



Responsibility of the state assets and auction services office (Kpknl) in the lawsuit for the implementation of the auction for the execution of mortgage rights

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ABSTRACT

The role of the auction is quite large in meeting the needs of the community, with the principles of fairness, transparency / openness, legal certainty, accountability, and efficiency to provide another way of buying and selling at the best price which is characterized by competition between enthusiasts or prospective buyers. This research uses qualitative methods with primary data types. The results showed that the implementation of the auction by the KPKNL was in accordance with the Regulation of the Minister of Finance No. 213 /PMK.06/2020 concerning guidelines for the implementation of auctions, but there are still obstacles, namely auction participants do not understand the requirements of auction documents, lawsuits are made by the parties. debtors or owners of collateral and auction objects are less in demand by the public. The occurrence of a lawsuit by the parties is caused by a party who feels aggrieved in the implementation of the auction carried out. The lawsuit material that is often disputed by the parties is Unlawful Acts through the District Court and requests for cancellation of Legal Products resulting from the implementation of auctions, namely Minutes of Auction through the State Administrative Court (PTUN). The author's advice to the KPKNL to increase the intensity of communication with the community so that the public does not hesitate to participate in KPKNL auction activities.

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1. Introduction

The economy is one of the implementations of national development in accordance with the mandate of the Constitution of the Republic of Indonesia Paragraph IV of 1945, namely "promoting general welfare" (Taqiuddin, 2021). In improving community welfare, the government implements this by facilitating loan funds from financial institutions so that community needs are met or financing their business activities. Banks are financial institutions that can provide people with loans in the form of credit. Article 1 number 1 No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning Banking which states that credit is the provision of money and bills that can be equated with this, in accordance with the agreement or

loan agreement involving banks and other parties where the borrower has the obligation to pay off his receivables within a certain time accompanied by flowers. Banking has an important function in the country's economy (Simatupang, 2019).

Of course, the implementation of credit provision by banks does not always run smoothly according to expectations, so in its implementation, banks must be careful. Banks must be able to act wisely in providing loans or credit to the public so that in this case the bank must pay attention to the principles of distributing or providing credit (Permata & Ghoni, 2019). The principles of credit distribution are the principles of trust, grace period, degree of risk, risk, achievement/credit object. The method that can be used to provide credit protection that has been given by the debtor is through the requirements put forward by the creditor regarding the credit guarantee they obtain (Frahma, 2022). This guarantee functions as a means of protecting the creditor's security, namely paying off the debtor's debt or carrying out the debtor's achievements or guaranteeing the debtor. Collateral when borrowing bank money, especially in the form of immovable property, is able to give the bank as a creditor a safe position so that the credit given can be paid by the debtor because if the credit cannot be paid by the debtor, then the bank has the right to directly execute the mortgage right through a special collateral auction (hereinafter referred to as Mortgage Auction) (Kaliey, 2023).

Actually executing an auction for mortgage rights must go through several stages, for example submitting a request for execution completely and clearly to the District Court, then a Warning Determination will be issued by the court, then first implementing the Execution Confiscation, then confiscating the collateral, then determining the Auction and announcing it in a public daily (Devi, 2021). The implementation of auctions for debt collateral, both fiduciary guarantees and mortgage rights, cannot be separated from the role of banks as creditors, so that banks are parties that really need the services of the State Property and Auction Services Office (hereinafter referred to as KPKNL) both from the auction stage and up to the execution process. KPKNL is a vertical agency of the Directorate General of State Assets (DJKN) – Ministry of Finance which has direct responsibility and is under the Head of the Regional Office (Hermawanto & Anggraini, 2020).

KPKNL is tasked with serving in the fields of state assets, assessing, state debt and auctions. Auctions have a long history, starting when the Dutch colonized. Auctions in Indonesia have been in effect since the Dutch Colonial Government in the Dutch East Indies or Indonesia in 1908 through the Auction Regulations or *Vendu Reglement Staatsblad No. 189*. The *Vendu Reglement* at that time only applied to Dutch citizens. Auctions were used to sell goods owned by Dutch officials. Then the development of the auction occurs by selling against the court's request or what is called an execution auction (Ginting et al., 2023).

The definition of auction based on Minister of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Auction Implementation Guidelines (hereinafter referred to as PMK Auction Implementation Guidelines) is selling goods in general by offering goods in writing or verbally which can be increased or decreased to obtain a price. highest, starting with the Auction Announcement. For intangible goods such as billing rights, enjoyment rights including broadcasting rights, securities and intellectual property rights are classified as auctionable. (Sudiarto et al., 2021).

KPKNL carries out auctions based on 3 functions, namely public, private and budgetary functions. An auction with a public function is first defined as the function of the auction mechanism to secure assets taken by the state so that efficiency and orderly administration are improved in managing these assets. Second, carrying out auctions as an embodiment of law enforcement which describes justice, certainty and legal security when selling auctions against orders from the court, tax, prosecutors and others. (Chaerani et al., 2024). In its private function, auctions are placed as a means of bringing together buyers and sellers in goods transaction activities. The items that can be auctioned are very broad, namely all types of objects or rights that can be sold using an auction system in accordance with regulations and laws (Yupi Suwansyah, 2022). Auctions also have a budgetary function, namely a means of collecting state revenues in the form of auction fees, Pph (income tax from land in Article 25 and Land Rights Acquisition Fees (BPHTB) (Arly, 2019).

In accordance with the auction provisions, the auction organizer is KPKNL, the Class II Auction Officer's Office, or is called the Auction Hall based on the authority it has. Auctions are carried out in accordance with the principles of openness, legal certainty, accountability, efficiency and justice (Hermawanto & Anggraini, 2020). Auctions are required to be held in the presence of an Auction Officer unless otherwise specified in the Law or Government Regulation. Every auction must begin with an Auction Announcement. In an auction for the execution of immovable goods, you are required to announce the auction twice and the second announcement must be made using a daily newspaper. Auctions are only held by KPKNL if there is an auction request submitted (Aritonang, 2020). If all requirements have been met in the auction application, then KPKNL is not allowed to reject the auction application. KPKNL's obligation not to reject an auction request if the request meets the requirements is regulated in Article 11 of the PMK Auction Implementation Guidelines, namely "The Head of KPKNL, Class II Auction Officer, or the Head of the Auction Hall may not reject an auction request submitted to him as long as the auction requirements documents are complete and fulfill the formal legality of the auction subject and object" (Ayunda, 2021).

Article 11 of the PMK Instructions for Implementing Auctions clearly requires and/or requires KPKNL to carry out an auction if all the requirements for an auction application have been met, especially the requirements for an auction application for the execution of mortgage rights such as Credit Agreements, Deeds of Mortgage Rights, APHT and statements of default. In the Deed of Granting Mortgage Rights there is a clause which states that if the obligation is not fulfilled by the debtor by paying off the debt, in accordance with the debt and receivables agreement, then the creditor as the one holding the First Rank Mortgage Rights is given and obtains the authority so that the power without the debtor's consent to (Ningsih, 2021). Carrying out a sale or generally selling part or all of it through an auction of Mortgage Rights Objects Determining and arranging the time, method, place and terms of sale; Receiving sales money, signing and submitting receipts; Delivery of goods to the buyer; All or part of the sales money is taken and used to pay off the debtor's debt based on UUHT Article 6.

Before the auction application is submitted to KPKNL for its implementation in the field, the Bank has given a warning to debtors who experience credit congestion with proof of the first, second and third warning letters. (Jufri et al., 2020). When submitting an auction application, you are required to attach a warning letter. After the summons is made and the debtor is not in good faith in fulfilling his obligations accompanied by no reason that can be used as a consideration (such as an overmacht condition) so that the debtor is deemed to be in default (the debtor is in a state of negligence) (Taradipa, 2023). Therefore, the Bank submitted an auction request to KPKNL to determine the implementation of the auction (Murni et al., 2019). Auctions are sometimes carried out by KPKNL even though they are in accordance with the procedures as regulated in the PMK Guidelines for Implementing Auctions, but filing a lawsuit with the court may occur. Debtors or other parties often challenge the mortgage execution auction conducted by KPKNL because their interests feel they have been harmed. Usually civil lawsuits take the form of resistance before the auction is held or filing a lawsuit after the auction is held. These lawsuits usually arise because the debtor is dissatisfied with the implementation of the auction (Hadrian & Hakim, 2020).

Not all lawsuits against KPKNL can cause the auction to be cancelled, because only third parties can file a lawsuit to cancel the auction and those related to collateral can cause delays in the auction. Cancellation of the auction is only at the request of the seller or in connection with the decision of a judicial institution through a written submission and must be received by the auction official before the auction has started. (Yusuf, 2021). Explanations are given in the HIR and RBG regarding third party opposition to confiscation of conservatorship, revindication and execution, the application is only based on property rights, so the application can only be made by the owner or party who feels they own the goods that have been confiscated and the application is made to the Chairman of the District Court of the District Court with actual confiscation (Article 195 (6) HIR, Article 206 (6) RBG).

The purpose of the third party carrying out the resistance is the third party whose execution is intended to be carried out and declared as the owner (holder of property rights, use

rights, HGB, HGU, rental rights, and mortgage rights) and lessee of objects other than land. In article 14 paragraph 1 PMK Instructions for Auction Implementation with an explanation relating to the auction implementation lawsuit, namely "In the event that there is a lawsuit before the auction implementation against the Mortgage Right object from a party other than the debtor/executed, the husband or wife of the debtor/executed relating to ownership, the Execution Auction Article 6 UUHT cannot be implemented." There is something that is also important, namely the reason why the debtor or third party files a lawsuit. For debtors, is the reason related to elements of unlawful action involving creditors and debtors or is the reason disruptive so that the implementation of the auction or executing the auction collateral is delayed. Meanwhile, if a third party submits an objection, the reason must be proven, such as the third party being a house tenant who will be executed within 5 years, but when the 1 year has passed, it will be used for business. (Pasaribu & Zulfa, 2021).

The next problem is if the auction items that have been sold are still controlled or occupied by execution. Based on the rules, the owner of goods that have been sold has the right to transfer them to the property of the buyer after closing the sale and purchase agreement. In order for the position of the auction winner to be confirmed, a buyer's statement letter is issued by the auction office (Article 200 paragraph 10 HIR, 218 paragraph 1 Rbg). So the collateral must be immediately abandoned by the party still occupying the collateral because it has been sold at auction. If the auction item that has been sold is still controlled by the debtor, then the auction grosse can be requested by the auction winner to be issued so that the auction object is vacated by submitting it to the District Court for assistance in vacating it. Furthermore, an order was made by the chairman of the District Court to be assisted by a bailiff, even the police would help if necessary, every item would be left behind by him and his family (Article 200 paragraph 11 HIR, 218 paragraph 2 Rbg) (Syamsuddin & Baharuddin, 2021).

2. Method

The legal research method used by the author based on the problems studied is the normative juridical research method, namely research that focuses on examining the application of rules or norms in positive law. Normative Juridical Approach, namely an approach that uses a positivist legislative conception (Ariyani et al., 2020). From the expression of this concept it is clear that what is desired is information in the form of a description and requires the meaning behind the legal material. In accordance with this type of research, namely normative research, in this research, several approaches are used, namely the statutory approach, the case approach, the conceptual approach. (Sherhan, 2022).

A statutory approach was taken to examine the statutory regulations governing auctions for the execution of mortgage rights through the KPKNL. A case approach was taken to examine cases related to legal issues faced by KPKNL. A conceptual approach is taken to look at every concept in guarantee law related to mortgage rights and also civil concepts related to auctions for the execution of mortgage rights, as well as the concept of accountability under administrative law as well as the concept of authority and state institutions related to the position of KPKNL as a state institution mandated by statutory regulations for conducting auctions (Ariyani et al., 2020).

3. Analysis and Results

3.1. Implementation of Auction for Execution of Mortgage Rights Conducted by KPKNL

The State Assets and Auction Services Office (KPKNL) is a vertical agency of the Directorate General of State Assets (DJKN) – Ministry of Finance which is under and directly responsible to the Head of the Regional Office. KPKNL has the task of carrying out services in the fields of state assets, appraisal, state receivables and auctions. Auctions in Indonesia have existed since the enactment of the Auction Regulations or *Vendu Reglement Staatsblad* Number 189 of 1908 by the Dutch Colonial Government in the Dutch East Indies or Indonesia. At that time the *Vendu Reglement* only applied to Dutch citizens. Auctions were used to sell items belonging to Dutch

officials who moved to work outside the city/region or who returned to the Netherlands. Furthermore, auctions also developed into sales at the request of the court or execution auctions.

In this writing, the author will focus on writing Execution Auctions as regulated in Article 6 of the Mortgage Law (UUHT), namely the sale of goods in public which is carried out on the basis of a request from the creditor to the KPKNL because the debtor is in default and does not comply with the summons given by the creditor. so that the creditor has the right to carry out an execution auction for the collateral in the agreement between the creditor and the debtor, namely the object of the Mortgage Right. The engagement agreement entered into by the parties mentioned above, if there is a breach of contract or failure to pay, will be executed, one of which is the auction mechanism for collateral. Carrying out auctions to facilitate the settlement of defaults in accordance with auction provisions, is KPKNL, Class II Auction Officer's Office, or Auction Hall in accordance with their authority. The responsibility and authority of KPKNL in carrying out auctions, including the implementation of auctions. Execution of Mortgage Rights must be carried out in accordance with the principles of auction, namely the Principle of Transparency, the Principle of Certainty, the Principle of Competition, the Principle of Efficiency, the Principle of Accountability.

In the practice of completing the execution of mortgage rights auctions based on Article 20 paragraph (1) of the Mortgage Rights Law, there are 2 (two) mechanism options, namely Article 6 auctions based on the right of the first level Mortgage Rights Holder to sell the mortgage rights object on their own authority, or using the Article mechanism. 14 paragraphs (2) and (3) based on the executorial title on the Mortgage Rights Certificate which reads "For the sake of justice based on belief in the Almighty God"(Nugrohandini & Mulyati, 2019). These two mechanisms are juridical instruments that are imperative because they are expressly stipulated in the Mortgage Rights Law and the procedure must go through a public auction through the State Property and Auction Services Office. Apart from these two mechanisms, Article 20 paragraphs (2) and (3) of the Mortgage Rights Law also stipulates that there is an execution mechanism outside the auction, namely a private sale carried out based on an agreement between the Mortgage Rights Holder and the Mortgage Rights Giver.

As for the execution auction mechanism based on the executorial title of the Mortgage Rights Certificate through the execution fiat of the head of the court, these three documents are not required. However, what is required are documents relating to the execution process by the Chairman of the District Court. In the event that the execution of the mortgage right is based on the execution fiat of the Chief of Court, the mortgage certificate is valid as a substitute for the grosse deed as far as land rights are concerned, so the execution process must go through the Chief of the District Court. As confirmed in Article 20 of the Law paragraph (1) letter b of the Mortgage Rights Law jo. Article 14 paragraphs (2) and (3) of the Mortgage Rights Law, then the auction for the execution of mortgage rights based on Article 14 paragraphs (2) and (3) of the Mortgage Rights Law, is carried out using ordinary execution mechanisms and procedures based on the provisions of civil procedural law(Suyatno, 2018).

An auction as explained in the previous discussion is the sale of goods carried out in public with an increased or decreased bid price or with the price included in a closed envelope, or to people who are invited or previously notified of the auction or sale, or permitted to participate, and given the opportunity to bid on the price in closed form. Based on the results of research conducted through interviews with Functional Auction Officials at the Ambon KPKNL as the official given the authority to carry out auctions, it is stated that the Ambon KPKNL is intensively conducting outreach to auction applicants to better understand how to fulfill the auction requirements, as well as asking auction applicants to carry out marketing intensively. to the auction object. Through socialization, the provisions that must be followed are not only conveyed, but also real problems that exist in the field are conveyed, including the lack of public interest in the items being auctioned.(Basuki & Teenagers, 2021).

3.2. The Legal Position of KPKNL in the Lawsuit for the Auction for the Execution of Mortgage Rights

KPKNL's implementation of mortgage rights execution auctions often receives lawsuits from debtors and other parties who feel their interests have been harmed. Civil lawsuits are usually carried out in the form of resistance before the auction or lawsuits filed after the auction. In 2022 there will be five lawsuits against the law and in 2023 there will be three lawsuits against the law filed by third parties to the Ambon District Court with the Ambon KPKNL as a party involved in the case. Based on case data on the Legal Aid Information System website of the Directorate General of State Assets, which is the official website of the Directorate General of State Assets which specifically contains information about handling legal cases involving all Work Units (Vertical Offices) within the scope of the Directorate General of State Assets, the main problem mortgage rights auctions are the number of civil lawsuits against the execution of mortgage rights auctions.

Attempting a lawsuit in civil relations is a necessity because there are no regulations that prohibit filing a lawsuit and in principle the court is not even allowed to refuse to examine an incoming lawsuit. As in Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states. This provision is a consequence of the *Ius Curia Novit* principle, namely that judges are assumed to know the law. In principle, lawsuits and resistance to the execution of a mortgage auction are debtors' efforts aimed at delaying the auction or canceling the auction. Lawsuits and opposition to mortgage rights are filed on two grounds, namely unlawful acts and breach of contract. The civil lawsuit that is usually filed against KPKNL is related to Unlawful Acts, based on article 1365 of the Civil Code which reads, "Every act that violates the law and brings loss to another person, requires the person who caused the loss through his fault to compensate for the loss," from the words of the article, the following elements can be drawn: There is an unlawful act, There is a mistake, There is a causal relationship between the loss and the act, There is a loss (Yesi, 2020).

According to the author, the aim of the lawsuit against the implementation of the auction is solely aimed at making it difficult for Mortgage Rights Holders to settle their receivables quickly, and to harm auction buyers who have good intentions in controlling the objects of mortgage rights that have been purchased at public auction. However, the length of the trial process creates uncertainty regarding the value of the auction object and the amount of the debtor's debt. Decisions on lawsuits and resistance can result in postponement of auctions that will be held or cancellation of auctions that have been held. Cancellation of an auction results in uncertainty for auction buyers, mortgage rights holders, mortgage rights grantors, KPKNL, land offices and related third parties because they have to return the legal condition of the mortgage rights object to the state before the auction. The existence of civil lawsuits creates legal uncertainty. If you use Roscoe Pound's theory, the existence of legal certainty allows for "predictability". Second, legal certainty means legal protection, in this case, the litigants can be protected from arbitrariness of judgment.

Therefore, the existence of regulations for concrete problems needs to be used as a reference in resolving cases handled by judges. Thus, it can be said that in this context justice must be based on applicable legal provisions, not justice outside of legal provisions. If the judge's decision is based on considerations of arguments that are procedurally permitted by law, then the decision will create legal certainty. Although, it is not impossible that the decision will cause legal injustice. Legal certainty in an auction is realized by making minutes after the auction by the Auction Officer in the form of an Auction Minute which is the minutes of the auction made by the auction official which is an authentic deed and has perfect evidentiary power. So that legal certainty for the Buyer regarding the transfer of the object of mortgage rights to become his own is legal. The existence of a decision on an auction lawsuit which causes the cancellation of the auction minutes, means that the auction buyer does not get legal certainty from the auction minutes in his possession.

The legal action that is usually taken to cancel an auction is a lawsuit to obtain a court ruling or decision by filing a lawsuit. In the PMK Instructions for Implementing Auctions, it is

not regulated that the absolute competence of the judiciary has the right to cancel an auction, so that legal action is open to be carried out in the District Court if it relates to a Lawsuit for Unlawful Actions (PMH) or in the State Administrative Court (hereinafter referred to as PTUN) if lawsuit related to Legal Products (Cancellation of Auction Minutes). Even though filing a lawsuit is not a reason for the auction to be cancelled, it is still often done by the debtor/executed person or their husband/wife in order to maintain ownership of the auction object or simply to delay the auction. The existence of a TUN lawsuit at the State Administrative Court (PTUN) is based on the consideration that KPKNL as a Government Institution with the authority to carry out auctions is a state administrative body or official as intended in Law Number 5 of 1986 concerning State Administrative Courts (UU PTUN) . Likewise, the Auction Minutes which are legal products resulting from the auction are considered to be State Administrative Decisions (KTUN). In terms of competence, based on Law Number 5 of 1986 concerning the State Administrative Court (hereinafter referred to as the PTUN Law) and its amendments, it is stipulated that the PTUN is a judicial institution under the Supreme Court which has the duty and authority to examine, decide and resolve State Administrative disputes.

Apart from that, the expansion of PTUN's authority with the enactment of Law Number 30 of 2014 concerning Government Administration (UUAP), created a new discourse that holding auctions for the execution of mortgage rights carried out by KPKNL is included in the government's factual actions. The existence of PTUN in the legal system in Indonesia is as a judicial institution that has the authority to examine and decide disputes between government officials and citizens resulting from the issuance of state administrative decisions. With this authority, PTUN has a role as a means of control over government administration for the purpose of establishing good governance. The implementation of the execution auction held by KPKNL is considered to be part of government administration so that a lawsuit can be filed through the PTUN. As a legal basis for the process of filing a lawsuit through the PTUN is in Article 53 of the PTUN Law, the reason or basis for filing a lawsuit at the PTUN is because there is a State Administrative Decree (hereinafter referred to as KTUN) which is in conflict or not in accordance with the provisions of the statutory regulations and/or principles. -general principles of good governance (AUPB). In the formulation of this article, it can be seen that the object of the lawsuit in a dispute at the PTUN is the KTUN.

As previously explained, the auction minutes are authentic deeds, so the auction minutes can also be compared to a Notarial deed or can refer to the definition of an authentic deed contained in Article 165 HIR. As an official report, the auction minutes do have certain concrete or tangible characteristics and are final in nature, where the legal consequences arising from the existence of the auction minutes are the transfer of rights to the land or goods which are the object of the auction. However, the auction minutes are not sufficient to qualify as KTUN because there is no element of *beslissing* or *beschikking* (decision) in the form of a will (statement of will) from the Auction Officer or KPKNL or in other words it is only an endorsement of the occurrence of an event between the Seller and the Buyer through auction intermediary.

The legal rules regarding auction minutes not being or not meeting the qualifications as KTUN can be found in the Supreme Court Jurisprudence Number 47 K/TUN/1997 dated January 2 1998, the essence of the decision of which states "Auction Minutes are not Decisions of State Administrative Bodies/Officials, but are Minutes of the results of the sale of goods, because there is no element of *beslissing* (written determination) / *beschikking* (decision) or statement of will from the auction office officials" (decision on the lawsuit case of Budi Laksono, Director of PT Marina Aneka Plywood, which was filed against the Head of the Surabaya Class I Auction Office regarding cancellation of auction minutes). Apart from that, similar legal rules are also found in the Supreme Court Jurisprudence Number 312 K/KTUN/1996 in the case between Mr. Gunawantoro fought against the Class I Auction Officer of the Surabaya State Auction Office with the legal principle which stated "The minutes of the auction are not State Administrative Decrees because they are merely Minutes of Auction Implementation, so they do not fulfill the requirements of State Administrative Decrees as regulated in Article 1 Paragraph 3 of Law no. 5/1986". Failure to comply with the auction minutes in qualifying the KTUN object should also be treated in the same way as assuming that the implementation of the auction is a government

act in the form of a factual action that can be sued at the PTUN on the grounds that there is an act against the government's law (onrechtmatige overheidsdaad). After the establishment of Law Number 30 of 2014 concerning Government Administration (UUAP), the decision in question can also be interpreted in relation to the factual actions of State Administrative Agencies and/or Officials as stated in Article 87 UUAP. These factual actions then fall within the competence of adjudicating the PTUN. It also needs to be understood that Article 2 of the PTUN Law excludes KTUN from the object of lawsuits in the PTUN, one of which is KTUN which is a civil legal action. In connection with the implementation of the execution of mortgage rights through auctions held by KPKNL where there are legal actions carried out that can be included in the group of legal actions in civil law or private law (privaatrechtshandelingen).

4. Conclusion

The responsibilities, duties and functions of KPKNL in carrying out auctions have been carried out in accordance with applicable provisions, namely PMK Instructions for Implementing Auctions and Regulation of the Director General of State Assets Number 2 /KN/2017 concerning Technical Instructions for Implementing Auctions.

KPKNL has carried out all these procedures very well and in accordance with the principles of transparency/openness, certainty, competition, efficiency and accountability, which have fulfilled the principles of good governance. The auction for the execution of mortgage rights based on Article 6 of Law Number 4 of 1996 at the State Property and Auction Service Office (KPKNL) has been carried out in accordance with the provisions of PMK Instructions for Auction Implementation jo. Regulation of the Director General of State Assets Number 2/KN/2017 concerning Technical Instructions for Auction Implementation. Obstacles in carrying out an auction for the execution of mortgage rights based on Article 6 of Law Number 4 of 1996 at the State Property and Auction Service Office (KPKNL) include: Obstacles before the auction and obstacles after the auction. Regarding these obstacles, several efforts have been made to overcome these obstacles, including: Conveying auction requirements in accordance with statutory regulations. Direct the auction applicant to be more careful in the editorial writing of the auction announcement in the case of publishing the second auction announcement through daily newspapers. Increase the implementation of outreach to auction applicants and the general public regarding auction implementation.

Adding auction officials to be able to handle auction application files so as to speed up auction implementation. Direct the auction applicant to study the replacement or (PIC) Person in Charge to anticipate any transfers, so that the replacement does not experience difficulties in carrying out the auction request. Even though the auction was carried out in accordance with the Regulation of the Director General of State Assets Number 2/KN/2017 concerning Technical Instructions for Auction Implementation jo. PMK Instructions for Implementing Auctions. However, the execution of mortgage rights as described above still leaves problems related to the interpretation of the material content of the Mortgage Rights Law itself which seems contradictory.

These problems include those related to the execution of collateral objects which are subject to mortgage rights based on mortgage rights certificates which have executorial power based on the instructions "FOR JUSTICE BASED ON THE ALMIGHTY GOD." And regarding the problems that still arise from execution auctions, including article 6 of the mortgage rights law itself, if you look more closely, the principle has been confirmed by the UUHT itself, where Article 20 UUHT actually does not conflict with the method of executing mortgage rights, but instead makes a choice. The law executes mortgage rights in 3 (three) ways: a) Execution based on grosse acte hypotheek (Article 224 HIR and Article 258 RBg); b) Execution based on the executorial title in the Mortgage Rights Certificate (Article 6 and Article 20 UUHT); c) Underhand execution based on the agreement between the giver and the Mortgage Rights holder.

Furthermore, in the execution of Article 6 UUHT, creditors are given a legal option to carry out the execution of their mortgage rights, whether using the Fiat Executie, Parate Executie mechanism, or private sale based on an agreement between the giver and the mortgage right

holder. Meanwhile, if you look at it from an Administrative Law perspective, in this case it is related to the lawsuit for cancellation of the Auction Minutes, as previously explained, the auction minutes are an authentic deed, then the auction minutes can also be equated with a Notary's deed or can refer to the definition of an authentic deed contained in Article 165 HIR. As an official report, the auction minutes do have certain concrete or tangible characteristics and are final in nature, where the legal consequences arising from the existence of the auction minutes are the transfer of rights to the land or goods which are the object of the auction. Based on this, the author concludes that the cancellation of the mortgage execution auction cannot be submitted through the PTUN, but should be submitted to the general court or in this case the local District Court.

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