

EXECUTION OF THE OBJECT OF DEPENDENT RIGHTS THROUGH AUCTION BASED ON THE PRINCIPLE OF PROPORTIONALITY

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ABSTRACT

This research was conducted to analyze the granting of credit by the Bank as the creditor to the debtor with land as collateral to the bank if something goes wrong with what was expected. If a credit problem occurs because the debtor is incapacitated or because the debtor has failed in business which results in reduced income so that obligations cannot be fulfilled, the Mortgage Law (UUHT) exists to provide legal certainty for land rights including collateral rights to land. Efforts made by the bank as a creditor if the debtor defaults in order to obtain repayment due to bad credit, namely by executing one of them through an auction. The research method uses normative research with a statutory approach and a concept approach. This research resulted that the execution of mortgage objects through auctions is still not in accordance with the principles of proportionality and legal protection that can be given to debtors, namely repressive and preventive legal protection. In its development, the fact is that in the implementation of executions carried out by creditors, the proceeds from selling mortgage objects through auction execution are often below market prices and do not give the debtor the opportunity to sell mortgage objects privately. Regarding this matter, Article 20 paragraph (2) of the Mortgage Law (UUHT) has actually given a sufficient portion of rights to the debtor for the sale of mortgage objects according to market prices, but this is limited by the "on agreement" norm, which actually hinders sales under the contract.

KEYWORDS mortgage execution, auction, principle of proportionality



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How to cite:

E-ISSN: 2775-3727

Published by: <https://greenpublisher.id/>

Tutiek Retnowati, Widyawati Boediningsih, Muh. Gani Irwansyah (2023). Execution of The Object of Dependent Rights Through Auction Based On The Principle of Proportionality. Journal Eduvest. 3 (2): 455-464

INTRODUCTION

Land has a very strategic function, both as a natural resource and as a space for development, so that the need for land will increase along with the development of development and an economy that requires land in the form of land. With the increase in development and the importance of the role of land, it will lead to a relationship between humans and land. To overcome difficulties in terms of capital in order to fulfill obligations in the utilization and implementation of obligations to land there are several articles in the UUPA have been given flexibility to the holders of land rights to acquire capital with land guarantees to banks. So based on several articles in the UUPA in the implementation of obligations to land, Law Number 4 of 1996 concerning Dependent Rights to Land and Objects related to Land (hereinafter referred to as UUHT) (Cahyono, 2016).

UUHT was formed to strengthen the realization of UUPA, namely by providing legal certainty on land rights including land guarantee rights. In the case of providing credit by the bank as a creditor to the debtor, namely credit (debt for the benefit of the debtor) with land guarantees to the bank, a relationship arises. The contract between the creditor and the debtor is a credit agreement, where by the parties want what is expected to be appropriate. But sometimes it turns into what one of the parties to a treaty does not expect. The cause of non-performing loans is because the debtor is unable to or because the debtor has failed in business which results in a decrease in income so that it cannot be fulfilled obligations or indeed the debtor in bad faith from the beginning by not wanting to pay (Desmawati et al., 2020). Article 8 of Law Number 7 of 1992 Jo. Law Number 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law) explains that in terms of providing credit by banks, they must have a which is pledged to the bank and bound as a credit guarantee. The binding of collateral with Dependent Rights is carried out if the debtor who gets credit from the Bank, without the debtor physically handing over the collateral to creditors indirectly make immovable goods in the form of land (land rights) as a debt guarantee. Physical collateral goods remain the ownership of the debtor, but because it is used as a debt guarantee with a Dependent Rights agreement, the authority of the Dependent Rights giver to carry out legal actions with third parties resulting in a decrease in the value of the guarantee limited to the Dependent Rights owned by the Bank as the holder of the Dependent Rights (Hadi et al., 2012).

Land rights, both with the status of property rights, building use rights, use rights, and business use rights are a form of guarantee of land rights that are often used as guarantee of dependent rights in bank credit agreements, because in general it has a high price and is constantly increasing. Generally, in banking practice, the value of credit guarantees is greater than the amount of credit approved by the Bank. To provide legal certainty as legal protection, the encumbrance of this Dependent Rights guarantee must be registered with the Land Office. The registration referred to according to article 23 paragraph 2 of the UUPA as a strong evidentiary tool regarding the abolition of land rights and the validity of the transfer and encumbrance of these rights (Azam et al., 2017).

The efforts made by the bank as a creditor if the debtor defaults to obtain repayment due to bad debts is by means of execution through auction. Creditors can

directly sell collateral items with the help of the State Wealth and Auction Service Office (hereinafter referred to as KPKNL) without having to ask for permission (fiat) of the District Court. Article 6 of the UUHT states that if the debtor is injured, the Bank (creditor) as the holder of the first dependent right has the right to sell the object of guarantee of the dependent right on its own power through a public auction with the proceeds of the auction as repayment of its receivables. Under article 20 paragraph 1 of the UUHT If it is not promised the right, the creditor may request the District Court to confiscate the execution of the collateral and sell the auction through KPKNL, meaning that it must be carried out through a public auction because it is considered that in terms of public auction, the highest price can be obtained against the object of rights dependents (Priyono, 2018).

The fact that in the execution carried out by creditors, the proceeds from the sale of dependent rights objects through auction execution are often below the market price. From the ruling there is the same problem regarding the outcome. In the provisions of Article 20 paragraph (2) of the UUHT, it has been stated that, "upon the agreement of the grantor and the holder of the right of custody, the sale of the object of dependent rights can be carried out under the hands of if then it will be able to obtain a high price that benefits all parties". The article has actually given a sufficient portion of the right to the debtor for the sale of the object of dependent rights according to the market price but it is limited by the norm "ondeal" (Endratno, 2019).

Researchers have also discussed this issue, including "Legal Protection for Banks Holding Second-Place Dependent Rights in Object Execution. Hak Tanggungan" is a journal written by Dimas Nur Arif Putra Suwandi at Universitas Airlangga in the journal Media Iuris Vol. 1 No. 3, October 2018, then a study entitled "Legal Protection for Parties (Creditors And Debtors) Through Parate Executie Object of Dependent Rights" is a journal written by Hirsanuddin & Sudiarto at the University Mataram in the journal IUS Journal of Law and Justice Studies Volume 9, Issue 1, April 2021, then the research entitled "Legal Protection of Auction Execution of Dependent Rights" is a journal written by Asuan from the Faculty of Law, University of Palembang in the journal Solusi Vol 19, No, 2, May 2021 (Anungraeni, 2017).

Previous research when compared with research conducted by the author, in this study both discuss legal protection of parties in the execution of dependent rights objects However, what distinguishes the research conducted by the author is the previous research

limited to only in the execution carried out by creditors, the proceeds from the sale of dependent rights objects through auction execution are often below the market price, thus the researcheran what the authors did was different from previous studies. Meanwhile, in this study, the consideration of the use of the proportionality principle is aimed at private banks and commercial banks because both private and commercial banks are prone to prosecution of the Financial Services Authority (OJK) (Mahmud Marzuki, 2010).

So it is hoped that this research can be an enlightenment for parties interested in law enforcement and reference material in solving legal problems

RESEARCH METHOD

The objectives to be achieved in this study are to analyze: first, the execution of the object of dependent rights through auction in accordance with the principle of proportionality, secondly, protection the law for debtors granting dependent rights to auction the object of dependent rights below the market price

Normative legal research, normative juridical research is a writing aimed at and carried out by reviewing laws and regulations and other written legal materials that relating to this study.

Meanwhile, the research method used is normative juridical with a statue approach and a Conceptual approach. The legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are binding legal materials in the form of laws and regulations, as well as secondary legal materials whose nature explains and supports primary legal materials between Other related literature such as law books include law journals, theses, and theses, as well as other libraries related to law.

RESULT AND DISCUSSION

The principle of execution must be through public upfront sales or through auctions, the rationale is that through an open auction sale, it is expected that a price will be obtained reasonable or at least close to reasonable, because in an auction a low bid can be expected to lure other bidders to try to get the auction object by adding offer. This is one of the manifestations for the protection of the law to the guarantee.

Article 6 of the UUHT provides that if the debtor is injured, the holder of the first dependent right has the right to sell the object of dependent rights on his own power through public auction and take repayment of his receivables from the proceeds of the auction. The existence of auctions as public and private functions is urgently needed, and the KPKNL is given very broad authority in carrying out including auction execution by the Minister of Finance Regulation Number 27 / PMK.06 / 2016 concerning instructions for the implementation of the auction. Because by selling through auctions, it is expected to reach the highest price.

In the implementation of auctions, especially auction execution of article 6 dependent rights, the potential for lawsuit is very high. The total number of lawsuits in 2013 based on the State Wealth Media Bulletin Edition No.14 Year IV/2013, the lawsuits that went to the DGT/KPKNL were 2,458 and as many as 1,500 more were g ugatan from auction execution of article 6 dependent rights (Resti, 2022). The lawsuit was filed during the pre-auction, conducted with the aim of delaying the implementation of the auction and post-auction, various motives behind it. There are several characteristics of an unlawful perbuatan lawsuit in an auction.

But the reality in practice is sometimes not as imagined as well as expected. J Satrio mentions that, it seems that nowadays there is a reluctance of people to take part in auctions, to be an executor in an execution, or at least People are only interested in participating if there is hope of obtaining auction items at low prices (Satrio, 2018). Likewise, the costs that must be incurred for the implementation of the

auction are not cheap and to avoid any lawsuits arising from the implementation of the auction, the dependent rights law facilitating debtors with the existence of article 20 of the UUHT.

In this regard, lawmakers have realized, by looking at certain events there is a possibility of obtaining a better price, if the sale is made in under hand and therefore in article 20 paragraph (2) of the UUHT provides an opportunity for execution to deviate from the principle described above.

Article 20 paragraph (2) of the UUHT provides an opportunity for the implementation of executions under the hands, in the article it can be seen that there is protection of interests for para party. The assessment of collateral, which is carried out by the creditor, is estimated to be a price smaller than the estimated current selling price and the estimated selling price is smaller than the creditor's credit, then the creditor the holder of the dependent right has a vested interest in the sale of the collateral object at a high price in the hope that the entire bill will be covered while the dependent entitler also expects the price which is high, because the rest of the sale after being taken by the creditor is the right of the debtor as the grantor of dependent rights. However, if the estimated sales price is far above the total creditor's bill, then the creditor does not care whether the execution will be carried out through auction or underhand sales. Because through any means it is estimated that the bill can be repaid with the proceeds of the sale of collateral objects.

The debtor as the grantor of dependent rights will think that the pledged object will give a high sales result, because the debtor expects the remaining money from the sale after deducting it to repayment of loan bills to creditors. To maintain the possibility of misuse of the opportunity to sell objects under the hands, several conditions are determined.

The sale of objects under the hands by the debtor can be carried out if it meets article 20 paragraph (3) of the UUHT which states that:

"The implementation of the sale as per paragraph (2) can only be carried out after the lapse of 1 (one) month from the time it is notified in writing by the giver and/or holder of the dependent right to interested parties and announced at least in 2 (two) newspapers circulating in the area concerned and / or local mass media and none of the parties expressed reservations"

In practice, what attracts attention is the existence of an obligation to carry out sales under the hands but provided that there is an agreement between the giver and the holder of the dependent rights, when viewed in article 20 paragraph (3) of the UUHT that to make an underhand sale takes a very long time so that the provision "by agreement..." the creditor will certainly say that he does not agree to make an underhand sale given the condition in article 20 paragraph (3) of the UUHT, the creditor considers the sale under the hand slowing down the time of repayment of debts secured by the object of dependent rights.

In this case, the bank as the creditor carries out the execution of the dependent right object through auction, because the creditor considers that the execution of the dependent right object by means of sale under hands slow down the repayment time. But on the lain side in the implementation of the auction, as explained

above that many debtors file lawsuits with cases of auction sales proceeds below the price market/fair price.

The execution of the dependent right object carried out through auction where the debtor does not fulfill his obligations or defaults with the guarantee of the dependent right object in the form of land and is a guarantee credit with a high economic value, is a priority over the guarantee of other objects, then with the consideration of the object of dependent rights belongs to the debtor, to The principles of propriety, good faith, and respect for the property of others are of a very important nature to creditors. But in practice it is counterproductive because the bank as the creditor nilaterally determines the auction limit value of the dependent right object, until the auction selling price becomes very unnatural and well below the market price with the potential for auction engineering by the auction mafia which has become an open secret (Widhianingtanti et al., 2019), this has become the factor of a lawsuit from the debtor because the debtor feels aggrieved by not being given the right to participate in the determination of the auction selling price and feels in Lose with the proceeds of auction sales that are far below the market price.

The object of dependent hak guaranteed by the debtor tends to be safe because the object is pledged to the bank as the holder of dependent rights and will not be destroyed unless a natural disaster occurs. On redit loans provided by banks as creditors, in addition to providing obligations to pledge land and/or buildings, creditors also provide obligations to debtors to Repayment of loans with interes payable of 8.46% in 2022 initially on working capital loans, 8.18% of investment loans, and 10.24% of consumption credit loans which commercial banks give to creditors. The amount of interest rate that must be paid by the debtor is calculated to be very large, so it can be seen that the fairness of both parties is not proportion. So the amount of interest rates and guarantees of land and/or buildings pledged by the debtor must be balanced in order to achieve a sense of justice in accordance with the proportions the parties.

The proportional principle in a contract is defined as the principle underlying the exchange of rights and obligations of the parties according to their proportions or parts. This proportionality of the division of rights and obligations that is embodied in the entire process of contractual relations, whether in the precontractual phase, the formation of contracts or the execution of contracts, the principle of PRoporsional does not dispute the balance (similarity of outcomes), but rather emphasizes the proportion of the division of rights and obligations between the parties. The right of dependents as collateral is part of the principal bond which is subject to the principle of proportionality but, in the nature of the UUHT the principle of proportionality is reduced to the existing norm in article 20 paragraph (2) of the UUHT which has been mentioned above. With the elimination of the norm on the agreement in the UUHT, and regulated the creditor gives a period of time to the debtor for approximately 3 (three) to 4 (four) months for underhand sales, and with underhand sales of course still involving creditors because the object of dependent rights is on creditors as dependent rights holders. And apabila debtor succeeds by selling the object of dependent rights under the hand at a price that is considered high and sufficient for the repayment of the debt to the creditor, the certificate of land and/or building pledged by the debtor shall be given to the

purchaser of the sale under the hand as well as the grant of roya by the bank as abolition of dependent rights. That way at least a sense of justice arises that corresponds to the proportion of rights and obligations of both parties.

LEGAL PROTECTION FOR DEBTORS WHO GIVE TANGGUNGAN RIGHTS TO AUCTION DEPENDENT RIGHTS OBJECTS BELOW THE MARKET PRICE

The UUHT says public auctions are expected to get high prices, as opposed to the many lawsuits filed by debtors in court regarding the proceeds of auction sales that are far below the market price is even far below NJOP. The granting of an opportunity for the sale of the object of dependent rights under the hands is limited by the norm "by agreement" so that the sale under the hands cannot be carried out without the consent of the creditor. Finally the execution of the object of dependent rights is mostly carried out through public auctions which in fact is not in accordance with what is stated in the UUHT that public auctions can obtain a price high.

According to Satjipto Raharjo Perlin, the law is to provide protection to the human rights of those harmed by others and that protection is given to the community so that they can enjoy all rights granted by law (Soekanto, 2016).

If you look at the legal protection of Philipus M. Hadjon, legal protection is divided into two, namely preventive legal protection and repressive legal protection is associated with the legal protection of debtors, hence preventive legal protection a The RTINYA of legal provisions can be presented as an effort to prevent acts of violation of the law. This effort is implemented by forming between laws that are normative. Nothing can be pursued in preventive legal protection for debtors in the event that the auction price is below the market price (Shamsul et al., 2014).

Legal remedies that can be made during the auction, namely by filing a lawsuit with the State Administrative Court, if the KPKNL in the pre-auction stage agrees that a until auction will be held Until the determination of the auction schedule while the object of the auction is still in dispute. In the case of a limit value that is too low below the market price, the minister of Finance Regulation No. 27/PMK.06 / 2016 concerning instructions for the implementation of auctions does not specifically regulate the submission procedure cancellation of the auction after the auction is held. Article 31 of the Minister of Finance Regulation No. 27 / PMK.06 / 2016 concerning instructions for the implementation of auctions states that the cancellation of auctions can only be carried out by lelang officials if in the case of:

- a. Force majeure or *force majeure*
- b. There are technical problems that cannot be addressed at the auction without the presence of auction participants

So that with auction procedures that have fulfilled the procedure, the implementation of the auction is considered valid so that for the problem of determining the limit value that is too low or far below the market price only can be done through subsequent legal remedies, resolved with repressive legal protection.

Repressive legal protection aims to resolve the occurrence of disputes, which directs the government's actions to be cautious. Repressive legal protection aims to resolve disputes, including their handling in institutions. Repressive legal protection if it is associated with the implementation of auctions, then repressive

legal protection to debtors has been regulated in laws and regulations. Because auctions are civil trades in general, it can be used as a first legal remedy, namely through a lawsuit to the District Court.

Lawsuit remedies that can be filed in the District Court on the basis of article 17 paragraph (1), paragraph (2) and paragraph (3) of the Minister of Finance Regulation No. 27 / PMK.06 / 2016 concerning instructions for auction implementation which regulates, that the seller is responsible for the validity of ownership of the goods, the validity of the auction requirements documents, the delivery of movable and/or immovable goods, submission of ownership documents to the buyer and the last one can be used as the basis for the lawsuit, namely the setting of a limit.

The regulations for the implementation of auctions and UUHT have not provided for rights and obligations that are in accordance with the proportions. The laws and regulations should provide justice to the debtor not only to one of the parties in this case is the creditor, because in the implementation of the auction the debtor also have rights that must be granted in accordance with the proportion of obligations that the debtor has carried out.

If the judgment of the court of first instance is found to be an inappropriate judgment, then the next legal remedy is as in the legal remedy in the civil procedural law, namely with appeals and appeals. Legal remedies are the rights of the defendant that can be exercised if the defendant is dissatisfied with the judgment rendered by the court (Nurhayani, 2015). Such remedy is an attempt given by law to a person or legal entity in a particular case to resist the judge's decision as a place for parties who dissatisfied with the judge's decision with what is desired and does not meet the sense of justice, because the judge is also a human being who can make mistakes so wrong decide or side with the wrong party.

The main objective in court proceedings is to obtain a judge's ruling of permanent legal force. However, any judgment handed down by a judge may not necessarily guarantee juridical truth, because the decision cannot be separated from errors and oversights, not even impossible to be impartial (Rafiq et al., 2017). In order for those errors and oversights to be corrected, it is possible to re-examine the judge's decision in an appropriate manner. To be able to realize truth and justice is to carry out legal remedies.

Remedies against the judgment of the first instance of the district court may file an appellate remedy which will be examined and dealt with by the High Court, furthermore if there is still an objection then the petitioner may appeal appeals to be examined by Judges of the Supreme Court. If there are still objections, it is possible to conduct a review which is the last resort and the final result of the examination of the case on review can be said to be as the inkraacht verdict.

This remedy is a right, where the right can be used and can also not be used. If the right to apply for such remedies is exercised by the defendant, the court shall accept it.

CONCLUSION

Based on the above explanation, the author draws conclusions, namely:

First, the execution of the object of dependent rights is not in accordance with the principle of proportionality, because in the UUHT there are several kinds of executions that can be carried out but always end with the execution carried out

objek dependent rights through auction with the facilitation of underhand sales by the UUHT it is hoped that the rights that the parties get are proportional, but the principle of proportion is reduced by being limited to the norms that the parties get. requires an agreement with the creditor. So that the execution of dependent rights through the sale of the object of dependent rights under the hands is not guaranteed directly by law.

Secondly, That way the legal protection that can be afforded to the debtor who gives the dependent right to the auction of the object of dependent rights below the market price is a repressive legal protection. Repressive legal protection that can be done is by the first legal remedy, namely filing a lawsuit with the District Court and a lawsuit can be filed with the State Administrative Court in the case of the implementation of the auction but the auction object is still in dispute and the KPKNL agrees with the auction of the object, if it is felt that the judgment in the first instance is obtained What is not appropriate, then the next legal remedy is a legal remedy in the civil procedural law, namely by appeal and cassation. And the last remedy is to apply for judicial review

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