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Legal Protection for the Winners of the Execution of Mortgage Rights in the Auction Case of Blocking of Property Rights Certificates (SHM) which Become the Object of the Auction

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ABSTRACT

The purpose of this study is to examine the meaning of the phrase "object of dispute in court" in the provisions of Article 45 paragraph 1 letter e of Government Regulation No. 24 of 1997 concerning Land Registration and In the event that the auction object is blocked, the winning bidders have legal protection when exercising their mortgage rights. Researchers employed a normative juridical research style in this study. The study's findings demonstrate that various parties have different interpretations of Letter E of Article 45 of PP Number 24 of 1997. Land Offices, so that any object of claim including objections to auctions because the limit value is considered low is still used as a reason to refuse registration of a rights transfer by auction. The type of law protection for auction winners, namely preventive protection which is preventive in nature, is still very weak, where The only thing the auction winner can do is wait for the Court's ultimate ruling. Taking legal action is another option to restrictive legal protection. The winning bidder may seek the District Court for help in removing the item. The auction winner can sue Perbuatan Melawan Hukum (PMH) against the Blocking Applicant and The representative for the to conduct the auction is the Land Office. in order to make the seller accountable through payment of damages. the blocking record

INTRODUCTION

The implementation of the execution of the mortgage right is due to the obligation of the debtor to the creditor which is not fulfilled, because previously an agreement was made between the debtor and the creditor by signing the Deed of Granting Mortgage made before the Land Deed Making Officer (PPAT) and registered at the Land Office. The debtor's default is closely tied to the auction for the execution of mortgage rights. against the creditor. The default in question is in the form of a credit agreement followed by a mortgage right, in which the debtor is no longer able or has no good faith to fulfill his debts to the creditor.

As a result, the collateral charged with the mortgage is sold to another party in order to fully satisfy all debts owed by the debtor to creditors through an auction. With a note that if after being given three warnings/reprimands (Subpoenas) properly and the debtor still cannot pay off the debt, then the debtor can be said to be in default. So that the collateral holder (Creditor) has the authority to conduct an execution auction for the collateral object that has been burdened with mortgage rights.

From the auction process that is carried out, there will be legal consequences, namely the handing over of ownership of an auction item by the seller to the winning bidder. The legal repercussions of the auction's implementation does not only apply specifically the transfer of the auction winner's Both the auction seller and the auction winner receive ownership rights to the auction item, with the seller losing all control over it. Because the binding form of the sale and purchase of the auction happens automatically when someone is named the winner of the auction. It must comply with Article 1457 of the Civil Code's requirements, specifically that the person designated as the auction winner receive the object up for auction when the buyer pays off the payment of the specified amount of bids.. The auction winner or auction buyer is the person, legal entity or business entity that submits the highest bid and is approved as the auction winner by the auction official.

After the object of the auction has been sold, the winner/buyer of the auction performs their obligations as the auction's successful bidder. Additionally, the auction's winner or purchaser gets the right to take over the assets or He has purchased the auction item, as evidenced by the deed in the auction minutes. As a result, the auction winner has acquired full ownership of the items as well as the authority to manage and enjoy them. Since that time, the buyer has had the option to demand actual delivery of the products, as well as the submission of any connected deeds or the right to rename the commodities.

Legally, The auction winner is already completely protected by the law. using the auction's minutes, he bought an item. According to Government Regulation Number 24 of 1997 Concerning Land Registration, the transfer of land rights through an auction may only be validated by a quote from the auction's minutes given by the auctioneer and then documented with the Land Office. Real estate transactions are legally binding, and just like deeds of sale and purchase, quotes from the auction minutes serve as evidence of the transfer of land rights. After collecting the auction records, the auction winner has the right to register his land rights with BPN in order to change the name of the property from the prior owner to the new owner. thus, following, the ownership right is entirely transferred to the auction winner.

However, a problem occurs when the auction winner wants to transfer the name of the mortgage object that has been purchased through the public sale. Initial court documents submitted by the debtor or landowner included an application to the Land Office to record the block on the certificate of ownership. The blockage has legal repercussions for land rights when done at the Land Office, namely that land rights cannot be transferred or assigned.

Thus, the certificate cannot be carried out by any legal action so that the auction winner cannot transfer the name or control the object of the auction. As a result, the buyer will feel disadvantaged when he has completed all his obligations as an auction buyer, but when he intends to exercise his right to

transfer the name of the land object that belongs to him based on evidence of the minutes of the auction, it is hampered due to a lawsuit in court.

Referring to the clauses PP 24/1997 concerning Land Registration, which states that the Head of the Land Office declines to carry out transfer registration or encumbrance of rights if the subject land is the subject of a legal dispute. This is stated in Article 45, paragraph (1), letter e. The State Minister for Agrarian Affairs/National Land Agency's Regulation No. 3 of 1997 about Provisions for Implementing Government Regulation No. 24 of 1997 about Land Registration, however, does not provide provisions regarding the meaning of "object of dispute in court" so that this regulation creates multiple interpretations for readers. If viewed through dogmatic jurisprudence, if a text is ambiguous then an interpretation is needed which is held in a commentary which can be in the form of additional or complementary interpretations so that people understand and accept a law and there should be no misunderstanding or double meanings.

As a result of Badan Pertanahan Nasional (BPN)'s reluctance to register the transfer of rights through an auction on the grounds that there is still a land dispute has prompted a lawsuit from the purchaser of the execution of the mortgage right auction in both the District Court and the High Court. Pengadilan Tata Usaha Negara (PTUN) against BPN. Furthermore, the procedures for recording blocks, Land rights cases, disputes, and confiscations are still dispersed among a number of provisions, incomplete, and inconsistent. Additionally, certain agreements no longer meet the requirements and dynamics of community development, necessitating their compilation into separate regulations. The Blocking and Confiscation Procedures 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 was published by the Ministry of Agrarian Affairs and Spatial Planning.

The presence of this regulation is expected to be able to close the legal gaps in the implementation of the rejection of the registration of the transfer of land rights, especially because the land to be transferred is still the object of dispute in court. This regulation provides guidance for both BPN officers and the public regarding procedures for recording and removing blocks and confiscations as well as what kinds of land disputes and cases can lead to rejection of registration of transfer of land rights. Article 35 paragraph (3) of this regulation states "In the event that the land rights requested for a confiscated case's registration has been made the subject of an execution auction, By providing notice, it is still possible to register a transfer of rights completed after the auction winner is informed of the existence of a lawsuit involving the property and noted in the land book that is the subject of the case.

Due to the existence of this article, the purchaser of the Mortgage Execution Auction has the right to continue to record the transfer of rights even though there are still lawsuits or land confiscation cases on the land. But contradictory, paragraph (5) in the old article has abolished the rights of the buyer of the mortgage execution auction to be able to transfer the land that has been purchased to another party until the case attached to the land obtains a decision that has permanent legal force, where the auction buyer should the acquisition of which has fulfilled the conditions and conditions as stipulated in the laws and regulations are buyers with good intentions who must be protected by law and obtain legal certainty.

METHODS

This thesis research is normative research that departs from problems related to the lack of legal protection for auction winners who cannot carry out the process of transferring the names of the auction objects they win due to blocking of the auction object. This study uses a statutory approach, a case approach and a conceptual approach to find out the arrangement of mortgage auctions in providing legal protection for auction winners in the process of transferring land rights which are then supported by the collection of several legal materials such as

primary legal documents in the shape of all laws and regulations. invitations related to mortgage execution auctions and several jurisprudence decisions of the Supreme Court (MA), secondary legal materials in the form of legal journals and legal articles, as well as tertiary legal materials in the form of legal dictionaries and encyclopedias. The analysis technique used is in the form of grammatical interpretation, to find out the meaning of the provisions of the law, the provisions of the law are interpreted or explained by describing them according to everyday common language.

RESULTS AND DISCUSSION

1. Meaning of the phrase "Object of Dispute in Court" in the provisions of Government Regulation No. 24 of 1997 concerning Land Registration, Article 45, Paragraph 1, Letter E. Blocking as a security measure through the avoidance or brief suspension of all forms of changes to the land title certificate by the land office until a permanent decision is made by the court. So, If the property is the subject of a legal dispute, the Head of the Land Office may opt not to record the transfer or encumbrance of rights.

The restrictions of Article 45 of Government Regulation Number 24 of 1997 Governing Land Registration, generally known as PP Number 24 of 1997, provided the legal justification for the Land Office's denial. The Land Office denies to transfer the land rights in accordance with Article 45. paragraph 1 letter e of Government Regulation Number 24 of 1997 which reads:

“The Head of the Land Office refuses to register the transfer or encumbrance of rights, if one of the conditions below is not met:

a. The certificate or statement regarding the condition of land rights is no longer in accordance with the existing registers at the Defense office;

b. The legal act as referred to in Article 37 paragraph (1) is not proven by a PPAT deed or a quote from the auction minutes as referred to in Article 41, except in certain circumstances as referred to in Article 37 paragraph (2);

c. The documents required for the registration of the transfer or encumbrance of the rights concerned are incomplete;

d. The other conditions specified in the relevant laws and regulations are not fulfilled;

e. The land in question is the object of a dispute in the Court;

f. Legal action as evidenced by the null and void PPAT deed or canceled by a court decision that has permanent legal force; or

g. The legal action referred to in Article 37 paragraph (1) is canceled by the parties before being registered by the Land Office.”

From the results of research conducted by researchers both from the elucidation section on Government Regulation Number 24 of 1997 concerning Land Registration and Law Number 5 of 1950 concerning Basic Agrarian Regulations (UUPA), it does not contain further explanation regarding disputes in court such as What can cause the BPN to reject the request submitted by the applicant to record the auction buyer's acquisition of land rights.

The custom is that any disagreement over a land object that has been recorded with the local District Court and will result in the BPN rejecting the registration of the transfer of land rights if it has been noted in the land book there either through a PPAT deed or an excerpt of the minutes of auction. Only until the land that is the subject of a case has received an inkraht ruling, has permanent legal effect, or the blockade has been lifted, can the transfer of land rights be registered. has been revoked by the person applying for the block in accordance with the procedures and requirements that must be met.

The definition of "dispute" in the Differences in values, interests, opinions, and/or perceptions between individuals and/or legal entities (private or public) are addressed in Regulation No. 21 of 2020 governing the Handling and Settlement of Land Cases, a directive from the Republic of Indonesia's Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency.) concerning status of control and or status of ownership and or status of use or utilization of

certain land parcels by certain parties, or the status of state administration decisions regarding the control, ownership and use or utilization of certain land parcels which do not have a broad impact.

Based on the understanding of the dispute above, according to PP Number 24 of 1997 Article 45 "When an application for blocking is received from a third party and the object is disputed, the head of the Land Office has the right to refuse the transfer of names, so that the Land Office will exercise principled caution in relation to the subject land is blocked as a result of the dispute. Even if those who apply to the Land, there is no cap on the sense of caution. Office to be blocked only use a written request, not a copy of the lawsuit from the court, but it is considered problematic, so the Land Office blocks it. The Land Office accepts a blockade with a written request for the purpose of protecting the interests of the parties, so that later the party that should be entitled to the land object loses out. So that they take the attitude of waiting for a ruling from a court with lasting legal effect with the purpose of achieving good governance, particularly in the land sector.

Blocking in accordance with paragraph (1) of Article 45 letter e of Government Regulation Number 24 of 1997 concerning Land Registration is carried out by the Head of the Land Office with the consideration of avoiding the risk of crime as stipulated in Articles 416 and 417 Kitab Undang-Undang Hukum Pidana (KUHP) It has a wide range of interpretations, i.e., goes beyond the scope of the Head of the Land Office's power. For more information, see Article 45 paragraph (1). The blocking is opened or deleted and a certificate transfer occurs as a result, costing the blocking applicant (plaintiff) losses that were upheld in the court decision. The blocking is opened or erased if the court judge determines that blocking is outside of his authority in the event of blocking. The Head of the Land Office "can" refuse the transfer registration or assignment of rights if the property is made the subject of a legal dispute. but "does not refuse" them according to 1letter e Government Regulation Number 24 of 1997 concerning Land Registration.

The Head of the Land Office may be charged with a crime if losses occur.

The Land Office in another location also records case blocks, and if a case is included with the block, Block remains in effect till Inkracht ruling. blocking instances on the justification that not all collateral in a claim is real estate or certificates debt agreement are not included in the scope of recording blocks, but are included in the scope of recording confiscations. For more details, according to Article 3 paragraph (1) Permen ATR 13 of 2017 it is explained that the recording of blocks is conducted on land rights as a result of judicial proceedings, legal events, or land disputes or conflicts. According to these provisions, the object of recording the block (the one being requested for the block) at the Land Office must be in the form of a land right. In other words, land disputes are the main condition for blocking, so that objects of dispute other than land rights should not be able to apply for blocking. So that the provisions of Article 45 paragraph (1) letter e PP Number 24 of 1997 have so far been interpreted broadly by several Land Offices, so that whatever the object of the lawsuit, including auction objections because the limit value is considered low or the debtor/executor still feels able to repay, still be used as a reason to refuse the registration of the transfer of rights through an auction. Even just a block letter from the debtor/lawyer is also used as a reason to reject the transfer of registration of rights.

According According to the researcher, this article should be read in the context of Article 45 letter e, which states that the claim material is limited to land disputes that are litigated in court and that the plaintiff is a third party who has a claim on ownership rights (not the debtor/executed or his family), not tenant etc.). By understanding according to the text of the article, it is hoped that there will be an understanding that lawsuits or blockades from the debtor/executed/his family or tenant cannot be used as a reason to reject the land rights' recording transfers.

Referring to According to Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, "The Head of the Land," replaced Government Regulation Number 24 of 1997 concerning Land Registration. The procedures remain the same, though, in that the "Office refuses to carry out a transfer registration or encumbrance of rights if the land in question is the subject of a dispute in the Court." are still the same. This is stated in Article 92 paragraph (1) of Government Regulation Number 18 of 2021 which states "in the event that land is the object of a case in Court, the object of determining the status quo by the judge examining the case or the object of court confiscation, The Land Office's Head declines to record the transfer or imposition of rights. Because the blocking action is regarded to have included describing the existence of disputes, conflicts, and cases, blocking is frequently used as a justification for postponing performing land service activities until an uncertain or indeterminate grace period or other problems, which of course can lead to legal uncertainty if the blocking action This seems to be a permanent administrative action from the Head of the Land Office.

Based on the provisions of Article 45 PP Number 24 of 1997, which is the handle of the Land Office even though this makes it unfair for the the individual who won the auction and acquired authentic evidence in the form of a Quotation of the Tender Minutes. However, the auction winner cannot control and carry out the process of transferring the name of the auction object won even though it has gone through the procedures in accordance with the guidelines set forth in PMK Number 213/PMK.06/2020 regarding the implementation of auction instructions and in accordance with the Mortgage Act, Article 20 which reads that: "if the debtor defaults, the HT object According to the procedure outlined in the relevant rules and regulations, the debt held by the creditor holding the HT is sold through a public auction, and the creditor holding the mortgage has the right to accept all or part of the earnings for repayment of the

receivables insured by the said HT, ahead of other creditors.

Even though the purchase The administrative requirements at the Land Office cannot be completed if the auction object in the form of a Mortgage object is in compliance with the procedure and is deemed as legally acceptable since there is a status quo for the object of land rights. So in this case the winning bidder administratively has not been able to submit an application for The winning bidder can proceed with the administrative process at the Land Office, specifically the request for the transfer of rights, even if the subject of litigation until a judgment that has final legal effect. So that by the Land Office's documentation of the block is contrary to legal certainty where the auction winner is protected by the applicable laws and regulations, namely the Mortgage Law which is executorial in nature contained in the Mortgage Certificate, as referred to in Article 14 paragraph (1) 2). The Irah-irah (head of the decision) listed on the Mortgage Certificate contains the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD" intended to emphasize the existence of executorial power on the Mortgage certificate, so that if the debtor defaults, it is ready to be executed as with a decision a court that has obtained permanent legal force, through procedures and by using parate executive institutions in accordance with the Civil Procedure Code.

2. Should the item up for auction be blocked, legal protection for auction winners is provided by the execution of mortgage rights.

Legal protection for auction buyers/auction winners means that there is legal certainty over the winning bidder's rights to the items bought at auction, to obtain goods and material rights to the goods purchased or in other words, The auction item that the winning bidder selects for himself already owns, both juridically and materially. The legal interests of the auction winner as a good faith buyer to obtain the auction object must be protected because the legal interest is concerned with human rights and interests, so that the law has the highest

authority to determine human interests that need to be regulated and protected.

The measure of the good faith of an auction buyer is not regulated in any of the regulations in force in Indonesia. However, reflected in its ruling, the Republic of Indonesia's Supreme Court dated August 28, 1967 Reg. No. 821 K/Sip/1974, states that a buyer who purchases something at public auction through the State Auction Office needs legal assistance since it is acting honestly. The court's thought process regarding the presence or absence of the auction buyer's good faith did not depend on whether the auction process was valid or not. This can be seen from the judge's decision which divides it into valid decisions and invalid decisions, but this does not affect the statement that the auction buyer is in good faith. Forms of legal protection for auction winners whose names are reversed are blocked by the National Land Agency can take the shape of both repressive and preventive legal protection:

a. Preventive Legal Protection

A sort of protection offered before a disagreement arises on the subject of the auction event is known as preventive protection for bidders. In connection to the transfer of rights to the auction event's object, venddu rule provides participants with preventive protection. Section 42 of the Vendu Regulation has regulations on this which states that the auction buyer has the right to obtain quotations from the minutes of the auction as a sale and purchase deed from the auction object for executing mortgage rights.

By law, The auction purchaser is already confident in the legality of the item he bought at the mortgage auction. The sale. buyer who has received the Excerpt of the Minutes of Auction has fully become the owner of the purpose of the mortgage execution and the authority over the item up for sale during mortgage execution. The winning bidder at the auction may also transfer the name to the winning bidder or register the transfer of land rights. Badan Pertanahan Nasional (BPN) Office.

According to the Minutes of Auction, a buyer who has won the auction can take possession of the prize he earned. However, the auction minutes actually 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 correctness of the information given verbally at the time of sale regarding the actual condition and legal situation of the item being auctioned, such as the area, boundaries, lease agreement and is at the buyer's risk. This clause reflects the Government releasing responsibility in the form of both the physical condition and the legal condition of the goods being sold.
2. The bidder/buyer is considered to have really known what has been bid by him/her. If there is a shortage/damage either visible or invisible, 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 can be seen that The winning bidder is in a precarious position with relation to the auction's item. This provision may be harmful to the auction winner, especially for prospective buyers who do not inspect the object prior to purchasing the sale through auction. The auction buyer/winner does not get definite legal protection regarding the auction object he purchased because it can harm the auction buyer's position if there is a problem with the item up for auction, particularly if the debtor is suing related to ownership.

Actually the factor of caution must be exercised by auction officials about the clarity of the land rights subject matter that will be auctioned. The legitimacy of an item, where to find out, the Auction Officer can make a request for information from the relevant agency or information from the applicant or the owner of the item, so that if there is a claim related to this matter, the relevant agency will be held liable. For example, when matching information

relating to goods in A Certificate of Land Registration (SKPT) from BPN is required depending on the type of land. Seven (seven) days prior to the auction, the head of Information on the physical data and legal data stored in the registration map, land register, measurement certificate, and land records must be gathered by the auction office book auction. from the Land Office.

This precautionary factor has actually been carried out by auction officials, but when applied in different cases as discussed in this case where a lawsuit filed by the owner of the auction object was carried out after the auction process was completed, in this case the auction official cannot be blamed for not the auction winner can control the object of the auction.

The duties of the Auction Officer are basically to prepare and carry out the implementation of the sale of goods in public by auction, both the task of carrying out auction preparation activities and after the auction is held. In carrying out these duties, the Auction Officer has the following functions:

- a. Auction object document researcher, during the auction's execution. The auctioneer looks over the auction's formal accuracy document;
- b. Provider of auction information to optimize auction implementation, this information is provided to users of auction services;
- c. Leader of the auction, namely to ensure order, security, and smooth running, as well as realize effective and accountable implementation of auctions in accordance with applicable regulations. Auction officials in leading the auction must be communicative, firm, and authoritative;
- d. General official, is that official whose job is to make deeds

In carrying out these functions there are no provisions explaining the responsibilities of the auctioneer in delivering goods, the auctioneer only functions as a general official who makes deeds, in this case the minutes of the auction. Which the minutes of the auction will later be used as a requirement for transferring names at BPN. For this

reason, if there is a loss suffered by the auction winner because he cannot control the auction object, the auction official cannot be held responsible for this.

b. Repressive Legal Protection

Repressive legal protection is legal protection that is in nature to resolve disputes that occur by returning to the situation before the violation of legal norms occurred. Repressive legal protection in the form of demands for rights to parties who are considered detrimental. This can happen if one party feels that their interests have been harmed. The forms of repressive legal protection given to auction winners include:

1. Attempts can remove the auction item through the district court chairman without going through a lawsuit

Efforts by the auction winner to make legal efforts so that the legality of the land and building he bought can be immediately reversed and can also be owned immediately upon purchasing the auction, a request for the execution of the emptying of the auction object that has been sold can be made and handed over to the buyer. The auction winner can take legal action, namely by submitting a request for the court to enforce the emptying of the auction item. Prior to submitting the application, The successful bidder applies for Grosse Auction Minutes. which is an original copy of the Auction Minutes headed "FOR JUSTICE BASED ON THE ALMIGHTY GOD" to the KPKNL. Grosse The Minutes of Auction has the same executive power as a decision that has permanent legal force. After obtaining the Grosse Minutes of Auction, the auction winner can submit a request for vacancy 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 Surat Edaran Mahkamah Agung (SEMA) Number 4 of 2013 on the Implementation of the Supreme Court Chamber Plenary Meeting's Formulation of Results 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 object of the auction, the execution of the vacancy can be directly submitted to the Chairperson of the District Court without going through a lawsuit".

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 executor, namely the collateral owner/debtor to attend an anonymous trial, which in the trial the executor is warned to empty the auction item voluntarily.

2. Attempts to Claim Compensation from the Seller
In this instance, the party who suffers injury as a result of losing his power to control the process of transferring names and the auction item is the winner of the auction that has been paid off. So the auction winner from any perspective has the right to get what he should get. Based on this statement, in Article 13 paragraph (1) letter 1 PMK Number 213/PMK.06/2020 that: "The seller is when the obligations outlined in paragraph (1) are not met, accountable for claims for compensation for losses incurred.

In the provisions contained in Article 13 paragraph (1) letter i above it is explained that the seller is responsible for "delivery of movable goods and/or immovable goods". This provision is the basis for legal protection for the auction winner over the control over the object of the auction he won. The seller, in this case, is the creditor, namely the bank should be responsible for the delivery of the goods that are 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 charge for non-compliance with laws and regulations regarding auctions, the seller must also be the person in charge. Furthermore, if the seller is unable to fulfill his responsibilities as a seller as mentioned in paragraph (1) then if a loss occurs due to this, the seller must be responsible for it. This is a form of legal protection provided by PMK in terms of mastery of auction objects. If seen in these provisions, the auction

winner can demand accountability to the seller in the event that he cannot control the auction object he won, because one of the responsibilities of the seller is the delivery of goods. Responsibility is an absolute thing that must be done by the seller if there is a civil lawsuit against the results of the auction. The auction winner can file for compensation if they feel that they have been harmed by a lawsuit that has arisen. This article can be used as a legal basis to guarantee the rights that must be obtained for the auction object.

3. File a lawsuit for *Perbuatan Melawan Hukum* (PMH) against the Blocking Applicant and the Land Office as the institution authorized to carry out the blocking record

Lawsuits in the implementation of the auction itself can be carried out on the basis of several elements, one of which is often included in *petitum/claims*, namely regarding *Perbuatan Melawan Hukum* (PMH). Based on article 1365 of the Civil Code states that:

"Every act that violates the law, which causes harm to other people, obliges the person who because of his mistake to issue the loss, compensate for the loss."

According to Article 1365 of the Civil Code regarding the consequences of *Perbuatan Melawan Hukum* (PMH) it is stipulated that any unlawful act that harms another person obligates the person who, by error, causes the loss, to make up for the damage. In accordance with Article 1365, the Civil Code for unlawful acts or "*onrechtmatige daad*" is interpreted narrowly, only regarding acts that directly violate a legal regulation.

In a wide sense, an illegal action is one that act of inaction that is contrary to the legal obligations of the maker, or contrary to the losses suffered by the winning bidder who is unable to transfer the name and as a result of the sale being blocked, registration the National Land Agency as the target. The requirements of Article 3 paragraph (1) 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 serve as the foundation for the blocking provisions., which states "blocking

records are carried out on land rights for legal proceedings or events, or as a result of land conflicts or disputes.

Actions that might be taken to get rid of the block on the Property Rights Certificate which is the object of the above auction as a form of legal protection is by filing a lawsuit for *Perbuatan Melawan Hukum (PMH)* based on Article 1365 of the Criminal Code to the Blocking Applicant and the Land Office as the institution authorized to carry out the blocking record suing the Head of Badan Pertanahan Nasional (BPN) It led to the National Land Agency blocking the certificate of land rights until a court judgement was issued. According to 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, "blocked if there is a court order in the form of a judgement or decree, erase all records submitted by people or organizations determination.

To provide protection for the winning bidder through the sale and purchase, the seller (creditor) can unblock the National Land Agency by making an Unblocking Letter by attaching a Court Decision at the First Level (District Court) and appellate level (High Court) as well as at the cassation level of the Supreme Court which has been legalized. Then the seller (Creditor) helps the winning bidder through buying and selling for management of transferring the name to the National Land Agency's auction winner's name. The winner of the mortgage execution auction who transfers rights should be given legal protection there is a blocking and confiscation of collateral by the debtor, namely the process of transferring his name can still be carried out as reflected in Article 35 paragraph (3) and paragraph (5) Under the Blocking and Confiscation Procedures Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head National Land Agency of the Republic of Indonesia Number 13 of 2017, which highlights that in the event that the land rights requested for the registration of confiscation cases have become the

object of an execution auction, namely *parate execution of mortgage rights*, It is still possible to register the transfer of rights by notifying to the auction winner regarding the existence of a lawsuit over the land and recorded in the land book which is the object of the auction.

When it is related to the provisions prohibiting the registration If the land in question is the subject of a legal dispute, it must be interpreted that the land that is the subject of the mortgage right and the subject of an execution auction that has been held is the land that is the subject of the Head of the Land Office's refusal to register the transfer of rights in Article 45 paragraph (1) letter e of Government Regulation Number 24 of 1997 concerning Land Registration. conducted and will be renamed with the name of the auction winner ownership dispute not related to a debt dispute.

Referring Blocking and confiscation procedures are governed by the rules Under Article 35 paragraphs (3) and (5) of the National Land Agency Act, Article 45 paragraph (1) letter e of the National Land Agency Act, and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017. Governing Body Regulation Number 24 for 1997 Even though there is a blockade and confiscation of collateral by the debtor, land registration is the process of transferring rights, namely the transfer of the name of the certificate on land to the name of the auction winner. of the transfer of rights can still be carried out as long as it is related to debt problems between the owner of the mortgage object and the debtor, except for land the object of the mortgage that will be renamed to the auction winner is clearly the object of an ownership dispute in court. Even though Article 35 paragraph (3) has indeed provided an opportunity for auction buyers to be able to register the transfer of land rights even though there are still blockages or confiscation cases, on the other hand, Article 35 paragraph (5) amputates the right of the auction winner to be able to enjoy in full for the object of land that has been purchased. The existence The auction buyer has been prevented from selling or transferring the land rights due to the

Minister of Agrarian Affairs' interpretation of Article 35 paragraph (5) of this Regulation to a third party until the case that has been determined for confiscation has received a court decision with permanent legal force.

Meanwhile, a lawsuit proceeding from the first court level to the cassation level can take years to decades. So that the existence of Article 35 paragraph (5) 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 land hopes to enjoy his rights in full both legal certainty over land ownership and the right to transfer the land to the debtor.

The District Court should have received a lawsuit from the debtor or collateral owner who felt harmed by the creditor as a result of the sale of the auction execution of the mortgage rights should only examine cases related to claims for compensation against the seller, not confiscation of the object of the auction collateral that had been completed by the auction in accordance with the rules.

CONCLUSION

The meaning of the phrase "object of dispute in court" in Since several Land Offices have up to this point interpreted the provisions of Article 45 paragraph (1) letter e of PP Number 24 of 1997 broadly, any object of claim, including objections to auctions because the limit value is viewed as low or the debtor/executed still feel able to pay in installments, is still used as a justification for refusing to register the transfer of rights through an auction. so that the block recording can be done carried out by the Land Office is contrary to legal certainty where the auction winner is protected by the applicable laws and regulations, namely the Mortgage Law which is executorial in nature contained in the Mortgage Certificate, as referred to in Article 14 paragraph (1) 2). The Irah-irah (head of the decision) listed on the Mortgage Certificate contains the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". According to the

researcher, this article should be understood in accordance with the The plaintiff is a third party with a claim on title rights, not the debtor/executed or his family, as stated in Article 45 Letter E, and the claim material is restricted to land disputes that are processed in court., not tenant etc.). By understanding according to the text of the article, it is hoped that there will be an understanding that a lawsuit or block from the debtor/executed/his family or tenant cannot be used as an excuse preventing the transfer of land rights from being registered.

In terms of There are both preventive and punitive legal safeguards for the successful bidder in the mortgage auction implementation. As the auctioneer in this instance is still standing with little choice but to wait for the Court's ultimate ruling, preventive legal protection, namely preventive protection, is still quite inadequate. However, in light of the provisions of Article 35 paragraphs (3) and (5) of The procedure for transferring land must be done in accordance with these provisions rights, specifically the transfer of the name of the certificate on land to the name of the auction. These procedures are outlined in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017 regarding Blocking and Confiscation Procedures and Article 45 paragraph (1) letter e of PP Number 24 of 1997 regarding Land Registration. winner, even though there is blocking and confiscation of collateral by the debtor, Even so, the registration of rights transfers should be done. as long as it is related to debt problems between the owner of the mortgage object and the debtor, except for the land object of the mortgage which will be renamed to the winner of the auction, is clearly the object of an ownership dispute in court. Impressive protection against auction winners is by taking legal action. Legal efforts that can be carried out by the auction buyer are the execution of collateral if in the case of an auction object is not completely under the hands of the auction buyer, who may file a lawsuit like the local national court so that action can be carried out by forceful voiding against the object of auction. If there is a lawsuit arising against the auction results that

have been won by the auction winner, the seller can be held accountable in the form of compensation. The auction winner can also file an Unlawful Act lawsuit (PMH) against the Blocking Applicant and the Land Office as the institution authorized to carry out the blocking record.

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