

Juridical Analysis of Implementation for the Execution of Debtor Collateral in the Context of Realizing Legal Protection and Certainty (Research Study on State Property Services Offices and Auctions (Kpknl) Batam)

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ABSTRACT

The construction of the journal topics mentioned above are: "Juridical Analysis of the Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty", with the formulation of the problem: How are the Legal Arrangements, Implementation, Constraint Factors and Solutions to the Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty?. The type of writing is normative law, using legal research methodology, supported by secondary data, and using a qualitative approach, and to obtain secondary data, obtained through library research. For grand theory, legal theory is used. positive law by John Austin law, middle theory using the legal theory of legal protection by Satjito Rahardjo and applied theory using the legal theory of happiness (utilitarianism) by Jeremy Bentham. The results of the analysis are basically the implementation of a decision or execution is an implementation of a decision that has permanent legal force which is carried out with the assistance of the court. Execution of the object of guarantee is the exercise of the rights of the creditor who holds the collateral right to the object of the guarantee in the event of a denial or default by the debtor by selling the object of the object of collateral to pay off his receivables. The right to fulfill the creditor's rights is carried out by selling the object of collateral, the proceeds of which are used as repayment of the creditor's receivables. Settings regarding Execution of mortgages.

Keyword : *Mortgage, Execution, Protection and Legal Certainty.*

INTRODUCTION

Mortgage rights according to the provisions of Article 1 point 1 of Law Number 4 of 1996 are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, including or not including other objects which is an integral part of the land, for the settlement of certain debts, which gives priority to certain creditors over other creditors.

In the process of granting credit, it often happens that the creditor is harmed when the debtor defaults, so that a legal rule is needed in the implementation of the imposition of mortgage rights contained in a credit agreement, which aims to provide legal certainty and protection for related parties, especially for the creditor if the debtor defaults or does not fulfill his obligations. In terms of legal protection with mortgage guarantees, the bank provides information that the bank is very protected by the mortgage even though there are still loopholes made by the debtor, causing the financing to default. Legal protection with guaranteed mortgage rights in accordance with Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land provides legal protection to banks because banks have preference rights/priority rights in terms of carrying out execution of collateral with mortgages the.

There are several provisions in the Mortgage Law that provide legal protection to creditors, including the following::

1. Priority position for creditors holding mortgage rights. That creditors holding mortgages have priority in repayment if the debtor defaults compared to other creditors. Creditors are given the convenience to take debt repayments, because creditors are given the right of parate execution. Article 1 paragraph (1) Giving priority or priority to the mortgage holder or creditor is a form of legal protection given to the creditor in the event of a default from the debtor, especially in taking the repayment of his receivables. This is in accordance with the provisions of Article 6 of the Mortgage Law, if the debtor is in default, the first Mortgage holder has the right to sell the object of the Mortgage on his own power through a public auction and take repayment of his receivables from the proceeds of the sale. The important point is the existence of legal protection and certainty for the execution of the debtor's collateral for creditors holding Mortgage Rights that the receivables will be returned in full if the debtor defaults.
2. Easy execution of execution The execution of this Mortgage object is a form of legal protection given to the creditor if the debtor defaults. Article 14 paragraph (3) of Law Number 4 of 1996 that a mortgage certificate as a substitute for a mortgage deed has the same power as a judge's decision that has permanent legal force giving the mortgage holder the right to execute the mortgage if the debtor defaults.
3. Mortgage always follows the object that is guaranteed in the hands of whoever the object is. The above is commonly referred to as the *droit de suite* principle, in the Mortgage Law (UUHT) it is regulated in Article 7 which states as follows, "The mortgage continues to follow the object in the hands of whoever the object is". This is a form of legal protection provided by the Mortgage Law to creditors holding mortgages. So even though the land rights burdened with the mortgage are transferred to another party or person, the mortgage rights are still attached to the land rights before they are abolished..

In addition to the problems above, in the opinion of the author, that legal certainty for creditors in the event of a default in a financing agreement with mortgage guarantees, namely providing a priority position for creditors holding mortgage rights, easy execution of the mortgage and following the object guaranteed in the mortgage. whoever the object is in. Obstacles in legal protection, namely the object of the collateral is defective in its binding, the collateral has issued another certificate, the collateral is in dispute and the transfer of the object of the guarantee without being noticed by the bank. The dispute resolution process is contacting the debtor, carrying out the stages by giving a summons, installing a plank and submitting an auction process through the State Auction Office. It is recommended to creditors that there is a need for an in-depth analysis of the intentions and abilities and ability of the customer/debtor to pay off the debt or return the borrowed money in accordance with the agreed period, so that problems do not occur due to the existence of a guarantor who is not a legal husband and wife. , then the bank in this case must ask for evidence, one of which is proof of a marriage book to avoid problems in the future so as not to harm the bank and the collateral must be analyzed carefully so that there will be no disputes in the future if you want to be executed and in the settlement sought first Is it because there is a disaster from the debtor or is there really no good faith from the debtor.

Seeing this condition, the researcher assumes that this issue is very important to be researched and studied in depth with the aim of legal protection for creditors, because the creditor holding the first mortgage has the right to sell the object of the mortgage on his own power through a public auction and take repayment of his receivables from the sale proceeds. that. To play a role in increasing the development of businesses carried out by the community, as business actors in developing the economy in Indonesia.

LITERATURE SOURCE

Sources of data in this study are primary data and secondary data. Primary data sourced from various policies and regulations issued in the field of environmental protection and management. Secondary data collection is done through library research by reviewing books, journals, research results, conventions and laws and regulations as well as through internet media related to research problems. Primary data was obtained by conducting field research by interviewing informants and respondents related to the object of this research. As for the informants, such as the Head of the Batam City KPKNL.

METHODOLOGY AND TYPES OF RESEARCH AND THEORETICAL BASIS

The research specification is basically to determine the type of research that will be carried out in writing this thesis proposal. In line with the title of this thesis proposal, the type of research that will be used is normative (*juridical*) legal research, and because it will also examine its application/implementation in the field, this thesis

proposal research also uses sociological (empirical) research. The research was conducted on the applicable laws and regulations related to the auction of execution of mortgage rights on land and buildings based on article 6 of the Mortgage Law relating to legal certainty for creditors and their implementation practices at the Batam State Property and Auction Service Office (KPKNL).

FORMULATION OF THE PROBLEM

1. What are the legal arrangements for the execution of debtor collateral goods in the context of realizing legal protection and certainty (Research Study at the Batam State Property and Auction Service Office (KPKNL))?
2. How is the Implementation of Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty (Research Study at the Batam State Property and Auction Service Office (KPKNL) ?
3. What are the Obstacles and What are the Solutions to the Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty (Research Study at the Batam State Property and Auction Service Office (KPKNL))?

DISCUSSION

ARRANGEMENTS FOR LEGAL CERTAINTY OF CREDITORS IN IMPLEMENTING THE AUCTION PROCESS FOR EXECUTING MORTGAGE ON LAND AND BUILDINGS

Execution of Mortgage is regulated in Article 20 UUHT, so it can be said that there are several ways of implementing Mortgage, namely:

Execution is based on Article 6 UUHT which provides convenience for creditors holding Mortgage Rights in the execution of Mortgage Rights because the Creditors holding Mortgages have a special position in the form of *droit de preference* and *droit de suite* which are characteristics of Mortgage Rights. So that if the debtor is in breach of contract, the creditor holding the Mortgage may directly submit a request to the Head of the State Auction Office to sell the object of the Mortgage concerned.

The implementation of this *parate executie* auction has been regulated in the Circular Letter of the State Receivables and Auctions Agency Number SE-211PN11998 concerning the Implementation Guidelines of Article 6 UUHT in Number 1 which states that "... the sale is not forced, but is an act of implementing the agreement by Therefore, there is no need to hesitate anymore to serve auction requests from banks for HT objects based on Article/6 UUHT" as well as in Number 3 which states that "the auctions for HT objects based on Article 6 UUHT are classified as voluntary auctions..." and confirmed by the Circular Letter of the State Receivables and Auctions Agency Number SE23IPN/2000 point la letter (e) which states that "The implementation of the HT auction as referred to in Article 6 UUHT does not require debtor approval for the auction".

Subsequent developments in the implementation of the auction were confirmed by the Letter of the Minister of Finance Number 3041KMK.0112002 dated June 13, 2002 concerning Auction Implementation Guidelines which in Article 2 Paragraph (3) states that "The auction office may not reject the auction application submitted to it as long as the requirements for the auction have been met." Subsequently, the implementing regulations were followed up by the Decree of the Director General of Receivables and State Auction Number 35/PLI2002 dated January 27, 2002 concerning Technical Guidelines for the Implementation of Auctions. January 2002 concerning the Technical Guidelines for the Implementation of Auctions.

From some of these regulations, it further clarifies the implementation of the right of the first creditor of the Mortgage holder to sell the object of the Mortgage on his own power through an auction (*parate executie*) carried out by the State Auction Office.

IMPLEMENTATION OF EXECUTION OF DEBTOR GUARANTEED GOODS IN THE CONTEXT OF REALIZING LEGAL PROTECTION AND CERTAINTY

The execution of the mortgage can be done in the following 2 (two) ways.

a. Execution Through Public Auction

The term auction comes from the Dutch language, namely *vendu*, while in English, it is called auction. The definition of auction can be seen and read in the laws and regulations relating to auctions and the opinions of several experts. Here are some definitions of auction.

- 1) Public sale is: auction and sale of goods held in public with increasing price offers, with decreasing agreement or with price registration, or in which previously invited persons have been notified of the auction or sale, or deals given to people who auction or buy to bid, agree on a price or list.
- 2) General selling is a tool to enter into the most profitable agreement or agreement for the seller by gathering interested parties. Polderman further said that the main condition of the auction is to gather interested parties to enter into a sale and purchase agreement that benefits the seller.

Polderman further said that the main condition of the auction was to gather interested parties to enter into a sale and purchase agreement that benefits the seller.

Thus, there are 3 (three) conditions for a general sale, namely:

- 1) general sales must be as complete as possible (volledigheid);
- 2) there is a will to bind oneself;
- 3) that the other party who will enter into the agreement cannot be appointed beforehand

Article 1 number 1 of the Regulation of the Minister of Finance No.40/PMK.07/2006 affirms that auction is the sale of goods openly to the public with written and verbal price offers increasing or decreasing to reach the highest price, preceded by the announcement of the auction. Auction announcement is a notification to the public about an auction with the intention of gathering auction enthusiasts and notification to interested parties .

a. Execution Auction

Execution auction is an auction to carry out court decisions or decisions or documents equivalent to it in accordance with applicable laws and regulations, in order to assist law enforcement, such as execution auctions for fiduciary certificates or mortgage certificates. The execution auction is a type of auction as specified in Article 200 paragraph (1) HIR or Article 215 RBg because it is a public sale of the defendant's property by the district court through the auction office. The main condition for the execution auction is to be preceded by an execution confiscation.

b. Non Execution Auction

A non-execution auction is a type of general sale outside the implementation of a court decision or decision. This auction includes the sale of state-owned/controlled goods or mandatory auctions and voluntary auctions of goods belonging to individuals, community groups or private entities including BUMN and BUMD in the form of a limited liability company.

Based on Article 2 of the Minister of Finance Regulation No. 40/PMK.07/2006, the auction must be conducted by the Auction Officer unless otherwise stipulated by the laws and regulations. Auction officials according to Article 1 number 13 of the Minister of Finance Regulation No. 40/PMK.07/2006, the auction officials given this authority are officials at the State Property and Auction Service Office (KPKNL) or the Auction Hall. According to Article 1 number 12 of the Minister of Finance Regulation No.40/PMK.07/2006, what is meant by Auction Hall is an Indonesian Legal Entity in the form of a PT that carries out business activities in the field of auction services based on a ministerial permit.

However, the KPKNL's authority is currently still limited only to the implementation of voluntary non-execution auctions, BUMN and BUMD assets in the form of state-owned companies, and bank assets in liquidation. The KPKNL has not been permitted to carry out mandatory execution and non-execution auctions, including auctions of assets owned or controlled by the government. This is due to the government's desire to develop voluntary auctions of assets belonging to individuals, community groups, and from the private sector_

The services of the Batam City State Assets and Auction Service Office include:

- a) State wealth services;
- b) Assessment services;
- c) State debt service;

FACTORS THAT BECOME OBSTACLES AND SOLUTIONS TO THE EXECUTION OF DEBTOR GUARANTEED GOODS IN THE CONTEXT OF REALIZING LEGAL PROTECTION AND CERTAINTY

In the execution of the Mortgage Execution auction carried out by the KPKNL, it often gets lawsuits from the debtor or other parties who feel that their interests have been harmed. Civil lawsuits carried out are usually in the form of resistance before the auction or lawsuits filed after the auction. The majority of lawsuits arise due to debtor dissatisfaction with the implementation of the Mortgage auction applied by the Bank concerned to the KPKNL.

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 being sold are transferred to the winner of the auction immediately after the sale and purchase agreement is closed. If the debtor still insists on controlling the auctioned goods, the auction winner requests the publication of the grosse minutes of the auction for the emptying of the auction which will be submitted to the District Court or Religious Court for assistance in emptying the auction. The execution of this execution begins with an application submitted to the Chairman of the local District Court by the winner of the auction as the owner of the rights. Based on the request, the Head of the District Court followed up by calling the defendant for execution. The costs for the emptying process are difficult to predict and the process from requesting vassals to execution of vacancies is uncertain.

Settlement efforts that can be carried out by buyers through auctions who cannot control their land can be through two paths that can be taken, namely the Litigation route (judicial route) and the Non-Litigation route (out-of-court route). The litigation path can be taken by filing a civil lawsuit in general, namely through the local District Court, while the non-litigation route, namely through mediation and negotiation, is the right choice for auction buyers to get their rights back. It is hoped that the Directorate General of State Assets, through the Director of Auctions, can make a policy related to legal protection for auction buyers so that there are no more doubts and anxiety in buying auction objects in the form of land and/or buildings through the auction process. Second, the policy regarding voluntary emptying prior to the auction so that auction buyers can get their rights fulfilled immediately to be able to own the goods in the form of land and/or buildings.

Provide an explanation or explanation to the auction buyer on the land and/or building if the collateral does not want to be vacated by the debtor/occupant owner of the guarantee. In the process after the auction has been carried out, it will lead to a process of transferring the rights of the auction object from the seller to the auction buyer. If the auction buyer is unable to control the land and/or building, the auction buyer may submit a request for execution of emptying to the Judiciary in the event that the debtor/occupant owner of the guarantee is not willing to vacate the object of the auction voluntarily.

However, in practice there are dynamics that may occur in the creditor's efforts to sell collateral through the auction process, one of which is an attempt to sue or rebut the debtor's court which is addressed to the creditor as the seller, the KPKNL as an intermediary for the auction and the buyer of the auction. Therefore, many people are not interested in participating in the auction because the process is quite vulnerable to legal remedies such as lawsuits or cases. This should be a concern for the relevant parties to conduct education so that the public knows the process that needs to be done in order to get legal protection.

To respond to this, it may be necessary to make a clear and transparent SOP (Standard Operating Procedure) for emptying so that the emptying process can be carried out according to the rules that have been set. And besides that, it is also necessary to have clear costs or tariffs in the emptying process that will be carried out because considering the costs or tariffs for which there is no standard fee that will be issued by the auction winner

CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS

1. Legal Arrangements for the Execution of Debtor Guaranteed Goods in the Context of Realizing the Protection and Legal Certainty of Mortgage Rights according to the provisions of Article 1 point 1 of Law Number 4 of 1996 are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, including or not including other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.
2. Implementation of Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty Based on some of the definitions above, it can be concluded that auction is the sale of goods in public which is preceded by an effort to collect interested parties through announcements made by and or

in front of auction officials with the achievement of optimal prices. through up-and-down or down-and-down oral offers and or in writing.

3. Obstacles and Solutions to the Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty Various obstacles that occur in the execution of mortgage rights based on the Batam City KPKNL decision can be classified as juridical obstacles, namely the ineffectiveness of Article 6 of Law NO. 4 of 1996 and the exetorial title which is included in the mortgage certificate, as well as the ineffectiveness of the emptying promise contained in the APHT as stipulated in Law No. 4 of 1996 in the execution of the mortgage. Meanwhile, other obstacles stemming from sociological factors are creditors not binding mortgages perfectly, disagreements about the auction price between debtors and auction officials, and interference from third parties in the execution.

2. SUGESTION

1. Regarding the Legal Arrangements for the Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty In order to give more understanding to the auction buyer that the auction object being sold is what it is. And it is better if the auction buyer can be more careful and thorough before buying and selling by auction by finding out how the condition of the auction object he is going to buy is so that he can avoid a problem that will arise in the future. It is hoped that the auction buyer can understand how the process of submitting the auction object is and know what risks will occur at the time of delivery or takeover of the auction object he has purchased.
2. On the Implementation of Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty It is hoped that the debtor will be able to better understand the exact contents of the promise that is broken down from the mortgage holder's deed for collateral in lending funds to the bank/creditor and be able to understand the events that will arise if the debtor does not want to hand over the object of the auction voluntarily
3. What are the Obstacles and What Are the Solutions to the Execution of Debtor Guaranteed Goods in the Context of Realizing Legal Protection and Certainty The auction implementation regulations should be revised again so that the submission of the auction object at the mortgage execution auction can be carried out materially so that the auction buyer does not bother in terms of mastery of the auction object that has been purchased

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