

## AUCTION PROBLEMS FOR DEPENDENT RIGHTS BETWEEN THE BANK AS CREDITOR AND DEBTOR

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**Abstract:** The problem with the norms of Article 8 of Law Number 10 of 1998 mentioned above is that if the debtor defaults, the bank basically can and take the guarantee provided by the creditor as repayment of the debt. But whether the implementation can run that easily, because the debtor himself also has rights that are respected as well, and how the execution process is so that each party, both debtors and creditors in this case the bank is not harmed by its interests, especially regarding guarantees in the form of land encumbered with Dependent Rights. The research method used is qualitative. The results showed that if the debtor defaults, the creditor (bank) basically can and take the guarantee provided by the debtor as repayment of the debt. Right of Liability is a security right for debt repayment, the object of the right of liability is the right to land in accordance with the Basic Agrarian Law, the right of liability can be imposed on the right to land, but it can also be charged along with other objects that are an integral part of the land, with the debtor's default then the creditor reasons to request that the right of liability be auctioned as a step of execution.

**Keywords:** Notary, Auction, Dependents, Bank.

### Introduction

Article 8 of Law Number 10 of 1998 State Gazette of the Republic of Indonesia of 1998 Number 182 and its explanation in the Supplement to the State Gazette of the Republic of Indonesia Number 3790, namely Amendments to Law Number 7 of 1992 concerning Banking, it is stated that in providing credit, banks must have confidence or ability and the ability of debtors to pay off their debts in accordance with the agreement, And in its explanation, the article contains provisions that banks must make a careful assessment of the character, ability, capital, collateral and business practices of the debtor to fulfill its performance, if at any time the debtor defaults, the bank can take the object of guarantee to pay off its debt.

With the enactment of Law Number 4 of 1996, what is ordered in Article 51 of the UUPA is fulfilled, so that there is no longer a need to use mortgage and credit verband provisions as stated in Article 57 of the UUPA. Therefore, it is confirmed in Article 29 UUHT, that with the enactment of this law, the provisions regarding credit verband as stated in statute 1908-542 have been amended by statute 1937-190 and the provisions regarding hypotheek as stated in Book II of the Code of Law. Indonesian Civil Code regarding the imposition of mortgage rights on land rights and objects related to land is declared no longer valid.<sup>1</sup>

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<sup>1</sup> Purwahid Patrik dan Kashadi, *Hukum Jaminan Edisi revisi dengan UUHT*, fakultas Hukum Undip, Semarang, 2007, Halaman1.

The concept of parate execution, the Mortgage Right holder does not need to ask for prior approval from the Mortgage Rights giver, and there is no need to ask for a local court decision if they want to execute the Mortgage Rights which are collateral for the debtor's debt in the event the debtor defaults.<sup>2</sup> Mortgage Rights Holders can come directly and ask the Head of the Auction Office to conduct an auction for the Mortgage Rights object in question.<sup>3</sup> This concept is a breakthrough in the execution process that existed before the birth of the Mortgage Law, where the execution of gross mortgage deeds could only be carried out through execution in the District Court, which took a long time and the execution costs were relatively greater compared to the Parate Execution of Mortgage Rights.<sup>4</sup>

The implementation of parate executions that occurred within the period since the enactment of Law no. 5 of 1960 (UUPA) until the enactment of Law no. 4 of 1996 (UUHT), could not be implemented as expected by banks as creditors because of the Decision of the Supreme Court of the Republic of Indonesia (MARI) No. 3210 K/Pdt/1984, dated January 30 1986, which is one of the ratio decidendi of MARI's decision in this case that the auction (meaning parate executie) was carried out personally by the Head of the Bandung State Auction Office on the orders of the original Defendant I (Creditor Bank) and did not based on the decision/fiat of the Chairman of the Bandung District Court, according to MARI the public auction is contrary to Article 224 H.I.R., so the auction is invalid. So according to this decision, the implementation of parate execution must be carried out by the fiat of the Chairman of the District Court.

## Literature Review

According to Sudikno Mertokusumo, there are three types of decision implementation (execution), namely:<sup>5</sup>

1. Execution of a decision that punishes the defeated party to pay a certain amount of money. In this execution, the required achievement is to pay a certain amount of money. This execution is regulated in Article 196 HIR or Article 206 Rbg.
2. Execution of decisions that punish people for committing an act. This execution is regulated in Article 225 HIR or Article 259 Rbg. People cannot be forced to fulfill achievements in the form of actions, but the party who wins can ask the judge to value the interests they will obtain in money.
3. Real Execution, namely the implementation of the Judge's decision ordering the vacating of fixed objects. In the event that the person who has been sentenced by the Judge to vacate the property still does not want to comply with the order, the Judge will order by letter to the bailiff that with the assistance of the Court Registrar and if necessary with the assistance of state authorities, the person who has been punished and his family will vacate the property. . This execution is regulated in Article 1033 Rv. Meanwhile, the HIR only recognizes real execution in auction sales, contained in Article 200 paragraph 11 HIR/Article 218 Rbg.

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<sup>2</sup> Remy Sjahdeini, 1999, Hak Tanggungan, Asas-Asas, KetentuanKetentuan Pokok dan Masalah yang Dihadapi Oleh Perbankan, Alumni, Bandung, halaman 46.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Sudikno Mertokusuko, Hukum Acara Perdata Indonesia, Yogyakarta, Liberty, 1988. Halaman 201.

4. Execution of Mortgage Rights can be done in 3 (three) ways, namely:
5. The right of the first Mortgage Right holder to sell the Mortgage Right under their own authority through a public auction as intended in Article 6 UUHT or Execution Parate ex Article 6 UUHT.<sup>6</sup>

## Method

This research is a qualitative legal research. Because this research is intended to analyze the principles, rules and doctrines of the law that elaborate. Normative juridical research places norms as objects of research, both norms in the form of legal dogma, in and legal norms originating from a law.<sup>7</sup>

## Result and Discussion

Mortgage rights can be transferred and transferred due to the possibility of the collateralized receivables being transferred or assigned. The provision that the mortgage right can be transferred and transferred, namely by transferring or transferring the ownership rights to the receivables secured by the mortgage right or the mortgage right changing due to the transfer of the principal agreement.<sup>8</sup> Referring to articles 16 and 17 UUHT regarding the transfer of mortgage rights due to auction, the transfer of mortgage rights through auction can be divided into two forms, namely transfer of rights by transfer and transfer of rights by transfer.<sup>9</sup>

The role of mortgage rights cannot be separated from the binding principles in agreeing on these rights, namely:<sup>10</sup>

1. The principle of publicity which is an absolute requirement so that the mortgage right, who the creditor holds, which receivables and how much amount are guaranteed and which objects are used as collateral, can easily be known by interested parties must be fulfilled, what is called publicity requirements, the granting of Mortgage Rights must be registered at the Land Office, we can see this in the explanation of Article 13 paragraph (1) of the Mortgage Rights Law.
2. The principle of specialization is an elaboration of Article 11 of the Mortgage Rights Law that in the Deed of Granting Mortgage Rights (APHT) certain things must be stated in full, namely regarding the name, identity, domicile of the creditor and the person giving the Mortgage Rights, it must also be stated clearly and definitely which receivables are guaranteed and the amount or dependents thereof. Also a clear and definite description of the objects designated as objects of Mortgage Rights.<sup>11</sup>
3. The principle of indivisibility which is an explanation of Article 2 paragraph (1) that the Mortgage Right burdens the object of the Mortgage Right and every part of it in its

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<sup>6</sup> J. Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, Bandung, PT. Citra Aditya Bakti, 1998, Halaman 271.

<sup>7</sup> Soerjono Soekanto dan Sri Mamudji, 1995, *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers, halaman. 70.

<sup>8</sup> Kartini Muljadi dan Gunawan Widjaja, *Op Cit*, halaman 105.

<sup>9</sup> Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*, Jakarta: Kencana, 2010 halaman 383.

<sup>10</sup> Boedi Harsono. 1999, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya*, Edisi Revisi, Djambatan, Jakarta., Halaman 405.

<sup>11</sup> *Loc.cit.*

entirety, repayment of part of the guaranteed debt does not mean the release of part of the Mortgage Right object from the burden of the Mortgage Right, exceptions to this Article are possible with Article 2 paragraph (2) of the Mortgage Rights Law.

According to Law Number 4 of 1996, the explanation provides the following characteristics of Mortgage Rights:<sup>12</sup>

- a. a. Article 1 number 1 and Article 20 paragraph (1) give priority or preferential position to holders of Mortgage Rights (*droit de preference*). In terms of taking repayment of receivables from the proceeds of the sale, creditors holding mortgage rights have the right to precede other creditors.
- b. Article 7 states that the Mortgage Right follows the object which is guaranteed in whoever's hands the object is in (*droit de suit*), that the creditor holding the Mortgage Rights still has the right to sell the object at auction, even though the rights have been transferred to another party.<sup>13</sup>
- c. c. Fulfills the principles of specialization and publicity so that it can bind interested parties, that is, the right can be transferred and registered.
- d. Easy and sure to execute. For creditors holding mortgage rights, the execution method is easy and certain, as stated in the general explanation of number 9.<sup>14</sup>

And to be able to become an object of mortgage rights, you must fulfill the following requirements, namely:<sup>15</sup>

- a. Can be valued in money, because the debt is guaranteed in the form of money.
- b. Including rights registered according to the applicable land registration regulations, because they must fulfill the "publicity requirements" in the general register.
- c. Fulfills the nature of being transferable, because if the debtor breaks the contract, the object used as collateral will be sold.
- d. Requires special appointment by law.

In connection with what is required above, the objects of Mortgage Rights are determined in Article 4, namely:<sup>16</sup>

1. Ownership Rights, Business Use Rights, and Building Use Rights (Article 25, Article 33, and Article 39 UUPA)

2. Use Rights on State Land, which according to applicable provisions must be registered and according to their nature can be transferred.

Condominium Buildings and Ownership Rights for Condominium Units which are based on Ownership Rights, Building Use Rights or Use Rights granted by the State (Article 27 in conjunction with Law No. 16 of 1985).

Elucidation of Article 22 paragraph 1 of Law No. 4 of 1996, states that the deletion of a note or Roya Mortgage Rights is carried out for the sake of administrative order and has no legal effect on the Mortgage Rights concerned which have been deleted. Mortgage Rights are

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<sup>12</sup> *Ibid*, hal 402

<sup>13</sup> *Loc.Cit*

<sup>14</sup> *Ibid*, hal 441

<sup>15</sup> *Ibid*, hal 408

<sup>16</sup> *Ibid*, hal 409

extinguished due to events as intended in Article 18 of Law No. 4 of 1996. Based on Article 18 of Law No. 4 of 1996, Mortgage Rights are extinguished due to the following things:

1. Elimination of debt secured by mortgage rights.
2. Relinquishment of Mortgage Rights by the Mortgage Rights holder
3. Cleaning of Mortgage Rights based on ranking determination by the Chairman of the District Court.
4. Elimination of land rights that are encumbered with mortgage rights.

Deletion of rights to land which is the object of the Mortgage Rights can result in the cancellation of the Mortgage Rights. Land rights can, among other things, be terminated due to matters as stated in Article 27, Article 34 and Article 40 of the UUPA or other statutory regulations. In this case, the mortgage right is canceled because the objective conditions for the validity of the agreement are not fulfilled, especially those related to the obligation to have certain objectives, one of which includes the existence of the plot of land that is guaranteed.

In the auction minutes, the function of the auction minutes as a roya letter must be stated. This provision really helps the smooth execution of the auction because the auction buyer does not have any more difficulties in the process of transferring the name of the auction object to the Land Office. For its implementation, the Head of the State Receivables and Auctions Agency (BUPLN) also issued SE-73/PN/1994 dated 28 December 1994 concerning the Implementation of Execution Auctions in the Land Sector. This Circular was delivered to the Heads of BUPLN Regional Offices, Heads of KP3N, Heads of KLN and Class II Auction Officials throughout Indonesia.

If the object of the Mortgage Rights is burdened with more than one Mortgage Right and there is no agreement between the holders of the Mortgage Rights regarding clearing the object of the Mortgage Rights from a burden that exceeds the purchase price, the buyer of the object can submit an application to the Chairman of the District Court whose jurisdiction includes the location of the object of the Mortgage Rights in question. to determine provisions regarding the distribution of auction sales proceeds among the debtors and their ranking according to applicable regulations (Article 19 paragraph 3 of Law No. 4 of 1996). An application for clearing the Mortgage Right object of the Mortgage Rights which burdens it cannot be made by the purchaser of the object, if such purchase is made by voluntary sale and purchase and in the Deed of Granting the Mortgage Rights the parties have expressly agreed that the Mortgage Rights object will not be cleared of the Mortgage Rights burden.

## **Conclusion**

Mortgage Rights are burdened with more than one Mortgage Right and there is no agreement between the Mortgage Rights holders regarding clearing the Mortgage Rights object from burdens that exceed the purchase price, the buyer of the object can submit a request to the Chairman of the District Court whose jurisdiction covers the location of the Mortgage Rights object in question to determine provisions regarding the distribution of auction sales proceeds among the debtors and their ranking according to applicable regulations (Article 19 paragraph 3 of Law No. 4 of 1996). An application for clearing the Mortgage Right object of the Mortgage Rights which burdens it cannot be made by the purchaser of the object, if such purchase is made by voluntary sale and purchase and in the

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