



Legal Aspects Of Execution Of Dependent Rights Against Auction Buyers In Indonesia

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ARTICLE INFO

Keywords:

System, Law, Execution

Date received : 03 Februari 2022

Revision date : 21 Februari 2022

Date received : 01 Maret 2022

ABSTRACT

The right of mortgage arises because of an agreement, that is, an agreement between the parties. Legal protection of the winner of the auction means the existence of legal certainty over the rights of the buyer / winner of the auction on the object purchased through the auction. In the auction process that has been carried out in practice will cause legal consequences, namely the transfer of the rights of the auction object from the seller to the buyer/winner of the auction as regulated in law no. 4 Of 1996 On The Rights Of Dependents On Land And Objects Related To The Land. In the transition of the rights of the auction object is not uncommon to cause a problem, such as the inability to control the auction object by the buyer/winner of the auction, which the owner of the auction object does not want to voluntarily vacate the auction object.

INTRODUCTION

In the credit agreement there are two agreements, namely the Basic Agreement and the additional agreement (*accessoir*). The principal agreement is a credit agreement made by the bank with the debtor in the context of business activities of lending banking, and the *accessoir* agreement is a mortgage agreement. The establishment of a credit agreement between the bank and the debtor aims to provide certainty on the repayment of the loan. The loan agreement between the bank and the borrower is tied to the right of guarantee.

In a credit agreement requires a guarantee or collateral that can be used as a substitute for debt repayment if in the future if the debtor is injured or in default. In the credit agreement there are rights and obligations of each party, including the period and interest set together. Similarly, the issue of sanctions if the debtor defaults to a credit agreement that has been made together. If there is a bad credit, then the steps taken to rescue the credit are diverse.

It is said to be diverse because it is seen first of all the causes. If it can still be helped, then the action helps whether by increasing the amount of credit or by extending the term. However, if it cannot be saved again, The Last Action for the Bank is to confiscate the collateral that has been pledged by the customer in this case in the form of land and or buildings that have been pledged with the right of dependents. In such case, if it has passed the subpoena process on the debt-receivable agreement in the dependent rights, but still cannot fulfill its performance, the certificate of dependent rights has the value of executorial power. Based on the provisions of Article 6 of Law No. 4 of 1996 on mortgage rights, namely: "if the debtor is injured, the first mortgage holder has the right to sell the object of mortgage on his own power through public tender and take the repayment of the claim from the sale of the asset", meaning that if the debtor is injured, the first mortgage holder has the right to sell the object of mortgage on his own power through public tender and take the repayment of the claim from the sale of the asset", which means that if the debtor is injured, the first

mortgage holder has the right to sell the object of mortgage on his own power through public tender and take the repayment of the claim from the sale. This concept in the Civil Code is known as Parate execution as referred to in Article 1178 paragraph (2) of the Civil Code.

"With the concept of Parate execution, the holder of the mortgage does not need to ask for prior approval to the assignor of the mortgage, and there is no need to also ask for the determination of the local court if it will execute the mortgage that is a guarantee of the debtor's debt in the event of the debtor's injury to the pledge. The holder of The Dependent rights can immediately come and ask the head of the auction Office to conduct an auction on the object of the relevant dependent rights. (Remy Sjahdeini, 1999; 46). An auction is known as an agreement that includes buying and selling. Herodotus menus that auctions began to exist in 500 BC in Babylon (Vijay Krisna, 2002 ; 1). As we know that the auction is included in the named agreement (nominaat) or special agreement (benoemd), because it has its own name "auction". The transfer of rights through auction can be divided into two forms, namely the transfer of rights by switching and switching rights by transferring.

The auction itself contains the elements listed in the definition of sale and purchase the presence of legal subjects, namely the seller and the buyer, the existence of an agreement between the seller and the buyer about the goods and prices, the presence of rights and obligations arising between the seller and the buyer. An auction is a sale and purchase in a special form. In addition, the auction must be held in front of auction officials. The sale and purchase of the auction must be preceded by an offer to the public (general). Buying and selling through auction, a price agreement is formed at the time of the auction, which is when the official of the auction for the benefit of the seller appoints the highest bidder and reaches the limit price as the buyer of the auction. So auction buying and selling does not purely occur between the seller and the buyer, but there is an intervention of auction officials in the form of the authority of auction officials to appoint auction buyers.

Thus, the auction includes a sale and purchase agreement, because there are terms of

validity of the agreement. An agreement in an auction sale is formed when the official of the auction for the benefit of the seller appoints the highest bidder and reaches the limit price as the buyer of the auction.

"The auction as an agreement in its implementation is subject to the clauses of the minutes of auction. The minutes of auction clause is set unilaterally by the auction Office, which has a stronger bargaining position and the auction buyer does not have the possibility to change the minutes of auction clause, so the minutes of auction is a standard agreement or standard contract".

METHOD

The methodology that the author uses is the normative legal methodology. Normative research or legal research literature is legal research using secondary data that is data obtained from library materials. In this normative legal research, the author collects data in the form of secondary data obtained from books, laws and other literature sources.

RESULTS AND DISCUSSION

A. Legal Protection For Buyers In Good Faith Through Auction Execution Of Mortgage

Legal protection of auction buyers has the meaning that there is legal certainty over the rights of the winner of the auction of the object of execution of mortgage rights purchased either juridically or materially through the auction mechanism. In the auction process conducted will cause legal consequences, namely the transfer of the rights of the auction object from the seller to the buyer of the auction. The right of mortgage arises because of an agreement, that is, an agreement between the parties. An auction is a general sale carried out in front of an authorized auction official and the transfer of ownership rights of the auction object is stated in the minutes of the auction.

In the case of execution of the object of the mortgage, if the previous owner does not want to voluntarily vacate the auction object of the mortgage, the legal protection of the auction buyer means that there is a legal certainty of the right of

the winner or buyer of the auction to be able to control or execute the auction object that has been owned juridically or materially. Legal protection against third parties who buy the results of the auction can be said to be still fairly minimal. This often happens, namely In Law No. 4 on the rights of dependents on land and objects related to land more emphasis on the protection of the law of creditors than debtors or third parties.

Even sellers and auction officials tend to avoid its legal obligation to protect third parties as auction buyers. As in one of the principles affirmed by the Supreme Court regarding buying and selling is "a good-faith buyer must always be protected". The consequences of the sale and purchase, in this case the sale and purchase through auction execution of dependent rights, namely the sale and purchase carried out by the buyer in good faith with the seller must be considered valid. The legal form of protection of auction buyers in the execution of dependent rights can be preventive and repressive legal protection. Preventive legal protection for auction buyers dependent rights is a form of protection provided to the buyer or winner of the auction before the occurrence of a dispute related to the auction object.

Vendu regulation provides preventive protection to the winner or buyer of the auction execution of dependent rights related to the transfer of rights of the auction object. Before carrying out the auction, the auction official has conducted a juridical analysis of the auction requirements document so that the auction can be carried out in accordance with applicable laws and regulations. In addition to preventive legal protection, winners or buyers of mortgage execution auctions also get repressive legal protection. Repressive protection according to Hadjon is an attempt to obtain legal protection carried out through judicial bodies. "Repressive protection against auction buyers of execution of dependent rights is contained in Article 200 HIR (Herzein Inlandsch Reglement) and Article 218 paragraph (2) RBG"Rechtreglement voor de Buitengewesten")"

In the order of practice, the legal protection of the auction buyer in the execution of the object of dependent rights, in the event that the auction object cannot be controlled by a third party because

the auction buyer does not want to voluntarily vacate the auction object must be regulated in the laws and regulations. When analyzed based on the theory of "Law as a tool of social engineering " pioneered by Roscoe Pound or law as a means of Community Renewal originally proposed by Roscoe Pound and is the core of the school of "Pragmatic Legal Realism".

"The concept is modified into law as a means of development by Mochtar Kusumaatmaja if the theory is applied in the renewal of legislation related to the auction, it is expected that the legislation- the auction invitation in the future will serve as a means (regulator) of the development direction of the auction with a legal concept that provides legal protection in the form of certainty of the rights of auction buyers over the goods purchased and fairness to auction buyers, a rational auction process so that it is transparent and accountable and : developing auctions with the role of the government".

B. Auction Object Execution Constraints For Auction Buyers

One of the characteristics of the mortgage is that it is easy and certain in the execution of its execution if the debtor defaults in the future. "Theoretically, if viewed based on the theory of positivism or positive law that currently applies, namely In Law No. 4 of 1996 on land rights and objects related to land, it has set forth firmly and in detail in the implementation of execution of mortgage rights, but in practice there are still many obstacles that can hinder the execution. Although the rule has been expressly contained in Law No. 4 of 1996 on land rights and objects related to land, but if viewed based on the theory of legal certainty, it can be said that it has not fully guaranteed the execution process of the object due to the constraints that hinder the execution process".

According to R. Overmacht is a condition that occurs after the approval is made, which prevents the debtor from fulfilling his performance, in which the debtor cannot be blamed and does not have to bear the risk and cannot suspect at the time the approval is made. "All of them were before the debtor failed to fulfill his achievements at the time of the onset of the situation. The definition needs to be further elaborated as follows:

- a. The circumstances that give rise to such coercive circumstances must occur after approval is made.
- b. Circumstances that hinder the fulfillment of achievements should be about his own achievements.
- c. The debtor can not give up his goods because it was stolen, can not be found guilty, if he has try your best to keep this stuff.
- d. The debtor does not have to bear the risk means that the debtor, either based on laws, agreements or views that apply in society, does not have to bear the risk.
- e. The debtor cannot suspect that an event will occur that hinders the fulfillment of the achievement at the time the engagement is made”.

In an auction implementation the obligation of the buyer is to make payments to the auction price. In addition to the constraints terebut, we can also meet obstacles in non juridical barriers :

- a. The existence of obstacles from the debtor parties which deliberately to hinder the process of execution of the object of the mortgage in various ways, namely, deliberately blocking the road to the location of the object of the mortgage, blocking the security apparatus by making noise.
- b. Lack of knowledge and understanding from the public related to the law, so it is easy to be influenced and provoked by the debtor and irresponsible parties.

CONCLUSION

The existing auction implementation regulations have not provided full legal protection to the winner/buyer of the auction, in the sense that the Vendu Regulation which is the main legal basis for auctions in Indonesia and the Minister of Finance Regulation No. 27/PMK / 2016 on auction implementation instructions has not found any legal protection to the buyer of the auction execution of dependent rights. The minutes of the auction itself does not provide legal protection to the auction

buyer for the control of the auction object. In this case, Hir (Herzein Inlandsch regulation) provides repressive legal protection that enforces an order for the emptying of the auction object to ask for assistance to the District Court, and if there is difficulty in emptying the auction object, a third party who feels aggrieved can apply for legal remedies.

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First publication right :

International Asia Of Law and Money Laundering

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