

Legal Protection of Our Guarantee Object Owners

After Low Limit Value

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ABSTRACT

writing of this journal aims to be able to know, analyze and understand about legal protection to the owner of the collateral object for the implementation of the auction with a low limit value. The legal analysis in this journal is focused on being able to find out the protection and legal remedies that can be carried out by the debtor or the owner of the collateral object if the determination of the results of the auction is conducted with a limit value too low than the market value so that it can be used as consideration in analyzing that there is an act against the law . Based on the research it can be seen that the low limit value can be one of the elements of the cancellation of the auction because of consideration of the actions that have been regulated by the legislation that can cause losses, errors, if it is done in accordance with the seller so that it can cause harm to other party. The injured party is the debtor or the owner of the collateral object. Therefore, the determination of auction results below the limit value can be one of the reasons for canceling the auction so that it can protect the owner of the collateral object from loss.

Keywords: Legal Protection, Auction, Limit Value

1. INTRODUCTION

The background of writing this journal is because there is still a lot of public misunderstanding about the auction, where some debtors feel that if the collateral object will be auctioned raises its own fear of either losing its collateral or the results of the auction not in accordance with the value of the price of the guarantee (Roesli, Heri, & Rahayu, 2017). As an effort to provide an understanding of the implementation of the auction, the existence of this research discusses legal protection and legal remedies if the auction results do not match the price of the object value of the guarantee. For the first understanding that the civil law itself uses four books, the first book is related to people, book two is related to material, book three is related to engagement, and book four is related to proof and maturity. In this thesis the writer wants to discuss about the third book namely the engagement, where in the engagement book in article 1313 of the Civil Code there are also rules regarding the agreement. The agreement itself consists of several types, one of which is the credit agreement.

The Credit Agreement itself today is familiar because with the development of the times more and more human needs must be met. Credit itself according to some people is a solution to be able to increase its business in order to compete. The credit agreement itself is usually carried out by banks. Banks in addition to collecting public funds, also provide credit services, usually banks in the provision of credit in the form of one of its business capital loans which are intended for

someone or business entity that wants to develop his business, but the debtor must provide collateral.

Collateral or commonly referred to as collateral, consists of 2 types, the first collateral and the second collateral is an individual or commonly referred to as *bortogcht*. These material guarantees are usually like collateral rights such as houses and land, while individual guarantees are the existence of a guarantor or a third party who will be the guarantor for the debtor. Material agreement with collateral in the form of a house using mortgage rights to the creditor of the debtor. Underwriting Right is explained as a security right attached to land ownership according to article 1 paragraph one of the mortgage right as explained again in the agrarian basic rule, which is to follow or not follow different material that is still on the ground, in order to pay off the related debt.

If the debtor defaults at the beginning or violates the agreement to repay the debt even though it has gone through several stages such as warning reprimands and so forth, then there is still the power of execution of the mortgage certificate for the guarantee by the creditor, because fundamentally there is a principle of justice based on almighty God, by because it can be based on article 20 paragraph 1 letter b of the mortgage right so that public tender can be conducted.

According to article 6 the mortgage rights law is also clarified if a default occurs then the holder has the right to auction and receive money to pay off debtors from the auction obtained, in this case the mortgage rights holder can request the auction to the auction office directly or by using the services of a private auction center so that the auction the object of the mortgage can be implemented.

Regarding the auction, it has been regulated in the auction rules *Vendu Reglement* on February 28, 1908 *Staatsblad* 1908 Number 189 which is a legacy of the Netherlands and started on April 1, 1908. So along with its development Indonesia issued a separate regulation regarding the auction namely a Permen No. 27 / PMK.06 / 2016 regarding the guidelines for conducting auctions, which explains that: (Rachmadi Usman, 2016) ¹ "Auction is an act of selling with an open system with price information in writing or verbally whose price rises or falls to reach the highest price through the previous announcement and applies general. "auction as a general sale, where the intended general sale itself is a measuring tool for making agreements or agreements that can provide the greatest benefit for the seller through gathering people who ask. And the main requirements of the auction are to gather as many interested people as possible so that the sale and purchase agreement can be implemented (Rochmat Soemitro, Rusdianto Sesung et al, 2017). ²

¹Rachmadi Usman, 2016, Auction Law, Sinar Grafika, Jakarta, p. 21.

² Rochmat Soemitro, in Rusdianto Sesung et al, 2017, Law & Politics of Legal Position of Notary Public, RA De. Rozarie, Surabaya, p. 74.

In Article 1 paragraph 1 of the Bidding Regulation, the meaning of auction is the activity of selling goods to the public openly³ through verbal or written price offerings. can be higher or lower so that the highest price can be reached, which is first carried out information on the implementation of the auction⁴. The auction conducted will be led by an auction official, in which case the activity will be carried out in front of the auction officer, the price agreed in advance will be determined by the auction official so the seller's limit price can be obtained and determined, therefore an intermediary is used, namely the auction official in the auction and not by the seller directly.⁵

For the implementation of the auction itself, especially for auction execution, there is usually the potential for very high lawsuits, this is because the collateral owner does not accept because his house is auctioned even though the true collateral owner as the debtor has defaulted to the creditor with a default payment which should be paid in accordance with the payment due date. Because usually this is done not with the desire to have the object and sometimes some other parties are involved in the object and do not want to do it by auction.

For those who feel disadvantaged, their interests can submit a lawsuit to the court, so that they can fight for their rights related to the object being auctioned because sometimes the price is very significantly different because it is determined by the auctioneer who often limits the value is too low than the market price. losses for the owner of the collateral object. Based on the above background, there are interesting normative legal issues to be analyzed, namely legal protection for the owner of the collateral object under the mortgage rights law at the auction, as well as legal remedies that can be carried out by the collateral object owner auctioned with a low limit value.

2. RESEARCH METHODS

Type of research used is normative which emphasizes more on legal norms by analyzing relevant legislation. This study uses two methods of problem approach namely *Statute Approach* by examining the relevant laws and regulations, and *Conceptual Approach* by conceptual approach from the views and doctrines of law.

Problem Formulation

Based on the preliminary description above, the formulation of the problem is as follows:

1. Legal Protection of Guaranteed Object Owners Under the Mortgage Rights Act on Bidding
2. Legal Measures That Can Be Done by the Owner of Collateral Objects Auctioned with Limit Value Low

³M. Yahya Harahap, *Ibid.*

⁴*Ibid.*

⁵*Ibid*, hlm. 75.

3. DISCUSSION

Legal Protection of Owners of Guaranteed Objects under the Underwriting Law in the implementation of Auction

In order to become an object of Underwriting Guarantee, the land rights must be able to fulfill two conditions, namely the first land rights can be transferred and have a sale value because this is necessary if the debtor fails to promise the creditor can carry out the execution by means of the second auction is the right to land must be in accordance with applicable provisions and registered or has been registered at the land office so that it has a valid certificate (Herowati Poesoko, 2012).⁶

If the debtor fails the promise then the collateral object can be executed by conducting an auction, the auction procedure itself is a series of actions carried out before the auction is carried out, when the auction is carried out, and after the auction is carried out. What is needed in the auction procedure is the auction request, auction time and place, auction announcement, security deposit, bidding and payment of auction price, auction fee and deposit(Purnama Tioria Sianturi, 2013)⁷. And the important thing in conducting an auction is the determination of the limit value. Limit value is the minimum price of goods to be set by the seller. The purpose in determining the value of this limit is as a minimum value when the auction sale is intended to set the lowest price limit⁸.

The form of legal protection provided to debtors has existed since the beginning of the loan agreement with collateral, which is where an assessment of the object of Mortgage Guarantee is required. which will be used. Namely according to article 46 paragraph 1 letter b of Bank Indonesia Regulation number 14/15 / PBI / 2012 concerning Assessment of Commercial Bank Asset Quality that the meaning of assessment is a written statement from the bank's independent appraisers of the estimates and opinions on the economic value of the collateral based on an analysis of the facts objective and relevant facts according to the applicable methods and principles stipulated by the association and or authorized agency.

Legal protection for debtors which furthermore is the possibility to make partial roya in Article 2 paragraph 2 of the UUHT, namely as a deviation from the characteristics of the mortgage right which cannot be divided into article 2 paragraph 1 of the UUHT. Mortgage rights cannot be divided, so that even if an owner is given the authority to encumber his property with other material rights which are limited in nature, the imposition can only be imposed on the entire

⁶ Herowati Poesoko, 2012, Legal Dynamics of the Parate Executie Object of Mortgage Rights, Aswaja Pressindo, Yogyakarta, p.35.

⁷ Purnama Tioria Sianturi, 2013,Immovable Legal Protection of Buyers of Guaranteed Goods through Auction, Mandar Maju, Bandung, p. 84

⁸ *Ibid*, hlm. 147.

material that belongs to him (Kartini Muljadi Gunawan Widjaja, 2005)⁹. This principle cannot be divided if applied in advance by the parties, and the protection of the debtor's object is also explained in article 12 which explains that the promise that gives the authority to the mortgage right holder to have the object of the mortgage right if the debtor is broken the promise is canceled for the sake of law. Elucidation of Article 12 of the UUHT namely this provision is held in order to protect the interests of debtors and mortgage holders, especially if the value of the mortgage rights object exceeds the amount of the guaranteed debt, the holders of mortgage rights are prohibited from automatically becoming the object of the mortgage right because the debtor is in default. However it is not prohibited for the bearer of mortgage rights to become the purchaser of the original mortgage right object through the procedures set forth in article 20 of the UUHT.

Legal protection for debtors, which furthermore is in the auction of the execution of mortgage rights in the event that the creditor submits an auction request, then the auction office must first be obliged to inform the debtor about the creditor's request from the creditor. This is so that the debtor knows that the object of the mortgage has been registered at the office auction. Then before the auction was held, it was explained in article 44 of the PMK concerning Bidding Guidelines, namely that creditors must announce in daily newspapers. This is done in order to provide protection for the debtor because in the auction the execution of the announcement is an effective way so that many people know that an auction will be held against the object of the debtor's property, so that more and more bidders participate in the auction. Then related to the number of bidders that is related to the nature of the auction that is open to the public, so the auction can be followed by anyone because it is expected to be open to the public more bidders so that it will be affected by tight price competition to reach the highest price on auction object.

Legal protection for the debtor, which furthermore concerns the establishment of the limit value, as explained earlier that the limit value is the lowest price of the goods to be auctioned determined by the seller, the limit value that has been determined by the creditor must be contained in the announcement of the auction, loading the price of the limit value in order to limit the price irregularities that might occur during the auction. Then the legal protection of the debtor in the final execution of mortgage rights auction is regarding the remainder of the proceeds of the auction sale, i.e. after the auction price is paid by the buyer of the auction object, the auction hall will provide net auction results to the creditor as the seller, but if the auction results are greater of the debtor's debt, then the creditor must return the remaining sales at auction to the debtor. What is clarified in Article 6 of the UUHT is that the remainder of the proceeds of the sale remains the right of the mortgage right.

⁹ Kartini Muljadi Gunawan Widjaja, 2005, Series of Assets Law: Mortgage Rights, Kencana, Jakarta, p. 160.

Legal Remedies That Can Be Done by the Owner of Objects Guaranteed for Conducting Auction Under Limit Value

Legal remedy is an attempt made by interested parties in order to obtain a fair decision (Victor M. Situmorang, 1994)¹⁰. Legal remedies are business steps that can be carried out by unsatisfied parties against the judge's decision (Man S. Sastrawidjaja, 2006)¹¹. As well as legal efforts can be done so that those who suffer from rights impaired by the existence of an auction sale and auction conducted through the auction office can defend their rights or interests by submitting a lawsuit to the court in the hope that the court can provide legal solutions to the problems faced (Munir Fuady, 2013)¹².

Legal remedies are efforts given by the legislation for a person or legal entity which for certain things such as efforts to fight the judge's decision as a place for parties who feel unfair about the decision, because the judge is also an ordinary person who can be wrong or err. Legal remedies can be undertaken by plaintiffs are persons or legal entities whose interests feel disadvantaged over the implementation of the auction, namely: the related debtor because the auction price is too low, the auction is conducted prior to the maturity of the credit agreement, improper auction procedures, for the party thirdly as the owner of the collateral object either directly involved in the loan agreement or purely as the guarantor of the debt the problem is almost the same as the debtor ie the auction price is too low.

And if related to heirs, there are problems with inheritance of collateral objects, the process of illegitimate guarantee, related to the issue of shared assets, as for the defendant, usually the bank is the creditor, auction office, auction buyer, and other related parties. In many cases it is usually the conduct of a tender which becomes a petition or lawsuit related to acts against the law (PMH). Based on article 1365 the Civil Code explains that every act that causes harm to others, requires the guilty person who caused the loss to compensate for the loss, and based on that article an act is classified as unlawful if it fulfills four elements namely the first act must be against the law, the second act must cause harm, thirdly the act must be done with error, fourth between the act and the loss that arises there must be a causal relationship.

Legal remedies carried out through the auction office if they feel aggrieved can defend their rights or interests by submitting a lawsuit to the court in the hope that the court can provide a solution to the problem. Usually a court decision, whether first instance or appeal or cassation level, is related to illegal acts in a broad sense, namely because it violates the right of the owner of

¹⁰Victor M. Situmorang, 1994, Introduction to Bankruptcy Law in Indonesia, Rinaka Cipta, Jakarta, p. 104.

¹¹Man S. Sastrawidjaja, 2006, Law Bankruptcy and Postponement of Debt Payment Obligations, Alumni, Bandung, p. 32.

¹²Munir Fuady, 2013, Acts Against Law-Contemporary Approaches, Citra Aditya Bakti, Bandung, Pg. 10

the goods at an unreasonable auction price, the price is too low so that it conflicts with propriety because the seller's obligation is to be able to optimize the auction price thus it is contrary to propriety. and in one of the judges' decisions, namely with the consideration of judges who stated that if the price related to the auction is too low or below the market price, it can be classified as illegal.

5. CONCLUSION

Legal protection that can be obtained for the owner of the collateral object or debtor is an assessment of the collateral object at the beginning of the credit agreement, the possibility to do *Partial Roya* , a ban on creditors to arbitrarily own the object because the debtor defaults and the obligation for the auction office to inform prior to the debtor regarding the auction request made by the creditor, the nature of the auction must be open to the public, and the determination of the limit value must be based on the fair value of the market price made by the appraiser and if there is residual results of the auction then it is the right of the debtor.

Legal remedies that can be carried out for parties such as debtors or owners of collateral objects who feel their rights have been impaired against the implementation of auction results conducted by the auction office so that the way to be able to defend their rights is by filing a lawsuit in the local court is expected so that court efforts can provide legal settlement which is being faced by the parties, like most problems that occur because of the low limit value that is included in the act against the law because it does not provide justice for the debtor or the owner of the collateral object.

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