

The Effectiveness of Legal Protection for Auction Winners Who Cannot Control the Object of Mortgage Right Guarantee

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Article Info	Abstract
<p><i>Article History</i></p> <p>Received: May 13, 2021</p> <p>Accepted: August 27, 2021</p> <hr/> <p>Keywords : Mortgage Rights, Execution, Effectiveness, Auction Winners</p> <p>DOI: 10.5281/zenodo.5297020</p>	<p><i>This paper examined the effectiveness of legal protection for auction winners who cannot control the object. The research method was normative juridical. This normative juridical research used library law research. The data analysis employed a descriptive qualitative approach, namely data analysis that cannot be calculated. The legal material obtained was then discussed. In conclusion, the effectiveness of the legal protection that occurs for the winner of the auction object who cannot enjoy the results of the object has been going well but cannot be said to be effective because the heirs reject the result of the case decision. This is, of course, as stated in the Case Number: 18/Pdt.G/2018/PN.Cms. In this case, the auction winner who has good faith is sued by a third party to the court, and the third party is the heir. This can result in the auction object of mortgage right guarantee that the auction winner does not enjoy. The execution of the mortgage right guarantee case became protracted for up to four years.</i></p>

Introduction

The instructions regarding the implementation of auctions are regulated by Article 1 Number 1 of the Minister of Finance Regulation Number 27/PMK.06/2016 of 2016 concerning The Instructions for Implementation of Auction. Based on these regulations, an auction is declared as sales of goods that are open to the public with a written and or verbal price offer that can increase or decrease to reach the highest price preceded by the announcement of the auction. Government regulations are drawn up to improve auction services and realize auctions that are more efficient, transparent, effective, accountable, fair, and guarantee legal certainty for every object and society involved in the auction.

The types of auction are divided into 3 (three) parts based on Article 5 of PMK 27/2016 as follows:

1. Execution auction implements court decisions, other documents equated with and/or implements provisions in laws and regulations.
2. Non-execution auction is used to sell goods required by legislation to be sold through auction.
3. Voluntary non-execution auction is an auction owned by the private sector, individuals or legal entities, or business entities that are auctioned voluntarily.

Based on Law Number 4 of 1996 in Article 6, an auction is a sale to the general public (*openbare verkopingen*). The procedures have been regulated in the provisions of the legislation on goods that are the object of the auction before the auction plan is carried out. Besides, this auction has been announced through a publicly available announcement to obtain the highest price. The seller in the auction transaction is different from the seller in the sale and purchase transaction. The seller must hand over the object of sale and purchase to the buyer, who has the right to receive the object (Basuki, 2020).

The auction that has been carried out in accordance with applicable rules and regulations cannot be cancelled. The cancellations can only be made before the auction starts (during the auction implementation stage, the limit price is determined by the seller and submitted by the auction official before the auction starts). In this case, the object of the auction will be the responsibility of the auction winner as a whole. The object, in this case, is also referred to as the agreement or the object of the auction. Some general public also refers to it as an achievement, where the intended achievement is to give something, to do something, or not to do something (Setiawan, 2019). The execution of mortgage rights is done when the debtor fails to fulfill the agreement. The first mortgage right holder has the right to sell the object of the mortgage right on their own power through a public auction and repay the debt from the sale's profit (Putri, 2020).

The problem that often arises after the auction lies in the execution of mortgage rights for auction objects, which often do not provide legal certainty to the auction winners (Alfara, 2020). Some examples of the problems are the provision of auction objects that must be submitted by the auction seller, as well as claims of object auction ownership of the mortgage right by third parties to the problem of the auction implementation

procedure itself. This is detrimental to the auction winner, especially if the auction winner cannot control the object they won in the auction process (Natasaha, 2016). Any denial of the agreements by one party may harm another. To grant this circumstance, collateral facilitates the settlement of obligations arising from the agreement (Rusen, 2007).

The bank always faces a counterclaim from debtors who do not want their collateral to be auctioned off in the auction. The lawsuit is based on the fact that the bank conducts an auction without prior approval from the debtor, even though the agreement deed already contains a clause if the debtor in default of the bank will take the necessary actions to return the bank's assets, including the auction effort. This is what often becomes a dispute between banks and their debtors, where the debtor feels that the auction action against the object of collateral is an action against the law (Prihartanto).

However, legal protection has actually been created to protect auction winners who cannot control the objects they won at auction. Based on the provisions of Article 11 paragraph (2) letter K UUHT, the debtor must submit the object that has been auctioned off to the auction winner voluntarily. If the object is land, the debtor must immediately vacate the land, and there is no reason for the debtor to delay the emptying process. To clear the court, the auction winner must apply for the Grosse Minutes of Auction, the original copy of the Minutes of Auction with the head "For the Sake of Justice under the One Almighty God" to KPKNL. Grosse Minutes of Auction has the same executive power as a decision that has permanent legal force. After obtaining the Grosse Minutes of Auction, the auction winner can submit a request for a vacancy to the Chief Justice of the Local District Court without having to go through a lawsuit. This is based on the provisions of Article 200 paragraph (11) of the HIR and Supreme Court Circular (SEMA) Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2013 as Guidelines for the Implementation of Duties for the Court which states "Towards the auction of mortgage rights by the creditor himself through the auction office. If the auctioneer does not want to vacate the object of the auction, the execution of the auction can be directly submitted to the Chief Justice of the District Court without going through a lawsuit". Furthermore, the request for execution can be submitted to the Chief Justice of the Local District Court for execution efforts.

The number of problems regarding legal protection for auction winners who cannot control this object makes the researcher want to examine the level of effectiveness of the legal protection provided. The effectiveness referred to by the researcher, in this case, is whether the legal protection for the auction winner who is unable to control the object is in accordance to make the legal protection or not in accordance with the purpose. Based on this case, the researcher is interested in conducting a study entitled "The Effectiveness of Legal Protection for Auction Winners Who Cannot Control the Object of Mortgage Right Guarantee."

Literature Review

Legal protection

Legal protection states that the law aims to integrate and coordinate various interests in society because, in traffic of interests, protection of certain interests can be carried out by limiting the various interests of the other party. The legal interest is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community, which are basically an agreement by the community to regulate the behavioral relationship between individual community members and the government, which is considered to represent the interests of the community (Raharjo, 2000).

Auction

The term "auction" means the sale of goods in public which is carried out using a verbal or open offer at an increasing or decreasing price. The provisions in Article 1 of the *Vendu Reglement* provide limitations on the definition of selling in public, namely: Public sale (*openbare verkoppingen*) is an auction or sale of goods to the public by offering an increased or decreased price or by entering the price in a closed envelope, or to people who are invited or previously notified of the auction or sale or are previously allowed to bid a price, agree on the price offered or enter the price in a closed envelope (Usman, 2016)..

Methodology

This study employed normative juridical, which included research on legal principles, legal systematics, legal synchronization level, legal history, and comparative law. This normative juridical research used library law research. The approach method used was the statutory approach. This study examined the effectiveness of legal protection for auction winners whose objects cannot be controlled based on existing regulations. The type of data used was secondary data consisting of primary legal materials in the form of decisions number

18/Pdt.G/2018/PN.Cms, Civil Code, Mortgage Law, and secondary legal materials in the form of legal books and legal journals related to existing legal issues.

Data Analysis

The data analysis used was descriptive qualitative method, namely the analysis of data that cannot be calculated. The legal material obtained was then discussed, examined, grouped into certain parts to be processed into information data which drew a conclusion to answer the legal issues in this study.

Results and Discussions

Execution Mechanism of Mortgage Rights

According to Article 1 Number 1 UUHT, mortgage rights are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations (Nurjannah, 2018). Guarantees are divided into two types, namely, guarantees born from the law, which consists of general guarantees and guarantees born due to an agreement (Panjaitan, 2018). For example, Article 1131 of the Civil Code, Article 1132 of the Civil Code, and Article 1131 of the Civil Code states that "The debtor's wealth includes movable and immovable objects and which will come in the future even though it is not submitted as collateral, it will legally become a guarantee for all debtors' debts" (Jamillah, 2017). However, special guarantees are present because there is a prior agreement, such as an agreement between the debtor and the bank or a third party who bears the debtor's debt (Fauzi, 2010).

In Article 6 of the Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights, it is stated that the right to sell the object of mortgage right on its own power is one manifestation of the preferred position held by the mortgage right holder or the first mortgage right holder. The rights are in accordance with the promise given by the provider of mortgage rights. If the debtor cannot carry out their obligations, the mortgage right holder has the right to sell the object of mortgage right through a public auction without any return approval from the provider of mortgage right. The right of the mortgage right holder to exercise their rights in accordance with the provisions of Article 6 of the Mortgage Law is a right that the Act solely grants.

In accordance with the Mortgage Law, the auction is a mechanism for executing mortgage right guarantees (Cahyono, 2016). This happens because debtors cannot carry out their obligations or, for example, bad loans so that creditors who have mortgage rights holders can conduct auctions to execute mortgage rights. The auction is regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Auction Implementation Guidelines.

Article 1 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Auction Implementation Guidelines states that "An auction is a sale of goods that is open to the public by providing written and verbal price offers that increase or decrease in achieving the highest price, which is preceded by the announcement of the auction." The legal source of auction sales can be measured from the provisions in Article 200 paragraph (1) HIR, Article 216 RBg, which states that auction sales are carried out through intermediaries, namely the auction office. It means that the source of law that becomes the guideline in its implementation is seen from HIR and RBg and looks at the provisions relating to the issue of auction sales. This is because HIR and RBg do not have further rules regarding the procedure. The existence of the *Vendu Relement* to date has become the main reference in auction sales in accordance with Article 200 paragraph (1) HIR, which is still effective as an auction regulation as follows (Sukmaya, 2020):

- a. *Vendu Reglement Staatsblad*. 1908 No.189 as amended by Staatblad. 1940 No. 56
- b. Auction Instructions (*Vendu Instructie*) LN 1908 No. 190 as amended by LN 1930 No. 85
- c. Regulation of Collection of Auction Fees for Auctions and General Sales (*Vendu Salaris*) LN 1949 No. 390
- d. Article 20 to Article 21 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land
- e. Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Auction Implementation Guidelines
- f. Regulation of the Director General of State Assets No. 2/KN/2017 concerning Technical Guidelines for Auction Implementation
- g. Regulation of the Director General of State Assets No. 5/KN/2017 concerning Minutes of Auction.

The types of auctions in Article 1 paragraphs 4.5 and 6 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Auction Implementation Guidelines are categorized as follows:

a. Execution Auction

Execution auction is an auction in carrying out court decisions, other documents that carry out the provisions of the legislation. This type of auction is a general sale to carry out or execute court decisions or documents equivalent to court decisions, such as mortgages, mortgages right or fiduciary guarantees.

b. Non-Execution Auction

Non-execution auction is a public sale outside of executing a court decision consisting of an auction of state property and a voluntary auction of private property. In the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Instructions for Implementation of non-execution auctions, these non-execution auctions are divided into two types. First, a mandatory non-execution auction is an auction to carry out the sale of goods according to the laws and regulations required to be sold by auction. Second, a voluntary non-execution auction is an auction of private property, individuals, or legal entities/business entities auctioned voluntarily.

The parties related to the auction of collateral objects are parties related to the auction of collateral objects consisting of the following (Sudiarto, 2020):

- a. Customer
The customer or seller is a person who guarantees money to creditors but cannot carry out their obligations in accordance with what has been agreed.
- b. Creditor
Creditor is a bank or other institution that has provided money or capital to customers.
- c. State Agency for Accounts Receivable and Auction (Auction Office)
- d. Party or Buyer of Guaranteed Goods
A person or entity that has purchased or won in an auction of collateral goods.

In Article 200 paragraph (1) HIR/Article 215 paragraph (1) RBg, the sale of confiscated goods is carried out through the Auction Office's intermediary. It cannot be carried out with the District Court or other offices or agencies. In accordance with the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines, the auction is carried out by the KPKNL and the Auction Center (Murni, 2019). KPKNL is a vertical DJKN agency that is under direct responsibility to the Head of the Regional Office. However, the Auction Center is an Indonesian Legal Entity in the form of a Limited Liability Company (LLC) specifically established to conduct business activities in the auction sector. According to Article 15 paragraph (1) of the Regulation of the Minister of Finance Number 176/PMK.06/2010 concerning Auction Center, the Auction Center can only carry out the business activities of Voluntary Non-execution Auction (Tista, 2013).

Article 2 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 mandates that every auction is carried out before the Auction Officer unless determined by law or government regulation (Dini, 2017). In accordance with these provisions, the Auction Officers are divided into two classes, namely, Auction Officers of Class I, who have the power to carry out all types of auctions, and Auction Officers of Class II who only have the authority to carry out voluntary non-execution auctions in accordance with the request of the Auction Center.

The transfer of rights to the auction buyer is based on the Article 32 *Vendu Reglement jo*, Article 200 paragraph (10) HIR, Article 218 paragraph (1) RBg (Kusmawan, 2019). Broadly speaking, the article has administrative arrangements for the payment of auction proceeds. The buyer must meet the payment terms that have been given to him. According to the payment, a proof or certificate from the auction office is given, which states that the buyer has fulfilled all payment obligations. Based on these articles, the transfer of rights to the auction buyer does not occur by itself, but when the buyer has been declared valid, the Auction Officer is the winner. The existence of this statement has not resulted in an effective transition because there will be a process towards the acquisition of legal rights. The acquisition of new rights will be carried out in accordance with legal provisions if the following occurs (Fernandez, 2014):

- a. After the auction buyer has fulfilled the auction requirements, especially in settlement of the payment of the auction proceeds, and is proven by a statement of settlement from the auction office.
- b. The certificate given to the buyer will be formal and material upon the transfer of rights to the buyer.

Article 526 Rv states that "The property rights of the auctioned item will change hands to the buyer in accordance with the announcement of the quotation from the auction list with written evidence issued by the auction office stating that all purchase conditions are met" (Sukamaya, 2020). On the transfer to the buyer, objects and the objects. This is in accordance with the provisions of Article 200 paragraph (10) of HIR, which states as follows:

- a. The right to be executed on immovable property passes to the buyer
- b. The transfer occurs after the buyer fulfills the payment terms

If the provisions of the article relate to Article 1474 and Article 1475 of the Civil Code given by the seller to the auction buyer, the transfer of material rights is physical and tangible or juridical (Umardani, 2019). The transfer or acquisition of rights as mentioned in Article 200 paragraph (10) of HIR is only limited to the extent of property rights. If the object is movable, then the transfer of property rights is enough to be submitted physically. This is in accordance with the provisions in Article 612 of the Civil Code, which states that the transfer of rights to movable goods is good with real delivery. The transfer of immovable property will be legal according to the law after the transfer of name at the registration office of the goods concerned, in Article 37

paragraph (1) jo. Article 41 paragraph (1) Government Regulation No. 24/1997 concerning Land Registration, the transfer of land rights obtained by auction is registered in accordance with the evidence of the quotation from the Minutes of Auction made by the auction official. Likewise, the transfer of land rights obtained by auction is registered in accordance with the evidence of the quotation from the minutes of the auction made by the auction official. This will be perfect if the name transfer is carried out at the registration office concerned.

The Effectiveness of Legal Protection for Auction Winners Who Cannot Control the Object

Legal protection in the legal system of execution of mortgage right guarantees by auction must be based on the principle of legal certainty and the rights of the auction winner. This principle guarantees the achievement of the agreement's objectives, which can provide legal protection for the auction winner and achieve legal objectives, which are order, legal certainty, and justice. This is based on Article 28D paragraph (1) of the 1945 Constitution, which states that everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law.

If there is a lawsuit against the auction buyer, even though the buyer has been declared a valid auction winner in the Minutes of Auction, this has implications for losses for the auction winner because the execution of the auction object of mortgage right cannot be carried out immediately. Then, the auction winner with good intentions cannot enjoy the goods from the auction results purchased. The winner of the auction with good intentions must be given legal protection in accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 821/K/Sip/1974, which purchases in public through the auction office is a buyer who has good intentions, this, of course, must be protected in accordance with the law in the Jurisprudence of the Supreme Court No. 323/K/Sip/1968 which states that the auction has been carried out in accordance with applicable regulations and won by the auction winner who has good intentions, then the auction winner who has good faith must be given legal protection (Simanjuntak, 2017).

As for the legal system of execution of mortgage right guarantees by auction, the auction winners who have good intentions are subjective buyers who buy the object of the mortgage right guarantee auction with honesty. It means that there is no deception and has fulfilled all its obligations on the object of the mortgage right guarantee auction by fulfilling the obligations of preparation for the tender, the obligations of the terms of the auction, and the obligations after the auction.

At this time, there are still cases in the auction that the winner of the auction who has good intentions is still not lucky, for example, as in the case of the Ciamis District Court in 2018. At that time, the court granted the confiscation of the equation that the plaintiff had requested on the object of the mortgage right guarantee auction with Case Number: 14/Pdt.Plw/2016/PN.Cms and Case Number: 18/Pdt .G/2018/PN.Cms. In this case, the auction winner who has good faith is sued by a third party to the court. This, of course, results in the result that the auction winner does not enjoy the object of the mortgage right guarantee auction. This results in the execution of the mortgage right guarantee being protracted for up to four years.

The agreement in legal protection that the auction winner can accept is the winner of the auction can claim compensation for not being able to enjoy the object of the mortgage right auction that they have won. The claim can be filed with the creditor. In accordance with Article 1236 of the Civil Code, which contains "The debtor is obliged to compensate the cost of loss and interest to the creditor if he/she makes himself unable to deliver the goods or does not take good care to save it" (Nurdianto, 2018). In addition to this, filing a claim can be carried out in accordance with the responsibilities of the auction seller in the delivery of the auction object perfectly in accordance with Article 17 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Auction Implementation Instructions with an easy and sure principle in the execution which is in the Mortgage Law (Rianto, 2017).

The effectiveness of the legal protection that occurs for the winner of the auction object but cannot enjoy the results of the object has been running well in accordance with the 1945 Constitution Article 28D paragraph (1), which states that everyone has the right to recognition, guarantee, protection and certainty fair law and equal treatment before the law. Besides, related to the 1945 Constitution, this effectiveness is also seen from the Mortgage Law and case studies that apply to cases such as Case Number: 18/Pdt.G/2018/PN.Cms. In this case, the auction winner who has good faith is sued by a third party to the court, and the third party is the heir. This can result in the auction object of mortgage right guarantee that the auction winner does not enjoy. The execution of the mortgage right guarantee case became protracted for up to four years. After getting the results of the trial decision, the claim of the heirs is rejected by the court, and then the case is won by the winner of the auction object who had been harmed for a long time and could not control the result of the auction object.

Conclusion

The auctioned mortgage right object is executed in accordance with existing procedures. The auction winner must change their name in fulfilling the formal requirements for the transfer of ownership of the auction object in accordance with Government Regulation no. 24 of 1997 concerning Land Registration. This will be

directly related to the control of the auction object by a third party in accordance with the auction minutes, which is the responsibility of the auction winner.

Legal protection for auction winners cannot control the object after winning the auction because there is a lawsuit. It can carry out a litigation lawsuit based on an unlawful act against the auction seller. The seller of the auction object will be responsible for the losses faced. This is contrary to the principle of easy and definite execution in the Mortgage Law and Article 17 of the Minister of Finance Regulation Number 27/PMK.06/2016, which states that the auction seller is responsible for the delivery of movable and immovable goods, which is the object of the auction perfectly.

The effectiveness of the legal protection that occurs for the winner of the auction object who cannot enjoy the results of the object has been running well but has not shown its effectiveness. This is, of course, as stated in Case Number: 18/Pdt.G/2018/PN.Cms. In this case, where a third party sues the auction winner who has good faith in the court, the third party is the heir, resulting in the object of the mortgage guarantee auction not being enjoyed by the auction winner. The execution of the mortgage guarantee case became protracted for up to four years.

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