

Legal Protection For Auction Winner Execution Of Liability Rights Auction No. 49 / Pdt.G / 2011 / Pn.Pkl (A case study in Kospin, Pekalongan)

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Abstract. The research objective was to examine the legal protection against the winner of the auction the object is blocked by the land office to analyze the reason for blocking, and the responsibility of the winning bidder auction officials that the object is blocked by the land office How Legal protection for the Auction Winner of the auction Exsekusi security rights. The method used is as an additive normative juridical research interviews to the land office and Legal Section Kospin pekalongan Services. Based on the results of the study concluded eat: first, Consideration of the Land Office to block the process of reverse auction execution object name Encumbrance (Civil Case Study No.25 / Pdt.G / 2011 / PN.Tegal) is: Based on Government Regulation No. 24 of 1997 Article 45, which reads the Head of the Land Office reserves the right to delay on behind the object name that is being problematic of land ", as well as the attitude of prudence to avoid the risk in the future in order not to become a defendant in the case; Secondly, legal protection for the winner of the auction execution Encumbrance Land Office blocked the auction of objects is very weak, as in this case the winning bidder can not do anything but just wait until the court decision is completed; Third, auction Officials Responsibility for the blocking of the auction objects at the office of the Land does not exist at all.

Keywords: *Legal Protection, Winning Bidder, Execution Mortgage.*

1. Introduction

Banking is one of the collector of funds from the public in the form of demand deposits, savings and time deposits are then channeled back to the people who need it, this event is known as the allocation of funds. Allocating funds can be realized in the form of a loan or credit terms are known.

Conditions of execution guarantees through parate these executions in Article 6 of Act No. 4 of 1996 on Mortgage can be concluded from which read: "If the debtor injury appointment rights holders first priority has the right to sell the object of a security interest in the validity of its own through a public auction, and take repayment receivables from the sale proceeds."³

Minister of Finance Regulation No. 93 / PMK.06 / 2010 which has been renewed 27 / PMK06 / 2016 on the instructions of the auction in Article 1 (1) states "The auction is a sale of goods open to the public at a price quote in writing and / or oral growing increased or decreased to achieve the highest price at the auction announcement preceded."⁴

In any event, an official report will auction section 35 Vendy Reglement set auction treatise synonymous with the news events that underlie the authentic auction auction

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³ UUHT Article 6

⁴ Article 1 paragraph 1 of the Minister of Finance Regulation No. 40 / PMK 07/2006 On Implementation Guidelines for the Auction.

sales, so that means without the minutes of an auction, then the sale is void.

Minutes of the auction will be given after the auction process and obligations are met, then the auction holder / buyer immediately be filed under the name of the object the execution of the auction to the Land Office.⁵

Land Office, as in the case of which the author writes, the auction winner can not perform the process behind the name even if the procedures are in accordance with the auction rules both of the auction rules, auction payment and already get the minutes of the auction, because there has been a blocking by the Land Office to the object of the auction he won, at the request of a third party / landowners. Faced with such a bidding process must go through a court warrant, as in the case of which the author wrote. Case in Kospin Services Pekalongan with Decision No. 49 / Pdt.G / 2011 / PN / PKL with the parties:

- R. Sutarya Arga Wijaya (debtor) against
- Credit Unions "Services" (Creditors)
- H. Agus Hartanto, SH (Holder Auction)

State Minister of Agrarian Affairs / Head of the Land Office No. 3 of 1997 on the Implementation of Government Regulation⁶ land registration with the understanding that it should be within a period of 30 days should automatically remove the roadblock. With the claim that the Land Office could not unblock considering the compliance of the Court on Lawsuit Parties to 3, the Land Office with reason to be careful because they dispute the Land Office did not want to bear the risk of the Land Office to block it and wait for the pending court has the power fixed law.

Based on the description above background, the authors formulate some problems as follows: Why Land Office (BPN) is not willing to carry out the process of transfer-Against Minutes of Auction For Auction Winner Encumbrance; How legal protection against Execution Mortgage auction winner in the auction the rights object is blocked by the Land Office (BPN) Execution of the Court; How responsibility for the blocking object official auction auction by the National Land Agency (BPN) and a lawsuit from the owners guarantee?

Research Methods

This study uses normative juridical method which is doing research on the principles of the law, the judge's decision, Decision BPN block name for the auction winner. Examining the literature (secondary data) that includes research principles Principles of Law, Law Systematics, Synchronize vertical and horizontal comparative law.

Specifications research is focused on the efforts of exposure and a complete presentation relating to matters of legal issues that occur How Legal Protection against the winner of the auction execution of mortgage. Case Trial Judgment with No. 49 / Pdt.G / 2011 / PN / PKL.

And legal history, the researchers stopped on the scope of legal conceptions and regulatory rules of human behavior was not up to the supporting data in a finding that will be examined and the primary legal materials Pancasila, the Constitution 45, Civil Code, Act No. 5 In 1960, the Law on the Basic Agrarian Act No. 4 of 1996 on Mortgage of Land, Rules Auction (Vendu Reglement, Staatsblad 1908 No. 189 on the Rules of

⁵ UUHT Article 3

⁶ Regulation of the Minister of Agriculture No. 3 of 1997 on the Implementation of Government Regulation

Sales in Public in Indonesia as amended by Staatsblaad 1940 Number 56), Instruction Auction Gazette Of 1930 No. 85. Secondary Legal Materials: PMK No. 93 / PMK.06 / 2010 on Implementation Guidelines Auctions, PMK No. 174 / PMK.06 / 2010 on the official Auction of Class I, PMK Number 175 / PMK. 06/2010 on Auction Officers Class II, PMK No. 176 / PMK.06 / 2010 on the Auctioneer.

2. Results And Discussion

2.1. Doing Blocking Consideration Land Office

Regulation of the Minister of Agriculture No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration mention:

- Interested parties may request written in the land that a land title or Right of Ownership on Housing Unit will be the object of a lawsuit in court to deliver the lawsuit concerned salman.
- The note is clear on their own within 30 days and the record date or if the party who requested the recording has revoked its request before the time expires.
- If the judges who examine cases referred to in paragraph memenntahkan status quo over land rights or ownership of the apartment units are concerned, then the command recorded in the land book.
- Note the status quo order specified in paragraph (3) remove themselves within 30 han unless followed by a decision of the Mumbai confiscation official and news in execution submitted to the Head of the Land Office.

Block will delete itself if it had been passed and 30 days, unless the party invoking revoke the petition blocking is less than 30 days, then the block can be removed. At the time the temporary block, on land book will be written statement that the object is being blocked by the block while causing land property rights can not be behind the name. Block still be done if there is a court decision and the confiscation and sequestration mi verdict should the request and the parties.

Understanding dispute sendin the Technical Instructions No. 01 / Juknis / DV / 2007 Mapping Problems and Roots Land Issues are difference values, interests, opinions, or perceptions between individuals or legal entity (private or public) about the status of the acquisition and or status ownership or status of the use or utilization of certain parcels of land by a particular party, or the status of state administrative decisions concerning the control, ownership and the use or utilization of certain parcels of land.

Basic execution in article 20 of Law HT Of 97 is Article 6 of Law HT Of 97 which states "If the Debtor in default, the holder of Encumbrance first has the right to sell the object Encumbrance over power sendin through public auction and take repayment of its receivables and proceeds" , Mortgage holders of rights and weeks to exercise their rights under article 6 Shrimp legislation such Encumbrance rights granted solely by law. However it does not mean the right to void there, but must be agreed in advance by the parties to the agreement of loading Encumbrance over land rights. The provisions contained in the explanation of Article 6 of Law HT in 97 "states the right to sell the object of Encumbrance on its own power is one manifestation notch preferred that belongs to the holder of Mortgage or holders of mortgages first in case there are more and the holders of any Encumbrance , It is based on the promise given by the grantor Encumbrance that if the debtor in default, the holder is entitled to sell the object Encumbrance through public auction without requiring further approval and

subsequent pemeberi security rights and take repayment of receivables and the sale hashes earlier than kreditor- other creditors. The rest of the proceeds from the sale shall remain the Mortgage providers.⁷

Based on the provisions set out in Article 14 (paragraph 2) of the Act Encumbrance certificate as referred to in paragraph I contains entitled with the words "For The Sake Of Justice Under The One Almighty God". The formulation of this article clearly states that the certificate encumbrance have executorial power as well as a court decision that has binding. Even affirmed that the certificate is a security rights Grose Hypoteka Agreement as described above is as a consequence of the Registration of Titles and the system adopted by the Basic Agrarian Law.

Two basic execution on top of the article 20 fulfilled the purpose formers Act will provide for creditors holders of Encumbrance means the execution of an easy and certain. Ease of execution Mortgage and Mortgage dibenkannya to creditors. Privileged position in the form of droit de preference and droit de suite is characteristic of Mortgage as a guarantee of land rights institution unique and powerful. According to the law, if the debtor injury promise for both creditors and holders of Mortgage ordinary creditors may submit the petition to the court through a civil suit. We know that the settlement of debts by the way time consuming and costly. So with HT available institution holding a special way of settlement in the form of two top tersebutdi conveniences.

Article 26 of Law HT Of 97 before any legislation specifically regulates the execution of Mortgage regulation Hypoteka execution recognize that existed at the time the Act came into force HT is April 9, 1996, shall apply to the execution of HT. Execution regulations in question is what is known as parate executie governed by Article 224 RIB (S.1941-44) Article 258 Rr BGW (S.1927.227).

2.2. Winning Bidder, Execution Mortgage

As referred to in Article 14 paragraph (2) and listed on the Certificate of Mortgage is meant to emphasize the strength executorial on the Certificate of Mortgage, so that if the debtor injury appointment, ready to be executed as well as a court judgment which has had permanent legal force, through ordinances way and using execute parate institutions in accordance with civil law with the Court's Decision No. 49 / Pdt.G / 2011 / PN / PKL.

2.3. Legal Protection Against Rights Auction Winner Execution

Pancasila is a set of noble values are believed to be true, which is then translated into guidelines for the implementation of Pancasila. The development of fair attitude towards fellow human beings, equality for the law and human rights, the balance between rights and obligations is reflected in the attitude and practice of the precepts of Pancasila values that reads 5 to social justice for all Indonesian people. Functions and values contained in the principle of Pancasila this 5th serves as the destination country in the eyes of the law. Fair to fellow that is, treat people the same as the others regardless of race, ethnicity, religion, gender.

The legal protection under Indonesian dictionary meaning of things (actions) shielding, while the meaning of the law according to Sudikno Martokusumo are: Overall collection

⁷ Kartini Mulyadi-Gunawan Widjaya *Hak Tanggungan* (Kencana Prenada Media Group Jakarta) p. 248

of rules or kaedah-kaedah in a life together; Overall rules of conduct that apply in a life together apat forced to implement with a witness.⁸

And the above description it appears that enforcement of the law by law enforcement officials is very important in order to the proper functioning of a law to regulate people's lives, protect and secure the interests of the community. In a society often a clash or conflict of interest. More Sudikno Mertokusumo among others mentioned:

The law regulates legal relations, legal relationships it comprises and the bond between individuals and society and between individuals themselves. Bond is reflected in rights and obligations. Order created by the new law become a reality if the subject burdened burdened rights and obligations. There are no rights without obligations, otherwise no obligations without rights. Rights are legally protected interest, while the interests are the demands of individuals or groups that are expected to be met. Interests essentially contains powers that are guaranteed and protected by law daam implement them.⁹

Legal protection is one of the elements contained in the rights (interests / demands of individuals or groups to be met), so that legal protection is a tinakan expected to mellndungi fulfillment.

There are two kinds of legal protection for the people, that is the legal protection of preventive and repressive legal protection. Preventive legal protection aims to prevent disputes while a repressive legal protection aimed at resolving the dispute:

Means Repressive Legal Protection in Indonesia is manifested in the form of bodies. Rochmat Soemitro breaks it down into three parts:

- Environment Court of Justice in General
At this time in practice, if there is a legal violation committed by the authorities will be submitted to the General Court.
- It is a Government agency Institution Administrative Appeals

Definition of legal protection for the people through the government agency that is an institution administrative appeal is an appeal against an act of government by those who feel aggrieved by the actions of government officials hierarchical to a higher or to a government official other than perform that action. The government agency that receives the appeal is authorized to change and may even cancel the acts of the government.¹⁰

The principle of legal protection for the people of Indonesia rests on Pancasila which is the basic philosophy and ideology of our country.

By using the Western conception as a framework to the departure runway on Pancasila, the principle of legal protection for the people (in Indonesia) is the principle of recognition and protection of human dignity based on Pancasila and the principle of rule of law based on Pancasila.¹¹

Recognition and protection of human dignity is said to be based on Pancasila as the recognition and protection against intrinsically attached to Pancasila and give color and complexion state of law based Pancasila.Kantor Land that issued the certificate, notary who hold a binding guarantee.

Basic principle of prime importance in our civil law is the principle point, which means

⁸Mertokusumo Sudikno 1986 *Mengenal Hukum (Suatu Pengantar)* Liberty Yogyakarta p. 37

⁹*Ibid* p. 40

¹⁰*Ibid* p. 12

¹¹*Ibid* p. 20

that anyone who has an interest can file a claim or lawsuit rights.¹²

Explanation by the description above, it can be said that the protection of the law against the winner of the auction in real time, there is no, as in the case of blocking the process behind the name of these blocked, the Land Office RI in agreement issued a Technical Directive No. 05 / Juknis DV / 2007 on Implementation Mechanism mediation to resolve disputes in the area of land but there are some drawbacks if it is associated with legal protection for the auction winner Encumbrance execution namely:

- Land Office had a mediation agency to resolve the dispute, but apparently not in all disputes mediation organization is applied, because in that case the researchers wrote, the Land Office does not mediate. Land Office to be passive because they feel no obligation to mediate unless the parties wish.
- Mediation can take place more and 30 days, even in a period that can not be known.

From the discussion, it can be concluded that the auction winner who has performed all its obligations, it may not be right to make the process behind the name on an auction object execution won Mortgage can be immediately processed. There are several provisions of the truth and protect the interests of the winning bidder, namely Article 126 Regulation of the Minister of Agrarian 3, 1997. Technical Guidelines No. 05 / Juknis / DV / 2007 on the Implementation of the Mediation Mechanism, Minutes of the Auction, and the filing of the lawsuit can be done by the Auction Winner. But it turns out that provision could be disregarded by the Land Office, causing the interests of the winning bidder is inhibited.

Such provisions should Iebih note and be a primary consideration by the Office of Defense in deciding a land object will be blocked or not. Supposedly Land Office immediately notify KPKNL in order to be forwarded to the winning bidder. In addition it should be made an additional regulations that Iangkah anything that can be done by the injured party if there Bokir.

- Responsibility Officer Auction Auction Top Blocking The Blocked places.
Article 1, paragraph 14 Regulation of the Minister of Finance number 93 / PKM.06 / 2010 on Implementation Guidelines is Official Auction Auction People by laws undangan be authorized to meaksanakan sale of goods by auction. Article 1 of its 5 I which reads Officials Auction Auction Officer Class I is the employee of the Directorate General of State is compulsory, and the authorities carry out executions Auction, Auction Noneksekusi voluntary.

The results of the interview with Ms. Fatimatul Isnaeni, SH cation Services Auction concurrently official auction first grade in KPKNL Tegal City said it has been aware of any reports of blocking and the winner of the auction, KPKNL felt there was nothing wrong and auction procedures all been through the correct procedures.

Not infrequently the Land Office often overlook Mortgage Act only to block the process behind the name simply because the petition third party. Law HT assessed as having many weaknesses because it was made in haste to meet the needs. Many multi interpretation in the articles of Law encumbrance deepening Of 97 who need to understand it, as in chapter 6, 14 and 20. When asked for the auction officials' duties to provide clear information about the object of the auction to auction participants whether the object is in the process of blocking Land Office, the KPKNL represented by Ms. Fatimatul Isnaeni, SH, auction officials explained that not the duty of the auction

¹²Usman Rachmadi 2008 *Hukum Jaminan Keperdataan* Ctk. Pertama Sinar Grafika Jakarta p. 20

officials to know that the object of the auction is in the blocking or not, Understanding the auction by Vendu Reglement (Stbl. In 1908, No. 189 amended by Stbl. 1940 No. 56) that when mi still applies is: "Sales general is the auction or sale of objects that do to the public at an offering price that is given or obey or to importation price in a closed envelope, or to those who are invited or previously notified about the auction or selling it, or allowed to participate, and given the opportunity to bid.

3. Closing

3.1. Conclusion

Based on the results of research and discussion in Chapter III, it can be drawn the conclusion that:

- Consideration of the Land Office to block the process of reverse auction execution object name Encumbrance (Civil Case Study No.25 / Pdt.G / 2011 / PN.Tegal) are:
 - Based on Government Regulation No. 24 of 1997 Article 45, which reads the Head of the Land Office reserves the right to delay on the process of transferring land under the object name berpekara ".
 - Prudence to avoid the risk in the future in order not to become a defendant in a dispute.
- Legal Protection for the auction winner Mortgage execution blocked the auction objects Land Office is very weak, as in this case the winning bidder can not do anything but just wait until the court decision is complete.
- Responsibility for the blocking object official auction Land auction office none at all, even impressed off the hands of the Land Office blame because, according to the auction officials what is written in the Minister of Finance Regulation Number 93 / PMK.06 / 2010 have been carried out according to the provisions, there is no responsibility responsible care whether the object hit the auction block or not.

3.2. Suggestion

- We recommend that the Land Office is not rigid in understanding PP 24 of 1997 Article 45, the Land Office reserves the right to delay on the process behind the name of ground objects that are berpekara "sentence are entitled can mean the head office may take other attitude when it is clear the object of the auction is obtained via auction protected execution Mortgage Act No. 6 of 1997, unless berpekaranya in the seizure of inheritance, property gono gini and others who must wait for a court decision who is eligible.
- Articles of the Law Encumbrance number 6 of 1997 should be added to make it clear how object security rights that have been executed through auction to unopposed again the process of transferring the name to immediately be switched hands kepenerima Encumbrance or transferred to other parties such as the winner of the auction , Likewise, in the Rules and Regulations of Financial Menteri number 93 /PMK.06/2010 On auction Regulation is necessary to penyempumaan again as the obligation should be added Pertu Auction officials membenkan auction information whether the object in dispute, blocking or not.
- KPKNL and Land Office need good communication and sit together to synchronize an understanding of the Act Mortgage No. 6 of 1997, PP 24 ofs 97 and the Rules

and Regulation of the Minister of Finance Regulation Number 93 / PMKO6 / 2010 Concerning the Regulation of the auction, in order not to blame and detrimental to other parties such as the winner of the auction object.

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