Interdisciplinary Social Studies
P-ISSN: 2808-0467
E-ISSN: 2808-5051

Legal Certainty for Auction Winners Regarding the Execution of the Object of the Dependent Rights

Dinny Octafiani[1*], Putri Fania Marchela[2], Imelda Rafsodia Khoviyatu Imaniffatillah[3], Dadan Taufik Fathurohman[4], Gusti Yosi Andri[5]
Universitas Swadaya Gunung Djati, Indonesia[1,2,3,4,5]
[*]Email Correspondence: dinnyoctafiani@gmail.com, putrifania662@gmail.com, imeldarapsodia029@gmail.com, king_jalaby@yahoo.com dan gusti.yosi@ugj.ac.id

Keywords:

Legal Certainty, Auction Winner, Mortgage Execution

ABSTRACT

This research discusses the legal certainty for the winner of the auction on the execution of the object of mortgage rights, especially in the context of bad credit in banking institutions. When the debtor defaults, the creditor has the right to execute the security object through auction based on Article 6 of Law No. 4 of 1996 and Article 200 HIR. Although the winner of the auction is legally valid, there are often obstacles in the physical control of the auction object due to the debtor's unwillingness to hand over the object. The research used empirical juridical method with Gustav Radbruch's legal theory approach to assess aspects of justice, certainty, and legal benefits. It was found that legal protection for auction winners includes preventive and repressive aspects, but the implementation of real execution in the field still faces various challenges, such as complex administrative processes and potential third-party claims. Therefore, regulatory improvements and inter-agency coordination are needed to ensure effective legal certainty for auction winners.

This is an open access article under the CC BY-SA license.

INTRODUCTION

In people's lives that run straight with the development of the times, the value of the level of needs is increasing, in order to continue the survival of the community, making several efforts to grow a good economy, one of which is by building a business. However, every business requires capital, so it is not uncommon for some people to apply for credit to conventional banks. People who apply for credit are consumers who are hereinafter referred to as debtors and banks as lenders are hereinafter referred to as creditors. This credit agreement activity takes place with clauses that have been made between the debtor and the creditor. Credit activities are a provision of capital in the form of money from creditors to debtors that have previously been calculated and the debtor is obliged to return the capital or money with interest within a predetermined period. In addition to trust, credit agreements can also occur due to the symbiotic nature of mutualism between creditors and debtors (Badriyah, 2013; Meralda Amala Istighfarin, 2018; Niland et al., 2020; Nur Aza Musamma, 2021; Setyaningrum et al., 2015).

However, the facts in the field explain that there are often promises made by the debtor so that the bank as a creditor is at risk. To maintain security and avoid risks that will have an impact on creditors, collateral or grace is needed. Guarantee is a form of responsibility of the debtor in the form of the delivery of securities, vehicles or in the form of land and house certificates given to creditors if the debtor defaults on the promise in the payment of principal and interest loans within a predetermined period. The existence of collateral is a form of protection for creditors in avoiding losses due to debtors who are injured by promises and the return of creditors' rights.

In article 6 of Law Number 4 of 1996 concerning Dependent Rights, it is explained that if there is a default committed by the debtor, the creditor as the holder of the right of dependency can sell the object with the auction procedure and after the sale is sold at the

auction of the object of the right of dependency, the proceeds of the sale belong to the creditor in exchange for the payment of the debtor's debt (Lubis, 2023). This act is known as the execution parate regulated in article 1178 of the Civil Code. The execution auction must be carried out by the State Service and Auction Office as an intermediary between banking creditors and to potential auction buyers. The auction provision is that the prospective buyer who bids the highest is the winner of the auction, for the auction implementation process itself is regulated in the Minister of Finance Regulation Number 122 of 2023.

The next process is the execution of the right of dependency, the auction winner is the new legal owner of the auctioned object. However, this execution process often has an obstacle, namely where the debtor does not want to hand over the object voluntarily. This is certainly an obstacle that is often encountered, the solution to this problem is that the auction winner must submit an application for execution to the local district court. The court decision has been incracht van gewijsde, the executory power is also based on the title "For Justice Based on the One Godhead" which is listed at the head of the decision and in Article 196 of the HIR it is explained that if after eight days after the aanmaning process, the respondent is still reluctant to give voluntarily, then there will be forced execution, the existence of forced execution will certainly take more time and money.

The following is an example where the auction winner is legitimate and has followed the applicable rules but has difficulty in controlling the auction object because the debtor is reluctant to vacate voluntarily, this is stated in the Majalengka Court Decision Number 4/Pdt.Eks/2018/PN Mjl. This research aims to further analyze the form of legal protection provided to the auction winner as well as the legal mechanism in the process of emptying the object of dependency rights by the auction winner. In this study, the author tested a hypothesis related to the main problem discussed using Gustav Radbruch's theory, namely the theory of "Legal Purpose." This theory emphasizes that law should be oriented towards three main aspects: legal certainty, justice, and utility. With this approach, this study is expected to provide comprehensive conclusions about the problems raised in the research topic.

Prior studies have explored legal mechanisms concerning debtors and creditors in Indonesia. The first study by Hulu (2021) investigates the role of guarantees in mitigating the risk faced by creditors in cases of debtor default. This study highlights the importance of collateral in securing creditor interests and the legal processes that govern such transactions. Similarly, Christin (2024) discusses the concept of collateral, focusing on how it functions as a safety net for creditors to avoid financial loss in case of debtor default. While both studies discuss the use of collateral and its importance in securing creditor rights, they do not specifically address the complexities involved in the execution process, particularly when the debtor refuses to vacate the pledged property. This gap in understanding execution obstacles, such as those faced by auction winners in cases of debtor reluctance, is filled by this research.

This research aims to analyze the legal protection provided to auction winners and examine the legal mechanisms involved in the execution process, particularly when the debtor refuses to hand over the pledged property voluntarily. By using Gustav Radbruch's "Legal Purpose" theory, this study seeks to offer insights into how legal certainty, justice, and utility can guide the enforcement of legal decisions in the context of creditor-debtor relationships. The findings of this research will provide valuable recommendations for improving the efficiency and fairness of the legal process, offering better protection for creditors and enhancing the execution mechanisms in Indonesia's legal system.

METHOD

This study uses a qualitative approach with an empirical juridical method to analyze legal protection for auction winners in the control of the object of dependent rights. This approach aims to describe the legal reality in the field which is analyzed with positive legal theories and principles, both written and unwritten (Soerjono Soekanto, 1996; Sudjarwo, 2011). The data used consists of primary and secondary data. Primary data was obtained through interviews with auction officials and law enforcement officials, while secondary data came from related laws and regulations, doctrines, and scientific literature. The data collection technique was carried out through literature studies and interviews. Data analysis was carried out descriptively to describe legal protection regulations and practices. The results are expected to provide a comprehensive understanding and solutions to increase legal certainty for auction winners.

RESULTS AND DISCUSSION

Legal Certainty Related to Auction Winners in Controlling the Object of Dependent Rights

Auction is a process of selling goods that is carried out openly to the public, where price bidding can be done in writing or orally in public, after previously gathering prospective auction participants. Meanwhile, according to Article 1 paragraph (58) of the Minister of Finance Regulation No. 122/PMK.06/2023, auction buyers are individuals or legal entities who participate in the auction and submit the highest bids compared to other participants, and have been certified as winners by auction officials. As the winner of the auction, there are obligations that must be fulfilled, including the auction price, auction fees, repayment fees, and building taxes. The auction winner was given five working days to make payments to the Treasurer of the State Wealth and Auction Service Office. After these obligations are met, the auction buyer has the right to obtain a copy of the auction minutes, which is an important document in the process of changing the name of the certificate (Purwo S.R, 2021). The auction winner can also be categorized as a buyer in good faith, as mentioned in the Supreme Court Decision No. 821 K/SIIP/1974. In the context of the auction of the execution of the Right of Dependency, the transaction between the buyer in good faith and the seller is considered valid (salsabila, 2023).

The winner of the auction is entitled to legal protection, there are two forms of protection, namely preventive and repressive. Preventive legal protection is in the form of providing a citation of auction minutes. In accordance with article 31 of the Minister of Finance Regulation of 2023, it is explained that an auction that has occurred and is carried out in accordance with the provisions of the law cannot be canceled, from this article it can be concluded that the auction winner is protected from things that can cancel the auction. Based on article 584 of the Criminal Code, a transfer of ownership can occur due to several events, one of which is a civil law event, in this case the legal event that occurs is an auction and the citation of the auction minutes is valid evidence of a transfer of rights. This quote is used in the process of name reversal, this is regulated in article 41 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration.

Meanwhile, the protection of repressive law involves the judiciary. One of the problems that often occurs is that the debtor does not want to vacate the object of dependency rights voluntarily, so that the auction winner cannot control the object completely, so the form of legal certainty to protect the rights of the auction winner is regulated in article 200 of the HIR. The article explains about forced execution through the court. (I Gede Arya, 2023). The legal protection refers to the Vendu Reglement, a regulation that regulates the auction sale mechanism in Indonesia. This regulation provides legal guarantees for the auction winner of the execution of the right of dependency, especially in the case of the

transfer of rights to the auction object. Before the auction is held, auction officials first conduct a juridical analysis of the required documents to ensure that the auction process is in accordance with the applicable legal provisions (Alusinsing, 2020; Karina et al., 2020; Khopipa & Rosando, 2023; MANGUNSONG, 2020; Sasongko, 2018; Suwarjono et al., 2023).

According to Yahya Harahap, it also explained that the execution system in Indonesia is still highly dependent on complex administrative mechanisms and requires coordination between agencies, including the courts, KPKNL, the police, and other related parties. The absence of a one-stop mechanism and lack of certainty of time in the implementation of execution are real obstacles in realizing substantive justice for auction winners. When the auction winner has to face various lawsuits from third parties or administrative obstacles from state agencies, this actually dwarfs the function of law as a tool of protection and justice for citizens.

If studied using Roscoe Pound's Law as a Tool of Social Engineering theory, law plays a role as a tool to build and renew society. This concept was then modified by Mochtar Kusumaatmaja into law as a means of development. If this theory is applied in the renewal of auction regulations, it is hoped that future regulations can be an instrument that directs the development of the auction system better. Clearer and stronger rules will provide certainty of rights for auction buyers, ensure fairness, and create a more rational, transparent, and accountable auction process. (DEA, 2020).

Legal Mechanism in the Process of Execution of the Emptying of the Object of Dependency Rights

Before entering the judicial process, the auction winner must first take care of correspondence at BPN related to the change of name for the ownership of the certificate of dependency rights with the assistance of a file issued by KPKNL in the form of an extract of the auction minutes (Salsabila, 2023). If this has been completed, then it will enter the execution stage. If the executed person is reluctant to voluntarily hand over the auction object, then the auction winner can submit an application for forced execution to the local District Court, this is regulated in article 200 of the HIR. The article contains legal principles that outline if the results of the execution of the auction sale owned by the executed party are a unit with the real execution. (Desi, Thesis, 2020 [salsabila, 2023]

The real execution steps are regulated in the Decree of the Director General of the General Judiciary Number 40/DJU/SK/HM.02/1/2019. The existence of real execution is an effort to improve the physical transfer of rights from the auction sale. The mechanism is as follows:

a) The auction winner submits a real execution application: Here the auction winner does not have to file a lawsuit. However, they can directly apply for real execution to the Chief Justice of the District Court. Submissions can be oral or written. The procedure for implementing real execution applications must be in accordance with the principles of fast, light, and cheap.
b) Execution process by the Chief of the District Court: After the request for a real execution application submitted by the auction winner, the Chief of the District Court must immediately process the matter, among other things.

1. Determination of Aanmaning
   Aanmaning is a commemoration carried out directly by the Chief Justice of the District Court, aanmaning is regulated in article 196 of the HIR. During this aanmaning process

as well as the isidential hearing, the Chief Justice of the District Court will ask the Bailiff to summon the executed to attend the isidential hearing. If the respondent is absent without a valid reason, the execution can be resumed immediately without an incidental hearing, unless the Chief Justice deems it necessary to resummon.

The Chief Justice then gave a warning to the respondent to carry out the decision voluntarily within eight days after the hearing. If the respondent fulfills his obligations, the applicant is obliged to report to the court for the Minutes of Implementation of the Decision and the Minutes of Handover.

2. Assignment of Execution Order
   If the respondent does not carry out the judgment voluntarily within the stipulated time, the Chief Justice asks the bailiff to issue a determination of the execution order, this is stated in article 200 of the HIR. During this execution process, they will usually be accompanied by police officers for security and local officials for location coordination.
3. Fisk Handover of Control to the Auction Winner
   After the real execution process has been carried out, the bailiff will physically and tangibly hand over to the auction winner the object of the dependent rights that have been purchased through the auction
4. The Making of the Minutes of the Execution
   The bailiff will make an execution minutes as authentic data on the implementation of the real execution. The minutes were signed by the bailiff and two witnesses.

c) Real Execution Range
   The real execution in article 200 of the HIR are:

1. Removing items and emptying items
2. The first thing done during the real execution process is to remove and vacate the object of dependency rights from the executed goods
3. Other things that need to be removed from the auction object
   a. Self-executed
   b. Relatives such as parents, wives, children, nephews, and all people are workers or who receive wages from being executed
   c. All his belongings except the auction object

In this case, relatives and workers must be removed from the auction object is a realistic thing. If the emptying passes through or does not include them, the executioner will take advantage of it, hindering the execution process and even the real execution cannot run perfectly. (M. Yahya Harahap, 2005).

So far, we can know that the execution process related to the release of the rights of dependents is still complicated and takes a long time, in addition to the obstacle to being executed, not wanting to hand over the object voluntarily, other things can also happen, for example, the occurrence of a lawsuit filed by a third party that can cancel the auction. The costs incurred are not cheap, it is one of the weaknesses of the execution process in Indonesia which costs quite a lot of money even because there are additional costs to control the rights of dependents.

CONCLUSION

Based on the results of this study, it can be concluded that legal protection for auction winners for the execution of objects of dependent rights in Indonesia is provided in two forms, namely preventive and repressive protection. Preventive protection is provided through the citation of valid auction minutes, which is the basis for the process of renaming the certificate on the object of the dependent right. This protection ensures that the ownership rights of the auction winner are legally recognized. On the other hand, repressive protection arises when there is an obstacle in the control of the object, such as a rejection from the debtor. In these conditions, the auction winner can take the real execution mechanism through an application to the District Court. This process, although regulated in law, still faces serious challenges such as lengthy administrative procedures, high costs, and the possibility of third-party lawsuits. Although Article 6 of the Law on the Rights of Dependents allows for direct execution (parate executie), the reality is that execution still requires court intervention, which actually slows down the process and reduces the effectiveness of legal protection for auction winners. This imbalance shows that factually the implementation of legal protection has not fully provided quick and simple legal certainty for the right parties. Therefore, legal reform measures are needed that not only clarify execution procedures, but also strengthen the effectiveness of legal protection, for example through simplifying execution procedures, strengthening coordination between relevant agencies, and empowering mediation mechanisms as an alternative to dispute resolution. That way, the legal goal, namely certainty, justice, and usefulness, can really be realized for all parties involved.

REFERENCES

Alusinsing, D. (2020). Sinkronisasi aturan kutipan risalah lelang berdasarkan Peraturan Dirjen Kekayaan Negara Nomor 5/KN/2017 tentang risalah lelang dengan Vendu Reglement dan PMK Nomor 27/PMK.06/2016. *Indonesian Notary*, *2*(1).

Badriyah, S. M. (2013). Problematika pesawat udara sebagai jaminan pada perjanjian kredit dalam pengembangan industri penerbangan. *Masalah-Masalah Hukum*, *43*(4).

Harahap Yahya, M. (2005). *Ruang lingkup permasalahan eksekusi bidang perdata*. Jakarta: Sinar Grafika.

Hulu, I. (2021). *Problematika perjanjian kredit*. Banyumas: CV. Lutfi Gilang.

Karina, A. S., Sukarmi, & Kawuryan, E. S. (2020). Keabsahan akta risalah lelang sebagai akta otentik dalam pelaksanaan lelang elektronik oleh Kantor Pelayanan Kekayaan Negara dan Lelang. *Jurisdictie: Jurnal Hukum dan Syariah*, *11*(1). https://doi.org/10.18860/j.v11i1.7421

Khopipa, N., & Rosando, A. F. (2023). Keabsahan akta risalah lelang sebagai akta otentik dalam pelaksanaan lelang melalui lelang online. *Conference on Innovation and Application of Science and Technology (CIASTECH)*, *6*(1). https://doi.org/10.31328/ciastech.v6i1.5267

Lubis, M. A., & Harahap, M. Y. (2023). Perlindungan hukum terhadap kreditur sebagai pemegang hak jaminan dalam perkara debitur wanprestasi. *Jurnal Interpretasi Hukum*.

MANGUNSONG, I. H. (2020). Kekuatan mengikat risalah lelang terhadap hak tanggungan bagi pembeli lelang di Kantor Pelayanan Kekayaan Negara dan Lelang (KPKNL) Medan. *Ilmu Hukum Prima (IHP)*, *3*(2). https://doi.org/10.34012/jihap.v3i2.1292

Meralda Amala Istighfarin. (2018). *Pelaksanaan perjanjian kredit bagi para pihak dengan jaminan tanah milik orang lain* (Skripsi). Fakultas Hukum Universitas Islam Indonesia.

Niland, N., Pearce, A. P., Naumann, D. N., O'Reilly, D., Series, P. B., Sataloff, R. T., Johns, M. M., Kost, K. M., Orsini, R. J., Medicine, T., Kalkman, J. P., Sataloff, R. T., Johns, M. M., Kost, K. M., Maiti, Bidinger, Assistance, H., Mitigate, T. O., Eroukhmanoff, C., & Licina, D. (2020). Perlindungan hukum dan problematika perbankan selaku kreditur dalam perjanjian kredit dengan hak cipta sebagai jaminan fidusia. *Global Health*, *167*(1).

Nur Aza Musamma. (2021). *Perlindungan hukum terhadap debitur (nasabah) dalam perjanjian kredit tanpa agunan di aplikasi digital Akulaku (Studi kasus pengguna aplikasi Akulaku di Kabupaten Jember)* (Skripsi). Fakultas Syariah, Institut Agama Islam Negeri Jember.

Sasongko, T. I. (2018). Kewenangan notaris dalam pembuatan akta risalah lelang pasca berlakunya Peraturan Menteri Keuangan Nomor 90/PMK.06/2016 tentang pedoman pelaksanaan lelang dengan penawaran secara tertulis tanpa kehadiran peserta lelang melalui internet. *Jurnal Lex Renaissance*, *3*(1). https://doi.org/10.20885/jlr.vol3.iss1.art9

Setyaningrum, A. (Alfitri), Septanti, N. (Noor), & Imanullah, M. N. (Muhammad). (2015). Problematika yuridis pelaksanaan novasi subjektif pasif dalam perjanjian kredit karena pemberi hak tanggungan meninggal dunia. *Repertorium*, *3*.

Soekanto, S. (1996). *Pengantar penelitian hukum*. Jakarta: UI Press.

Sudjarwo. (2011). *Metodologi penelitian sosial*. Bandung: Mandar Maju.

Suwarjono, A., Sinaga, N. A., & Sudarto, S. (2023). Keabsahan risalah lelang eksekusi hak tanggungan tidak memiliki kekuatan hukum. *Jurnal Intelektualita: Keislaman, Sosial dan Sains*, *12*(2). https://doi.org/10.19109/intelektualita.v12i2.18845