


Legal Protection for Buyers of Mortgage Rights Execution Auctions in the Case of Blocking the Certificate of Ownership which becomes the Object of the Auction

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Abstract

Introduction: Article 45 paragraph 1 letter e creates legal uncertainty regarding the rights of the auction winner in terms of transfer of rights and control of the auction object due to a blockade from the debtor or other party.

Purposes of the Research: The purpose of this research is to examine the legal certainty of Article 45 Paragraph 1 Letter e of Government Regulation No. 24 of 1997 concerning Land Registration against blocking of auction objects and legal protection for auction winners executing mortgage rights in the event of blocking of auction objects.

Methods of the Research: The research method used is normative legal research.

Results of the Research: The results of the study show that the form of legal protection for the auction winner is preventive legal protection, in which the name transfer process by the auction winner should still be carried out by understanding the meaning of Article 45 paragraph 1 letter e, namely the material claim or dispute referred to is limited to ownership disputes, not debts. Furthermore, legal protection is repressive, i.e. the auction winner can request assistance from the District Court to empty the object. The auction winner can hold the seller accountable in the form of compensation, and the auction winner can file a lawsuit against the unlawful act against the blockade applicant and the Land Office as the institution authorized to carry out block records.

Keywords: Legal Protection; Auction Winner; Execution of Liability.

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INTRODUCTION

Banks in granting credit must apply the prudential principle. The purpose of applying the prudential principle is so that banks are protected from the risks that can occur due to credit. As is the case with bad credit cases, for this reason, the Bank in granting credit to customers/debtors applies the prerequisite for collateral. Collateral or collateral is needed as a protection effort for creditors to ensure the certainty of repayment of debtor debts. If in the future the debtor breaks his promise or makes a default that causes the debtor to be unable to pay off his debt according to the predetermined time. Then this can be accounted.

The collateral used by banks in granting credit is generally a material guarantee. Immovable collateral is a guarantee whose object is in the form of either movable or immovable objects specifically intended to guarantee the debtor's loan to the creditor if in

the future the debtor cannot repay his debt to the creditor.¹ One form of material security is in the form of Land Rights (HAT), the provisions of which are regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Mortgage Rights Law).

Mortgage rights can be interpreted as a guarantee of protection of the right to repayment of a debtor's debt. In the event that a debtor defaults, the creditor as the security holder has the right to sell the collateral that has been charged with the object of the mortgage through a public auction system. The holder of the first mortgage right has the right to take precedence over the repayment of his debt to other creditors. The creditor's right of precedence is a right that the law classifies into privileges, while the creditor's position as a preferred creditor.

Mortgage execution auction is related to the default of the debtor against the creditor. The default in question is in the form of a credit agreement followed by a mortgage, where the debtor is no longer able or there is no good faith to pay off his obligations to the creditor.

Legally, the auction buyer has legal certainty over the auction goods he buys with the minutes of the auction. As in Article 41 of Government Regulation Number 24 of 1997 concerning Land Registration states that the transfer of land rights through auction can only be registered with the Land Office if it is proven through an excerpt of the minutes of the auction made by the auction official.² The auction minutes quotation is evidence of the transfer of land rights, such as a deed of sale and purchase in the legal act of buying and selling land. Auction buyers who have obtained auction minutes have the right to register their land rights with the BPN to change the name from the old owner to the new owner. In other words, the property rights are fully transferred to the auction buyer after the auction buyer has fulfilled all the auction requirements.

However, problems occur when the auction purchaser wants to transfer the title after a mortgage auction. The debtor or other party requests the BPN to block the certificate of ownership. The blocking at the Land Office has legal consequences for the land rights, namely that no transfer or encumbrance of land rights can be made. Thus, the certificate cannot be used for any legal action and the purchaser of the auction cannot transfer the name or take possession of the auction object. As a result, the process of transferring rights or transferring the name of the auction buyer is hampered because of the blocking.

This is also because the certificate, as a strong evidentiary tool, does not guarantee the legal certainty of its owner. Article 32 of Government Regulation No. 24 of 1997 on Land Registration provides an opportunity whereby any other party who feels entitled to ownership can sue the party whose name is listed on the certificate in a civil manner either to a general court, or sue the Head of the National Land Agency (BPN)/Head of the Land Office, or the State Administrative Court (PTUN).³ The objecting party can request a recording in the land book, better known as blocking the land or recording the block.

Referring to the provisions of Article 45 paragraph (1) letter e of Government Regulation No. 24/1997 on Land Registration which states that the Head of the Land Office refuses to

¹ Gatot Supramono, *Perjanjian Utang Piutang* (Jakarta: Kencana Prenada Media Group, 2013), p. 59.

² Budi Harsono, *Hukum Agraria Indonesia* (Jakarta: Universitas Trisakti, 2013), h. 516.

³ Urip Santoso, *Hukum Agraria : Kajian Komprehensif* (Jakarta: Kencana Prenada Media Group, 2017), p. 319.

register the transfer or encumbrance of rights, if the land concerned is the object of a dispute in Court.⁴ However, Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration does not provide provisions on the definition of "Object of dispute in Court", so this regulation creates multiple interpretations for its readers. When viewed through dogmatic legal science, if a text is vague, an interpretation is needed which is held in a commentary in the form of an additional or complementary interpretation so that people understand and accept law and there is no misunderstanding or double meaning.⁵

This is a legal loophole for debtors/other parties who object to the execution of mortgage rights from their collateral objects by filing a civil lawsuit through the local district court and registering it with the local BPN to be recorded in the land book so that it indirectly intimidates prospective bidders to buy the collateral object because later the auction buyer will experience a refusal to register the transfer of land rights through auction until a court decision is obtained that has permanent legal force in favor of the auction buyer or creditor.

As a result of the refusal of registration in the transfer of rights through auction by the National Land Agency (BPN) on the grounds that there is still a dispute over the land, it has resulted in a lawsuit from the buyer of the auction for the execution of mortgage rights both in the District Court and the State Administrative Court (PTUN) against BPN.⁶ Furthermore, the procedures for recording blocking, confiscation or disputes and cases regarding land rights are still scattered in several provisions, incomplete, not uniform and some arrangements are no longer by the demands and dynamics of community development so that they need to be compiled in a separate regulation, the Ministry of Agrarian Affairs and Spatial Planning issued Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 13 of 2017 concerning Procedures for Blocking and Confiscation.

The presence of this regulation is expected to close the legal gap on the implementation of refusal to register the transfer of land rights, especially because the land to be transferred is still the object of a dispute in court. This regulation guides both officers at the BPN and the public on the procedures for recording and removing blocks and seizures as well as disputes and cases over land such as what can cause refusal to register the transfer of land rights. Article 35 paragraph (3) of this regulation states "If the land rights requested to be recorded for the existence of a Case Confiscation have become the Object of an execution auction, the registration of transfer of rights can still be carried out by notifying the auction buyer of the existence of a lawsuit case on the land and recording it in the land book which is the Object of the auction."⁷

The presence of this article gives the purchaser of an auction for the execution of a Mortgage Right the right to continue to register the transfer of rights even though there is

⁴ Adrian Sutedi, *Hukum Hak Tanggungan* (Jakarta: Sinar Grafika, 2012), p. 32.

⁵ Satya Haprabu and Burhanudin Harahap, "Penjualan Lelang Barang Jaminan Hak Tanggungan Menurut Perspektif Hukum Islam," *Jurnal Repertorium* 4, no. 1 (2017): 52-60.

⁶ Pasal 45 ayat (1) huruf e Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah (Lernbaran Negara Republik Indonesia Tahun 1997 Nomor 59, Tambahan Lembaran Negara Republik Indonesia Nomor 3696)

⁷ Offi Jayanti and Agung Darmawan, "Pelaksanaan Lelang Tanah Jaminan Yang Terikat Hak Tanggungan," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (2018): 457-72, <https://doi.org/10.24815/kanun.v20i3.11830>.

still a lawsuit or confiscation case on the land. However, in a contradictory manner, paragraph (5) of the old article has eliminated the right of the purchaser of the auction for the execution of the Mortgage Rights to transfer the purchased land to another party until the case attached to the land obtains a decision that has permanent legal force.

Although on the one hand, the purpose of blocking land rights certificates is to assure protection and legal certainty to the parties concerned. However, on the other hand, the blocking of land rights indirectly causes auction buyers to feel disadvantaged because they cannot carry out the process of transferring names even though they have fulfilled their obligations as auction buyers. This results in the absence of legal certainty for auction buyers because they cannot immediately obtain their rights juridically and materially.⁸ The auction buyer whose acquisition has met the requirements and methods as stipulated in the legislation is a good faith buyer who must be protected by law and obtain legal certainty as reflected in the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 821 / K / Sip / 1974 that the purchase in public through the auction office is a good faith buyer and must be protected by law.

METHOD

The research method used in this writing is normative legal writing with the statutory approach method (statute approach) and conceptual approach (conceptual approach). Legal materials used include primary, secondary and tertiary legal materials. Legal material tracing techniques use literature studies that are analyzed using prescriptive analysis techniques.

RESULTS AND DISCUSSION

A. Legal Certainty Provisions of Article 45 of Government Regulation No. 24 of 1997 concerning Land Registration Against Blocking of Auction Objects

Legal certainty in the transfer of ownership of land rights through an auction based on Government Regulation No. 24 of 1997 is contained in the minutes of the auction. Minutes of the auction are minutes of the implementation of the auction made by the auction official in the form of an authentic deed and have perfect evidentiary power. Minutes of the auction minutes that are official documents of the course of public sales or auctions that are organized and accounted for by the Auction Officer and the parties (sales and purchases) so that the implementation of the auction referred to therein is binding.⁹

The *Vendu Reglement* has regulated the rights of auction buyers in the process of transferring auction objects. This is regulated in the provisions of Article 42 of the *Vendu Reglement*, the winner of the auction is entitled to obtain a copy or excerpt of the authenticated minutes or what is currently called an excerpt of the minutes of the auction. As stipulated in Article 93 paragraph (2) point an of the Minister of Finance Regulation Number 213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions

⁸ Haprabu and Harahap, "Penjualan Lelang Barang Jaminan Hak Tanggungan Menurut Perspektif Hukum Islam." *Op. Cit.*

⁹ Hatta Isnaini Wahyu Utomo, *Memahami Pelaksanaan Tugas Jabatan Pejabat Pembuat Akta Tanah* (Yogyakarta: Phoenix Publisher, 2019), p. 172.

which states that the buyer obtains an excerpt of the minutes of the auction as a deed of sale and purchase to transfer the name or gross minutes of the auction as needed.

The minutes of the auction are evidence of the transfer of rights and directly a change in juridical data on the land sold through the public auction, so according to Article 36 Paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration, that the maintenance of land registration is carried out if there is a change in the physical data and juridical data of land registration objects that have been registered and automatically the relevant right holder is obliged to register the changes referred to in paragraph (1) to the Land Office.

In an auction that is carried out by the creditor on the debtor's property, it is not uncommon to cause conflict based on the debtor's dissatisfaction with the creditor's action to auction off the collateral, the conflict that arises can be caused by the debtor's dissatisfaction with the determination of the limit value below the market price. So because of a sense of dissatisfaction or feeling that his rights have been harmed by the auction of the collateral, the debtor as the owner of the collateral seeks to defend his rights by filing a lawsuit to the court to cancel the decisions taken during the auction and make a blocking application.

Such a problem that occurs in the implementation of the transfer of land rights through auction is the blocking of land both individual applications and there is a dispute over the land which is the object of collateral security. This is based on Article 45 paragraph (1) letter e of Government Regulation Number 24 of 1997 concerning Land Registration, giving the Head of the local Land Office the right to refuse registration of transfer of land rights if the land concerned is the object of a dispute in court.

In fact, for a lawsuit that lasts from the first court level to the cassation level, it can take years to decades. So that the existence of Article 45 paragraph (1) letter e of Government Regulation Number 24 of 1997 has not provided legal certainty for auction buyers because of course the auction buyer after completing his obligations in full both to the seller and to the state party in the form of paying off the auction purchase price and transaction tax on The land hopes to be able to fully enjoy its rights, both legal certainty over land ownership and the right to transfer the land to other parties.

Blocking is carried out as a security measure in the form of prevention / temporary suspension of all forms of change. Similarly, Article 45 paragraph (1) letter e of Government Regulation No. 24/1997 on Land Registration states that the Head of the Land Office refuses to register the transfer of rights or encumbrance of rights if the land concerned is the object of a dispute in court. Registration of land acquired through auction is included in data maintenance registration because the land is not registered for the first time. The first registration was made by the previous landowner. This is by the provisions of Article 94 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 on the Provisions for the Implementation of Government Regulation No. 24 of 1997 on Land Registration, that the maintenance of the cadastral data is carried out by registering the changes of the physical data and/or legal data of the registered cadastral objects by recording them in the Public Register by the provisions of this Regulation (Article 1). The changes of the legal data referred to in paragraph (1) are in the form of transfer of rights due

to sale and purchase, exchange, grants, incorporation into companies and other legal acts of transfer of rights (Article 2 letter a).

As stated in Article 3 paragraphs (1), (2), and (3) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 13 of 2017 concerning Procedures for Blocking and Confiscation, which states that: 1) Blocking recording shall be carried out against land rights due to legal acts or legal events, or due to land disputes or conflicts; 2) Recording of blocking as referred to in paragraph (1) shall be submitted: a) in the context of the legal protection of interests in land requested for blocking; and b) at most 1 (one) time by 1 (one) applicant on 1 (one) same land object; 3) Land rights for which there is a blocking record in the land book shall not be subject to land registration data maintenance activities."

The provisions of the article explain that if there is a dispute or conflict of land law over the land rights that are the object of the auction, blocking will be carried out, this is done to protect the interests of the applicant. Then based on the blocking, land registration maintenance activities cannot be carried out. This provision underlies the BPN to block the land rights that are the object of the auction. So that the auction buyer cannot make a name change and directly control the object of the auction he won even though he has paid off all his obligations as an auction buyer.

As in Article 5 paragraph (1) of the Regulation of the Minister of Agrarian Affairs on the Procedure for Blocking and Confiscation requires that the applicant who submits the blocking is the party who has a legal relationship in this case, namely the land owner, either an individual or a legal entity. Therefore, only the auction buyer as the legal owner of the land can apply for blocking the land instead of the original owner (the debtor) because the ownership of the certificate of ownership has been transferred to the creditor with a promise to provide security in the form of the certificate of ownership to the creditor.

In this regard, arrangements regarding the issuance of certificates are also experiencing problems, if there is a land claim case over the right to the land. Then it will be suspended. About the problems of this thesis, buyers of auctions of land objects that have been sued in court cannot, of course, apply for the issuance of certificates. This is as stated in Article 31 paragraph (2) PP No. 24 of 1997. In this regulation, it is clear that the issuance of a land certificate is suspended in the event of a lawsuit against the land in question until the said record has been deleted.

Meanwhile, the mastery of the auction object by the auction buyer based on Article 24 PMK Number 213/PMK.06/2020 states that the auction buyer can control or own the auction object after fulfilling the obligation to pay auctions and taxes or other legal levies according to laws and regulations. However, in practice, bidders who have been declared bidders cannot carry out the process of mastery and transfer of rights to the auction object they have won as stated in the Minutes of Auction, even though they have fulfilled the obligation to pay auctions and taxes or other legal levies according to laws and regulations.

This is because there are rules as stated in the provisions of Article 45 of Government Regulation No. 24 of 1997 concerning Land Registration and Article 126 of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to Regulation of the Minister of Agrarian Affairs/Head

of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

This rule makes the auction buyer unable to register the auction object that he has won into his property rights because the land has been blocked by the BPN. If the certificate is blocked, then the application for issuance of a new certificate will not be able to occur, this is as stated in Article 31 paragraph (2) of PP No. 24 of 1997, namely: "If in the land book there are records referred to in Article 30 paragraph (1) letter b concerning juridical data, or records referred to in Article 30 paragraph (1) letters c, d and e concerning physical and juridical data, the issuance of the certificate is suspended until the records concerned are removed." In this regulation, it is stipulated that the issuance of land certificates is suspended if there is a lawsuit case on the land concerned until the record in question has been erased.

This is where there is legal uncertainty regarding the transfer of rights and control of the auction object by the auction buyer. As stated in Article 42 of the *Vendu Reglement* and Article 24 of PMK Number 213 / PMK.06 / 2020 concerning the Implementation of Auctions, if the auction buyer has made payment obligations and other costs, he is entitled to control both physically and juridically the auction object. However, in other rules as stated in Article 45 of Government Regulation No. 24 of 1997 concerning Land Registration and Article 126 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration that if there is an object of dispute in court, blocking is carried out so that no maintenance activities can be carried out on the land rights. So here there is uncertainty regarding the transfer of rights and control of the auction object by the auction buyer.

In addition, blocking is sometimes used as an excuse for not being able to carry out land service activities until an uncertain or indeterminate period because the blocking action is considered to have included explaining the existence of disputes, conflicts, and cases or other problems, which of course can cause legal uncertainty if the blocking action seems to be a permanent administrative action of the Head of the Land Office even though based on the principle of prudence from the Land Office, the land object is blocked. That is, there is no limitation in the sense of prudence, even though those who apply to the Land Office to be blocked only use a written request letter, not a copy of the lawsuit letter from the court, but it is considered problematic, then the Land Office blocks the land.

According to the author, the recording of blocks based on the provisions of Article 45 paragraph (1) letter e of Government Regulation No. 24 of 1997 results in the legal certainty of land registration will not be realized. This is because in a civil case from the lawsuit stage at the District Court, Appeal at the High Court, and Cassation at the Supreme Court to the *Inkracht* decision takes a long time to years. Then, the requirement to record the blocking due to the existence of a case allows the blocking to be carried out repeatedly or more than 1 (one) time, raising the question of when the *Eintracht* decision will be reached if the blocking of the case provides an opportunity for the applicant to continue to hinder the

transfer or encumbrance of land rights by filing a new case when the initial lawsuit is expected to lose.

Then the provision of conditions for applying for blocking with a copy of a lawsuit that has not yet been decided by the court, defeats the excerpt of the minutes of the auction which has binding legal force to carry out the process of transferring land rights which is the object of the auction. Regulations regarding blocking are still ambiguous and do not provide legal certainty. It is necessary to establish laws and regulations governing the legal protection of auction buyers.

According to the author, the Land Office has been misguided in interpreting this article so that it is equated with a dispute even though the implementation of the auction has fulfilled the laws and regulations, especially Law Number 4 of 1996 concerning mortgage rights recorded in Article 6 which reads: "If the debtor breaks his promise, the first holder of the mortgage right has the right to sell the object of the mortgage right on his own authority through a public auction and take repayment of his debt from the proceeds of the sale" and also how could the land office / BPN deny its own product, namely by issuing a Certificate of Mortgage (SHT) on the agreement between the debtor and the creditor, which means that everything also refers to Law Number 4 of 1996 concerning Mortgage Rights.

So that the provisions in Article 45 letter e of Government Regulation No. 24 of 1997 concerning Land Registration cause legal uncertainty to the rights of auction buyers in the process of transferring rights and control of auction objects due to blocking and due to the absence of provisions regarding the limits of the object of dispute in court in Government Regulation No. 24 of 1997 and its implementing regulations. In the provisions as explained above, there is no further explanation regarding the object of dispute in court as to what can cause the rejection of the transfer of rights through auction and does not provide a guarantee of legal certainty to the auction buyer itself in the process of transferring rights through auction so that the existing provisions cause multiple interpretations. The article should be understood by the text in Article 45 letter e, namely the material of the lawsuit is limited to land disputes processed in the Court, of course the plaintiff is another party who has a claim of ownership rights (not the debtor / executor), not a debt and credit dispute.

B. Legal Protection of Buyers of Mortgage Rights Execution Auctions in the Event of Blocking of the Auction Objects

Legal protection of the auction buyer/auction buyer means the legal certainty of the auction buyer's right to the goods he buys through the auction, obtaining goods and property rights for the goods he buys or in other words the auction buyer can control the auction object he has juridically and materially. The legal interests of auction buyers to obtain auction objects must be protected because legal interests are taking care of human rights and interests so the law has the highest authority to determine human interests that need to be regulated and protected.¹⁰ Based on the Supreme Court Jurisprudence dated August 28, 1967 Reg. No. 821 K/SIP/1974, regarding legal protection to buyers in good faith, which emphasizes that buyers who have acted in good faith must be protected and

¹⁰ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000), p. 69.

the sale and purchase concerned must be considered valid, so good faith buyers must be given legal protection.

Based on judicial practice so far, it is believed that buyers in good faith must be protected. However, the applicable laws and regulations do not provide clear instructions regarding the criteria that can be considered a "Good Faith Buyer". According to Subekti, a good faith buyer as a buyer who is completely unaware that he is dealing with a person who is not the owner, so he is seen as the owner and whoever obtains an item from him is protected by law.¹¹ The same definition is also put forward by Ridwan Khairandy, who defines a good faith buyer as someone who buys goods with full confidence that the seller is the owner of the goods he sells. He did not know that he was buying goods from someone who did not own them. He is an honest buyer.¹²

The law and doctrine have not been able to provide clear boundaries regarding the notion of good faith, but generally recognize the distinction between the nature of good faith, namely subjective nature and objective nature. When looking at the law in the normative realm, Article 1338 paragraph (3) of the Civil Code emphasizes that agreements must be made in good faith. If it is related to the legal system of execution of mortgage collateral through auction, it can be divided into 2 (two) types, namely:

1) Good Faith Subjective Dimension

Auction buyers buy auction objects with honesty and have confidence that the seller is indeed a person who has the authority to sell. Procedures have been carried out that are regulated by laws and regulations that show the clear status of goods, which for the auction of execution of mortgage rights the creditor has been authorized to sell goods. Before the auction is held, it has been preceded by an announcement that is open to everyone.

2) Good Faith Objective Dimension

Auction buyers have fulfilled good faith objectively, namely related to rationality, appropriateness and justice. Auction buyers can be said to fulfill rationality because the conditions in buying and selling through auctions apply to everyone, such as being the highest bidder, where rationally the highest bidder is determined as an auction buyer. Fulfills the propriety because it is done clearly in front of the Auction Officer, cash and open to the public.

With the fulfillment of subjective and objective good faith, the auction buyer is fulfilled as a good faith buyer. As a result, there must be absolute and absolute legal protection for auction buyers.¹³ Based on the above criteria, the auction buyer in the case that the researcher raised is a good-faith buyer. This is evidenced by the fulfillment of requirements by procedures and laws by auction buyers when participating in and carrying out auctions. Therefore, the auction buyer as a good faith buyer should be given legal protection to protect his rights. The form of legal protection for auction buyers in the process of transferring their names is blocked by BPN in the form of preventive legal protection and repressive legal protection as follows:

¹¹ Subekti, *Aneka Perjanjian* (Bandung: Aditya Bakti, 2014), p. 15.

¹² Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak* (Jakarta: Program Pascasarjana, Fakultas Hukum Universitas Indonesia, 2003), p. 194.

¹³ *Ibid.*, p. 417.

a. Preventive Legal Protection

Preventive legal protection against buyers of auction execution of mortgage rights is a form of protection given to auction buyers before disputes related to the object of auction execution of mortgage rights. Legal protection efforts against auction buyers mean that there is a legal certainty of the rights of the winner or auction buyer to be able to control or execute the auction object that has been owned juridically and materially.¹⁴ *Vendu Reglement* regulates the rights of auction buyers related to the transfer of objects. Article 42 of the *Vendu Reglement* states that the auction buyer is entitled to obtain an excerpt of the minutes of the auction as a deed of sale and purchase of the object of the auction of execution of mortgage rights. The quotation of the minutes of the auction will be used as a deed of sale and purchase to transfer the name of the object of the auction of execution of mortgage rights if the auctioned object is immovable. Minutes of auction have perfect evidentiary power related to what is contained therein. The minutes of the auction have a function related to the validity of legal actions which is an agreement between the seller and the auction buyer in written form.¹⁵

So that legally, the auction buyer has legal certainty over the object of the mortgage auction he bought. The auction buyer who has received the Excerpt of Minutes of the Auction has fully become the owner of the object of the auction of execution of mortgage rights and has the right to control the object of the auction of execution of the mortgage rights. The auction buyer is also entitled to register the transfer of land rights or transfer the name to the National Land Agency Office (BPN).¹⁶ However, in fact the minutes of the auction cannot guarantee legal protection for the auction buyer of the execution of the mortgage due to the provisions in the clause of the auction minutes regarding the responsibilities of the Auction Office which reads:

- 1) The auction official / KPKNL does not bear responsibility for the truth of the information given orally at the time of sale about the actual and legal conditions of the auctioned goods, such as the area, boundaries, and lease agreements and are at the risk of the buyer. The clause reflects the Government relinquishing responsibility in the form of both the physical and legal conditions of the goods sold.
- 2) The bidder/buyer is considered to have truly known what he has bid on. If there is a visible or invisible flaw/damage, the bidder/buyer has no right to refuse or withdraw after the purchase is authorized and waives all rights to claim damages for anything whatsoever.

Based on this clause, it appears that the auction buyer as a legitimate buyer has a weak position regarding the auction object. This clause can be detrimental to auction buyers, especially for prospective buyers who do not inspect the object before buying the sale through auction. Buyers/auction buyers do not get definite legal protection related to the auction object they buy because it can harm the position of auction buyers if there are problems with the auction object, especially if there is a lawsuit from a third party related to ownership.

¹⁴ Dea Mahara Saputri, "Perlindungan Hukum Terhadap Pembeli Lelang Dalam Pelaksanaan Lelang Eksekusi Hak Tanggungan," *Pamulang Law Review* 2, no. 1 (2020): 7-12.

¹⁵ *Ibid.*, p. 9.

¹⁶ Sutiarnoto, *Peraturan Hukum Lelang Di Indonesia* (Medan: USU Press, 2018), p. 93.

So that preventive legal protection for buyers of auction execution of mortgage rights who acquire land rights through auctions whose objects of mortgage rights are blocked, in the process of changing their names can still be carried out as reflected in Article 35 paragraph (3) and paragraph (5) of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 13 of 2017 concerning Procedures for Blocking and Confiscation which emphasizes that if the land rights requested to be recorded have become the object of an execution auction, namely parate execution of mortgage rights, the registration of the transfer of rights can still be carried out by notifying the auction buyer of the existence of a lawsuit case on the land and recording it in the land book which is the object of the auction. Land rights that have been registered, i.e. have been transferred to the name of the auction buyer, cannot be transferred by the auction buyer until the case has obtained a final legal decision.

When it is related to the provisions prohibiting the registration of the transfer of rights in Article 45 paragraph (1) letter e of Government Regulation Number 24 of 1997 concerning Land Registration, which confirms that the Head of the Land Office refuses to register the transfer of rights, if the land in question is the object of dispute in court, It must be interpreted that the land which is the object of the dependents who have carried out an execution auction which will be renamed to the name of the auction buyer is the object of an ownership dispute not related to a debt dispute.

b. Repressive Legal Protection

Repressive legal protection is a legal protection that resolves disputes that occur by returning to the situation before the violation of legal norms. Repressive legal protection is in the form of claiming rights to parties that are considered detrimental.¹⁷ This can occur if one party feels that his interests have been harmed. Repressive legal protection against buyers of auction execution of mortgages is an effort by auction buyers to obtain legal protection through the judiciary.¹⁸ The repressive legal protection provided to the auction buyer, among others:

1) Efforts to Vacate the Auction Object Through the Chairman of the District Court Without a Lawsuit

The efforts of auction buyers who make legal efforts so that the legality of the land and buildings they buy can be immediately transferred and can also be owned immediately for the purchase of the auction, an application for execution of the vacating of the auction object that has been sold and handed over to the buyer can be made. The auction buyer can take a legal action by submitting an application for the execution of the vacating of the auction object to the court.

Before submitting the application, the auction buyer submits an application for Grosse Minutes of Auction which is a copy of the original Minutes of Auction with the headline "DEMI KEADILY BASED ON THE Almighty God" to KPKNL. Grosse Minutes of Auction has the same executorial power as a decision with permanent legal force. After obtaining

¹⁷ Burhan Sidabariba, *Lelang Eksekusi Hak Tanggungan: Meniscayakan Perlindungan Hukum Bagi Para Pihak* (Jakarta: Papas Sinar Sinanti, 2019), p. 30.

¹⁸ Saputri, "Perlindungan Hukum Terhadap Pembeli Lelang Dalam Pelaksanaan Lelang Eksekusi Hak Tanggungan." *Op. Cit.*

the Grosse Minutes of Auction, the auction buyer can submit a request for vacating to the Chairman of the local District Court without having to go through a lawsuit.

This is in accordance with the provisions of Article 200 paragraph (11) HIR and the Supreme Court Circular Letter (SEMA) Number 4 of 2013 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a guideline for carrying out tasks in court stating: "Regarding the auction of mortgage rights by the creditor himself through the auction office, if the auctioneer does not want to vacate the auction object, the execution of the vacancy can be directly submitted to the Head of the District Court without going through a lawsuit". The real execution petition is not through a lawsuit in general. The application can be submitted orally or in writing and will be submitted to the Chairperson of the local District Court, in this case, namely the local District Court. Upon this request, then the Head of the local District Court will follow up by carrying out an *Aanmaning* (warning). What *Aanmaning* meant was a summons to the executed, namely the collateral owner/debtor to attend an anonymous trial, during which the executed was warned to empty the auction items voluntarily.

2) Attempts to Compensate the Seller

In this case the auction buyer is the party that is harmed because they do not get their rights to carry out the transfer process and control the auction object that has been paid off. So the auction buyer from any point of view has the right to get what he should get. Based on this statement, in Article 13 paragraph (1) letter l PMK Number 213/PMK.06/2020 that "Sellers are responsible for claims for compensation for losses incurred, in the case of not fulfilling the responsibilities referred to in paragraph (1).

In the provisions contained in Article 13 paragraph (1) letter i above, it is explained that the seller is responsible for the "delivery of movable and/or immovable goods". This provision is the basis of legal protection for auction buyers over the control of the auction object they won. The seller in this case is the creditor, namely the bank, should be responsible for the delivery of goods that become the object of the auction. It is further explained in Article 1 letter k which states that when there is a civil lawsuit or criminal prosecution for non-fulfillment of laws and regulations regarding the auction, the seller must also be responsible. Furthermore, if the seller is unable to fulfill his responsibilities as a seller as mentioned in paragraph (1), then if a loss arises from this, the seller must be responsible for it. This is one form of legal protection provided by the PMK in terms of control of the auction object. If seen in these provisions, the auction buyer can claim responsibility to the seller in the event that the auction object he won cannot be controlled, because one of the responsibilities of the seller is the delivery of goods.

3) Unlawful Act Lawsuit (PMH) against the Blocking Applicant and the Land Office as an Authorized Institution

Efforts that can be made to remove the block on the Certificate of Property Rights above as a form of legal protection are by filing a lawsuit for Unlawful Acts (PMH) based on Article 1365 of the Civil Code against the Block Applicant and the Land Office as the institution authorized to carry out the recording of the block against the Head of the National Land Agency (BPN) which resulted in the blocking of the certificate of land rights by the National Land Agency until a Court decision is made. This is based on the provisions of Article 15

paragraph (1) letter d of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017 concerning Blocking and Confiscation Procedures which states that "blocked records by individuals or legal entities, delete if there is an order court in the form of a decision or determination.

So the auction buyer who has obtained the minutes of the auction as proof of the owner of the auctioned goods so that other actions related to the auctioned goods or land rights cannot affect the validity of the ownership of land rights by the auction buyer, then the auction buyer has the right to register the transfer of land rights to the Land Office from the name of the old owner to the new owner. The Land Office cannot amputate the rights of land rights holders or holders of mortgage rights, as well as of good faith purchasers. The land office is not an adjudicative-judicial institution, the land office is an administrative institution to achieve administrative order in the field of agrarian principles. So it is not appropriate for the blocking application from the former debtor to be accepted. Other legal remedies can be taken through litigation by filing a civil lawsuit in general, namely through the local District Court according to the domicile of the lawsuit to the State Administrative Court (PTUN) for the legal actions of the BPN that do not serve the transfer of rights. So that the object of the auction is controlled and the reason BPN does not transfer rights is because there are legal actions/events that can be canceled.

CONCLUSION

Article 45 letter e Government Regulation Number 24 of 1997 concerning Land Registration, creates legal uncertainty regarding the rights of auction buyers in the process of transferring rights and control of auction objects due to blocking and the absence of provisions regarding the boundaries of object disputes in court referred to in PP No. 24 of 1997 and its implementing regulations. Legal protection for buyers of auctions executing mortgage rights, if the auction object is blocked by the National Land Agency, is regulated in a preventive and repressive manner. Preventive legal protection is preventive protection where the process of transferring rights, namely the return of the name of the land certificate to the name of the auction winner even though there is a block by the debtor or other parties, can still be carried out registration of the transfer of rights, by understanding Article 45 letter e and Article 35 paragraph (3) and paragraph (5) of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 13 of 2017 concerning Procedures Block and Sita, which are lawsuit materials limited to land disputes processed in Court, of course, the plaintiffs are other parties who have claims to ownership rights. Meanwhile, repressive legal protection is an effort to obtain legal protection through the judiciary. Efforts to empty the auction object through the chairman of the District Court without going through a lawsuit, Efforts to Claim Compensation to the Seller, file an Unlawful Action (PMH) lawsuit for block cancellation by attaching a Court Decision to the National Land Agency.

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