

EXECUTION OF MORTGAGE RIGHTS THROUGH AUCTION IMPLEMENTATION WITHOUT COURT DECISION (STUDY OF SUPREME COURT DECISION NUMBER 3600 K/PDT/2020)

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Keywords

Auction, dependents, execution

ABSTRACT

The Law on Dependent Rights provides convenience and certainty for Holders of Dependent Rights to carry out execution through public auctions. The execution of the right of dependency can be carried out in two ways, namely the Execution Parate based on Article 6 of the Law on the Rights of Dependency, or through the Fiat of the District Court Execution based on Article 14 paragraphs (2) and (3) of the Law on the Rights of Dependency. In this writing, the main focus is to analyze the lawsuit against the defendant who is considered an unlawful act in the execution of the right of dependency through the implementation of an auction. This paper is expected to provide a comprehensive overview of the legal consequences arising from the existence of a civil lawsuit against the auction of the execution of the Right of Dependency and whether it is possible to conduct an auction without a court determination. The research used the doctrinal research method with the type of research used by the author based on its nature as an explanatory research, using case data in the Supreme Court Decision Number 3600 K/Pdt/2020 associated with principles, legal norms and laws and regulations. Lawsuits and fights create legal uncertainty for the Holder of Dependent Rights, auction buyers and other parties related to the execution of Dependent Rights.

INTRODUCTION

The right of dependency is a new term in the guarantee law introduced by Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), which was previously not known at all, both in customary law and in the Civil Code. In Article 51 of the UUPA, it is determined that the right of dependency can be charged to property rights, business use rights and building use rights regulated by law. Based on the mandate of Article 51 of the UUPA, on April 9, 1996, Law Number 4 of 1996 concerning Dependent Rights on Land and Land-Related Objects (UUHT) was promulgated. Article 29 of the Law stipulates that with the enactment of the Law, the provisions regarding *credietverband* and the provisions regarding *hypotheks* as mentioned in Book II of the Civil Code as far as the imposition of the right of dependency on land rights and objects related to land are declared invalid. So with the promulgation of the Law, the right of dependency is the only institution of land security rights in the written national land law. Meanwhile, *hypotheks* on other objects remain valid, for example, *hypotheks* on ships or mortgages on aircraft based on the Civil Aviation Act (Fuady, 2013).

Dependent rights are not a stand-alone agreement. Its existence is due to the existence of another agreement, called the principal agreement (Atikah, 2021; Isvara, 2021; Lubis, 2020; Nugraha, 2020; Savelyev, 2017; Widodo, 2022). One of the principal agreements for a lien agreement is a credit

agreement that gives rise to a secured debt (Dewi & Kurniawan, 2024; Lehtimäki, 2023; Mann, 2022). In point 8 of the General Explanation of the UUHT, it is stated that because the dependents by their nature are incidental or *accessoires* to a certain receivable, which is based on a debt agreement or other agreements, its birth and existence are determined by the existence of a receivable that is guaranteed to be repaid. In addition, according to Article 10 paragraph (1) of the UUHT that the agreement to provide the right of dependency is an integral part of the agreement on the debt and receivables concerned, and Article 18 paragraph (1) letter a of the UUHT stipulates the right of dependency to be deleted due to the cancellation of the debt guaranteed by the right of dependency.

The definition of the right of dependency is mentioned in Article 1 point 1 of the UUHT, which reads: The right of dependency on land and objects related to land, hereinafter referred to as the right of dependency, is a right of guarantee imposed on the right to land as mentioned in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, following or not following other objects that are one unit with the land, for the repayment of certain debts, which gives a priority position to certain creditors over other creditors." From this definition, it can be concluded that the definition of dependent rights has several elements, namely (Syahdeni, 1999): (a) Dependent rights are collateral rights for debt repayment; (b) The object of the dependent right is the right to land according to the UUPA; (c) the right of dependency may be imposed on the right to the land, but it may also be imposed on other objects which are one with the land; (d) the secured debt must be a specific debt; (e) create a precedence or priority position for certain creditors over other creditors.

The object of the right of dependency is regulated in Article 4 of the UUHT, namely property rights, business use rights, building use rights, and use rights on state land which according to applicable provisions must be registered and according to their transferable nature, can also be burdened with dependent rights. One of the characteristics of the right of dependency as an institution of land security rights for the repayment of certain debts is that the execution is easy and certain. The material of Law No. 4 of 1996 concerning Dependent Rights on Land and Land-Related Objects in practice causes problems. One of the reasons is because the material of the Law on the Rights of Dependents itself seems to contradict each other. Based on Article 20 of Law No. 4 of 1996, in principle, there are three ways of executing dependent rights. First, execution based on a promise to sell the object of the right of dependency over one's own power. Second, execution based on the executory title contained in the certificate of dependent rights. Third, execution through the sale of the object of the right of dependency is carried out under the hand based on an agreement made between the buyer and the holder of the right of dependency.

The problem that then arises is regarding the execution of dependent rights, which in practice is now carried out through execution *parate* based on Article 6 of the UUHT. Sometimes the guarantee that has been auctioned and has an auction winner then the auction winner will take the guarantee, but there is resistance from the debtor who does not want to give up the guarantee. If the debtor files a claim, the court will generally accept the plaintiff's lawsuit and process it like ordinary procedural law. This is certainly detrimental to the parties involved, in addition to taking a long time and also a considerable cost and even more dangerous if the plaintiff's lawsuit is granted, the rights of the buyer or auction winner will be lost and the debtor's guarantee will return to its original state. The development of the business world cannot be separated from capital support which generally comes from financial institutions consisting of banks or non-bank financial institutions. As Indonesia's economy develops more advanced, the need for funding has also increased, most of which are sourced from loan or credit facilities. In granting credit, usually the bank as a creditor requires a guarantee that can be used as a substitute to pay off the debt if it turns out that in the future the debtor is injured in the promise. Currently, debt guarantees in the form of land and/or buildings based on dependent rights are more widely used with the consideration of providing a sense of security (secured) because the value of collateral is relatively stable and there is legal certainty in the implementation of execution in the event of debtor, injury to promise or default. The value of collateral in the form of land and/or buildings will usually increase in selling value (economic value) from year to year, especially in big cities.

Given the importance of the position of guarantee institutions in supporting credit funds, it is appropriate that credit givers and recipients and other related parties receive protection through a strong guarantee institution and can also provide legal certainty for all interested parties. In Article 51 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, a strong guarantee right institution has been provided that can be charged to land rights, namely the Right of Dependency. This provision subsequently became the juridical basis for the promulgation of Law Number 4 of 1996

concerning the Rights of Dependents (Law on the Rights of Dependents) which officially came into effect on April 9, 1996.

The Law on Dependent Rights is expected to provide better changes in supporting credit development and provide legal certainty for creditors of the Holder of Guarantee Rights over land and buildings as well as the existence of facilities to facilitate execution in the event that the debtor of the Grantor of the Right of Dependence is injured in the promise. Creditors of Dependent Rights are given convenience in carrying out executions which in principle are carried out through public auctions. Article 20 paragraph (1) and paragraph (2) of the Law on Dependent Rights, provides an alternative for creditors to pay off receivables based on the Right of Dependency by: (1) The First Holder of the Right of Dependency has the right to sell the object of the right of dependency over its own power through a public auction and take the receivables from the proceeds of the sale based on Article 6 of the Law on the Right of Dependency which is strengthened by the promise stipulated in Article 11 paragraph (2) of the Law on the Rights of Dependents, called the Execution Parate. (2) The executory title is "For Justice Based on the One Godhead" contained in the Certificate of Dependent Rights based on Article 14 paragraph (2) of the Law on Dependent Rights. (3) Selling under the hands based on the agreement of the Giver and the Holder of Dependent Rights as stipulated in Article 20 paragraph (2) of the Law on Dependent Rights.

In practice in banking institutions, the solution provided by the Dependent Rights Law for debt repayment through the mechanism of Article 20 of the Dependent Rights Law is usually the last solution carried out by the creditor of the Dependent Rights Holder if the debtor of the Dependent Rights Holder is injured in the promise. However, all the conveniences in the Law on Dependent Rights in practice there are legal problems, in other words, the creditors of the Dependent Rights Holder have difficulty in taking the receivables repayment using the execution mechanism of the Dependent Rights through a public auction with the intermediary of the State Wealth and Auction Service Office (KPKNL). As for the efforts of the debtor/grantor of dependent rights, in general, it aims to postpone the implementation of the auction or at least hinder the interest so that there is no bid for the sale of the auction.

The efforts submitted by the Grantor of the right of dependency vary both in the form of summons, resistance, *verzet*, making announcements, lawsuits through civil lawsuits and State Administration (TUN), and even the Police can be involved in the problem of settling the right of dependency based on the complaint of the debtor/the right of dependency on the grounds of unpleasant acts. The lawsuit and resistance hinder the execution of the Dependent Rights and have recently become a mode used by debtors to delay the settlement of debts and receivables. Lawsuits and Resistance are also one of the factors that lack interest in auction buyers and hinder the auction winner from controlling the object of dependent rights that have been legally purchased through auction.

In the case discussed in the Supreme Court Decision 3600 K/Pdt/2020 that the plaintiff or cassation applicant who in this case is a debtor, namely the grantor of the right of dependency, is suing as many as seven co-defendants or cassation respondents, which in this case are creditors (PT BRI Persero Tbk and PT BRI Persero Tbk Jakarta Gatot Subroto Branch Office), the Jakarta IV State Property and Auction Service Office, PT Trinita Karya Persada, Notary Office and PPAT EM, Notary Office and PPAT EH, and Head of the West Jakarta City Administrative City Land Office, they are defendants I-VII respectively. The main content of the lawsuit by the plaintiff is to claim the losses it suffered because the defendant also committed an unlawful act against the execution of the right of dependency through the implementation of an auction. The decision of the Court of Second Instance, namely the DKI Jakarta High Court, affirmed the decision of the West Jakarta District Court which rejected the plaintiff's lawsuit in its entirety and the decision at the cassation level was to reject the cassation application from the cassation applicant. So it can be concluded that the judge did not agree that what was done by the defendant was an unlawful act in terms of the execution of the right of dependency through the implementation of the auction.

Defendant III said that after the promulgation of special regulations such as the Law, there have been laws and regulations that regulate the implementation of the auction for the execution of the Right of Dependency as stipulated in the Regulation of the Minister of Finance Number 27 / PMK.06 / 2016 concerning Auction Implementation Guidelines (PMK 27/2016) but in the hierarchy of laws and regulations that the Law is stronger than the Ministerial regulation because the Law is a regulation higher legislation in the hierarchy of legislation. In the *Uuht* (Law No. 4 of 1996) it has been stipulated that in the execution of the right of dependency, a letter of determination of the court or a power of attorney from the district court is required. a promise that gives authority to the holder of the Right of

Dependency to manage the object of the Right of Dependency based on the determination of the Chief of the District Court whose jurisdiction includes the location of the object of the Right of Dependency if the debtor is seriously injured in the promise; Explanation of Article 11 paragraph 2 letter c, namely

A promise that gives authority to the holder of the Right of Dependency to manage the object of the Right of Dependency can be detrimental to the giver of the Right of Dependency. Therefore, the promise must be accompanied by a requirement that its implementation still requires the determination of the Chief Justice of the District Court. Before issuing the determination, the Chairman of the District Court needs to summon and hear the interested parties, namely the holder of the Right of Dependency and the giver of the Right of Dependency and the debtor if the giver of the Right of Dependency is not the debtor.

It is stated that the implementation still requires the determination of the chairman of the District Court, but this is in line with the opinion of Defendant III, namely KPKNL gave an opinion that in this case they refer to the Ministerial Regulation on the implementation of the auction for the execution of the Right of Dependency as stipulated in the Regulation of the Minister of Finance Number 27 / PMK.06 / 2016 concerning Auction Implementation Guidelines (PMK 27/2016). There is confusion or legal uncertainty for the debtor as the grantor of the right of dependency who feels aggrieved by the behavior of the creditor who is considered by him to be not in accordance with the applicable procedures or conduct a unilateral auction of the right of dependency without the determination of the district court where the object of the right of dependency is located. Therefore, from the description of the background above, the issue raised in this writing is whether the auction process based on the plaintiff's demands in the Supreme Court Decision Number 3600 K/Pdt/2020 is an Unlawful Act? and How to Execute Dependent Rights Through the Implementation of Auctions by the State Property and Auction Service Office (KPKNL) based on the Supreme Court Decision Number 3600 K/Pdt/2020? Then the purpose of the research in this writing is that the author can analyze whether the auction process based on the plaintiff's demands in the Supreme Court Decision Number 3600 K/Pdt/2020 is an Unlawful Act and can find out how to Execute Dependent Rights Through the Implementation of Auctions by the State Property and Auction Service Office (KPKNL) based on the Supreme Court Decision Number 3600 K/Pdt/2020.

The main focus of the current research is to analyze the lawsuit against the defendant who is considered an unlawful act in the execution of the right of dependency through the implementation of an auction. This paper is expected to provide a comprehensive overview of the legal consequences arising from the existence of a civil lawsuit against the auction of the execution of the Right of Dependency and whether it is possible to conduct an auction without a court determination.

METHODS

In this study, the type of research method used was the doctrinal method, which involved inventorying and studying literature materials through literature studies. The type of research utilized by the author, based on its nature, was explanatory research, which described or explained more about a phenomenon by emphasizing existing hypotheses. The type of data used in this study was secondary data, obtained from literature studies. The data analysis employed in this study was qualitative analysis. The results of the research provided an approach to the study of the decision by depicting, explaining, and analyzing whether it was true that the defendant fulfilled the elements of unlawful acts and revealed the methods carried out by the KPKNL in executing the right of dependency through the implementation of the auction, as outlined in Supreme Court Decision Number 3600 K/Pdt/2020. This writing systematics consisted of abstracts; an introduction that contained the background of the problem, problems, research objectives, and research methods; a discussion that answered both problem formulations; and a cover that contained conclusions and suggestions, accompanied by a list of references.

RESULTS

Is the auction process based on the plaintiff's demands in the Supreme Court Decision Number 3600 K/Pdt/2020 an Unlawful Act?

The execution of the Right of Dependency is not a real execution, but one related to the sale by way of auction of the object of the Right of Dependency which then the proceeds are paid to the creditor who holds the Right of Dependency, and if there is any remainder, it is returned to the debtor. However, in the implementation of the execution of the Right of Dependency as a credit guarantee, there are still

several obstacles that are obstacles. The debtor who feels aggrieved will file a lawsuit with the District Court over the sale of the object of the Dependent Rights which is considered by the debtor to be an unlawful act. The postulate of the debtor's lawsuit that feels aggrieved is the process of conducting the auction of the execution of the Right of Dependency where the action of the creditor who submits the execution of the auction of the Right of Dependency without the first court decision stating that the debtor has been negligent in fulfilling its obligations to pay off its debts to creditors which is considered by the debtor as an unlawful act.

Regarding the guarantee submitted by the debtor, the bank as the creditor has an obligation to protect the debtor, because this is related to the interests of the bank as well as the recipient of the guarantee (Suyatno, 1994). In Article 14 of Law of the Republic of Indonesia Number 4 of 1996 concerning Dependent Rights on Land and Land-Related Objects (UUHT) it is stated that the Certificate of Dependent Rights serves as a sign of proof of the existence of Dependent Rights which contains *irah-irah* with the words "For Justice Based on the One Godhead", and has the same executory force as a court decision that has obtained permanent legal force. The provisions of Article 20 Paragraph (1) letters a and b and Paragraph (2) of the Law provide the right to the Bank as the creditor holder of the Dependent Rights to execute through 3 (three) ways, namely: (1) *parate executie*; (2) *title executorial*; and (3) sales under hand. From the perspective of the banking world, the settlement of bad loans through the execution of the guarantee of the Right of Dependency in court without going through a lawsuit process based on the executory title as stipulated in Article 20 paragraph (1) b of the UUHT, is a form of settlement that is very effective and efficient so as to provide a sense of justice for banks as creditors. The process of executing the guarantee of the Right of Dependency based on the executory title as stipulated in Article 20 paragraph (1) b provides protection for banks in an effort to refund the funds that have been distributed to the debtor definitely, although in practice it takes a relatively long time due to resistance from the debtor and other parties.

In general, banks prefer a form of collateral in the form of land given by the debtor with a guarantee of Dependent Rights as a certainty for the return of the debt guarantee. The Right of Dependency is a form of security for the bank if the debtor defaults or is unable to fulfill its obligations to pay the bank's credit debts. Regarding the provisions of collateral that can be tied to the Right of Dependency contained in Article 1 number 1 of Law No. 4 of 1996 concerning the Right of Dependency (hereinafter abbreviated as UUHT) states that the Right of Dependency on land and objects related to land, hereinafter referred to as the Right of Dependency, is a right of security charged to the right to land as referred to in Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, The following or not the following other things which are a union with the land, for the repayment of certain debts which give a priority to certain creditors over other creditors. Credits tied with the guarantee of Execution of Dependent Rights are executions related to sales through the auction of the object of Dependent Rights which are then paid to creditors who hold Dependent Rights as an effort to fulfill and return the creditor's rights and if there is any remainder, it is returned to the debtor.

In the Study of the Supreme Court Decision Number 3600 K/Pdt/2020 with a ruling rejecting the cassation application by the cassation applicant, as well as in the court of second instance, namely the DKI Jakarta High Court with Decision Number 547/PDT/2019/PT. DKI court to uphold the decision of the West Jakarta District Court dated March 5, 2019 Number. 335/Pdt.G/2018/PN. Jkt. Brt whose decision is to reject all of the plaintiff's lawsuits.

It reads in Article 6 of the UUHT that if the debtor defaults on the promise, the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency over its own power through a public auction and take the receivables from the proceeds of the sale with an Explanation that the right to sell the object of the Right of Dependency over one's own power is one of the manifestations of the priority position held by the holder of the Right of Dependency or the holder of the first Right of Dependency in the event that there is more than one holder of the Right of Dependency. The right is based on the promise given by the grantor of the Right of Dependency that if the debtor defaults on the promise, the holder of the Right of Dependency has the right to sell the object of the Right of Dependency through a public auction without requiring further approval from the grantor of the Right of Dependency and then take the receivables from the proceeds of the sale first than other creditors. The rest of the proceeds from the sale remain the right of the grantor of the Right of Dependency. Article 6 of the Law provides the right for holders of dependent rights to carry out *execution parates*, which means executions carried out without court intervention or without the need for court approval. The term *execution parate* comes from the word *paraat* which means ready in hand. Therefore, the holder of the

right of dependency does not need to not only obtain approval from the grantor of the right of dependency, but also does not need to ask for determination from the local court if it is going to execute the right of dependency which is the debt security of the debtor in the event of the debtor's injury to the promise; The holder of the right of dependency can directly come and ask the head of the Auction Office to conduct an auction on the object of the right of dependency. So the legal basis for the authority to execute the right of dependency through the implementation of an auction in the Supreme Court decision Number 3600 K/Pdt/2020) is in Article 6 of Law Number. 4 of 1996 (UUHT). The holder of the right of dependency must also have proof that he or she really has a Certificate of Right of Dependency as the basis for executing the right of dependency. Except in the event that before the creditor executes the collateral bound by the Dependent Rights, *a lawsuit arises in court from a third party* (other than the debtor/executed and or the wife/husband/child of the debtor/executed) related to the ownership right, then it is appropriate for the creditor to carry out the auction execution through the Chief Justice *of the Court, not* through article 6 of the UUHT; (see article 14 of PMK Number 27/PMK.06/2016). In the case of the Supreme Court Decision Number 3600 K/Pdt/2020, the lawsuit was filed by the debtor and the lawsuit was carried out after the creditor executed the right of dependents.

Then in article 26 of the UUHT it is intended for the implementation of the execution of the Right of Dependency through article 14 of the UUHT (through the executive title), meaning that the procedural law for the auction of the execution of article 6 of the UUHT does not follow articles 196-200 of the HIR and 224 HIR. Therefore, the legal provisions of the procedure for the implementation of the Auction article 6 of the Law are regulated in the Regulation of the Minister of Finance which has binding legal force and cannot be ruled out based on the transitional rules of the Law article 26 referred to above. In a lawsuit, it is often stated "considering the implementing rules used by the Regulation of the Minister of Finance so that it is (*considered*) contrary to Law no. 12 of 2011 concerning the Establishment of Regulations. This is because the UUHT does not mention that the implementing rules are the Regulation of the Minister of Finance." That in accordance with articles 7, 8 paragraph (1) and article 8 paragraph (2) of Law No. 12 of 2011 concerning the Formation of Legislation, it can be concluded that PMK Number 27 of 2016 concerning Technical Instructions for the Implementation of Auctions that regulates the auction procedures article 6 of the UUHT is a regulation that is recognized for its existence and has binding legal force as long as it is ordered by a higher Legislation or formed based on authority. So based on the description above and referring to the judge's consideration in the West Jakarta District Court Decision Number. 335/Pdt.G/2018/PN. Jkt. Brt which was used as a reference in the court of second instance and cassation, namely that the co-defendant was not proven guilty of committing an unlawful act.

Methods in the Execution of Dependent Rights Through the Implementation of Auctions by the State Property and Auction Service Office (KPKNL) based on the Supreme Court Decision Number 3600 K/Pdt/2020

The existence of the Guarantee Law is important to protect the interests of the bank (creditor) as a provider of funds that requires guarantees and legal protection when providing credit to customers (debtors). Guarantees also have an important role for banks in providing credit, because guarantees give the bank the right and power to get repayment from the collateral if the debtor commits a breach of promise (default), namely to repay the debt at the time that has been stipulated in the agreement. In accordance with Article 8 paragraph (1) of the Banking Law, it is emphasized that banks are obliged to conduct an in-depth analysis, which is then explained in the Explanation of Article 8 paragraph (1) of the Banking Law that the bank's confidence is formed from the results of a careful assessment of the character, ability, capital, collateral, and business prospects of the debtor's customers, known as the Five C1 analysis (Usanti & Bakarbesy, 2013).

The provision of credit carried out by a bank as a financial institution must be able to provide legal protection for the giver and recipient of the loan as well as related parties to receive protection through a strong guarantee right institution and can provide legal certainty for all interested parties. In banking practice, to further secure the funds distributed by creditors to debtors, additional security is needed in the form of special collateral that is often used, namely material collateral in the form of land. The use of land as credit collateral is based on the consideration that land is the safest and has a relatively high economic value (Hernoko, 1998). The guarantee institution by banking institutions is considered the most effective and safe is land with a guarantee of Dependent Rights. This is based on the ease of identification of the object of the Dependent Rights, its execution is clear and certain and prioritizes

payment from the results of the land auction to its creditors (Sutantio, 1999). The function of providing guarantees is to give the bank the right and power to get repayment with these collateral goods, if the debtor is injured in the promise and does not pay back the debt at the time that has been stipulated in the agreement.

The definition of Dependent Rights is the right of security charged to the right to land as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, following or not following other objects that are one unit with the land, for the repayment of certain debts, which gives priority to certain creditors over other creditors. Meanwhile, the auction of the Right of Dependency is an auction to implement Article 6 of the UUHT, namely, "If the debtor defaults on the promise, the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency on his own power through a public auction and take the receivables from the proceeds of the sale." The Auction of Dependent Rights will be carried out if there is an application from the auction applicant and the file has been declared complete and procedurally correct. In the auction application, there are requirements for the completeness of documents consisting of: photocopy of Credit Agreement, Certificate of Dependent Rights, Deed of Grant of Dependent Rights, Certificate of Property Rights and other files. Application procedure in submitting the auction of Dependent Rights: The creditor submits a letter of application for the determination of the auction schedule accompanied by special documents including, a copy of the Credit Agreement, a copy of the Certificate of Dependent Rights and the Deed of Grant of Dependent Rights, a copy of the certificate of land rights encumbered by the Dependent Rights, a copy of the debtor's Debt Details, a copy of the warning letter, a statement letter from the creditor as the Auction Applicant whose contents will be responsible in the event of a civil lawsuit and/or criminal prosecution and a copy of the collateral valuation report.

The clause contained in the Deed of Grant of Dependent Rights states that if the debtor fails to fulfill the obligation to pay off its debt, based on the debt agreement, the creditor as the holder of the First Rank Dependent Rights is given and declares to accept the authority, and for that reason, the power of attorney, to without prior consent from the debtor to:

- 1) Selling or ordering to sell in public at auction the Object of Dependent Rights, either in whole or in part;
- 2) Regulate and set the time, place, manner and conditions of sales;
- 3) Receive sales money, sign and hand over receipts;
- 4) Deliver what is sold to the buyer concerned;
- 5) Taking from the proceeds of the sale in whole or in part to pay off the debtor debt in accordance with Article 6 of the UUHT which reads, "If the debtor defaults on the promise, the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency on his own power through a public auction and take the repayment of his receivables from the proceeds of the sale."

In the implementation in the field, before submitting an auction application to the KPKNL (Office of State Wealth and Auction Services), the Bank has appropriately warned debtors who have experienced bad credit as evidenced by the first, second and third warning letters. The warning letter must have been attached at the time of submission of the auction application. After being summoned and it turns out that there is no good faith from the debtor to fulfill the obligation and there is no reason that can be taken into consideration (for example, an *overmacht* situation), the debtor is declared in default (a condition in which the debtor is in a state of negligence). On this basis, the Bank submitted an auction application to KPKNL to determine the implementation of the auction. In the case discussed in the Supreme Court Decision Number 3600 K/Pdt/2020, the Bank as a creditor has sent warnings 3 (three) times in a row to the debtor but the debtor still does not heed the warning by still not performing its obligations by not paying the installment arrears so that it can be concluded that the debtor has injured the promise. After that, the debtor has the right to submit an application to KPKNL to carry out the execution of dependent rights through the implementation of an auction. In the answer of Defendant III in which KPKNL stated that the implementation of *a quo* auction is a legal obligation of Defendant III as ordered from the provisions of Article 7 of the Auction Law of *venu reglement, ordonantie* February 28, 1908 Staatsblad 1941:3 reads, "The Auctioneer is not authorized to refuse the request for his intermediary to hold a public sale in his area." *Juncto* provisions of Article 13 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines (PMK 27/2016) which reads, "The Head of KPKNL/Class Auction Official/I may not reject the auction application submitted to him as long as the auction requirements document is complete and has met the

formal legality of the subject and object of the auction." That the auction was carried out through the mediation of Defendant III where KPKNL was an auction for the execution of Article 6 of the Law on the Rights of Dependency at the request of the leadership of PT BRI Tbk. Jakarta Branch Gatot Subroto through his letter Number B. 1 824/KC-XIV/ADK/08/2017 dated August 8, 2017 by attaching the auction requirements document and the implementation of the auction was held on October 17, 2017 with the auction winner of PT. Trinita Karya Persada with a note that in the implementation of the auction no one filed a rebuttal. So that it can be concluded from the explanation above that KPKNL, which is a co-defendant III here, has carried out the auction implementation procedures correctly and has been in accordance with the applicable rules as already mentioned.

Although the implementation of the auction has been in accordance with the procedures as stipulated in the Regulation of the Director General of State Assets Number 2/KN/2017 concerning Technical Instructions for the Implementation of Auctions jo. Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions, it does not rule out the possibility of a lawsuit being filed with the Court. The implementation of the auction for the execution of the Right of Dependency by KPKNL often receives lawsuits from debtors and other parties who feel that their interests are harmed. Civil lawsuits are usually in the form of resistance before the auction or lawsuits filed after the auction. Similar to the case in the Supreme Court Decision Number 3600 K/Pdt/2020, KPKNL became a co-defendant III where KPKNL felt that it had carried out the correct procedures when conducting an auction on the object of the dependent rights. From this, there are still many people who misunderstand and do not carefully refer to the rules even though the legal principle states that special rules override the general rules "*lex specialis derogate lege generalis*." Therefore, before filing a lawsuit to the court, it should be more checked the rules related to this matter, the lawsuit is not rejected by the panel of judges.

The majority of lawsuits arise due to the debtor's dissatisfaction with the implementation of the Dependent Rights auction requested by the Bank concerned to KPKNL. Basically, not all lawsuits submitted to KPKNL before the auction can directly cancel the auction, only lawsuits filed by third parties and related to collateral can delay the auction. The auction to be held can only be canceled at the request of the Seller or based on a determination or decision from a judicial institution submitted in writing and must have been received by the Auction Officer no later than before the auction begins.

In the HIR and Rbg, it is explained that a third party's resistance to the confiscation of *conservatoir*, confiscation of *revindacatoir* and confiscation of execution, can only be filed on the basis of property rights, so it can only be filed by the owner or person who feels that he is the owner of the confiscated goods and submitted to the Chief of the District Court of the District Court that is clearly confiscated (Article 195 (6) HIR, Article 206 (6) Rbg). The third party in question who resists is a third party to be executed who claims to be his or her (title holder, HGU, HGB, Right of Use, including the bearing of dependent rights and lease rights) and tenants whose object is not land. Article 14 paragraph (1) of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines explains related to the auction implementation lawsuit, namely "In the event that there is a lawsuit before the auction against the object of the Dependent Rights from other parties other than the debtor/executed, the husband or wife of the debtor/executed related to ownership, the Execution Auction Article 6 of the UUHT cannot be carried out." In this case, the lawsuit filed by the plaintiff occurred after an auction was carried out by KPKNL.

No less important is the reason for filing a lawsuit by the debtor or a third party. For the debtor, whether the reason is related to the existence of an element of unlawful act between the creditor and the debtor or a reason that is only to interfere or delay the implementation of the auction or the execution of the auction collateral. Meanwhile, in the case of an objection filed by a third party, the reason for the resistance must be proven and reasonably reasonable, for example, the third party is a person who rents a house that will be executed for five years but has only been running for one year which is used to run a business.

Then the next problem is if an auctioned person still occupies or physically controls the auctioned goods that are sold. As a rule, the rights of the person to whom the goods are sold pass to the buyer as soon as the sale and purchase agreement is closed. To strengthen the position of the auction winner, the Auction Office gives a certificate to the buyer (Article 200 paragraph 10 HIR, 218 paragraph 1 Rbg). With these basics, the person who still occupies the collateral that has been sold at auction must leave the collateral. If the debtor still insists on controlling the auctioned goods, then the auction winner requests the issuance of auction grosse for auction emptying which will be submitted to the District Court for

emptying assistance. Then the Chairman of the local District Court makes a warrant to the bailiff so that with the help of the District Court, if necessary with the help of the police, the permanent goods are abandoned or emptied by him and his family (Article 200 paragraph 11 HIR, 218 paragraph 2 Rbg).

The implementation of this real execution begins with a grosse application submitted to the Chairman of the local District Court by the auction winner as the owner of the rights. Based on the application, the Chairman of the District Court followed up by conducting *an aanmaning*. In the event that the executed item is not emptied voluntarily, the Chief Justice of the District Court issues a determination in the form of an order to the Bailiff to execute forcibly and if necessary with the help of the police witnessed by two witnesses. For the execution of the execution, the Bailiff is required to make a minutes of execution signed by the Bailiff and two witnesses. From the description above, it can be concluded that the auction can be canceled as follows:

- 1) Seller's request, at the latest the cancellation request letter is received before the auction starts;
- 2) Determination or decision from the judicial institution;
- 3) There is a lawsuit from a third party related to collateral, with the provision that if he is the holder of property rights, HGU, HGB, Right of Use, including the bearing of dependent rights and rental rights;
- 4) There is a third-party lawsuit as a tenant whose object is not land (as evidenced by supporting documents that strengthen the lawsuit).

In the case of the Supreme Court Decision Number 3600 K/Pdt/2020, the auction was not canceled because the above conditions were met so that the auction was still running and legally valid. So it can be concluded that the implementation of the auction carried out by KPKNL has been in accordance with the rules as stipulated in the Regulation of the Director General of State Assets Number 2/KN/2017 concerning Technical Instructions for the Implementation of Auctions jo. Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions and KPKNL is proven not to have committed any unlawful acts in the execution of dependent rights through the implementation of auctions.

CONCLUSION

The author concludes that the execution of auctions under Article 6 of the UUHT is legally valid and does not require court approval, as it is governed by the authority of the Holder of the Right of Dependency and aligns with relevant regulations. The process must include prior warning letters to debtors, and if these do not result in compliance, the debtor is deemed in default, allowing the bank to proceed with the auction application to KPKNL. Future research should focus on analyzing the practical implementation of Article 6, examining auction outcomes and recovery rates, the effectiveness of warning letters, legal challenges, stakeholder perspectives, and comparative studies with similar frameworks in other jurisdictions to identify best practices and potential reforms.

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