

Conference Paper

Resistance to The Cancellation of Auction Execution on the Collateral Right

Herwastoeti*

Universitas Muhammadiyah Malang, Indonesia

ORCIDHerwastoeti: <https://orcid.org/0009-0007-3283-1051>**Abstract.**

This research aims to determine the resistance to cancellation of auction for the collateral object of the mortgage right and the creditor's responsibility toward the auction winner, when, the object of the mortgage right has a lawsuit against the creditor from another party. The research method used in this research is a normative juridical research method. The research results show that the auction cannot be canceled if it complies with existing regulations and procedures as regulated in PMK.No.213/PMK.06/2020 concerning instructions for carrying out auctions. Creditors can be held responsible if an auction is canceled after the auction has been executed as regulated in Minister of Finance Regulation, PMK No. 213/PMK.06/2020 concerning instructions for implementing auctions. Creditors must ensure the validity of the mortgage object being auctioned. So, if the creditor is negligent in this matter, it is the responsibility of the creditor (auction seller) to provide compensation for third-party losses.

Keywords: cancellation, auction execution, guarantee, mortgage

Corresponding Author:

Herwastoeti; email:

herwastoeti@umm.ac.id**Published** 5 January 2024Publishing services provided by
Knowledge E

© Herwastoeti. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

1. INTRODUCTION

Credit activities are an effort to support the economic development of society so that the standard of living also increases. In order to support economic development, banks have a strategic role, especially because the main function of banks is as a supporting institution in providing loans to the community in the form of credit. As regulated in the Banking Law, credit is the provision of money or equivalent bills based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest.

Credit agreements are always related to binding guarantees, this is done by the bank so that the bank has assurance that the credit given to the debtor can be used according to needs and can be returned safely. So, having collateral bound in the form of a certain guarantee agreement will reduce the risk that might occur if the credit recipient defaults

OPEN ACCESS

or is unable to repay the credit or loan. Thus, the guarantee in the credit agreement aims to guarantee that the debtor's debt will be paid in full. [1]

As regulated in the Banking Law, credit is the provision of money or equivalent bills based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest.

Credit agreements are always related to binding guarantees, this is done by the bank so that the bank has certainty that the credit given to the debtor can be used according to needs and can be returned safely. So, having collateral bound in the form of a certain guarantee agreement will reduce the risks that might occur if the credit recipient defaults or is unable to repay the credit or loan. Thus, the guarantee in the credit agreement aims to guarantee that the debtor's debt will be paid in full. [1]

The debtor as a person who has a loan from the bank must have good intentions to repay the principal debt along with the interest according to the time specified in the credit agreement. On the other hand, banks as creditors are obliged to provide loans to their customers in accordance with sound and prudent banking principles. [2]

The mortgage rights guarantee agreement is a security agreement that is above the main agreement, namely the loan agreement. This agreement is needed to guarantee the debtor's debt to the creditor and also to provide ease of dispute resolution if the debtor defaults. This is because the law gives the party who feels aggrieved the right to act directly at the execution stage if the other party denies its obligations. [3]

In practice, if the debtor defaults, the creditor or mortgage recipient sends three warning letters to the debtor to pay off the debt. If the debtor does not pay the debt even after three warnings, the debtor may fail to make payment, so in this case the mortgage recipient can force the mortgage guarantee to be auctioned. Auction is a technique of selling objects openly to the general public by offering prices in writing and/or verbally with an offer to obtain the highest price which is preceded by an auction announcement. Auctions are carried out by presenting people or giving them advance notice of the auction and then giving those people the opportunity to bid or buy to negotiate prices, set prices and register. [4]

In the provisions of Article 6 of Law no. 4 of 1996 concerning Mortgage Rights, states that if the debtor breaks his contract, the holder of the first mortgage right has the right to sell the object of the mortgage right under his own authority through a public auction and collect the receivables from the proceeds of the sale. The execution of mortgage rights is also based on the provisions of Article 20 of Law no. 4 of 1996 concerning Mortgage Rights (hereinafter referred to as UUHT) by notifying the implementation of the sale after 1 month has passed since being notified in writing by the giver and/or holder of

mortgage rights to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned and no party expressed objection.

However, the execution of the mortgage rights auction does not always run smoothly without any obstacles, there are times when other parties file lawsuits over the execution of the mortgage rights auction, causing losses to the winning party. The auction winner cannot use the rights to the auction object that has been purchased because there is a lawsuit against the execution of the auction object due to a lawsuit against the creditor, so that the auction for the execution of mortgage rights cannot be carried out by the auction winner. In this case, it will be detrimental to the auction winner, who should have been decided as the auction winner, so the auction winner can automatically execute the object of mortgage rights in order to have full control over the object of mortgage rights.

Based on the description above, the problems that will be studied by the author in this research are:

1. What if there is resistance to the winner of the execution auction for the collateral object of the mortgage right?
2. What is the creditor's responsibility towards the winner of the auction when the object of the mortgage has a lawsuit against the creditor from another party?

2. METHODOLOGY/ MATERIALS

According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced. [5] Based on the definition above, the type of research carried out in this research is normative legal research. The legal materials used are primary, secondary and tertiary legal materials. All primary, secondary and tertiary legal materials are processed and analyzed qualitatively where research analysis is carried out inductively and deductively.

3. RESULTS AND DISCUSSIONS

3.1. Resistance Against the Winner of the Auction Execution Over the Object of Mortgage Rights

Loans from banks in the form of credit will help customers overcome capital constraints. Banks lend funds to customers as debtors based on trust or confidence that the debtor will be able to repay the loan or credit provided. To gain this confidence, before providing

credit, banks must carry out a careful assessment of the character, abilities, capital, collateral and business prospects of the debtor customer. [6]

Providing material collateral always takes the form of a part of a person's or collateral provider's assets and provides it to fulfill the payment of obligations (debts) of a debtor. [6] The term guarantee is also known as collateral, which can be found in articles 1131 and 1132 of the Civil Code, and article 1 number 23 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

The definition of collateral is stated in article 1 number 23 of the Banking Law, namely "Additional collateral submitted by the debtor to the bank in order to provide credit or financing facilities based on Sharia Principles. The legal basis for guarantee law in Indonesia is also found in article 1131 of the Civil Code which states that: "All the debtor's property, whether movable or immovable, whether existing or new that will exist in the future, will be borne by the individual agreement."

The binding of collateral for mortgage rights is carried out notarially. Notarial or notarial binding or often called an authentic deed whose form is determined by law and made by or before an authorized public official in the place where the deed is made. An authentic deed is made by a notary, namely a legal official who has authority based on the Civil Code. An authentic deed made by a notary is called a notarial deed. Making a notarial deed is indeed safer for the bank because legal certainty is more guaranteed.

Binding guarantees/collateral will provide comfort for the parties to the transaction, in this way the bank will receive legal certainty if the debtor breaks his promise, while the debtor is obliged to fulfill his obligations if he defaults as agreed. Based on the Mortgage Rights Law, the guarantee process for objects that can be encumbered with Mortgage Rights takes place in 2 (two) stages, namely: the mortgage rights granting stage and the mortgage rights registration stage. Article 10 (2) of the Mortgage Rights Law regulates that the granting of mortgage rights is carried out by making a Deed of Granting Mortgage Rights by the Land Deed Making Officer.

The granting of Mortgage Rights must be registered at the National Land Agency Office, and as proof of the existence of Mortgage Rights, the Land Registry Office issues a Mortgage Rights Certificate which contains instructions FOR JUSTICE BASED ON THE ALMIGHTY GOD (Article 13 paragraph (1), Article 14 paragraph (1) and (2) Law No. 4 of 1996). [7]

If the debtor defaults on the land which is encumbered with the Mortgage Right, it is entitled to be sold by the Mortgage Right holder without the consent of the Mortgage Rights giver and the Mortgage Rights Giver cannot express objection to the sale as regulated in Article 6 UUHT. The Mortgage Rights Holder also does not need to ask

for a decision from the Head of the District Court. However, the holder of the mortgage right must submit an application to the local State Auction Office for a public auction to execute the object of the mortgage right.

The implementation of the auction for the execution of Mortgage Rights is an application as regulated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights, where in the event that the debtor breaks his promise, the creditor has the right to sell the Mortgage object under his own authority through a public auction. In this way, it is hoped that the highest price for the mortgage object can be obtained.

However, if a lawsuit is filed by a third party and results in losses to the auction winner, so that the auction winner cannot control the auction object, then the auction winner (buyer) who has good intentions must receive legal protection. The auction winner who has good faith, in this case, as stated by Ridwan Khairandy, said that good faith leads to the meaning of honesty and rationality, propriety and justice. If it is related to the legal system for executing mortgage guarantees through auctions, then the auction winner as a buyer in good faith is a buyer who in fact buys the mortgage auction object with honesty without any deception and fulfills all obligations for auction preparation, auction implementation and post-auction.

Preventive legal protection for auction winners is a form of protection given to auction winners before a dispute occurs regarding the auction object. *Vendu Reglement* provides preventive legal protection for auction winners regarding the transfer of rights to auction objects. Preventive legal protection for auction winners is also contained in the auction minutes, which are minutes of the auction held by auction officials as authentic deeds and have perfect evidentiary power. The winner of the execution auction, apart from preventive legal protection, also gets repressive protection. Repressive protection is an effort to obtain legal protection carried out through the judiciary.

This was also confirmed by Yahya. M. Harahap, that the laws enforced by law enforcement agencies which are accompanied by the task of ensuring legal certainty for the sake of upholding order and justice in community life. [4] Legal uncertainty will cause chaos in people's lives, and people will do whatever they please and act as vigilantes. As confirmed in the Minister of Finance Regulation 213/PMK.06/2020 concerning Auction Implementation Instructions, the auction execution cannot be canceled if the conditions have been fulfilled according to existing terms and procedures.

Likewise in Supreme Court Decision no. 821K/Sip/1974, which states that buyers who buy goods through public auctions by the State Auction Office are buyers who have good intentions and must be protected by law. This jurisprudence confirms that auction

buyers who have good intentions must be protected to provide legal certainty and justice for auction buyers.

3.2. Creditor's Responsibility for Bidder Winners for Opposition Lawsuits

Credit is the provision of money or similar claims based on an agreement or loan agreement between a bank and another party which requires the borrower to pay off the debt after a certain period of time accompanied by interest. A loan agreement or credit agreement is a principal (main) agreement. The implementation of the loan agreement is determined by the delivery of money from the bank to the debtor. According to Gatot Wardoyo, the role of loan agreements is as follows. [6]

1. The loan agreement is the main agreement
2. The loan agreement is proof of the boundaries of rights and obligations between the creditor and debtor
3. Loan agreement
4. Acts as a tool for monitoring credit.

A loan agreement is recognized and binding on the parties who make it, they must fulfill the conditions for the validity of an agreement as intended in Article 1320 of the Civil Code, namely:

1. Agree that those who carry it out must first agree on the main points of the agreement to be entered into.
2. Ability to enter into an agreement, every person is said to be able to enter into an agreement, unless according to law it is not stated that they fulfill the requirements as intended in Article 1329 of the Civil Code. Those declared incompetent include:
 - (a) Immature person.
 - (b) Those who are detained.
 - (c) Women in matters regulated by law and all persons with whom the law has prohibited from entering into certain contracts. The legal consequence of this disqualification is that the judge can be required to cancel the contract that has been made.

3. There are certain things, the purpose of the contract must be clear and definite. According to Article 1333 of the Civil Code, an agreement must have a main object of at least a certain type.
4. There is a valid case related to the contents of the agreement which does not conflict with public policy, ethics and law.

According to Thomas Suyanto, the role of guarantees in providing credit is: [8]

1. Ensure that clients are involved in the business to finance their business or project so that the possibility of leaving their company or project at their own expense can be avoided or at least minimized the possibility of being able to do so.
2. Give the bank the right and power to receive a refund with a guarantee (guarantee), if the customer is in default, namely. for not paying the debt at the time specified in the contract.
3. Providing incentives to debtors (collection to) to fulfill loan agreements, especially regarding repayment in accordance with agreed terms so as not to lose assets that have been guaranteed by the bank.

Based on the Regulation of the Minister of Finance of the Republic of Indonesia. No.23/PMK.06/2020 concerning Instructions for Implementing Auctions, explains that "Auctions are sales of goods that are open to the public with written and/or verbal price offers that increase or decrease to reach the highest price which is preceded by an auction announcement."

Normatively there are no statutory regulations that regulate the principles of auctions. However, if you look closely at the laws and regulations in the field of auctions, you can find the principles of auctions, namely: [9]

1. Principle of Transparency

This principle means that public sales through auction are carried out in public. The auction must also be announced in advance, so that the public knows there will be an auction and the auction items sell quickly.

2. Principle of Accountability

The principle of accountability is that the implementation of the auction can be accounted for.

3. Principle of Efficiency

Ensure that the auction is carried out quickly and at a relatively low cost because the auction is held at a predetermined place and time.

4. Certainty Principle (certainty)

The certainty of the auction has been regulated as stated in the Regulation of the Minister of Finance for Auction Implementation, namely that the auction is led by an Auction Officer organized by the State Auction Office. The place, date, time and object of the auction have been determined in advance and announced to the public. and the buyer is confirmed right away.

5. Principle of Justice

Contains the understanding that the auction process must be able to fulfill a sense of justice proportionally for each interested party. This principle is to prevent auction officials from taking sides with certain auction participants or siding only with the interests of the seller.

The auction buying and selling process includes auction preparation, auction implementation and post-auction activities, which include:

3.2.1. Auction Preparation

There are several things that must be done, namely:

- a. Auction Requests must be submitted in writing to the Head of KPKNL
- b. Auction Time and Place
- c. Holding Auctions Outside Working Days and Hours
- d. Auction outside the KPKNL Working Area
- e. General conditions in principle for every auction
- f. Request for Land Certificate (SKT)
- g. Auction Announcement Procedures
- h. Bail
- i. Limit Price
- j. Bidding method

Based on Article 55 paragraph (1) PMK Number 213/PMK.06/2020 concerning Auction Implementation Instructions, namely the Auction Notification for Auction Implementation is carried out with the following provisions:

- a. notification is given 2 (two) times;

- b. the period from the first notification to the second notification is 15 (fifteen) calendar days;
- c. other notices are arranged so that they do not appear on public holidays or public holidays;
- d. the first notification can be sent via brochure, electronic media, or newspaper; And
- e. the second notification must be published in a newspaper no later than 14 (fourteen) calendar days before the auction date.

3.2.2. Auction Implementation

The auction implementation consists of:

- (a) Every person interested in selling products at auction must submit an auction request to the local KPKNL/Class I auctioneer. Each auction request must be accompanied by documents relating to the product to be offered, as well as proof of authorization (which has been approved by the debtor and creditor in the APHT) for sale from the auction applicant and must be submitted to KPKNL no later than 3 (three) days before the auction.
- (b) The auction organizer can determine auction conditions as long as these requirements do not conflict with the applicable auction provisions and must be submitted no later than 3 (three) days before the auction is held.
- (c) After KPKNL examines the bid request and the completeness of the documents and obtains confidence in the validation of the contents and principal of the auction, the time and location of the auction is determined by the KPKNL/Class II auctioneer by taking it into account, explaining the wishes of the applicant/auction seller. Bidders announce the auction to be offered in newspapers and/or other print/electronic media. Bidders have the right to cancel the auction within a time limit of 8 (eight) days before the auction, but are subject to an auction cancellation fee in accordance with Regulation Number 44 of 2003 dated 31 July 2003 concerning Collection of State Revenues outside tax.

3.2.3. Post Auction

Post-Auction consists of:

1. Payment and deposit of auction proceeds.

2. Bookkeeping and Reports.
3. Auction No Bidding and Auction on Hold.
4. Auction Postponement and Cancellation.
5. Objection/Rebuttal/Claim/Third Party Intervention.

In carrying out an auction, a Minutes of Auction is prepared, namely Minutes of Auction conducted by the auction official or his/her proxy. During the sale for each day of the auction or sale a separate minutes must be made. The form of the Auction Minutes is determined by the government, a particular form is intended to guarantee and create legal certainty and restrictions on freedom of contract. [10]

There is a lawsuit against the auction item which was won by the auction buyer, although this is stated by law in the auction minutes, in reality the clause in the auction minutes as a law carried out by the parties in the auction does not comply with the principle of certainty for the buyer auction. This can be seen in the clause in the auction minutes which states: "The Auction Officer/KPKNL is not responsible for the correctness of the information conveyed verbally at the time of sale regarding the actual and legal conditions of the items being auctioned, such as size and limits, which are at the buyer's risk. [11]

The auction buyer is deemed to really know what he has bid on. If there is a shortage/damage, visible or invisible, the bidder/buyer has no right to refuse or withdraw after the purchase has been confirmed and waives all rights to claim compensation in any way. [12] Based on this article, it can be seen that the auction minutes do not provide legal protection to the auction winner when a lawsuit occurs against the auction object. If you look at the clause which states that the auction officer or KPKNL as the agency authorized to conduct the auction is not responsible for the correctness of the information provided at the time of sale, then all risks are the responsibility of the buyer or auction winner.

However, if there is a lawsuit regarding the execution of the mortgage rights auction, in this case the creditor must be responsible as regulated in Law no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UUHT) and Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions. In accordance with the provisions of Article 13 (1) PMK No. 213/PMK.06/2020, the Seller is responsible for:

1. (a) legality of ownership and/or authority to sell goods;
(b) validity of tender requirements documents;

- (c) validity of additional auction conditions;
- (d) validity of the Auction Announcement;
- (e) formal and material truth of Limit Value;
- (f) formal and material truth of the statement regarding the absence of changes in the physical data and juridical data of the land plot or apartment unit or object to be auctioned;
- (g) the correctness of the material of the letter and the delivery of the letter made by the Seller to the relevant party;
- (h) conformity of goods with Auction Object documents.

Responsibility is the same as legal obligation, which means that a person must be responsible for all legal actions if he does not act in accordance with applicable laws and regulations. The concept of responsibility for breaking the law is generally regulated in Article 1365, Article 1366 and Article 1367 of the Civil Code. In the 3 (three) principles of responsibility as regulated in the Civil Code, a person is obliged to be responsible for every act that harms another person, either because of his own fault or because of the fault of another party who is part of his supervision.

If related to the theory of responsibility according to Hans Kelsen in his theory of legal responsibility, it states that: "a person is legally responsible for a certain act or that he bears legal responsibility, meaning that he is responsible for a sanction in the event of a conflicting act. [13] The theory of responsibility places more emphasis on the meaning of responsibility which arises from the provisions of the Legislative Regulations so that the theory of responsibility is interpreted in the sense of liability, as a concept related to the legal obligations of a person who is legally responsible for certain actions so that he or she can be subject to sanctions in cases his actions are contrary to the law. [14]

The above provisions mean that if a lawsuit occurs, the seller ((creditor) is responsible for losses incurred by the auction buyer due to the invalidity of the goods and documents required by the auction or due to a lawsuit from a third party. This confirms that in carrying out an auction, the precautionary factor is Caution is not only directed at auction buyers, but auction sellers must also pay attention to precautionary factors regarding auction items and the validity of auction requirements. [15]

Based on this, the bank as the creditor has the responsibility to ensure that the object of the mortgage right will be auctioned, and if there is negligence regarding the object of the mortgage right, the creditor must be responsible for any negligence that results in losses to other parties as regulated in the Minister of Finance Regulation, namely PMK No. 213/PMK.06/2020, Article 13 letter (k), namely civil lawsuits and/or criminal

charges and the implementation of decisions due to non-compliance with statutory regulations by the Seller; and article 13 letter (l), namely claims for compensation and implementation of decisions including forced money/dwangsom, in the case of failure to fulfill responsibilities.

If it is seen that the auction buyer is a buyer in good faith who is not aware of any hidden defects in the auction object, then the auction buyer is entitled to legal protection if a lawsuit occurs which results in losses for the auction buyer in good faith. [16] So if there is a cancellation of the auction due to a lawsuit filed against the seller, in this case the creditor, due to negligence in the credit agreement which results in losses suffered by the auction winner, based on this, the creditor must be responsible and the auction winner can file a lawsuit against the auction seller (creditors) based on PMK No. 213/PMK.06/2020. Cancellation of an auction for the execution of mortgage rights if it is a result of an act of selling someone else's goods, the auction buyer can claim compensation based on Article 1471 of the Civil Code. (Narisworo, 2022).

4. CONCLUSION AND RECOMMENDATION

The auction in carrying out the execution of Mortgage Rights must be in accordance with legal provisions and procedures as regulated in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. The execution auction cannot be canceled as long as it is carried out in accordance with the provisions and based on Jurisprudence also fulfills the principle of good faith. Creditors must ensure the validity of the object of mortgage rights that will be auctioned. Creditors can be held responsible if cancellation occurs after the auction has been executed as regulated in Minister of Finance Regulation, PMK No. 213/PMK.06/2020 concerning Instructions for Implementing Auctions. If the creditor is negligent in this matter, it is the responsibility of the creditor (auction seller) to provide compensation for third party losses. Therefore, it is recommended that creditors carry out credit agreements carefully, both regarding the object of the mortgage right and the completeness of the documents.

References

- [1] A. S. Adrian Sutedi, Mortgage Rights Law, Jakarta,: Sinar Graphics, , 2020.
- [2] L. A. a. T. Handayani, " Implementation of the Prudential Principle Through the Obligation to Prepare and Implement Bank Credit or Financing Policies," *Rechtidee*,, vol. 13, no. 1, 2018..

- [3] D. M., *Basic Thoughts on Execution Law*, Semarang: Diponegoro University, 2014.
- [4] Y. H. M., *Scope of Execution Problems in the Civil Sector*, Jakarta: PT Gramedia, 2019.
- [5] M. PM, *Legal Research. Revised Edition*, Jakarta: Kencana Publishers, 2019.
- [6] Hermansyah, *Indonesian National Banking Law*, Jakarta: Kencana Prenada Media Group, 2021.
- [7] M. Isnaeni, *Introduction to the Law of Material Guarantees*, Surabaya: PT. Revka Petra Media, 2019.
- [8] S. PN., *Indonesian Civil Law*, Jakarta: Prenada Media Group, 2014.
- [9] S. M. B. Pandu Dwi Nugroho, "Implementation of Auctions for Objects Encumbered with Mortgage Rights in the Context of Realizing Justice for the Parties," *Rechtidee Journal*, vol. 13, 2018.
- [10] F. MI., "DJKN Kemenekeu," [Online]. Available: Fadhilah MI. Legal Protect <https://www.djkn.kemenkeu.go.id/kpknl-gorontalo/bacaarticles/13352/Perlindungan-Hukum-Terhadap-Pembeli-Lelang-yang-InGoodFaith.html>.
- [11] F. AW, "Legal Review Regarding Cancellation of Auction Deeds," in *Proceedings of the UNISSULA STUDENT SCIENTIFIC CONSTELLATION (KIMU) 7 Sultan Agung Islamic University, Semarang*, 2022..
- [12] Gentur Cahyo Setiono, "Material Guarantees in the Banking Credit Agreement Process (Judicial Review of Guarantees for Intangible Movable Objects)," *Legal Transparency Journal*, vol. 1, 2018.
- [13] N. W., *Business Law in Indonesia*, Jakarta: Prenada media. Group (New York), 2019..
- [14] T. Mukhidin, *he Ins and Outs of Mortgage Auctions*, Pekalongan: Nasya Expanding Management,, 2021.
- [15] U. R, *Aspects of Banking Law in Indonesia*, Jakarta: Gramedia Pustaka Utama,, 2016.
- [16] R. S. A, *uction Regulations and Instructions.*, Bandung: Eresco, 2017.