

Legal Protection of Auction Buyers of Mortgage Objects Canceled by Court at the State Property Service Office and Auctions

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Abstract. *This study aims to: analyze the legal remedies of mortgaged object buyers at the State Property Service Office and Auctions that were canceled, To analyze the legal protection of mortgaged object auction buyers at the State Property and Auction Services Office which were canceled by the court, To analyze the mortgage objects in Office of the State Assets and Auction Service which was canceled by the court. Research Methods: The empirical juridical approach is that this research means that in analyzing the problem, it is done by combining legal materials (which are secondary data) with primary data obtained in the field, namely about "Legal Protection Of The Position Of Buyer Auction Objects Of Liability Canceled At The Court' s Decision In The Office Services Of State Property And Auction In The City Of Pekalongan" This type of research is analytical descriptive, that is, this research is analytical descriptive, which describes the data obtained from observations, interviews, documents and field notes, then analyzed in the form of a thesis to describe the problem with the title chosen, namely Legal Protection Of Object Auction Buyer Position Liability Rights Canceled Court Decisions At The State Property Service Office And Auction In Pekalongan City. From the approach, this research uses an empirical juridical approach.*

Keywords: Auction; Buyer, Insurance; Object; Protection; Rights.

1. Introduction

Auction is a legal institution that always exists in the legal system in Indonesia to meet the needs of the community, one of which is to fulfill the sale of an object through auction as regulated in laws and regulations. The auction has been regulated in the Regulation of the Minister of Finance Number: 27/PMK.06/2016,

dated February 22, 2016, in relation to the Regulation of the Minister of Finance Number 106/PMK.06/2013 concerning Amendments to the Regulation of the Minister of Finance Number 93/PMK.06/2010 concerning Instructions Auction Implementation. In Article 1 point 1 PMK number 27/PMK.06/2016 states that, Auction is the sale of goods that are open to the public with a written and/or verbal price offer that increases or decreases to reach the highest price, which is preceded by the announcement of the Auction Article 1 point 4 , 5,

1. Execution Auction is an auction to implement court decisions or decisions, other documents equivalent to that, and/or implement provisions in laws and regulations.
2. Mandatory Non-execution Auctions are Auctions to carry out the sale of goods which are required by legislation to be sold by auction.
3. Voluntary Non-execution Auctions are auctions of private property, individuals or legal entities/business entities that are auctioned voluntarily.

Mortgage rights are collateral rights over land for the settlement of certain debts, which give priority to certain creditors over other creditors. In a sense, if the debtor defaults, the creditor holding the Mortgage has the right to sell through a public auction the land that is used as collateral according to the provisions of the legislation in question, with the right to precede other creditors. This priority position certainly does not reduce the preference for State receivables according to the applicable legal provisions.¹

The first Mortgage holder may submit an application to the local Head of the State Auction Office for the implementation of a public auction in the context of the execution of the Mortgage object. comply with this authority.²The debtor is in breach of contract and refuses or even opposes the implementation of the auction based on Article 6 in conjunction with Article 11 Paragraph (2) letter e of the UUHT, then Article 20 paragraph (1) letter b of the UUHT is determined that based on the executorial title contained in the certificate of Mortgage, the object of the Mortgage can be sold through public auctions according to the procedures specified in the laws and regulations. As long as there is no statutory regulation that regulates it according to Article 26 of the UUHT and its explanations. The execution was based on Article 224 HIR and Article 258 RBg.

Thus the procedure taken is through the auction of Mortgage with the assistance of the District Court. The procedure begins with an application from the creditor to the State Court to execute the Mortgage Rights. If the District Court accepts the application, the District Court will follow up by issuing a bail/reprimand, a confiscation determination followed by the confiscation of collateral and issuing an auction decision. Furthermore, the District Court will submit an application for

¹Adrian Sutedi, (2010), *Hukum Hak Tanggungan*, Jakarta: Sinar Grafika, p. 5.

² Sutan Remy Sjahdeini, (1999), *Hak Tanggungan (Asas-Asas, Ketentuan-Ketentuan Pokok dan Masalah Yang Dihadapi Oleh Perbankan)*, Bandung: Alumni, p.165

the auction of the Mortgage Rights to the State Property and Auction Service Office (KPKNL).³

2. Research Methods

This research uses empirical research methods. The specifications of the research conducted by the author are classified as analytical descriptive research. Methods of data collection using interview techniques and literature study. After the data from the field is collected with the data collection methods described above, the authors will manage and analyze the data using qualitative analysis.

3. Results and Discussion

3.1 Legal Efforts for Buyers of Mortgage Objects at the State Property Service Office and Court Canceled Auctions

The provisions contained in Article 200 paragraph (10) and paragraph (11) of HIR or Article 218 Rbg, if the auctioneer is not willing to surrender the land/land and the house vacantly, the auctioneer, along with their families, will be forced out, if necessary, with the assistance of the authorities, from the said land/land and house based on the application submitted by the winner of the auction. If the auction is declared invalid and null and void as stated in a court decision that has permanent legal force, then the right of the auction buyer ends and the effort that can be made by the buyer/auction winner is to claim compensation from the seller.

The auction security deposit must be effectively received in the KPKNL account no later than 1 (one) working day prior to the auction. The auction bid security deposit is charged to the Bidder in the amount determined by the Seller at least 20% (twenty percent) of the Limit Value and at most equal to the Limit Value. Provisions regarding the amount of the auction bid security deposit are stated in Article 32 of the Minister of Finance Number 93/PMK.06/2010. The bid security deposit is a prerequisite before conducting the auction and this is intended so that the auction participant feels bound because the security deposit will be lost if the participant appointed as the Buyer defaults, so that it can be avoided from the existence of participants who are not really interested in participating in the auction or who are just playing around.

The bidder/proxy must be present at the time of the auction by registering first. For participants who give power of attorney to another party, it must be accompanied by a Notary Power of Attorney. Registered Bidders are required to submit bids at least equal to the limit price, if the bid is less than the limit price,

³ http://digilib.uinsgd.ac.id/27459/4/4_BAB%20I.pdf

then they are willing to be included in the blacklist of bidders⁴. In the event that the highest bid in the auction is in accordance with the will of the Seller, the goods will be released and the Auction Officer will determine the highest bidder as the Auction Winner/Buyer. However, in the event that the highest bid has not yet reached the desired selling price (Limit Price), the Auction Officer will determine that the object of the auction will be withheld or the winner will not be appointed.

The auction winner must complete the settlement of payments no later than 5 (five) working days after the auction, and if the payment is not settled within the specified timeframe, then on the next working day the Auction Officer must cancel his endorsement as a Buyer by making a Cancellation Statement and, the Buyer who does not can fulfill their obligations after being ratified as an Auction Buyer, are not allowed to participate in auctions throughout Indonesia within 6 (six) months⁵.

Buyer's auction fee collected in accordance with the provisions of the Government regulation on Auction Fee, Staatsblad 1949-390, namely 9% for movable goods and 4.5% for immovable goods, and collected based on Article 18 *Vendu Reglement* of 0.7% for movable goods and 0.4% for immovable property. On the other hand, the Seller is also charged an Auction Fee, which is 3% for movable goods and 1.5% for immovable goods calculated from the Auction Principal. The Seller is not subject to Poor Money.

Deposit of Net Auction Results to the Seller/Owner of Goods no later than 3 (three) working days after payment is received by the KPKNL Receipt Treasurer/Auction Hall/Class II Auction Officer. Then KPKNL submits documents and Excerpts of the Minutes of Auction to the Auction Buyer as evidence for changing names and so on.

An auction is an agreement in its implementation subject to the clauses in the minutes of the auction. The clause of the minutes of auction is determined unilaterally by the Auction Office, which has a stronger bargaining position and the auction buyer does not have the possibility to change the clause of the minutes of auction, so that the minutes of auction are standard agreements or contract standards. All clauses of the minutes of auction come from the Auction Office, which may not give place to the rights of the auction buyer. Article 35

⁴ Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

⁵ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

Vendu Reglement stipulates that the Minutes of Auction have the same meaning as the “Minutes of the Auction” of the Auction. Auction minutes are the basis for authenticating auction sales, auction minutes record all events that occur in auction sales.

The results of the research on court decisions from civil lawsuits in the first instance, appeal, and cassation are:

- a. The auction has legal force and is valid.
- b. The auction is declared as an act against the law so that the auction is declared null and void or legally flawed or invalid or has no binding force.

There are various forms or types of final decisions, namely:

- a. Negative Final Decision

In the final decision which is negative, the decision taken by the District Court is not based on the subject matter, but is based on formal reasons, namely that the lawsuit filed contains a formal defect, so that the verdict handed down: declares the lawsuit unacceptable (*niet ontvankelijk verklaand*). There are several types of formal disability claims that result in a decision: “Declaring the claim unacceptable”. a. the lawsuit contains an error in persona; b. the lawsuit filed is outside the jurisdiction or absolute or relative competence of the court concerned; c. the lawsuit contains an obscure libel defect. the lawsuit contains defects *ne bis in idem*; d. the lawsuit contains premature defects; e. the lawsuit filed has expired.

- b. Positive Final Decision

A final decision that is positive is a decision handed down based on the subject matter of the case. Such a decision has completely and thoroughly resolved the dispute that was litigated so that the object of the case is complete and certain. The form of a final decision that is positive according to law consists of:

- 1) Completely reject the plaintiff's claim

The decision which reads: "Reject the plaintiff's claim entirely" is an affirmation of the Plaintiff not having legal rights and legal relations with the defendant or with the object of the case. The decision rejects the Plaintiff's claim in its entirety, if the Plaintiff is unable to prove the argument of the lawsuit based on the evidence or the evidence submitted by the Plaintiff is paralyzed by evidence by the Defendant.

- 2) Accept the plaintiff's claim

The decision to grant the lawsuit is a correction to the legal relationship in a direction that benefits the plaintiff accompanied by the imposition of a legal obligation on the defendant to carry out the fulfillment of something in the form of punishment to surrender, vacate, pay, share, or stop an act.

3.2 Legal Protection of Auction Buyers of Mortgage Objects at the State Property Service Office and Court Canceled Auctions

The winner of the auction based on the Regulation of the Minister of Finance No. 93/2010 concerning auction implementation instructions, is the buyer who submits the highest bid and is ratified as the winner of the auction by the Auction Officer. Article 41 paragraph (1) Government Regulation no. 24/1997 concerning land registration, it is explained that the transfer of land rights through the transfer of rights by auction can only be registered if it is proven by an excerpt from the minutes of the auction made by the auction official.

Article 6 states, "If the debtor is in breach of contract, the holder of the Mortgage has the right to sell the object of the Mortgage on his own power through a public auction and take repayment of his receivables from the proceeds of the sale. Article 6 and Article 20 paragraph (1) UUHT, provide opportunities for creditors holding Mortgage Rights if the debtor defaults, the creditor can sell through the State Property and Auction Service Office (KPKNL). In these circumstances, it is not uncommon for buyers of the mortgaged object through auction to have difficulty controlling the goods they bought because the mortgaged object being auctioned is still in the control of the debtor. This happens because the Mortgage Law does not provide the realm of how to protect the mortgage auction buyer to control the goods he bought.

Several definitions were formulated in the Minister of Finance Regulation Number 106/PMK.06/2013 dated 26 July 2013, among others:

- a. Article 1 point 1 auction is the sale of goods that are open to the public with a written and/or verbal price offer that is increasing or decreasing to reach the highest price, which is preceded by the announcement of the auction.
- b. Article 1 point 19 seller is a person, legal entity/business entity or agency based on the legislation or agreement authorized to sell goods by auction.
- c. Article 1 number 22 the buyer is a person or legal entity/business entity that submits the highest bid and is ratified as the winner of the auction by the auction official.

Article 20 states:

- a. If the debtor is in default, then based on:
 - 1) The right of the first Mortgage holder to sell the object of the Mortgage as referred to in Article 6, or
 - 2) The executorial title contained in the Mortgage certificate as referred to in Article 14 paragraph (2), the object of the Mortgage is sold through a public auction according to the procedure specified in the laws and regulations for the settlement of the mortgage holder's receivables with prior rights from other creditors.

- b. With the agreement of the grantor and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hands, if so, the highest price will be obtained that benefits all parties.
- c. The implementation of the sale as referred to in paragraph (2) can only be carried out after 1 (one) month has passed since it has been notified in writing by the giver and/or holder of the Mortgage to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned and/or the local mass media, and no party has objected.
- d. Every promise to carry out the execution of the Mortgage in a way that is contrary to the provisions in paragraph (1), paragraph (2), and paragraph (3) is null and void.
- e. Until the announcement for the auction is issued, the sale as referred to in paragraph (1) can be avoided by paying off the debt guaranteed by the Mortgage along with the execution costs that have been incurred.

In addition to the above provisions, there are instructions for implementing the auction as regulated in Regulation of the Minister of Finance Number 93/PMK.06/2010 dated April 23, 2010, as amended by Regulation of the Minister of Finance Number 106/PMK.06/2013 dated July 26, 2013 and Regulation of the Director General State Assets Number 6/KN/2013 concerning Technical Guidelines for Auction Implementation.

According to Rochmat Soemitro, what is meant by selling in public is an auction and sale of goods carried out in public by offering an increasing price or with the approval of a decreasing price or by price registration, where the invited persons or previously have been notified of the price. According to Yahya Harahap, what is meant by selling in public or what is usually called an auction is an auction and sale of goods held in public by bidding. an increasing price, by agreeing on an increasing price, or by registering a price, or⁶where persons who are invited are or have previously been notified of the auction or sale, or the opportunity provided to persons who are auctioning or buying to bid, agree on a price or register.⁷According to Wildan Suyuthi, auction is the sale of goods in public by way of offering prices verbally or in writing through an effort to gather interested parties or bidders and must be led by an auction official. From the definition of the auction, there are several elements of an auction.

There is an objection from the debtor/third party to the auction results by filing a court lawsuit to cancel the auction results so that if the court has given a decision that has permanent legal force stating the auction being held is invalid and null and void and the minutes of the auction have no binding force.

The implication of the auction decision being declared invalid and null and void means that the auction buyer's rights to the auction object will end. The problems that arise from the sale by auction cause legal uncertainty where the

⁶Rochmat Soemitro, (1987), *Peraturan dan Instruksi Lelang*, Bandung: Eresco, p. 153

⁷M. Yahya Harahap, (1989), *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Jakarta: Gramedia, p. 115.

auction buyer with good intentions entrusts the mechanism for purchasing goods through auction facilities that are considered safe.

This greatly affects the issue of legal protection for the buyer/auction winner. The law has provided legal protection for the buyer/winner of the auction, this can be referred to in court decisions that have been made into jurisprudence which provide legal protection to the auctioneer, namely:

- a. Jurisprudence of the Supreme Court Number: 323/K/Sip/1968 which states that an auction which is carried out in accordance with the provisions of the applicable laws and is won by an auction buyer with good intentions, then the auction cannot be canceled and to the auction buyer with good intentions must be given legal protection.
- b. Jurisprudence of the Supreme Court Number: 821/K/Sip/1974 states that a purchase in public through an auction office is a buyer with good intentions, must be protected by law.
- c. The jurisprudence of the Supreme Court Number: 3201 K/Pdt/1991 states that buyers with good intentions must be protected. Buying and selling that is carried out by pretending is only binding on those who made the agreement, and is not binding at all on third parties who buy in good faith. Good faith buyers are protected by law.
- d. Jurisprudence of the Supreme Court Number: 314 K/TUN/1996, July 29, 1998, states: Buyers of land auctions for court executions carried out by the state auction office must receive legal protection, therefore control over land certificates by the Regional Government is invalid and certificates of rights his property must be declared null and void by law.
- e. Decision of the Supreme Court of the Republic of Indonesia Number 4039K/Pdt/2001 which in its consideration states the following:
 - 1) that the mortgage on the object of this dispute has been auctioned in accordance with the existing procedures, although it can later be proven by a criminal decision that the party who guarantees (Defendant I) is not entitled to pledge the object of the dispute.
 - 2) that because the auction took place before the decision of the criminal case, the auction of the object of dispute is legal and thus the auction buyer must be protected.
 - 3) that because the auction of the object of dispute is legal, the Defendant must be responsible for the losses suffered by the Plaintiffs. Meanwhile, Co-Defendants I and II must be released from responsibility for the Plaintiff's claims.
- f. Jurisprudence of the Supreme Court Number : 1068 K/Pdt/2008, dated January 21, 2009 : it was decided by the Supreme Court, with the conclusion that:
 - 1) Cancellation of an auction that has been carried out based on a decision that has permanent legal force cannot be canceled.

- 2) Buyers of auctions against disputed objects based on the Minutes of Auction and Minutes of Auction based on a decision that has permanent legal force are auction buyers who have good intentions and therefore must be protected.
- 3) If in the future there is a decision that is contrary to a decision that has permanent legal force and declares the decision with permanent legal force is not binding, then that decision cannot be used as a reason to cancel the auction, what can be done is to demand compensation for the object of dispute from the auction applicant.

Compensation for auctions canceled by the court is not regulated in the auction rules, so it can be seen in a more general regulation, namely the Civil Code. The auction rules only mention the seller's obligations. Article 16 of the Regulation of the Minister of Finance Number 93/PMK/06/2010 concerning the instructions for implementing the auction, it is stated that the Seller/Owner of the Goods is responsible for: the legality of ownership of the goods, the validity of the tender requirements documents, the delivery of movable goods and/or immovable goods; and ownership documents to the Buyer. Seller/Owner of Goods is responsible for civil lawsuits and criminal charges arising from non-compliance with laws and regulations in the field of auction.

From the explanation above, it can be interpreted that the seller/owner of the goods is responsible for civil lawsuits and criminal charges that arise if the statutory regulations in the auction are not fulfilled, in this case if the auction is declared invalid and canceled by the court, the seller/owner of the goods returns the price auction that has been paid by the auction buyer along with the compensation incurred in the auction process. Article 1365 of the Civil Code explains that every act that causes harm to another person requires the person who caused the loss because of his mistake to compensate. The law guarantees that the protection of buyers who have been harmed in buying and selling is that the buyer can claim compensation before the court.⁸

Auction is a form of buying and selling events that are packaged in different ways. A sale and purchase is an agreement in which one party binds himself to surrender ownership of an object and the other party pays the promised price. The definition of buying and selling according to Article 1457 of the Civil Code (KUH Perdata) is an agreement in which one party binds himself to deliver an object, and the other party pays the promised price. The definition above represents several elements contained in the sale and purchase, namely an agreement, the delivery of goods, and the other party paying the promised price. Auction sale is an advanced stage of the confiscation of execution process. The purpose of the auction sale itself is to generally sell the defendant's assets so that the proceeds from the sale of the debt will be paid to the plaintiff in the amount stipulated in the decision. According to Article 200 paragraph 1 of the

⁸ <https://menurut> Hukum.com/2020/04/02/kepastian-law-dan-perlindungan-Hukum-bagi-penang-or-belii-lelang/

Herzien Inlandsch Reglement (HIR) or Article 215 *Rechtreglement voor de Buitengewesten* (Rbg), the sale of confiscated goods in public is carried out with 'intermediaries' or 'assistance' by the State Auction Office. If these two articles are linked with Article 1a of the Auction Regulations (LN 1908 No. 189), it will become clearer who is the official authorized to sell the auction, namely the Auctioneer.

The State Property and Auction Service Office (KPKNL) always tries to carry out the auction in accordance with the provisions, so that legal certainty can be given to the auction buyer. Prior to the implementation of the auction, the Head of the KPKNL/Auction Officer who is appointed to conduct an auction of an object shall first verify the tender requirements document, with the aim that the Head of the KPKNL/Auction Officer will receive information regarding the formal legality of the subject and object of the auction. Thus, it can be ensured that the auction conducted by the auction official has truly fulfilled the requirements and can be carried out in accordance with the applicable procedures, so that it does not cause legal defects and the appointment of the winner of the auction is also legally valid.

The auction winner is the buyer, either a person or a legal entity/business entity who submits the highest bid and is ratified as the winner of the auction by the auction official. The winner in the auction is validated by the auction official and published in the minutes of the auction. The execution auction as a legal legal act creates rights and obligations for the auction winner. The auction winner as a legitimate buyer has obligations related to auction payments and other legal taxes/levies in accordance with a predetermined period of time. Prior to the auction, the seller must announce the goods to be auctioned. The issuance of this announcement has provided an opportunity for third parties who feel aggrieved to file a lawsuit before the auction.

Preventive legal protection for the auction winner is a form of protection given to the auction winner before the occurrence of a dispute regarding the object of the auction. *Vendu Reglement* provides preventive legal protection to the auction winner regarding the transfer of rights to the object of the auction. This is in accordance with the provisions in Article 42 of the *Vendu Regulation*, that the winner of the auction is entitled to a quote from the minutes of the auction as a deed of sale and purchase of the object of the auction. Preventive legal protection for the auction winner is also contained in the minutes of the auction, which is the official report of the auction made by the auction official as an authentic deed and has perfect evidentiary power. The winner of the execution auction, in addition to preventive legal protection, also gets repressive protection. Repressive protection, according to Hadjon,

The government has provided legal protection to auction buyers who have good intentions who participate in auctions in accordance with applicable regulations, namely those explicitly regulated in Article 4 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation

Guidelines, which confirms that auctions have been carried out in accordance with applicable regulations, cannot be canceled. From this formulation, it has reflected the principle of legal certainty for the auction winner.

Through Article 4 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines, the State in this case the KPKNL has provided legal protection to auction buyers with good intentions, the judiciary through the Decision of the Supreme Court of the Republic of Indonesia Reg. Number 821K/Sip/1974, also emphasizes legal protection for auction buyers who have good intentions, so that the certainty of the rights of auction buyers is certain and guaranteed by law.⁹Theoretically, the buyer of the auction winner who has good intentions will be protected by law based on his position of power in good faith based on the articles in the Civil Code mentioned above. However, regarding the buyer from the auction winner, especially with regard to ownership disputes that started with the *uitvoerbaar bij voorraad* decision which initiated the execution of the execution auction sale, there are other forms of protection.

4. Conclusion

Compensation for auctions canceled by the court is not regulated in the auction rules, so it can be seen in a more general regulation, namely the Civil Code. Preventive legal protection for the auction winner is a form of protection given to the auction winner before the occurrence of a dispute related to the object of the auction. *Vendu Reglement* provides preventive legal protection to the auction winner regarding the transfer of rights to the object of the auction. This is in accordance with the provisions in Article 42 of the *Vendu Regulation*, that the winner of the auction is entitled to a quote from the minutes of the auction as a deed of sale and purchase of the object of the auction.

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