

Legal Protection of the Auction Winner in *Parate Executie*: A Juridical Analysis of the Execution of Mortgage

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Abstract. The formulation of the problem raised in this study is whether the executable parate auction process for the execution of mortgage rights in the Dwikora Paruntungan case is legal and what is the form of legal protection for the auction winner. The approach method used is normative juridical with research specifications descriptive analysis Sources and types of data using secondary data. The data collection method is done through a literature study using data analysis methods. The results of the study indicate that, generally speaking, the regulation regarding the auction has been stipulated in the regulation of the Ministry of Finance, in which one party conducting the auction is the Indonesian Auction Center and the State Property and Auction Office (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*). In principle, KPKNL may not refuse an auction application submitted as long as the tender requirement documents are complete and fulfil the Formal Legality of the Subject and Object of the Auction. KPKNL has the authority to hold all types of auctions at the seller's request. However, in reality, there are currently many online auction procedures that do not follow these regulations. Therefore, a form of legal protection is needed for the auction winner, divided into preventive legal protection (prevention) and repressive legal protection (imposing sanctions).

Keywords: auction, execution, mortgage execution, default.

1 Introduction

Economic and trade growth and the overall impact of the corporate world today, considering that the funds available to businesses are usually half of the proceeds from loans to banks, investments, bond issuances, or other methods permitted by law, have raised several problems in overcoming loans to the bank. If not addressed immediately, it leads to ongoing problems, which will have a big impact [1]. In realizing the desire to provide welfare for many people, the continuation of the stipulation is a provision related to debt problems that are hampered by the implementation of guarantees at bank institutions by not going through the implementation of a lawsuit in court [2].

Payments disbursed by banks have an impact, so all funding distributions must follow the prudent aspect [3]. In minimizing the impact, guarantees are channelled by credit, and trust in the skills and strength of debtors to finance their responsibilities based on contracts are the main aspects that must be the focus of banking. In gaining that trust, first, calculate the character, strength, funds, guarantees, and economic conditions [4] [5].

The guarantee agency by bank agency is said to be efficient and has a high level of security in securing debt by guaranteeing mortgage rights. It is based on the easy identification of the object of the mortgage, appropriate and appropriate implementation, and prioritizing the

settlement of the land auction fee to the creditor [6] [7]. The use of the agency implementing the mortgage is a method to speed up the payment of guarantees provided by the bank so that it can be repaid as soon as possible and used again by other debtors.

The stages in resolving debts whose payments are hampered can also be carried out peacefully or through law. Although banks have determined very competitive conditions, there are still debtors who do not fulfil their obligations until the payment is delayed. Then the implementation of the guaranteed object must be carried out by auctioning it based on the provisions of Article 6 of the Mortgage Law. For a long time or not, customers who do not comply will auction their guarantees by banks.

Based on the stages, after the auction is carried out, a party wins the auction, is authorized to obtain collateral and is said to be legal under the law. It is due to the non-fulfilment of all responsibilities arising after the auction or after the auction. The responsibility of the winning party before conducting the auction includes all the conditions as the party that wins the auction by financing the guarantee fund carried out by auction, and the final responsibility is to finance taxes and pay.

After the party that wins the auction fulfils all its responsibilities, the winning party has the authority to obtain collateral from the auction results [8]. So that the debtor has no authority over the collateral that has been distributed. Likewise, the banking industry does not have jurisdiction over the collateral, and the party winning the auction cannot exercise its authority over the goods that have been won—for example, a debtor who cannot provide the collateral.

One of the cases is contained in Decision No. 242/Pdt.G/2013/PN Mdn between Dwikora Paruntungan. S. Brahmin as plaintiff against Mulana Putra as defendant I, PT. Bank Rakyat Indonesia, Tbk Medan Branch Office Sisingamaraja as Defendant II and the Medan State Property and Auction Service Office as Defendant III Tbk Medan Branch Office Sisingamangaraja as Defendant II and the Medan State Property and Auction Service Office as Defendant III (Dwikora Peruntungan. S. Brahmana vs. Mulana Putra, PT Bank Rakyat Indonesia, Tbk and State Property and Auction Office (*Kantor Pelayanan Kekayaan Negara dan Lelang/KPKNL*) Medan, No.242/Pdt.G/2013/PN Mdn, Medan District Court, 13 August 2014). However, banks will not conduct auctions with KPKNL on collateral without prior notification to the debtor based on the provisions of Article 20 paragraph 3 of the Mortgage Law". In this case, the debtor's statement is irrational because the debtor has reasons in the absence of prior notification from the bank that the collateral will be auctioned. The auction winner who does not get his authority as the winner of the auction, then his responsibility has been given so that the party who wins the auction gives a letter to the creditor, namely the bank on the auction of collateral, to ask the debtor who no longer has authority over the collateral to give it to the party who won the auction. However, the bank does not carry out this obligation because the notification of the auction contains conditions in the form of a member of the auction who is said to have understood the existence and condition of the collateral.

Another effort carried out by the auction winner to obtain his authority as the winning party is to warn the debtor who owns the mortgage object to vacate the collateral and submit the collateral to the winning party because there is no legal remedy against the auction result.

For these problems, the authors need to examine and conduct research with the title: "Legal Protection of the Auction Winner in *Parate Executie*: A Juridical Analysis of the Execution of Mortgage."

From the description above, the problems that can be arranged include:

1. Is the auction of the mortgage execution in the case of Dwikora Peruntungan against Mulana Putra legal from a legal point of view?
2. What is the legal protection for the winner of the Mortgage Execution auction?

2 Research Methods

The approach method used in this research is normative juridical, with descriptive-analytical research specifications [9]. The type of data used is secondary data, namely by using primary legal materials in the form of legislation and secondary legal materials in the form of expert opinions and journal articles. The data collection method is through literature study and a complement to legal materials—data analysis by qualitative analysis [10].

3 Results and Discussion

3.1 Auction for the Execution of Mortgage Rights in the Case of Dwikora Paruntungan Against Mulana Putra

Auction is the activity of selling goods and is transparent to everyone, first by attracting the interest of prospective people who will buy by previously giving an announcement to get the largest number and ending if there is a legal bond before the auctioneer [11][12]. Arrangements regarding auctions have generally been stipulated in a Ministry of Finance regulation in which a party conducting the auction is the Indonesian Auction Center and the KPKNL.

KPKNL cannot refuse an auction application submitted as long as the tender requirement documents are complete and fulfil the Formal Legality of the Subject and Object of the Auction. KPKNL has the authority to hold all types of auctions at the seller's request. The procedure for conducting an auction at the KPKNL must be passed so that the auction can run well. In carrying out the auction, some procedures must be passed at the Indonesian Auction Center, starting from the pre-auction stage until the auction. At the pre-auction stage, the procedure that must be passed is the signing of the cooperation, receipt of documents, checking legal aspects, initial review, asset valuation, minor repairs and cleaning, security, asset explanations, marketing, exhibitions, and auction announcements [13].

Furthermore, the procedures contained in the auction implementation stage are determining the auction day, determining the auction method, and announcing the auction winner. This stage of auction implementation will continue at the post-auction stage, which includes payment, minutes of handover of original documents and goods, and after-auction services.

The auction procedure at Bank BRI basically follows the provisions contained in the Indonesian laws and regulations. The problems associated with auctions are generally not new in this country. This can be reviewed because there have been many problems that have been given to the court regarding the problem related to the problem of the object being auctioned. The person or agency that won the auction that did not have its authority sued the party who did not get a fair decision on the object being auctioned and other problems.

There is a fundamental difference in the implementation of auctions via the internet through sites that are not registered with the Directorate General of State Assets (*Direktorat*

Jenderal Kekayaan Negara/DJKN), namely the absence of the Auction Officer and the Minutes of Auction. The Auction Officer is a functional position as a public official who serves the community by carrying out auctions every auction. The Auction Officer is tasked with examining tender requirements documents, providing auction information, leading the auction and acting as treasurer. The Auction Officer not only witnesses the auction but also plays an active role in checking the validity of the auction file, conducting sales in a fair, efficient, open, accountable manner, and making an authentic deed of auction minutes. While the Minutes of Auction as an authentic deed is a binding evidence in that what is written in it must be trusted and considered true so that it does not require additional evidence to conduct sales in a fair, efficient, open, accountable manner, and also make an authentic deed of auction minutes. At the same time, the Minutes of Auction as an authentic deed is binding evidence in the sense that what is written in it must be trusted and must be considered true so that it does not require additional evidence [11, 14]. One example is often found in implementing auctions via the internet using social media, namely Instagram. The use of Instagram social media accounts is used to carry out marketing activities for products that will be auctioned by posting photos of the items that will be sold by the auction's Instagram account and posted on the account profile accompanied by the terms of the auction made by the auction organizer and the lowest selling value or known with the term open bid.

Other matters that are principles in conducting auctions that have been regulated in the auction regulations in Indonesia, either in the *Vendu Reglement* or in other implementing regulations, namely the role of the Auction Officer and the Minutes of Auction as evidence. Suppose the online auction on social media does not meet the regulatory provisions regarding the principle of conducting an auction. In that case, it can be said that the online auction violates the regulations and is a form of an unlawful act.

3.2 Legal Protection of the Winner of Auction Execution of Mortgage Right

Based on Article 6 of Mortgage Law in conjunction with article 20 paragraph 1 letter (a), so that the owner of the goods can carry out the application for execution of mortgage rights with his proxy by conducting an open auction.

It means that the auction, in accordance with Article 6 of Mortgage Law, the authority is given by law (*ex lege*) to the holder of the first mortgage to make a sale through a public auction of assets that are used as collateral if the debtor breaks his promise, so the legislation distributes the right for creditors to conduct auctions of collateral goods without requiring permission from other parties.

The obstacles encountered in providing legal protection to the auction winner in the event of a decision to cancel the auction can be divided into internal and external obstacles. The internal obstacle in providing legal protection to the auction winner is if the seller/creditor/auction applicant does not want to provide compensation to the auction winner. In contrast, the external obstacle encountered is the absence of laws and regulations that regulate the provision of legal protection to the auction winner regarding a lawsuit for the auction's cancellation.

Efforts to overcome obstacles if the seller/creditor/auction applicant does not want to provide compensation, namely, the auction winner can file a claim for compensation to the District Court against the seller/creditor/auction applicant because the auction is declared void and invalid which results in the sale and purchase carried out in the auction is also declared void so that the Auction Winner should get back his rights to the price paid in the sale and

purchase. The Auction Winner may use the Minutes of Auction and the court's decision declaring the auction void as a basis for filing a lawsuit

The implementation of the mortgage auction is the application of Article 6 of Law Number 4 of 1996, where if the debtor is in breach of contract, the creditor has the right to sell the mortgage object on his power through a public auction." With this method, a very large value for the collateral can be obtained [15]. Article 41 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, that the transfer of rights through the transfer of rights by auction can only be registered if proven by an excerpt from the minutes of the auction made by the Auction Officer. However, the transfer of authority raises another problem, for example, the auction item cannot be taken over by the person who wins the auction, and court decisions cancel the auction. Following Article 1 paragraph (22) of the Regulation of the Minister of Finance Number 106/PMK.06/2013, the winner of the auction is the buyer, either a person or a legal entity/business entity that submits the highest bid and is ratified as the winner of the auction by the Auction Officer." The buyer at the mortgage auction is valid if it is said by the auction office and contains the minutes of the auction. A mortgage auction is a legal action that gives rise to authority and responsibility for the buyer of the auction item.

In Article 22 *Vendu Reglement* and Article 71 paragraph (1) Regulation of the Minister of Finance Number 106/PMK.06/2013, the winner of the auction as a legal buyer has obligations related to auction payments and other legal taxes/levies in accordance with a predetermined period of time. If the buyer has not paid the payment, he is not allowed to get the goods.

The transfer of authority with the minutes of auction is stipulated in Article 41 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. In this case, the minutes of the auction have the same position as the sale and purchase deed made by the Land Deed Making Official (*Pejabat Pembuat Akta Tanah/PPAT*), which is usually used as a basis for registering the transfer of land rights at the Land Office. The provisions of Article 12 PMK Number 93/PMK.06/2010" have indirectly provided the principle of legal certainty to the buyer/winner of the auction. Before the auction, the auction official has conducted a juridical analysis of the tender requirement documents so that the provisions of the legislation can carry out the auction. Regarding object control, Article 67 of the Regulation of the Minister of Finance Number 93/PMK.06/2010 provides preventive protection to the owner of the object. Based on this provision, the auction winner must carry out his obligations to be able to control the object. This article has reflected the existence of legal certainty for the owner of the object and the seller (the creditor) for the settlement of the sale and purchase in the auction by the winner of the auction. Repressive protection for the auction winner of the mortgage execution is contained in Article 200 of *Herziene Inlandsch Reglement* (HIR) which states that if the winner of the mortgage execution auction cannot control the object purchased through a legal auction process, the auction winner can request assistance from the District Court for the emptying of the object. This provision provides the principle of legal certainty for the auction winner to be able to control the object of the auction. So real execution is the implementation of a decision that leads to the same result as if it was carried out voluntarily by the party concerned. So, the implementation is witnessed and decided by the judge so that the implementation imposed by the debtor must be carried out because the execution is real. Thus, it can be concluded that the auction, in this case, was in accordance with the Mortgage Law and PMK Number 93/PMK.06/2010.

4 Conclusion

The implementation of the auction often raises pros and cons, and there is a resistance reaction by the debtor by filing a lawsuit to the District Court in the jurisdiction of the dispute over the object of the mortgage auction. Furthermore, the Panel of Judges handling the dispute over the object of the mortgage auction will see and decide based on the authentic evidence and the facts in the trial as the basis for the judge's consideration in resolving the problem of unlawful acts in the dispute over the object of the mortgage auction. Then the request for an auction of mortgage guarantees to the State Assets Service and Auction Office (KPKNL) to carry out a public auction of guaranteed mortgage objects through an auction process based on legal procedures based on applicable laws and regulations.

Protection for the winner of the mortgage auction has been carried out preventively by the KPKNL because prior to the auction, the KPKNL notifies the bidders regarding the documents, condition and condition of the object to be auctioned in truth and as it is, as well as the consequences and risks that may arise from the object of the auction. Related to repressive protection, namely efforts to get legal protection through the judiciary contained in Article 200 HIR, which states that if the winner of the auction of the execution of mortgage cannot control the object purchased through a legal auction process, the winner of the auction may request assistance from the District Court to carry out the real execution or execution of emptying. Emptying executions can be submitted if the executioner or the mortgage guarantee does not want to leave and vacate the auction object, harming the auction winner because he cannot physically control the object he won. In that case, of course, the auction winner is at a loss because he cannot control the goods he has purchased.

4.1 Suggestion

Regarding the legal protection of the auction's winner's right to execute mortgage rights, it is hoped that the government needs further action. The legal certainty of the auction buyer needs special attention because it is not uncommon for problems to arise in the process of transferring rights to the object of the auction. So, it is necessary to make a new law that specifically regulates the legal protection of the auction winner for the execution of mortgage rights.

The government is expected to form a special regulation regarding the legal protection of the winner of the mortgage auction. It is intended to ensure legal certainty for the auction winner so that it is legally protected. The need for an overhaul in regulations related to auctions, namely in *Vendureglement*, is because *Vendureglement* is a Dutch heritage regulation that, in modern times, is no longer relevant to the current development of auction implementation.

Apart from the government, the bank and the buyer are expected to be more careful in checking the validity of the object to be auctioned and the auction procedure to minimize the occurrence of problems before and after the auction.

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