

LEGAL PROTECTION AGAINST THE WINNER OF THE EXECUTION OF LIABILITY RIGHTS THIRD PARTY SUBSCRIBES

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ABSTRACT:

This research uses Normative and enriched Empirical Juridical Methods with library and field data collection techniques which include research on legal principles, legal sources, laws and regulations, literature related to problems and interviews, are analytical descriptive and analyzing data With qualitative juridical analytical techniques and analyzes based on the Theory of Legal Protection. From the results of the study conclusions: Legal protection for auction winners against third party claims in practice has been realized in reality as contained in various preventive regulations that are repressively realized in court decisions and. Dispute resolution is associated with resistance from third parties, the auction winner as the new owner is legal because besides being seen as a good faith party there is also a guarantee that the auction can only be canceled before the legal proceedings to control the auction object apply to the local court, namely the court in the form of emptying the auction object auction winner who has a good intention must be protected.

KEYWORD: Legal Protection, The Winner of The Auction

INTRODUCTION:

The provisions regarding bank financial institutions are regulated in Act Number 7 of 1992 j.o. Act Number 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law) and Act Number 23 of 1999 j.o.3 of 2004

concerning Bank Indonesia. The function of a bank can be found in article 1 number 2 of the Banking Law, which states that a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large. Based on these provisions, it can be seen that the main function of the bank is to collect and channel public funds (Usman, 2003). One of the most preferred guarantees by the bank as a creditor in a credit agreement is collateral for immovable objects in the form of land and buildings that have been certified to be bound with a guarantee of Mortgage through making a deed of collateral bondage made by and in front of a notary public (Harun, 2010).

All court decisions have executive power, that is, the power to be enforced by force by state officials. A court decision is said to have executorial power because of the head of the verdict, which reads: "For the sake of Justice based on the One Godhead". However, not all court decisions in implementing them are carried out by force by state officials, but only court decisions are. The dictum has the character of "condemnatoir", while the decision whose dictum is declaratory and constitutive does not require the means to carry it out (Nugroho, 2009).

The arrangement regarding the execution of the Mortgage, which is regulated in article 20 paragraph (1) letter a of the UUHT, states that if the debtor fails to promise, then the first Mortgage holder will sell the object of the Mortgage Rights as referred to in article 6 of the

UUHT. While the juridical text of article 6 of the UUHT, the substance is that if the debtor is injured, the first Mortgage holder has the right to sell the object of the Mortgage on his own power through a public auction and take the repayment from the sale proceeds.

The provisions stipulated in Article 6 and Article 20 paragraph (1) of the UUHT are actually not only in line with and sharpening what has been regulated in Article 11 paragraph (2) or what has been previously stipulated in Article 1178 paragraph (2) of the Civil Code. regarding *beding van eigenmachtige verkoop in mortgages / credietverband* institutions, but it also means that Article 6 and Article 20 paragraph (1) letter a of the UUHT above, require the creditor's authority to sell the object of the Mortgage on his own power, it can be interpreted not only because it was agreed but the right or authority of the creditor rests with him because indeed the law itself also grants him or stipulates it so (*ex lege*).

From the provisions of the UUHT, basically the execution of the guarantee is carried out through a public auction mechanism, namely the Office of State Wealth and Auction Services (hereinafter referred to as "KPKNL"), which is regulated based on the Minister of Finance Regulation Number 93 / PMK.06 / 2010 in conjunction with the Minister of Finance Regulation Number 106 / PMK.06/2013 concerning Guidelines for Auction Implementation and most recently amended by Regulation of the Minister of Finance Number 27 / PMK.06 / 2016 concerning Guidelines for Auction Implementation dated 19 February 2016 (hereinafter referred to as "PMK.27").

In accordance with Article 1 point 1, it is stated that an auction is a sale of goods open to the public with a written and / or oral price offering which is increasing or decreasing to reach the highest price which is preceded by

with the auction announcement. Meanwhile, article 1 point 4 states that the Execution Auction is an auction to carry out a court decision or order, other documents equivalent to it, and / or to implement the provisions of laws and regulations.

If the Execution Auction of collateral goes well and the auction results are submitted by KPKNL to the creditor to pay off the debtor's obligations and the auction winner can enjoy the collateral that has been purchased based on the execution auction, then what is described in the explanation of article 20 paragraph 1 provides legal certainty for the auction. execution of mortgage rights.

If there is a potential objection / rejection or even a lawsuit from the executed / debtor, the Bank will seek alternatives to the auction with execution fiat from the Head of the District Court. The District Court will deliver an *aanmaning* (warning letter) to the debtor so that the debtor will come before the specified day and carry out his obligations to the bank as the creditor. If the *aanmaning* is not obeyed by the debtor, the district court will seize the execution of the collateral object of the debtor's Mortgage.

The types of legal remedies that can be filed can be differentiated based on the time of submission. If the remedy is filed while the execution procedure is still running, then the legal remedy that can be filed is *verzet* against execution. *Verzet* against this execution can be submitted by the debtor / guarantor, which is called a *verzet* by the party concerned, or submitted by a third party called a *verzet* by a third party or *derden verzet*.

Elucidation of Article 20 UUHT Paragraph (1) The provisions of this paragraph are a manifestation of the facilities provided by this law for creditors holding Mortgage Rights in the event that execution must be carried out. In principle, every execution must be carried out

through a public auction, because in this way it is hoped that the highest price can be obtained for the object of the Mortgage. Creditors have the right to take guaranteed receivables from the sale of the object of the Mortgage. In the event that the proceeds from the sale are greater than the receivables which is a maximum of the value of the dependents, the remainder becomes the right of the guarantor of the Mortgage. Paragraph (2) In the event that the sale through a public auction is not expected to result in the highest price, deviating from the principle as referred to in paragraph (1) is given the possibility of carrying out the execution through an underhand sale, provided that this is agreed upon by the giver and the insurance rights holder, and the conditions specified in paragraph (3) are met. This possibility is intended to accelerate the sale of Mortgage objects with the highest selling price. Paragraph (3) The requirements set out in this paragraph are intended to protect interested parties, for example the second, third Mortgage holder and other creditors of the Insurer.

Referring to the existence of a third party lawsuit in the auction for the execution of the Mortgage, this thesis will present several examples of cases contained in the Court's decision, such as:
Supreme Court Decision Number 1866 K / Pdt / 2015 between Ernawati as the Original Owner of the land, with Ahmad Khubi Asyari as the Giver of the Mortgage with PT Bank Mega as the Mortgage Holder, where the Plaintiff owns a residential plot of land, with Certificate of Ownership Number 199, GS Number 213 Koto Tangah / 2007, dated 3 September 2007, with an area of 275 m² (two hundred and seventy five square meters) hereinafter referred to as the Object of the Dispute, began in January 2012 with the introduction of the Plaintiff with his friend Elvita, who introduced the Plaintiff to a Bank Mega Officer (Defendant 1), then

Defendant 1 suggested to Elvita that the credit loan application could be granted on condition that it used another person's name with the object of the dispute as collateral.

Elvita was willing to find someone on behalf of the Applicant for a Credit Loan to the Defendant-1, who finally met Ahmad Khubi Asyhari), then the Defendant-3 (and was willing to use his name as on behalf of the Applicant for a Credit Loan to the Defendant-1 for IDR 250,000,000.00 (two hundred and fifty million rupiahs), on condition that they receive a commission of Rp.5,000,000.00 (five million rupiah);

In addition to the agreement between the Plaintiff and Defendant 3 before the application for credit borrowing was realized by Defendant-1, where Defendant-3 was not given the right to transfer or reverse the name of the Property Rights Certificate Number 199 in the name of the Ernawati Rightsholder to Defendant-3, apparently without the knowledge of the Plaintiff as Holders of land and building rights, the object of the dispute as collateral for credit to the Defendant-1 has become the property or on behalf of the Rightsholder of the Defendant 3. Finally, bad credit occurs and the object is executed by the Mortgage Holder.

In another case, namely Case No.16 / Pdt.G / 2016 / PN.BKL which was carried out by the plaintiff against the defendants where the incident began with the plaintiff borrowing money from Defendant I by providing collateral in the form of 1 certificate of land then without the knowledge of the Defendant Defendant 1 committed transfer the name of the certificate and put it as collateral to the bank (Defendant 3). Over time, bad credit occurred so that Defendant 3 decided that the debtor (Defendant 1) could not pay the debt installments according to the predetermined maturity and conducted an execution auction at KPKNL Pamekasan and based on the Minutes of Auction Number:

018/2015 dated 02-25-2015 the auction winner is Sulaiman, SE (Defendant 4). For the actions of Defendant 1 to reverse the name of the object of this dispute based on decision No. 05 / Pid.B / 2016 / PN.Bkl on April 13, 2016 the Bangkalan District Court has been convicted of the 1st defendant and the Bangkalan District Court's verdict has permanent legal force with imprisonment of 2 years The Plaintiff's claim is to grant the Plaintiff's claim in its entirety, stating that the disputed land law is the property of the Plaintiffs and the control of the disputed land by the Plaintiffs is valid and declares all forms of legal binding made by the Defendants to the certificate of ownership No 446, Kelurahan Pejagan measuring letter GS dated 24-12-1975 No. 370 / GS / 75 covering an area of 140 M2 in the name of SUPRAPTI. Against this lawsuit, the Court rejected all claims.

If viewed objectively from the above case, it can be said that there are 2 interrelated legal relationships, namely the auction winner who buys in a legal way and procedure with the Mortgage Holder on the one hand and on the other is a legal relationship in the form of Unlawful Actions between the original owner who lost his property rights in an illegal way with the guarantor of the Mortgage

In Law No. 4 of 1996 concerning Mortgage Rights, Article 6, which states that if the debtor is defaulted, the first Mortgage holder has the right to sell the object of the Mortgage on his own power through a public auction and to take the payment of his debt from the sale proceeds. For this reason, the first Mortgage Holder has the right to execute the guarantee through a public auction.

The provisions for auction implementation in the Minister of Finance Regulation Number 27 / PMK.06 / 2016 in Article 4 state that auctions that have been conducted in accordance with the applicable

provisions cannot be canceled. If there is a lawsuit from a third party in accordance with Article 14 paragraph 1 (one) states that if there is a lawsuit prior to the auction, then the execution auction according to Article 6 of the UUHT cannot be carried out. This indicates that the lawsuit from the Third Party after the auction is held, the claim cannot be accepted. This is in accordance with Article 4 of the Minister of Finance Regulation Number 27 / PMK.06 / 2016, which states that auctions that have been carried out in accordance with applicable regulations cannot be canceled. However, based on empirical data, there are still claims from third parties where the inconsistency with Article 4 of the Minister of Finance Regulation Number 27 / PMK.06 / 2016, and the auction winner must be protected.

FRAMEWORK:

In this thesis, to analyze the formulation of the above problems using the theory of Legal Protection and Legal Remedies. The theory of legal protection according to Philipus M. Hadjon (2016) is because this theory is very relevant where "legal protection for the people in the Dutch language legal literature is known as *rechtsbescherming van de burgers*".

According to Philipus M. Hadjon, there are two kinds of legal protection for the Indonesian people, namely, preventive and protective legal protection repressive laws. In preventive legal protection, the people are given the opportunity to submit objections (*inspraak*) or their opinions before a government decision takes a definitive form. Thus, preventive legal protection aims to prevent disputes. On the other hand, repressive legal protection aims to resolve disputes.

In Article 6 of the UUHT gives authority to the first Mortgage holder to sell the object of the Mortgage on his own power through a public

auction and to take the payment of the debt from the sale proceeds, if the debtor is in default. This is called the mortgage execution parate. The first Mortgage Holder does not need to ask for the appointment of the Chairman of the local District Court to carry out the execution of the Mortgage which is used as collateral.

The judge's decision made the party dissatisfied, so legal action was taken. Legal remedies are efforts provided by law to a person or legal entity for certain matters to oppose the judge's decision as a place for parties who are dissatisfied with a judge's decision that is deemed not in accordance with what is desired, does not fulfill a sense of justice, because the judge also a human being who can make mistakes / mistakes so that the wrong decision or side with one of the parties.

According to Mrs. Retno Wulan in the Civil Law Procedure book stated that ordinary legal remedies were resistance to vesrtek decisions, appeals, and cassations. In principle, this legal remedy delays execution. The exception is, if the decision is passed on the condition that it can be implemented first (uitvoerbaar bij voorraad ex. Article 180 (1) H.I.R), then even if the usual effort is submitted, the execution will continue.

In contrast to ordinary legal remedies, with regard to extraordinary legal remedies, in principle, they do not postpone the execution, which includes extraordinary legal remedies, is the resistance of a third party to the confiscation of executives and a review. What is meant by a third party is a person who was not originally a party to the case concerned, but because he feels it is an interested party, for example he feels that the object in dispute or being confiscated is his, not the defendant's. The theory of legal protection is used to analyze the first problem formulation while legal measures are used to analyze the second problem formulation.

The definition of an agreement or contract according to Rosa Agustina is different from an engagement. Agreement is one source of the engagement. Another source of engagement is law. The difference between an agreement that comes from an agreement and the law lies in the legal consequences of the legal relationship the. The legal consequences of an agreement born from the agreement are desired by the parties because the agreement is made on the basis of an agreement between the parties, while the legal consequences of an agreement born from the law are determined by law, the party who commits the act may not want the legal consequences.

Based on Article 1238 of the Civil Code, the debtor is in a state of negligence and therefore defaults, if he has been sentenced (admonished), still does not fulfill his obligations properly or if he is for the sake of his own engagement, must be considered negligent after the specified time has passed. Furthermore, the term Agreement in Dutch is called (Overeenkomst) and the contract law is (Overeenkomstenrecht). With regard to the legal term of the agreement as part or the content of the engagement law, there are several terms / opinions, in Book III of the Civil Code, Subekti uses the term contract or agreement. However, in the book Principles of Civil Law, the Subekti of the agreement issues an agreement between the two people who make it, in the form of an agreement that can be in the form of a series of words that contain promises or abilities that are pronounced even if written".

Finally, after describing the opinions of the experts as mentioned above, the meaning of this agreement can also be found in Article 1313 of the Civil Code which states that: "An agreement is an act whereby one or more people bind themselves to one or more people."

Agreements by their nature are divided into two types, namely material agreements

(zakelijk overeenkomst) and obligatory agreements. A material agreement is an agreement that is generated by material rights due to an agreement of two or more parties that bind themselves to each other and are intended to cause, transfer, change or terminate the material rights. An agreement of this nature is an agreement to impose guarantees and transfer of property rights, while an obligatory agreement is an agreement that creates obligations from the parties. Besides that, there are also types of agreements by their nature, namely the main agreement and the accessory agreement. The principal agreement is the main agreement, namely the credit agreement, both to individuals and through banking institutions. Whereas the accessory agreement is an additional agreement, such as the fiduciary imposition / mortgage agreement.

Material rights that provide guarantees, namely Pawn, Mortgage, Mortgage and Fiduciary Rights. The birth of material rights that provide guarantees is different, this depends on the type of object that is burdened by the guarantee institution. In a pledge guarantee the birth of material rights, namely when the object of the pledge is handed over to the recipient of the pledge or party third as stipulated in Article 1152 paragraph 1 of the Criminal Code.

In the case of the implementation of the transfer of land rights, the parties must do so in front of the competent official, in this case the Official for Making Land Deeds. This provision is reinforced again in the Government Regulation on Land Registration, which states that the transfer of rights to land and ownership rights to apartment units through sale and purchase, exchange, grants, company data entry and other legal actions of transfer of rights, except the transfer of rights through auction can only be registered if proven by deeds made by the Authorized Land Deed Making Official according

to the provisions of the prevailing laws and regulations (Agustina, 2012).

RESEARCH METHODS:

This research method is a normative juridical method which is strengthened by empirical juridical, namely by emphasizing secondary data by studying and examining positive legal principles derived from literature data and legal comparisons, as well as elements or factors related to the object of research as part of the field research. The focus of the research is on literature research, which means more research and review of secondary data as a normative juridical approach because the problems studied revolve around the relationship between regulations and their application in society.

Research specifications can be indicated by the characteristics of legal research that are more dominant descriptive, namely describing systematically and completely the material or material in the form of data and / or information derived from cases, literature studies, and field research.

The method of analysis, namely research by describing the conditions and facts about the object of research. These legal facts are analyzed by various laws, theories and doctrines or expert opinions that aim to find answers to problems to be discussed further. The data obtained from this research is in the form of data from the results of literature studies and document studies on primary, secondary, and tertiary legal materials which are analyzed using qualitative normative or juridical qualitative. This is closely related to the type of research categorized as normative legal research with a more abstract-theoretical approach, meaning that all data are systematically and completely compiled and then analyzed in the form of descriptions.

The research location is focused on the library of the Jayabaya Faculty of Law Jakarta, Jalan Pulomas Selatan Kav. 23 RT 004/09, Kayu Putih Pulo Gadung East Jakarta. In principle, although this research has similarities with the aforementioned research, namely the "auction and auction winner for the execution of mortgage rights" which is the object of research, what distinguishes it from previous research is the location of the research and the formulation of the problem as well as the case study raised in the form of a Court decision which different too. Based on the foregoing, research with this theme has never been carried out, therefore the authors state that this writing is original. If there are similarities in this research, it is hoped that they can complement each other so as to increase knowledge, especially Civil Law.

RESULTS AND DISCUSSION:

A. Legal Protection for Auction Winner of Mortgage Execution Against Third Party Lawsuit:

Law essentially functions to protect human interests because human interests are demands of individuals or groups that are expected to be fulfilled. According to Sudikno Mertokusumo, creditors and debtors in carrying out a legal relationship in the civil sector need protection of their interests and the law is in charge of protecting these interests by regulating rights and obligations and striving to create legal certainty as well as guaranteeing their existence must be able to provide protection for the interests of creditors. namely by giving preference (priority) to creditors holding guarantee rights.

The guarantee law, especially the Mortgage Institution, provides convenience and flexibility for creditors in collecting their receivables, especially from the sale of the guarantee object. The convenience provided to the creditor is found in the guarantee institution

of the mortgage right as implied in the General Explanation number 9 of the UUHT, which states that one of the characteristics of the mortgage right is easy and certain execution if the debtor fails to promise.

General explanation of number 9 UUHT, which states that one of the characteristics of the mortgage right is easy and certain execution if the debtor fails to promise. As for the general explanation of number 9 UUHT, reads: One of the characteristics of a strong mortgage is easy and sure in the implementation of the execution, if the debtor fails to promise. Although in general the provisions regarding execution have been regulated in the applicable Civil Procedure Law, it is deemed necessary to include specifically provisions regarding the execution of Mortgage Rights in this Law, namely that which regulates parate executie institutions as referred to in Article 224 of the Updated Indonesian Reglemen (Het Herziene Indonesisch Reglement) and Article 258 of the Reglemen on Legal Procedures for Regions Outside Java and Madura (Reglement tot Regeling van het Rechtswezen in de

In order for the implementation of the sale to be carried out honestly, the UUHT requires that the sale be made through a public auction through procedures according to the legal provisions as referred to in Article 20 paragraph (1) of the UUHT, namely:

- a. Execution based on a promise to sell the object of the Mortgage on one's own power, as in Article 6 UUHT (parate execution).
- b. Execution based on the executorial title contained in the Certificate of Mortgage, as in Article 14 paragraph (2) of the UUHT

From the aforementioned settlement, it shows that the Law has granted special rights (privileges) to holders of guarantee rights, especially the existence of creditors' rights over the parate executie or direct execution of pledged goods by selling the collateral object of

the debtor by auction without prior previously obtained approval from the holder of the Mortgage and the determination of the Head of the District Court. However, in the regulation, the provisions mentioned above, must first be agreed upon in the APHT as referred to in Article 11 paragraph (2) letter e of the UUHT.

If viewed from the provisions of Article 6 of the UUHT (parate execution), it is clear that the embodiment of the principle of legal protection, especially for creditors, is that there is an ease, simplification and acceleration of taking repayments for creditors when the debtor is default, namely the sale of the object of the Insurance Rights only through a public auction, without having to ask for fiat the Chairman of the District Court. This convenience mainly indicates time efficiency compared to the execution of court decisions that have permanent legal force. This is because the execution procedure is through the formalities of procedural law, the process that is passed takes a long time and is complicated and requires a lot of money, which in the end is that the return in full from the sale of the object of collateral with the expenses in the execution process is often felt to be imbalanced.

Parate execution is an execution carried out by the holder of the collateral (pawn and mortgage) independently without any assistance or interference. *Gewesten Buiten Java en Madura*). In connection with that the Mortgage certificate, which functions as a proof of the existence of Mortgage Rights, is affixed with the words "For Justice Based on Almighty Godhead", to provide the same executorial power as a court decision that has legal force. permanent. In addition, the mortgage certificate is stated as a substitute for the *Hypotheek grosse act*, which for the execution of the *Hypotheek on land* is stipulated as a condition in implementing the provisions of the second articles of the above *Reglemen* So that there is a

unity of understanding and certainty regarding the use of these provisions, it is further emphasized in this Law, that as long as there is no statutory regulation that regulates it, the regulations regarding the execution of *Hypotheek* which are regulated in the two Regulations, apply to the execution of Mortgage Rights. The hands of the District Court, but only through the assistance of the State Auction Office alone".

According to Pitlo, *Parate Executie* is a sale that is outside the jurisdiction of procedure and does not need confiscation, does not involve bailiffs, everything is done like a person who sells his own goods in public.

The principle underlying the execution parate as a means to accelerate the repayment of creditors' receivables is the principle of legal protection for the holder of the first guarantee right. The embodiment of the principle of legal protection is reflected in the execution of parate execution, the convenience, fast time and low cost of recovering creditors' receivables, compared to execution based on the executorial title, in connection with the procedure for selling the object of collateral right on one's own power, without preempting collateral and seized execution and without court fiat. Thus, it is appropriate if the bank as the creditor uses the rights to the execution parate as a means to accelerate the repayment of its receivables, even the execution parate on the mortgage has a very important role so that some consider the execution parate as one of the main pillars / mortgage building. The execution parate should be perceived as a deterrent, its role can be effective and efficient in order to accelerate the repayment of receivables, which is provided by legal instruments for creditors, when the debtor has been declared in default so that it can be relied on to help support the era of economic growth today.

The right of execution through the parate executie is confirmed in an agreement by the parties as outlined in the APHT. The promise to sell itself is contained in the provisions of Article 11 paragraph (2) e UUHT.

The authority to sell the debtor's own collateral in the Mortgage Rights arises from the agreement made between the creditor and the debtor as outlined in the APHT. The promise stated in the APHT, if it has been registered, will give rise to material rights and give authority to creditors who hold Mortgage Rights to execute or sell debtors' collateral for settlement of their debts. The material guarantee rights that exist in the Mortgage make it easy for creditors to carry out execution through a parate executie institution.

From several formulations of the definition of execution parate, it can be seen that not only the judge's decision can be executed, but there are provisions that give the creditor the right to carry out the execution himself without court intermediary if the debtor defaults. This means that if the debtor is in default, the creditor can directly sell the goods property of the debtor which is used as collateral with the KPKNL intermediary. This sale is made without going through trial.

Based on the provisions in Article 6 of the UUHT, it also contains the character of the parate of execution and selling on its own power or eigenmachtige verkoop (the right to sale), however its application refers to the following explanation. The execution of the execution parate is subject to Article 224 HIR, Article 258 RBg. If the power to sell itself is not agreed, the auction sale (executoriale verkoop) must be requested from the head of the district court and the request is based on reasons of breach of contract or default.

The parate executie arrangement in the UUHT is confused, this can be seen when it is connected between Article 6 of the UUHT which

states that its implementation is through a public auction, while in the General Explanation number 9 UUHT states that the parate executie is based on Article 224 HIR. Arrangements for execution according to Article 224 HIR are executions aimed at mortgage grosse acte and debt acknowledgment grosse acte, in which the two grosse actes are intended to have executorial rights which have permanent legal force, so the execution is subject to and obedient as a court decision, which must be carried out by order of the chairman of the district court.

Based on the regulations regarding the execution parate implementation process along with the implementing regulations as well as the opinion of several legal experts, it can be understood if the debtor is in default, it turns out that the implementation of the right of the first mortgage holder creditor to sell on his own power (parate execution) whose sales are through auction, the process for settling the receivables is faster. Creditors are compared with the implementation using the executorial title (Court Decision or Certificate of Mortgage). These include:

1. Ease of the execution procedure in the means of getting the money back, compared to the process of executing a Certificate of Mortgage
2. The time is fast at the same time to get the money back, compared to the execution process of a Certificate of Mortgage
3. Low cost and simple means of getting the money back, compared to the process of executing a certificate of mortgage
4. Protection of the rights of third parties and / or bankruptcy debtors
5. Certainty in the sale of collateral by means of an auction
6. Exemptions from the execution of the formalities of civil procedural law
7. Its implementation takes precedence over selling banda guarantees based on aka with the title executorial; and

8. Selling collateral in a simple manner

B. Legal Remedies for Auction Winners for Rights Execution Coverage Against Third Party Lawsuit:

Buyers of auction winners who have good faith will be protected by law based on their position of power in good faith based on the articles in the Civil Code mentioned above.

Based on the elucidation of Article 6 and Article 20 paragraph (1) of the UUHT, it can be understood that the first creditor / mortgage holder has the right to take the guaranteed payment of receivables from the sale of an auction of the object of the Mortgage prior to the other creditors. In the event that the proceeds from the auction sale are greater than the receivables which is up to the maximum value of the insurance, the remainder is a right and must be submitted to the guarantor of the Mortgage. Even in the provisions of Article 21 of the UUHT, it is stated "If the guarantor of the Mortgage is declared bankrupt, the holder of the Mortgage is still authorized to exercise all the rights he has obtained according to the provisions of this law". This provision is intended to further consolidate the priority position of the holder of the Mortgage by excluding the effect of the bankruptcy of the guarantor of the Insurance Right against the object of the Mortgage.

Referring to article 27 PMK.27, the auction official can cancel the auction, if there is a request from the creditor as the seller or based on a ruling or decision from a judicial institution. In addition, apart from the administrative requirements that have not been fulfilled by the creditor, the auction official can also cancel the auction, if there is a lawsuit on the plan to carry out the auction for the execution of article 6 of the UUHT from a party other than the debtor / executed, the husband or wife of the debtor / executed related to ownership. auction object.

Regarding the aforementioned conditions, the bank as the holder of the mortgage rights also has a right or to defend its rights by providing actual legal facts to the judge, that the process of extending credit to debtors has been carried out in accordance with the basic principles of granting, signing of credit agreements and guaranteeing agreements. based on the legality document of the object of guarantee in accordance with the applicable provisions.

If analyzed, the judge's consideration for rejecting the appeal of the Cassation Applicant is based on the facts of the trial, namely:

1. The legal subjects in granting credit are BANKS and DEBTORS based on the Credit Agreement so that the PLAUTOR / Appellant / Applicant does not have any legal relationship with the BANK. Thus the element of article 1338 paragraph 1 of the Civil Code which reads "All agreements made in accordance with the law shall be valid as law for those who Efforts made by creditors are in accordance with the meaning contained in Article 1865 of the Civil Code, which reads: "Any person who argues that he has a right, or in order to confirm his or her own rights or to deny someone else's rights, points to an incident, is obliged to prove the existence of rights or events that ". make it "unfulfilled.
2. The object of the Case has been transferred and changed into the name of the Debtor based on the Sale and Purchase Deed, which is clearly and clearly recorded in the name of the DEBTOR, so that the Debtor is the legal owner. Therefore, the Plaintiff / Appellant / Applicant does not have the right to cancel the auction that the Bank has submitted to KPKNL.

From the description of the case above, the bank as the creditor has exercised its rights, namely taking efforts to settle bad credit through the KPKNL in accordance with the provisions in article 6 in conjunction with article 20 (1) letter a of the UUHT which is a

manifestation of the preferred position held by the holder of the mortgage right.

Likewise, the KPKNL in principle has exercised its power over the application letter from creditors in accordance with the provisions of PMK.27 article 13, namely: "The head of the KPKNL or class II auction official may not refuse the auction application submitted to him as long as the tender requirements documents are complete and have met the formal legality of the auction subject and object"

In the case of Case No.16 / Pdt.G / 2016 / PN.BKL mentioned above, it can be said that chronologically there were 3 different legal events. First is the debt and credit agreement between Plaintiff 4 (RINY BUDIARTI as party 1) and Defendant 1 (H. NUR HIDAYAT as party 2) witnessed by Plaintiff 2 (BAMBANG BUDIARTO / Plaintiff 4's brother) and RUDY SUSANTO (from 2nd party) then Defendant 1 has reversed the name of the title certificate No. 446, Ex. Pejagan, GS measuring letter dated 24-12-1975 No. 370 / GS / 75 covering an area of 140 M2 in the name of SUPRAPTI became in the name of Defendant 1, which resulted in Criminal Case No. 05 / Pid.B / 2016 / PN.Bkl. who has permanent legal force and is binding with Defendant H. Nur Hidayat (Defendant 1).

Second, the legal incident between H. Nur Hidayat (Defendant 1) and PT. Bank Mega, Tbk (Defendant 3) based on the First Amendment (First) of the Mega UKM Credit Agreement Number: 150 / PK / RO-SBY / 11 dated 06-10-2011 signed by and between H. Nur Hidayat, written also H Nur Hidayat (Defendant 1) and PT. Bank Mega, Tbk (Defendant 3) before a notary (Defendant 2) in Bangkalan with Legalization number 43 / Leg / X / 2011 dated October 6, 2011 Juncto Credit Agreement for Mega Small and Medium Enterprises ("Mega UKM") Number: 150 / PK / RO-SBY / 11 dated 19-05-2011 which was

signed by and between H. Nur Hidayat (Defendant 1) and PT. Bank Mega, Tbk (Defendant 3) as collateral for the repayment of Defendant I's debt to Defendant 3, so the above guarantees have been burdened with Mortgage by the Defendant 3 Mortgage Certificate Rank I (First) Number: 1115/2011 dated 17-11-2011 issued by the Bangkalan Regency Land Office Juncto Deed of Granting Mortgage Number: 255/2011 dated 7 November 2011 Juncto Power of Attorney to Impose Mortgage Number: 224/2011 dated 6-10-2011, both of which were made before the Notary / Land Deed Making Official (PPAT) of Bangkalan Regency (Defendant 2) which then arose a problem, namely the default / breach of contract of the Debtor (Defendant1) having first gone through the warning / warning stage to Debtor (Defendant 1) through:

1. Letter Number: 21 / BKL-COLL / SP-I / 7/2012, dated July 17, 2012, regarding Warning Letter I;
2. Letter Number: 40 / BKL-COLL / SP-II / 7/2012, dated July 23, 2012, regarding Warning Letter II;
3. Letter Number: 73 / BKL-COLL / SP-III / 9/2012, dated September 25, 2012, regarding Warning Letter III;

The third and final is the auction process in which the auction winner (Defendant 4) obtained the land object of the dispute based on the auction process conducted by the Ministry of Finance of the Republic of Indonesia, Directorate General of State Assets, Regional Office of DJKN, East Java, KPKNL Pamekasan, the author believes that:

- a. The resistance that was carried out by a third party against the execution auction had no clear legal basis, because it was carried out after the auction was held. In addition, KPKNL was not included as a co-defendant Party.
- b. The lawsuit must be based on the existence of preliminary supporting evidence (prima

faciecase). The lawsuit filed by the Plaintiffs has been wrongly addressed (Error In Persona / Error In Subjectum), because it attracted PT. Bank Mega, Tbk (Defendant 3) and the winner of the Auction (Defendant 4) who have absolutely no legal relationship with the Plaintiffs. Thus the Plaintiffs have mistakenly drawn the auction winner and the Bank (Mortgage holder) as the Defendant in this dispute, because the absolute requirement to sue someone before the Court is if there is a legal dispute (legal dispute) between the two parties and it can only be legally justified when a right arises or has been violated by another party;

c. Legally, the position of the bank as the creditor of the Mortgage Rights holder is strong, because all collateral documents, namely the Sale and Purchase Deed (AJB), Power of Attorney to Charge Mortgage Rights (SKMHT) and Deed of Granting Mortgage Rights (APHT) are made by authorized officials and are based on law, the document is an authentic deed having perfect evidentiary power before a judge.

d. The process of acquiring property rights by the debtor up to the imposition of legal guarantees has provided a strong legal basis for the bank to obtain its rights, namely the settlement of debtor debts from the sale of guarantees through public auctions in accordance with applicable regulations

e. The third party acknowledges that the sale and purchase transaction of land and buildings with the buyer (debtor) is a fabrication / does not actually occur, is a bilateral problem between the debtor and the third party. Banks as parties with good faith in accordance with the law receive legal protection against the resistance of parties who try to obstruct the execution. Thus, referring to the case example above, there is a lawsuit from a third party that has no legal relationship with the bank and by carrying out the auction, it shows that there is

legal certainty where the auction winner as a party in good faith has been protected because the entire series of processes has been passed with correct.

CONCLUSION:

In essence, civil issues and civil court cases emphasize and aim to seek formal truth. The formal truth here is proven by the existence of a valid Deed of Sale and Purchase between the Plaintiff and Defendant 1 so that the Plaintiff is not the owner of the object of execution except for other reasons where the Plaintiff argues that there was fraud with the issuance of a criminal decision on Criminal Case No. 05 / Pid.B / 2016 / PN.Bkl. The argument was submitted before the auction was carried out. The arguments put forward by the Plaintiff against this background certainly need further proof because article 1918 of the Civil Code explicitly stipulates that a Judge's Decision in a Criminal Case can be accepted as evidence in a civil case concerning a case that has been committed by the Defendant, unless it can be proven otherwise, then article 1920 of the Civil Code which regulates judges' decisions regarding the legal position of persons, in which the verdict is passed on to a person who according to law has the power to dispute it, is applicable to each person.

So that a criminal decision can only be used as evidence in a civil case and does not have an absolute binding character for the panel of judges examining the case and the parties who according to the law have the power to dispute it, it is the right of every person or parties litigating in a civil case. As a result, if the Plaintiffs linked it to the Criminal Decision, it would need to be proven again and reconsidered by the Panel of Judges Examining the civil case and the parties in the case were given legal and statutory rights to be able to prove otherwise.

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