

RESEARCH ARTICLE

# SETTLEMENT OF AUCTION DISPUTES OVER LAND AND BUILDING COLLATERAL OBJECTS

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## ABSTRACT

The implementation of the auction still faced many obstacles and lawsuits that lead to auction disputes against the object of the Guarantee Rights. The purpose of making this article is to find out how land and building guarantee auction disputes occur for the object of the Mortgage and how to resolve it. The qualitative approach method is descriptive analytical namely describing systematically factually and accurately regarding the settlement of auction disputes in accordance with the legislation, then the legal facts are analyzed. The research revealed and showed that the conduct of auctions often results in disputes. The auction will affect the parties involved as auctioneer, namely the Bank as the creditor, the State Wealth and Auction Service Office (KPKNL), and the National Land Office. This of course will also affect public confidence in legal certainty in the implementation of the auction. The auction in this case the KPKNL, uses the basis of the Execution Parate, as well as through the fiat court. Parate execution based on Article 6 of the Mortgage Law which is supported Regulation of the Minister of Finance concerning Technical Guidelines for Implementation of Tenders, is expected to be implemented properly so that legal certainty can be achieved. Apart from that, settlement of an auction dispute for the object of the Mortgage Rights is carried out by selling under hand, this is

based on Article 20 paragraph (2) UUHT Number 4 of 1996, "The right to sell on one's own power" the object of the Mortgage.

Keywords: *disputes, auction, mortgage*

## INTRODUCTION

Economic development as part of national development is one of the efforts to create a just, fair and prosperous society based on Pancasila and the 1945 Constitution. To maintain the sustainability of this development, the role of the government and the private sector is needed. In this case, the role of the private sector represented by the community either individually or as a legal entity requires a lot of funds to be able to implement it. The basis of high needs and the unmet economy means that many people make loans through banking services.

The distribution of loans from banks to the public, both individuals and legal entities as mandated in Law Number 10 of 1998, is an amendment to Law Number 7 of 1992 concerning Banking, described in Article 1 point 11, "Credit is provision of money or an equivalent claim, based on a loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest" (Jumhana, 2021: 413).

People who make loans or as owners of debts are called debtors, while banks that provide loans or owners of receivables are called creditors. Every credit that has been approved and agreed upon between the creditor and the debtor must be stated in the credit agreement in writing and signed by both parties. Credit agreements made in writing in the procedure for making them must refer to the agreement law regulated in the Civil Code, in particular Article 1313 of the Civil Code which states that an agreement is an act in which one or more people bind themselves to one or more people. Besides the existence of a credit agreement as the main agreement, the debtor also delivers collateral which is used as collateral at the bank. Collateral submitted to the bank as evidence of the debtor's good faith to cooperate with the bank and to ensure legal certainty.

To ensure legal certainty for banking institutions (creditors), the guarantee institution was created, namely Law No. 4 of 1996 regarding the land rights and objects related to land or better known as the UUHT. With the existence of this law, it is hoped that its implementation in practice will provide a stronger position and ensure greater legal certainty regarding the rights of creditors. What is called the Mortgage Rights according to the UUHT in article 1 paragraph 1 is "The guarantee imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, along with other objects which are an integral part of the land, for the settlement of certain debts, which give the position which gives priority to certain creditors over other creditors".

The debtor as an indebted party if he does not perform the obligations as mutually agreed upon in the credit agreement, it can be said that the debtor has committed "default". Consequently, the debtor defaults, then the collateral object can be transferred or sold through a public auction to pay off the receivables of the Mortgage holder by preceding the preferred creditor. However, for the execution of the object of the credit guarantee, there are many obstacles, not always accepting the execution of the object of the credit guarantee. The debtor who feels aggrieved by the execution can take up the fight. This resistance effort will be realized by the debtor in a lawsuit in the District Court.

Therefore, this research is intended to analyze on how does a land and building guarantee auction dispute happen? And how to settle land and building collateral auction disputes for the Object of the Mortgage Rights?

## METHOD

The qualitative approach method is descriptive analytical namely describing systematically factually and accurately regarding the settlement of auction disputes in accordance with the legislation, then the legal facts are analyzed (Fajar & Ahmad, 2010: 183). This type of doctrinal legal research, namely research that originates from the applicable laws or legal regulations and doctrines. The focus of research is a problem that originates from the experience and knowledge of researchers obtained through scientific literature or other literature. Where is the focus of research as contained in the formulation of the problem, namely regarding the occurrence of auction disputes and their resolutions. Sources of data were obtained through literature study to obtain primary legal material, namely the main legal material in the study (legislation), namely the 1945 Constitution, Law No. 10 of 1998 is an amendment of Law No. 7 of 1992 concerning Banking, Law No. 4 of 1996 concerning Mortgage Rights and other laws and regulations, including court decisions (Marzuki, 2010: 146-155). Furthermore, secondary law (expert opinion), namely legal materials to explain primary legal materials from books or journals, tertiary legal materials serve to explain primary legal materials and secondary legal materials (dictionaries, encyclopedias, internet and others). Data collection techniques and procedures are carried out through document study, namely based on written legal documents (legislation). The validity of the data using source triangulation by checking steps, comparing the information obtained, and conducting analysis through different sources. Technique Data analysis was carried out in a qualitative normative manner, namely starting from the statutory norms through interpretation.

## THE OCCURRENCE OF A LAND AND BUILDING COLLATERAL OBJECT AUCTION DISPUTES

As one of the efforts to reduce credit risk, the provision of bank credit requires collateral to be used as collateral. The function of providing guarantees is to provide rights and powers to the bank to get repayment with these collateral, if the debtor defaults on not paying back his debt at the time specified in the agreement.

Collateral that is often used is in the form of land and / or buildings that have proof in the form of a certificate and are bound by Mortgage Rights as regulated in Law No. 4 of 1996 concerning Mortgage Rights. In dealing with non-performing loans, various efforts have been made by banks to recover money from debtors, namely through regular collection efforts or through other efforts. The recovery process carried out by the bank is very difficult because in general the debtors faced are debtors who are bankrupt, have bad intentions, have died, even the debtor has run away (skip), so that the installment payments to the bank are not fulfilled. To deal with this, the bank usually uses a parate executie auction mechanism.

In auction, what often happens is that the bank always faces a counterclaim from debtors who do not want their collateral to be auctioned off. The lawsuit was based on the fact that the bank conducted an auction without prior approval from the debtor, even though the agreement deed already contained a clause if the debtor in default of the bank would 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.

The factors causing the debtor not to carry out payment obligations are as follows:

1. The debtor's economic condition

In general, those who borrow money from banking institutions are middle to lower class. They are generally small and medium entrepreneurs. So that in developing its business it always depends on the prevailing market prices.

2. The debtor's willingness to pay his debts is low.

The character or nature of the debtor is very important, this is the key to the potential for non-performing loans if the debtor has a bad character. The accuracy of the bank during the initial verification / survey in the field is needed.

3. Collateral value is less than the amount of principal and interest payable.

At the time of the assessment of the guarantee by the bank, that the collateral object owned by the debtor is deemed sufficient and feasible. However, in practice it turns out that when the collateral is sold, it is not sufficient to pay

off debts. The credit received by the debtor is not in accordance with the original purpose of the loan/side streaming.

From the factors above, basically the debtor does not want collateral or other items to be auctioned by the State Receivables and Auction Service Office (KPKNL). They still want the collateral not to be sold and they still hope that the payment of their debts can be extended. Even though the banks or non-bank financial institutions have made *subpoenaes* several times to the debtors, they still do not make any achievements on time. If the debtor continues to ignore this matter, the banking institution will submit the matter to the State Receivables and Auction Service Office (KPKNL).

According to Article 29 of the Minister of Finance Regulation Number 135 /PMK.01/2006, the Office of State Assets and Auction Services (KPKNL) states that the KPKNL is a vertical agency of the Directorate General of State Assets which is under and directly responsible to the Head of the Regional Office. The task of the State Wealth and Auction Service Office (KPKNL) according to Article 30 of the Minister of Finance Regulation Number 135/PMK.01/2006 is to provide services in the field of State assets, assessment of State receivables, based on applicable laws and regulations. The parties related to the auction of collateral objects are:

1. Debtor, namely a person who has borrowed money from a creditor but does not carry out his obligations as agreed.
2. Creditors are banks or other institutions that have provided money or capital to customers.
3. State Receivables and Auction Affairs Agency (BUPLN).
4. The party or buyer of collateral is a person or entity that has bought or won in the auction of collateral.

Legal basis of the auction is carried out based on Article 6 of the UUHT as follows:

1. Law No.4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land (UUHT)
2. Law No. 05 of 1960 concerning Basic Agrarian Regulations (UUPA)
3. RI Minister of Finance Regulation No.118 / PMK.07 / 2005 concerning Auction Hall
4. Regulation of the Minister of Finance of the Republic of Indonesia Number 40 / PMK.07 / 2006 concerning Guidelines for Auction Implementation.

Execution of Mortgages based on Law No. 4/1996, collateral can be executed in 3 ways, namely:

1. Execution parate, Article 6 and Article 11 (C) of the Mortgage Law
  - a. Article 6 of the Mortgage Rights Act says Parate execution for the sake of law
  - b. Article 11 (C) of the Mortgage Rights Act because the parate of execution was agreed.

Parate execution is an execution without litigation and without an executorial title. In law, granting authority for execution parates is based on legal doctrine which, among other things, states that an agreement that is certain or does not contain disputes, such as fixed loans, should be carried out independently by interested parties without court intervention ([Sutedi, 2012: 130](#)). The first Mortgage Holder has the right to sell the object of the Mortgage on his own power through a public auction and collect his receivables from the sale proceeds. The creditor has the authority to carry out direct execution of objects that become collateral without the intermediary of a judge.

According to the general explanation Number 9 of the Mortgage Rights Law, one of the characteristics of a strong Mortgage is easy and sure to carry out the execution:

- a. For this reason, the Mortgage Rights in this Law regulates the Execution Parate institution as referred to in Article 224 HIR, Article 256 RBG;
- b. In connection with that, the mortgage certificate is affixed with the words: "For the sake of Justice based on the one and only Godhead", as the foundation of executorial power, which is as strong as a court which has permanent legal force.

Thus, the institutionalization of execution parates in this Law, apart from being regulated in Article 6, is also affirmed in the General Elucidation.

## 2. Execution by Court

The Mortgage Rights Law provides for the possibility of carrying out execution through a judicial process. The judicial process takes time and costs. So, in practice what is done is execution through a lawsuit. If a lawsuit occurs in court, the object of collateral will be auctioned off in public and the proceeds will be used to pay off the debtor's debt.

## 3. Guarantee sales on an underhand basis

Article 20 of the Mortgage Rights Law item (3). Underhand sales are sales made not through a public auction. Underhand sales will be more profitable for both parties because usually if there is a sale through an auction, the price may go down and the debtor and creditor may suffer losses.

In the implementation of the auction, especially the execution auction, the potential for lawsuits is very high. The lawsuit/rebuttal is separately submitted before the auction and after the auction. The claim before the auction is intended by the plaintiff to delay the auction. And the post-auction claims/rebuttals have very various motives behind it ([Khalim, 2014](#)). Lawsuits generally arise when someone is unsatisfied. As a rule of law/rechtstaat, every citizen who feels his rights have been violated, has the right to file a lawsuit/rebuttal to the court as a channel for his violated rights. There are requests for auction postponement and/or resistance submitted by debtors and/or guarantors and/or other third parties during the ongoing guarantee execution process, where requests for postponement and/or resistance submitted by such parties may cause postponement of the guarantee auction.

The plaintiff is a person/legal entity whose interest in the form of ownership of the auction object has been harmed by the auction, for example:

1. The debtor who is the subject of the case is related to the auction price that is too low, the auction of bad credit is carried out before the due date of the credit agreement, the procedures for implementing the auction are not correct, for example, the auction notification is not timely, the announcement is not in accordance with the procedure and so on. other;
2. The third party owner of the goods is either directly involved in the signing of the credit agreement or purely as guarantor of the debt, the subject of which is basically the same as the debtor, namely the auction price is too low / if the collateral is auctioned off, the auction of bad credit is carried out before it falls credit agreement due date;
3. Heirs related to inheritance issues, an illegal guarantee process;
4. One of the parties in the marriage, related to the issue of joint assets, an illegal guarantee process;
5. The auction buyer is related to the auction buyer's right to be able to control the goods that have been purchased / emptied.
6. The defendants include creditor banks, PUPN, auction offices, auction buyers, debtors who pledge goods, and other parties related to legal actions contained in the tender requirements documents, among others, the land office that issues certificates, notaries who make the binding. Guarantee (Sianturi, 2013: 244-245).

After the object of the Mortgage has been auctioned and has been purchased by the winner of the auction, it turns out that the debtor who gives the Mortgage does not want to vacate the object/parcel of the Mortgage that has been sold, then vacating the object of the Mortgage can be done in the following manner:

- a. Persuasively, that is, by making an approach between the old owner or occupant and the new owner as the winner of the auction, then by providing compensation in the form of compensation, vacating fees, etc. or if it is in a leased condition, by extending or renewing the lease.
- b. The auction winner as the new owner of the Mortgage object has the right to submit a vacant application to the Chairman of the local District Court, and then upon the existence of the request, the Head of the District Court makes a Decision Letter ordering the Clerk of the Secretary or the bailiff of the District Court to vacate the object of the Mortgage by way of forced and if necessary the evacuation can be carried out with the assistance of other forces (police if necessary military assistance).

In several guarantees law in Indonesia, there are provisions which stipulate that a document has the same executorial power as a judge in a civil case which has permanent legal force. However, in reality, the judge or the District Court did not treat it that way. The word "*equal to*" in this Law is deemed by the District Court judge to be "*the same as*" if it has passed a court decision or order (Sutedi, 2012: 132).

In the auction, many daily events such as limit price fixing, suspension and cancellation of the auction indicate that law enforcement on the execution of Mortgage Rights has not provided legal certainty. From the auction problems, the lawsuit submitted to the judiciary was based on a lawsuit against the law against the auction.

An auction action is contested on the basis of an illegal act because it fulfills the elements as explained by Sianturi (2013), as follows:

- a. The act is against the law
- b. Error (*schuld*)
- c. Loss (*scade*)
- d. There is a causal relationship (*oorzakelijk verband*) between losses and illegal actions that occur in the auction.

One of the needs for auction legal institutions is to fulfill or implement judicial decisions or dispute resolution institutions based on laws in the context of law enforcement. Auction creates the value of an item that is the object of a dispute in a judicial decision or collateral that is the object of a dispute based on law, such as the settlement of bad credit by the District Court or PUPN or a creditor bank. Power is given based on law, not voluntarily by the owner of the goods, so that claims often arise from the owner of the goods, both by the debtor who owns the goods and by third parties who own the goods. The law only allows parties whose rights have been impaired by the act of buying and selling an auction which is carried out through the auction office, can defend their rights / interests by submitting a lawsuit to the court, with the hope that the court will give law to the dispute it faces. Judges at the trial constrict concrete events, which at the same time mean formulating concrete events, qualifying concrete events and constituting or giving law or punishment (Mertokusumo, 1996: 74).

## SETTLEMENT OF LAND AND BUILDING AUCTION DISPUTES FOR THE OBJECT OF THE MORTGAGE RIGHTS

In general, not every implementation of collateral auction runs as it should be, but in doing so it experiences various obstacles. The obstacles in implementing collateral for the object of the Mortgage are as follows:

1. There is no auction enthusiast;
2. The auction of collateral is intended so that the public can buy the collateral, so that by auctioning the object, the debtor can pay off all debts owed to the creditor. However, often there are no auction enthusiasts. The low or no interest in buying this auction is due to:
  - a. Collateral is not good (less strategic location, owned by third parties);
  - b. It is very difficult for control of post-auction objects to be emptied;

- c. The culture in the community to buy auction items is taboo, because they feel uncomfortable with the owner of the collateral, so that it has a negative impact on land use; and
  - d. Collateral is in the form of *girik*, not a certificate
3. Collateral belonging to third parties  
 In principle, the collateral that will be guaranteed by the debtor is his property, but it does not rule out that the collateral belongs to a third party. This third party has authorized the installation of guarantees. In conducting the auction, this third party prevents the auction of collateral objects, on the grounds that the debtor has never authorized the debtor to pledge the land. If a power of attorney occurs, then the power of attorney shall be carried out by means of *bedrog*, *dwaling*, *dwang* and *unduemflunce*.
4. Collateral has not been registered  
 In principle, collateral at a banking institution must be registered for collateral. However, in reality many credits are extended to customers without registration. The registration of guarantees of mortgage rights is carried out by the National Land Agency.
5. The selling value of the collateral object is smaller than the amount owed by the debtor
6. Lack of good faith from the debtor
7. The promise of the debtor who gave the Mortgage Rights to empty the object of the Mortgage at the time of execution of the Mortgage was not obeyed.
8. The buyer of the execution auction under the sole power of the first Mortgage Holder receives the minutes of auction from the State Auction Office but does not receive the title to the land that has been purchased from the auction. As a result, the National Land Agency refuses to change the name of the original owner of the Mortgage Giver to the name of the auction buyer. In such a case, the auction buyer submits an application to the Head of the State Auction Office (which conducts the auction) asking him to be given a certificate regarding the reasons for not submitting the certificate, only then the auction buyer with evidence of submitting an application for a name reversal to the competent Land Agency.
- a. Quote of the auction minutes concerned.
  - b. Ownership Certificate for apartment units or Rights to land and buildings that are auctioned if the land parcel concerned has been registered. Or in the event that the certificate is not submitted to the buyer of the auction, the execution of a statement from the Head of the Auction Office regarding the reasons for not submitting the certificate.
  - c. Proof of identity of the auction buyer.
  - d. Proof of payment of the purchase price.

To overcome obstacles and auction disputes, the efforts made by the bank are as follows:

1. Provide subpoena to debtors continuously with the aim that debtors can carry out their achievements.
2. The auction of collateral is still carried out.
3. Awareness to customers.
4. Carry out continuous collection against customers.
4. The creditor (bank) will give warnings to the debtor on his credit (summons). This effort was made before taking further legal action. This warrant is very important to confirm that the debtor has actually committed default.
5. The bank submits the matter to the prosecutor's office, under the Junior Attorney General for Civil and Administrative Affairs. Because here the prosecutor does not have the power to decide, in this case the prosecutor only acts like a lawyer for the bank to warn and collect bank receivables from debtors. This is specifically intended for government agencies or banks.
6. By deliberation. A deliberative settlement between creditors and debtors is a method of settlement based on a sense of kinship. The settlement in this way is an attempt by the government bank so that the bad credit can be used properly by the debtor. The deliberative resolution of the problem also depends on the nature of credit congestion, meaning that bad credit is due to deliberate or unintentional factors. If the bank assesses that the credit congestion is caused by unintentional things, usually the bank provides or determines policy steps that can ease the burden on the debtor with the intention that the congestion can be resolved by the debtor, after being given a policy that is pursued through this deliberation. The policy steps taken by the bank in resolving a case by deliberation include:
  - a) Providing extension of the credit maturity period.
  - b) Giving installment interest relief.
  - c) Providing additional credit assistance, for loans with substandard collectiveness, with the hope that the collectability will run smoothly.
7. Advise the debtor to sell the collateral themselves. In doing this, if necessary, the bank can assist the debtor by finding potential buyers in such a way that the money from the sale of the collateral is still deposited with the bank to be calculated with the debtor's loan as repayment.
8. Make the sale of the collateral in public based on the power to sell. In this case, the bank may request assistance from the State Auction Office to sell collateral through a public auction, and the proceeds from the sale of the collateral will be calculated for the settlement of receivables from the bank.

Attempts made by the bank (creditor) within 21 months are declared non-performing as follows:

1. Through the State Receivables Affairs Committee (PUPN)  
The settlement of bad credit at private banks is settled through court channels. As specifically for bad credit at state banks, so far, the collection process has been carried out through the State Receivables Affairs Committee (PUPN), which was formed by Law Number 49 Prp 1960, and the State

Receivables and Auction Business Entity (BUPLN), which was formed by Presidential Decree Number 21 of 1991. PUPN is tasked with settling state receivables that have been submitted to it by government agencies or state agencies. Thus, for state-owned banks to resolve their bad debts, they must be done through the State Receivables Affairs Committee (PUPN), in which by the handover of bad debts to the agency legally, the authority over the right to collect is transferred to it.

## 2. Settlement through court channels

Efforts taken in this regard is by filing a lawsuit to the District Court on the basis of default. It is just that the process of resolving civil cases at the District Court until there is a permanent and definite court decision (*in kracht van gewisde*) usually goes through 3 (three) levels of justice, namely:

- a. The District Court as the court of first instance.
- b. The High Court as the court of appeal and,
- c. Supreme Court

Whereas the guarantee agreement is an *accessoir* of the main agreement, namely the credit agreement. If the debtor is negligent in paying off his loan and if the reprimand is by asking for assistance from the district court, then such warning is called a *sommatie* or summons (Sutedi, 2012: 212). If the debtor has received a warning and then pays the loan in full, the loan execution is no longer needed, on the other hand, if the debtor has been reprimanded, the debtor still does not want to pay the loan, then the creditor or bank starts to execute the guarantee.

## 3. Settlement through the Commercial Court

Settlement through the Commercial Court is an alternative that can be used by creditors against debtors as long as they meet certain requirements stipulated by Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Basically, the process of requesting a bankruptcy statement based on the Bankruptcy Law consists of stages. The steps stipulated in the Bankruptcy Law Number 37 of 2004, regarding the proceedings at the Commercial Court, take a long time. Whereas the decision making is at the first level, where the judge can only decide on the bankruptcy case within 60 days. The time taken from the commercial court to the cassation is 120 days, and not to mention if the parties are not satisfied who want to file a reconsideration, it takes time.

## 4. Settlement through a Forced Agency

Particularly for debtors who have bad intentions and have debts of at least 1,000,000,000 (one billion rupiah), the agency may be subject to force. This is in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2000 concerning Forced Institutions. Corporate coercion is indirect coercion by placing a debtor with a bad bond into a state detention center determined by the court to force the person concerned to fulfill his obligations.

According to the author, in the practice of auction dispute resolution, the effective method and carried out by the Mortgage holder if it is linked to the prevailing laws and regulations, are:

- a. The first way, namely through the sale of the object of the Mortgage which is done under the hand.
- b. The second way, namely "The right to sell on their own power" the object of the Mortgage.

## CONCLUSION

This research highlighted and finally concluded that the occurrence of disputes is because the debtor is in default so that the bank as the creditor based on the Mortgage Law Number 4 of 1996 submits a request for auction execution to the State Wealth and Auction Service Office. For the implementation of the KPKNL auction based on the Parate for execution of Article 6 of the Mortgage Rights Law. UUHT No. 4 of 1996, "The right to sell on one's own power" the object of the Mortgage.

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