

The Legal Protection of Auction Winners Execution of Mortgage Guarantee Auction

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Abstract. *Legal Protection for the winner of the Mortgage Execution Auction means that there is a legal certainty regarding an object for the winner of the Mortgage Auction Execution. In the auction process that has been carried out, there will be legal consequences, namely the transfer of the rights of the auction object from the seller to the auction winner. In practice, the transfer of rights to the auction object raises a problem, such as the auction winner being unable to control the object because it is controlled by a third party. The empirical juridical approach is that this research means that in analyzing the problem it is carried out by combining legal materials (which are secondary data) with primary data obtained in the field, namely regarding "Legal Protection of the Rights of the Winner of the Mortgage Execution Auction. This study draws a conclusion that the provisions for purchasing land and buildings through auctions in Indonesia can be interpreted from the provisions of Article 1313 of the Civil Code and Article 1320 of the Civil Code regarding the terms of the validity of the agreement, then referring to Article 1 point 11 of Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking, credit agreements do not always go well there are problems that arise, namely bad credit, to resolve the problem of bad credit then refer to Article 6 of Act No. 4 of 1996 concerning Mortgage Rights. Then it also refers to Article 1457 of the Civil Code regarding buying and selling.*

Keywords : Execution; Mortgage; Protection.

1. Introduction

To achieve Indonesia's national development goals, namely to realize a just and prosperous society based on Pancasila and the 1945 Constitution, it is necessary to carry out development in all fields, including in this case development in the economic sector. In carrying out development in this economic field, the capital

factor is a requirement that has a very important role.¹The community tries to support development by developing various businesses to develop their economic life.

Indonesian people in developing their economic life still need capital, especially in terms of finance. In today's economic development, many ways are used to get what they want, especially for entrepreneurs and people who work in industrial environments, where they are still in the stage of increasing their business, so that the aspect of capital (money) is the main problem.

Institutions that can serve the community in obtaining loans or credit are needed by the community, because one way to obtain this capital is through credit. One of the financial institutions that can help provide solutions to these capital problems is banking.

The definition of a bank as stated in Article 1 point 2 of Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking states that: "Banks are business entities that collect funds from the public in the form of savings, and distribute them to the public in order to improve the standard of living of the people".

Banks' daily activities 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 credit. In order to carry out the granting of credit, there must be an agreement or agreement between the bank as the creditor and the customer receiving the credit as the debtor, which is called a credit agreement. In providing credit to the community, the bank must feel confident that the funds lent to the community will be returned on time along with the interest and with the conditions that have been mutually agreed upon by the bank and the customer concerned in the credit agreement.²

Making a credit agreement, banks generally will not give credit just like that without regard to the guarantees given by the debtor to guarantee the credit he gets.³Collateral or collateral is something that is very closely related to the bank in the technical implementation of lending. Credit provided by the bank needs to be secured. Without security, it is difficult for banks to avoid future risks, as a result of a customer's failure to perform. To obtain certainty and security from their credit, banks take security measures and ask prospective customers to provide

¹ Adrian Sutedi, Mortgage Law, (Jakarta: Sinar Graphic, 2010), p. 2

² *Ibid* p. 12

³ Munir Fuady, Contemporary Credit Law. (Bandung: Citra Aditya Bakti, 2002), p. 21-22

collateral for certain goods as collateral in granting credit and which are regulated in Articles 1131 and 1132 of the Civil Code.

The Civil Code in Article 1131 states that all the property of the person in debt, both movable and immovable, both existing and future will be borne for all individual engagements, but often people are not satisfied with guarantees. which is formulated in general, therefore, the bank needs to request that certain objects can be used as collateral that is binding legally. Thus if the debtor does not keep his promise, the bank can exercise its rights by obtaining a higher position than other creditors to obtain payment of its receivables.⁴

Land is the most preferred collateral for debt repayment by financial institutions that provide credit facilities, because land is generally easy to sell, the price continues to increase, has proof of title, is difficult to embezzle and can be burdened with a Mortgage which gives creditors special rights.

The Basic Agrarian Principles Regulations (UUPA) Article 51 Act No. 5 of 1960, has regulated a guarantee institution for land or land and building rights called Mortgage Rights, whose arrangements will be regulated further by law. In this regard, Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT) was born.

UUHT on April 9, 1996, all provisions regarding Credietverband in Book II of the Civil Code which were enforced under Article 57 of the UUPA were declared no longer valid. This brought the Indonesian people into the era of national Mortgage Rights. The definition of Mortgage is based on Article 1 paragraph (1) Number 5 of 2020 concerning Electronically Integrated Mortgage Services, namely:

" Mortgage rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights that are imposed on land rights as referred to in Act No. 5 of 1960 concerning Basic Agrarian Regulations, whether or not along with other objects that are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors."

The granting of credit secured by Mortgage is a guarantee agreement that is an accessory to the principal agreement, namely the credit agreement. This guarantee agreement is necessary because in addition to guaranteeing the settlement or implementation of the debtor's obligations to the creditor, it also provides convenience in resolving disputes if the debtor defaults. This is because the law gives rights to parties who feel they have been harmed to act directly at

⁴ Adrian Sutedi, Op. Cit., p. 15

the forced realization of rights (execution) if the opposing party denies their obligations.⁵

The execution of debt guarantees by creditors is in principle not the only way to resolve bad loans, because in banking practice there are 2 (two) ways to settle bad loans, including:

1. internally

Settlement of bad loans internally carried out by banks can go through several stages, namely:

- a. Negotiation, namely the process where debtors and creditors meet to find solutions to settle bad loans properly. If the negotiation process results in an agreement between the two parties, then rescheduling, reconditioning and restructuring will be carried out.
- b. Warning, if the negotiation process does not reach an agreement and the debtor does not show good faith in resolving the bad credit.
- c. The creditor will make a visit to the debtor's business if it still exists.

2. externally

Settlement externally is the last resort that can be taken by creditors if efforts to resolve internal disputes cannot produce results. Settlement externally in the form of execution, can be done in 2 (two) ways, including:

- a. through the District Court, by filing a lawsuit against the debtor's debts and guarantees that are not bound by the Mortgage, or against the Mortgage certificate by submitting a fiat execution application to the Chairperson of the District Court in the area where the guarantee is located.
- b. Through the State Wealth and Auction Service Office (hereinafter referred to as KPKNL), for guarantees that have been burdened with Mortgage Rights, without fiat execution from the Chairperson of the District Court (parate executie)

Execution of Mortgage can be done by:

⁵ Mochammad Dja'is, Basic Thoughts on the Law of Execution, Semarang: Faculty of Law, University of Diponegoro, 2004, p. 6

1. The auction sale of the object of Mortgage Right on the authority of the holder of the first Mortgage Right, as referred to in Article 6 UUHT.
2. Sales through a public auction of Mortgage objects based on executorial titles contained in the Mortgage certificate as referred to in Article 14 paragraph (2) according to the procedure specified in the laws and regulations for settlement of receivables of Mortgage holders with prior rights than other creditors.
3. Sales of Mortgage objects under the hand In order to facilitate the implementation of the Mortgage object execution to creditors the Mortgage holder is given the right of his own authority to carry out the execution of the Mortgage if the debtor defaults as stipulated in Article 6 UUHT. The provisions in Article 6 of the UUHT give the right to the first creditor (the Mortgage Holder) to sell the Mortgage object on his own power through a public auction and collect the settlement of his receivables from the proceeds of the sale if the debtor defaults.⁶

Through Article 6 UUHT, legislators intend to give a strong position to the Mortgage Holder, namely by giving a very powerful right, which is called parate execution. The first Mortgage Holder does not need to ask for prior approval from the Mortgage giver and also does not need to ask for the decision of the Head of the local District Court to carry out the execution of the Mortgage object. The first Mortgage Holder only needs to submit an application to the Head of the local State Auction Office to carry out a public auction in the context of executing the Mortgage object.

Public sales or auctions have been officially entered into Indonesian law since 1908, with the enactment of the *Vendu Reglement*, Ordonantie 28 February 1908 Staatsblad 1908 Number 189 jo Stb. 1941 NO. 3 and the *Vendu Instructie* which was announced in the 1908 Staatsblad Number 190 jo Stb. 1930 No. 85 which is still valid, based on Article II of the Transitional Rules of the 1945 Constitution. by law.

The definition of auction is based on Article 1 *Vendu Reglement*, Ordonantie 28 February 1908 Stb. 1908 No. 189 jo Stb. 1941 NO. 3, namely:

"Public sales or openbare verkopeningen are auctions and sales of goods held in public with increasing price bids, with increasing price agreements or with price registration, or where people are invited or previously informed about the auction

⁶ Rachmadi Usman, *Civil Guarantee Law*, (Jakarta: Sinar Graphic, 2008), p. 491

or sale. , or the opportunity given to repeat or purchasers to bid on prices, agree on prices or register.”

As time went on, several provisions in the *Vendu Reglement*, *Ordonantie* 28 February 1908 *Stb.* 1908 No. 189 *jo Stb* 1941 No. 3 and *Vendu Instructie*, *Stb* 1908 No. 190 *jo Stb.* 1930 No. 85 which were deemed no longer suitable to meet the needs of the community, was amended by various Minister of Finance Regulations and Decrees of the Director General of Receivables and State Auctions. 213/PMK.06/2020 concerning Instructions for Conducting Auctions.

The definition of an auction according to Article 1 point 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 concerning Guidelines for Implementation of Auctions that: "Auction is the sale of goods open to the public with written and/or oral price bids that increase or decrease for achieves the highest price, which is preceded by an Announcement of Auction.." Auction implementation in Indonesia is classified into 2 (two) types, namely:⁷

1. Execution auction, is an auction to carry out court decisions or decisions, other documents that are equivalent to that and/or carry out provisions in laws and regulations.
2. Non-execution auctions are auctions outside the implementation of court decisions or orders, other documents that are equivalent to that, in accordance with the applicable laws and regulations. This auction includes:
 - a. Mandatory non-execution auctions, namely auctions to carry out the sale of goods which by law are required to be sold by auction.
 - b. Voluntary non-execution auctions, namely auctions of private property, persons or legal entities and business entities that are auctioned voluntarily.

Auction as a coercive legal act and its role is very important in resolving civil issues carried out by the District Court and the Office for State Assets Services and Auctions (KPKNL). the manner specified in the laws and regulations for the settlement of receivables of the Mortgage Holder. This is as stated in Article 200 paragraph (7) *Het Herziene Indonesisch Reglement (HIR)* that the mortgagee,

⁷ I Made Soewandi, *Auction Hall (Authority of the Auction Center in the Sale of Bad Credit Guarantees)*, Yogyakarta: Gloria Foundation, 2005, p. 27

namely the debtor is no longer allowed to prevent the auction and pay all the debt.⁸

Auctions in Indonesia can be carried out through the procedures stipulated in Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Conducting Auctions, but even though it has been regulated in a Minister of Finance Regulation, in practice, there are still many lawsuits for cancellation of auctions filed with District Court.

If an auction is canceled based on a court decision, the implementation of the auction as a form of preferential rights granted by law on mortgage rights becomes uncertain. Thus it is a waste of time to give preference rights to the Mortgage holder, but in the end after the sale of the Mortgage object, it is in fact canceled by a court decision which results in the Mortgage and the sale of the Mortgage object being deemed non-existent. The cancellation of the auction through a court decision also reflects the lack of legal protection for the auction winner.

In practice, the creditor or the holder of the first mortgage right usually carry out the execution of mortgage rights by means of *parate executie*. *Parate executie* is usually carried out by the holder of the first mortgage right if the debtor defaults through the State Property and Auction Service Office (hereinafter referred to as the KPKNL). *Parate executie* is often carried out by creditors holding mortgage rights because they are considered easier, costs less, the implementation is shorter, and creditors do not have to ask for fiat from the head of the court to execute the mortgage.⁹

2. Research Methods

The method used in this research is legal research method Normative or literary legal research methods are methods or methods used in legal research conducted by examining materials originating from the literature. Examining library materials or secondary data. This research uses the juridical-normative method, especially to examine laws and regulations and court decisions. The normative legal research method is research that refers to legal norms contained in statutory regulations and court decisions. The research approach used is descriptive analytical research.

3. Results and Discussion

⁸ Adrian Sutedi, Op. Cit., p. 163

⁹ Deasy Soeikromo, "Legal Certainty in the Fulfillment of Creditors' Rights in the Execution of Objects Guarantee of Mortgage through Execution *Parate*", Journal of Law, No. 1 Vol. 1, Faculty of Law, University of Sam Ratulangi Manado, 2016, p. 34.

3.1. Implementation of Mortgage Guarantee Execution Auction

1. Implementation of Auction Objects with Collateral Encumbered with Mortgage Deed of Encumbrance

Mortgage is a binding guarantee that is often used in the implementation of financing, especially to guarantee guarantees in the form of immovable objects bound by binding agreements in the form of a Power of Attorney for Imposing Mortgage Rights (SKMHT) and Deeds for Granting Mortgage Rights (APHT) which are based on the main agreement that made by the customer and the bank as the guarantee recipient. Arrangements regarding Mortgage Rights are regulated in Act No. 4 of 1996 concerning Mortgage Laws (UUHT).

The implementation of the auction is carried out by the State Assets and Auction Service Office (KPKNL) regulated in Minister of Finance Regulation No. 213/PMK.06/2020 concerning the Organization and Work Procedure of Vertical Agencies of the Directorate General of State Assets Article 26 paragraph (2), that the State Assets and Auction Service Office (KPKNL) is a vertical agency of the Directorate General of State Assets (DJKN) which is under and is responsible for directly responsible to the Head of the Regional Office led by a Head.

The word "vertical agency" in the sentence above means that the KPKNL is basically the operational office of the Directorate General of State Assets (DJKN). Because the KPKNL is the operational office of the DJKN, the KPKNL also carries out the duties of the DJKN in the regions.

Announcements of auctions are usually made in newspapers and other media, in this case the KPKNL will review an auction process so as to resolve problems thereby creating a fair and open auction which is a convenience for the public.

2. Implementation of Auctions for Mortgage Objects to Realize Justice for the Parties

The engagement agreement entered into by the parties mentioned above in the event of default or default will later be executed, one of which is the auction mechanism for collateral items. Implementation of the auction to facilitate the settlement of default occurs. Therefore, this study wants to examine the Auction of Mortgage Guaranteed Goods.

Juridically, a mortgage right is a security right over land that is charged to property rights, building use rights, usufructuary rights and usufructuary rights, along with or without other objects that are an integral part of the land, for repayment of certain debts, which provide preferred position to certain creditors over other creditors in taking payment of their receivables. It is clear in the meaning above

that it is stated that mortgage rights are collateral rights to land, not land as collateral. The guarantee right to land is a guarantee that legally places land rights as the object, not the physical land.

Mortgage rights arise because of an agreement, so there is an agreement between the two parties by giving mortgage rights. The formulation of Article 10 paragraph (1) of the Mortgage Law states that "The granting of mortgage rights is preceded by a promise to provide mortgage rights as guarantees for repayment of certain debts, which are set forth in and are an integral part of the debt agreement in question or other agreements that incur the debt." One of the characteristics of the mortgage is the exact implementation of its execution and the special rights contained in the mortgage are more aimed at the recipient of the mortgage. This privilege is contained in one of the principles of mortgage rights, namely giving a preferred position to the creditor. The object charged with the mortgage right is under the authority of the mortgagee. This aims to provide protection and legal certainty to creditors if the debtor defaults. If there is a breach of contract, the object that is collateralized with the mortgage right will be sold to pay off the debt of the guaranteed debtor.

3.2. Legal Protection Against Mortgage Execution Auctions in Bank Credit Agreements

The bank is one of the financing institutions that can improve the economy by channeling funds in the form of credit to the public for business development. As previously explained, when extending credit, banks must apply the precautionary principle because every credit extended by a bank carries a risk. Therefore, a guarantee is needed to guarantee the repayment of the debtor's debt in the credit agreement.

The credit agreement must be considered by the bank as the creditor as well as by the customer as the debtor because the credit agreement is the principal agreement and has a very important function. With the existence of a credit agreement as the main agreement, it can be followed by additional agreements such as guarantee agreements. The guarantee agreement is an accessory agreement (additional) that is linked to the main agreement to guarantee the creditor's rights if the debtor cannot fulfill the performance. One guarantee institution that is often used in the practice of granting credit is a mortgage guarantee institution.¹⁰

¹⁰ Rachmadi Usman, *Civil Guarantee Law* (Jakarta: Sinar Graphic, 2016).

The General Explanation of number 7 of the Company Law regulates the procedure for imposing mortgage rights which states that:

1. The stage of granting mortgage rights by making mortgage rights by the Land Deed Official (hereinafter abbreviated as PPAT), which was previously preceded by a guaranteed debt agreement.
2. The registration stage by the Land Office, which is when the mortgage right is born.

Based on these provisions, it can be seen that the imposition of mortgage rights on property rights is carried out according to the procedures regulated in the applicable laws and regulations. This is because the granting of mortgage rights by the debtor has been carried out before a notary public so that the Deed of Mortgage Imposition (APHT) has been issued and has been registered at the Land Office so that Mortgage Letters (SHT) have been born as proof of the existence of mortgage rights and have the same executive power as court decisions because contains the irah-irah "For the sake of Justice Based on Belief in the One and Only God."

The binding of the mortgage has been preceded by a guarantee binding agreement which is an accessoir agreement to the banking facility agreement as previously mentioned as the principal agreement. The APHT has included the name and identity of the holder and giver of the mortgage right, the domicile of the parties, a clear designation of the debt that is guaranteed for repayment with the Mortgage Right, the collateral value and a clear description regarding the object of the mortgage right. By including these matters, the imposition of mortgage rights fulfills the requirements for special mortgage rights.¹¹

The imposition of Mortgage is intended to guarantee the rights of the bank as a creditor in terms of repayment of debt if the debtor is unable to pay off his debt within a predetermined period of time. The imposition of mortgage rights by the debtor gives rise to protection for creditors and obtains a priority position in terms of debt repayment of the collateralized object. With the guarantee of mortgage rights, it can minimize the risks experienced by banks due to credit agreements.¹²

The issuance of the warning letter shows that the bank (creditor) is in good faith to give the debtor to pay off his debt. After being given a third warning letter to the debtor to fulfill his obligations, there was still no response, the bank determined that the credit to the debtor was bad credit because it had fulfilled

¹¹Sutedi Adrian, *Mortgage Law* (Jakarta: Sinar Graphic, 2010).

¹² Sianturi Purnama Tioria, *Legal Protection for Buyers of Immovable Guaranteed Goods*

collectibility as bad credit. Determination of credit quality is based on the provisions of Bank Indonesia Regulation number 14/15/PBI/2012 concerning Asset Quality Rating for Commercial Banks and Bank Indonesia Regulation number 7/2/PBI/2005 concerning Asset Quality Rating for Commercial Banks. With the determination of bad credit, the debtor has defaulted.¹³

The bank performs *parate executie* (direct execution) through the State Assets and Auction Service Office (KPKNL). The direct execution carried out is based on Article 20 paragraph (1) letter a UUHT jo Article 6 UUHT and Article 11 paragraph (2) letter e UUHT. According to Article 20 paragraph (1) letter a jo Article 6 UUHT if the debtor defaults, the creditor The holder of the first mortgage right has the right to sell the object of mortgage on his own power through a public auction and collects the settlement of his receivables through the proceeds from the sale of the object of mortgage.

Whereas Article 11 paragraph (2) letter e requires a promise that the holder of the first mortgage right has the right to sell the mortgage object under his own authority if the debtor defaults.¹⁴If the debtor does not fulfill the obligation to pay off the debt, based on the loan agreement, the bank as the holder of the mortgage right with the APHT is given the power to:

1. Selling in public by way of auction the object of mortgage, either in whole or in part.
2. Arrange and determine the time, place, manner and terms of sale.
3. Receive sales money, sign and submit receipts.
4. Submit what is sold to the buyer concerned.
5. Taking the proceeds from the sale in whole or in part to pay off the Debtor's debt.
6. Do other things according to applicable laws and legal regulations that are required or in the opinion of the bank as a creditor it is necessary to carry out this power of attorney.

Based on this explanation, there are no problems with the actions taken by the bank. Thus it can be said that the actions taken by the bank have been carried out

¹³ Sianturi Purnama Tioria, *Legal Protection for Buyers of Immovable Guaranteed Goods through Auctions* (Bandung: Publisher CV. Mandar Maju, 2013).

¹⁴ Law Number 4 of 1996 Concerning Mortgage Rights

based on the provisions in the UUHT and strengthened by the provisions in the APHT.¹⁵

Furthermore, the bank submits an auction request through the KPKNL. Previously, it was necessary to note that the regulations regarding auctions in Indonesia were regulated in the *Vendu Reglement* contained in the *Ordonantie* dated February 28, 1908 *Staatsblad* 1908 Number 189 which had been amended several times, most recently by *Staatsblad* 1941 Number 3, which came into force on April 1 1908, until now it is still the legal basis for organizing conducting auctions or selling collateral in public in Indonesia. Meanwhile, the procedure for carrying out the auction itself is regulated in the Regulation of the Minister of Finance (hereinafter abbreviated as PMK) Number 213/PMK.06/2020 Concerning Instructions for Conducting Auctions.¹⁶

After the documents are completed by the bank, the KPKNL accepts the tender request submitted by the bank. This is in accordance with the provisions stipulated in Article 11 of PMK Number 213/PMK.06/2020 Concerning Instructions for Conducting Auctions which states that the Head of the KPKNL or a Class II Auction Officer may not refuse a bid request as long as the tender requirements document is complete and meets formal legality. the subject and object of the auction. Therefore, after the document inspection is considered complete, the KPKNL accepts the tender request submitted by the Bank. Once accepted, the KPKNL determines the time for the auction to be held.¹⁷

In this case, the auction winner has followed the auction process according to the procedure and met the requirements determined by the KPKNL, then the auction buyer is required to pay Land and Building Rights Acquisition Fees (BPHTB) before obtaining auction receipts and minutes.¹⁸

The granting of the tender minutes is an implementation of Article 42 *Vendu Regulation* and Article 93 paragraph (1) PMK No. 213/PMK.06/2020 concerning Instructions for Implementation of the Auction, which in essence explains the rights of the auction buyer, namely to obtain a copy of the identical report regarding the sale accompanied by stamp duty. In addition, Article 93 paragraph (2) letter a regulates the use of minutes of auction for auction buyers, namely as a deed of sale and purchase for the purpose of transferring names at the Land Office. Thus, it can be concluded that the implementation of the auction was carried out based on the *Vendu Regulation* contained in the *Ordonnantie* dated

¹⁵ Poesoko Herowati, *Legal Dynamics of Parate Executie Mortgage Objects* (Yogyakarta: Aswaja Pressindo, 2013).

¹⁶ Rachmadi Usman, *Auction Law* (Jakarta: Sinar Graphic, 2016).

¹⁷ Rachmadi Usman, *Auction Law* (Jakarta: Sinar Graphic, 2016).

¹⁸ Najah. R. Daeng, *Credit Law and Bank Guarantees* (Bandung: Citra Aditya Bakti, 2005).

28 February 1908 Staatsblad 1908 Number 189 which has been amended several times, most recently by Staatsblad 1941 Number 3, which came into force from 1 April 1908 until now.¹⁹

Legal protection for the right of the winner of the auction to execute the mortgage, indeed the protection for the winner of the auction to execute the mortgage has not been clearly regulated in laws and regulations. Whereas in this case the winner of the auction is a buyer in good faith. The good faith of the auction buyer can be proven by the completeness of the requirements needed to participate in the auction and carry out the auction according to procedures and not contrary to laws and regulations.²⁰

Auctions in this case can be equated with buying and selling as stated in Article 1457 of the Civil Code. When connected with article 584 of the Civil Code in conjunction with Article 531 of the Civil Code, a buyer can be said to have good faith if he has carried out according to procedures, meets the requirements as a buyer, and complies with the principles of selling through auction. In this case, the auction buyer has met the requirements and complied with the procedure so that he can be said to be a buyer in good faith. It is appropriate that buyers with good intentions have their rights protected.

Protection for buyers of auction execution of mortgage rights has actually indirectly been regulated in a preventive manner. Preventive protection for the winner of the mortgage auction, namely a form of protection given before the occurrence of a dispute related to the object of the auction, so that it is preventive.²¹

Preventive protection in vendor regulation, namely contained in Article 42 vendor regulation which stipulates that the auction winner can receive excerpts from minutes of events that are terminated or what is called a quotation of minutes of auction. The provision of auction minutes here can be likened to a deed of sale and purchase agreement. The position of the excerpt of the minutes of auction is parallel to the sale and purchase agreement deed made by the Land Deed Official (PPAT) so that it can be used for the purpose of transferring rights to the object of the auction for mortgage rights at the Land Office. General Provisions Article 1 point 32 PMK Number 213/PMK.06/ 2020 concerning the Guidelines for the

¹⁹ Najah. R. Daeng, *Credit Law and Bank Guarantees* (Bandung: Citra Aditya Bakti, 2005).

²⁰ Rachmadi Usman, *Auction Law* (Jakarta: Sinar Graphic, 2016).

²¹ Hadjon Philipus M., *Legal Protection for the Indonesian People: A Study of its Principles, Handling by the Courts within the scope of General Courts and the Formation of State Administrative Courts* (Surabaya: Bina Ilmu, 1987).

Implementation of Auctions states that the minutes of the auction are the minutes of the auction which are authentic deeds that have perfect evidentiary power.

The minutes of the auction must contain what, why, where, if, how, and who is involved in the auction. What is being auctioned explains the object of the item being auctioned. Why the auction is held explains the background to the auction. Where auctioned explains the place where the auction is held and when the auction is held. How is the implementation of the auction explains the process of bidding until the winner of the auction is appointed. Who is involved in the auction explains who is the applicant or seller of the auction, who is the bidder in the auction, and who is the buyer of the auction.²²

However, the minutes of the auction cannot guarantee legal protection for the buyer of the mortgage execution auction. This is because the clause in the minutes of auction contains the statement:

1. The Auction Officer/KPKNL does not guarantee the correctness of the information given orally given at the time of sale regarding the actual condition and legal situation of the item being auctioned, and is at the buyer's risk.
2. The bidder/buyer is considered to have truly known what has been bid or purchased by them, if there are defects and damage, both visible and invisible, or there are other defects on the land or building of the goods they have purchased, then they have no right to refuse or withdraw. return after the purchase is authorized and waive all rights to claim compensation in any form whatsoever.

Protection for the winner of the Mortgage auction has actually been carried out preventively by the KPKNL because before the auction is held, the KPKNL informs the bidders regarding the documents, condition and condition of the object to be auctioned really and as it is, as well as the consequences and risks that could arising from the auction object. Auction participants are considered to know the truth and accept the consequences of auctioning mortgage objects by carrying out preventive actions by the KPKNL. In addition, the auction official is required to ask the Land Office for information regarding the land parcels to be auctioned. This is done no later than 7 days prior to the auction to ensure the clarity of the auction object. Obligations of the Auction Officer as an intermediary to sellers and buyers to act carefully in carrying out their duties, and to provide important information that they know. Auction officials must be careful in carrying out auctions both for

²² Rachmadi Usman, Auction Law (Jakarta: Sinar Graphic, 2016).

the interests of the seller and the interests of the buyer and provide information as clear as possible, including about the goods or objects to the buyer.²³

Because the implementation of the auction here can be equated with the sale and purchase agreement as stipulated in the Civil Code, the legal protection is also contained in the Civil Code. Based on the Civil Code, buyers in good faith must be protected. This form of protection for the buyer in good faith is contained in Article 1491 of the Civil Code which states that the guarantee that is the obligation of the seller to the buyer is to guarantee two things, namely firstly the possession of the object being sold safely and securely, secondly against defects in hidden or hidden goods. in such a way as to issue a reason for canceling the purchase.

In addition to the protection in Article 1491 of the Civil Code, protection for buyers can also be carried out by filing a lawsuit for compensation. This is based on Article 1267 of the Civil Code which states that the party against whom the agreement is not fulfilled, can choose whether he, if this can still be done, will force the other party to fulfill the agreement, or will he demand cancellation of the agreement, accompanied by compensation for costs, losses and flower. Based on this article, it is clear that the buyer is protected to obtain his rights. Legal protection for auction winners can be found in Article 25 of PMK Number 213/PMK.06/2020 concerning Instructions for Conducting Auctions which states that auctions that have been carried out in accordance with applicable regulations cannot be cancelled. Based on this article, it can be seen that legal certainty for the winner of the mortgage auction is guaranteed. Apart from that, preventive protection can also be seen in Article 26 PMK Number 213/PMK.06/2020 concerning Guidelines for Auctions which regulates the obligation for auction sellers to complete documents and formal legality related to the object to be auctioned. Furthermore, the KPKNL Auction Officer conducts a juridical analysis of the auction requirement documents, formal legality and the validity of the auction object. This provides legal certainty for auction buyers because auctions can be carried out according to procedures regulated in laws and regulations.²⁴

Related to the submission of ownership documents over the auction object is not the authority of the KPKNL, but is the responsibility of the auction seller, in this case the bank/creditor. This is regulated in Article 17 PMK Number: 213/PMK.06/2020 concerning Guidelines for Conducting Auctions which states that:

²³ Sutedi Adrian, Mortgage Law (Jakarta: Sinar Graphic, 2010).

²⁴ Sutedi Adrian, Mortgage Law (Jakarta: Sinar Graphic, 2010).

(1) The seller submits or shows the original documents of ownership to the Auction Officer at the latest before the auction.

(2) Excluded from the provisions referred to in paragraph (1), the Seller may not submit or show the original ownership documents for the Execution Auction which according to the laws and regulations can still be executed even though the original ownership documents are not in the possession of the Seller.

(3) In the event that the Seller submits the original ownership document as referred to in paragraph (1), the Auction Official is required to show it to the Bidder before the auction begins.

(4) In the case of the Auction With the Attendance of the Participant and the Seller only showing the original documents of ownership as referred to in paragraph (1), the Seller shows them to the Bidder before the Auction starts and makes a stamped statement.

(5) A stamped statement as referred to in paragraph (4) contains a statement that the original ownership documents are in the possession of the Seller and will be handed over to the Buyer in accordance with the provisions of the laws and regulations.

In addition to this article, the seller's obligations to the goods he sells are also contained in the Civil Code. Article 1474 of the Civil Code states that the seller has an obligation to:

1. Maintain and care for the material that will be handed over to the buyer until the time of delivery.
2. Delivering the goods sold at a predetermined time, or if the time has not been determined, at the request of the buyer.

Based on these articles, legal certainty and protection can be seen for the auction winner. This is because the rights of the auction winner are guaranteed by the obligations and responsibilities that must be carried out by the auction seller in accordance with that article. This regulation reflects that in the implementation of pre-auction and post-auction not only emphasizes the prudential factor of the auction buyer when purchasing goods, but also the prudential factor is the responsibility of the seller. This responsibility is strictly regulated so that in the case of granting compensation arising from the invalidity of goods and document requirements for goods, the responsibility lies with the seller.

In addition to the vendor regulation and Minister of Finance Regulation, protection for repressive auction winners is included in the HIR. Repressive

protection is an effort to obtain legal protection through the judiciary. Article 200 paragraph (11) of the HIR regulates the real execution or the execution of vacancy which in essence states that if the auction winner cannot control the auction object that has been purchased through a valid auction by law, then the auction winner may request assistance from the local District Court to carry out the vacancy. of the auction object.²⁵

APHT made based on SKMHT that has never been born apart from not fulfilling certain object requirements, also does not meet the requirements of halal causation. Halal causes are regulated in Article 1320 of the Civil Code, and further regulated in Articles 1335-1337 of the Civil Code. Article 1335 of the Civil Code determines that an agreement made without cause or made with false or prohibited reasons does not have binding force. Agreements that do not state a cause but do not violate the prohibition then the agreement remains valid. Article 1337 of the Civil Code confirms that a cause is prohibited if that cause is prohibited by law, decency or public order. Tri Wahyu Surya Lestari argues that because it is said to be prohibited if it conflicts with the law, for example Article 31 paragraph (1) of Act No. 24 of 2009 concerning Flags, Languages, and the State Emblem and National Anthem, which basically stipulate in a memorandum of understanding or agreement involving state institutions, government agencies, Indonesian private institutions as well as individual Indonesian citizens must use the Indonesian language. If the provisions of Article 31 paragraph (1) Law 24/2009 are not fulfilled, then it is categorized as a form of violation of the law. Agreements involving foreign parties if they do not use the Indonesian language then the agreement is null and void.²⁶

4. Conclusion

The results of the analysis and discussion regarding the implementation of auctions for objects burdened with mortgage rights in the context of realizing justice for the parties can be concluded as follows: bidders are related to the documents, the condition and condition of the object to be auctioned really and as it is, as well as the consequences and risks that may arise from the object of the auction. Regarding repressive protection, namely efforts to obtain legal protection through the judiciary. It is hoped that the government, especially the KPKNL (State Property and Auction Services) Office, needs special arrangements regarding the legal protection of the winner of the mortgage auction. Prior to conducting an

²⁵ Hadjon, Philipus, *Legal Protection for Indonesian People* (Surabaya: Bina Ilmu, 1997).

²⁶ Lestari, Tri Wahyu Surya and Lukman Santoso., *Comparison of Legal Terms for Halal Causes in Conventional Agreements and Sharia Agreements*, *Yudisia: Journal of Islamic Law and Legal Thought*, Vol.8 No.2, 2017;

auction, creditors and debtors must make an agreement in advance regarding the price of the auction object, so as not to harm the buyer of the auction.

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