



Legal Status of Execution of Liability Auction Winner through *Parate Executie*

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Abstract:

This study aims to analyse the execution of mortgage rights, namely executorial title, parate executie, and underhand execution. Parate executie is carried out by the holder of the first mortgage right if the debtor defaults through the State Property and Auction Service Office. The provisions and procedures for conducting an auction are regulated in the Regulation of the Minister of Finance Number 213/PMK.06/2020 Concerning Instructions for Conducting Auctions. However, in practice there are still many problems or conflicts and many obstacles that occur. For example, there is no legal certainty for auction winners who have good intentions because they cannot immediately obtain their rights legally and materially. The type of research used in this study is normative juridical research which is descriptive analytical using a qualitative approach. The sources of legal materials used are primary legal materials, secondary legal materials and tertiary legal materials through library research. Based on the research results, the Auction Winner as a buyer in good faith has a position as the right holder of the auction object both formally and physically as a mortgage object. Therefore, the winner of the auction with good faith is entitled to all of his rights both in terms of formal juridical evidence and the physical object of the mortgage object. In this position, the State Wealth and Auction Service Office has the responsibility of examining all sales conditions and fulfilling all stages and appointing an auction official as the executor of the sale so that as long as the requirements and processes are carried out according to the instructions for conducting the auction.

Keywords: Auction Winner; Execution; Mortgage right

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Introduction

The activity of borrowing money or better known as credit in the practice of everyday life is not something foreign anymore, even the term credit is not only known to urban communities, but also to rural communities. Credit generally functions to expedite a business activity, and in particular for economic activity in Indonesia it plays an important role in its position, both for production businesses



and private businesses which are developed independently because it aims to improve the standard of living of society (Murdianto 2022).

Articles 3 and 4 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking state that: "The main function of Indonesian banking is to collect and distribute funds from the public which aims to support the implementation of national development towards increasing people's welfare". Banking has an important function in the country's economy (Abdullah and Noorjaya 2006). Currently there are many banks that provide loan funds for various activities, because this is in line with the bank's own goals, namely bridging those who lack funds with those who have more funds (Hikmah 2023).

In a money lending agreement, basically the Civil Code regulates that all personal assets of the borrower, both existing and future, whether movable or immovable objects, are collateral for all of his debts (Tjoanda et al. 2021). This is regulated in Article 1131 of the Civil Code which states that "all movable and immovable property belonging to the debtor, both existing and future, shall serve as collateral for the debtor's individual agreements." This means, if the debtor borrows money from the creditor, then all the debtor's assets, whether moving, such as cars, motorbikes, mobile phones, as well as immovable items such as land and so on, are collateral for all debts belonging to the debtor, as well as existing items. or things that will be there.

Basically, when a debtor borrows money from a creditor, especially a bank, there should be no need for a special guarantee, because indeed all of the debtor's wealth is collateral for his debts, but even though the Civil Code has stipulated so, in reality, if the debtor wants to borrow money from bank, the bank will ask for another guarantee that places the bank as a preferred creditor or a creditor who is given special rights because the creditor has a special guarantee from the debtor (Sunarya 2023).

J. Satrio in his book says that preferential rights are "rights to take precedence over creditors only given based on privileges, liens and mortgage rights." (Satrio 2002). J. Satrio's statement is based on Article 1133 of the Civil Code, namely "the right to take precedence among creditors stems from privileges, pledges and mortgages."



The Civil Code divides guarantees into two forms, namely general guarantees and special guarantees. General guarantees are guarantees regulated in Article 1131 of the Civil Code, namely: all movable and immovable assets belonging to the debtor, both existing and future ones. However, currently it is also known about special guarantees consisting of person guarantees or *borgtocht* and goods guarantees where the collateral for goods is divided into movable and immovable property as stated in Article 1132 of the Civil Code. Specific guarantees for movable property are mortgages and fiduciaries, while those for immovable property are mortgages (Ukus 2023).

Rachmadi Usman stated, "every sector of national development is supported by adequate legal and statutory instruments and will be more able to provide legal certainty and comparability" (Gazali and Usman 2012). Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as *UUHT*), is closely related to economic development, especially to support credit activities for the purposes of financing national development.

AP. Parlindungan stated: "One of the objectives of the promulgation of the Mortgage Law is to carry out strict instructions from Article 51 of the Indonesian Agrarian Law so that it eliminates various interpretations of collateral institutions, and at the same time implements the unification developed by the Indonesian Agrarian Law, namely the institution of Mortgage as a debt guarantee institution with land as collateral (Parlindungan, A. P., n.d.). Furthermore, according to Maria Sardjono: "the issuance of the Law on Mortgage is very meaningful in creating the unification of the National Land Law, especially in the field of security rights over land."

With the enactment of Law Number 4 of 1996, what is ordered in Article 51 of the Indonesian Agrarian Law is fulfilled, so that it is no longer necessary to use mortgage and creditverband provisions as stated in Article 57 of the Indonesian Agrarian Law, therefore it is emphasized in Article 29 of the *UUHT*, that with the enactment of the law this law, the provisions regarding creditverband as stated in the *Staatsblad* 1908-542 as amended by the *Staatsblad* 1937-190 and the provisions regarding the mortgage referred to in Book II of the Indonesian Civil Code insofar as



it concerns the imposition of mortgage rights on land rights and objects -Objects related to land are declared no longer valid.

The definition of Mortgage is stated in Article 1 point 1 *UUHT*, which reads: "Mortgage rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights that are imposed on land rights as stated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, whether or not these are: other objects which are an integral part of the land, for the settlement of certain debts, which gives priority to certain creditors over other creditors".

From this definition it can be concluded that the definition of Mortgage has five elements, namely:

- a. Mortgage is a guarantee right for debt repayment;
- b. Unsecured Objects are land rights according to the Indonesian Agrarian Law;
- c. Mortgage rights can be imposed on land rights, but can also be imposed along with other objects that are an integral part of the land;
- d. Guaranteed debt must be a certain debt;
- e. Gives priority to certain creditors over other creditors.

According to Soedikno Mertokusumo that: "*the law cannot be complete, the law is only one stage in the process of forming a law and one is forced to look for its completeness in legal practice and judges*" (Mertokusumo 2007). Loans of money to banks by providing special guarantees, especially immovable property, provide a relatively safe position for the bank as a creditor so that the credit it gives can be paid by the debtor because if the debtor cannot pay the credit, the bank has the right to carry out direct execution of the encumbrance right. owned by way of auction on the special guarantee (hereinafter referred to as Mortgage) (Latifah et al. 2022).

Execution of the auction for mortgage rights must go through stages such as an application for execution that is submitted clearly and completely to the District Court, then the Court will issue a Reprimand Decision, then the Execution Confiscation Determination first, after that the collateral is confiscated, then the



Auction Determination and just announced in the public daily. If the creditor executes the auction in accordance with the provisions of Article 224 HIR/258 RBG as stated above, then there will be a balance of position between the creditor and the debtor, where the creditor has the right to execute, where the results of the auction on mortgage rights will be given to the creditor. Likewise the debtor, he will get a good position, in which the mortgage he gives to the creditor will not simply be executed by the creditor.

An auction as a legal institution has the function of creating the value of an item or disbursing an item into an amount of money with an objective value, to meet the needs of auction sales as stipulated in various laws and regulations, to fulfill or implement court decisions, and to meet the needs of the business world in generally, it is possible for producers or owners of goods to carry out auction sales.

Article 6 *UUHT* states:

“if the debtor defaults, the holder of the first mortgage has the right to sell the object of mortgage on his own power through a public auction and take the settlement of the receivables from the proceeds of the sale.”

Based on the *UUHT*, there are three types of execution of mortgage rights, namely executorial title, *parate executie*, and underhand execution. What distinguishes the three types of execution of the mortgage is the implementation procedure. Execution of mortgage rights with the Executorial Title, namely the sale of goods for the execution of mortgage rights is carried out based on the “For the sake of Justice Based on Belief in the One and Only God” which is carried out through procedures in accordance with the Civil Procedure Code. Furthermore, *parate executie* or execution on their own power, meaning that the sale of goods for executing mortgage rights does not need to ask for a decision from the Chairperson of the local District Court but on their own power through a public auction. Whereas for underhand execution, it must fulfill the elements listed in Article 20 *UUHT*, namely the existence of an agreement between the mortgagee and the mortgage holder.

In practice, the creditor or the first mortgage holder usually executes the mortgage by *parate executie*. *Parate executie* is usually carried out by the holder of



the first mortgage right if the debtor defaults through the State Property and Auction Service Office (hereinafter referred to as the *KPKNL*). Parate executie is often carried out by creditors holding mortgage rights because they are considered easier, costs less, the implementation is shorter, and creditors do not have to ask for fiat from the head of the court to execute the mortgage.

The arrangements regarding the procedures for conducting the auction itself are contained in the Regulation of the Minister of Finance Number 213/*PMK*.06/2020 Concerning Instructions for Conducting Auctions (hereinafter referred to as *PMK* Instructions for Conducting Auctions). In Article 5 of this regulation, it states that there are three types of auctions, namely execution auctions, non-execution auctions, which are a type of execution that are included in the type of execution auction. The provisions of Article 1 point 4 of the *PMK* Instructions for the Implementation of Auctions have been explained regarding execution auctions, namely auctions to carry out court decisions or orders, other documents equivalent to that, and/or carry out provisions in laws and regulations. Even though all the provisions and procedures for carrying out the auction have been regulated in the Regulation of the Minister of Finance Number 213/*PMK*.06/2020 Concerning Instructions for Conducting Auctions. However, in practice there are still many problems or conflicts and many obstacles that occur. For example, conflicts arising from third parties objecting then filing a lawsuit through the District Court. This conflict will certainly make it difficult for the bank as the creditor and harm the auction winner because he cannot directly control the object of the auction. In other words, the debtor's resistance and objections to the debtor's collateral auction results are one of the obstacles that often occur in the execution of collateral auctions. Sometimes the buyer/winner of the auction with good intentions cannot immediately enjoy the auction results that he has purchased through a legal auction because it is still inhabited by the debtor, even the auction buyer is sued in court by the debtor. This creates a lack of legal certainty for the auction winner because they cannot immediately obtain their rights legally and materially.

Method

The method used in this study is normative juridical by using qualitative to answer problems related to the legal position of the auction buyer in good faith in the



execution of mortgage rights through parate executie. Data collection method through literature study (literary study). The data obtained is then analyzed qualitatively in order to draw conclusions from the problems studied in this research.

Discussion

Implementation of Mortgage Execution Auction through Parate Executie

Article 1 point 1 Regulation of the Minister of Finance Number 106/PMK.06/2013 concerning Amendment to Regulation of the Minister of Finance Number 93/PMK.06/2010 which has been amended by Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Instructions for Conducting Auctions provides an understanding Auction is "sale of goods open to the public with written and/or oral price bids that increase or decrease to reach the highest price, which is preceded by an auction announcement".

Article 1 Numbers 4, 5 and 6 *PMK* Number 213/PMK.06/2020 classifies auctions as :

1) Execution Auction

Execution auction is an auction to carry out court decisions/decisions, other documents equivalent to that, and/or carry out provisions in laws and regulations.

2) Non-executed auction

Mandatory non-execution auctions are obligatory auctions to carry out the sale of goods which by law are required to be sold by auction.

3) Voluntary Non-Execution Auction

Voluntary Non-Execution Auctions are auctions of private property, persons or legal entities/business entities that are auctioned voluntarily.

The government agency in charge of holding the auction is the Office for State Assets and Auction Services-*KPKNL*. *KPKNL* according to Article 29 Paragraph (1) Minister of Finance Regulation Number 170/PMK.01/2012 that *KPKNL* is a vertical agency of the Directorate General of State Assets which is



under and directly responsible to the Head of Regional Offices. The duties of the *KPKNL* according to Article 30 of Minister of Finance Regulation Number 170/PMK.01/2012 are to carry out services in the field of state assets, valuation, state receivables and auctions based on applicable laws and regulations.

The implementation of the execution auction of Mortgage rights based on Article 6 *UUHT* is a form of *parate executie*, namely if the debtor defaults, the creditor holding the Mortgage with his own authority (without the consent of the debtor) sells the collateral object through a public auction, and collects receivables from the proceeds from the sale of the auction, without requiring permission or determination from the Head of the District Court. Article 20 *UUHT* clearly regulates execution based on Article 6 and based on executorial title, both of which end with the sale of the Mortgage object through a public auction. The execution auction of Mortgage as the implementation of Article 6 *UUHT*, compared to the implementation of the Mortgage auction with fiat execution from the court, the implementation of Mortgage auction based on Article 6 *UUHT* without court execution fiat becomes simple, fast, light because the land/building object Mortgage does not need confiscation and a lengthy court process.

The object of the execution auction based on Article 6 *UUHT* is in the form of land and objects related to land and have been bound by Mortgage Rights. Creditors who wish to sell collateral objects by auction, must meet the requirements as applicants for mortgage auctions, namely:

- 1) The auction applicant is the first rank Mortgage Right holder. Execution authority cannot be delegated to other parties.
- 2) The bidder submits a letter of request for bidding to the head of the *KPKNL* completed or attached with general and specific tender requirements documents and a receipt is given.
- 3) General auction requirements, among others:
 - a. Copy or photocopy of Seller Appointment Decree;
 - b. List of items to be auctioned.



Additional auction requirements from the seller or owner of the goods as long as they do not conflict with laws and regulations, for example the time period for bidders to see or physically examine the items to be auctioned, the timeframe for picking up the goods by the buyer, the schedule for explaining the auction to the auction participants prior to the auction.

- 4) Special auction requirements, among others:
 - a. Copy or photocopy of the Credit Agreement;
 - b. Copy or photocopy of Mortgage Certificate and Mortgage Deed;
 - c. Copy or photocopy of Land Title Certificate burdened with Mortgage;
 - d. Copy or photocopy of Debt Details or the amount of the debtor's obligations that must be fulfilled;
 - e. Copy or photocopy of evidence that the debtor is in default accompanied by warnings or statements from the creditor;
 - f. A statement letter from the creditor as the bidder whose contents will be responsible in the event of a lawsuit;
 - g. Copy or photocopy of the notice of the auction plan to the debtor or creditor, submitted no later than 1 (one) day before the auction is held.

The *KPKNL* in carrying out execution auctions based on Article 6 *UUHT* is based on Minister of Finance Regulation Number 213/*PMK.06/2020* Concerning Instructions for Implementation of Auctions and Regulation of the Directorate General of State Assets Number 2/*KN/2022* concerning Guidelines for Administration of Auctions at the Office of State Assets Services and Auctions.

Auction Winners As Good Faith Buyers

In the Black's Law Dictionary what is meant by good faith is:

A state of mind consisting in (1) honesty in belief or purposes. (2) Faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage (Harahap 2017).



Article 548 of the Civil Code states:

Each position of power in good faith gives the person holding it the following rights over the object under its control:

1. That he is up to the point when the object is demanded to be returned before the judge, while he must be considered as the owner of the material;
2. That because he has expired, he can obtain ownership rights to said object;
3. That he has the right to enjoy all the proceeds up to the time of re-prosecution of said material before the Judge;
4. That he must be maintained in his position, if he is disturbed in holding him, or reinstated in that, if he loses his position.

Theoretically, a buyer in good faith will be protected based on his position of power in good faith based on the articles in the Civil Code mentioned above. As stated in Article 584 of the Civil Code, good faith exists if the material rights are obtained through one of the ways to obtain property rights, where from the article it is known that some of the transfer of existing property rights cannot be separated from the existence of contract law in the Civil Code.

Article 1338 paragraph (3) of the Civil Code states that: "An agreement must be implemented in good faith". This article aims to prevent inappropriate and unlawful acts. The formulation of Article 1338 paragraph (3) of the Civil Code indicates that actually good faith is not a legal requirement for a contract as the conditions contained in Article 1320 of the Civil Code. The element of good faith is only required in terms of the implementation of a contract, not in the making of a contract as good faith in an objective sense. The Civil Code recognizes objections into 2 types of objections, namely movable objects and immovable objects. Regarding movable objects in good faith, Article 1977 paragraph (1) of the Civil Code essentially protects a buyer of movable objects who has good intentions. Where in paragraph (2) it is an exception to Article 1977 paragraph (1). Article 1977 paragraph (2) of the Civil Code stipulates that the protection provided by Article 1977 paragraph (1) of the Civil Code does not apply to items that are lost or that come from theft. Whoever loses or has an item stolen, within a period of 3 years from the time the item was lost or stolen has the right to request the return of the



item from anyone holding it unless the holder of the item obtains it at the annual market or at public auctions as stipulated in Article 582 of the Civil Code.

As for the application of Article 1977 paragraph (1) of the Civil Code, this is in line with the provisions of Article 1966 of the Civil Code which states: "It is sufficient that when objects or receivables are obtained, good faith exists." Regarding immovable objects, the Civil Code does not regulate them as in the arrangement of movable objects. In this case, Prof. R. Subekti, argues that the provisions of Article 1977 paragraph (1) apply to all types of goods, so that immovable property needs to include a provision stating that if an agreement is made in the presence of an official, then the parties can be considered in good faith. It is different from our customary law, customary law does not only provide protection to buyers with good intentions of movable objects but also to buyers of immovable objects in good faith (Disemadi and Lau 2021). Based on this, it can be seen that the law provides protection to buyers with good intentions to control the objects they own in good faith and benefit from these objects as a result of their position of power over these objects as long as they are not proven otherwise before the court for their good intentions.

Auction is a legal term whose explanation is given in Article 1 of the Auction Law (*Vendu Reglement*) which provides the following definition:

"What is meant by public sale is auctions and sales of goods held in public with increasing price bids or with decreasing price agreements, or with price registration, where people who are invited or have previously been notified of the auction, are given the opportunity to buy by way of: bidding on prices, agreeing on prices or by way of registration."

In the Black's Law Dictionary what is meant by an auction is:

"A public sale of property to the highest bidder, a sale at auction is ordinarily complete when the auctioneer so announces in a customary manner, as by pounding a hammer" (Garner 2023).

This definition is then clarified by Article 1 point 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 Concerning Instructions for Conducting Auctions, which states that:



Auction is the sale of goods open to the public with written and/or oral price offers that increase or decrease to reach the highest price, which is preceded by an Auction Announcement.

From the definition of the auction, in general the auction can be interpreted as:

- 1) The method of selling is carried out at a predetermined time and place;
- 2) Done in public, namely by way of announcing it to gather bidders/bidders;
- 3) It is carried out by way of a special price offer, namely by way of a price offer verbally or in writing that is competitive in nature;

The participant who submits the highest bid will be declared the winner (Silitonga 2020).

Likewise, the principles used in the auction are reflected in the meaning of the auction mentioned above. Some of the principles that can be stated include:

1. The principle of Publicity, meaning that each auction must be preceded by an announcement of the auction, either in the form of advertisements, brochures or invitations. In addition to attracting as many bidders as possible, the auction announcement is also intended to provide an opportunity for social control as a form of public protection.
2. The Principle of Competition, namely because the bidders compete and the bidder with the highest bid that is in accordance with or above the limit price will be declared the winner.
3. The Principle of Certainty, meaning that the independence of the Auction Officer should be able to ensure that the highest bidder is declared the winner, that the auction winner who has paid off his obligations will receive the goods and their documents.
4. The Principle of Accountability, meaning that the implementation of the auction can be accounted for because the Government through the Auction



Officer has the role of supervising the auction and making an Authentic Deed called the Minutes of Auction.

5. The Principle of Efficiency, meaning that because the auction is carried out at a specified time and place and transactions occur at that time, cost and time efficiency is obtained, because then goods can be quickly converted into money.
6. The principle of *Nemo plus Juris* means that no one can transfer rights greater than what he has. The aim is to protect the actual holder of land rights from the actions of other people who transfer the matter without the true rights holder knowing (Adrian Sutedi 2014).

Auctions in Indonesia are officially recognized by the enactment of the Auction Law (*Vendu Reglement, Ordonantie* 28 February 1908 *Staatsblad* Year 1908 Number 189 as amended several times, most recently by *Staatsblad* Year 1941 Number 3) and Auction Instructions (*Vendu Instructie, Staatsblad* Year 1908 Number 190 as amended several times, most recently by the *Staatsblad* of 1930 Number 85) by the Dutch East Indies government which is still in effect today as the highest regulation governing the principles of auctions based on Article II of the Transitional Rules of the 1945 Constitution which was later supplemented by various Minister of Finance Regulations related to the implementation of the auction.

In the Indonesian legal system, auctions are classified as a special way of selling whose procedure is different from buying and selling in general. The auction includes a named agreement (*nominaat*) or a special agreement (*benoemd*) because it has its own name, namely "auction". Auctions are not specifically regulated in the Civil Code, but auction sales are regulated in the provisions of Book III concerning Contracts of the Civil Code regarding buying and selling. Article 1319 of the Civil Code stipulates that all agreements, both those with a special name and those that are not known by a certain name, are subject to the general regulations contained in this chapter and the previous chapter (Arisandy et al. 2023).

The basis for auction sales also refers to the provisions of Article 1457 of the Civil Code which defines "buying and selling" as an agreement, in which one party binds himself to surrender an object and the other party to pay the promised price.



The auction contains the elements listed in the definition of buying and selling, namely the existence of a legal subject (a seller and a buyer), an agreement between the seller and the buyer regarding goods and prices and the rights and obligations that arise between the seller and the buyer.

Thus the auction is buying and selling in a special form. In connection with the auction as a form of buying and selling, there are rights and obligations that arise between the seller and the buyer in good faith to guarantee legal certainty for the goods purchased by the buyer. Auction as a form of buying and selling as referred to in Article 1319 jo. Article 1457 of the Civil Code and considering Article 584 jo. Article 531 of the Civil Code where to be said to have good faith, then a position of power obtained through an auction can only be said to be in good faith if it has fulfilled the procedures and principles contained in a sale through auction, in this case specifically the court execution auction. Therefore, the buyer of the auction winner can be said to have good faith if the sale and purchase carried out between the auction winner complies with the existing laws and regulations regarding buying and selling in general by observing Articles 1320 and 1338 of the Civil Code. If it is related to the theory of authority in civil law which examines the authority to have the right and the authority to act, then the auction winner as a good faith buyer has rights in the case of auction as a form of buying and selling of mortgage objects because legally considered competent and has fulfilled all the auction requirements so that the auction winner is the party that should be in charge of the mortgage object auction.

Conclusion

The legal position of the Auction Winner as a buyer in good faith through the execution auction of the Mortgage right as the right holder of the auction object that has been purchased and has full authority over the auction object based on formal juridical evidence and physical material of the Mortgage object. The auction winner as an auction buyer who has good faith obtains legal protection for his actions in purchasing the object of the mortgage auction, including when there is resistance from the mortgage holder.

Recommendation



Based on the conclusions above, the suggestions that the writer can put forward are:

1. For the buyer of the mortgage execution auction, before participating in the mortgage execution auction, it is best to examine the formal juridical data submitted for auction on the object of the mortgage execution auction object to the Land Office to obtain accurate information directly regarding the condition of the auction object and the fulfillment of formal procedures for the auction the execution of the mortgage is in accordance with the principle of prudence so as not to suffer losses due to resistance from the mortgage holder.
2. For Auction Officials, the substance of the Minutes of Auction in the future should contain certain clauses. These clauses must provide protection for the Auction Winner. The contents of the clauses of the Minutes of Auction should provide a balance between the interests of the parties, the interests of the seller and the interests of the Auction Winner.

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