



Legal Protection of Debtor's Object Which is Auctioned by Bank in Pekanbaru City According to Indonesia Legal System

Gusrial; Azmi Fendri; Yasniwati

Master of Notary Program, Faculty of Law, Andalas University, Padang, Indonesia

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Abstract

Economic development is prioritized as part of national development, is one of the efforts to realize the welfare of the people that is just and prosperous based on Pancasila and the 1945 Constitution. In order to maintain the sustainability of the development, the actors include both the government and the community as individuals. and legal entities, there is also an increased need for the availability of funds, which are mostly obtained through credit activities. Credit is one of the important efforts for banks to provide benefits, but various problems with lending must be faced by banks. Credit is the granting of the use of a money or goods to another person at a certain time with a guarantee or without collateral, by providing services or interest or without interest. According to Law Number 10 of 1998, the term credit is a provision of money or bills that can be likened to it, based on a loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest. "The term credit comes from the Latin language that is credere which means trust, or credo which means I believe, meaning that the trust of the creditor (granting a loan) that the debtor (loan recipient) will return the loan along with the interest in accordance with the agreement of both parties. Lately, there has been a lot of criticism from the public about the performance of national banking by financial practitioners or government institutions. This is due to the existence of problem loans which are commonly called Non Performing Loans (NPL) with a significant amount in a number of these banks.

Keywords: *Legal Protection; Auction; Bank*

Introduction

Execution auction according to Elucidation of Article 41 of the Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration, including auctioning of Court Decisions, Mortgage Rights, seizure of seizure, Attorney or Investigator seizure and Committee seizure Affairs of State Receivables. Whereas a voluntary auction is an auction on the initiative of the party entitled to the object to be auctioned. Unlike the case with auction execution, where the transfer of rights is carried out by creditors. In the execution auction, the institution authorized to

implement it is the State Auction Office while for voluntary auctions can be carried out by the State Auction Office or Private Auction Hall.

In the implementation of the auction, especially the auction execution, the potential for a lawsuit is very high. The total number of lawsuits submitted to the DJKN / KPKNL (based on the State Wealth Media Bulletin Edition 14 of Year IV / 2013) is 2,458 and 1,500 more than the lawsuit from the auction of the execution of Article 6 Mortgage Rights. This is because in the execution auction, most goods are auctioned without volunteerism from the owner of the goods and often many interested parties of the goods do not want the auction, so in practice there are parties who feel their interests are disturbed by the auction. Parties who feel their interests are disturbed in relation to the auction of an auction object, usually will file a lawsuit in court, to fight for their rights related to the object being auctioned, so that there are many cases both civil and state administration related to the auction. The purpose of the land rights auction is for the auction buyer to legally control and use the land. As it is known that land is an object that has high economic value. Existing regulations related to the auction are sometimes unable to accommodate cases that occur in the community. Transfers of rights by auction can only be registered if proven by quotations from the minutes of auction made by the Bidding Officer both in the execution auction and the voluntary auction.

1. Regulation of the Minister of Finance No. 106 / PMK.06 / 2013 concerning Amendment to the Regulation of the Minister of Finance No. 93 / PMK / 06/2010 concerning Bidding Implementation Guidelines, which states that: "Auction is the sale of goods open to the public by offering a written price. and or verbally increasing or decreasing to reach the highest price which is preceded by an auction announcement. "
2. Law Number 19 of 2000 concerning Amendment to Law Number 19 of 1997 concerning Tax Collection by Forced Letter Article 1 sub 17, states that: "Auction is the sale of goods in public by means of an oral and or written price offer. through the business of gathering prospective buyers or interested people.¹

One effort to realize prosperity for the community is the existence of national development in the form of economic development. The efforts made by the public are doing business with financial support and the availability of funds from banks in the form of credit. In Article 1 number 11 of the Law of the Republic of Indonesia Number 7 of 1992 as amended by Act Number 10 of 1998 concerning Banking states that credit is the provision of money or claims that can be equalized based on an agreement or agreement between the bank and other parties requires the borrower to pay off the debt after a certain period of time with interest. Lending is a loan agreement between the bank and the debtor, which is emphasized on the agreement of the parties based on the principle of freedom of contract but in practice lending often runs the risk of credit default.

Pekanbaru City as a research location where the authors describe it as a city that is relatively quite developed in terms of the economy to have an impact on the banking world as described in the data related to the volume of credit, especially in the city of Pekanbaru. But in terms of credit financing facilities provided by banks, not all went well. This means that there are a number of bad credit facilities, due to bad debts based on the provisions of the mortgage right, the object can be executed through public auctions.

The mortgage right has an executorial title that has the same legal force as a court decision. The government established an institution, namely the State Receivables and Auction Service Office

¹ Nirmala Sari, *Perlindungan Hukum Terhadap Pembeli Lelang Dalam Proses Pelaksanaan Lelang Eksekusi Hak Tanggungan*, Tesis, Pascasarjana Universitas Udayana, Denpasar, 2015, pg.106.

(hereinafter abbreviated KP2LN) as a means of auction sales. So that the auction can be an efficient means of selling to get repayments for creditors. The mortgage right has an executorial title that has the same legal force as a court decision. The government established an institution, namely the State Receivables and Auction Service Office (hereinafter abbreviated KP2LN) as a means of auction sales. So that the auction can be an efficient means of selling to get repayments for creditors. But in reality, there are many obstacles and problems that arise in the implementation, including the auction winner in good faith who cannot obtain and enjoy the goods he has won. And settlement of obligations from the auction process experienced by debtors that are not in accordance with the law, such as excess debt difference that should be the debtor's rights. However, in conducting auctions at the KPKNL facility it does not always provide benefits to the debtor, in fact it is not uncommon for debtors to always feel disadvantaged by the auction. often the value offered by the bank is below market price. Based on this background, the authors are interested in conducting further research.

Research Method

The approach taken is Empirical Juridical Approach, Empirical Juridical Approach is an approach undertaken to analyze the extent to which a law and regulation is effective so that the scope of research is an inventory of positive law which is a preliminary activity, here the researcher does not only reveal the negative aspects of an but also positive aspects so that a solution can be given. In this approach actually how to find law in action from a regulation so that the real behavior can be observed as a result of the implementation of positive law and is evidence of whether or not it has behaved in accordance with normative legal provisions (codification or Law).²

Discussion

1. Factors That Caused the Occurrence of Auction Against Mortgage Objects in Pekanbaru City.

Factors that Caused is in the event that a decision or approval for credit approval prior to restructuring is carried out by the party having the highest authority in accordance with the bank's articles of association, the authority to approve credit restructuring is carried out by officials at the level of officials who decide or approve credit prior to restructuring. this is the order adjusted to the chances of success, namely Inventory of problems that cause credit problems as following :

- a. Establish billing priorities, namely
- b. The credit quality of "Current" which is predicted or potentially will become a problem credit
- c. Credit quality "Special Mention"
- d. Substandard" credit quality
- e. Doubtful" credit quality
- f. Bad" credit quality
- g. Credits recorded on an "Extracomptable" basis
- h. Take a persuasive approach with debtors, including:
 - i. Call the debtor to the office
 - j. Conduct regular visits
 - k. Discuss the causes of problem loans
 - l. Discuss the steps to save / settle credit

² Abdulkadir Muhamad, *Hukum dan Penelitian Hukum* , PT Citra Aditya, Bandung, 2004, pg. 132.

- m. Make an action plan as outlined in the Daily Report
- n. Negotiate with the debtor about the settlement steps, such as:
 - o. Credit rescue
 - p. Credit settlement
 - q. Repayment
 - r. Installments within a certain period
 - s. Repayment by granting interest relief and credit fines 4.6. Settlement through guarantor
 - t. Selling collateral for credit

Make and submit a letter of claim to the debtor, i.e. a notification to the debtor that there has been arrears in principal and / or interest on credit with a request to immediately settle the arrears liability. Make and submit a warning letter, which is a request / order from the bank to the debtor to immediately settle the principal arrears and / or interest on loans that are past / past due. This warning letter is delivered by the bank to the debtor if the persuasive approach made to the debtor does not produce the expected results. Selling collateral for credit. After following the aforementioned steps, the bank can take credit restructuring steps towards debtors who experience difficulties in fulfilling their obligations to banks, which are carried out through:

- a. Decrease in lending rates
- b. Extension of credit period
- c. Reduction of interest arrears on loans
- d. Reduction of principal loan arrears
- e. Adding credit facilities; and or
- f. Credit conversion to temporary capital participation.

In general, the rescue effort is carried out by the bank through deliberation (persuasive steps) with the debtor in the form of:

- a. Rescheduling, namely changes in credit terms concerning payment schedules or time periods, relief that can be given such as: Extend credit period, Extend the period of credit installment Decreased amount for each installment.
- b. Rescue efforts with this rescheduling can be done if the debtor is unable to pay off credit payments or credit installments that are past due, but from the evaluation results, the bank knows that the prospect of the debtor's future financial condition is not worrying or the debtor's financial liquidity disruption is only temporary.
- c. Reconditioning, i.e. changes in part or all credit conditions that are not limited to changes in repayment schedules, time periods and / or other conditions as long as they do not involve changes in maximum credit balances, relief or changes in credit terms including:
- d. Delayed payment of interest where the interest is still calculated but the billing to the customer is not carried out until the customer is able to charge the interest charged and does not cause additional credit limit.
- e. Decrease in interest rates, namely in circumstances where the customer is considered to be able to pay interest on time but the interest rate charged is too high for the economic situation at that time. This is done if the customer's business activities show a surplus or profit and liquidity is possible to pay interest. Changes from short-term loans to long-term loans with lighter terms.

- f. Interest capitalization, where interest is used as principal debt so that customers at a certain time do not need to pay interest but only pay the principal debt later, with a ceiling that can exceed the amount agreed upon, for example a credit of Rp. 200,000,000.00 after the installments remain Rp. 75,000,000.00 and interest to be paid Rp. 2,000,000.00 means now the debit tray is Rp. 77,000,000.00 used as a ceiling or new debt.

2. *Tender Process Against Mortgage Rights Objects in Pekanbaru City*

The auction process begins, there are obligations and auction procedures that begin with the announcement of the auction. Auction sales must be preceded by Auction Announcements made by the Seller. For this reason, the Seller must submit proof of Auction Announcement in accordance with the provisions of the Auction Officer. Announcement of Auction is a notification to the public about the existence of the Auction with a view to gathering auction enthusiasts and notification to interested parties.

The purpose of the announcement of this auction, namely: In order to be known to the wider community, so for those who are interested can attend the auction (gathering interest in the auction or aspects of publication); Provide an opportunity for third parties who feel disadvantaged to file a rebuttal or *verzet* (legal aspect); Shock therapy for the public to have a deterrent effect, so it is expected that debtors who had been lazy about fulfilling their obligations will arise awareness to pay off their obligations, for fear that their property might be auctioned off as part of paying off debts.

The auction announcement is arranged in such a way that it is published on the KPKNL working day, and does not make it difficult for those interested in auctioning a Bid Deposit Guarantee or submitting a Bid Guarantee. The activities related to the stages of the implementation of the auction of guaranteed goods are as follows: Auction Bidding Based on Vendor Reglement, the auction is reviewed from the standpoint of the bidding, then known: Written auction, i.e. auction with a bidding price is done in writing in a closed cover, open auction, i.e. auction with a price quote made directly orally with bids increasing or decreasing, Auction of the written combination is continued with open or continued with written, i.e. the initial bidding is done in writing or open and if it has not reached the desired price continued by open or vice versa .

In Article 54 of the Minister of Finance Regulation Number 93 / PMK.06 / 2010 as amended by Regulation of the Minister of Finance Number 106 / PMK.06 / 2013, it is regulated on how to Bid Auction. Auction Winner or Buyer According to Article 66 of the Minister of Finance Regulation Number 93 / PMK.06 / 2010 as amended by Regulation of the Minister of Finance Number 106 / PMK.06 / 2013, the Bidding Officer authorizes the highest bid that has reached or exceeds the limit value as a buyer, in conduct auctions that use a limit value and authorize the highest bidder as a buyer in conducting a voluntary non-execution auction that does not use a limit value. Excluded from this provision, in conducting a voluntary non-execution auction in the form of movable property, the Bidding Officer may authorize the highest bid that does not reach the limit value as a buyer, after obtaining written approval from the owner of the goods. In the event that there are bidders who submit the same highest bid via e-mail (e-mail), the Auction Officer authorizes bidders whose bids are accepted as buyers.

Payment and Deposit According to Article 71 of the Minister of Finance Regulation Number 93 / PMK.06 / 2010 as amended by Regulation of the Minister of Finance Number 106 / PMK.06 / 2013, bid price and auction fee must be made in cash or cash or check or current account 5 (five) working days before the auction. Submission of Goods Ownership Documents In Article 76 of the Regulation of the Minister of Finance Number 93 / PMK.06 / 2010 it is further regulated regarding the delivery of documents on ownership of goods. According to this provision, in the event that the seller or owner of the goods surrenders the original documents of ownership of the auctioned goods to the Bidding Officer, the

Bidding Officer must submit the original ownership documents and / or the goods auctioned to the buyer, no later than 1 (one) working day after the buyer shows proof of payment in full. and submit proof of deposit fees for the acquisition of land and building rights (BPHTB). Conversely, if the seller or owner of the goods does not submit the original documents of ownership of the auctioned goods to the Auction Officer, the seller or owner of the goods must submit the original ownership documents and / or the goods auctioned to the buyer, no later than 1 (one) business day after the buyer shows proof of payment of payment and submit proof of deposit BPHTB.

In terms of the validity of the auction if the documents are incomplete, the Head of the KPKNL will immediately stop the auction execution process if the auction process occurs. However, because it is rarely found, because basically the Bidding Officer will first examine the completeness of the documents as conditions and evidence in carrying out the auction execution process in accordance with the applicable laws and regulations so that the auction process has valid legal force.

3. Legal Protection of Objects Auctioned by Banks in Pekanbaru City.

The concept of acts against the law is not only every act that violates written rules that are contrary to the legal obligations of the perpetrator and violates the subjective rights of others but also an act that violates unwritten rules namely the rules governing ethics, propriety, accuracy, and prudence - the attention that a person should have in the life of the community or the property of the community.³ Although the regulations do not provide a legal basis that the auction office is responsible for losses incurred, the auction office must provide protection to auction buyers in the form of:

1. The auction officer must first examine the goods to be auctioned, this relates to the validity of the seller and the goods to be sold, so that if there are problems regarding the goods or ownership of the goods, then between the auction office and the ownership of the goods resolve all inherent problems on the item. The auction office must look closely and examine whether there are problems with the object of the auction that will be carried out by the auction, if all the problems have been resolved, then the goods will be sold in general (auction). This is done in order to avoid the object being auctioned from experiencing legal defects or illegitimate.
2. Auction officials provide legal protection in the form of testimonies and evidence in the form of providing proof of auction purchase (minutes of auction) as well as proof of legal certificates for the said goods (shop houses) with certificates of land use rights, land use rights, and other evidence. The state auction office will also provide a defense by saying that prior to the auction being held, the Head of District Court has submitted a request for auction sales. The current auction does not provide explicit responsibility to auction officials so that KP2LN cannot be held responsible for losses. Basically, the auction office cannot refuse what is requested from him as long as the auction requirements are met. The auction office is not responsible for any losses borne by the auction winner. At the beginning of bidding for bidding, the buyer has made and agreed to be able to buy the auction object. This is the initial protection of the auction office for the auction winner, so that no auction winner does not know how the object will be bought because the auction office conducts all auction activities transparently, nothing is covered up, and for all risks that arise will be borne by auction buyers. Basically whoever commits an act against the law must be held responsible for someone who has been harmed. But in reality in the auction rules mentioned that the auction buyer must be willing to bear all the risks that occur.

³ Rosa Agustina, 2003, *Perbuatan Melawan Hukum*, Tesis, Program Pascasarjana Fakultas Hukum Universitas Indonesia, Jakarta, pg. 326-327

Banks in the auction process for Underwriting Rights objects still carry out appraisal according to the appraisal that has been determined by both internal and external banks, after the completion of the appraisal.⁴ The bank submits a request for auction at the KP2LN office, and the auction is online, and the debtor can find out how the results of the collateral object These, with whom the latest buyers, openly, the results of the auction, that is the cost to cover the debtor's debt, if there is excess will be returned to the debtor⁵.

Conclusion

1. From the bank is not careful in conducting a feasibility analysis of credit applications from prospective borrowers. From the customer party of Misappropriation of funds. Debtors in this case do not use credit funds provided in a professional manner, this happens in large part because the debtor's personality is not good, for example money lent for productive activities such as for business development is used for consumptive activities such as buying a car, renovating a house and others. External factors, External factors that affect the debtor's business activities such as: national and international economic turmoil, rising inflation, people's purch.
2. Execution of Mortgage Guarantee is the last step taken by the creditor as the recipient of the Underwriting Right if the debtor as the giver of the Mortgage fails the promise through Article 6 of Law Number 4 Year 1996 concerning Mortgage Rights on Land and Objects Related to Land. According to the provisions in Article 6 of the Underwriting Law, it is stated that if the debtor defaults (breach of contract), then the Underwriting Right holder has the right to sell the object of the Underwriting right on his own power through a public auction and to repay his receivables from the sale proceeds.
3. Banks in the auction process for Underwriting Rights objects still carry out appraisal according to the appraisal that has been determined by both internal and external banks, after the completion of the appraisal, the bank submits a request for auction at the KP2LN office, and the auction is online, and the debtor can find out how the results of the collateral object These, with whom the latest buyers, openly, the results of the auction, that is the cost to cover the debtor's debt, if there is excess will be returned to the debtor.

Suggestion

1. Before the parties do the pelalang, it is better to have to provide an opportunity for the debtor to be able to make efforts to save assets such as rescheduling (Rescheduling), Reconditioning, Restructuring, before the auction.
2. As long as the auction process is strived to be more transparent, and debtor information is provided, that the object is sold based on appraisal and is in accordance with the market price, which has been determined by the official appraisal agency, the results must be returned to the debtor if all debtors have paid off.

⁴ The result of interview, Sutjipto, Deputi Service Manager Bank BTN, dated 26 December 2019, 10.00 a.m

⁵ The results of the interview, Wenny Pratiwi, Bank BNI, dated 27 December 2019, 2:00 a.m.

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The result of interview, Sutjipto, Deputi Service Manager Bank BTN, dated 26 December 2019.

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