

Enhancing Auction Execution: Implementation Strategies for Collection Rights Auction Objects

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ABSTRACT

Banking institutions play a crucial role in facilitating access to additional capital for businesses. As creditors, banks provide credit loans, and borrowers must fulfill certain conditions set by the bank to secure the loan. However, the transfer of claim rights through auctions, specifically for billing rights in the form of receivables, presents potential challenges. After the auction, the debtor becomes connected to the auction buyer as the new creditor, which may lead to irregularities in credit payments and potential losses for the bank. This research focuses on addressing the issues surrounding the execution of credit auctions and the subsequent management of non-performing loans. By examining different types of auctions, including execution auctions, district court execution auctions, and voluntary non-execution auctions, we aim to identify potential problems and devise effective strategies for credit recovery. Our findings will provide valuable insights for banks to mitigate risks, restore credit performance, and optimize loan recovery processes.

MANUSCRIPT INFO

Manuscript History:

Received:

2023-07-03

Accepted:

2024-03-12

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Keywords:

Auction; Guarantee; Credit; Collection Rights, Banking



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Cite this paper

Efrianza, Busro, A., & Silviana, A. (2024). Enhancing Auction Execution: Implementation Strategies for Collection Rights Auction Objects. *Widya Yuridika: Jurnal Hukum*, 7(1).

Layout Version:

v.7.2024

PRELIMINARY

The term “guarantee” originated from the Dutch language, where it means the debtor's ability to repay their debt to the creditor.¹ This is achieved by providing certain valuable objects as collateral for the loans received by the debtor.² According to Article 1, Point 2 of Law Number 10 of 1998, which amends Law Number 7 of 1992 on Banking, a bank is a business entity that collects funds from the public through deposits and then provides these

¹ Sirait, G. N., Murwadi, T., & Suwandono, A. (2021). Kedudukan Pihak Ketiga Pemberi Hak Tanggungan Dalam Perpanjangan Perjanjian Kredit Dalam Hal Terjadinya Eksekusi Lelang Hak Tanggungan. *Jurnal Sains Sosio Humaniora*, 5(2), 1324-1333.

² Usman, R. (20118). *Hukum Jaminan Keperdataan*, Jakarta, Sinar Grafika.

funds to the public in the form of credit or other means, with the aim of improving the overall living standards of the people. In the context of banking activities, banks primarily support commercial ventures by extending credit. However, this is not done without certain conditions, and borrowers or debtors are required to provide credit guarantees.

A guarantee can be understood as a responsibility, specifically an obligation that arises from an agreement made by an individual³. Typically, the debtor or borrower offers collateral, which is valuable assets that can be easily liquidated. The value of this collateral is at least equal to the amount of credit or financing provided to the debtor.⁴ The purpose of providing collateral is to ensure that there are sufficient funds available to cover any outstanding debts in the event of the debtor's default.⁵

The regulation governing guarantees is Article 1131 of the Civil Code, which states that all tangible assets owned by the debtor, both current and future, whether movable or immovable, are held as collateral for all of their obligations. However, complications may arise when a debtor has multiple creditors, each seeking to prioritize their rights. To address such situations, the law provides specific types of guarantees, such as pledges, mortgages, and fiduciary guarantees, which are agreed upon to secure material rights associated with the debt. These guarantees help establish a clear order of priority among the creditors.

Cessie, as explained by Subekti, is a method of transferring receivables from one creditor to another.⁶ In this process, the old creditor sells the receivables to a new creditor, but the legal relationship between the debt and the receivable remains intact, albeit transferred entirely to the new creditor. However, this transfer does not eliminate the possibility of significant irregularities occurring in credit payments during the ongoing credit period.⁷ Therefore, the bank must take action to rectify the situation and mitigate potential losses. This situation is commonly referred to as a non-performing loan or problem loan in banking terminology.⁸ Non-performing loans represent inherent risks associated with every credit provision made by the bank. Loans are classified as non-performing if their quality is deemed substandard, doubtful, or at risk of being unrecoverable.⁹ To address issues with bad credits, one of the solutions commonly employed is the practice of auctions. According to Article 1, Paragraph (1) of Minister of Finance Regulation Number 27 of 2016, known as PMK number 27/PMK.06/2016, an auction is a public sale of goods where participants make written or verbal offers, competing to reach the highest price. The auction process is preceded by an Auction Announcement.

In the context of auctionable items, the *Vendu Reglement Staatblad* 1908 Number 189, known as VR Stb, classifies them into two categories: movable objects and immovable objects. Article 1, Number 2 of Minister of Finance Regulation Number 27 of 2016, referred to as PMK number 27/PMK.06/2016, defines goods as any objects or rights that can be sold through auctions. Therefore, the goods subject to auction can include both movable and immovable objects. Regarding the transfer of collection rights, as stipulated in Article 1, Point 2 in conjunction with Article 17, Paragraph (4) of the Minister of Finance Regulation Number 27/PMK.06/2016, collection rights such as receivables and credit assets are considered goods that can be auctioned. However, there is currently no clear regulation regarding the auction procedures for collection rights or the required documentation for such auctions, despite the considerable potential for auctioning these rights.

³ Marziah, A., Rahayu, S. W., & Jauhari, I. (2019). Pembuktian Risalah Lelang Bagi Pemenang Eksekusi Hak Tanggungan. *Jurnal IUS Kajian Hukum dan Keadilan*, 7(2), 225-236.

⁴ Jayanti, O., & Darmawan, A. (2018). Pelaksanaan Lelang Tanah Jaminan yang Terikat Hak Tanggungan. *Kanun Jurnal Ilmu Hukum*, 20(3), 457-472.

⁵ Gazali, D.J., & Usman, R. (2010). *Hukum Perbankan*, Jakarta: Sinar Grafika.

⁶ Amnan, S. (2022). Tanggung Jawab Bank Atas Hasil Lelang Eksekusi Hak Tanggungan Yang Dibatalkan Pengadilan (Studi Putusan Nomor 24/Pdt. Bth/2017/PN Stb). *Nommensen Journal of Legal Opinion*, 125-138.

⁷ Subekti. (1998). *Hukum Perjanjian*, Jakarta, Internasa.

⁸ Usanti, T.P., & Nurwahjuni. (2014). *Model Penyelesaian Kredi Bermasalah*, Surabaya: Revka Petra Media.

⁹ Hermansyah. (2014). *Hukum Perbankan Nasional Indonesia*, Jakarta: Prenada Media Group.

Transferring collection rights through auctions involves various types, including execution auctions, district court execution auctions, and voluntary non-execution auctions. However, issues may arise when conducting auctions for collection rights in the form of receivables, particularly concerning the debtor who originally entered into a credit agreement with the bank as the creditor. After the auction, the debtor becomes obligated to interact with the auction buyer, who becomes the new creditor. To comply with legal requirements, it is crucial to notify the transfer of collection rights through the auction mechanism as stated in Article 613 of the Civil Code.¹⁰ This scientific paper aims to address the problem of utilizing claim rights as auctionable objects to offer legal protection for buyers involved in cessie transactions through auctions. By exploring and developing ideas related to legal reconstruction, this inquiry seeks to effectively resolve banking disputes and conflicts in contract law. Ultimately, the goal is to contribute to economic development that ensures legal certainty, justice, and overall benefits in the future.

METHOD

This research primarily focuses on legal research, employing a problem-solving approach¹¹. The methodology involves identifying legal issues, engaging in legal reasoning, analyzing the identified problems, and subsequently providing solutions.¹² The sources of legal materials utilized in this article include both secondary legal materials and primary legal materials. Secondary legal materials encompass treatises, official records, and other publications that aid in the interpretation and application of laws. Primary legal materials consist of statutes and judicial decisions specifically relevant to auction law. These resources form the foundation for the formulation of legal arguments and the development of recommendations in this study. This study adopts two approaches: the statutory approach and the conceptual approach.¹³ The statutory approach involves analyzing relevant laws and regulations that pertain to the legal issues being investigated.

RESULT AND DISCUSSION

Claim rights can be transferred through various types of auctions, including execution auctions, district court execution auctions, and voluntary non-execution auctions. However, when conducting an auction for the transfer of collection rights, issues may arise for the debtor whose rights are being transferred.¹⁴ This is because the debtor originally entered into a credit agreement with the bank, acting as the creditor. Nevertheless, once the collection rights auction is completed, the debtor will have a new creditor in the form of the auction buyer. Therefore, in order to comply with Article 613 of the Civil Code, it is essential to provide notification regarding the implementation of the transfer of collection rights through the auction mechanism.¹⁵ The definition of an auction can also be found in Article 1, Number 17 of Law Number 19 of 1997, as amended by Law Number 19 of 2000, which pertains to the collection of taxes through enforcement letters. According to this definition, an auction refers to the public sale of goods where interested parties or prospective buyers bid verbally and/or in writing to determine the price. The objective is to gather potential buyers through this bidding process.

¹⁰ Direktorat Jenderal Kekayaan Negara Kementerian Keuangan Indonesia. (2018). *Lelang Hak Tagih? Mengapa Tidak*, <https://www.djkn.kemenkeu.go.id/artikel/baca/12717/Lelang-Hak-Tagih-MengapaTidak.html>, diunduh pada tanggal 22 Desember 2022

¹¹ Disemadi, H. S. (2022). Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies. *Journal of Judicial Review*, 24(2), 289-304.

¹² Marzuki, P.M. (2016). *Penelitian Hukum*, Jakarta: Kencana.

¹³ *Ibid.*

¹⁴ Lestari, C. R. (2017). Penyelesaian Kredit Macet Bank Melalui Parate Eksekusi. *Kanun Jurnal Ilmu Hukum*, 19(1), 81-96.

¹⁵ Direktorat Jenderal Kekayaan Negara Kementerian Keuangan Indonesia, 27 September 2018, "Lelang Hak Tagih? Mengapa Tidak", <https://www.djkn.kemenkeu.go.id/artikel/baca/12717/Lelang-Hak-Tagih-Mengapa-Tidak.html>, diunduh pada tanggal 22 Desember 2022.

Over time, Ministerial Regulations have refined and governed auctions. According to Minister of Finance Regulation Number 27/PMK.06/2016, an auction is defined as a public sale where individuals make written and/or oral price offers that fluctuate until the highest price is achieved. This process is preceded by an Auction Announcement. Key elements of an auction include the sale of an item, a public setting, price quotations that can vary, oral or written bids, and the Auction Announcement as a preliminary step.

1. Types of Auctions

- a. Execution Auction. The Auction Execution Committee for State Receivable Affairs (PUPN) plays a pivotal role in managing national receivables and disposing of collateral/confiscated goods. As an integral part of the national receivables management procedure, PUPN carries out auctions in compliance with Law Number 16 and Law Number 49 of 1960. Working under the Bureau of State Receivable Affairs (BUPLN), PUPN conducts auctions to sell confiscated goods owned by debtors to government agencies, state-owned enterprises (BUMN), regional-owned enterprises (BUMD), and other relevant parties. These auctions serve as a crucial mechanism to recoup funds and assets, effectively addressing outstanding debts owed to the state.
- b. District Court/Religious Court Execution Auction. The tender for the implementation of the District Court (PN) or Religious Court (PA) refers to an auction process initiated by the court clerk in order to execute a court decision made by a judge with specific jurisdiction, particularly in civil matters. This includes auctions related to mortgage rights and mortgage foreclosures. In order to proceed with the auction, the rights holder must obtain formal approval (law enforcement) from the court's head. This ensures that the auction process adheres to the legal requirements and procedures set forth by the court.¹⁶
- c. Tax Execution Auction (Central/Regional Government Tax). The forfeited tax auction serves as a means to enforce the collection of tax receivables from both central and regional taxes by the government. This auction process is based on the provisions outlined in Law Number 19 of 1997, which specifically addresses taxpayer regulations. Conducting tax auctions can be considered a drastic measure to encourage taxpayers to promptly settle their outstanding debts. During the auction, confiscated tax assets, which refer to properties seized by the authorized bailiff, are put up for bidding. The proceeds obtained from the auction are then utilized to settle the taxpayer's tax liabilities with the treasury. Any surplus funds generated from the auction must be returned to the taxpayer. Even in the absence of a taxpayer, this tax enforcement auction can still proceed. Overall, the forfeited tax auction plays a vital role in ensuring the fulfillment of tax obligations and recovering outstanding tax debts owed to the government.¹⁷
- d. Bankruptcy Property Execution Auction. Bankruptcy asset execution auctions are auctions carried out by class I auctioneers under the direction of the Commercial Court. These auctions are initiated when a legal entity, including a company, is declared bankrupt due to its inability to fulfill its debt obligations to creditors.
- e. Auction of Found and Confiscated Goods, Seized by Attorney/Investigator. The auction of confiscated goods and seizures by lawyers/investigators is a process where items that have been found and seized in criminal proceedings are put up for auction. This is governed by the Criminal Procedure Code, specifically Article 45, which covers the auctioning of perishable evidence that requires high storage costs. These items are typically confiscated by the state and, after a certain period of time, if no one claims ownership, they are announced for auction.

¹⁶ Siahnturi, P.T. (2008). *Perlindungan Hukum Terhadap Pembeli Barang Jaminan Tidak Bergerak Melalui Lelang*, Bandung: CV. Mandar Maju.

¹⁷ Shaan, M.P. (2010). *Hukum Pajak Formal*, Yogyakarta: Graha Ilmu.

- f. Fiduciary Guarantee Execution Auction. The guarantee implementation auction is an auction conducted for trust objects when the debtor defaults or fails to fulfill their obligations, as regulated in Law Number 42 of 1999 concerning Trust Guarantees. In such cases, if the creditor wishes to sell the credit collateral entrusted to them through an auction due to the debtor's default, they do not need to seek formal approval from the district court chairman.¹⁸
- g. Goods Execution Auction Directorate General of Customs and Excise (Unclaimed Goods). The Directorate General of Customs and Excise conducts auctions for various types of goods, including goods that are declared not controlled, goods that are controlled by the State, and goods that belong to the State. These goods are classified accordingly by the Directorate of Customs and Excise. The auction of unclaimed goods refers to the auction held for goods on which import duty has not been paid within a specified period and have not been claimed by the owner.
- h. Mandatory Non Execution Auction. Inventory auctions for central/regional government agencies are conducted to dispose of goods that belong to or are controlled by the state. These goods include assets owned or controlled by the central/regional government, armed forces (ABRI), or civilians. State-owned goods are acquired using funds from the national or regional budget (APBN or APBD) and other sources, or they are clearly recognized as state-owned based on relevant laws and regulations. However, individual state assets are not included in this category. The sale of national/regional property through auctions is governed by Law No. 1 of January 2004, specifically Article 48(1) of the Ministry of Finance of the People's Republic of China. According to this provision, under certain circumstances, national/regional property can be sold through auctions. The specific regulations for such sales are outlined in government regulations, as stated in paragraph (2) of the same article. Furthermore, the sale and/or transfer of state-owned/controlled goods are regulated by the INPRES (Presidential Instruction) issued on September 9, 1970. According to this instruction, state/regional property or assets must be sold through auctions.
- i. Voluntary Auction. Voluntary Auction of Private Property. Voluntary/Private Auctions is an auction service that operates on the basis of a voluntary public application. This auction service was created to compete with various forms of private buying and selling that are well-known to the general public. Auctions of items from embassies/diplomatic missions, auctions of works of art such as carpets and paintings, and voluntary auctions held in the auction room are currently underway.
- j. Voluntary Auction of BUMD/BUMN Assets in the Form of a Persero. Government Regulation Presidential Regulation Number 1970 overrides Article 37 paragraph (2) of the 1998 Limited Liability Companies Law (Persero) with regards to the sale and transfer of state-owned/controlled goods. This means that Persero and Public Limited Liability Companies are not obligated to sell their goods through auctions. They have the freedom to sell their assets and products without using auctions. However, if they opt for the auction method, it is considered voluntary.

Execution auctions, particularly in cases where items are auctioned without the owner's consent, often give rise to a high potential for lawsuits. Many parties may show interest in items that are being auctioned against their wishes.¹⁹ These parties often resort to legal action in order to protect their rights in relation to the auctioned goods. As a result, civil and constitutional issues frequently arise in connection with auctions. The terms and conditions of auctions are governed by Minister of Finance Regulation Number 40, PMK.07/2006, as well as Article 6 of the General Administration of Receivables and State

¹⁸ *Ibid.*

¹⁹ Natsya, I. D. G. A. D., & Ora, D. G. R. (2021). Kedudukan Lembaga Perbankan Sebagai Pembeli Lelang Eksekusi Hak Tanggungan Atas Jaminanya. *Acta Comitatus*, 6(02).

Auctions Decision No. 35/PL/2002. The auction terms include both general conditions and specific requirements that bidders must adhere to during the auction process.

The general terms of an auction encompass several key conditions that are universally applicable. Firstly, the presence of an Auction Official is required unless specified otherwise by relevant laws and regulations. Secondly, auctions are open to the public and can be attended by the seller and multiple participants. Thirdly, prior announcement of the auction must be made. Finally, the auction price must be paid in cash within one day after the conclusion of the auction. Additionally, Article 78 of the Minister of Finance Decree, in conjunction with Article 6, paragraph (2) of the Directorate General of Receivables and State Auctions Decree, grants the seller the authority to establish additional auction conditions. These may include providing participants with a schedule of auction explanations, allowing time for viewing and inspecting the items, and specifying the timeframe for returning goods, if necessary. However, these additional conditions require written submission and approval from the Head of the Auction Office, as they are not automatically considered valid or binding. The Head of the Auction Office has the authority to accept or reject these conditions, and their decision will be documented in the auction minutes and communicated to the bidders.

Auction is essentially a public sale where goods are sold, and it involves both sellers and auction buyers. According to Article 1, number 19 of Minister of Finance Regulation Number 27/PMK.06/2016, an auction seller refers to a "person, legal entity, or business entity, or agency authorized by laws and regulations or agreements to sell goods through auction." Auction sellers can include goods owners, their representatives, or individuals/legal entities/business entities/agents authorized to sell goods through auctions.²⁰ As a legal participant in the auction process, auction sellers have certain obligations that need to be fulfilled for the proper conduct of the auction. These obligations may include the following:²¹ (1) Submitting a written request for auction implementation to the Head of the KPKNL (Regional Office of the Directorate General of Taxation and Customs) or through the Auction Center or the Office of Class II Auction Officials; (2) Assuming responsibility and ensuring the legal ownership of the goods being auctioned; (3) Being accountable for any civil or criminal charges that may arise from non-compliance with auction-related laws and regulations; (4) Being liable for claims for compensation in case of losses incurred; (5) Possessing the physical movable property to be auctioned, except for intangible goods such as scriptless shares, billing rights, copyrights, brands, and patents; (6) Specifying the type of goods to be auctioned in the auction application letter, particularly for intangible goods; (7) Paying the expenses for obtaining a Certificate of Land Registration (SKPT) issued by the local Land Office, if applicable; (8) Making auction announcements to inform potential buyers; (9) Providing the original ownership documents and/or goods to the buyer or auction winner; (10) Signing the Minutes of Auction as a confirmation of the auction process; (11) Paying the necessary fees, including canceled auction fees, auction fees, final income tax (PPh), administration fees, and other levies to the State Treasury; and (12) Adhering to the procedural rules and regulations set by the KPKNL/Auction Center/Class II Auction Officials when conducting the auction.

In auctions, the Auction Buyer refers to the participant authorized by the Auction Official as the winner, having placed the highest bid.²² Auction participants can be individuals or legal entities that meet the necessary criteria to take part. Therefore, the auction buyer is the individual or legal entity that satisfies participation requirements, submits the highest bid, and is officially recognized as the winner by the Auction Official. Minister of Finance Regulation No. 27/PMK.06/2016 prohibits certain legal subjects from

²⁰ Usman, R. (20118). *Op.Cit.*

²¹ *Ibid.*

²² Walidani, L., & Adjie, H. (2018). Perlindungan Hukum Kreditur Terhadap Pelaksanaan Eksekusi Hak Tanggungan (Analisis Putusan Mahkamah Agung Republik Indonesia Nomor 2859K/PDT/2011). *Humani (Hukum dan Masyarakat Madani)*, 8(2), 117-130.

participating as bidders. Prohibited entities include Auction Officials and their immediate family members, Sales Officers, Auction Guides, Judges, Prosecutors, Lawyers or Advocates, Notary Publics, Land Titles Registrars, DJKN employees, Auction Hall employees, and employees of Class II Auction Officer Offices directly involved in the auction process.

2. Auction object

In accordance with Article 6 of *Vendu Reglement Staatblad 1908 Number 189*, auction objects are classified into two types: movable objects and immovable objects. Furthermore, as stated in Article 1 number 2 of Minister of Finance Regulation 27/PMK.06/2016, goods refer to any objects or rights that can be sold through auction. Therefore, the goods that can be subject to auction include both movable and immovable objects.

According to Article 504 of the Civil Code (BW), objects can be classified into two categories: movable objects and immovable objects. The regulations pertaining to immovable objects are outlined in Article 506 to Article 508 of the Civil Code. On the other hand, regulations regarding movable objects are specified in Article 509 to Article 518 of the Civil Code. Moving objects can be further categorized into two groups:²³ (1) Objects that move due to their nature: According to Article 509 of the Civil Code (BW), objects are considered movable by nature if they can be physically moved or transported. Additionally, Article 510 of the Civil Code specifies certain examples of movable objects, such as ships, mining boats, mills, and bathing places that are attached to or detached from boats; (2) Movable objects based on legal provisions: Movable objects based on legal provisions are governed by Article 511 of the Civil Code. This category includes: Usufructuary rights and rights of use over movable objects; Rights to agreed interests; Bills or receivables; Shares or interests in trade partnerships. Participation in mortgages on Indonesian state assets, including those listed in the general ledger, as well as certificates, debt acknowledgments, bonds, or other securities, along with their associated coupons or interest payment proofs. Shares or coupon bonds from other loans, including loans made by foreign countries.

Prof. Subekti explains that immovable objects can be classified into three categories: those due to their natural state, those intended for specific use, and those determined by law.²⁴ Naturally immovable objects include land and everything directly or indirectly connected to it through natural or human activities. For example, this includes land itself, structures like houses, trees, and even unpicked fruits. Objects that are designated to accompany the land or buildings for an extended period, such as machinery in factories, are also considered immovable. All these objects are recognized as real property by law, entailing rights and claims associated with them. It's important to note that these classifications provide a general understanding of immovable objects, but specific legal definitions and regulations may vary depending on the jurisdiction.

3. Rights of the Auction Winner

Auctions are a method of selling where potential buyers participate in a bidding process to determine the highest price. It is an open and public process accessible to everyone. The auction process involves announcing the sale in advance to attract buyers and encourage competitive bidding.²⁵ The highest bidder becomes the buyer of the item being auctioned. In the context of auctions, the right to claim refers to the creditor's right to the debtor's receivables. Through auctions, buyers can competitively bid on intangible assets like receivables to acquire their associated rights. The limit value of the item being sold is set by the seller, and in auctions involving the right to collect, the limit value is usually set below the debt value to encourage buyer participation and potential resolution of the debt issue.²⁶

²³ Hasbullah, F.H. (2005). *Hukum Kebendaan Perdata, Hak-Hak Yang Memberi Kenikmatan*.

²⁴ Subekti. (2005). *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa.

²⁵ Sianturi, P.T. (2008). *Perlindungan Hukum Terhadap Pembeli Barang Jaminan Tidak Bergerak Melalui Lelang*, Bandung: CV Mandar Maju.

²⁶ Adriani, M. (n.d). *Tjhong Sendrawan dan Widodo Suryandono*.

After the auction, when the auction official determines the winner, who is also the buyer, the buyer obtains the right to receive payments from the credit agreement and the collateral attached to it. The status of the collateral always follows the provisions of the main agreement, which in this case is the credit agreement. Therefore, when the expropriation rights are transferred through an auction, the objects used as collateral are also transferred. It's important to note that even though the expropriation rights are acquired through the auction system, the existing agreements are still in effect. The buyer in this type of auction, known as a cessie auction, becomes a new creditor or cessionary, taking over the rights and obligations of the original creditor.

Buyers who act in good faith are entitled to obtain legal protection. These provisions also extend to parties who purchase goods at auctions in good faith. The latest Minister of Finance Regulation includes provisions that apply the principle of auctions, which are as follows:²⁷ (1) The auction is conducted based on a predetermined agreement, including the time and place of sale; (2) The auction is announced to the bidders in front of the general public; (3) Participants in the auction compete by submitting competitive bids, both orally and in writing; and (4) The participant who submits the highest bid will be declared the winner of the auction, subject to certain conditions.

The legal relationship between the buyer and seller in an auction is governed by a legal agreement. As per the Civil Code, a legal agreement is established when one party assumes an obligation and the other acquires rights over something. In an auction, the buyer has the right to receive the purchased item, and the seller has the obligation to transfer ownership to the auction winner. The auction winner is the participant with the highest bid and must comply with the regulations outlined in PMK Number 27 / PMK.06 / 2017 to be considered genuine. The buyer holds rights such as inspecting the goods, obtaining auction minutes or receipts, requesting the return of security deposits, and receiving the goods and accompanying documents.²⁸ The auction process transfers rights from the seller to the winner, granting ownership and control to the winner and removing authority from the seller.

When participating in an auction process, it is important for bidders to act with sincerity and integrity. To avoid potential losses and increase their chances of winning the auction, bidders should follow certain steps before and after being declared the winner:²⁹ (1) Gathering Information: Bidders should gather as much information as possible about the location of the auctioned item and carefully review all provisions mentioned in the auction announcement. It is essential to assess the actual conditions of the item and verify the accuracy of the information provided in the announcement; and (2) Understanding Limitations: Bidders should be aware that certain information, such as the pedigree and age of the item, may not be disclosed by the banking institution or the party conducting the auction. This limitation should be taken into account when evaluating the auctioned item.

4. Auction Cancellation

The legal terms of an agreement create a binding contract in which both parties willingly and knowingly reach a mutual understanding. The subjective conditions, which encompass the parties' intentions, and the objective conditions, which involve external factors, determine the validity of the agreement. If the subjective provisions are inadequate, either party can request to cancel the agreement. Hence, unless the agreement with subjective defects is cancelled, it remains binding upon the parties similar to a valid agreement. Cancellation of an auction refers to the termination of the ongoing auction

²⁷ Adityanata, M.R., Bagiastra, I.N. (2020). Upaya Memperoleh Kepastian Hukum Demi Hak dari Pemenang Suatu Lelang, *Jurnal Kertha Semaya*, 9(5).

²⁸ Tshalbiah. (2004). *Materi Pokok Pengetahuan Lelang*, Jakarta: Pusat Pendidikan dan Pelatihan Perpajakan, Sinar Grafika.

²⁹ Adhrian, R. (2014). Mengantisipasi Kerugian Bagi Calon Peserta Lelang Eksekusi Atas Barang Tidak Bergerak, *Jurnal Hukum*, IV.

process. It can occur in situations where a third party initiates a lawsuit, and the court subsequently issues a decision to cancel the auction. The court deems the auction as invalid and declares it null and void. In such cases, any payments made by the auction buyer will be refunded to them. Consequently, the auction is halted and cannot proceed further.

Auction legal certainty relies on the creation of auction records, specifically the minutes of the auction, which hold the status of an authentic deed. These records ensure the transfer of collateral from the buyer to the property. However, if a lawsuit leads to the cancellation of the auction records, the buyer loses the legal certainty they would have obtained from those records.

According to Article 4 of Minister of Finance Regulation No. 27/PMK.06/2016, auctions conducted in accordance with the regulations cannot be canceled. The cancellation of auctions is addressed in Articles 27-33 of the same regulation. Article 27 states that an auction can only be canceled upon the seller's request or based on a court decision. The auction official must receive a written court decision to cancel the auction before it starts. If the auction is canceled, the seller and the auction official must announce it during the auction. The cancellation request from the seller must be in writing, providing specific reasons, and received by the auction official before the auction starts, even if the seller is absent. Canceled auctions incur cancellation fees as per the relevant regulations. In summary, the cancellation of auctions can only occur at the request of the seller or through a court decision. The auction official must receive a written court decision for the cancellation before the auction starts. If an auction is canceled, it must be announced to the bidders during the auction. The cancellation request from the seller must be submitted in writing with specific reasons before the auction begins. Canceled auctions result in the application of cancellation fees as prescribed by the relevant regulations.

The auction officer can cancel the auction under certain circumstances, such as the absence of necessary permits, goods under criminal investigation, legal disputes, force majeure, technical difficulties, failure to meet the limit value, or lack of physical possession by the seller. According to Article 31 of Minister of Finance Regulation Number 27/PMK.06/2016, the cancellation can only occur during the auction due to force majeure, unresolved technical disturbances, or at the seller's request if they don't participate. This cancellation renders the agreement invalid as it doesn't meet the conditions for validity stated in Article 1320 of the Civil Code. The auction winner, acting in good faith, deserves legal protection based on their adherence to auction regulations, purchase through authorized processes, sincerity in intentions, adherence to decency and rationality, reasonable purchasing process, and entitlement to seek redress. Once the auction is completed and the highest bid announced, the law should protect the auction winner as the buyer, granting them certainty and safeguarding their rights. This designation of good faith depends on fulfilling additional requirements, including payment and proper documentation.

In accordance with Article 1 number 35 of PMK Number 27/PMK.06/2016 regarding Instructions for Implementation of Auctions, the minutes of the Auction hold significant weight as concrete actions and carry perfect evidentiary power. As a genuine and authentic document, the auction records serve as binding evidence, meaning that they must be accepted and trusted by the judge, requiring no further evidence. The auction records serve as conclusive proof of the legal proceedings documented within them.³⁰

The Minutes of Auction constitute a valid and binding contract and hold perfect evidentiary power, serving as irrefutable proof of its contents. In this regard, the auction records possess three types of evidentiary power, as follows:³¹ (1) Inherent evidentiary power: The auction records, which resemble a contract, are considered valid and binding unless proven otherwise; (2) Formal evidentiary power: The auction records establish that the events documented within them were indeed carried out by the auctioneer. (3)

³⁰ Usman, R. (20118). *Op.Cit.*

³¹ *Ibid.*

Presumption of certainty: In the absence of contrary evidence, the auction records serve as conclusive and reliable evidence for all parties involved, including sellers, buyers, and the general public.

The auctioneer's minutes of auction serve as authentic documents that carry the power to offer legal protection and ensure legal certainty regarding the purchase of goods by the auction winner from the seller.³² Furthermore, the Minutes of Auction guarantee legal certainty regarding the transfer of rights from the seller to the buyer through the auction process. To validate the effectiveness of the Minutes of Auction as a legal guarantee for the transfer of rights, it can be examined through legal testing.

The auction process can be seen as a specific type of sale and purchase agreement. According to Article 1458 of the Civil Code (BW), a sale and purchase agreement is formed when the parties agree on the object and price. However, the formation of a sale and purchase agreement does not automatically result in the transfer of property rights, which is the ultimate goal of the transaction. At this stage, an agreement is established between the seller and the buyer, as outlined in Article 1233 of the Civil Code.³³ Since a sale and purchase agreement is a binding agreement that creates rights and obligations for both parties, it serves as a basis for the transfer of property rights. The Auction Official prepares the Minutes of Auction after the seller and the buyer in the auction have fulfilled their respective obligations. The buyer pays the auction's principal amount and fees, while the seller delivers the goods to the buyer. Based on the information provided, it can be concluded that the auction minutes serve as a guarantee of legal certainty regarding the transfer of rights over the object being auctioned.

Auction buyers have the right to seek legal recourse if they believe they have been harmed by filing a lawsuit.³⁴ According to Article 1565 of the Civil Code (BW), any violation of the law that causes harm to others imposes a responsibility on the person who caused the damage through their inappropriate behavior to compensate for the loss. This provision is in line with the concept of *onrechtmatige daad* (unlawful act) in Indonesian civil law, which holds individuals accountable for their actions that result in harm to others.³⁵

According to Mariam Darus Badrulzaan in the Draft Law, the following explanations are provided: (1) Acts that violate the law and cause harm to others, whether due to mistakes or negligence, should result in the responsible party compensating for the losses incurred; (2) Violations of the law encompass actions that infringe upon the rights of others or violate established social norms and etiquette, whether in relation to individuals or their property; and (3) A person who intentionally fails to fulfill their obligations is regarded in the same manner as someone who commits a prohibited act, thereby violating the law.

Unlawful acts result in losses, requiring the wrongdoer to compensate monetarily. Article 1365 of the Civil Code establishes this duty, but specific regulations on compensation are lacking. Analogously, Articles 1243 to 1252 can be used to determine compensation, aiming to restore the injured party. Lawsuits regarding auctions may be based on unlawful acts, satisfying certain elements. These include actions against auction laws, faults leading to losses, damages to be compensated (material and non-material), and a causal relationship between losses and unlawful acts. The auction winner can seek compensation from the seller, holding them accountable in civil and/or criminal terms.

CLOSING

Cessie auctions offer a method for transferring or selling claim rights, specifically those related to debt collection. However, the absence of clear regulations addressing cessie

³² Laily, N., Seroja, T. D., Fitri, W., & Fimos, Z. A. (2020). Analisis Perlindungan Hukum Terhadap Peserta Lelang dalam Pelaksanaan Eksekusi Hak Tanggungan oleh Pihak Bank. *Reformasi Hukum*, 24(2), 209-228.

³³ Isnaeni, M. (2018). *Pengantar Hukum Jaminan Kebendaan*, Surabaya: Revka Putra Media.

³⁴ Fadhli, M. (2018). Tinjauan Hukum Islam Terhadap Eksekusi Lelang Jaminan Pada Institusi Perbankan Syariah Di Aceh. *At-Tasyri': Jurnal Ilmiah Prodi Muamalah*, 39-50.

³⁵ Gautama, S. (2004). *Hukum Perdata Internasional Indonesia*, Bandung: PT. Alumni.

auctions poses challenges. Cessie involves the transfer of debt collection rights from the original creditor (cedent) to the debtor (cessus) and subsequently to the new creditor (cessionaris). In a cessie auction, the claim right becomes the auctioned object, falling under the category of a voluntary non-execution auction. Auction winners, acting in good faith, enjoy legal protection. Nevertheless, the lack of specific regulations governing cessie auctions and the inadequate support from existing auction regulations highlight the need for comprehensive rules to safeguard the rights and interests of auction winners.

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