

Obstacles in the Implementation of Legal Protection for Auction Buyers Regarding the Employment of Auction Objects for The Execution of Mortgage Rights

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Abstract. Problems often arise in the auction winner's control of the auctioned object, which is the collateral, mortgage, or other collateral. One such problem is the debtor's or third party's reluctance to leave and vacate the auctioned object. This clearly does not provide legal certainty for the guaranteed protection of the auction winner's rights. This research was conducted using normative legal research (normative legal research method). Based on the research results, it can be seen that the current procedure for protecting the rights of auction winners has obstacles in the form of Guarantees for the protection of rights for auction winners in the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 (PMK 122/2023) have not been specifically regulated. The auction can only be canceled by the request of the Seller or a provisional decision or decision from a general judicial institution, as regulated in the Regulation of the Minister of Finance (PMK) Number: 93/PMK.06/2010. Many debtors are reluctant to hand over the HT collateral object for auction, resulting in obstacles in the process of clearing the auction object after the auction. Intervention by third parties who feel disadvantaged by the auction can hinder the process.

Keywords: Auction; Law; Mortgage; Protection.

1. Introduction

Mortgage is a security right over land for the repayment of a particular debt, which gives a particular creditor a priority position over other creditors. This means that if the debtor defaults, the creditor holding the Mortgage Right has the right to sell the land used as collateral through a public auction according to the provisions of the relevant laws and regulations, with priority rights over other creditors. This priority position certainly does not reduce the preference of State receivables according to the provisions of applicable law. Post Auction related to the HT collateral object which is marked by the purchase of the HT collateral object which is then followed by the cleaning of the HT collateral object which has been purchased by the auction winner from all Mortgage Rights which exceed the purchase price as referred to in Article 19 paragraph (1) of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. This provision is then followed by the process of deleting the Mortgage Rights record or roya which is carried out for the sake of administrative order as referred to in Article 22 paragraph (1) of the Republic of Indonesia Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

Article 1 number 1 of the Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Guidelines then states that an Auction is a sale of goods that is open to the public with written and/or verbal price offers that increase or decrease to achieve the highest price, which is preceded by an Auction Announcement. After the auction execution is carried out, the creditor holding the mortgage right is entitled to receive payment from the proceeds of the sale of the mortgage object. If the proceeds from the auction are greater than the collateral value receivables, then the remainder of the repayment of the collateral becomes the right of the mortgagee. After the execution of the mortgage auction, the auction winner is then given a deed of quotation of the auction minutes which serve as an authentic deed for the transfer of ownership of land rights from the old owner to the new owner. The auction minutes are minutes of the auction that serve as the basis for authenticating the auction sale, which contain all events that occurred during the auction process. With the auction minutes, the auction winner can register their land rights with the National Land Agency for the transfer of name. To minimize obstacles in the auction process, auction execution is fully regulated in Minister of Finance Regulation No. 122 of 2023 concerning Auction Implementation Guidelines. The execution of mortgage auctions does not always run smoothly, with numerous obstacles encountered, from the pre-auction to the post-auction process.

However, the auction winner filed a lawsuit to the court for vacating the property because he could not physically control the land. The debtor was reluctant to vacate the property and instead made extraordinary efforts.¹The next case is a case that occurred in the case of Decision Number: 5874 / Pdt.G / 2022 / PA.CLP. which occurred in Cilacap. Initially, the plaintiff had entered into a murabahah agreement on Number: 769 / MRBH / X / 2017 with PT. BPR SYARIAH Gunung Slamet with a total financing of Rp. 650,000,000. The plaintiff as a customer has received murabahah financing with 2 collateral guarantees, namely, a plot of land in accordance with the Land Ownership Certificate number: 333 with a land area of 435 m2 located in the village of Kuripan Kesugihan, Cilacap Regency, the name of the plaintiff's rights holder with the northern boundary being Tuginem, South: Yatim, East namely Jalan Karangandri Lebeng, South: Tertiary. and Land Title Certificate number 130, covering 1,118 m2 of land located in Kuripan Kidul, Kesugihan District, Cilacap Regency.

The opposing party then proceeded to make installment payments.²Pelawan is a debtor who is smooth in paying his credit, however, due to the Covid 19 pandemic which impacted Pelawan's business, Pelawan has difficulty paying the credit installments. which then the opponent experienced a delay in paying the installments. However, Pelawan also has good intentions, namely to pay off the installments. However, it does take time because the Covid 19 situation creates obstacles and is a disaster that is unknown to anyone. The decision stated that the opponent has had good intentions, namely to pay off his debt to Bank BPR Syariah. However, because one of the collateral has been auctioned and has been purchased by a person who has been appointed as an auction buyer, Bank BPR Syariah refused to pay off.³In this case, the plaintiff also felt disadvantaged because the assets that should still be his had actually changed hands to someone else. Bank BPR Syariah issued a letter containing the settlement of the collateral by the plaintiff, because the collateral had been sold by Bank BPR Syariah.

2. Research Methods

This writing uses a normative research method. The normative legal research method is a library legal research conducted by examining library materials or secondary data. In this research, the scope of this research will be conducted by drawing legal principles, which is carried out on both written and unwritten positive law. In this research process, the method uses legal principles in

¹Salsabila Fathimah Azzahra & Siti Malikhatun Badriyah, "Perlindungan Hukum Terhadap Pemenang Lelang Atas Objek Eksekusi Hak Tanggungan", *Lex Renaissance*, No. 1, Vol. 8, 2023, p. 170. [file:///C:/Users/ASUS/Downloads/28375-Article-Text-94487-103905-10-202312-20\(1\).pdf](file:///C:/Users/ASUS/Downloads/28375-Article-Text-94487-103905-10-202312-20(1).pdf).

²Putusan Pengadilan Negeri Negara Nomor 13/Pdt.G/2021/PN Nga, <https://putusan3.mahkamahagung.go.id/pengadilan/profil/pengadilan/pn-negara.html>, January 7, 2025.

³*Loc, cit.*

interpreting legislation. Furthermore, this research can also be used to search for legal principles formulated, both implicitly and explicitly.⁴

3. Results and Discussion

3.1. Current Procedures for Auctioning Mortgage Objects

Every legal act has legal consequences, and auctions are no exception. An auction is a general process of selling an item before an auction official, establishing a competitive price through open or closed price bargaining, beginning with an auction announcement. Therefore, auctions can be considered a form of buying and selling, although the methods differ but have the same requirements. In this process, once the item has been sold and paid for, the buyer should have the right to receive the item. According to Article 1 of PMK No. 213/PMK.6/2023, a buyer is any person, organization, or institution that submits a bid at an auction and whose bid is accepted by the auctioneer appointed as the highest and best. An auction participant will be declared the auction winner or buyer if:

- a. the person or body that submits the highest bid is an individual or legal entity/business entity;
- b. the auction winner is officially recognized by the authorized official;
- c. they have accepted delivery of the goods they purchased before fulfilling their tax and levy responsibilities;
- d. must pay all auction payment obligations;
- e. If a buyer fails to fulfill their commitments after being declared the auction winner, they are barred from participating in any auction in Indonesia for a period of six months. If the buyer fails to meet the financial requirements, the auctioneer must revoke their approval as a buyer.

After the auction is carried out, the auction buyer will receive an Auction Minutes Extract from the KPKNL as a Deed of Sale and Purchase, and can also be given a Grosse Auction Minutes as needed, this is confirmed in Article 93 paragraph (2) letter a of PMK No. 213 / PMK.06 / 2020. The deed is the basis for the buyer to prove to any party that there has been a transfer of rights from the land and / building owner to the auction buyer. In the journey to obtain their rights to ownership of the land and / building they already own, it does not always go well. The buyer often encounters things or events where the auction object is still controlled by the previous land and / building owner. In connection with the eviction of a house whose ownership has been transferred from the home owner

⁴Soerjono Soekanto, (1996), *Pengantar Penelitian Hukum*, Jakarta : UI Press, p. 63.

to the auction buyer, legally the auction buyer can file an eviction effort through the courts by using the Grosse Auction Minutes which are entitled "For Justice Based on the Almighty God". This mechanism is included in the provisions of Article 200 paragraph (11) of the Herzien Inlandsch Reglement, which states:⁵

If the person whose goods are being sold is reluctant to leave the immovable property, the head of the district court will make a written order to the person who has the authority to execute the bailiff's letter, so that with the assistance of the clerk of the district court, and if necessary with the assistance of the police, the immovable property will be left and vacated by the person whose goods are being sold, and by his family.

Furthermore, specifically for the auction of mortgage rights by the auction buyer, a request for execution of vacancy can be submitted to the Head of the District Court without filing a lawsuit by submitting a Grosse Auction Minutes. This is emphasized in the Circular Letter of the Supreme Court No. 4 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2013 as a Guideline for the Implementation of Duties for the Court, namely:⁶

Regarding the auction of mortgage rights by the creditor himself through the auction office, if the auctioneer does not want to vacate the auction object, the execution of the vacate can be submitted directly to the Head of the District Court without going through a lawsuit.

Based on this request, the district court will carry out the mechanism for implementing the eviction in accordance with statutory regulations.⁷

Although the auction has been carried out in accordance with the procedures as stipulated in the Regulation of the Minister of Finance Number 213 / PMK.06 / 2020 concerning Auction Implementation Guidelines and Regulation of the Director General of State Assets (Perdirjen KN) Number 02 / KN / 2017 concerning Technical Guidelines for Auction Implementation, the implementation of the auction is not free from the emergence of lawsuits, especially Civil lawsuits both in the District Court and the Religious Court. Just like the duties and functions of the Ministry of Finance cq Directorate General of State Assets cq Directorate of Auctions cq State Assets and Auction Service Office which may not reject any auction application that has been submitted to it as long as it meets the formal

⁵Kementerian Keuangan Republik Indonesia, "Pembeli Lelang Tidak Dapat Menguasai Obyek Lelang Yang Dimenangkannya, Dan Justru Digugat. Bagaimana Langkah Hukumnya?", <https://www.djkn.kemenkeu.go.id/kpkn-lampung/baca-artikel/14459/pembeli-lelang-tidak-dapat-menguasai-obyek-lelang-yang-dimenangkannya-dan-justru-digugat-bagaimana-langkah-hukumnya.html>, May 12, 2025.

⁶*Loc. cit.*

⁷*Loc. cit.*

legality of the subject and object of the auction, the Court may not reject as long as there is a lawsuit filed against who filed the lawsuit, every citizen who feels that their rights have been violated has the right to file a lawsuit. The parties who are sued and involved in it can of course be submitted by the plaintiff to anyone, starting from the Auction Applicant, KPKNL as the auction implementer, the Land Office, Notary, to the Auction Buyer without exception.⁸

Auction buyers who are buyers in good faith are often also sued in civil cases filed by the Auctioneer. The law has guaranteed legal certainty for auction buyers which is clearly stated in *Vendu Reglement*, HIR, and PMK 213 / PMK.06 / 2020. Since the Auction Officer issued the Auction Minutes containing the entire series of auction events along with all the terms and conditions of the auction implementation, the Auction Minutes are sufficient as evidence of the transfer of rights from the original owner to the auction buyer. Legally, the auction winner has legal certainty over the auction object he purchased, if there is a lawsuit by a third party to the District Court for the item, it does not actually affect the validity of the ownership of the item because this is based on the consideration that by selling an item through auction means that KPKNL as the recipient of the intermediary power of attorney to sell through auction has guaranteed that the item being auctioned is clearly known to the owner and has met the auction registration requirements because before the auction application is granted by the Auction Officer, the Auction Officer is required to verify the validity of the documents submitted by the seller / owner of the auction object. The Auction Minutes, as an authentic deed, guarantee legal certainty regarding the full rights inherent in the auction buyer. As long as a lawsuit can prove the contents of the Auction Minutes to be untrue, the Auction Minutes can be annulled.⁹

If there is a case regarding the denial of the Auction Minutes, then what is denied must be able to be proven, whether there are things that are not in accordance with the procedures specified in the provisions of the laws and regulations, including being able to prove that there are violations of the external, formal, and material aspects of the Auction Minutes. The burden of proof regarding what is denied is borne by the party denying. If the party denying is unable to prove the untruth, then the Auction Minutes must be accepted by anyone.¹⁰

Because judges decide cases not always based on existing positive law, but rather on intuitive conviction and experience. Judicial decision-making is more of an art than a logic. In law, there are three basic values that serve as legal parameters: legal certainty, justice, and expediency. These three are not always harmonious, but more often in tension. Legal certainty, for example, can be at odds with justice,

⁸*Loc, cit.*

⁹*Loc, cit.*

¹⁰*Loc, cit.*

and so on. Therefore, in making decisions, judges must manage these three basic values. This requirement means that judges cannot rely solely on one basic value.¹¹

Therefore, if the Auction Buyer is sued in a Civil Case, as long as he knows the correct condition of the auction object he is going to buy, the Auction Minutes can be a shield as evidence that has perfect power.¹²

3.2. Obstacles in the Implementation of Legal Protection for Auction Buyers Regarding the Vacating of Auction Objects for the Execution of Mortgage Rights Currently

Regulations regarding efforts to guarantee the rights of auction winners in the auction process for objects secured by mortgage rights have been clearly regulated, both through the mechanism of the KPKNL's role in the auction and through the courts. Although the legal protection arrangements for auction winners have been clearly regulated, in reality there are still many cases of disputes regarding the vacancy of objects secured by mortgage rights.

This is one of the cases that occurred in the Cilayap area. Mr. Darwis Nugroho purchased a plot of land with proof of Ownership Certificate no. 2249/Slarang, an area of 601 m², located in Slarang Village, Kesugihan District, Cilacap Regency, registered in the name of Siti Tarsiyah. Siti Tarsiyah owned the land on the basis of acquisition from an AUCTION based on the Auction Minutes Extract Number: 0233/2012, Dated 11/11/2016 made by Nomie Arumsari, SH, as the Auction Officer of the State Assets and Auction Service Office of Purwokerto. The land object was auctioned from PT Bank Danamon Tbk, Cilacap Branch Office, due to the debtor's loan default on behalf of Irianto. Around November 2016, the process of transferring rights from Irianto to Siti Tarsiyah encountered obstacles, because at that time the notary came to Irianto's house to borrow the SPPT PBB where the house and the house occupied were the object of the auction. Because of ignorance that the land owner had not yet received the auction results, and felt disadvantaged by the reason of not receiving the auction notification letter from the Purwokerto KPKNL, which finally the homeowner was angry with the notary staff who came to his house, to the point of taking out a sharp weapon and expelling the staff from the notary. As time went by, finally in 2017, precisely in January, the process continued by coming to the house of the Hamlet Head to borrow the latest SPPT of 2017. After receiving the SPPT, the process of transferring rights from Irianto's name to Siti Tarsiyah continued. After the certificate was changed to Siti Tarsiyah's name, it was then sold to Darwis Nugroho. With the transfer of ownership rights from Siti Tarsiyah to Darwis Nugroho, with good intentions Darwis Nugroho wanted to take over the land and building objects, but experienced difficulties because the homeowner was not

¹¹*Loc, cit.*

¹²*Loc, cit.*

willing to let go of the object and did not want to leave the house. Finally, Darwis Nugroho used legal counsel to execute the eviction of the sale and purchase object. Before registering with the Cilacap District Court, with good intentions approached Irianto by ordering someone. If Irianto voluntarily left the house, Darwis Nugroho would provide compensation of Rp. 50,000,000, - plus provide a 3-year house contract facility paid by Darwis Nugroho. However, this good intention was not accepted. The execution was continued from the District Court. The first step of the execution was unsuccessful because the house was guarded by the Pancasila Youth NGO. One month later, the District Court carried out the second execution, without the Court's knowledge, it turned out that the house was empty and based on information from the neighbors, Irianto had left about a week ago.¹³

Based on the case that occurred above, it is clear that the auction winner is likely to experience losses due to the issue of emptying the auction object, where the auction winner mostly has to resolve the dispute over the emptying of the auction object through civil court. This clearly results in the auction winner having to spend money and time again to be able to take control of the auction object that he has paid for. This clearly deviates from the perspective of legal certainty. Legal certainty according to Jan Michiel Otto must be realized through the availability of clear, consistent and easily accessible regulations, issued by and recognized because of the (power) of the state. Authorities (government) implement these legal regulations consistently and also submit and obey them. Citizens in principle adjust their behavior to these regulations.¹⁴

Based on existing cases, it is clear that many cases of legal lapses occur for debtors who refuse to vacate the HT collateral they have pledged to creditors when the HT is auctioned due to payment failure. This problem arises from several obstacles, including:

1) Legal constraints

The implementation of auctions for HT collateral is regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 (Pmk 122/2023). This also includes auctions for HT collateral from HT collateral agreements with murabahah agreements in Islamic financial services institutions. Article 34 paragraph (3) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 (Pmk 122/2023) states that "Regarding the object of mortgage rights as referred to in paragraph (1), the implementation of the auction is carried out based on the executorial title of the mortgage rights certificate that requires an execution fiat". Then Article 34 paragraph (4) of the

¹³Darwis Nugroho, interview with the auction winner who is in dispute with the debtor due to the issue of vacating the auction object for the execution of Mortgage Rights, April 12, 2025.

¹⁴Soeroso, (2011), *Pengantar Ilmu Hukum*, Jakarta : PT. Sinar Grafika, p. 157.

Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 (Pmk 122/2023) states that:

Applications for the implementation of the Auction as referred to in paragraph (3) are made by:

- a. district court; or
- b. religious court, in the case of mortgage rights being made based on a debt agreement that uses sharia principles.

Regarding the guarantee of protection of rights for auction winners in the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 (Pmk 122/2023) has not been specifically regulated, especially regarding the position of the auction winner's rights in disputes over the vacancy of auction objects that have been won. PMK 122/2023 has not been fully able to prevent problems related to the legal certainty of auction objects for execution of Mortgage Rights through e-auction. The burden of checking auction objects is only given to participants, so the potential for legal problems remains. This is indicated by the majority of auction participants for HT collateral objects not knowing the legal status of the auctioned object, after the auction is won, the auction winner only learns of a dispute over the vacancy of the auction object due to unresolved legal issues between the debtor and creditor or between the debtor and a third party who also feels they have rights over the auction object. When the auction winner wants to reclaim his rights in the form of payment for the auction object and wants to cancel the auction he has won due to a dispute over the vacancy of the auction object, this cannot be done without a decision from the creditor and a court order. The auction can only be canceled by the request of the Seller or a provisional decision or decision from a general judicial institution, as regulated in the Regulation of the Minister of Finance (PMK) Number: 93 / PMK.06 / 2010. Article 3 of the Regulation of the Minister of Finance (PMK) Number: 93 / PMK.06 / 2010 states that "An auction that has been carried out in accordance with applicable provisions cannot be canceled". Then Article 24 of the Regulation of the Minister of Finance (PMK) Number: 93 / PMK.06 / 2010 states that "An auction that will be carried out can only be canceled by the request of the Seller or a provisional decision or decision from a general judicial institution". This situation is clearly unfair to the auction winner, this is because since the auction will be carried out there is no obligation for the creditor or auction seller of the HT collateral object to provide transparent information on the status of the object free from disputes, when the auction winner wins the auction object where the debtor or third party is reluctant to vacate the auction object, the auction winner must submit an application to the court or take legal action at no small cost and for a long time to control the auction object that he has won, this is clearly contrary to the principle of good ethics in an auction agreement. In the aspect of

cancellation of auction results determined by the auction seller, there is also the potential for the auction seller to abuse the situation in civil law to benefit himself, this is also clear that it has deviated from the proportional principle in the auction agreement. This situation clearly shows how the auction seller can freely commit default in the HT object sale and purchase agreement due to default by the debtor through the auction mechanism.

3.3. Obstacles In Implementing The Law

According to Ida Nursanti as a Notary and PPAT in the Cilacap Regency area, obstacles to legal implementation consist of:¹⁵

1) There is resistance from debtors to the vacating of auction objects

Many debtors are reluctant to hand over the HT collateral object for auction, resulting in obstacles in the process of emptying the auction object after the auction. This can cause auction buyers to have difficulty controlling the object that has been purchased. It often happens that debtors believe that the execution parate carried out by the creditor has violated their rights, this is because most debtors believe that the credit agreement made by the creditor does not contain the principle of balance of position in the protection of rights. So that debtors who feel that the creditor does not consider the debtor's position in terms of debt payments with high interest or with the rules of immediate and sudden debt repayment by ignoring the debtor's economic condition are the driving force that the execution parate against the HT collateral object that is then auctioned is a form of *misbruik van omstandigheden*.¹⁶ *Misbruik van omstandigheden* is the act of a party with more power or control over a situation to exploit the situation to gain an advantage in an agreement. This situation is the reason why debtors are reluctant to hand over their auctioned HT collateral to the winning party.

2) The existence of a lawsuit from the debtor or a third party that can cancel the auction decision

The existence of legal disputes between debtors and creditors in the HT guarantee agreement due to *Misbruik van omstandigheden* as explained in point 1 above, is also the background for many debtors with large capital to take legal action in the form of civil lawsuits against creditors and KPKNL to civil court. When the relevant court decides that the debtor is legally correct, then the auction carried out will be declared an Unlawful Act and is legally invalid, so it can be canceled. If this

¹⁵Ida Nursanti, interview with Notary and PPAT in Cilacap Regency, May 10, 2025.

¹⁶Nanang Hermansyah, "Penyalahgunaan Keadaan/Undue Influence Menurut Civil Law System (Kuhperdata Indonesia) Dan Common Law System (Inggris) Dalam Perjanjian" *Jurnal Wasaka Hukum*, Vol. 10, No. 01, 2022, p. 36.

happens, the rights of the auction winner to the auction object are also considered legally invalid.

3) Third party intervention in the vacancy of auction objects

Intervention by third parties who feel disadvantaged by the auction process can hinder the process. It often happens that third parties other than the debtor have rights over the HT collateral object. When the HT collateral agreement is made, the third party is not involved and is not clearly notified. The creditor also does not confirm with the third party regarding the ownership of the third party's rights over the HT collateral object. This then becomes a problem when the debtor defaults and the HT collateral object is parate executed and auctioned, even though it is known that the third party has rights, so the third party intervenes to empty the auction object that has been won.

These various weaknesses clearly deviate from the principle of preventive legal protection. Under preventive legal protection, legal subjects are given the opportunity to raise objections or express opinions before a government decision is finalized. The goal is to prevent disputes. Preventive legal protection is crucial for government actions based on freedom of action, as it encourages the government to exercise caution in making discretionary decisions.

4. Conclusion

The current procedure for protecting the rights of auction winners has obstacles in the form of Guarantees for the protection of rights for auction winners in the Regulation of the Minister of Finance of the Republic of Indonesia Number 122 of 2023 (PMK 122/2023) have not been specifically regulated. Auctions can only be canceled by request from the Seller or a provisional decision or decision from a general judicial institution, as regulated in the Regulation of the Minister of Finance (PMK) Number: 93 / PMK.06 / 2010. Many debtors are reluctant to hand over the HT collateral object for auction, resulting in obstacles in the process of clearing the auction object after the auction. Many debtors and third parties file lawsuits against the HT collateral that has been won by auction, thus canceling the results of the auction minutes. Intervention by third parties who feel disadvantaged by the implementation of the auction can hinder the process.

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