

Legal Protection for Auction Winners against Fiduciaryguarantee Objects (A Research in Aceh Province)

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Abstract: This study describes the implementation of movable objects auction at the State Assets and Auction Service Office of Langsa City. Legal protection efforts against auction winners can be carried out through litigation and non-litigation such assubpoena, and by implementing legal safeguards in the form of preventive, curative, rehabilitative and repressive legal protection measures. The research method in this study is empirical legal research methods or sociological research methods by identifying law as patterned behavior, using a social theoretical framework of sociological law or legal theories whose proof is carried out through society.

Keywords: Legal Protection, Auction, Auction Objects.

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I. INTRODUCTION

Auction is one of buying and selling forms with several differences in general. In buying and selling, there is a right to choose and exchanging in public is allowed, while in auction, one cannot choose, no exchanging in public, and the action is carried out in public. One of the principles of auction is efficiency, which means that the auction is carried out quickly and straightforwardly. However, this understanding does not exist in the legislation so that it creates an empty norm. The existence of empty norms results in the implementation of the auction which does not provide certainty for auction buyers, so auction buyers often suffer losses in time, energy and costs.

Voluntary auctions are conducted on the initiative of the party entitled to the object to be auctioned. It is unlike the execution auction where creditors carry out the transfer of rights. In the execution auction, the institution authorized to conduct it is the State Auction Office while for voluntary auctions can be carried out by the State Auction Office or Private Auction Office. The public in an effort to meet their needs requires funding from banks, one of which is by crediting. Credit, namely as a gift of achievement by one party to another party and the achievement will be returned again at a certain period in the future accompanied by a counter achievement in the form of interest.¹

Legal protection for buyers of execution auction of mortgage right so far has not provided preventive legal protection for auction winners, meaning that *VenduReglement* which is the main legal basis for auction in Indonesia, and Minister of Finance Regulation No. 106 / PMK.06 / 2013 concerning Amendments to the Minister of Finance Regulation Number 93 / PMK.06 / 2010 concerning Bidding Implementation Guidelines have not found any legal protection to the winner of the auction of execution of mortgage rights. The minutes of the auction do not provide legal protection to the winner of the auction for the possession of the auction object. Repressive legal protection is provided by the HIR in the event that the auction object is emptied and asking for protection from district court. And if there is an objection of an auction winner, one can proceed to subpoena and appeal.

The positive legal rules governing the auctions that currently exist do not support the development of the auction as a buying and selling agency and do not provide protection for the interests of auction buyer rights for the goods bought. Because the existing auction law is less rational, especially the auction rules lack a general "normative" quality, it has not been able to solve all practical problems that are legal in nature so that lawsuits often occur by way of sellers filing a lawsuit against illegal acts against the execution of collateral or making resistance (*verzet*) to the Chairperson of the local District Court with a view to delaying or canceling the auction

¹MuchdarsyahSinungan, *Fundamentals and Credit Management Techniques*, Bina Aksara, Jakarta, 2004, pp. 12.

of execution of collateral items. Legal protection for auction buyers means the legal certainty of the rights of auction buyers for the goods bought through auction. The seller should be fully responsible for the losses incurred.²

Based on Article 1365 of the Civil Code, the injured party is sufficient to prove that the loss suffered is due to an act against the defendant's law, it is not required that the act constitutes an unlawful act against the injured person. The problem of causality becomes a central issue in tort, because its function is to determine whether a person must be legally responsible for actions that cause harm to others. Execution Auction Method based on Act Number 42 of 1999 Fiduciary is through the Parate Execution, namely the Mortgage Holder, in this case the Bank, selling the Mortgage Right object through a public auction and taking the payment of receivables from the public auction results. Procedure for Execution Auction according to Article 16 of the Regulation of the Minister of Finance of the Republic of Indonesia Number PMK 27 / PMK.06 of 2016 concerning the Auction Hall is as follows:

1. Pre-Auction

- a. Submitting a written request regarding the execution to the Head of the Office of State Assets and Auction Services. It is a government agency under the Directorate General of State Assets at the Ministry of Finance. In this case the Bank may also request to use the Pre-Auction services from the Private Auction Hall;
- b. The Office of State Assets and Auction Services / Private Auction Office will examine the completeness of the tender documents, which include but are not limited to Credit Agreements, Mortgage Rights Certificates, Evidence of details of debtors' debts, proof of warning of defaults to debtors, proof of ownership of rights, proof of tender notification to debtors;
- c. After the above documents are deemed complete, the Office of State Assets and Auction Services will issue a written auction schedule to the Bank;
- d. The Bank carries out the Announcement of Auction.
 - 1.) If the goods auctioned are immovable or immovable goods which are sold with the movable property; the announcement shall be made twice, after 15 days. The first announcement can be made through an announcement board that can be read by the public or through a daily newspaper. But the second announcement must be published in a daily newspaper and must be made 14 days before the auction. If the goods auctioned are movable goods, announcements are made 1 (one) time through a daily newspaper at least 6 (six) calendar days before the auction, except the Execution Auction of Confiscated Objects Article 45 of the Criminal Law Code in the form of:
 - a) goods that are damaged / rotten or dangerous or if the cost of storing the goods is too high, can be done in less than 6 (six) calendar days but must not be less than 2 (two) working days; and
 - b) fish and the like resulting from a fishery crime can be done in less than 6 (six) calendar days but must not be less than 1 (one) calendar day.
- e. The bank gives auction notifications to the debtor.

2. Auction Implementation

If there is a potential objection / rejection or even a lawsuit from the debtor/ the executed, the Bank will in practice seek an alternative implementation of the auction with the fiat execution from the Chair of the District Court. The District Court will deliver dunning to the debtor so that the debtor will come at the appointed day and carry out his obligations to the Bank, if dunning is not fulfilled by the debtor, the District Court will seize the execution on the debtor's guarantee.

Many auctions that cause disputes occur in the province of Aceh, such as the case that bound in the Consumer Financing Agreement Number: 9018810866 / PK / 10/11 dated 7 October 2011 which has been auctioned. Similarly, the case that occurred in Langsa City with the object of a motor vehicle. There is no levering of the auction object in the form of a minibus to the winner of the auction with a final bid (consignment) of Rp.89,000,000 (eighty-nine million rupiah). One reason for the absence of the auction object submission is because the auction object is being the object of a dispute that was sued by the previous car owner who claimed the price of the object should amount to Rp120,000,000 (one hundred and twenty million rupiah).

The case that occurred in Langsa City can be said to be quite complicated because it involves many parties, places, and also takes a relatively long time. And the object of the auction is unclear related to the validity and the existence of documents. The parties in this case not only involved the auction winner and the organizer of the auction, but also dragged the debt collectors, debtors, creditors, even the police and the 1-01 Banda Aceh Court-martial. The existence of the auction object which was in dispute according to the latest information was in the jurisdiction of Medan City.

²PurnamaTioriaSianturi, *Legal Protection for Buyers of Immovable Collateral through Auction*, MandarMaju, Bandung, 2013, pp.6.

The management of collateral objects (objects of dispute) itself should be part of the management of collateral items which includes the act of receiving, recording, storing, maintaining, and issuing documents for collateral items. Recording is carried out systematically and is classified based on the types of collateral items.³ The management of collateral items is carried out by taking inventory of all collateral and recording the maintenance process related to collateral. Furthermore, security for collateral is carried out by blocking the relevant agencies authorized to seize movable debt collateral if deemed necessary.⁴ The Office of State Receivable and Auction Services should cancel the auction in terms of:⁵

1. The guarantor of the debt repays the debt;
2. Goods to be auctioned are confiscated in a criminal case;
3. Items to be auctioned are destroyed;
4. Debt collateral goods have been disbursed outside the auction; and
5. Debt collateral is no longer act as collateral.

Regarding legal protection for buyers in good faith, there is Article 1977 paragraph (1) of the Civil Code in which, in essence, the article protects a buyer of movable property in good faith. Article 1977 paragraph (1) of the Civil Code states that: Against movable objects that are not in the form of interest, or receivables that do not have to be paid to the bearer, then whoever controls them is considered to be the owner. The question is how the protocol of immovable objects are arranged in which the Civil Code does not regulate unlike on movable objects. The provisions of Article 1977 paragraph (1) apply to all kinds of goods, so that the immovable property needs to include a provision that states that if an agreement is made in front of an official, the parties can be considered in good faith.⁶

II. MATERIAL AND METHOD

The research method used in this study is an empirical juridical research method by identifying the law as a patterned study, using the theory of social evolution about the law or the theory of sociological law that is carried out through community proof.⁷ The form of the analysis is quantitative in the form of conclusions set forth in the form of numbers or statistics. Use tools or instruments to measure certain symptoms that are processed or tested and analyzed through numbers or statistics.⁸

Data collection in the form of primary data is done by conducting observation techniques, questionnaires, samples, and data collection methods by conducting interviews with respondents and informants, using three techniques namely observation techniques, questionnaires, and data collection methods by conducting interviews.⁹ The sampling technique is part of the population to be investigated. The sample is part of the population that is considered to represent the population. In this study, a purposive sampling method is used, namely the technique of determining the sample with certain considerations.

III. DISCUSSION

A. Auction of Movable Property at the Office of State Assets and Auction Services

Based on Article 1365 of the Civil Code, the injured party is sufficient to prove that the loss suffered is due to an act against the defendant's law, it is not required that the act constitutes an unlawful act against the injured person. The problem of causality becomes a central issue in tort, because its function is to determine whether a person must be legally responsible for actions that cause harm to others.

Execution Auction Method based on Act Number 42 of 1999 Fiduciary is through the Parate Execution, namely the Mortgage Holder, in this case the Bank, selling the Mortgage Right object through a public auction and taking the payment of receivables from the public auction results. Procedure for Execution Auction according to Article 16 of the Regulation of the Minister of Finance of the Republic of Indonesia Number PMK 27 / PMK.06 of 2016 concerning the Auction Hall is as follows:

1. Pre-Auction
 - a. Submitting a written request regarding the execution to the Head of the Office of State Assets and Auction

³ImanJauhari, S. Mantayborbir, Agus Hari Widodo., *Receivable Law and State Auction in Indonesia*, Bangsa Library, Medan, 2002, pp. 53.

⁴*Ibid.*

⁵*Ibid.*, pp. 64.

⁶Djaja S. Meliala, *Good Faith in Civil Code*, Binacipta, Bandung, 1987, pp. 9-10.

⁷FakultasHukum, *BukuPedomanPenulisanTesis Program Studi Magister Kenotariatan*, FH Unsyiah, Banda Aceh, 2017, hlm. 48.

⁸*Ibid.*

⁹Uma Sekaran, *MetodologiPenelitian*, SalembaEmpat, Jakarta, 2006, hlm. 163.

Services. It is a government agency under the Directorate General of State Assets at the Ministry of Finance. In this case the Bank may also request to use the Pre-Auction services from the Private Auction Hall;

- b. The Office of State Assets and Auction Services / Private Auction Office will examine the completeness of the tender documents, which include but are not limited to Credit Agreements, Mortgage Rights Certificates, Proof of debt details of debtors, proof of warning of defaults to debtors, proof of ownership of rights, proof of tender notification to debtors;
- c. After the above documents are deemed complete, the Office of State Assets and Auction Services will issue a written auction schedule to the Bank;
- d. The Bank carries out the Announcement of Auction.
 - 1) If the goods being auctioned are immovable or immovable goods which are sold with movable property, the announcement shall be made 2 times, after 15 days. The first announcement can be made through an announcement that can be read by the public or through a daily newspaper. But the second announcement must be published in a daily newspaper and made 14 days before the auction.
 - 2) If the goods auctioned are movable goods, announcements are made 1 (one) time through a daily newspaper at least 6 (six) calendar days before the auction, except the Execution Auction of Confiscated Objects Article 45 of the Criminal Law Code in the form of:
 - a) Items that are damaged / rotten or dangerous or if the cost of storing the goods is too high, can be done in less than 6 (six) calendar days but must not be less than 2 (two) working days; and
 - b) fish and the like resulting from a fishery crime can be done in less than 6 (six) calendar days but must not be less than 1 (one) calendar day.
- e. The bank conducts auction notifications to the debtor.

2. Auction Implementation

If there is a potential objection / rejection or even a lawsuit from the debtor/ the executed, the Bank will in practice seek an alternative implementation of the auction with the fiat execution from the Chair of the District Court. The District Court will submit dunning to the debtor so that the debtor comes at the appointed day and carry out his obligations to the Bank. If the debtor disobeys the dunning, the District Court will seize the execution on the debtor's guarantee.

The State Receivables and Auction Services Office should cancel the auction when it comes to:⁷

1. The debt guarantor repays the debt;
2. Goods to be auctioned are confiscated in a criminal case;
3. Items to be auctioned are destroyed;
4. Debt collateral goods have been disbursed outside the auction; and
5. Debt collateral is no longer act as collateral.

B. Legal Protections for Auction Winners

Legal protection efforts for auction winners can be done by litigation and non-litigation such as subpoena, and by implementing legal protection measures in the form of preventive, curative, rehabilitative, and repressive legal protection efforts. Efforts that can be made by auction winners to obtain juridical responsibility due to no submission of auction objects, including litigation efforts, namely by submitting claims or lawsuits to the District Court, or by conducting non-litigation efforts namely subpoena, mediation, arbitration and negotiations.

IV. RESULT

Preventive legal safeguards in this auction dispute should be avoided if both parties are more careful and attentive in reading and studying the contents of the agreed contract, taking into account the terms and conditions in force. There is further handling of this auction dispute in the form of litigation and non-litigation, for the sake of the completion of the dispute, as a concrete manifestation of the legal efforts of the curative law against the winning bidder. The next stage of curative efforts is the restoration of rights and obligations for the parties in dispute in rehabilitative legal protection efforts or to restore the situation of the parties to the state before the dispute (status quo). Repressive legal safeguards that play a role in suppressing the same number of disputes in the future can be realized by socializing various laws and regulations pertaining to auctions.

V. CONCLUSION

The auction of movable objects at the Langsa City State Assets and Auction Service Office can be said to be quite complicated because it involves many parties, locations, and also takes a relatively long time, as well as the object of the auction is unclear regarding the validity and existence of documents. The parties in this case not only involved the auction winner and the auction organizer but also debt collectors, debtors, creditors, even

¹⁰ *Ibid*, pp. 64.

the police and the 1-01 Banda Aceh Court-martial. The existence of the auction object which was in dispute according to the latest information was in the jurisdiction of Medan City.

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