcement.

The mortgage auction is held by the State Assets and Auction Service Office (KPKNL). The auction is held based on an application made by the seller to KPKNL.¹⁷ The auction application is submitted in writing by the seller to the auction organizer accompanied by the auction requirement documents. The auction application can be submitted using the auction application. The Head of KPKNL may not reject the auction application as long as the application meets the formal legality of the subject and object of the auction. The place where the auction is held must be based on the KPKNL work area where the goods are located. The auction time is determined by the Head of KPKNL, and is carried out during the KPKNL's working hours and days.

¹³Burhan Sidabariba. (2019). Execution Auction of Mortgage Rights: Ensuring Legal Protection for the Parties, 1st ed. Jakarta: Papas Sinar Sinanti.

¹⁴ House of Representatives, Law Number 4 of 1996 concerning Mortgage Rights.

¹⁵Burhan Sidabariba. (2019). Execution Auction of Mortgage Rights: Ensuring Legal Protection for the Parties, 1st ed. Jakarta: Papas Sinar Sinanti.

¹⁶ Regulation of the Minister of Finance of the Republic of Indonesia, "Regulation of the Minister of Finance No. 122 of 2020 concerning Guidelines for the Implementation of Auctions."

¹⁷Supriyadi Jufri, Anwar Borahima, & Nurfaidah Said. (2020). Implementation of Execution Auction of Mortgage Rights Through Auction House. SCIENTIFIC JOURNAL OF WORLD LAW: Vol. 4, No. 2, 95. Retrieved from <https://doi.org/10.35973/jidh.v4i2.1379>

Each application for a mortgage auction will be subject to an auction application fee or duty based on government regulations governing non-tax state revenues. The fee is charged to the seller. Payment of the fee that has been paid does not mean that the auction schedule will be immediately determined as long as the formal legality of the subject and object of the auction has not been fulfilled.¹⁸ Therefore, the implementation of the mortgage auction must be accompanied by a Land Certificate (SKT)/Land Registration Certificate (SKPT) or other documents proving ownership of the land based on PMK No. 122 of 2023.¹⁹

The auction official may cancel the auction based on the seller's request, a court decision, or others as regulated in PMK No. 122 of 2023. The auction cancellation must be received by the auction official before the auction begins. The seller or auction official must announce the auction cancellation to the auction participants. The auction cancellation based on the determination or decision of the judicial institution is submitted in writing before the auction is held. The seller and/or auction official must announce the auction cancellation no later than before the auction begins. Through the submitted auction application, the seller can propose an auction bidding method to the Head of KPKNL. In addition, if the auction participant is not present, the seller must show the original documents of ownership of the auctioned object to the auction official. If the seller does not have the original documents, the seller can make a statement by the Head of KPKNL. The seller and witnesses from the seller's side must also be present at the auction. During the auction, the Auction Official can be assisted by an auction guide from the Directorate General of State Assets (DKJN) and from abroad during the auction.²⁰ The auction will not stop even if there is only one participant. Any individual, organization, or company can participate in the auction except, auction officials, sellers, appraisers, assessors, bailiffs, executioners, debtors, and convicts²¹

Each auction must have a limit. Based on Article 56 of PMK No. 122 of 2023, the limit set by the seller is based on the appraisal report by the appraiser, the appraisal report by the appraiser, or the estimated price itself. While the appraiser is an internal party of the seller or a party appointed to estimate the price using a certain method, the appraiser must have the necessary qualifications, abilities, and experience. However, the estimated price only applies to auctions that are not carried out voluntarily. The execution auction of Article 6 of the HT Law has a value limit set by the seller based on the appraiser's assessment results, with a minimum value of ten billion rupiah. The determination of the limit value with the highest range is the same as the market value and the lowest is the same as the

¹⁸Jufri, S., Borahima, A., & Said, N. (2020). Implementation of Mortgage Execution Auction Through Auction House. *Scientific Journal of World Law*, 4(2), 95-107.

¹⁹Minister of Finance. (2023). Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Guidelines for the Implementation of Auctions.

²⁰PNH Simanjuntak. (2023). *Auction Law in Indonesia*, 1st ed. Jakarta: Kencana.

²¹Usman Rachmadi. (2016). *Auction Law*. Jakarta: Sinar Grafika.

liquidation value. Payment of the auction price and auction fees must be made no later than 5 working days (applicable to the auction organizer) after the auction is held. Payment of auction payment obligations is made by the buyer through the KPKNL account.

There is a condition where the auction of the mortgage object cannot be carried out if there is a lawsuit from a party other than the debtor/collateral owner and/or the husband or wife of the debtor/collateral owner regarding the ownership of the mortgage (the object to be auctioned).²²

Objection/resistance lawsuits (*verzet*) or from third parties (*derden verzet*) can occur against auction results even though the auction has been carried out in accordance with the rules based on PMK Number. 122 of 2023 concerning Auction Implementation Guidelines. The majority of reasons for filing objection lawsuits are due to the debtor's dissatisfaction with the auction of the execution of mortgage rights requested by the Bank concerned as a creditor to the KPKNL.²³ Lawsuits can be made before or after the auction is held.²⁴

The objection lawsuit filed creates legal uncertainty for the parties conducting the auction, especially for the auction winner/buyer. It can be seen that the methods as explained will actually make it difficult for the parties to access justice and create legal uncertainty.

One of the problems is that an auctioneer still controls the auction object that has been physically sold.²⁵, where according to the rules the auction object that has been sold should be given to the auction winner.²⁶

In order to strengthen the position of the auction winner, the KPKNL provides an authentic quote/copy/grosse of the auction minutes (Article 95 paragraph (1) of PMK No. 122 of 2023, Article 200 paragraph (10) HIR, and Article 218 paragraph (1) R.Bg). Therefore, the debtor/executor who still occupies the place should have left or vacated the goods. If the debtor still insists on controlling the goods, the auction winner can ask the KPKNL to issue a grosse auction minutes for the auction vacancy which is submitted to the District Court for assistance in vacating. Then the Head of the District Court orders the clerk and bailiff and if necessary can ask

²²Basuki, R., & Remaja, ING (2021). Implementation of Execution Auction of Mortgage Rights Based on Article 6 of Law Number 4 of 1996 at the Singaraja State Asset and Auction Service Office. *Kertha Widya*, 8(2), 32-60.

²³ Sun, S., & Perbawa, KSLP (2023). Implementation of Execution of Collateral After Auction of Mortgage Rights at Balai Mandiri Prasarana Bali. *Student Law Journal*, 3(1), 754-768.

²⁴ Halim, MS (2018). Legal Protection for Collateral Owners in Mortgage Execution Auctions. *jhbbc*, 96-109.

²⁵ Sun, S., & Perbawa, KSLP (2023). Implementation of Execution of Collateral After Auction of Mortgage Rights at Balai Mandiri Prasarana Bali. *Student Law Journal*, 3(1), 754-768.

²⁶ Tambunan, CN, & Winanti, A. (2024). Legal Protection for Winners of the Execution of Mortgage Rights Auction Who Cannot Control the Auction Object (Case Study of Decision No. 3/PDT. G/2018/PN. Lgs). *Journal of Legal Interpretation*, 5(1), 821-829.

for assistance from the Police to vacate the goods that are the object of the auction and have been sold (Article 200 paragraph (11) HIR and Article 218 paragraph (2) R.Bg).

The important thing to note in the implementation of the auction is its relation to legal certainty. Legal certainty is one of the legal principles that is the basis for the formation of a law. Legal certainty must be obtained by the parties concerned in the implementation of the auction. The idea of legal certainty was introduced by Gustav Radbruch in his book "Einführung in die Rechtswissenschaften" that in law there are 3 basic values, namely Justice (Gerechtigkeit), Benefit (Zweckmassigkeit), and Legal Certainty (Rechtssicherheit).

The auction winner gets protection from the arbitrary actions of the debtor who does not want to release the goods under his control even though it is clear that the goods have changed ownership through auction. Through this context, it can be interpreted that the auction winner hopes to obtain his rights that he obtained through auction. Gustav Radbruch is of the view that with legal certainty, society will know what it should do and ultimately not cause chaos, in contrast if there is no legal certainty, uncertainty can arise in the midst of society which causes the legal system in a country to be unclear.

The legal status of auction objects that have been carried out in accordance with the Regulation of the Minister of Finance No. 122 of 2023, according to the author, legally the auction winner has legal certainty and legal protection for the auction objects that have been purchased. This is proven by the issuance of auction minutes as authentic evidence of the auction. As explained in Article 1 paragraph (34) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 concerning Auction Implementation Guidelines that the Auction Minutes are minutes of the auction implementation made by the Auction Official which is an authentic deed and has perfect evidentiary force.

The validity of ownership of auctioned goods is based on the consideration that by selling goods through auction, it means that the Auction Office as the authorized party has guaranteed that the auctioned goods have a clear owner and have fulfilled the auction registration requirements because before the auction application is granted by the auction official, the auction official is required to verify the documents submitted by the seller or owner of the auction object whether they meet the formal legality of the subject and object of the auction and as long as the auction requirement documents are complete and have fulfilled the formal legality of the subject and object of the auction, the auction official may not reject the submitted auction application.

Based on the auction minutes as perfect evidence, the auction winner will receive a guarantee of legal certainty because they have proof of ownership of the land they control, namely in the form of a land title certificate or land book. Thus, the principle of legal certainty guarantees that the auction winner can use a law that

is definite, concrete and objective, without any involvement of subjective speculation.

4. Conclusion

The mortgage auction is included in the type of execution auction which can be called an execution auction as per Article 6 of the HT Law. KPKNL in this case the auctioneer receives the auction application and the requirements for completeness of documents/formal legality of the subject and object of the auction. KPKNL will examine the completeness of the documents. The place where the auction is held is based on the KPKNL work area where the goods are located. The auction time is determined by the Head of KPKNL, and is held during the KPKNL's working hours and days. After the schedule is notified, the auction announcement will be made by the seller immediately. The announcement is published on the KPKNL's working day. The auction announcement can be supplemented with more complete information regarding the auction object, terms and conditions, and other information. The auction announcement can be made through daily newspapers, websites, flyers, electronic media. After the announcement has been made and auction participants have been obtained. At each auction, auction participants must deposit an auction bid guarantee and show the Taxpayer Identification Number (NPWP). The auction is led by the Auction Officer assisted by the Auction Guide. The auction is conducted through bidding verbally (increasing or decreasing), in writing, or in writing (continued verbally, if the highest bid has not reached the limit). After the auction winner is obtained, the Auction Officer will collect and receive payment of the auction price including auction fees. If the Auction Winner has paid all payments, the Auction Officer will then complete the preparation of minutes, copies, quotes, and excerpts of the auction minutes. To strengthen the position of the auction winner, the KPKNL provides authentic quotes/copies/grosse of the auction minutes (Article 95 paragraph (1) of PMK No. 122 Law of 2023, Article 200 paragraph (10) HIR, and Article 218 paragraph (1) R.Bg). Debtors/executed who still occupy the place should have left or vacated the goods. If the debtor still insists on controlling the goods, the auction winner can ask the KPKNL to issue a grosse auction report for the auction to be emptied which is submitted to the District Court, then the Head of the District Court orders the clerk and bailiff and, if necessary, can ask for assistance from the Police to emptied the goods which are the object of the auction and have been sold (Article 200 paragraph (11) HIR and Article 218 paragraph (2) R.Bg). The implementation of the execution auction of Article 6 of the HT Law has been rigidly regulated in the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions, however, the regulation does not yet contain an article regarding legal protection for auction winners who act in good faith, therefore it is hoped that the Government can update regulations related to auctions.

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