

BANK'S RESPONSIBILITY FOR THE EXECUTION OF AUCTIONS FOR UNCERTIFIED LAND

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Abstract

The auction method is typically used to bring together two parties in a legal transaction. In an auction, there are two parties involved: the party submitting the bid and the party that wins the auction. Auctions can be carried out on land that has been obtained and registered with a mortgage. In practice, there are also irregularities in the auction process, particularly in auctions conducted on land that has not been certified. This is the case, for example, in Court Decision Number 03/Pdt. Eks / 2020 / Pn.Tbk Jo. Number 29 / Pdt.G / 2015 / Pn.Tbk. This study will discuss the Implementation of Regulations regarding the execution of auctions for land collateral that has not been certified. How is the Bank's Accountability for the Execution of Auctions for Land That Has Not Been Certified? What is the Solution to the Execution of Auctions for Land That Has Not Been Certified? The research methodology employed in this study is a normative research approach. Regulations governing the Execution Auction include Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Auction PMK, Mortgage Law, Regulation of the Minister of Agrarian Affairs Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration. The role of the bank in the smooth running of the transfer of rights from the bank as the applicant for the auction of land to the auction winner is part of the bank's responsibility, as referred to in the theory of *strict liability*, which requires the bank to be jointly responsible for it even though the bank did not make a mistake. To address the issue of auction execution on uncertified land, several legal solutions can be employed. First, the government needs to accelerate the land certification process through the Systematic Land Registration (PTSL) program. Second, there needs to be stricter regulations related to auction execution. Third, education and socialization to the community regarding land rights and applicable legal procedures are also critical. Fourth, establishing mediation or dispute resolution institutions at the local level can be an alternative solution to resolving disputes that arise from auction execution. Fifth, the government should also consider providing incentives for landowners who are willing to undergo certification.

Keywords: Auction execution, Land, bank

INTRODUCTION

National development is a noble goal that is expected to serve as a means to build a cohesive Indonesian society. In national development, the presence of the economic sector, particularly banking, is one of the key driving forces behind Indonesian development. The critical role of banking in the financial industry is evident in its management of community savings funds, which are then distributed through loans to borrowers (Pradata et al., 2020). The profit obtained from the loan is used to support economic growth.

Banking as a financial institution that collects public savings and then disburses them in the form of loans requires regulations that govern it. According to Law Number 10 of 1998, which amends Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), banks are required to adhere to the principle of prudence in their business activities (Haykal et al., 2024).

The principle of prudence in business activities is also applied in lending activities to debtors. It is generally known as the 5C principle (*Character, Capacity, Capital, Collateral, Condition*) and the 5P principle (*Party, Purpose, Payment, Profitability, Protection*) in the context of providing credit. Credit given to debtors is intended as a tool to build or add to a business (Charron-Chénier & Seamster, 2021).

The provision of credit by banks is typically accompanied by a credit agreement between the creditor (the bank) and the debtor. Usually, the credit agreement is made as an effort to secure the position of each party. In the credit agreement, it is typically included as a provision requiring the debtor to provide collateral as a guarantee for repayment of the credit in the event of the debtor's negligence in fulfilling the credit agreement (Sriwati, 2021).

A credit agreement between a bank (creditor) and a customer (debtor) is an agreement between the parties based on the principle of freedom of contract as stipulated in Article 1320 of the Civil Code (hereinafter referred to as the Civil Code) (Haspada, 2025). In credit agreements, banks generally do not provide credit without any guarantee or collateral provided by the debtor, ensuring that the credit can be paid on time.

The provision of guarantees or collateral by the debtor is a legitimate matter, as regulated in Article 1131 of the Civil Code, which states that "all movable and immovable goods belonging to the debtor, whether existing or future, shall serve as collateral for the debtor's obligations" (Assagaf, 2023). Types of credit guarantees in Indonesia consist of Personal Guarantee and Material Guarantee. In practice, banks prefer material guarantees as the primary form of guarantee.

A guarantee is *an accessory* against the principal agreement, namely the credit agreement. The guarantee provides convenience in resolving disputes if the debtor fails to fulfill their promise (default) (Atikah, 2021). The collateral that banks generally seek is a tangible asset. This is because land has a relatively high and stable economic value. Additionally, land can be subject to a mortgage burden, which is a special right granted to creditors.

Mortgage rights are a means provided by law as a guarantee of rights to land or land and buildings as stated in Article 51 of Law Number 5 of 1960 concerning Agrarian Principles (hereinafter referred to as UUPA) and also regulated in Article 1 Paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (hereinafter referred to as the Mortgage Rights Law) (Nurvadillah et al., 2022).

The mortgage right is *accessory*, as stated in point 8 of the general explanation of the Mortgage Rights Law, which specifies that mortgage rights are of a secondary nature or *accessory* to a particular receivable based on a debt agreement (Algifarri et al., 2020). According to Article 10 Paragraph (1) of the Mortgage Rights Law, the existence of mortgage rights is emphasized, which is an inseparable part of the relevant debt agreement. Mortgage rights can be granted if the land used as collateral in the credit agreement is legally owned.

Granting of mortgage rights based on Article 4 of the Mortgage Law can only be granted for ownership rights, business use rights, building use rights, and usage rights. The burden on the land rights is stated in a limited manner, which results in land rights outside of those mentioned not being able to be burdened with mortgage rights (Wardhana et al., 2020). After being charged with a mortgage, the bank's legal position as a creditor in the credit agreement is given a guarantee against any breach of promise by the debtor.

The guarantee in the form of mortgage rights against any breach of promise/default by the creditor is also regulated in Article 6 of the Mortgage Rights Law, which states that if the debtor breaches the promise, the first mortgage holder has the right to sell the mortgage object at his discretion through a public auction and to take payment of his receivables from the proceeds of the sale (Prihartanto, 2021).

The sale of mortgage objects through auction is still rarely used by the public due to negative views towards the auction itself (Soraya, 2021). The public perception of auctions is often associated

with the courts, although this is not always the practice case. Indeed, auctions can be carried out based on a court decision but not always must the auction go through the courts.

The auction method is typically used to bring together two parties in a legal transaction. In an auction, there are two parties involved: the party submitting the bid and the party that wins the auction. For auction objects in the form of land that is burdened with mortgage rights, this can be done through the State Assets and Auction Service Office (hereinafter referred to as KPKNL) (Anwar et al., 2020). Every stage of the auction conducted by KPKNL must comply with the applicable laws in Indonesia. One of them is that the auction can be conducted on land that has been obtained and registered with mortgage rights.

In practice, there are also irregularities in the auction process, particularly when the auction is conducted on land that has not been appropriately certified. This occurs as in the case of Court Decision Number 03/Pdt.Eks/2020/Pn.Tbk Jo. Number 29/Pdt.G/2015/Pn. Tbk, the object of execution is a plot of land with an area of ± 200 M2 (Anwar et al., 2020). and the buildings standing on it. Ownership of the land is only based on the Land Transfer and Ownership Letter issued by the Village Head. The Land Transfer and Ownership Letter is not a valid proof of land ownership. However, an auction can be carried out on the land with a Copy of the Auction Minutes Number 626/II/2021 by the Batam City KPKNL. Regarding the land that was auctioned, it was discovered that the land was still unregistered and lacked proof of ownership.

RESEARCH METHOD

Research is a stage in science that is used to test whether a science can be considered a science or not (Disemadi, 2022). In other words, it is necessary to test the knowledge through research. The testing of knowledge must be carried out scientifically, following the stages established by the field of science. The stages used in doing so are called research methods. In short, research methods are used as a means to solve problems related to the field of science being studied. Each field of science has its characteristics in its research (Disemadi, 2022). The type of research used by the author is normative legal research with a statutory approach. Normative legal research is a type of research that focuses on written studies, utilizing secondary data, such as laws and regulations, as primary legal materials. This normative legal research involves collecting legal materials in the form of secondary data. Secondary data is data obtained through document studies of library materials, namely:

1. Primary legal materials, namely legal regulations relating to auction execution and other rules relevant to this research.
2. Secondary legal materials, namely materials that provide explanations regarding primary legal materials, such as scientific journals, results of seminars or other scientific meetings, and even personal documents or opinions from legal experts as long as they are relevant to the object of this research.
3. Tertiary legal materials, which include supporting legal materials, provide guidance and explanations for primary and secondary legal materials, such as legal dictionaries.

Data collection has a close relationship with data sources because it enables the collection of data needed for further analysis, as per the expected requirements. Regarding this, the author employs the library data collection method in this study. (*library research*).

Secondary data is obtained through library or literature studies. Secondary data includes:

1. Primary Legal Materials, which are binding legal materials in the form of statutory regulations and court decisions, including:
 - a. Civil Code
 - b. Law Number 5 of 1960 concerning Agrarian Principles.
 - c. Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.
 - d. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking
 - e. Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Fees
 - f. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration
 - g. Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions
 - h. Regulation of the Minister of Finance Number 86 of 2024 concerning Auction Minutes
 - i. Regulation of the Minister of Finance Number 90/PMK.06/2016 of 2016 concerning Guidelines for the Implementation of Auctions with Written Offers Without the Presence of Auction Participants via the Internet.

2. Secondary Legal Materials

Secondary legal materials are legal materials that provide explanations regarding primary legal materials as contained in bibliographic collections that serve as support for primary legal materials, which consist of:

- a. Books;
 - b. Journals;
 - c. Magazines;
 - d. Article-article media;
 - e. And various other writings.
- ## 3. Tertiary Legal Materials

Tertiary legal materials are legal materials that provide guidance or explanations for primary legal materials and secondary legal materials in the form of the Legal Dictionary and the Indonesian Language Dictionary.

Data analysis methods are activities in research that involve interpreting and discussing research results based on legal understanding, legal norms, legal theories and doctrines related to the problems in the research (Budianto, 2020).

This study employs a qualitative legal analysis method because data management in normative legal research with qualitative analysis is essentially an activity that involves systematically organizing written legal materials—systematic means making a classification of the written materials to facilitate the work of analysts and construction.

RESULTS AND DISCUSSION

Regulations Concerning the Execution of Auctions for Uncertified Land

According to Article 1 Point (1) of the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines (hereinafter referred to as the Auction PMK), an auction is an action carried out through the sale of goods which is carried out openly and can be seen by the general public which is based on offers for the goods verbally/or in writing to get the highest price and usually begins with an auction announcement (Alfara, 2020).

Execution refers to the action taken in the context of implementing a court decision. The implementation of a court decision can only be carried out against a court decision that has permanent legal force (*i.e.*, *res judicata*). Execution is the last resort carried out in the event of non-compliance with a court decision. It is said to be the last resort because execution is, in principle, only carried out against parties who have lost and do not voluntarily accept the decision (Yusa et al., 2020).

An execution auction is an auction conducted to implement a court decision. Powerful permanent law. Execution auction is one of the types of auction that is usually applied. The object of the execution auction depends on the verdict in the court decision made following the implementation of the execution. The object of the execution auction can be land, motor vehicles, mortgages, and other items of value that are for sale (Rasji, 2024).

Regulations governing Execution Auctions include: Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (hereinafter referred to as PP Land Registration), PMK Auction, Mortgage Rights Law, Regulation of the Minister of Agrarian Affairs Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Ministerial Regulation on Land Registration).

The execution auction that generally occurs is for land that has a certificate. However, based on Article 39 Paragraph (4), it is stated that an auction for land that has not been certified can be carried out by attaching a land certificate containing the land ownership status, area, and location. as well as land boundaries as well as request a land registration certificate from the Land Office. In addition, Article 41 Paragraph (1) states that auctions can be carried out on land that is not certified.

Article 108, Paragraph 1 of the Land Registration Regulation states that the winner of the auction who carries out the application registration of land rights transfer, yet certified, obtained through auctions, can be conducted by attaching proof of ownership as stated in Article 76 of the Land Registration Regulation. The existence of the aforementioned regulations legitimizes the possibility of conducting an auction on land that does not yet have a certificate.

Bank's Responsibility for Executing Auctions for Uncertified Land

Responsibility is a state of being required to bear the consequences of one's actions if sued, blamed, prosecuted, and so on (Al Fikri, 2022). Etymologically, responsibility is defined as a form of

obligation towards everything, in the sense of assuming a burden as a result of one's actions or those of others. Responsibility is a condition that requires a person to bear all the consequences of his actions if something undesirable occurs. In the legal dictionary, the term "responsibility" is defined as *both liability and responsibility*.

Liability is understood as legal responsibility resulting from errors made by legal subjects, whereas *responsibility* is understood as political accountability. Accountability arising from the law is often interpreted as *a form of liability*. Legal responsibility is a series of steps established by legal rules to fulfill an agreement or refuse to act.

The standard theory of responsibility is the theory of *strict liability*; according to this theory, a person can be held responsible for specific actions even if they are not guilty (Yuanitasari et al., 2023). This theory emphasizes the responsibility of a person or body for actions taken, even if the person or body is not guilty but is involved. The problem.

Banks, as institutions granted the right by law to collect funds from the public and distribute them back to the public through credit, have the responsibility to ensure that every credit extended meets the provisions outlined in laws and regulations. In addition, banks must also ensure that every legal step taken by the bank is in accordance with the bank's prudential principles.

The principle of bank prudence is a fundamental principle that banks must apply in all actions deemed necessary. Article 2, 8, and 29 Paragraph (2) of the Banking Law contains the principle of prudence that must be applied by banks both in collecting funds and providing credit. This principle of prudence should also be used in the matter of giving credit for land that is not yet certified.

Banks in this research problem often take too bold steps towards providing credit for uncertified land. Although the legislation states that this is possible, a thorough examination of the regulation is necessary. When viewed from the problems raised in this study, an error was made by the bank, namely, not registering the land at the time the credit is approved. This negligence will have fatal consequences in the future. The result is that the auction winner cannot proceed with changing the name of the land that has been auctioned. In other words, the auction winner's status on the land is not yet valid because the process of changing the land's name requires payment of the Land and Building Acquisition Fee (hereinafter referred to as BPHTB) first.

Article 21 Paragraph (3) of the Regulation of the Minister of Finance Number 86 of 2024 concerning Auction Minutes (hereinafter referred to as the PMK Auction Minutes) states that an extract of the auction minutes is given after the auction winner submits proof of payment of BPHTB. Article 2 Paragraph (1) of Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Fees (hereinafter referred to as the BPHTB Law) states that the object of the tax is the acquisition of rights to land and/or buildings. Then, Paragraph (3) of Law PBHT states that what is meant by 'land rights' in Paragraph (1) are ownership rights, business use rights, building use rights, usage rights, ownership rights over apartment units, and management rights.

Based on the above rules, auctions for land that does not yet have a certificate have overlapping rules, resulting in uncertainty regarding the status of the auction winner about the auction object. The bank, as the auction applicant, should be responsible for this problem because the auction submission was due to issues with the debtor, who failed to fulfill their performance obligations. Consequently, the bank executed the guarantee of the credit.

However, in practice, banks seem not to care because of the assumption that banks only carry out auction applications by laws and regulations that benefit the bank. The bank's responsibility as an auction applicant should not only be limited to applying but also to ensure that, after the auction is carried out and the winner is determined, the process of transferring rights from the bank to the auction winner can be completed.

The bank's role in ensuring the smooth transfer of rights from the bank as the auction applicant for the land to the auction winner is part of the bank's responsibility, as intended in theory *strict liability*, which requires the bank to be jointly responsible for this even if the bank has not made a mistake.

Solutions for Auction Execution of Uncertified Land

To address the issue of auction execution on uncertified land, several legal solutions can be employed. First, the government needs to accelerate the land certification process through the Land Registration Program Systematic (PTSL). This program aims to provide legal certainty for landowners and reduce the amount of uncertified land. According to BPN data, since the launch of the PTSL program in 2017, more than 10 million plots of land have been registered, but much remains to be done to achieve the national target.

Second, there needs to be stricter regulations related to auction execution. The Mortgage Law, for example, needs to be strengthened with provisions that protect landowners who have not yet been certified. This can be achieved by requiring financial institutions to conduct a more thorough verification

of land status before executing an auction. Thus, the authorities can ensure that the land to be executed is truly legally owned by the debtor.

Third, education and socialization to the community regarding land rights and applicable legal procedures are also critical. The government and related institutions must be proactive in providing clear and straightforward information about the land certification process and the potential risks associated with land ownership. With increasing public awareness, they can be more vigilant and avoid being easily trapped in detrimental practices.

Fourth, establishing mediation or dispute resolution institutions at the local level can be an alternative solution to resolving disputes arising from auction executions. This institution can help disputing parties reach an agreement without having to go through a lengthy and expensive court process. Through mediation, conflicts can be resolved more peacefully, benefiting all parties.

Fifth, the government should also consider providing incentives for landowners who are willing to undergo certification. For example, providing subsidies or financial assistance for the land certification process. With this incentive, it is hoped that more people will be willing to register their land and obtain legal certainty over their property rights.

CONCLUSION

Regulations governing Execution Auctions include: Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (hereinafter referred to as PP Land Registration), PMK Auction, Mortgage Rights Law, Regulation of the Minister of Agrarian Affairs Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Ministerial Regulation on Land Registration).

The bank's role in ensuring the smooth transfer of rights from itself as the applicant for the land auction to the auction winner is part of the bank's responsibility, as intended in theory. *strict liability*, which requires the bank to be jointly responsible for this even if the bank has not made a mistake.

To address the issue of auction execution on uncertified land, several legal solutions can be employed. First, the government needs to accelerate the land certification process through the Land Registration Program Systematic (PTSL). Second, there needs to be stricter regulations related to auction execution. Third, education and socialization to the community regarding land rights and applicable legal procedures are also critical. Fourth, the establishment of mediation or dispute resolution institutions at the local level can be an alternative solution to resolve disputes arising from auction execution. Fifth, the government should also consider providing incentives for landowners who are willing to undergo certification.

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