

Juridical Analysis of Authority of Notaris And Officials For Land Deed Events After Liability Rights Auction (Research Study at The Office of Notary And PPAT Sansan Antoni in Batam)

Hengki Maretha Dharmanto¹, Idham², Fadlan³

¹⁻³Master of Notarial Law
Universitas Batam, Indonesia

ABSTRACT

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 the legislation. The legal protection of the winner of the auction of the execution of mortgage rights has not been explicitly stated in the legislation. This study aims to determine the authority of the Notary and/or Land Deed Maker after completion of the Auction and to find out how the Process of Transferring the Name of the Certificate of Auction results and to find out the implementation, constraints, as well as solutions in carrying out these processes. This research uses empirical legal research which is supported by normative legal research. The research method uses sociological normative juridical. The results of the study explain that the auction sale of goods is open to the public with a written and/or verbal price quote, the auction winner can receive an authenticated official report quote or what is called an auction minutes quotation, in which the auction minutes are used by the Auction Winner to do it. Names through Notaries and/or Land Deed Making Officials for management at the National Land Agency. And the results of this study also explain that the authority of Notaries and Land Deed Making Officials does not play a significant role because the winner of the auction can make changes or transfer the name themselves without the role of a Notary and/or Land Deed Making Official, but Notary and/or Land Deed Making Official can assist and can provide education to the public in general regarding the transfer of name process itself.

Keyword : *Auctions, Notaries and Land Deed Maker Officials, Transfer of Names*

INTRODUCTION

Auctions in Indonesia have existed since the Dutch East Indies era, this is proven by the existence of regulations governing auctions, namely the *Vendu Reglement* (Law on Auctions) contained in the *Ordonation of 28 February 1908 Staatsblad 1908 number 189* as last amended by *Staatsblad 1941 number 3* which applies since April 1, 1908, and the *Vendu Instructie* (Auction Instructions) contained in the *1908 Staatsblad number 190* as last amended by *Staatsblad 1930 number 85*.

Vendu Reglement is a government regulation level regulation, but the highest bidding regulation to date. Therefore, no wrong if *Vendu Reglement* is called as auction law (Rachmadi Usman, 2016:15).

The auction office during the reign of the Dutch East Indies, was under the authority of Director Van Financien (Minister of Finance). This thing continues After the independence era of the Republic of Indonesia, at that time at the Central level the auction office was called the Auction Inspection Office while in operation it was called the Auction Office State Auction In 1960 the auction was under the guidance of the Directorate General of Taxes, in 1970 the State Auction Office changed its name to State Auction Office, in 1990 the State Auction Office was integrated with the State Receivables Agency (BUPN) and in 1991 BUPN changed its name to the State Receivables and Auctions Agency (BUPLN). In 2000 BUPLN changed to DJPLN (Directorate General of State Receivables and Auctions) and in 2001 the State Auction Office and State Receivable Service Office merged into the State Receivable and Auction Service Office (KP2LN). In 2006 DJPLN changed to the Directorate General of State Assets (DJKN) and its operational office changed its name to the Office of State Assets and Auction Services (KPKNL) (<http://www.balailelang.co.id/index.php/sejarah-lelang/sejarah-lelang-di-indonesia>).

The types of auctions known to the public in general are execution auctions, mandatory non-execution auctions and voluntary non-execution auctions. With the different types of auctions, of course, the documents required for each type of auction are also different. This is very important and needs to be known by the Auction Officer. The required documents in general are legal documents with details for voluntary auctions including proof of legal ownership of the goods, power of attorney and a statement not in dispute, for auctions of execution of mortgage or fiduciary documents in the form of copies of credit agreements, certificates of mortgage and deed of granting rights Dependents, fiduciary certificates, evidence of default debtors. Auction through a court order in the form of a copy of the court's decision and/or decision, a copy of the confiscation order from the court, evidence of confiscation, details of debt, stipulation of warning from the court notification of auction to the respondent of execution, a statement from the owner of the goods. With the different types of auctions, of course, the required documents are also different. If the required tender document requirements are missed, it will result in the auction being canceled (Habib Adjie, 2015:20).

Legal certainty that creates public confidence in the auction that occurs for the movement of both movable and immovable goods is supported by certainty regarding the parties involved in the auction and the rights and obligations of these parties, including the Auction Officer who is a person specifically authorized by the Minister of Finance to carry out the sale of goods by auction based on the applicable laws and regulations.

The responsibility of the auction official for the validity of the auction document is very necessary both from the side of the auction official himself, related parties or interested third parties. Because this will involve the extent to which he is responsible and must check the validity of an auction document to avoid or reduce disputes that can occur after the auction is carried out. The existing auction hall, both individually and as a legal entity, will greatly affect the responsibility of the auction official, whether if there is a request for compensation it will reach the personal property of the auction official himself.

For Notaries and/or Land Deed Maker Officials, the Process of Transfer of Names, Certificates is often a topic of discussion where the public generally refers to the profession in the process of Transfer of Names, but the main task of a Notary and/or Official Making Land Deeds is not the management of Transfer of Names. itself, but a Notary and/or Land Deed Making Officer is in charge of making a sale and purchase deed, which generally takes place after the sale and purchase of land takes place.

Based on Article 1 paragraph (1) of Government Regulation number 24 of 2016 concerning Amendments to Government Regulation number 37 of 1998 concerning the Regulation of the Position of Land Deed Maker Officials. PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights and property rights over flat units.

Regarding the main duties of the PPAT, it is stated in Article 2 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official for Making Land Deeds. The task of PPAT itself is to carry out some land registration activities by making a deed as evidence that certain legal actions have been carried out regarding land rights or ownership rights to flat units which are used as the basis for registering changes in land registration data caused by such legal acts. The legal actions in question are buying and selling, exchanging, grants, entry into the company (inbreng), distribution of building rights/use rights or land rights, granting mortgage rights and granting power of attorney to encumber mortgage rights. To discuss further, the author is interested in raising it into a scientific research in the form of a thesis with the title Juridical Analysis Of Authority Of Notaris And Officials For Land Deed Events After Liability Rights Auction (Research Study At The Office Of Notary And PPAT Sansan Antoni In Batam).

LITERATURE REVIEW

The sources of literature in this study include the collection of legal materials consisting of primary, secondary and tertiary legal materials by taking into account their validity and reliability. Primary legal materials are collected by collecting legal products and laws and regulations relating to notarial and corporate law, including those relating to them. For secondary legal materials, they are collected by searching, finding and reviewing the results of studies by previous researchers related to this research. And for tertiary legal materials in the form of books on law, be it legal dictionaries, encyclopedias and articles related to supporting materials for research analysis related to agrarian law, including those relating to it.

RESEARCH METHODOLOGY

The specification of this research only analyzes to the level of detection, that is, analyzes and presents facts systematically so that it can be easier to understand and conclude (Irawan Suhartono, 1999:63). Specifically, according to the type, nature and purpose of Soerjono Soekanto's specification of legal research, it is divided into normative legal research and empirical or sociological legal research (Soerjono Soekanto, 1996:6).

In writing this thesis, the author uses empirical legal research methods which are supported by normative legal research methods. Normative legal research is also referred to as library research or document study, this is because it is mostly carried out on secondary data, besides that normative legal research is research that studies more laws. From the results of the study, it will be conceptualized into a norm or rule that applies in a community environment.

Empirical Legal Research is also often referred to as sociological research or field research, where the research is based on primary data, where the data is obtained directly from the community through field research. This study also links the law to efforts with the intention of fulfilling the wishes of the community in understanding the intent of the title written by the author. Based on the explanation above and taking into account several variables and problem formulations in this thesis, it is related to the type/specification of the research, that this thesis research is normative legal research, supported by sociological/empirical legal research.

The approach method is an explanation of what methods will be applied by researchers in the research to be carried out (Buku Pedoman Penyusunan Proposal dan Tesis Program Magister Universitas Batam, 2013:10). In this study, the authors use the Normative Juridical Approach and Sociological Juridical Approach. First, the Normative Juridical Approach Method is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles, articles and laws and regulations related to research that has to do with its application in practice. Second, the Sociological Juridical Approach Method, which is a legal research carried out by researching and examining existing facts, with field observations and then reviewed based on laws and regulations related to references to solve problems (Soerjono Soekanto dan Sri Mamuji, 1985:1).

DISCUSSION

1. LEGAL ARRANGEMENTS OF NOTARY AUTHORITY AFTER AUCTION OF INSURANCE RIGHTS

The law is seen as an order from the holder of the highest authority where the order cannot be contested, the law is a logical system that is fixed and closed, positive law must fulfill several elements of orders, sanctions, obligations, and sovereignty, beyond that it is not law but positive morals. The Process of Transferring Mortgage Rights after the Auction. In accordance with the provisions of Article 37 of Government Regulation Number 24 of 1997, the sale and purchase (transfer of rights) relating to land must be carried out before a Land Deed Making Official (PPAT). In the practice of buying and selling land, the term " Transfer of title " is encountered. Although this term can be interpreted clearly, but there are still some who do not understand what exactly Behind the Name is related to the transfer of rights. For land that has been certified, in the event of a sale and purchase transaction between the seller and the buyer made before the Land Deed Maker Official , then the next name transfer process will be carried out. What is meant here is changing the ownership status of the seller as the previous land owner to the buyer as the new land owner. The transfer of name process is carried out at the local Land Office where the land is located. When the process is complete, the land certificate in question will include the name of the new owner of the land, namely the name of the buyer (Interview with Notary/PPAT Sansan Antoni, S.H., M.Kn), while the name of the old owner is crossed out. Thus, the transfer of names has been completed so that the buyer is legally the new owner of the land. This process usually takes approximately 3 to 4 weeks at the local Land Office(<https://lagowari.wordpress.com/2011/01/03/pengertian-tentang-balik-nama-dalam-kaitannya-dengan-akta-jual-beli-tanah>). One of the purposes of land registration is to provide legal certainty and legal protection to the holder of the right to a parcel of land, apartment unit and other registered rights so that they can easily prove themselves as the holder of the right in question (Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, Pasal 3).

2. IMPLEMENTATION OF THE AUTHORITY OF NOTARIES AND OFFICIALS OF LAND DEED EVENTS AFTER THE IMPLEMENTATION OF THE INSURANCE RIGHTS AUCTION

Ownership rights are the strongest rights to land, which give the owner the authority to give back another right on the plot of land that he owns (can be in the form of building rights or use rights, with the exception of cultivation rights), which is almost the same as the right of ownership. state (as ruler) to give land rights to its citizens. This right, although not absolutely the same, can be said to be similar to eigendom over land according to the Civil Code, which gives the authority (the most extensive to the owner, with the provisions that it must pay attention to the provisions of Article 6 of the Basic Agrarian Law) (Kartini Muljadi dan Gunawan Widjaja, 2007:30).

From the subsequent provisions regarding property rights regulated in the Basic Agrarian Law, Article 21 which states that it can be seen that basically land ownership rights can only be owned by a single Indonesian citizen, and cannot be owned by foreign citizens and legal entities, both those established in Indonesia and those established abroad with the exception of certain legal entities as regulated in PP No. 38 of 1963. This means that apart from a single Indonesian citizen, and the entities referred to in Government Regulation No. 38 of 1963. No other party can be the holder of land ownership rights in Indonesia. With such provisions, it means that everyone cannot simply transfer ownership of land. This means that the Basic Agrarian Law provides restrictions on the transfer of ownership rights to land. In order for land ownership rights to be transferred, the party to whom the ownership rights to the land are to be transferred must be an individual Indonesian citizen, or certain legal entities regulated in PP No. 38 of 1963 (Erna Sri Wibawanti & R. Murjiyanto, 2013:35).

Based on Article 1 number 1 of Government Regulation Number 24 of 2016 Amendment to Number 37 of 1998 it is said that the Land Deed Making Officer is "a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units (Peraturan Pemerintah Nomor 24 Tahun 2016 Perubahan atas Nomor 37 Tahun 1998).

The types of land rights mentioned in Article 16 of the LoGA and Article 53 of the LoGA are grouped into several fields, namely:

1. Permanent land rights. That is, the rights to this land will be remain or apply as long as the UUPA is still in effect or has not been revoked by a new law. These types of land rights are Property Rights, Cultivation Rights, Building Use Rights, Use Rights, Rental Rights for Buildings, Land Clearing Rights, and Forest Products Collecting Rights.
2. Land rights to be determined by law. Namely land rights that will be born then will be determined by law. This kind of land rights does not yet exist.

Temporary land rights. Namely land rights which are temporary in nature, will be abolished in a short time because they contain extortion characteristics, contain feudal characteristics, and are contrary to the spirit of the Basic Agrarian Law (UUPA) (Pasal 16 Undang-Undang Pokok Agraria dan Pasal 53 Undang-Undang Pokok Agraria).

Based on the origin of the land, land rights are divided into 2 groups, namely:

1. Primary land rights, namely land rights originating from state land. The types of land rights are Property Rights, Cultivation Rights, Building Use Rights on state land, and Use Rights on state land.
2. Secondary land rights, namely land rights originating from the land of other parties. The types of land rights are Building Use Rights on Land Management Rights, Building Use Rights on Land Ownership Rights, Use Rights on Land Management Rights, Use Rights on Land Ownership Rights, Rental Rights for Buildings, Pawn Rights, Profit Sharing Business Rights, ., Right to Ride, and Right to Rent Agricultural Land (Urip Santoso, 2010:52).

Article 20 paragraph (2) of the Basic Agrarian Law stipulates that property rights can be transferred and transferred to other parties. Two forms of transfer of ownership rights over land, namely:

1. Switching means the transfer of ownership rights on land from the owner to another party due to a legal event. The legal event is the death of the land owner. With the death of the owner of the land, the right of ownership on the land is legally transferred to the heirs who meet the requirements as the subject of the right of ownership. The transfer of ownership rights to this land through a process of inheritance from the land owner as the heir to another party as the heir.
2. Transferred means the transfer of ownership rights on land from the owner to another party due to legal actions. Legal actions are actions that cause legal consequences. Examples of legal actions are buying and selling, exchanging, grants, income in company capital, auctions.

Based on the foregoing, basically the PPAT authority is closely related to certain legal actions regarding land rights or land ownership rights. To prove the existence of a legal act of transferring rights to land and or buildings, an authentic deed must be made. Without an authentic deed, legally the legal act to transfer a right to land and buildings is not yet valid.

The PPAT deed serves as a means of proving that the sale and purchase is correct. The sale and purchase can still be proven by other evidence. However, in the land registration system according to the regulations that have been perfected, namely Government Regulation No. 24 of 1997, registration of sale and purchase can only be carried out with a PPAT deed as legal evidence. People who make sales and purchases without being proven by a PPAT deed will not be able to obtain a certificate, even though the sale and purchase is legal according to law.

Making a PPAT deed according to Article 24 of Government Regulation Number 37 of 1998, it is emphasized that: "further provisions regarding the procedure for making a PPAT deed regulated in the laws and regulations concerning land registration. Based on the provisions in Article 96 of the Regulation of the Minister of Agrarian Affairs and the Head of the National Land Agency Number 7 of 2019 The second amendment to the Regulation of

the Minister of Agrarian Affairs and the Head of the National Land Agency Number 3 of 1997, it is stated that the PPAT deed must use a form or form in accordance with the form provided and the method of filling it out is as contained in attachments 16 to 23 of the regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency (Mustofa, 2010:8).

Land Deed Maker Official, hereinafter referred to as PPAT, is a public official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units. While the duties and functions of the PPAT itself have the main task of carrying out some land registration activities by making a deed as evidence that certain legal actions have been carried out regarding land rights or Property Rights to Flat Units, which will be used as the basis for registering changes in land registration data caused by actions. that law (John Salindeho, 2007:5).

The legal acts as referred to above are as follows:

- a. buying and selling;
- b. exchange;
- c. grants;
- d. entry into the company (inbreng);
- e. sharing of joint rights;
- f. granting of Building Use Rights/Hak Use Rights over land with Ownership Rights;
- g. granting Mortgage Rights;
- h. granting power to impose Mortgage Rights.

To carry out the main tasks as referred to above, a PPAT has the authority to make an authentic deed regarding all legal actions as referred to in Article 2 paragraph (2) of Government Regulation Number 24 of 2016 concerning land rights and Ownership Rights to Flat Units located within their working area. .

From the explanation above, the duties and functions of a Land Deed Making Officer are not included in the process of transferring the name of the Mortgage auction results, the results of the Mortgage auction can be directly handled by the Auction winner to the National Land Agency.

3. CONSTRAINT FACTORS AND SOLUTIONS OF NOTARY AND PPAT AUTHORITY AFTER THE IMPLEMENTATION OF INSURANCE RIGHTS AUCTION

The implementation of the mortgage execution auction at the State Property and Auction Service Office (KPKNL), is basically the same as the execution auction in general as regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number: 27/PMK.06/2016 concerning Auction Implementation Guidelines, article 11 which begins with a letter of request for auction accompanied by documents for tender requirements to the Head of the KPKNL to request a schedule for the implementation of the auction in accordance with the type of auction. The Head of the KPKNL or Class II Auction Officer may not refuse the bidding application submitted to him as long as the tender requirement documents are complete and fulfill the formal legality of the subject and object of the auction (Pasal 11, 12, dan 13 Peraturan Menteri Keuangan Republik Indonesia Nomor : 27/PMK.06/2016 Tentang Petunjuk Pelaksanaan Lelang).

Although the implementation of the auction has been in accordance with the procedures as stipulated in the Regulation of the Director General of State Assets Number 2/KN/2017 concerning Technical Instructions for the Implementation of Auction jo. Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Instructions for Implementation of Auctions but does not rule out the possibility of a lawsuit being submitted to the Court. The implementation of the Mortgage Execution auction by the KPKNL often gets lawsuits from the debtor or other parties who feel that their interests have been harmed. Then the next problem is if a person who is executed by the auction still occupies or physically controls the auction item that is sold. As a rule, the rights of the person whose goods are sold pass to the buyer immediately after the sale and purchase agreement is closed. To strengthen the position of the winner of the auction, the Auction Office provides a statement letter to the buyer (Article 200 paragraph 10 HIR, 218 paragraph 1 Rbg).

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Legal arrangements for Notary Authorities after the Mortgage Auction are expressly regulated in Government Regulation Number 24 of 2016 concerning Duties and Functions of Land Deed Maker Officials whose main task is to carry out some land registration activities by making a deed as evidence that certain legal actions have been taken regarding land rights or rights. Ownership of Flats, which will be used as the basis for registration of changes to land registration data caused by legal actions.

The making of the PPAT deed according to Article 24 of Government Regulation Number 37 of 1998, it is emphasized that: "further provisions regarding the procedure for making the PPAT deed are regulated in the laws and regulations concerning land registration". Based on the provisions in Article 96 of the Regulation of the Minister of Agrarian Affairs and the Head of the National Land Agency Number 7 of 2019 The second amendment to the Regulation of the Minister of Agrarian Affairs and the Head of the National Land Agency Number 3 of 1997, it is stated that the PPAT deed must use a form or form in accordance with the form provided and the method of filling it out is as contained in attachments 16 to 23 of the regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency.

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SUGESTION

Government should make or update regulations regarding auctions in which it stipulates that auctions that have been conducted legally in accordance with the provisions cannot be canceled if there is a lawsuit that can cancel the auction. Especially in the auction of Mortgage execution, because often the lawsuit is only to hinder the auction, making the Mortgage holder not get certainty of payment of the debtor's debt.

The government should make or update regulations regarding auctions which contain legal protection for auction winners with good intentions, because buyers with good intentions must be protected by law. Until now, the regulations regarding the auction have not provided legal protection for the auction winner.

The government should provide education to the public regarding the process after the mortgage auction, how the auction winner should reverse his name with the minutes of the auction.

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