

## The Legal Review on the Sale of Land Auction Results When A Breach Happened

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**Abstract.** Any collateralized credit in the form of land rights must be collateralized by a mortgage right as outlined in the Mortgage Granting Deed (APHT), for granting a certain amount of credit. APHT is made, then the promise will legally bind both parties so that they can anticipate in the event of a default. Normative juridical approach method. Specifications are analytical descriptive. The type of data is secondary data, divided into legal material originating from law and legal knowledge. The method of collecting data through literature studies and interviews with data analysis methods is qualitative analysis. The legal review of the sale of land auction results when a default occurs (Study on Decision Number: 121/Pdt.G.2017/PN.Unr) according to the creditor, according to the applicable procedure. However, this is different from the opinion of the Debtor who feels that the auction process carried out by the Creditor is detrimental to the Debtor because the auction limit value for land objects is not appropriate because it is far below the market and the auction sales results are not notified by the Creditor to the Debtor. The value of justice in fulfilling the price of the auction sale of land rights in the event of default, is to fulfill the benefits for both the Debtor and the Creditor, the Creditor benefits in returning the money lent to the Debtor. Meanwhile, the debtor who is in default will feel that he is getting justice if the debt burden is paid off and when the collateral is sold through auction, he still gets the remainder.

**Keywords:** Auction; Default; Land; Sale.

### 1. Introduction

Land is the most preferred collateral for debt repayment by financial institutions that provide credit facilities, because land is an asset that continues to increase in value over time. Land and land ownership rights can be used as collateral for borrowing funds through a bank. However, it is not uncommon in the implementation of these credits to default or non-fulfillment of obligations by

the community as the debtor, because for some reason the land owner as the debtor is unable to pay his credit debts.

Collateral is an important element in a credit agreement in order to give creditor confidence, because with a guarantee, there is confidence from the creditor that the debtor will repay the loan. The guarantee functions so that the creditor can immediately get repayment of his debt if the debtor defaults through an auction on the guarantee.

The granting of guarantees must be in accordance with a guarantee imposition agreement, as an additional agreement because of the main agreement. This collateral imposition agreement is in the form of a mortgage guarantee. The definition of mortgage rights in Article 1 point 1 of the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT) states that mortgage rights are security rights that are imposed on land rights as referred to in Act No. 5 of 1960 concerning the Basic Agrarian Regulations (UUPA), together with or without other objects which are an integral part of the land, for the settlement of certain debts, which gives a preferred position to other creditors.

The execution carried out by the creditor is one of the efforts to fulfill and return the creditor's rights to obtain funds provided to the debtor in a credit facility. The creditor himself in carrying out the execution must go through a public institution, namely the auction institution. Arguments put forward by the debtor, such as the filing of a lawsuit by the customer in Decision Number: 121/Pdt.G.2017/PN.Unr where the creditor was declared to have committed an unlawful act because he had executed an auction on several guarantees belonging to the debtor due to legal defects where the debtor feels that he has never been given a copy of the credit agreement and does not know the exact contents of the credit agreement and does not understand bills and payments as well as credit balances. In fact, at the time of signing the credit agreement, the debtor has read the agreement and is given the opportunity to ask questions if there are still some things that are not understood. Execution of collateral objects is the implementation of the rights of creditors holding collateral rights to collateral objects in the event of a breach of promise by the debtor by selling the collateral objects to pay off the receivables.

Someone who has a debt, must pay it off before death comes. The Prophet Muhammad was never willing to pray over the body of a Muslim who had a debt dependent until someone agreed to pay it. In the Qur'an letter An-Nisa verse 12, Allah SWT orders the heirs to complete the will and debts of someone who died before dividing his inheritance.

## **2. Research Methods**

This research was conducted using a normative juridical approach, namely legal research conducted by examining legal materials (literary study) or secondary data. According to Soerjono Soekanto and Sri Mamudji normative juridical

research includes the following types: research on legal principles, study on legal systematics, research on the level of vertical and horizontal synchronization, comparison of law and legal history.<sup>1</sup>

### **3. Results and Discussion**

#### **3.1. Legal Review of the Sale of Land Auction Results When Default Occurs (Study on Decision Number: 121/Pdt.G.2017/PN.Unr)**

The implementation of the auction is based on the provisions of Article 6 UUHT, which is one type of auction that is included in the execution auction. The auction itself is carried out through the State Assets and Auction Service Office (KPKNL). The creditor must submit a letter requesting an auction in writing before the auction is carried out, accompanied by the documents required for the auction to the KPKNL. The Head of the KPKNL or the Class II Auction Officer may not refuse the submitted bid application, if the document requirements for the auction are complete and have fulfilled the formal legality of the subject and object of the auction.

The auction is held after the bank makes an auction announcement in a daily newspaper published and/or circulating in the city or district where the goods are located. However, if it turns out that there is no announcement in the local city or regency newspaper, the auction announcement can be made through a daily newspaper published in the nearest city or regency or in the provincial capital or state capital and circulated in the work area of the KPKNL or the position area of Class II Auction Officer where the item will be auctioned. If there are bidders who offer the highest price, and have reached or exceeded the limit value, the auction official will certify the highest bidder as a buyer.

The auction winner must immediately pay off the purchase of the auction object no later than 5 (five) working days after the auction is carried out, either in cash or check or giro. Upon the sale of the auctioned goods, the creditor has the right to collect receivables from the proceeds from the sale of the auction object belonging to the debtor, and if the proceeds from the sale are more than the value of the receivables, the debtor is entitled to the remainder. Obstacles that occur during the auction include: the auction is not interested, the auction is held or the buyer defaults on the auction. As a result, the bank can apply for a re-auction to find a buyer for the auction.

Decision Number 121/Pdt.G/2017/PN.Unr is a case involving Zaenal Arifin and Nocha Fitria as debtors with PT. Bank Rakyat Indonesia (Persero), Tbk as creditor. Starting from the existence of a credit facility in 2008 amounting to Rp. 175,000,000.- (one hundred and seventy five million rupiah) given by the Creditor to the Debtor with a guarantee certificate HM Number 157 with an area of ± 2,320 m<sup>2</sup> registered in the name of Tri Darmaningsih, located in West Ungaran. PThe credit loan is stated in the Deed of Credit Agreement Number 05,

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<sup>1</sup>Soerjono Soekanto and Sri Mamudji, Normative Legal Research, A Brief Overview, (Jakarta: Raja Grafindo Persada, 1995), p. 13-14

dated 30 April 2008 with a length of loan or installments of 36 months (3 years) which will end/complete on 30 April 2011.

The Creditor states that the Debtor's confession that he has never been given a copy of the Credit Agreement and does not know the exact contents of the credit agreement and does not understand bills and payments and credit balances shows that the Debtor does not understand the law of the agreement and the law of guarantees. The agreement between the debtor and the creditor is a notarized agreement that has perfect evidentiary power. Both the Debtor and the Creditor have the same position as appearers in the Credit Agreement Deed. The notary has conveyed the intent and content of the Deed of Credit Agreement so that ignorance and lack of understanding of the contents of the credit agreement can be assumed to be an act of subterfuge on the part of the Debtor which further indicates the presence of bad faith on the part of the Debtor.

The execution procedure with the help of a judge (a request for execution by the creditor to the Head of the District Court, then the District Court carries out the execution as carrying out the execution of an ordinary judge's decision that has reached definite legal force "in cracht van gewijsde" is an execution procedure that is in the Civil Procedure Code as stipulated in Article 224 HIR/Article 258 RBg.

The use of this procedure can be clearly read in General Elucidation No. 9 UUHT. If the Debtor defaults, then the collateral object or Mortgage Right by the bank holding the Mortgage Right will be sold through a public auction according to the method specified in the applicable laws and regulations and the creditor holding the Mortgage Right has the right to take all or part of the proceeds from the auction to pay off his receivables secured by the Mortgage Right, with the right to precede other creditors. This is called the execution of Mortgage Rights.

The bank has the right to take settlement of the receivables guaranteed from the sale of the Mortgage object, with the right to precede other creditors who have a lower rating or who are not creditors holding the Mortgage, in the event that the proceeds from the sale are greater than these receivables, which are as high as the mortgage amount, the remainder becomes the right of the mortgage holder to fulfill his other obligations.

Mortgage rights aim to guarantee the debt given by the Mortgage holder to the debtor. If the debtor defaults, the land (land rights) burdened with the Mortgage is to be sold by the Mortgage holder without the consent of the Mortgage giver and the Mortgage giver cannot object to the sale.

Implementation of auction sales can be carried out in an honest (fair) way, UUHT requires that sales be carried out through public auctions according to the procedures determined in the applicable laws and regulations. As specified in Article 20 paragraph (1) UUHT that:

1. If the Debtor defaults, then based on:
  - a. The right of the holder of the First Mortgage Right to sell the object of the Mortgage right as referred to in Article 6, or
  - b. The executorial title contained in the mortgage right certificate as referred to in Article 14 paragraph (2), the mortgage object is sold through a public auction according to the procedure determined in the laws and regulations for settlement of receivables of the mortgage holder with the right to precede other creditors.

Parate execution is considered simple because it does not involve debtors, courts or procedural law procedures. Its implementation only depends on the terms "default debtor", even though the creditor himself only needs it if the debtor defaults. Such authority appears as an execution right that is always ready to be exercised if needed, which is why such execution is referred to as parate execution.

Parate eskesusi provides certainty and the creditor's position will be further protected if the debtor defaults / defaults, because the debtor seems to have set aside part / all of his material assets to pay off his debts at a later date. In the execution of Mortgage Rights, it is also known as the implementation of real executions originating from a debt agreement or punishment for paying compensation arising from "default" based on Article 1243 jo. Article 1246 of the Civil Code or arising from "unlawful acts" based on Article 1365 of the Civil Code. Quantitatively, real execution is almost sourced from punishment for paying debts or known as execution for paying a sum of money. If the defendant as a debtor does not pay off the payment of the amount that was sentenced to him voluntarily, open the authority of the court to carry out the decision by force through execution by selling the assets of the defendant's assets in public auction. Based on the results of the sale of the auction, it is paid to the plaintiff (creditor) in accordance with the amount stated in the decision.

According to the consideration of the Head of Court, the sale of confiscated goods can be carried out by the person who carried out the confiscation or another person who is capable and trustworthy appointed by the President of the Court. With the provisions of these Articles, it means that the Court has the choice to determine who will carry out the auction of the confiscated goods that it handles. In the past, this alternative provision has been carried out by several District Courts by conducting their own auctions of confiscated goods. Regarding this provision, first of all, efforts must be made to sell the confiscated goods

through the auction office, only if there is no mediation in the area of authority where the auction is located, then the auction may be carried out by the person carrying out the confiscation or another person who is capable and trusted.

The auction office itself currently tends to avoid implementing "Verkoop Executorial" based on Article 1178 paragraph 2 of the Civil Code, while the banking sector really hopes that "Verkoop Executorial" can be implemented immediately to speed up the process of resolving bad loans through auction. However, if the Judicial Institution considers that it is still being strengthened by making an execution fiat for the District Court, as a material for consideration so that a fast deadline for granting the fiat for execution.

Banks in giving must pay attention to the principles of sound credit including the risks that must be faced on credit repayments. In order to gain confidence before extending credit, the bank must conduct a thorough assessment of the Debtor's character, ability, capital, collateral and business prospects. Guarantees and collateral are not a substitute for character and or payment. Although it has been stated that in granting credit, banks have a second way out, namely collateral/collateral, it should be emphasized that collateral or collateral cannot be used as a substitute for character and/or payment.

### **3.2. The Value of Justice in Fulfilling the Price of Land Rights Auction Sale Results in the Event of a Default**

Execution of Mortgage by means of auction is a method that is often used by banks as creditors / Mortgage holders to execute collateral belonging to a defaulted debtor. This is because execution through auction is an easy and fast procedure to implement, especially because the creditor/holder of the Mortgage Right is given the power to sell the collateral by law without the need for court fiat.

The principle of fairness in the auction referred to in practice covers all aspects, namely procedural justice which is expected to result in justice for the bidder, the owner of the auction item and the auction buyer. The theory of procedural justice was put forward by John Rawls, that through a procedure, the theory of justice is expected to be able to guarantee the implementation of rights and at the same time distribute obligations fairly for all people so that peace, order and fairness can be realized as a whole and comprehensively.

Procedural fairness in the auction in question is justice seen from the applicable procedure or a regulation that regulates the instructions for carrying out the auction. The current rule is the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning PMK.No Auction

Implementation Guidelines. 27/PMK.06/2016 which regulates all matters relating to auctions.

In practice, problems often occur regarding setting a limit value that only benefits one party. The creditor sets the limit value of the collateral for the mortgage below a reasonable price and it is often found that creditors sell the collateral instead of using the actual liquidity value but the debt value. Cases were found, where the bank set the limit value of the mortgage object (auction item) with the liquidation value on the grounds that the bank used the liquidation value as the limit value.

#### 4. Conclusion

Legal review of the sale of land auction results when a default occurs (Study on Decision Number: 121/Pdt.G.2017/PN.Unr) according to the Creditor is in accordance with the applicable procedures. However, this is different from the opinion of the Debtor who feels that the auction process carried out by the Creditor is detrimental to the Debtor because the auction limit value for the land object is not appropriate because it is far below the market and the auction sales results are not notified by the Creditor to the Debtor. The creditor has complied with all the procedures and requirements of the execution auction so that the execution auction against the object of dispute has been carried out and the execution auction which has been carried out in accordance with these provisions cannot be cancelled. The value of justice in fulfilling the price of the auction sale of land rights in the event of default, is to fulfill the benefits for both the Debtor and the Creditor. In this case, the creditor gets an advantage in returning the money lent to the debtor. Meanwhile, the debtor who is in default will feel that he is getting justice if the debt burden is paid off and when the collateral is sold through auction, he still gets the remainder.

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