



Implementation Determination Limit Value Dependent Rights Objects by Sellers in Auctions Execution Dependent Rights

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ABSTRACT

This research is motivated by the author submitting an application against a lawsuit related to the determination of the estimated value limit that is not in accordance with applicable regulations, causing losses to the debtor. The purpose of this study is to determine the auction mechanism and the application of determining the value of the mortgage object by the seller. This research is based on the normative legal research method through a legal approach. The results of this study are that the auction mechanism for the execution of mortgage objects must comply with the rules in the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Auction Implementation Guidelines. The implementation of the determination of the boundary of the mortgage object in the field has not been in accordance with the procedure and legal protection for the debtor has not been maximized because it can only be done through a lawsuit in court and the KPKNL does not have the authority to conduct an auction against the applicable boundary determination. Suggestions for the Government to change the method of setting the limit value to 1 (one) method, namely assessment by the appraiser to provide maximum legal protection for the debtor.

Keywords: Auction Execution of Liability Rights; Determination of Limit Value; Seller

1. Introduction

After Indonesia's independence, the government faced problems related to the economy. At that time, all sectors of society suffered from the increase in prices of goods and services. Therefore, the government is trying to restore the economy to be better with one of its steps, namely strengthening guarantee institutions and being able to provide protection and guarantees of legal certainty for interested parties. A guarantee is something that is given to creditors to give rise to confidence that the debtor will fulfill obligations that can be assessed with money arising from an agreement (Salim, 2004). Guarantees have a very important position and benefits in supporting economic development, because the existence of this institution can provide benefits for interested parties, both creditors and debtors. The benefits obtained by creditors are in the form of realizing security for trade transactions and providing legal certainty for creditors (Sofwan, 1980). Meanwhile, the benefits obtained by the debtor are that there is a guarantee that they can obtain a credit facility so that they do not have to worry about developing their business, because they have obtained the capital needed (Widyani & Pandiangan, 2015).

The Indonesian government then sought to strengthen the guarantee institution by issuing Law No. 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA) established with the aim of providing legal certainty regarding land rights for all communities and establishing a guarantee institution called Hak Tanggungan, which replaced the previous guarantee institutions, namely the Hypotheek and Credietverband institutions (Agustiwi, 2014). Over time, the government has again tried to strengthen the institution of dependent rights because in the Basic Agrarian Law the provisions regarding dependent rights are incomplete so that regulations regarding dependent rights are needed. Therefore, the government issued Law No. 4 of 1996 concerning Dependent Rights to Land and Objects Related to Land (Arba & Mulada, 2021). In the Dependent Rights Law, there are several rights to land, namely: Property rights; Business Use Rights, Building Use Rights, Use Rights, Lease Rights, Land Opening Rights, Forest Product Collection Rights, and other rights that are not included in the rights mentioned above that will be stipulated by law and rights of a temporary nature (Santoso, 2017).

In the Dependent Rights Act in the event of a default by the debtor, the creditor can make a sale of the object of the guarantee through auction. In the auction of the execution of dependent rights, there are rules regarding the limit value as a limit on the lowest price of the dependent rights object to be auctioned. The limit value at this auction is set by the seller, as stipulated in Article 47 of the Minister of Finance Regulation Number 213 / PMK.06 / 2020. In its implementation, there is often dissatisfaction by debtors because they feel disadvantaged by the implementation of the limit value determination carried out by creditors as sellers which causes the price of the auction object to be far from the fair price and the limit value should be.

As per the data obtained from the State Wealth Media Bulletin Edition Number 14 Year IV/2013, there are a total of 2,458 lawsuits that go to the State Assets and Auction Service Office, and 1,500 more are lawsuits from the auction execution of dependent rights. The lawsuit is filed both before the auction and post-auction. The suit prior to the execution of the auction was intended by the plaintiff to postpone the execution of the auction. And post-auction lawsuits/rebuttals are very diverse in the motives behind them (Nasichin & Candra, 2020).

One of the things behind the post-auction lawsuit by the debtor is the implementation of determining the limit value of the dependent rights object which is not in accordance with the rules and causes losses to the debtor. Based on the background of the aforementioned issues, the formulation of the issues discussed in this Journal, regarding how is the mechanism for auctioning dependent rights objects through the State Financial Services Office and Auctions and how is the implementation of the determination of the limit value of dependent rights objects by sellers?

2. Method

This type of research uses Normative Legal Research through a Case Approach to study how the application of legal norms or rules is carried out in legal practice. Ronny Hanitijo Soemitro stated that "Normative juridical research is literature research, namely research on secondary data" (Sumitro, 1990). Normative legal research can also be referred to as doctrinal legal research. In this study, law is conceived as what is written in laws and regulations (law in book) or laws that are conceived as norms that are a benchmark for people's behavior towards what is considered appropriate (Efendi & Ibrahim, 2018).

Normative legal research is carried out using literature literature, such as laws, court decisions, books, notes and reports on research results from previous research and to compile discussions, these legal materials are analyzed normatively. The case approach is carried out by reviewing cases related to the issue at hand that have become court decisions that have had permanent force (Marzuki, 2005). The case approach in normative research aims to study how it applies to norms (Efendi & Ibrahim, 2018).

3. Result and Discussion

3.1 Mechanism for Auction of Dependent Rights Objects Through the State Wealth Service Office and Auctions

The legal basis regarding auctions in Indonesia was originally regulated in the *Vendu Reglement Staatsblad No. 189 of 1908* as amended by *Staatsblad No. 56 of 1940*. In principle, the matters stipulated in the *Vendu Reglement* concern the principal of sales (buying and selling) carried out in public (auctions). As a follow-up to the *Vendu Reglement*, the *Vendu Instructie* was declared as contained in the Ordinance of 28 February 1908 No. 4 of the *Staatsblad No. 190 of 1908* as amended several times most recently by *Staatsblad No. 57 of 1940* which is commonly referred to as the *Auction Instruction*. Both *Vendu Reglement* and *Vendu Instructie* became the basis for the birth of various auction regulations and technical provisions made by the Indonesian government (R. Usman, 2016).

In carrying out the mechanism for the execution of dependent rights objects and the determination of the limit value of dependent rights objects by sellers, it has been regulated in the Minister of Finance Regulation Number 213 / PMK.06 / 2020 concerning Instructions for Auction Implementation. Broadly speaking, the sources of auction law that are the basis for holding auctions so far can be divided into 2 (two) types, namely general provisions and special provisions. General provisions, namely the laws and regulations, do not specifically regulate the requirements and procedures for auctions, but there are provisions related to the implementation of the auction (Salam, 2020; Sudiarto, 2021). Meanwhile, special provisions, namely the laws and regulations, specifically regulate the requirements and procedures for auctions (R. Usman, 2016).

The State Wealth and Auction Service Office conduct auctions for the execution of dependent rights referring to the Dependent Rights Law and Minister of Finance Regulation Number 213 / PMK.06 / 2020 concerning Instructions for Auction Implementation. In article 6 of the Dependent Rights Act, it has been explained that if the debtor defaults on the pledge, the creditor can sell the collateral object through auction to pay off the debtor's debt.

In Article 20 paragraph 1 letters a and b and paragraph 2 of the Dependent Rights Act explains in more detail, in which the State Wealth and Auction Service Office carries out an auction of the execution of dependent rights based on a request from the creditor directly without first requiring a Court determination, provided that in the Deed of Encumbrance of Dependent Rights there is a promise that the holder of the first Dependent Right has the right to sell on his own power the object of the Dependent Right, this method is the same as in Article 6 of the Dependent Rights Law (Ayunda, 2021).

Suparman Usman defines a dependent rights holder as a person or legal entity who is domiciled as a debtor. The holder of the dependent right has the authority to sell the object of dependent rights through auction, this authority is written in the Deed of Encumbrance of Dependent Rights (S. Usman, 2014). The holder of dependent rights can be more than 1 (one) party as explained by J. Satrio who explained that, one object of guarantee can be used to bear more than one debt. These debts come from the same creditor or come from 2 (two) or more different creditors (Satrio, 1998).

If in the Deed of Encumbrance of Dependent Rights there is no promise that the holder of the first Dependent Right has the right to sell on his own power the object of Dependent Rights then the Creditor can use the Certificate of Dependent Rights as a basis for applying for the execution of the auction of the dependent right object to the authorized Chief Justice of the District Court. Then the execution will be carried out like the execution of a verdict that has permanent legal force (Ayunda, 2021).

The mechanism for auctioning the object of dependent rights by the State Wealth and Auction Service Office is as follows:

- a. Auction request from seller/creditor
- b. Determination of the auction schedule
- c. Auction announcement
- d. Depositing security deposits
- e. Auction implementation
- f. Payment of the auction object
- g. Payment of auction duty
- h. Depositing the net proceeds of the auction
- i. Submission of documents and excerpts of auction minutes

Article 8 paragraph 2 of the Regulation of the Minister of Finance 213 of 2020 explains that the application for auction for the execution of dependent rights is submitted by the seller to the Head of the State Wealth and Auction Service Office accompanied by the auction requirements documents.

After the State Wealth and Auction Service Office receives the application for an auction for the execution of dependent rights accompanied by the auction requirements documents, then the State Wealth and Auction Service Office checks the completeness of the documents, if they are complete and meet the Formal Legality of the Auction Subjects and Objects, the Head of the State Wealth and Auction Service Office must not refuse the auction application (Asuan, 2021).

The seller is the authorized party to sell the object of dependent rights based on the Deed of Encumbrance of Dependent Rights which in APHT is referred to as the Dependent Rights Holder. Then the Office of State Wealth and Auction Services sets the time for the auction.

In the auction announcement, the seller is obliged to make an auction announcement. Article 22 paragraphs 1 and 2 of the Minister of Finance Regulation 213 of 2020 explains that the auction is carried out

according to a schedule that has been determined by the Head of the State Wealth and Auction Service Office. The auction is still held even though it is only attended by 1 (one) bidder. Any person, legal entity, or business entity may be a participant in the auction, except for auction officials, selling officials, appraisers or estimators, bailiffs, executed, debtors and convicts.

Article 80 of the Minister of Finance Regulation 213 of 2020 explains, after the auction is completed and there has been an auction winner (auction participant/buyer), the buyer pays off the auction price and auction duty.

Article 82 paragraph 2 of the Minister of Finance Regulation 213 of 2020 explains, after obtaining the net proceeds of the auction, the State Wealth and Auction Service Office deposits or submits to the seller.

The seller is obliged to submit the original document of ownership of the auction object to the State Wealth and Auction Service Office which is then handed over to the buyer.

Article 87 paragraphs 1 and 3 of the Minister of Finance Regulation 213 of 2020 explains, after the completion of the auction, the State Wealth and Auction Service Office makes Auction Minutes in Indonesian.

In mechanics of the auction of dependent rights. Legal protection for debtors is obtained by the following means and causes:

- a. In the auction requirements document, if the debtor suspects an error or falsity of the documents from the seller, the debtor can file a civil lawsuit, this is based on Article 13 paragraph 1 letter k and l of the Minister of Finance Regulation Number 213 / PMK.06 / 2020.
- b. In the auction announcement, if the auction announcement is not carried out by the seller as per the applicable rules and there is a falsehood in the auction announcement, the auction official can cancel the auction based on Article 39 letter g of the Minister of Finance Regulation Number 213 / PMK.06 / 2020. Debtors can also file lawsuits and claims for compensation based on Article 13 paragraph 1 letter k and l of the Minister of Finance Regulation Number 213 / PMK.06 / 2020.
- c. In the implementation of the auction based on the Regulation of the Minister of Finance Number 213 / PMK.06 / 2020, the State Wealth and Auction Service Office can cancel the auction if the seller does not announce the auction according to the provisions of the rules, the seller does not upload leaflets on the website of the auction organizer according to the rules, the seller is not present in the auction, there is no Land Certificate / Land Registration Certificate for Auction of land plots or house units stacking, certificate of registration of flats for auction of units of flats with proof of ownership of Certificates of Ownership of Buildings of Units of Flats or a certificate for the auction of immovable goods other than land that based on laws and regulations must be registered, does not meet the formal legality of the subject and object of the auction, the limit value stated in the auction announcement is not in accordance with the letter of determination of the limit value made by the seller and the amount of the auction bid security deposit in the auction announcement is not in accordance with the provisions or documents of the auction application.

3.2 Implementation of The Determination of The Limit Value of The Dependent Rights Auction Object By The Seller

Every auction, both auctions for the execution of dependent rights, must have a limit value of the auction object (Yuniza, 2021). The limit value is set by the seller (Kumala, 2020). Borgers and Damme explained that limit value encourages more aggressive bidding, more than just compensation for the risk of not selling. Amidu and Agboola stated that setting an auction limit value that is higher than the market price or vice versa lower than the market price will cause the limit value not to be a good measure in determining the auction price (Rianto et al., 2017).

Articles 48 and 49 of the Minister of Finance Regulation Number 213 / PMK.06 / 2020, the seller sets the limit value based on 2 (methods), namely the report of the assessment results by the appraiser for a limit value of at least IDR 5,000,000,000.00 (five billion rupiah) or a report on the results of the estimation by the estimator for a limit value below IDR 5,000,000,000.00 (five billion rupiah).

Article 51 of the Minister of Finance Regulation Number 213 / PMK.06 / 2020 explains that the limit value is set with the highest range equal to the market value and the lowest equal to the liquidation value. Market value

is an estimate of the amount of money that can be obtained, at the exchange date, from the exchange of assets and liabilities between a potential buyer and a potential seller for a non-binding loan. transactions that have been marketed as appropriate and in which both parties act on the basis of a clear understanding. Settlement value is the amount of money that can be earned from the sale of a property in a relatively short period of time to allow it to meet the market period according to the definition of market value.

In the implementation of determining the limit value of the object of dependent rights, there are often determinations that do not comply with the rules and cause losses to the debtor. This is because in determining the limit value of the dependent rights object, the seller sets the limit value as low as possible not as it should be even though the limit value is important for the debtor because the limit value is the benchmark for the price of the debtor's object.

There is a court decision in Indonesia that provides an overview of the implementation of the determination of the limit value by the seller that is not based on applicable rules and causes losses to the debtor and the judge accepts the debtor's lawsuit and cancels the auction, some of which are as follows:

- a. Kediri District Court Decision No. 61/Pdt.G/2012/PN.Kdr (Rosilistiyani et al., 2016).
- b. Bandung District Court Decision Number 274/Pdt.G/2013/PN.Bdg (Purba, 2018).
- c. Bandung High Court Decision Number 488/PDT/2014/PT.Bdg.

In the above judgments there are losses arising from the implementation of the determination of the limit value of the dependent rights object by the seller which is not based on the applicable rules.

Associated with legal protection for debtors, in the first judgment, the determination of the limit value of the object of collateral rights by the seller uses the method of estimation by the estimator who is supposed to use the appraisal by the appraiser because the seller participates in the auction. Legal protection for debtors is obtained by filing a lawsuit for the seller's actions, this is based on the rules of Article 36 paragraph 5 of the Minister of Finance Regulation Number 93 / PMK.06 / 2010 explaining that if the creditor will participate in the auction execution of dependent rights, then the limit value must be set by the seller based on the results of the assessment from the appraiser.

In the second decision, legal protection for debtors is obtained based on the rules of Article 36 paragraph 3 of the Minister of Finance Regulation Number 93 / PMK.06 / 2010, namely by setting a limit value based on the results of the assessment by the internal estimator team of the creditor not based on an accountable method.

In the third decision, legal protection for debtors is obtained based on the rules of Article 36 paragraph 3 of the Minister of Finance Regulation Number 93 / PMK.06 / 2010, namely by setting a limit value based on the results of the assessment by the internal estimator team of the creditor not based on an accountable method.

Based on these rules in the above judgments and associated with the actions of the seller, it has been proven that the seller did not follow the applicable rules.

The limit value is an integral part of the auction requirements documents, where the seller is responsible for the auction requirements documents and lawsuits arising from errors in the auction requirements documents, which in determining the limit value are not based on applicable rules.

Based on the author's analysis of the above decisions, legal protection related to setting limit values that are not in accordance with applicable rules has not been maximized. This is based on the existence of loopholes that can be utilized by sellers, namely as follows:

- 1) No legal sanctions for internal estimators

Regulation of the Minister of Finance Number 93 / PMK.06 / 2010 until the amendment in the Regulation of the Minister of Finance Number 213 / PMK.06 / 2020 explains, if there is an error in determining the limit value of the dependent rights object at auction conducted by the estimator, the person responsible is the seller and if the seller does not fulfill his responsibilities, the seller is responsible for lawsuits and claims for compensation for losses incurred.

Unlike the estimator, the appraiser is a party who conducts an independent assessment based on his competence. Furthermore, the rules regarding appraisers have been regulated in the Minister of Finance

Regulation Number 228 / PMK.01 / 2019 concerning the Second Amendment to the Regulation of the Minister of Finance Number 101 / PMK.01 / 2014 concerning Public Appraisers, specifying that any violations committed by public appraisers will be subject to various sanctions up to the sanction of license revocation (Tampubolon et al., 2021).

Therefore, a public appraiser is very careful in assessing the limit value so as not to be penalized. Based on the explanation above, a seller in determining the limit value of a dependent rights object tends to use the internal estimator method because there is no sanction on the internal estimator if assessing the limit value of the dependent rights object is not based on applicable rules.

2) Benchmark limit value in the limit value determination method that provides a gap for sellers

Regulation of the Minister of Finance Number 213/PMK.06/2020, which explains the determination of the limit value by the seller based on the estimation by the estimator, namely for a limit value below IDR 5,000,000,000.00 (five billion rupiahs), and an assessment by the appraiser, namely for a limit value of at least IDR 5,000,000,000.00 (five billion rupiahs).

Although regulations related to benchmark limit values as a determination by sellers to use the limit value determination method already exist and seek to provide legal protection for debtors. However, in its implementation, there are still many sellers who take advantage of this, namely to obtain the limit value of dependent rights objects below IDR 5,000,000,000.00 (five billion rupiahs) as much as possible so as not to use the appraisal method by the appraiser and use an appraisal by the estimator who in this case is the seller's internal party.

Based on the explanation above, the seller tries to avoid appraisal by the appraiser and causes the limit value to be low and the debtor does not get the maximum value of his goods/objects that are auctioned.

3) The auction is void but the debtor's debt continues

In a judge's decision that cancels the auction because the determination of the limit value of the dependent rights object by the seller is not in accordance with applicable rules, one of the legal consequences that occurs is that the object of the dispute returns to its original position, namely the debtor's property and as a debt guarantee, the receivables agreement between the seller as a creditor and the debtor returns in its original state as it was before the default and the execution of the dependent right object through auction.

Although the seller/creditor cannot get repayment of the debtor's debt because the auction is void, the debtor's debt is not written off and still has to be paid to the creditor. If in the future the debtor returns to default, the seller can carry out the re-execution of the dependent rights object through auction.

Based on this, whether or not the auction is void in the judge's decision, will not have too much effect on the creditor because the debtor's debt still remains and must be repaid and if the debtor returns to default, the seller can auction it back.

In addition to the above reasons, there are other important reasons where Article 11 of the Minister of Finance Regulation Number 213 / PMK.06 / 2020, the State Wealth and Auction Service Office as the implementing party for the auction does not obtain the authority to ensure the validity of the auction requirements documents, especially related to the validity of the limit value.

Regarding the limit value, the State Wealth and Auction Service Office can only cancel the auction if the limit value stated in the auction announcement does not match the limit value determination letter made by the seller so that the seller can be more free to try to reduce the limit value as low as possible and even not according to the applicable rules. Therefore, legal protection for debtors for the determination of the limit value of the object of dependent rights by creditors that are not in accordance with applicable rules can only be obtained through a lawsuit in court, while in the auction process the State Wealth and Auction Service Office does not have the authority to cancel so that this causes a waste of costs and time for all parties concerned.

Based on the author's analysis above, it can be seen that legal protection for debtors related to the determination of the limit value by the seller has not been able to provide legal protection for debtors in a maximum way.

4. Conclusion

The auction mechanism for the execution of dependent rights carried out through the State Financial Services and Auctions Office still does not provide strong legal protection. This is based on the lack of authority of the State Wealth and Auction Service Office in the Minister of Finance Regulation Number 213 / PMK.06 / 2020, to cancel the auction if the determination of the limit value by the seller turns out not to be in accordance with applicable regulations. In addition, the absence of legal sanctions for internal estimators also provides an opportunity for the seller as a creditor who is usually a bank, to set the limit value of the dependent rights object as low as possible and even though the auction is canceled by a court decision regarding the determination of the limit value set by the seller not in accordance with the applicable rules, the debtor's debt continues and must be repaid, so that the seller is not too disadvantaged.

Efforts to overcome weak legal protections can be made by the Government by authorizing the State Wealth and Auction Service Office to assess the validity of the determination of the limit value by the seller and can cancel the auction if the determination of the limit value is not valid, and changing the method of determining the limit value to one method I am the assessment of the limit value by the appraiser.

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