

## Legal Protection of Auction Winners Against the Execution of Dependent Rights

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### Abstract

According to Article 14 of the Law on Dependency Rights, dependency right enforcement can be executed through a parate of execution or a fiat execution by State courts. However, legal certainty is not absolute; if a debtor fails to repay the debt, the creditor's liability is settled by selling the secured object through a public auction. This study investigates the legal consequences of the auction process, particularly the transfer of auctioned property rights to the winner. Using empirical juris and analytical descriptive research, primary and secondary data were gathered through library research and qualitatively analyzed. Auction winners may request the local state court to vacate the object if possession is unattainable under the law. An auction letter, as an authentic act, protects auction winners against normative enforcement of dependency rights. Nonetheless, the law lacks explicit protection for third parties and auction winners regarding possession, resulting in legal uncertainty.

**Keywords:** auction, execution, holding rights

### Introduction

The development of the business world depends on capital support, which usually comes from financial institutions, both banks and non-bank institutions (Miotto et al., 2020; Tingey-Holyoak et al., 2024). The need for funding increases in line with Indonesia's economic growth, mostly from loans or credit facilities. Banks, as creditors, usually require collateral to pay off debts if the debtor fails to fulfill the promise (Chandrarin et al., 2022; Rahman et al., 2024).

Because the value of the collateral is relatively stable and there is legal certainty in the execution of debtors, defaults, or default, debt guarantees in the form of land and/or buildings based on dependent rights are now more widely used because they provide a sense of security (*secured*) (Chang & Chuan, 2024). The value of land and building collateral usually increases yearly, especially in large cities (Naegels et al., 2020).

Credit givers and recipients, as well as other related parties, should be protected by strong guarantee institutions, which can provide legal certainty for all interested parties, given the important role of guarantee institutions in supporting credit funds (Astuti et al., 2022). The Right of Dependent, stipulated in Article 51 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, is a strong security right that can be imposed on land rights. Therefore, Law Number 4 of 1996 concerning the Rights of Dependents, which came into force legally on April 9, 1996, is based on these provisions (Dobriev, 2021; He et al., 2020).

The law is expected to help credit growth by providing legal certainty for creditors holding security rights over land and buildings and facilitating execution for debtors who default on their rights (Wijatmoko et al., 2023). The fact shows that public auctions remain attractive as a buying and selling method, even becoming more popular when the government sets a policy to set up auction houses. There are now state auction offices throughout the provincial capitals and some cities deemed necessary, rather than just being in big cities (Mabin & Harrison, 2023).

All Indonesians are responsible for national development, which must be done by the people, for the people, and for the sake of the people (Talib et al., 2022). While the government is responsible for guiding, directing, and creating an environment that supports development, the people act as the main actors (Sutopo et al., 2022). The goal of Indonesia's national development is to create a just and prosperous society, which is materially and spiritually equitable, based on Pancasila and the 1945 Constitution, within the forum of the Unitary State of the Republic of Indonesia (NKRI) that is independent, united, and sovereign of the people, in an atmosphere of peaceful, serene, orderly, and dynamic national life during an independent, friendly, orderly, and peaceful world association (Wardhani et al., 2022).

Because economic development requires funds, it requires the role of financial institutions. Therefore, banking institutions are important and play an important role in the national economy. With a sound banking system, efficiency and benefits to the economy are the keys to success in maintaining the continuity of economic development. Banks are organizations that can meet these needs (Azzahra et al., 2024). Various financial institutions, especially conventional banks, have helped meet the needs of funds for economic activities by providing money loans, including bank credit (Triatmanto et al., 2023).

Banks usually will not give credit just like that without considering the collateral the debtor provides to ensure that they can receive credit (Mara et al., 2021). In the technical procedure of providing credit, collateral or guarantee is something that is very closely related to the bank. The credit provided by the bank must be protected. Without protection, it is difficult for banks to avoid risks that can result in customer default. The Bank takes steps to ensure its credibility and credit security by asking prospective customers to provide collateral for certain goods as collateral when providing credit, as stipulated in Articles 1131 and 1132 of the Civil Code.

In addition, guarantee law is a law that regulates the guarantee of a creditor's receivables against debtors (Anwar et al., 2023). Financial institutions that provide credit facilities prefer to use the land as collateral for debt repayment because of its increasing economic value; its price is constantly increasing, it has proof of rights, and it is difficult to embezzle. In addition, the possibility of land being encumbered with liens provides security for financial institutions. This gives creditors privileges.

Article 51 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) regulates an institution that guarantees the right to land or land and buildings called the right of dependents. Further regulations on this institution will be made by law. Law Number 4 of 1996 concerning Land Liability Rights and Objects Related to Land (UUHT) was made because of this.

The collateral regulated in this liability works if the debtor breaks a promise or defaults on the credit agreement (Widyastuti et al., 2023). In this case, the creditor or bank can execute the dependent rights by conducting a public auction to meet the performance

expected by the debtor. In this case, the bank is also not too risky if it provides large amounts of credit in accordance with collateral (Chang & Chuan, 2024).

A person receiving bank credit with collateral may not be able to fulfill their obligations as agreed in the credit agreement (Anwar et al., 2023). One of the advantages of a certificate of entitlement is that the law gives the holder of the dependent right an executory right that has permanent legal force. This means that if the debtor defaults, the property can be sold through public auction in the manner provided for in the laws and regulations intended to pay off the liabilities of the insured holder (Roestamy et al., 2022; Saheruddin & Soedarmono, 2022).

An auction is an open public sale at a price offered in writing and/or orally that increases or decreases to reach the highest price set prior to the announcement of the auction. The Indonesian legal system has an auction institution to meet the needs of the community, including the settlement of disputes that have been decided by the court. *VenduReglement* (Auction Arrangement Stbl.1008 No. 189) and *VenduInstructie* (Auction Instruction Stbl.1908 No. 190) regulate public sale through auction houses.

After the auction process ends, the legal result is that the title to the auction item passes from the seller to the winner. As long as it meets the conditions specified in the laws and regulations, the transfer of land rights through auction is a valid legal act. According to Article 41 Paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of rights through auction can only be registered if evidenced by quotations from auction minutes made by auction officials.

The State Wealth and Auction Service Office is a vertical organization under the Directorate General of State Wealth (DJKN), which reports directly to the head of the regional office. An auction hall, also known as KPKNL, is an auction organizer that organizes auctions with written bids without the presence of auction participants.

Creditors of Dependent Rights Holders get the convenience to carry out execution, which is basically done through public auction. Article 20, paragraph (1) and paragraph (2) of the Law on Dependent Rights gives creditors another option to pay off receivables based on Dependent Rights (Anwar et al., 2023).

Creditors of Dependent Rights Holders usually use the mechanism of Article 20 of the Law on Dependent Rights to repay debts if the debtors of Dependent Rights Holders fail to fulfill promises. However, all the conveniences offered by the Law on Rights of Dependents actually have legal problems. Creditors of Dependent Rights Holders face problems in paying off receivables through the mechanism of execution of Dependent Rights through public auction facilitated by the State Wealth and Auction Service Office (KPKNL).

The efforts of debtors and dependents usually aim to delay the auction or at least block offers from interested parties. The grantor of the dependent rights can take various actions, such as subpoenas, resistance, *verzet*, announcements, lawsuits through civil lawsuits or State Administration (TUN), and even the police can be involved in cases of settlement of dependent rights if the debtor or grantor of dependent rights complains of unpleasant actions. The lawsuit and resistance hindered the execution of the Lien, and the debtor now uses it to extend the time for settling the debt. In addition, lawsuits and resistance affect the interest of auction buyers and prevent auction winners from having liability rights to items that have been legally purchased through auction.

The plaintiff is an individual or legal organization whose interest in the ownership of the auction object is harmed by the conduct of the auction, for example, the debtor who is the subject matter of the case because the auction price is too low, the auction is carried

out before the maturity of the credit agreement, improper auction procedures, such as untimely notification of auctions or announcements that are not in accordance with procedures, and The third party is the owner of the goods, whether directly involved in signing the credit agreement or only as a guarantor of the debt, whose subject matter is almost the same as the debtor, namely the auction price is too low, or if the collateral is auctioned bad credit. Heirs are related to the unauthorized guarantee of inheritance. Unauthorized guarantee proceedings against one of the parties to the marriage are related to the issue of joint property. The auction buyer is related to the right to control the purchased goods.

It is expected that this paper will provide a thorough review of the legal issues that arise during the execution of the dependent rights by the auction winner. The author will provide a direct picture of the legal protection for the auction winner against the execution of the dependent rights.

### **Research Methods**

This research employs a Normative Juridical approach, focusing on secondary data to investigate the issue of transfer of responsibility in bank credit agreements through exoneration clauses linked to the principle of balance. The research comprises two types: literature research and field research. Literature research involves collecting data and information from books, newspapers, tabloids, magazines, and other written sources relevant to the topic. Field research involves direct interaction with research subjects through interviews.

Data sources are categorized into primary and secondary data. Primary data are obtained from legal practitioners and judges experienced in the field. Secondary data are sourced from books, magazines, newspapers, and other relevant written materials. Data collection techniques include interviews and questionnaires. Interviews are conducted using guidelines provided to legal practitioners and court officials. Questionnaires are used to gather public opinions, which serve as research samples. Data analysis is conducted using qualitative descriptive methods, aiming to make the data easier to read and interpret. This process provides a deeper understanding of the transfer of responsibility in bank credit agreements through exoneration clauses linked to the principle of balance.

### **Results and Discussion**

Legal protection for auction winners is very important. Legal protection is intended to protect the human rights of those abused by others. This protection is given to the people so that they can take advantage of all the rights guaranteed by law. Intended to enable protection that has anticipatory and predictive properties, not just flexible and responsive.

The sale of confiscated goods may not be carried out independently by the district court or other offices or institutions, in accordance with Article 200 Paragraph 1 HIR and Article 215 Paragraph 1 RBG. The kelang office can only assist the chief justice of the district court. According to Article 1 Number 11 of the Minister of Finance Regulation Number: 27/PMK.06/2016 concerning Auction Implementation Guidelines dated February 22, 2016, the State Wealth and Auction Service Office (KPKNL) is a vertical agency of the Directorate General of State Wealth and is under and directly responsible to the Head of the Regional Office. Article 22 states that the KPKNL working area or the pejaba office area must be the place for the auction.

Auction officials, also called vendeurs, are individuals who are given legal authority to sell goods by auction (Article 1 Number 14 PMK Number 27/PMK.06/2016). Unless otherwise provided by law or government regulation, any auction shall be conducted by an auction official and in their presence. The auction still takes place even if only one participant participates. Auction guides can assist auction officials during the auction.

#### **A. Auction Method to Exercise Dependent Rights**

Auctions have a very large role in meeting the needs of the community, with the principles of openness, competition, fairness, legal certainty, efficiency, and accountability. One of the functions of auctions is to be a tool for law enforcement, as regulated by the Law on Rights of Dependents. (Rachmadi Usman, 2016: 25).

There are two (two) ways to complete the execution of the auction of dependent rights, as stated in Article 20, paragraph (1) of the Law on Dependent Rights. The first is to use the mechanism of Article 14 paragraphs (2) and (3) based on the executory title on the Certificate of Rights of Dependents, which is entitled "For Justice Based on the One and Only God," or the auction of Article 6 which refers to the right of the holder of the first level of the Right of Dependents to sell the object of the Right of Dependents Because it has been explicitly specified in the Law on the Rights of Dependents, both mechanisms are very important juridical tools, and the public auction process must be conducted through the State Wealth and Auction Service Office/KPKNL (formerly the State Auction Office).

Article 20, paragraphs (2) and (3) of the Law on Dependent Rights also regulate the mechanism of execution outside the auction, namely underhand sales carried out in accordance with the agreement between the Grantor of Dependent Rights and the Holder of Dependent Rights. Public auctions are conducted in accordance with Vendu Reglement Stb's regulations. 1908 No. 189 governing the Auction Office. According to Article 5 PMK Number: 93/PMK.06/2010 concerning Auction Implementation Guidelines, "Execution Auctions include but are not limited to: ....., Court Execution Auctions, Tax Execution Auctions, Execution Auctions Article 6 of the Law on Dependent Rights, etc."

Minister of Finance Regulation Number 27/PMK., 06/2016, concerning Auction Implementation Guidelines, regulates the auction of execution of dependent rights based on Article 6 of the Law on Dependent Rights. This Regulation does not regulate the execution of auctions of dependent rights based on fiat execution, as stated in Article 20 paragraph (1) letter b jo. Law of Rights of Dependents, Article 14, Paragraphs 2 and 3, This is due to the fact that the execution of Dependent Rights based on the execution fiat of the District Court is categorized in the Auction Rules as a type of court execution auction based on the execution of a court decision or determination. As a result, the formal documents required to apply for an auction are the same as those required for a court execution auction.

Article 6 of the Law on Dependent Rights stipulates that the holders of dependent rights must be responsible in the event of legal problems. They must ensure that the auction of execution of dependent rights has a strong legal basis. Based on these provisions, the execution of an auction of a dependent object can only be carried out if several important conditions are met: the debtor is injured in promise, the first Dependent Holder has the authority to sell the dependent object independently, the money obtained from the public auction, and the consent of the Dependent is not required.

For execution auction procedures that depend on the executory title and certificate of title permitted by the execution of the chief justice, these three documents are not required. However, documents relating to execution proceedings by the Chief Justice of the District Court are required. The certificate of title serves as a substitute for a gross deed insofar as it concerns land title in cases where the execution of the title of liability is carried out on the basis of the fiat execution of the Chief Justice. As a result, the process of execution of dependent rights must be carried out through the Chief Justice of the District Court. As stated in Article 20, paragraph (1), point b of the Law on the Rights of Dependents, jo Article IV paragraphs (2) and (3) of the Law on the Rights of Dependents, the auction of execution of the rights of dependents is carried out using ordinary execution mechanisms and procedures based on the provisions of the civil procedure law.

Auction of dependent rights through KPKNL, either with court approval or based on Article 6 of the Law on Rights of Dependents, must be conducted in front of a Class I Auction Officer at the KPKNL; These are civil servants who are specially authorized by laws and regulations to conduct auctions of goods.

To obtain a schedule for setting the auction date, the Dependent Rights Holder or Registrar who intends to conduct an execution auction sale must submit an auction request letter in writing to the KPKNL along with the auction requirements documents. The first holder of the Dependent Rights must apply for an auction of the Dependent Rights according to Article 6 of the Dependent Rights Law. It should not be given to third parties, including advocates, to do so.

The head of KPKNL may not reject an auction application if the documents are complete and meet the formal requirements for the subject and object of the auction. Article 7 of the *Vendu Reglement Stb.* Governs these requirements. 1908 No. 189, j Article 13 of the Auction Implementation Guidelines of the Minister of Finance Number 27/PMK.06/2016 states, "The Head of KPKNL/Class II Auction Officer shall not reject an auction application submitted to him as long as the auction requirements documents are complete and have fulfilled the formal legality of the subject and object of the auction."

The formal legality of the subject and object of the auction is when the auction requirements document has been fulfilled by the bidder or seller and there is no difference in data, this condition shows the legal relationship between the subject or bidder and the item to be auctioned, or the object of auction. This condition assures the Auction Officer that the auction subject has the right to auction the auction item, and the auction can be conducted.

The seller shall be responsible for the validity of ownership of the goods, the auction requirements documents, and the delivery of the auction item and ownership documents due to such provisions. After the KPKNL sets the auction schedule, the seller must announce the execution of the dependent rights through a daily newspaper in the city or district where the goods are located. Daily newspapers should have a high circulation for transparency and publicity, and to attract auction enthusiasts, should not be listed on the main page or regular page.

In addition, the debtor or grantor of the dependent rights must be notified by the holder of the dependent rights about the execution of the execution auction, in which the participant bids on an ascending and rising basis. Furthermore, the Auction official will certify a supreme bidder who becomes a buyer after reaching or exceeding the limit value. The auction buyer must immediately pay the auction price and auction duty within 5 (five) working days after the auction after the Auction Officer certifies the buyer. The auction

buyer may not take or possess the purchased item before the auction payment obligation is satisfied.

Every step and step required to carry out the auction is written by the Auction Officer in the Minutes of Auction, which are the minutes of the auction made by the Auction Officer. This treatise is an authentic deed that has perfect evidentiary power.

## **B. Application and Rejection of Auction for Execution of Dependent Rights**

Many civil lawsuits against the implementation of the dependent rights auction are the main problem of the dependent rights auction; according to case data at the KPKNL Bandung, in civil cases, lawsuit efforts cannot be carried out because there is no law prohibiting filing a lawsuit, and even basically the court is not allowed to reject incoming claims. According to Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, "The court is prohibited from refusing to examine, adjudicate, and decide a case submitted under the pretext that the law does not exist or is unclear, but is obliged to examine and try it." One of the principles in civil procedural law, the principle of *Ius Curia Novit*, which states that judges are presumed to know the law, led to this provision.

Basically, a lawsuit and refusal to execute a dependent rights auction is an attempt by the debtor to postpone or cancel the auction based on two grounds of violation of law and breach of promise (Default), and if it is based on unlawful acts, it is usually related to land disputes, so proof is difficult and time-consuming. In general, the subject of a lawsuit relating to the conduct of an auction can be put into the following categories:

1. Suits and objections filed by third parties take into account the joint property, inheritance, and guarantees belonging to third parties. The imposition of dependent rights as the basis of this lawsuit indicates an illegal act. One of the most frequently used reasons for refusing to impose a dependent on common property is the absence of consent.
2. Invalid agreements, overdue, and the amount of debt are some examples of lawsuits on the basis of credit agreement problems. The Collateral Rights Act states that injury of promise is the basis for execution of the insured's right, but there is no specific definition of default in the law. The definition of injury promise is the basis for carrying out a dependent rights auction. Installments in credit agreements are usually paid periodically in a certain amount and period rather than all at once.

Often, the Plaintiff feels the debt is not yet due, but the Creditor declares default because the Plaintiff has not paid in installments for several consecutive months. This satisfies the element of default in the Credit Agreement. Article 1243 of the Civil Code provides that default or injury of promise is the inability to fulfill the agreement, not deliver or pay for goods or services within the specified period, or not to do what was promised within the specified period.

According to Article 1763 of the Civil Code, a debtor is considered in default if he does not fully repay the loan within the specified time. Decree Number of the Decree of the Director of Bank Indonesia In Regulation No.31/147/KEP/DIR dated November 12, 1998, concerning the Quality of Productive Assets, it is stated that bad loans (Loss) occur if principal and interest installments have not been paid for more than 270 days. They also often file lawsuits because of differences in interest and penalty calculations. The Dependent Rights Holder must prove it in Court if there is a lawsuit based on the

maturity period and the amount of debt. Banks can usually offer rescheduling, reconditioning, or restructuring. However, credit rescue efforts cannot be applied to all non-performing loans; It can only be done casuistically, taking into account certain requirements, such as that credit restructuring can only be carried out on debtors who still have the possibility to fulfill their obligations and not to avoid a temporary deterioration in credit quality or accounting problems for bank profits.

Therefore, efforts to save credit should be considered the responsibility of creditors rather than the debtor's right to demand credit restructuring. However, the Bandung District Court Judges ruled that restructuring actions must be carried out before the execution of the dependent rights for the settlement of bad debts in case Number 63/Pdt.G/2016/PN.Bdg in the Bandung District Court. This shows that the rights of dependents are delayed because the Creditor has not restructured.

The District Court is the statutory power of the creditor for a lawsuit on the basis of negligence or misconduct of the executing agency, which includes error or vagueness about the object of confiscation. The author found civil case number 107/Pdt.G/2016/PN.Bgr in the Bogor District Court that canceled the auction of the execution of PT. Bank Permata gave the power of execution to the Chairman of the Bogor District Court. The panel of judges ruled that there was an illegal act when the rights of the collateral object were transferred so that the imposition of the rights of dependents became void, and the execution carried out by the Bogor District Court was canceled.

This shows that the execution of Article 6 of the Dependent Rights Act is prone to lawsuits and that the auction of execution of dependent rights based on the execution fiat of the District Court can be canceled. As long as there are parties who can prove that the object of the dependent right is the result of an unlawful act, the legal certainty of the execution of the dependent right is not absolute. The benevolent buyer becomes the aggrieved and neglected party in this decision.

Resistance and lawsuits regarding auction prices and emptying The second factor that causes the most lawsuits against KPKNL is the low auction limit value. The Auction Rules govern how auction value limits are set. One of the rules is that an assessment must first be made to protect the interests of the Holder and the Grantor, as well as other interested parties.

Basically, every auction requires a value limit that must be met by the seller or owner of the item. Sellers or owners may set this value limit using independent judgment based on their professional expertise or the assessment of the Company's internal Estimator Team or Estimators, where the assessment is carried out in an accountable manner. Article 43, as regulated by PMK 27/KN.06/2016, Article 44 establishes a value limit for sales, which is based on the results of the appraisal of the Appraiser or Estimator. If the transaction value is more than one billion rupiah, the appraiser is an independent appraiser who is outside the seller. However, items worth less than one billion rupiah are auctioned by the Seller's internal estimator or appraiser.

In a dependent rights execution auction, the limit value that bidders can put forward, also known as the floor price, must be mentioned in the auction announcement so that everyone knows the limit value. If the object of the dependent right is re-auctioned because it was not sold before, the Dependent Rights Holder has the right to change the limit.

Due to its non-confidential nature and as stated in the auction announcement, the Grantor of Dependent Rights is considered to have known the limit value legally.

Therefore, they should, from the beginning, market the insured goods to get the highest price they want if the debtor objects or thinks the price is too cheap.

In addition, the difference in asset value, namely the auction limit value and the value of the dependent rights, can cause legal problems related to the limit value. The value of the dependent right is the highest imposition value on the object of the dependent right, which is used as the basis for a preferred bill equal to the value of the dependent right. At the stage of encumbrance, assets are usually assessed by considering the prospects and progress of the business. As a result, a fair market approach is usually used to assess the value of a lien's rights. However, at the time of execution of the dependent rights auction, the auction limit value is the liquidation value due to legal risks, financial risks, and elements of coercion to immediately complete repayment.

In most cases, the auction limit value for the auction object is lower than the value of the lien. As a result, the Grantor objected to the auction limit value set by the Dependent Rights Holder. One result of this lawsuit is not the cancellation of the auction; Rather, it is an application for damages due to the difference in the debtor's assessment with the limit value.

KPKNL and the Applicant won a civil lawsuit based on the limit value, case 274/Pdt.G/2013/PN.Bdg, at the cassation level, considers the law that there is a risk that could reduce the value of the auction object.

The final cause is emptying, according to Article 200 HIR. If the winner of the auction cannot possess the auction object after paying the auction price, they can request the determination of the execution of the emptying by the local Chief Justice of the District Court. However, debtors often oppose the establishment of this execution of emptying, which hinders the mastery of the auction object. as indicated by decision 91/Pdt.Bth/2012/PN. BB, which overturned the decision to vacate the Chairman of the Bandung District Court and the auction that had been conducted. This creates legal uncertainty because auction buyers who want to control the auction lose their rights.

### **C. Execution of the auction of execution of dependent rights**

Law Number 4 of 1996 concerning Land Liability Rights and Objects Related to Land (UUHT) regulates the auction of the execution of dependent rights. Three different methods can be used for the execution of the rights of dependents:

1. Sale of dependent goods underhand, as stipulated in Article 20 Paragraph 2 of the Law;
2. Parate execution through KPKNL, as stipulated in Article 6 of the Law, if the debtor defaults, the holder of the first dependent has the right to sell the dependent goods independently through a public auction and receive his receivables from the proceeds of the sale; and
3. Execution of rights in district courts under Article 224 HIR/258 RBg jo. Article 14 Paragraphs 2 and 3 of the UUHT in its implementation.

Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK. 06/2016, dated February 22, 2016, concerning amendments to the Regulation of the Minister of Finance of the Republic of Indonesia Number 93/PMK. 06/2010, regulates the auction procedure. Banks, in an effort to resolve non-performing loans, use KPKNL to submit auctions against debtor collateral objects.

The author can provide a brief description of the auction procedure through KPKNL as follows:

- a. Auction request from the owner of the goods (seller) ;

- b. KPKNL sets the date, day, and time of the auction;
- c. Auction announcements in daily newspapers;
- d. Bidders deposit security deposits into KPKNL accounts;
- e. Auction officials conduct auctions;
- f. The winner of the auction pays the auction price to KPKNL;
- g. The auction duty is deposited into the state treasury by the KPKNL;
- h. The bidder receives the total auction proceeds.

#### **D. Legal Effects for Auction Winners Who Cannot Own the Auction Object**

While Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) regulates all laws and regulations related to land, it does not explicitly regulate the rights of dependents. Because Article 51 of the Law states that "Dependent Rights that can be imposed on Property Rights, Business Use Rights, and Building Use Rights as stipulated in Articles 25, 33, and 39 are regulated by law", Law Number 4 of 1996 concerning Dependent Rights is expected to provide legal certainty about the relationship of guarantees with land and objects related to the land as previously established guarantees.

Auction winners who cannot own the auction object can resort to persuasive legal remedies. If the persuasive effort fails, the winner of the auction can apply to the chairman of the local district court to vacate the auction object that has been won through the auction process conducted by the local KPKNL. This emptying is carried out because of evidence that the auction object cannot be owned by the previous auction winner.

#### **e. Legal protection against the winner of the auction for the execution of the dependent rights.**

Selling in front of a crowd (with a top bid) and led by an Auction Officer is called an "auction," while "auction" is selling by auction, giving goods to be sold by auction, and buying up work. (S. Mantayborbir and Iman Jauhari, 2003:13)

Some of the documents required for the auction of execution of the dependent rights are as follows: the auction application is submitted by the holder of the dependent rights; the auctioned item is a debt security that has been bound by the liability; and the grantor of the dependent has defaulted on the holder of the dependent right. The auction request must be accompanied by the following:

- a. Certificate of Rights of Dependents and Deed of Granting Rights of Dependents;
- b. A copy or photocopy of the certificate of the auction object;
- c. Copy or photocopy of the Deed of Credit Agreement and Proof that the Debtor is in Default, which can be in the form of warnings;
- d. A statement from the creditor that the creditor/bank is responsible in the event of a lawsuit

The existence of legal protection for auction winners refers to the legal protection of their rights to goods purchased through auction. The legal consequence of the auction process is the transfer of auction rights from the seller to the winner. The winner of the auction is not legally protected by the minutes of the auction. A court decision that cancels the execution auction of the dependent rights makes the fulfillment of the preferential rights granted by law to the creditors of the holders of the dependent rights through the execution auction not fixed.

In execution auctions, most items are auctioned without the consent of the owner of the item and often many parties interested in the item do not want the auction to take

place. As a result, parties who feel their interests are disturbed by the conduct of the auction can take legal action to fight for their rights.

#### **F. Legal Uncertainty due to Lawsuit and Rejection of Dependent Rights Auction**

Auctions may be canceled or postponed due to civil lawsuits. They have juridical and economic consequences. If the judge decides to postpone the auction, then creditors may incur losses that will accumulate over a long time. Ultimately, because a protracted legal settlement will shorten the loan recovery time, the less chance the dependent holder has of getting the item back.

There is no guarantee of legal certainty regarding the auction of the execution of the Right of Liability due to the juridical impact that occurs. This is not in line with the characteristics of the rights of dependents mentioned in the General Explanation of the Law on Rights of Dependents. The judge who decided to cancel the auction made the auction null and void. It will certainly have significant legal consequences on the viability of the auction, including, but not limited to, the object of the auction, the rights of creditors or objectors to the rights of liability on the results of the auction, and debts of debtors of the Liens.

After the decision to cancel the auction regarding the object of the auction, the liens that have been purchased by the auction buyer are returned to the plaintiff or the grantor of the liens. The Buyer loses the title to the auction object, and the money deposited to pay for the auction proceeds must be returned to the Buyer conducting the auction. Since the creditor's rights as the holder of the dependent rights to the auction object have been lost, all money obtained from the sale must be returned to the auction buyer. In the case of debtors' debts, the grantors remain in their original position; that is, they have debts to creditors that have not been paid. Due to juridical constraints, debtors try to make suits and resist on various grounds. In the end, this makes it difficult for the winner of the auction to obtain physical liability.

Actually, Article 11, paragraph 2, letter J of the Law on Dependent Rights stipulates that the Grantor of the dependent right will vacate the object of the dependent right at the time of execution of the dependent right. However, voluntary emptying is difficult and requires the assistance of the courts or police to carry out forced emptying, which is time- and costly. To date, no one knows how long the emptying process will take and how much it will cost the auction buyer to vacate the auction item.

The Auction Terms actually anticipate a civil lawsuit against the conduct of the auction. Since the object of indemnity has been sold, the Buyer has paid the auction price, and the certificate of title to the object has been returned to the Buyer, there is no legal reason to cancel the Minutes of Auction. According to Article 4 PMK Number 27/PMK.01/2016, "Auctions that have been carried out in accordance with applicable regulations cannot be canceled." Conversely, Article 27 PMK Number: 27/PMK.06/2016 Article 24 states that "The auction to be held can only be canceled by request of the Seller or provisional determination or decision from the judicial institution." As long as there is no decision or decision of the Court delaying the auction, the Auction Officer will conduct the auction.

In other words, lawsuits and resistance before the auction can not always stop the auction. Based on Article 6 of the Law on Dependent Rights, auctions of dependent rights can only be carried out against claims filed by parties other than debtors or executors, debtors or executors' husbands or wives related to ownership, as stipulated in Article 27

letter c PMK 27 / PMK.06 / 2016. The auction regulations and the Liability Act do not specifically regulate claims filed after auctions.

Legal uncertainty arises when there is a civil lawsuit. According to Roscoe Pound, the existence of legal certainty allows "predictability." (Peter Mahmud Marzuki, 2008:58). Second, Legal belief refers to legal protection. In such a situation, litigants are protected from disproportionate judgmental authority. Therefore, clear rules must be used as a basis for resolving cases handled by judges. Therefore, it can be said that, in this situation, justice should be based on the applicable law, not outside the law. If the judge's decision is made based on arguments allowed by law, the decision will provide legal certainty. However, it is possible that the ruling caused legal injustice.

Lawsuit and Resistance hearings in Court can take years, causing uncertainty about the status, value of dependents, and amount of debt. With the passage of time, the right to the auctioned goods passes to the Buyer. The value of auction items is reduced due to disputes over liability. Uncertainty about the amount of debt charged by dependents arises because of the length of the case, which results in an increase in the value of the debt. This is a situation that does not meet the elements of Roscoe Pound's legal certainty. The absence of legal protection is due to legal uncertainty. In cases where the right of liability passes to the auction buyer, the context of fairness in the auction of execution of the right of liability should be based on the guarantee of certainty of execution provided by the Law of Rights of Liability. Therefore, if the creditor makes a loan, he believes that the law will protect his interests if the debtor does not repay the loan.

After the auction, the auction officer publishes the minutes of the auction in the form of the minutes of an auction, which are minutes of the execution of the auction and are reliable, authentic deeds. This ensures the legal certainty of the auction. Thus, the Buyer has a valid legal belief that the object of the dependent rights has been transferred into his hands. After the decision of the auction lawsuit, the auction minutes were canceled. As a result, the auction buyer has no legal confidence about the auction minutes in his possession.

For the benefit of the auction buyer. So far, the Supreme Court has tried to protect the Buyer in good faith through the agreement of the Plenary Meeting of the Civil Chamber listed in SEMA No. (2012). According to point IX, "Protection shall be granted to a buyer in good faith even if it is later discovered that the seller is an unauthorized person."

The original Owner can only sue the Seller, who is not entitled. The same applies to benevolent Dependent Rights Holders, as stated in point VIII: "Benevolent Dependent Rights Holders must be protected even if it is later discovered that the Dependent Grantor is an unauthorized person." Supreme Court Circular (SEMA) No. 7/2012, as amended by SEMA No. 5/2014 and SEMA No. 7/2012. 4. 2016

However, only the Supreme Court Circular (SEMA) corrects the weaknesses of this standard. The Supreme Court Circular or SEMA is basically a circular sent by the leadership of the Supreme Court to all levels of the judiciary containing instructions on the administration of justice, which is more administrative in nature. (Henry P. Panggabean, 2001: 144) The Supreme Court Regulation or PERMA is basically a rule that contains procedural law provisions, while SEMA Circular No. 4 of 2016, according to the author, can be included in the draft amendment to the Law on Dependent Rights to allow the execution of dependent rights.

The examination of the lawsuit and the resistance to the auction of execution of the dependent rights are based on the Code of Civil Procedure in general and are time-

consuming and costly. Currently, the Law on Dependent Rights only provides for execution, but the process of objection to execution is not specifically regulated. It is expected that the author can illustrate that the case of the dependent rights will be resolved in a short time so that legal certainty about the object of the dependent rights does not drag on. Therefore, they have established a time and procedure for objection to the execution of the rights of dependents.

The special procedural law of the Dependent Rights Law is required to provide legal certainty for creditors and debtors. To provide security for the parties, the Law on Rights of Dependents must include an article that removes the rights of dependents due to a court decision. Article 18 paragraphs (1) and (3) of the Law on Dependent Rights only provides for the removal of dependent rights by the Chief Justice of Ngeri based on the removal of the rank of the Dependent Rights Holder, not because of a decision that cancels the execution of dependent rights.

The examination of lawsuits and resistance to the auction of execution of dependent rights is generally based on the Code of Civil Procedure, which is time-consuming and costly. Currently, the Law on Dependent Rights only provides for execution, but the process of objecting to execution is not specifically regulated. This lack of regulation can lead to prolonged legal uncertainty regarding the object of dependent rights. The author aims to illustrate that cases involving dependent rights should be resolved swiftly to ensure legal certainty. Therefore, establishing a specific time frame and procedure for objections to the execution of dependent rights is necessary.

The special procedural law of the Dependent Rights Law is required to provide legal certainty for creditors and debtors. To offer security for the parties, the Law on Rights of Dependents must include an article that allows for the removal of dependent rights due to a court decision. Article 18 paragraphs (1) and (3) of the Law on Dependent Rights currently only provide for the removal of dependent rights by the Chief Justice of Ngeri based on the removal of the rank of the Dependent Rights Holder, not due to a decision that cancels the execution of dependent rights.

However, there are limitations in generalizing the results of this research and in the representation of all potential scenarios. The findings may not be broadly applicable to all cases involving dependent rights, and the current study may not adequately represent the diversity of situations that could arise in practice. This indicates a need for further research and more comprehensive regulation to address these gaps.

## **Conclusion**

The lawsuit and resistance to the auction of the execution of dependent rights typically do not delay the execution process. However, the purpose of such lawsuits is often to complicate the quick settlement of receivables for the holder of the dependent right and to hinder the good auction buyer from obtaining the purchased dependent goods. The lengthy trial process creates uncertainty about the value of auctioned goods and the debtor's owed amount. It can delay or cancel the auction, leading to uncertainty for the auction buyer, the holder of the dependent right, the grantor of the dependent right, KPKNL, the land office, and related third parties by reverting the legal state of the object to its pre-auction status. Over the years, these lawsuits have been used to impede the execution of dependent rights, causing legal uncertainty. To address this, the law needs amending to include provisions for objecting to the auction execution, protecting against execution consequences, and removing dependent rights if execution is canceled. The *Vendu Reglement* and the Regulation of the Minister of Finance of the Republic of

Indonesia regulate auction procedures but do not provide adequate legal protection for auction winners. Auction winners can file a lawsuit with the local district court to request the emptying of the auction object, but there is no legal certainty about controlling the auctioned object. Preventive legal protection for auction winners is lacking, indicating a need for updated auction laws. The minutes of subsequent auctions should include clauses protecting auction winners. Auction participants must be thorough and conduct surveys of the auctioned items to ensure correctness. Amending the Law on the Rights of Dependents, especially Article 20, is crucial. The *Vendu Reglement*, Article 200 HIR, and Minister of Finance Regulation Number 27/PMK.06/2016 need clearer protection formulas for auction winners. Special articles should regulate how auction winners are protected during the execution of dependent rights.

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