

ANALYSIS OF THE PROBLEMS OF EXECUTING COLLATERAL OBJECTS ENCUMBERED WITH MORTGAGE RIGHTS

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ABSTRACT

The land that is used as collateral for the credit agreement is bound by a Deed of Granting Mortgage Rights (APHT) which is then registered with the local land office to be burdened with charge mortgaging. The consequence of having a charge mortgaging is that if the debtor breaks his promise, the bank has the authority to execute the object of the guarantee. In order to protect the debtor's interests in executing the object of the charge mortgaging, the bank is obliged to carry out the execution in accordance with applicable regulations, one of which is that the auction of the object of the charge mortgaging must be in accordance with the market price or in accordance with the limit value, so as not to harm the debtor in particular. The aim of this research is to analyze legal protection for debtors for mortgage execution auctions that do not reach the maximum value and identify how the government should determine the execution auction process and limitations in conducting charge mortgaging execution auctions. This type of research uses normative juridical research methods. Article Decree of the Minister of Finance jo. Article of the Decree of the Directorate General of State Receivables and Auctions gives the seller the right to determine special auction conditions that do not conflict with general auction regulations or existing laws and regulations. The auction for the execution of charge mortgaging rights must be carried out at the KPKNL, namely the government which has a position based on the provisions of the applicable laws so that the execution auction is carried out in accordance with the applicable regulations.

Keywords: Guarantee, Credit, Charge Mortgaging

ABSTRAK

Tanah yang dijadikan objek jaminan perjanjian kredit diikat dengan Akta Pemberian Hak Tanggungan (APHT) selanjutnya didaftarkan ke kantor pertanahan setempat untuk dibebani hak tanggungan. Konsekuensi adanya hak tanggungan yaitu apabila debitur cidera janji, maka bank mempunyai wewenang untuk mengeksekusi objek jaminan tersebut. Guna melindungi kepentingan debitur pada pelaksanaan eksekusi obyek hak tanggungan, pihak bank wajib melakukan eksekusi sesuai dengan aturan yang berlaku, salah satunya lelang obyek hak tanggungan harus sesuai dengan harga pasaran atau sesuai dengan nilai limit, agar tidak merugikan pihak debitur khususnya. Tujuan dari penelitian ini adalah untuk menganalisis perlindungan hukum bagi debitur atas lelang eksekusi hak tanggungan yang tidak mencapai nilai maksimum dan mengidentifikasi bagaimana seharusnya pemerintah menetapkan proses lelang eksekusi dan batasan dalam melakukan lelang eksekusi hak tanggungan. jenis penelitian ini menggunakan metode penelitian yuridis normatif. Keputusan Menteri Keuangan jo. Keputusan Direktorat Jendral Piutang dan Lelang Negara memberikan hak kepada penjual untuk menentukan syarat lelang yang sifatnya khusus kemudian tidak bertentangan dengan peraturan umum lelang maupun peraturan perundang-undangan yang ada. Pelaksanaan lelang eksekusi hak tanggungan harus dilaksanakan di KPKNL yakni pemerintah yang memiliki kedudukan berdasarkan ketentuan perundang-undangan yang berlaku sehingga pelelangan eksekusi dilakukan sesuai dengan aturan yang berlaku demikian.

Kata Kunci : Jaminan, Kredit, Hak Tanggungan

A. BACKGROUND

In banking practice for more secure funds distributed to debtors collateral in the form of land is required as collateral credit, "both for productive credit and consumptive. The consideration is that land is an object the safest and most valuable guarantee relatively high economic." Charge mortgaging are the only security rights institution for land and In this way, the unification of national land law is complete one of the main objectives of the Basic Agrarian Law. Apart from that, there are many the legal and regulatory instruments required in Indonesia and always carrying out development in all fields is the Guarantee Rights Institution. Based on Law Number 4 of 1996 concerning "Mortgage Rights on Land along with objects related to land (Mortgage Rights Law/UUHT).

All explanations relating to mortgage rights are regulated in this Law and this Law is the implementation regarding this land security rights institution and is mandated by Law Number 5 1960 concerning "Basic Regulations on Agrarian Principles (UUPA)" based on Article 51 which reads: "Mortgage Rights can be imposed on Ownership Rights, Use Rights "Business, building use rights as stated in Articles 25, 33 and 39 are regulated by law." It also contains several provisions and is an important breakthrough in the regulation of Mortgage Rights in Indonesia.¹ Mortgage rights, according to their characteristics, will always follow the rights holder, which in this case is the creditor. Therefore, an auction was held due to the debtor's default.

B. RESEARCH METHODOLOGY

The research focuses on aspects of civil law, especially those relating to material guarantees. This research uses a normative juridical method based on secondary data originating from literature legislation or literature studies. The statutory approach is taken by reviewing and examining "Law Number 4 of 1996" concerning Rights Liability for land and objects related to land and "Regulation of the Minister of Finance of the Republic of Indonesia Number 203/PMK.06/2020 regarding Auction Implementation Instructions relating to legal issues is being handled.

C. FINDING & DISCUSSION

Mortgage Rights, Credit Agreements, State Property & Auction Services Office

Mortgage rights are based on "Article 1 number 1 of the Law of Rights "Encumbrance" is a mortgage right over land and objects related to the land, hereinafter referred to as mortgage rights, which means that collateral rights are imposed on land rights in accordance with the provisions of "Law Number 5 of 1960" concerning Basic Agrarian Principles . In terms of the provisions, mortgage rights are control over land rights regarding the creditor's authority to act or do something regarding the land that is used as collateral but not to be physically controlled and used by the creditor but to sell it return if the debtor breaks his promise so that the payment of the debtor's debt to him is paid in full.²

¹ Dr. Burhan Sidabariba, S.H., M.H, Lelang Eksekusi Hak Tanggungan, (Depok, Papas Sinar Sinanti, 2019), hlm. 1.

² Budi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Djambatan, Jakarta, 2008, hlm. 24.

Land rights that can be encumbered with mortgage rights are property rights, business use rights and building use rights.³ An auction for the execution of mortgage rights is carried out if the debtor breaks his promise, then the holder of the mortgage rights first gets the right to sell the object of the mortgage rights on his own authority through a public auction and then take repayment of receivables from the proceeds of sales that have been made. Provisions for conducting auctions are regulated in "Minister of Finance Regulation Number 213/PMK.06/2020 of concerning Instructions for Implementing Auctions. "Article 1 Number 1 of the Minister of Finance Regulation No. 213/2020" defines an auction as the open sale of goods in accordance with written or verbal price offers which increase or decrease to reach the highest price through an auction announcement made in the daily newspaper carried out by the KPKNL.

According to Minister of Finance regulations, an auction is the sale of goods that is open to the public by offering prices verbally or in writing, increasing or decreasing to reach the highest price from the auction announcement, what is placed on the auction object is not set at the lowest possible price but at least the same. for example, such as in accordance with the market price and a predetermined time period, such as the sale of auction objects being sold at a higher price for 1 month, then a second auction being held, sold at the market price of course within 1 month and then the third auction taking place. In the 3rd auction, usually the KPKNL, the owner and the creditors have negotiated to sell the auction object below market price and this can only be done depending on the agreement between the parties.

Mechanism for Application and Execution of Mortgage Rights

Regarding the execution of mortgage rights, the execution in question is the court being forced to enforce a decision that was not enforced by the losing party voluntarily. Meanwhile, Mortgage Rights are in accordance with Law no. 4 dated 9 April 1996 article 1 paragraph 1 is: "Mortgage Rights over land and objects related to the land, hereinafter referred to as Mortgage Rights, are security rights for a right which is equivalent to immovable property within the meaning of the Basic Law. Land No. 5 of 1960, regardless of whether it is an equivalent right to goods or other objects which are an inseparable part of the assets to pay off certain debts owed to other creditors."

Basically, the execution of mortgage rights is a series legal process carried out to enforce the guarantee granted a right to land or other property. The mechanism for requesting and implementing the execution of mortgage rights may vary depending on the legal regulations in force in a particular country or jurisdiction. It should be noted that the mechanism for requesting and implementing the execution of mortgage rights may have additional requirements and procedures that are specific to each jurisdiction. Therefore, it is highly recommended to consult a legal expert or notary experienced in property law in the relevant country or jurisdiction to obtain more precise and detailed information.

³ MunirFuady, Pengantar Hukum Bisnis, Menata Bisnis Modern di Era Global, Citra Aditya Bakti, Bandung, 2002, hlm. 146.

Legal Protection For Debtors For Auctions For The Execution of Mortgage Rights That Do Not Reach The Maximum Value

Providing certainty and legal protection to creditors can be achieved if the creditor can carry out the execution process for the guarantee that has been given to the creditor to guarantee the repayment of the debtor's debt effectively and efficiently, so that the creditor can recover his rights. the right to receive optimal returns or credit payments. The execution process is carried out if the debtor does not carry out his obligations/breaks his promise regarding the agreement between the parties in the credit agreement, therefore the way that the creditor can obtain his rights in repayment of the debtor's debt is by auctioning the collateral. the object is then determined as debt repayment from the auction results.

In a credit agreement when using collateral for mortgage rights, the term mortgage right deed is known, namely a material agreement where registration is carried out and then a mortgage rights certificate is obtained. Based on "Article 10 paragraph (1) of the Mortgage Rights Law (UUHT)" it is stated that the person giving the Mortgage Rights is based on a promise to provide the Mortgage Rights as collateral for repayment of the debt and is an inseparable part of the relevant debt and receivable agreement or other agreement which gives rise to the debt.⁴

Material collateral that can be tied to mortgage rights in accordance with the UUHT aims to ensure that creditors become strong collateral holders and are legally recognized. The guarantee must be tied to registration with the local National Land Agency (BPN) according to where the object is located. With the existence of mortgage rights, the institution has given authority to creditors as holders of collateral rights. The process that can be carried out to carry out an auction for the execution of mortgage rights must be in accordance with written regulations, and then it must be stated that the object belonging to the debtor can be executed so that it has been agreed by the parties.

To carry out an execution auction for an object that has been pledged as collateral to the creditor, the debtor and creditor must pay attention to the procedures for carrying out the correct execution so that it does not harm both parties, based on auction regulations, public sales are carried out by the auction office or also known as the auction intermediary. according to the sales method with high or low bids, the bid is in writing with notification to the debtor no later than 30 days from the auction date. In the procedure for executing mortgage rights, the creditor's hope is that if the collateral object is executed, if the debtor breaks his promise in the hope of carrying out the execution, the creditor can recover the receivables and the remaining proceeds from the auction can be handed back to the debtor, and this will make the process easier. the execution.

In implementing an agreement between creditors and debtors, there is legal protection for each party, protection for creditors is stated in the contents of the agreement which can determine what actions must be taken by both parties, for example the provisions on interest & fines written in the credit agreement still apply, at the time of execution the debtor must be

⁴Undang-Undang Hak Tanggungan No 4 Tahun 1996, Pasal 10 Ayat (1)

willing to give permission to the bank / other designated party to enter into each credit collateral by the debtor to the bank as credit repayment.

As with debtor protection, when executing an object of mortgage rights, the bank is obliged to carry out the execution and auction in accordance with applicable regulations, for example, the collateral provided is not equal. With debts owned by the debtor, at the time of the auction the price value for the collateral object must be determined as follows:⁵

1. in accordance with the market price or in accordance with the limit value adjusted by the debtor because usually at the initial stage of the auction the minimum price for the object to be auctioned is determined by the owner of the object (debtor);
2. Then, if after 30 days the object has not been sold, the price will be reduced from the market price, but the creditor cannot sell the object as much as possible. Then in the second stage, if the auction object has not been sold, then
3. In the third stage, the creditor is obliged to reduce the value of the collateral object again so that if the auction is successful, the value of the collateral object is used to pay off the debtor's debt and the remainder will be returned to the debtor who has the rights to the mortgage object.

In connection with the regulations, they apply even if the creditor is the only party requires repayment of debts through the auction results of the collateral object, the creditor must still pay attention to the appropriate value for the mortgage object, at least below the appropriate market price and apart from that based on the agreement of the debtor as the owner of the mortgage object because the results of the auction value will usually be paid to the creditor (repayment of the debtor's debt) then the remainder will be given back to the debtor as the owner of the object, but if the object is auctioned at a value that has fallen significantly from the market price it will certainly cause losses to the debtor besides that the creditor has violated the law because of what was done by creditors do not comply with the rules and if the author looks at various similar cases then if the auction for the execution of mortgage rights does not reach the maximum value it can be reported to the Court and charged as an Unlawful Act (PMH) and then the judge can cancel the auction because the auction process is considered violates applicable rules. After that, in its implementation the judge must ask the appraiser used by the seller to be held accountable in court for having determined the auction price based on his interpretation of its value.⁶

So that the Court can cancel the execution value carried out below the market price (if the value is too far from the market price) and the basis used is article 1365 of the Criminal Code which reads "every act that violates the law and brings loss to another person requires the person who caused the loss through his fault to "replace the loss," because as long as the creditor executes the dependent object within reasonable limits, there is no problem, but as long as the creditor auctions the execution of the object outside the limits, the execution auction can be canceled because it will cause detrimental consequences to the debtor.

⁵ Jessica A Putri Hutapea, PERLINDUNGAN HUKUM TERHADAP DEBITUR ATAS LELANG EKSEKUSI HAK TANGGUNGAN YANG TIDAK MENCAPAI NILAI MAKSIMUM, Jurnal Kertha Semaya, Vol. 9 No. 3 Tahun 2021, hlm. 404-414

⁶ *Ibid*

D. CONCLUSIONS AND RECOMMENDATIONS

Any determination of the limit value of an execution auction that is carried out far below the market price and is detrimental to the debtor can use Article 1365 of the Criminal Code which discusses Unlawful Acts (PMH) so that the basis for consideration is the unlawful act and can be the basis for canceling the execution auction for the collateral object. In this way, it can be stated that there is a loss and a causal relationship between the action and the loss for the debtor as the owner of the object, and that is also the reason becomes invalid and violates the reasonableness of the limit value and the KPKNL must fully adhere to the principle that to determine the auction execution must be in accordance with the applicable regulations. By linking several regulations and observing the assessment team, the collateral object is auctioned according to its value market value or below market value but not dropping far from market value so as not to harm the debtor. So the first procedure that the Government must pay attention to is regulations, for example looking at article 6 UUHT.

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