



ATTEMPT OF LAWSUIT BY THE DEBTOR TO DELAY THE IMPLEMENTATION OF THE AUCTION OF THE OBJECT OF LIABILITY

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Article Info

Received : 28/10/2021
Approved: 04/12/2021
DOI: 10.24815/sklj.v5i3.24299

Keywords:

Auction;
limit value;
lawsuit;
debtor.

Abstrak

The auction lawsuit arises when there is dissatisfaction with the debtor where the claim before the auction is intended by the plaintiff to delay the auction and the lawsuit after the auction has very diverse motives that cause it. The type of research used is normative legal research with analytical approach and legislation approach. (statute approach). Data processing is carried out in a systematic way on written legal materials. The purpose of this study is to explain the causes and explain the legal protection for debtors as well as the legal consequences for delaying the implementation of the mortgage execution auction. The results of this study indicate that there is a loss experienced by the debtor for setting a low limit value in the implementation of the mortgage execution auction which is carried out by the KPKNL as the Auction Body. Every limit price determination is required to use or use an appraisal service in accordance with Article 36 number 93/PMK/2010 concerning Auction Implementation Guidelines. There are objections to the low auction limit value, the debtor files a lawsuit to the court to postpone the auction, so if the court has given a decision that has permanent legal force stating the auction being held is invalid and null and void.

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I. INTRODUCTION

With the Law Number 4 of 1996 concerning Mortgage Rights, it has given authority to creditors to be able to carry out the execution of mortgage rights without having to require the approval of any party. Therefore UUHT, become the choice of creditors of banking and non-banking institutions, in the settlement of bad loans because the process is relatively easier and faster. Because, once the debtor is in default, the creditor can sell the object of mortgage, it must go through the auction of the auction body, namely the KPKNL if the submission of the auction application and the files from the creditor are declared complete and include a written warning, first, second and third. But the potential for a lawsuit from the debtor to the creditor over the auction through the KNPL is very high, even though the auction is based on the executorial title of the mortgage certificate.

So that the auction was delayed, due to a lawsuit from the debtor with the various motives behind the auction lawsuits, mostly due to the determination of the low object limit price, although in the end several debtor claims were rejected by the panel of judges with various considerations, so that

the execution process continued through a court order. However, if accompanied by a judge's decision to postpone the auction, it will result in potential losses suffered by creditors to accumulate in a relatively long time.

Some examples of cases related to auction delays are: the decision of the Banda Aceh District Court Number: 13/Pdt.G/2019/PN.Bna that the debtor objected because the creditor through the KNPL had committed an unlawful act. The decision of the Pekanbaru District Court Number: 232/Pdt.G/2014/PN.PBR that the debtor feels objected to the determination of the amount of arrears on credit obligations. This is different from the decision of the Inderamayu District Court in decision Number 40/Pdt.G/2013/PN.Im which granted the debtor's claim against the defendant and ordered the auctioneers to postpone the execution of the mortgage execution auction.

Lawsuit against the law This may occur due to violating a legal regulation, where the plaintiff or debtor as a person with an interest in the ownership of the object of the auction feels that he has been harmed as a result of the auction. Efforts by the debtor to postpone the auction before the auction in the example case mentioned above show that the implementation of the mortgage execution auction is not easy even though there are laws that regulate the mortgage execution auction.

This shows that efforts to delay the implementation of the mortgage execution auction which has been going on for a lawsuit to postpone the auction execution of mortgage usually carried out by unscrupulous debtors. Therefore, To guarantee the rights of seekers of justice, the law provides a way with rights for seekers of all justice, so that there is legal certainty for the parties involved in the auction.

Based on the description of the background of the problems presented, this research can formulate the following problems:

1. What causes the debtor to file a lawsuit to delay the execution of the mortgage right?
2. How is legal protection for debtors in the execution of mortgage execution auctions?
3. What are the legal consequences for delaying the execution of the mortgage execution auction?

The scope of this research is included in the field of normative juridical law with the title "Efforts by the Debtor's Lawsuit to Postpone the Implementation of the Auction of the Mortgage Object".

Based on the description From the background of the problems presented, the following problems can be formulated:

1. To explain the cause of the debtor making a lawsuit to delay the execution of the mortgage execution auction.
2. To explain legal protection for debtors in the execution of mortgage execution auctions.
3. To explain the legal consequences of delaying the implementation of the mortgage execution auction.

II. RESEARCH METHOD

2.1. Types of research

The type of research used is normative legal research which is also known as theoretical legal research or dogmatic legal research because it does not examine the implementation or implementation of law. This type of normative legal research is a research to study the object of legal research in the form of legal principles, legal rules in the sense of value (norm), concrete legal regulations in the form of doctrines, statutory regulations and the legal system of the legal system or *das sein* where this normative legal research It is not intended to find facts, because the rule of law is not only contained in written laws and regulations, but can also be in the form of unwritten habits, even legal rules are also found in human behavior in the form of active or passive actions in the form of attitudes.

2.2. Research Approach

The approach used in This article is an analytical approach and a statute approach. The analytical approach is used to find out the meaning contained in the law conventionally as well as to know the application in practice and legal decisions.

2.3. Source of Legal Material

a. Primary Legal Material

Primary legal materials are legal materials that have binding force in general or for interested parties, including the decisions of the Panel of Judges and laws and regulations related to this research, including:

- 1) Civil Code,
- 2) Law Number 4 of 1996 concerning Mortgage Rights,
- 3) PMK Number 27/PMK.06/2016 concerning Guidelines Auction Implementation.

b. Secondary Legal Material

Secondary legal materials are legal materials that provide an explanation of primary legal materials in the form of legal literature.

c. Tertiary Law Material

Tertiary legal materials are legal materials that provide explanations for primary legal materials and secondary legal materials such as legal dictionaries.

2.4. Legal Materials Collection Techniques

The method used for data collection in this research is as follows:

a. Literature review

The literature study was carried out with the aim of obtaining secondary data by reading, citing literature books and examining data related to the subject of the mortgage execution auction, including in this case document studies by examining matters related to the debtor's efforts to carry out a lawsuit for the execution of mortgage rights.

b. Documentation Study

Documentation studies are carried out by studying documents in the form of Court Decisions relating to the debtor's efforts to file a lawsuit for the execution of mortgage rights. The technique used is to find and read the decision and then analyze the contents of the decision in question.

2.5. Legal Material Processing Techniques

Legal materials are collected through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. Therefore, the data collection technique used in this research is literature study. Literature studies are carried out by reading, studying, taking notes and making reviews of library materials that are related to this research.

2.6. Legal Material Analysis

In normative legal research, data processing is carried out in a systematic way on written legal materials. Systematization means making a classification of these legal materials to facilitate analysis and construction work. Activities carried out in the analysis of normative legal research data by means of the data obtained in a descriptive qualitative analysis, namely the analysis of data that cannot be calculated. The legal material obtained is then discussed, examined and grouped into certain parts to be processed into data that can explain the information described in sentences that are systematically arranged, then discussion and interpretation are carried out which in the end can be concluded about the problem being studied.

III. RESULTS AND DISCUSSION

3.1. Causes of Debtors Undertaking Efforts to Delay Execution of Mortgage Execution Auction

Basically, the debtor's effort to file a lawsuit for the execution of mortgage rights in the credit agreement is a step taken by the debtor to postpone or cancel the auction. The lawsuit is usually carried out by the debtor, when the debtor is declared to have defaulted by the creditor because the debtor does not pay off the credit agreement after passing the provisions made in the agreement, thus

causing consequences for the debtor to pay compensation to the creditor as the injured party in the credit agreement. In this regard, as a consequence of the default, it is stated that in the credit agreement, the creditor can carry out the execution of the mortgage object which is the guarantee of the debtor in the credit agreement.

In jurisprudence is that the provisions for binding credit guarantees in the form of land are regulated by Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Relating to Land, hereinafter referred to as UUHT, namely in article 10 it states "the granting of Mortgage Rights is preceded by a promise to provide Mortgage Rights as collateral for the settlement of certain debts, which are set forth in and are an inseparable part of the debt agreement in question or other agreements that give rise to the debt.

With the existence of an auction lawsuit made by the debtor after the auction was announced by the creditor who auctioned the mortgage object through the auction agency, in this case the KPKNL, usually KPKNL will take a stance to postpone the auction or reject the request for an execution auction submitted by the creditor. This is indeed necessary and must be carried out by the KPKNL because the reality on the ground shows that often the auctioneer who carries out the auction of the mortgage object at the request of the creditor is made a party by the debtor as a party that is also a defendant in the auction process for the execution of the mortgage.

The debtor's attempt to file a mortgage execution lawsuit was carried out, because in the process prior to the auction there were problems that were considered potentially detrimental to the debtor and in several other issues, the debtor's efforts were only to disrupt the process of implementing the mortgage execution auction. In terms of the auction process for the execution of the Mortgage, regardless of what the motive was for the debtor to postpone the auction, that as a state of law, there is a legal basis for the debtor to file a lawsuit when the debtor feels disadvantaged in the process of implementing the auction for the execution of the Mortgage Rights, namely Article 1365 of the Civil Code which reads "Every act that violates the law and brings harm to others, obliges" the person who caused the loss because of his mistake to compensate for the loss.

In relation to the implementation of the mortgage execution auction based on UUHT, the principal claim of the debtor in an effort to delay the execution of the mortgage execution auction consists of:

1. Lawsuit on the basis of the limit on the price of the object of mortgage

In principle, the value of the object of collateral used as collateral in a banking institution must be greater than the amount of debt granted. This term is known as *Loans to Value Ratio*, where u For loans with collateral in the form of Mortgage, namely the value of Mortgage at least 125% of the loan value, and the value of this Mortgage which should be stated in the Deed of Granting Mortgage (APHT). So that related to the implementation of the mortgage auction, as stated in the Regulation of

the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines, it requires the existence of a limit value based on an assessment by an accountable third party appraiser.

2. Lawsuit on Mortgage Execution Auction Before Maturity of Credit Agreement

In banking practice, if there is a debtor, usually the creditor will send a warning letter as a notification to the debtor to immediately carry out his obligations as promised, 3 (three) times to comply with the conditions of the debtor's default. However, if the debtor has been properly warned, but the debtor still has not made payment of his obligations, the creditor through the legal provisions contained in Article 6 and Article 20 of the UUHT will conduct an auction process for the object of mortgage that is guaranteed by the debtor in the credit agreement. As for the implementation before the maturity of the credit agreement.

3. Lawsuit for Improper Auction Procedure

The procedure for conducting the auction of collateral with Mortgage Rights based on UUHT refers to the mortgage execution process as contained in the updated article 224 HIR which this article refers to Article 195, Article 196 and Article 197 HIR. The auction procedure according to these provisions in its implementation must be preceded by the existence of permanent legal force, namely a court decision received by both parties involved in a credit agreement with a mortgage guarantee. This means that the legal consequences of the disputed mortgage object auction based on Article 6 UUHT", then the auction has no legal force and violates the provisions of Article 14 of the 2016 Auction Guidelines. Execution auctions based on Article 6 UUHT when the debtor defaults are allowed, but if the auction is disputed, referring to the provisions of Article 14 of the 2016 Auction Juklak, it must be determined by the District Court based on Article 224 HIR.

4. Lawsuit on Agreement of Parties Related to Mortgage Execution

With regard to the provision that has been made between the Mortgage Provider and the Mortgage recipient for the Deed of Mortgage Maker (APHT) as regulated in Article 1320 paragraph (4) of the Civil Code and Article 224 HIR, it is stated that it is mandatory to be present before a notary (PPAT) for further issuance of a Certificate of Rights. Dependent (SHT). But in reality a lawsuit can occur If the mortgage giver is unable to attend, then a Power of Attorney is made Imposing Mortgage Rights (SKMHT). Even though the procedures and regulations have been regulated in Article 15 paragraph (1) of the UUHT. This can happen because the creditor has violated it by conducting an auction for the execution of dependents through the KPKNL which should have had a prior determination and found the fact of legal action in the SKMHT, namely the Power to Charge Mortgage Rights and the Power to Sell so that it is not in accordance with Article 15 paragraph (1) UUHT.

With regard to the auction of execution of Mortgage as a form of settlement of non-performing loans to defaulted debtors, which is carried out mechanically by parate execution which refers to Article 20 of the UUHT through the Office of the State Property and Auction Service (KPKNL)

accompanied by the provisions of the Minister of Finance Regulation (PMK) No. 27 / PMK.06 /2016 concerning Implementation Guidelines Auctions, in practice there are still problems that often cause problems for debtors so that they often have an impact on auction settlements based on court decisions where usually the lawsuit is filed by the debtor before the auction is carried out to ask the court to decide to postpone the auction, because the auction will be carried out through an auction. KPKNL does not reflect the existence of elements of justice for debtors. As regulated by Article 4 PMK Number 27/PMK.01/2016 which reads that "auctions that have been carried out in accordance with applicable regulations cannot be cancelled. Meanwhile, the cancellation before the auction is regulated in Article 27 PMK Number: 27/PMK.06/2016 Article 24 which stipulates that "an auction to be held can only be canceled at the request of the Seller or a provisional determination or decision from a judicial institution". As long as there is no court decision or decision delaying the auction, the Auction Officer will continue to carry out the scheduled auction. This means that the existence of a lawsuit before the auction can delay the auction.

3.2. Legal Protection for Debtors in the Execution of Mortgage Execution Auctions

The UUHT does not regulate in detail and detail regarding legal protection for the debtor providing the Mortgage, if in the future the debtor breaks his promise in the credit agreement, so that the UUHT does not only provide legal protection to the creditor holding the Mortgage, in the sense that the object of the debtor's mortgage becomes more secure. in the execution of the Mortgage Execution auction. In this regard, normatively, the execution of an execution auction based on Article 6 of the UUHT still does not meet the principle of proportional justice, because the auction has not yet provided a solution for the settlement of non-performing loans to banking institutions in setting a low limit value.

Legal protection for the parties related to the credit agreement which continues with the auction of Mortgage execution for loans that are already bad, is very clearly and strongly regulated by UUHT including as regulated in Article 6 UUHT: "if the debtor breaks his promise, the first Mortgage holder can immediately and immediately submit an auction for the execution of Mortgage Rights to the KPKNL (Office of the State Assets and Auction Service) and take the payment of the receivables first from the auction". However, if the creditor does not set the limit value carefully and responsibly, it will certainly cause losses to the debtor. Because if Article 1131 of the Civil Code continues to apply after the legal act of auction, the plaintiff (debtor) will feel that he has been harmed,

This is also the same as protection for debtors, when the execution of the mortgage object is carried out, the bank is obliged to carry out executions and auctions in accordance with applicable regulations, for example, the collateral provided is not equivalent to the debt owned by the debtor, at the time of the auction to determine the value of the price on the object of collateral must be 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).then if after 30 days the object has not been successfully sold the price will be lowered from the market price but the creditor cannot sell the object as low as possible. if the auction is successful, the value of the object of collateral will be used to pay off the remaining debts of the debtor and the remainder will be returned to the debtor because the debtor has the right to the object of the mortgage.

3.3. Legal Consequences for Postponing the Execution of Mortgage Execution Auction

The execution auction is based on Article 6 of the UUHT that when the debtor is in default it is permitted, but if the auction is disputed, referring to the provisions of Article 14 of the 2016 Auction Juklak, it must be determined by the District Court based on Article 224 HIR. This is because Mortgage is indeed designed as the strongest guarantee right, with the characteristics of easy and sure execution, but in practice it causes many obstacles. As happens in the event that a bank customer or debtor defaults at the time of the auction due to a breach of contract, the debtor holds a fight or lawsuit to postpone the auction requested by the bank for various reasons, including the amount of debt according to the debtor does not match the amount stated in the deed of credit agreement or credit agreement.

Although the implementation of the mortgage execution auction has been regulated in UUHT, does not make the auction of Mortgage executions through auctions provide convenience and legal certainty for creditors, because if the auction process is carried out arbitrarily by the creditor. Because, in relation to the creditor's efforts to conduct an auction for the execution of mortgage rights through a public auction if the debtor is in default and takes the proceeds from the sale for the settlement of the debtor's receivables, the creditor should be able to consider that the object of the mortgage is owned by the debtor, in the sense that if the creditor intends to commit the auction of the object of mortgage ownership of the executed debtor must be based on the principle of good faith and the principle of respect for the property of others.

With Thus, it is very reasonable that the principle of good faith and the principle of respect for other people's property can be used as a reference for banking institutions before determining the object of the auction to be owned by the debtor in order to minimize the emergence of lawsuits for delaying the auction of execution of mortgages submitted by the debtor to the court.

The judge's decision declared the auction to be against the law, so that the auction was declared null and void, then the goods were returned to the owner the original condition, among others as collateral, or as a debtor so that the ownership of the auction buyer ends. In order to realize the legal protection of the auction after the execution of the mortgage, it can be canceled because the auction is a sale and purchase agreement so it must comply with Article 1320 of the Civil Code and not an act referred to in Article 1471 of the Civil Code. As a result of the cancellation of the mortgage execution

auction, according to the conditions of the validity of the agreement, the situation was returned to what it was before it was sold through the mortgage execution auction, so that based on this, it can be concluded that the auction winner's money or the buyer's money was returned and the land rights returned to the situation before the mortgage execution auction was carried out.

IV. CONCLUSION

Each debtor tries to file a lawsuit for the execution of mortgage rights in the credit agreement, which is a step to delay or cancel the auction. The lawsuit is usually carried out by the debtor, when the debtor is declared to have defaulted by the creditor because the debtor does not pay off the credit agreement after passing the agreement made in the agreement, so that it can cause consequences for the debtor to pay compensation to the creditor as the injured party in the credit agreement. . In this case, as a consequence of the default, it is stated that in the credit agreement, the creditor can carry out the execution of the mortgage object which is the guarantee for the debtor in the credit agreement.

With an attempt by the auction claim made by the debtor after the auction is announced by the creditor who auctions the mortgage object through the auction agency, in this case the KPKNL, usually KPKNL will take a stance to postpone the auction or reject the request for an execution auction submitted by the creditor. This is indeed necessary and must be done by KPKN. Various attempts by the debtor to file a lawsuit for the execution of mortgage rights were carried out, because in the process prior to the auction, there were problems that were considered to have the potential to harm the debtor. The debtor's efforts are only intended to interfere with the auction process for the execution of mortgage rights. In terms of the auction process for the execution of the Mortgage, regardless of the motive for the debtor to postpone the auction in order to obtain justice in filing a lawsuit in the process of implementing the auction for the execution of the Mortgage, For the sake of legal protection for the debtor at the time of execution of the object of mortgage, the bank is obliged to carry out the execution of the object to be auctioned and the auction in accordance with applicable regulations, for example, the collateral provided is not equal or adjusted to the debt owned by the debtor at an early stage. auction.

In every auction of the implementation of the pawned object, in terms of determining the market price and the liquidation price of the pawned object, the mortgage guarantor is involved in determining the value in order to reach an agreement that is mutually beneficial to both parties. the parties in the execution of the auction of the execution of the pawned object and expect that each panel of judges will provide legal considerations on the value of the auction limit for the mortgaged object which has been determined by the assessment team in this case as a third party in fulfilling the principle of justice for the plaintiffs or defendants in dispute.

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