

## The Effectiveness of Legal Protection for Winner of Auction in Land Disputes with Objects of Collateral Rights

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**Abstract.** *This study aims to find out and analyze the Effectiveness of Legal Protection for Auction Winners in Land Disputes with Mortgage Guaranteed Objects in Banjarnegara Regency, to find out and analyze how the validity of the process of blocking property rights certificates that have been won through auctions in the concept of legal certainty, to find out and analyze how legal protection is for creditors and auction winners for blocking certificates of ownership rights, to find out and analyze examples of Deeds for Granting Mortgage Rights. The approach method in this study uses a sociological juridical approach. The specification of this study uses a sociological juridical approach. The specification of this research uses descriptive analytical research. The type of data used in this study is data from primary legal materials which include the Civil Code, the Mortgage Act No. 4 of 1996, BAL no. 5 of 1960, Minister of Finance No. 27/PMK.06/2016 Concerning Instructions for Implementation of Tenders, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 13 of 2017, Minister of Agrarian Regulation No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration, Supreme Court Jurisprudence, SEMA No. 589/PAN.2/251/P/09/SK.Perd, as well as data on secondary legal materials from books and supporting documents. The data analysis method that the writer uses is qualitative data analysis. The results of the study show that the validity of the process of blocking SHM that has been won through an auction process is not legally valid and cannot be implemented because the ownership of the certificate of ownership has been transferred to the creditor with a promise to provide collateral in the form of the certificate of ownership to the creditor. Legal protection for auction winners for blocking SHM is contained in the Civil Code, Vendu Reglement, HIR, PMK Number 27/PMK.06/2016, and Supreme Court Judgment Jurisprudence.*

**Keywords:** *Blocking; Legality; Mortgage; Protection.*

## **1. Introduction**

The development of the times as the economic activities of the people increased, the need for the availability of capital funds also increased, most of which were obtained through credit activities. Capital funds are the most important factor in business activities, especially in the field of entrepreneurship. Many entrepreneurs are faced with the problem of insufficient capital stock, the bank as the creditor in providing credit facilities, asks the debtor to submit collateral based on the conditions previously agreed with the bank as the creditor.

In granting collateral loans, the most widely used as collateral in bank credit agreements are land rights, either with the status of property rights, usufructuary rights, building use rights or usufructuary rights, because they generally have a high value or price and continue to increase, so In this case, it is appropriate if the debtor as credit recipient and creditor as credit facility provider and other related parties obtain protection through a strong collateral rights institution and can provide legal certainty. Based on the provisions in Article 51 of Act No. 5 of 1960 concerning Basic Agrarian Regulations<sup>1</sup>, it is stated that a strong collateral rights institution has been provided and can be charged to land rights, namely Mortgage Rights as a substitute for hypoyheek and creditverband institutions.

The position of this Mortgage Guarantee institution has been recognized for its existence through Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land and makes the interests of debtors and creditors get legal protection from the government. The main purpose and objective of issuing this Mortgage Law is to provide legal protection for creditors if the debtor commits an unlawful act in the form of default.

The definition of a mortgage right in Act No. 4 of 1996 is a security right that is imposed on land rights as referred to in Act No. 5 of 1960 concerning Basic Agrarian Basic Regulations, including or not following other objects which form a single unit with the land, for the settlement of certain debts, which gives priority positions to certain creditors over other creditors. Aiming at guaranteeing legal certainty in the form of legal protection, this requires that the encumbrance of mortgage rights must be registered at the Land Office as a fulfillment of the element of publicity for collateral, and as a means for third parties to exercise control in the event of a transfer of collateral.

During the credit period, it often happens that the creditor is harmed when the debtor defaults, which will then be auctioned by the creditor and then sold in public through the KPKNL Office (Office of State Assets Services and Auctions). The definition of auction is contained in the provisions of Article 1 number 17 of Act No. 19 of 1997 concerning Collection of Taxes by Enforcement Letter as amended by Act No. 19 of 2000, which states that "auction" is "any sale of goods

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<sup>1</sup>Act No. 5 of 1960 concerning the Basic Agrarian Law.

in public by means of price offer orally or in writing through efforts to gather interested parties or prospective buyers"<sup>2</sup>. However, in its implementation, several cases of blocking of auctions carried out by the debtor were found. This study examines the registration of sale and purchase deed (transfer of name) which was rejected by the land office because of a record in the land book (block), on the basis of the above background, the researcher discusses a study entitled Effectiveness of Legal Protection for Auction Winners in Land Disputes with Objects Mortgage Guarantee in Banjarnegara Regency.

## **2. Research Methods**

The research method used in this study uses a sociological juridical approach. Research specifications in the preparation of writing this thesis, the authors used descriptive analytical research. The data sources used are primary, secondary and tertiary legal materials. The data collection method was carried out by means of a literature study (library research).

## **3. Results and Discussion**

### **3.1. How Effective is Legal Protection for Auction Winners in Land Disputes with Mortgage Objects**

In several cases of the credit granting process by banks, it often happens that the creditor is harmed when the debtor defaults, so it is very important that a rule of law is needed in implementing the imposition of mortgage rights contained in a credit agreement, aimed at providing certainty and legal protection for parties - Related parties, especially for creditors if the debtor is in default or does not fulfill his obligations. Which will then be carried out by the creditor in the auction process, as we know juridically the meaning of "auction" can be found in the provisions of Article 1 number 17 of Act No. 19 of 1997 concerning Tax Collection by Enforcement Letter as amended by Act No. 19 of 1997 2000,<sup>3</sup>.

However, in practice there are many cases of obstruction of the auction process carried out by the debtor, namely by attempting to block SHM at the land office. So the problem occurs when the auction winner wants to transfer the name of the mortgage object that has been purchased through the auction process that has been won.

Based on SEMA No. 589/PAN.2/54/P?09/SK.Perd dated 28 December 2009 states that blocking cannot be implemented if the certificate of ownership is still encumbered with mortgage rights, if blocking is to be carried out then the certificate must be royalized first. The SEMA reinforces that the blocking process that is implemented is not legally valid. Meanwhile, if at the time the auction is

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<sup>2</sup>Act No. No. 19 of 2000 concerning Amendments to Law Number 19 of 1997 concerning Collection of Taxes by Forced Letter, Article 1

<sup>3</sup>Act No. No. 19 of 2000 concerning Amendments to Law Number 19 of 1997 concerning Collection of Taxes by Forced Letter, Article 1

being held and there is no auction winner, then there is a request for blocking made by the debtor (previous land owner) based on Jurisprudence against Supreme Court Decision of the Republic of Indonesia No. 1068 K/Pdt/2008 January 21, 2009 in the 2011 MA National Working Meeting,

The status and position of the creditor holding the Mortgage Right is a preferred creditor who has the right of precedence because of the nature of his receivables by law. That is why, even if there is a lawsuit for auction, it can still be continued because the preferential creditor's rights take precedence and the Mortgage has executive orders.

As stated in Article 6 of the Mortgage Law, if the debtor defaults, the first Mortgage holder has the right to sell the Mortgage object under his own authority through a public auction and collect the settlement of his receivables from the proceeds of the sale. This right is based on the promise given by the Mortgage giver that if the debtor defaults, the Mortgage holder has the right to sell the Mortgage object through a public auction without requiring further approval from the Mortgage giver and then take payment of his receivables from the sale proceeds before the creditor. The remainder of the proceeds from the sale remains the right of the mortgagee. The holder of the Mortgage Right in terms of buying and selling auctions is the Bank as the creditor<sup>4</sup>.

In the provisions in article 7 of the Mortgage Law, it is stated that the Mortgage continues to follow the object in the hands of whoever the object is (*droit de suite*). This characteristic is one of the guarantees for the interests of the Mortgage Holder. Even though the object of the Mortgage has changed hands and become another party, the creditor can still use his right to execute, if the debtor defaults. This characteristic is one of the special guarantees for the interests of the Mortgage Right holder.

Even though the object of the Mortgage Right has changed hands and belongs to another party, the creditor can still use his right to execute, if the debtor defaults. So that this can be said to be a foundational step in terms of protecting auction winners who have bought and sold land with mortgage objects.

Article 3 PMK concerning Instructions for Auctions states that an auction which has been carried out in accordance with the applicable regulations cannot be cancelled. From the elucidation of the article, it reflects the principle of legal certainty for the winner of the auction for the execution of the Mortgage Right, each auction will be made into an official report (Minutes of Auction) which is an authentic deed, as perfect evidence. Minutes of auction as a Sale and Purchase

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<sup>4</sup>Sutan Remy Sjahdeini, *Mortgage*, Graffiti Main Library, Yogyakarta, 2002, p. 15-48.

Deed (acte van transport), which is used for transfer of names, so there is no need for a Sale and Purchase Deed drawn up by a Notary/PPAT<sup>5</sup>.

According to the provisions of Article 1 number 32 PMK concerning Instructions for Auctions, the minutes of an auction are "an official report on the implementation of an auction made by an Auction Official which is an authentic deed and has perfect evidentiary power". The minutes of this auction are authentic deeds and have perfect evidentiary power, so the existence of the minutes of auction gives power to the buyer/winner of the auction to control the object of the auction because when the minutes of this auction are published, since then the transfer of ownership rights from the seller in the case of the bank switching auction buyers.

Based on Supreme Court Jurisprudence dated December 26, 1958 Number 251K/Sip/1958, regarding legal protection for buyers with good intentions, namely confirming that buyers who have acted in good faith must be protected and the sale and purchase in question must be considered valid, so buyers with good intentions must be given legal protection. .

In the law of objects, good faith means honesty or cleanliness. Article 531 of the Civil Code states that "The position (bezit) is in good faith, when the person holding the object obtains the object by obtaining property rights, in which case he does not know the defects contained therein."<sup>6</sup>

### **3.2. How is the Legal Protection of Auction Winners in Land Disputes with Mortgage Objects**

Based on the analysis above which says that the blocking process cannot be carried out and is not legally valid. Based on Supreme Court Jurisprudence dated December 26, 1958 Number 251K/Sip/1958, regarding legal protection for buyers with good intentions, namely confirming that buyers who have acted in good faith must be protected and the sale and purchase in question must be considered valid, so buyers with good intentions must be given legal protection. . According to Satjipto Rahardjo, the notion of legal protection is an effort to protect a person's interests by allocating a power to him to act in his interests.<sup>7</sup>Muchsin argues that legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that are

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<sup>5</sup>Article 54 paragraph (1) Regulation of the Minister of Finance No. 27 of 2016 concerning Guidelines for Auction Implementation.

<sup>6</sup>Indonesian Civil Code

<sup>7</sup>Satjipto Rahardjo, Legal Issues in Indonesia, Alumni, Bandung, 1983, p. 121

embodied in attitudes and actions in creating order in relations between human beings.<sup>8</sup>

Thus, the legal protection for the auction winner for blocking the certificate of ownership of a good-faith buyer in the process of buying and selling auctions that have occurred and the transfer of rights has occurred by making minutes of the auction by the auctioneer because in the process of buying and selling the auction, the auctioneer has an obligation to guarantee the formal legality of the subject and object of the auction, so that buyers with good intentions must receive legal protection as emphasized in the Supreme Court Jurisprudence with the following explanation:

1. Supreme Court Jurisprudence No. 1230 K/SIP/1980 dated March 29, 1982 which stipulates that "Buyers with good intentions must receive legal protection."
2. Supreme Court Jurisprudence dated August 28, 1976, in decision No. 821 K/Sip/1974 emphasizes that good faith plays an important role in buying and selling and legal certainty must be given to buyers with good intentions. The intended buyer is if he has fulfilled the material requirements and formal requirements when making the transfer of the sale and purchase of land to the legal action of the sale and purchase, he always gets legal protection because he is deemed to have fulfilled the legal requirements of the sale and purchase.
3. Jurisprudence against Supreme Court Decision No. 1068 K/Pdt/2008 dated January 21 2009 which states that if in the future there is a decision that contradicts a decision that has permanent legal force and states that the decision that has permanent legal force is not binding, then that decision cannot be used as a reason to cancel the auction, especially requesting to be placed in confiscation or confiscation, what can be done is to demand compensation for the object of dispute from the auctioneer.

As explained above, when the auction sale and purchase process occurs, it has legal consequences for the seller to fulfill his obligations, among others, in cases where a blockage occurs when the auction buyer and the creditor have entered into an auction sale and purchase agreement.

Article 200 paragraph 10 and paragraph 11 of the HIR also explains that a person's right to the fixed goods being sold, upon receipt of the buyer's offer, moves to the buyer after he fulfills the purchase conditions. In essence, if the auction winner cannot control the auction object that has been purchased

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<sup>8</sup>Muchsin, *Legal Protection and Certainty for Investors in Indonesia*, Master of Law in the Graduate Program of Sebelas Maret University, Surakarta, 2003, p. 14-20.

through an auction that is legal by law, then the auction winner can ask for assistance from the local District Court to ask for the object to be vacated.

#### 4. Conclusion

Legal protection for auction winners in good faith over disputes over ownership rights certificates submitted by debtors is contained in the Civil Code, Vendu Reglement, HIR, PMK Number 27/PMK.06/2016, and Supreme Court Judgment Jurisprudence. Article 200 paragraph 10 and paragraph 11 of the HIR stipulates that legal protection for the auction winner, if the auction winner cannot control the auction object that has been purchased through an auction that is legal by law, the auction winner can ask for assistance from the local District Court to request the vacancy of the auction object the. As based SMA Number.589/PAN.2/54/P?09/SK.Perd dated 28 December 2009 states that blocking cannot be implemented if the certificate of ownership is still encumbered with mortgage rights, if blocking is to be carried out then the certificate must be royalized first. The SEMA reinforces that the blocking process that is implemented is not legally valid. Based on the explanation above, the government has actually provided legal protection to the auction winner for the rights they have obtained, which occurs after the auction winner is declared the owner of the land object through a legal auction process, so there is no need to worry anymore about ownership of the land rights.

#### 5. References

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##### Regulation:

- [1] Indonesian Civil Code
- [2] Act No. 5 of 1960 concerning the Basic Agrarian Law.
- [3] Act No. No. 19 of 2000 concerning Amendments to Act No. 19 of 1997 concerning Collection of Taxes by Forced Letter.
- [4] Regulation of the Minister of Finance no. 27 of 2016 concerning Guidelines for Auction Implementation.