

# Implementation of The Auction Execution of Mortgage Objects (Case Study at the State Asset and Auction Service Office of Malang)

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## Implementation of The Auction Execution of Mortgage Objects (Case Study at the State Asset and Auction Service Office of Malang)

| Article                                                                                                                                                                                                                                                                                           | Abstract                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p><b>Article History</b><br/>                     Received: __ __ __ __;<br/>                     Reviewed: __ __ __ __;<br/>                     Accepted: __ __ __ __;<br/>                     Published: __ __ __ __;</p> <p><b>DOI:</b><br/>                     10.33474/yur.v_i_19533</p> | <p><i>The execution auction of mortgaged objects in the concept of parate execution, carried out at the State Aset and Auction Service Office of Malang, doesn't always proceed smoothly due to uncooperative debtors, which hampers the auction process. The urgency of this research is to examine the legal certainty of auction processes in the face of obstacles. The purpose of this research is to analyze the factors that hinder the auction process and the efforts made to overcome these obstacles. This empirical study uses a sociological approach with primary and secondary data sources. Obstacles to the auction process include incomplete documents, failure to find a buyer, low reserve price, difficulty in vacating the object, and ongoing lawsuits. The efforts to overcome these obstacles involve seeking information, re-auction, negotiating the reserve price, issuing the grosse minutes of auction, sending an aanmaning, pursuing non-litigation methods, and applying evidentiary theory.</i></p> <p><b>Keywords:</b> Execution Auction; Mortgage; Obstacles, Parate Execution, Legal Certainty.</p> |
|                                                                                                                                                                                                                                                                                                   | <p style="text-align: center;"><b>Abstrak</b></p> <p>Lelang eksekusi objek hak tanggungan dalam konsep parate eksekusi yang dilaksanakan di Kantor Pelayanan Kekayaan Negara Dan Lelang Malang tidak selamanya berjalan sempurna karena disebabkan oleh debitur tidak kooperatif, sehingga menghambat proses lelang. Urgensi penelitian ini bagaimana kepastian hukum proses lelang yang mengalami hambatan. Tujuan penelitian ini menganalisis faktor-faktor hambatan dan upaya yang ditempuh dalam mengatasi hambatan lelang eksekusi objek hak tanggungan. Penelitian ini merupakan penelitian empiris menggunakan pendekatan sosiologis dengan sumber data primer dan sekunder. Hambatan lelang yang terjadi adalah dokumen tidak lengkap, tidak mendapatkan pembeli, nilai limit rendah, sulit mengosongkan objek dan adanya gugatan, kemudian upaya yang dilakukan dalam mengatasi hambatan adalah mencari informasi, melakukan lelang ulang, kesepakatan nilai limit, penerbitan grosse risalah lelang, aanmaning, non litigasi dan penggunaan teori pembuktian.</p>                                                               |

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| <b>Kata Kunci:</b> Lelang Eksekusi; Hak Tanggungan; Hambatan, Parate Eksekusi, Kepastian Hukum. |
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## PENDAHULUAN

Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land establishes a comprehensive legal framework governing both the parties involved and the objects pledged as collateral.<sup>1</sup> The Deed of Granting of Mortgage constitutes a formal legal document prepared by a Notary or Land Deed Official, which serves as the juridical basis for the encumbrance of mortgage rights over land designated as collateral.<sup>2</sup> In its implementation, there are many defaulting debtors, so an auction is carried out for the execution of the object of dependent rights through the State Aset and Auction Service Office of Malang as stipulated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights. In its implementation, the auction process doesn't always run perfectly, often the debtor is uncooperative during the auction

process and results in the auction process being hampered unlike as stipulated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights, so in the implementation of this legal act it is necessary to contain legal certainty for creditors.

There are several studies that have been conducted, namely *first*, by Ayup Suran Ningsih with the title "Kajian Yuridis Efektifitas Penyelesaian Kredit Macet Melalui Lelang Hak Tanggungan",<sup>3</sup> *the second* by Wahyu Pangestu, Wahyu Prawesthi and Siti Marwiyah with the title "Perlindungan Hukum Terhadap Pembeli Atas Obyek Hak Tanggungan Yang Di Lelang",<sup>4</sup> *third* by Ersal Malida Astriani and Ngadino with the title "Prosedur Pelaksanaan dan Pengumuman Lelang Oleh Kantor Pelayanan Kekayaan Negara Dan Lelang".<sup>5</sup> These studies in general have similarities with this study,

<sup>1</sup> Dimas Aditya El Fachrizza dan Mahendra Wardhana, "Analisis Yuridis Putusan Pengadilan Negeri Sidoarjo Nomor 130/Pdt.G/2022/PN.Sda Tentang Perbuatan Melawan Hukum Lelang Eksekusi Hak Tanggungan Atas Objek Waris Yang Belum Di Bagi," *Novum: Jurnal Hukum* 11, no. 3 (30 Juli 2024): 538, <https://doi.org/10.2674/novum.v0i0.62277>.

<sup>2</sup> Ivan Yosa Ari Ramadita dan Yunanto Yunanto, "Analisis Pelaksanaan Lelang Sebagai Tindak Lanjut Eksekusi Hak Tanggungan Perspektif Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (8 Agustus 2023): 1312, <https://doi.org/10.37680/almanhaj.v5i2.2975>.

<sup>3</sup> Ayup Suran Ningsih, "Kajian Yuridis Efektifitas Penyelesaian Kredit Macet Melalui Lelang Hak Tanggungan," *Arena Hukum* 14, no. 3 (31 Desember 2021): 546, <https://doi.org/10.21776/ub.arenahukum.2021.01403.7>.

<sup>4</sup> Wahyu Pangestu, Wahyu Prawesthi, dan Siti Marwiyah, "Perlindungan Hukum Terhadap Pembeli Atas Obyek Hak Tanggungan Yang Di Lelang," *Jurnal Hukum Ius Publicum* 5, no. 2 (12 Agustus 2024): 59, <https://doi.org/10.55551/jip.v5i2.144>.

<sup>5</sup> Ersal Malida Astriani dan Ngadino Ngadino, "Prosedur Pelaksanaan Dan Pengumuman Lelang Oleh Kantor Pelayanan Kekayaan Negara Dan Lelang," *Notarius* 15, no. 2 (27 Desember 2022): 649, <https://doi.org/10.14710/nts.v15i2.36938>.

namely discussing the auction of the execution of dependent rights, similarities are found in the research conducted by Ersal Malida Astriani and Ngadino, but in the research that has been carried out it doesn't specifically mention the place or location where the auction is held, the difference is also that it doesn't describe the obstacles experienced during the auction process. These differences can be novelties in this study.

The urgency of this research is regarding the provisions of Article 6 of Law Number 4 of 1996 concerning Mortgage Rights which authorizes creditors as holders of dependent rights to sell the object of dependent rights through a public auction on the condition that the debtor defaults, the dependent rights are used as guarantors in the repayment of certain debts.<sup>6</sup> The sale of the object of dependent rights through auction can include buying and selling activities, only in different ways but with the same conditions,<sup>7</sup> implied in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights the basic idea of execution parate which has the meaning of facilitating execution by not involving judicial institutions,<sup>8</sup> but because the debtor's

uncooperative attitude harms the provisions of Article 6 of Law Number 4 of 1996 concerning Mortgage Rights, which results in sales through auction becoming more complicated. The State Asset and Auction Service Office of Malang in 2023 out of 1,117 auctions carried out, there were 286 auctions canceled due to negligence from the seller and attempts to repay the debtor so that the auction process was canceled by the seller, from the auction process there were also obstacles that should be carried out easily by the auction process.

The State Asset and Auction Service Office of Malang as the organizer of the auction of the execution of the right of dependency, must provide protection and guarantee of legal certainty for the parties.<sup>9</sup> The focus of this research is to analyze the factors that are obstacles to the auction of the execution of the object of the right of dependency through the State Asset and Auction Service Office of Malang. This problem comes from debtors who are not cooperative during the auction process, which impact creditors and auction winners when the auction process, which should be easy

<sup>6</sup> I Gusti Ayu Dyah Pramesti dan I Ketut Westra, "Mekanisme Pengambilalihan Agunan Oleh Bank Pekreditasi Rakyat Yang Diletakkan Hak Tanggungan Terkait Penyelesaian Kredit Macet," *Jurnal Kertha Desa* 9, no. 9 (28 September 2021): 81–82.

<sup>7</sup> Christin Natalia Tambunan dan Atik Winanti, "Perlindungan Hukum Bagi Pemenang Lelang Eksekusi Hak Tanggungan Yang Tidak Dapat Menguasai Objek Lelang (Studi Kasus Putusan No.3/PDT.G/2018/PN.Lgs)," *Jurnal Interpretasi Hukum* 5, no. 1 (5 Januari 2024): 824, <https://doi.org/10.22225/juinlum.5.1.8528.821-829>.

<sup>8</sup> Ngurah Gede Manik Menawa Ratna Gozala dan Anak Agung Sri Indrawati, "Parate Executie Terhadap Objek Hak Tanggungan Ketika Terjadi Kredit Macet," *Jurnal Kertha Desa* 8, no. 11 (30 Januari 2021): 36.

<sup>9</sup> Lavetta Ferels, Zainal Muttaqin, dan Muhammad Akyas, "Sinkronisasi Pengaturan Pemindahan Hak Atas Tanah Melalui Lelang Dalam Perspektif Teori Kepastian Hukum," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 7, no. 2 (30 Juni 2024): 184, <https://doi.org/10.23920/acta.v7i2.1742>.

becomes complicated. Juridically, Article 6 of Law Number 4 of 1996 concerning Mortgage Rights is the legal basis for auctions that are carried out on the condition that the debtor defaults, but there are still parties who are not subject to these rules, so the focus of this research is also how the efforts taken by the State Asset and Auction Service Office of Malang in overcoming obstacles.

The research method in the research is empirical juridical, empirical research is research to obtain factual knowledge about actual reality and is sourced from experience and experimentation.<sup>10</sup> The approach method in this study is the sociological approach, the sociological approach is the mechanism of a legal rule that is faced with a habit that undergoes the development of values, so as to measure how effective the existing legal rule is.<sup>11</sup> The data sources used in this study are primary and secondary data sources, primary data sources are data obtained through field surveys at the State Wealth and Auction Service Office Malang, by conducting interviews, while secondary data sources come from the Civil Code, Law Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land, and Regulation of the Minister of Finance Number 122 of

2023 concerning Guidelines for the Implementation of Auctions.

This study aims to analyze the factors that hinder the auction of the execution of objects of dependent rights through the State Asset and Auction Service Office of Malang, and to analyze the efforts taken by the State Asset and Auction Service Office of Malang in overcoming these obstacles. So it's hoped that this research can describe how legal problems can be implemented and how we can overcome problems that may exist in the future.

## RESULTS AND DISCUSSION

### Factors that Become Obstacles to the Execution of Mortgage Objects Through the State Asset and Auction Service Office Malang

The right of dependency contains rights and obligations that should be carried out in accordance with applicable provisions, both in the provisions of laws and internal provisions agreed upon by the parties.<sup>12</sup> If the debtor defaults, in this condition the creditor has the right to sell the object of dependency through auction as stipulated in Article 6 of the Law and Regulation and of the Minister of Finance Number 122/2023 concerning Auction Implementation Guidelines, then the auction

<sup>10</sup> Suyanto Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif* (Gresik: Unigres Press, 2022), 23.

<sup>11</sup> Mahlil Andriaman, *Pengantar Metode Penelitian Ilmu Hukum* (Sumatera Barat: Yayasan Tri Edukasi Ilmiah, 2024), 139–40.

<sup>12</sup> Salsabila Fathimah Azzahra dan Siti Malikhatun Badriyah, "Perlindungan Hukum Terhadap Pemenang Lelang Atas Objek Eksekusi Hak Tanggungan," *Lex Renaissance* 8, no. 1 (20 Desember 2023): 168, <https://doi.org/10.20885/JLR.vol8.iss1.art10>.

process will cause legal consequences, namely the transfer of the auction object from the debtor to the auction buyer.<sup>13</sup> The auction mechanism is currently carried out digitally, making it easier, more time-efficient and accessible to all Indonesian.<sup>14</sup>

Based on the theory of authority, according to the great Indonesian dictionary, the word authority has the same meaning as the word authority, which is interpreted as the right and power to act, make decisions, govern and delegate responsibilities to other people/bodies.<sup>15</sup> This theory describes how the authority of the creditor as the holder of the right of dependency in executing the object of the debtor's right of dependency through the State Asset and Auction Service Office of Malang on the condition that the debtor defaults, so that the right and power to act and make decisions are inherent in the creditor, just as Article 6 of Law Number 4 of 1996 concerning Mortgage Rights gives the right to sell to the holder of the right of dependency.

It's very easy for creditors to sell the object of the right of dependency, because basically the object of the right of dependency is used as collateral and the deed of the right of dependency is proof of the existence of the position of each party, then the holder of the first right of dependency can execute the object of the right of dependency directly.<sup>16</sup> However, in practice, the auction process is often faced with various legal discipline issues,<sup>17</sup> in the sense that there are obstacles experienced, both obstacles in administration and obstacles from the executed party who still wants to defend their property.

The implementation of direct execution auctions or execution parades through the State Asset and Auction Service Office of Malang doesn't always run perfectly, in reality every execution has the possibility of obstacles or obstacles that result in the execution not being able to run optimally. Based on the results of an interview with Mr. Moh. Luthfi Rosyadi Muhtar stated that during the auction process for the execution of

<sup>13</sup> Andika Natanael Oroh, Dedy A. Prasetyo, dan Yudha Cahya Kumala, "Perlindungan Hukum Terhadap Pembeli Lelang Eksekusi Hak Tanggungan Yang Tidak Dapat Menempati Objek Lelang Dikarenakan Adanya Perlawanan Hukum Dari Debitur," *Themis: Jurnal Ilmu Hukum* 2, no. 2 (2025): 75, <https://doi.org/10.70437/themis.v2i2.890>.

<sup>14</sup> Umni Maskanah dkk., "Efektivitas Pengaturan Hukum Terhadap Prosedur Lelang Elektronik Dalam Menjamin Kepastian Hukum Di Indonesia," *Journal of Social and Economics Research* 6, no. 1 (5 Juli 2024): 864, <https://doi.org/10.54783/jsr.v6i1.465>.

<sup>15</sup> Danel Aditia Situngkir, "Mengenal Teori Demokrasi Dan Teori Kewenangan Dalam Ilmu Hukum," *Ensiklopedia of Journal* 5, no. 4 (24 Juni 2023): 10, <https://doi.org/10.33559/eoj.v5i4.1745>.

<sup>16</sup> Muslim Shohib dan Abid Zamzami, "Parate Executie Polemic: The Nature of the Authority to Sell Creditors for Objects of Collateral Rights," *Jurnal Hukum Dan Kenotariatan* 7, no. 3 (15 Oktober 2023): 147, <https://doi.org/10.33474/hukeno.v7i3.20754>.

<sup>17</sup> Ariyanto Ariyanto, "Akibat Hukum Pemegang Hak Tanggungan Yang Tidak Mendaftarkan Sebagai Kreditor Dalam Kepailitan," *Jurnal Hukum Ius Quia Iustum* 29, no. 2 (1 Mei 2022): 306, <https://doi.org/10.20885/iustum.vol29.iss2.art4>.

dependency rights, there were several obtained from the auction process which was obstacles that occurred and there was also an carried out from 2023 to July 2024, as auction process that ended perfectly, as data follows:<sup>18</sup>

<sup>4</sup> *Table 1: Data on the Number of Auctions for the Execution of Dependent Rights in 2023 to July 2024*

*Tabel 2: Percentage of Annulled Execution Auctions of Mortgage Rights Objects*

| Year              | Minutes of Auction | Annulled |
|-------------------|--------------------|----------|
| 2023              | 1.117              | 286      |
| January–July 2024 | 598                | 146      |

*Tabel 3: Percentage of Obstacles in the Execution Auctions of Mortgage Objects*

| Annulled                                       | Percentage |
|------------------------------------------------|------------|
| Seller Fails to Announce the Auction           | 76%        |
| Repayment Made by the Debtor (Judgment Debtor) | 3%         |
| Seller is Absent During the Auction Execution  | 21%        |

| Obstacles                                       | Percentage |
|-------------------------------------------------|------------|
| Completeness of Documents                       | 24%        |
| No Bidders/Potential Buyers                     | 64%        |
| Low Reserve Price of the Auctioned Object       | 7%         |
| Eviction Issues Related to the Auctioned Object | 3%         |
| Pending Legal Action (Filing of Lawsuit)        | 2%         |

<sup>5</sup> Based on the data obtained, it shows that City, Jombang Regency, Kediri City, Kediri the State Asset and Auction Service Office of Regency, Blitar City, Blitar Regency, Malang from 2023 to July 2024 recorded Tulungagung Regency and Trenggalek many auction processes that were carried out, Regency.

<sup>1</sup> this is against the background of the State The cancellation of the auction and the Asset and Auction Service Office of Malang existence of an auction obstacle have two work area which is quite wide covering the different meanings. The cancellation of the areas of Malang City, Malang Regency, Batu auction can be done with a cancellation

<sup>18</sup> Moh. Luthfi Rosyadi Muhtar, Jabatan Pelaksana Bagian Lelang KPKNL Malang , 6 Februari 2025.

request from the seller, as stipulated in Article 44 Regulation of The Minister of Finance of The Republic Of Indonesia Number 122/2023 concerning Guidelines For The Implementation of Auctions. Meanwhile, an auction obstacle is a problem that occurs in the auction process that results in obstacles to the implementation of the auction; thus, if there are obstacles to the auction, isn't necessarily possible to cancel the auction.

The high number of auction minutes is also a benchmark for the success of the auction of the execution of the object of dependency rights by the State Asset and Auction Service Office of Malang in carrying out its duties and positions as auction officials. But in the auction minutes there are also obstacles that occur during the auction process, including the following:<sup>19</sup>

#### 1. Completeness of Documents

The State Asset and Auction Service Office of Malang recorded that in 2023 there were 1,117 (one thousand one hundred and seventeen) auction documents that could be processed. Documents that are large in number are often an obstacle in the implementation of execution auctions. the State Asset and Auction Service Office of Malang, while receiving applications for auctions for the execution of objects of dependent rights, often found incomplete documents so that the conditions for the

implementation of the auction weren't met.

This is usually present from auction applicants who have never or for the first time conducted an auction at the State Asset and Auction Service Office of Malang. Isn't uncommon for a shortage of documents to occur from several auction applicants who have conducted auctions at the State Asset and Auction Service Office of Malang. In addition, the State Asset and Auction Service Office of Malang also experiences complete but imperfect documents, such as when verifying the uploaded documents, there are opaque documents, cut and even reversed in position. This condition is felt to be an obstacle for the State Asset and Auction Service Office of Malang verifies at the Pre-Auction stage. Then the limited number of verifications of 4 (four) people makes the verification process a little constrained, because with a minimal number of verifications with a large number of documents, the verify officer is extra careful in examining the documents provided.

#### 2. Not Getting Buyers

The transition of the auction mechanism from conventional to electronic should expand the meaning of auctions so as to facilitate auction marketing because public sales through the internet without

<sup>19</sup> Muhtar.



the presence of auction participants,<sup>20</sup> but in the implementation of auctions for the execution of objects of dependent rights through the State Asset and Auction Service Office of Malang isn't uncommon in difficult conditions to get buyers. The background to this condition is caused by a situation where the auction participants have no interest or lack of interest in the auction object. Many people also don't understand the law or the mechanism of auctions, so many have bad opinions about selling through auctions.<sup>21</sup>

Other factors that cause the auction object to not get a buyer include the condition of the object being auctioned, which is considered imperfect.<sup>22</sup> Then the strategic factor of the collateral object or the existence of the collateral object is one of the factors that make it difficult to get buyers, because potential buyers not only see the cheap prices offered but also see the ease of reaching around.

Under this condition, creditors are constrained in auctioning the object of dependency rights for the repayment of their receivables, so creditors under this

condition have to wait even longer for the repayment of their receivables. In addition, creditors are less careful in assessing the debtor's collateral. It's important to conduct more detailed research so that the collateral can be used optimally if the debtor is in default in the future.

### 3. Low Reserve Price of the Auctioned Object

Every auction process must be preceded by a Limit Value. Generally, the creditor as the holder of the dependent rights will determine the amount of the Limit Value to be used and the determination of the Limit Value will be the responsibility of the creditor/seller. The Limit Value contains the highest price of the auction object (market value) and the liquidation value, which is the lowest price of the market value (minimum value), then the seller can determine the Limit Value to be used based on the market value and the liquidation value.<sup>23</sup> However, the creditor/seller must have a good strategy in determining the Limit Value to be submitted to the State Asset and Auction Service Office. The seller can determine the market value as the first priority and the

<sup>20</sup> Liviana Faiza dan Aisyah Ayu Musyarafah, "Legalitas Lelang Melalui Aplikasi Lelang Yang Tidak Terdaftar Di Direktorat Jenderal Kekayaan Negara," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 6, no. 2 (20 Juni 2023): 188, <https://doi.org/10.33474/yur.v6i2.19672>.

<sup>21</sup> Khofiyah Nida dan Ashif Az Zafi, "Perspektif Islam Terhadap Jual Beli Dengan Sistem Lelang," *Al-Adl : Jurnal Hukum* 12, no. 2 (1 Juli 2020): 230, <https://doi.org/10.31602/al-adl.v12i2.2827>.

<sup>22</sup> Nisa Az Zahra dan Ummi Maskanah, "Tantangan Dan Kendala Eksekusi Lelang Harta Tak Bergerak Dalam Penyelesaian Utang," *Innovative: Journal Of Social Science Research* 5, no. 1 (24 Januari 2025): 3037, <https://doi.org/10.31004/innovative.v5i1.17509>.

<sup>23</sup> Cindy Amelia Tampubolon, "Perlindungan Hukum Penilai Publik Terhadap Tuntutan Debitor Berdasarkan Undang-Undang Perbankan Dan Ketentuan Jasa Penilai," *Kertha Semaya : Journal Ilmu Hukum* 9, no. 11 (Juli 2020): 275.

liquidation value as the last alternative, so that the proposed limit value can attract the interest of auction participants to buy the auction object, because the purpose of the auction itself isn't to seek profit but to repay the debtor's debt.

The implementation of the auction of the object of dependency is a legal act that is prone to lawsuits regarding the limit value, problems related to the limit value arise from debtors who are dissatisfied with the limit value used by the creditor. In fact, in determining the limit value of the auction object is based on the appraiser's report or the appraiser's report, but when faced with the problem of not getting a buyer from the previous auction, it results in a depreciation of the set limit value and becomes the reason why the limit value and selling price can be lower.<sup>24</sup>

The implementation of the auctions of the object of dependency is a legal act that is prone to lawsuits regarding the limit value, and problems related to the limit valuer arise from debtors who are dissatisfied with the limit value used by the creditor. In fact, in determining the limit value of the auction object is based on the appraiser's report or the appraiser's report, but when faced with the problem of not getting a buyer from the previous auction,

it results in a depreciation of the set limit value and selling price can be lower.

In the implementation of auction through the State Asset and Auction Service Office, creditors and sellers often experience obstacles, such as lawsuits from debtors, because they object to the low Limit Valuer. The State Asset and Auction Service Office, as the auction organizer, was also affected by a lawsuit from the debtor, who was a suspect in its authority.

The State Asset and Auction Service Office regrets that this happened because the auction process will not occur if the debtor obeys his previous obligation. In addition, the Limit Value submitted by the creditor/seller who is rated low by the debtor has several considerations, such as the following:

- a. Attracting prospective buyers/auction participants interest.

Generally, people have a bad view of goods sold through auctions, especially objects of dependency rights. The public has a fear that the object being auctioned is problematic, in dispute or the location of the object is not strategic.

- b. Consideration of post-auction costs for prospective buyers/auction participants. Using a Limit Value that is equivalent to the market value is very possible that it will be difficult to get buyers, because

<sup>24</sup> Lydia Fransiscani Br.Turnip, "Maraknya Gugatan Lelang: Kajian Yuridis Penetapan Nilai Limit Obyek Lelang Hak Tanggungan," *Jurnal Hukum Dan Bisnis (Selisik)* 10, no. 1 (30 Juni 2024): 185.

the auction process uses the highest bid system, so that the bidder with the highest price will be the winner of the auction, and it is certain that the highest bid made will affect other costs after the auction.

#### 4. Eviction Issues Related to the Auctioned Object

Auction emptying is still included in the auction process, because the auction is carried out in 3 (three) stages, namely: 1). Pre-Auction (filing and announcement); 2). Auction Process (bidding/buying and selling process through auction); and 3). Post-Auction (auction minutes). Even though the auction was successful, the auction winner could not control what was his right, because there was resistance from the debtor who still controlled the auction object. This is still in the responsibility of the State Asset and Auction Service Office to solve problems, obstacles not only in the Pre-Auction or auction process, but also in post-auction.

In the post-auction, the auction winner/buyer has rights and obligations. The buyer has to pay he nominal price offered at the time the auction occurs. After the buyer makes a full payment for the auction object, the buyer is entitled to the auction object that has been won. The rights of the buyer in question, include:

1. Perform the Name Reversal process on the Certificate of Rights of the auction object that has been purchased;
2. Do everything to the auction object that is won like a rights owner.

However, the buyer as the party who will have the rights mentioned above is often hampered by the uncooperativeness of the executed party/debtor, in the sense that the control of the auction object is still occupied or controlled by the debtor so that the buyer has difficulties in emptying the auction object. This condition reflects the debtor's lack of awareness of the debtor's negligence in the obligation to settle his debt within a predetermined period of time, and feels that the collateral that is guaranteed is sold by not wanting to discharge the object of the collateral.

Another thing about the occurrence of this problem is also due to the lack of communication between creditors and debtors. Lack of explanation by creditors if in the agreement the debtor makes his land and/or building a debt dependent, according to the agreement in the event that the debtor defaults or is unable to pay his debt obligations, then the creditor can sell the collateral object through the State Asset and Auction Service Office without the need for approval from the debtor (debtor) and lack of affirmation from the debtor to immediately leave or vacate the collateral object His.

The auction winner should be able to control the auction object because it has been proven that it has been legally purchased through the official auction institution, namely the State Asset and Auction Service Office of Malang. However, in the above problems, buyers often burden this problem on creditors and the State Asset and Auction Service Office as the party organizing the auction. Buyers often think that this problem is the negligence of creditors and the State Asset and Auction Service Office. The lack of awareness and cooperation of the debtor causes the emptying process to be hampered, so that it also has an impact on the inhibition of the control of the auction object by the auction winner/buyer, this harms the provisions of Article 6 of the Law on Mortgage Rights which is implied in the concept of execution parate that the creditor's right can sell directly if the debtor defaults.<sup>25</sup>

##### 5. Pending Legal Action (Filing of Lawsuit)

Although the auction execution by the State Asset and Auction Service Office of Malang complies with the applicable procedures as stipulated in Minister of

Finance Regulation No. 122/2023 concerning Guidelines for Auction Implementation, the possibility of a lawsuit being filed cannot be ruled out.<sup>26</sup> In principle, not all lawsuits filed prior to the execution of an auction have the legal effect of nullifying the auction. However, the mere existence of such a lawsuit may hinder the auction process, which runs contrary to the concept stipulated in Article 6 of the Law on Mortgage Rights and the principle of parate executie, which permits execution without a court ruling.<sup>27</sup> The execution auction of a mortgage object may only be annulled upon the request of the seller, or pursuant to a written court order or judgment issued by a competent judicial authority. In addition, the auction must be cancelled if the judgment debtor ultimately settles their debt in full.

The lawsuits in the court cases obtained by the author from the Case Tracking Information System generally serve only to delay the auction process and don't annul the ongoing auction process at the State Asset and Auction Service Office of Malang. Specifically, Article 6 of the Law on Mortgage Rights Law grants

<sup>25</sup> Miki Yanti P dkk., "Perbuatan Melawan Hukum Terhadap Parate Eksekusi Yang Dilakukan Oleh Perusahaan Pembiayaan," *Binamulia Hukum* 13, no. 1 (18 Juli 2024): 85, <https://doi.org/10.37893/jbh.v13i1.696>.

<sup>26</sup> Umul Khair, Ana Ramadhona, dan Edi Rosman, "Implementation Of Collection Of Nad Loans Through Auction On Liability Rights As Guarantee In PT. BPD Sumatera Barat," *JCH (Jurnal Cendekia Hukum)* 7, no. 2 (31 Maret 2022): 301, <https://doi.org/10.33760/jch.v7i2.525>.

<sup>27</sup> Nadila Rahma Dewi dan Leli Joko Suryono, "Pelaksanaan Parate Eksekusi Terhadap Akad Musyarakah Mutanaqisah Di Bank Syariah Indonesia," *Media of Law and Sharia* 5, no. 2 (31 Maret 2024): 166, <https://doi.org/10.18196/mls.v5i2.94>.

creditors the authority to auction the mortgage object, provided that the debtor is in default.

The following are several cases obtained by the author through the Case Tracking Information System:

1. The District Court of Malang, with case number 92/Pdt.G/2023/PN Mlg, The State Asset and Auction Service Office of Malang is the defendant, and the plaintiffs are the heirs of the late Siti Zubaidah, who are dissatisfied with the auction process carried out by the State Asset and Auction Service Office of Malang. Therefore, through their legal representative, the plaintiffs requested that the District Court of Malang to annul the auction process conducted by the State Asset and Auction Service Office of Malang;<sup>28</sup>
2. The District Court of Malang, with case number 55/Pdt.G/2024/PN Mlg,<sup>29</sup> the State Asset and Auction Service Office of Malang as the defendant, and Rangga Aditya Putra as the plaintiff, who seeks to suspend the execution of the auction of the Mortgage Rights in the name of Rika Kusumadewi;

3. The State Administrative Court of Surabaya, with case number 98/G/2019/PTUN.SBY,<sup>30</sup> also serves as the defendant, while Wiedyawati is the plaintiff, who is dissatisfied with the auction carried out by the State Asset and Auction Service Office of Malang. This case even proceeded to the appeal stage, where the plaintiff argued.<sup>31</sup>

The lawsuits filed are generally similar, with the plaintiffs seeking to annul or suspend the execution of the auction of the mortgage object. However, in the event of a lawsuit, the auction process can only be temporarily suspended and can't be annulled until a final and binding court decision has been reached.

#### **Efforts Undertaken by the State Asset and Auction Service Office of Malang to Overcome Obstacles in the Execution of Mortgage Object Auctions**

##### **1. Completeness of Documents**

In addressing the obstacles mentioned above, there are efforts that can be undertaken to resolve these issues. Resolution of document completeness issues can be addressed by having the State Asset and Auction Service Office of inform the applicant to correct or complete

<sup>28</sup> Pengadilan Negeri Malang, "SIPP," diakses 5 Februari 2025, [https://sipp.pn-malang.go.id/index.php/detil\\_perkara](https://sipp.pn-malang.go.id/index.php/detil_perkara).

<sup>29</sup> Pengadilan Negeri Malang.

<sup>30</sup> Pengadilan Tata Usaha Negara, "SIPP," diakses 5 Februari 2025, [https://sipp.ptun-surabaya.go.id/index.php/detil\\_perkara](https://sipp.ptun-surabaya.go.id/index.php/detil_perkara).

<sup>31</sup> Muhtar, Jabatan Pelaksana Bagian Lelang KPKNL Malang.

documents that are incomplete or not in compliance. Applicants are encouraged to monitor the status of documents uploaded on the Indonesian Auction Portal. Applicants are also expected to take the initiative to maintain communication with the verification officers if there is anything unclear, especially for those submitting an auction request to the State Asset and Auction Service Office of Malang for the first time.

## 2. No Bidders/Potential Buyers

To address the issue of not securing a buyer for the auction of the mortgage object, the seller may request a re-auction. There is no specific rule on how many times the seller may request a re-auction, meaning that the seller can continue to request a re-auction until a buyer is found. However, it should be noted that with each subsequent re-auction, the reserve price decreases, which is intended to attract the interest of auction participants to purchase the auctioned object.

The seller may request a re-auction from the State Asset and Auction Service Office of by submitting an auction request. However, there is a slight difference in the procedure for announcing a re-auction. In the case of a re-auction, only 1 (one) announcement is made, which must be published in a daily newspaper at least 7 (seven) days prior to the auction, as stipulated in Article 67, paragraph (1)

Regulation of The Minister of Finance of The Republic of Indonesia Number 122/2023 concerning Guidelines For The Implementation Of Auctions, which states that:

“The Re-auction Announcement for a Mandatory Auction, specifically for the execution auction of immovable property or immovable property sold together with movable property, shall be carried out:

- a. Once (1) through a daily newspaper, at least 7 (seven) calendar days before the auction is held, with the re-auction taking place no later than 60 (sixty) calendar days from the last auction; or
- b. In accordance with the provisions as referred to in Article 63, paragraph (1), if the re-auction is held more than 60 (sixty) calendar days after the last auction.”

## 3. Low Reserve Price of the Auction Object

Efforts to resolve the debtor's lawsuit regarding the low reserve price can be undertaken by proving that the determination of the reserve price used was based on considerations that don't violate legal provisions or norms. The reserve price is determined by the price range between the highest and the lowest market value (liquidation value).

The seller may also present a valuation report from an appraiser who has been authorized by the Minister of Finance, with the qualifications and experience in conducting appraisals to determine the economic value of the mortgage object to be auctioned. In addition, another approach

that can be taken is through an agreement between the creditor and the debtor to determine the reserve price.

#### 4. Eviction Issues Related to the Auctioned Object

Obstacles in vacating the auctioned object can be addressed by the auction winner requesting the issuance of the *Grosse Risalah Lelang* (Auction Record). The auction winner receives the *Risalah Lelang*, which contains the minutes of the auction proceedings made by the auction officer, and holds full evidentiary power. Even if the auction is conducted electronically, the *Risalah Lelang* is still categorized as an authentic deed with permanent legal force and serves as a valid piece of evidence.<sup>32</sup>

*Grosse Risalah Lelang* holds executory power equivalent to that of a court decision with permanent legal force. The *Grosse Risalah Lelang* is then submitted by the buyer to the District Court for assistance in vacating the property. The process may begin with a request made by the buyer, as the new owner of the rights, to the head of the local district court. Based on this request, the head of the District Court will proceed by issuing a summons to the

execution respondent, urging them to comply with the decision voluntarily. 'Aanmaning' refers to the action taken by the head of the court in the form of a warning to the executed party, encouraging them to comply with the decision voluntarily.<sup>33</sup> If the executed party disregards the warning and refuses to vacate or relinquish the auctioned property, the head of the local District Court will issue an execution order, instructing the bailiff to carry out the eviction execution against the executed party.<sup>34</sup> This execution may involve the police if necessary, and will be attended by the court clerk, interested parties, Military Police (MP) if the executed party is a member of the Indonesian National Army, and the Land Office officials if required. After the eviction has been carried out, the bailiff will hand over the collateral object to the auction winner.

The costs for the eviction process are difficult to predict, and the process from the eviction request to the actual eviction execution lacks a definite timeline and often takes a prolonged period, resulting in uncertainty for the buyer in obtaining his/her rights. The issues or consequences

<sup>32</sup> I. Nengah Gowinda Wijaya, "Sanctions for Not Being Read out by the Auction Office," *Jurnal Cakrawala Hukum* 13, no. 2 (1 Agustus 2022): 173, <https://doi.org/10.26905/ijch.v13i2.5896>.

<sup>33</sup> Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2016), 331.

<sup>34</sup> Yudhi Putra Eka Yuri dan Heri Qomarudin, "Peranan Fiat Ekseksi Pengadilan Dalam Upaya Eksekusi Hak Tanggungan Berdasarkan Tinjauan Teoritis Dan Praktis," *J-CEKI: Jurnal Cendekia Ilmiah* 3, no. 6 (31 Oktober 2024): 8458, <https://doi.org/10.56799/jceki.v3i6.5971>.



that may arise in the future include the following:

- a. It reduces public interest in participating in the auction of land and/or buildings that are still occupied by the previous residents, especially if a lawsuit is filed;
- b. Gradually, the public will begin to view purchasing land and/or buildings through other means aside from the Indonesia Auction Portal;
- c. This increases the potential for the auction to remain unsold.

Furthermore, the resolution of obstacles vacating the auctioned object can be pursued through a non-litigation process (out-of-court settlement). The non-litigation route involves mediation and negotiation to reach an agreement between the buyer and the executed party, with the aim of restoring the rights of the parties involved. The creditor is also expected to establish communication and provide education on the legal actions taken by the parties, in order to minimize potential future risks.

The protection for the auction winner has been proactively ensured by the State Asset and Auction Service Office, as prior to the auction process, the auction organizer has informed and communicated to the auction participants regarding the documents,

condition, and circumstances of the object to be auctioned in its present state, along with the consequences and risks that may arise in the future. Repressive protection refers to efforts to seek legal protection through the judiciary, given that there are currently no regulations that specifically and clearly govern legal protection for the winner of an execution auction of a collateral object.<sup>35</sup> In contrast, another form of protection for the auction winner is also legal protection regarding the auction process conducted by the State Asset and Auction Service Office of Malang, which ensures the accuracy of the information provided from the beginning of the auction process until its conclusion.<sup>36</sup>

#### 5. Pending Legal Action (Filing of Lawsuit)

To address the obstacles caused by a lawsuit claiming harm to one's rights due to legal actions taken by the State Asset and Auction Service Office of Malang, the plaintiff may file an objection lawsuit with the local District Court, and the court is prohibited from refusing to adjudicate or obstructing someone from seeking justice. While the lawsuit is being processed, the execution auction of the collateral object will be temporarily suspended.

The plaintiff may then submit a request to the court for the imposition of a precautionary attachment on the contested auction object. A

<sup>35</sup> Muhtar, Jabatan Pelaksana Bagian Lelang KPKNL Malang.

<sup>36</sup> I. Nyoman Semadiartha, I. Nyoman Sujana, dan I. Ketut Widia, "The Execution Rights Of Dependents Online," *Jurnal Hukum Prasada* 7, no. 1 (7 April 2020): 10, <https://doi.org/10.22225/jhp.7.1.2020.8-13>.



precautionary attachment is a legal measure granted to the plaintiff to place the disputed object under attachment to safeguard and ensure that the lawsuit filed is not illusory or void. The purpose of the precautionary attachment is to prevent the disputed object, which the defendant owns, from being transferred to another party.

However, if the precautionary attachment requested by the plaintiff is granted, then the State Asset and Auction Service Office and the creditor are obligated to follow the existing process, which is prone to causing losses as it affects the creditor who is hindered in the repayment of their debt. The creditor becomes the party at a disadvantage because he/she has the right to collect the debt due to the debtor's default. Furthermore, with the imposition of precautionary attachment, the process of debt settlement through the auction, which is the creditor's right, will be delayed.

In case number 92/Pdt.G/2023/PN Mlg, case number 55/Pdt.G/2024/PN Mlg, and case number 98/G/2019/PTUN.SBY, all three are lawsuits filed by the plaintiffs who felt their rights were harmed by the auction process carried out by the State Asset and Auction Service Office of Malang. However, in all three cases, none of the lawsuits were won by the plaintiffs. The ruling in case number 92/Pdt.G/2023/PN Mlg stated, the District Court of Malang doesn't have jurisdiction to hear this case. The ruling in case number 55/Pdt.G/2024/PN Mlg stated, the plaintiffs

request for the withdrawal of Case No. 55/Pdt.G/2024/PN.Mlg was granted. Similarly, the verdict in case number 55/Pdt.G/2024/PN Mlg stated, "The request to revoke case No. 55/Pdt.G/2024/PN.Mlg is granted." The decision of the Surabaya State Administrative Court with case number 98/G/2019/PTUN. SBY stated that the lawsuit was not accepted, and at the appeal level, the panel of judges maintained the previous decision.

The three rulings above proves that all actions taken by the creditor and the State Asset and Auction Service Office of Malang, are legal actions carried out with the correct auction procedures and in accordance with applicable laws and regulations. Therefore, any form of opposition from the executed party can't invalidate the ongoing auction process. The debtor or the executed party may file an opposition through a lawsuit merely to delay and obstruct the auction process. This can be simply observed from the consideration that there are risks for the debtor who fails to fulfill their obligations when the property (in this case, the debtor's land rights) is used as collateral and burdened with a mortgage in a loan agreement with the creditor.

The State Asset and Auction Service Office of Malang, as the auction organizer, exercises its authority only in relation to applicable regulations when dealing with lawsuits. The State Assets and Auction Service Office of Malang uses the Regulation

of the Minister of Finance of the Republic of Indonesia Number 122 of 2017 concerning Guidelines for the Implementation of Auctions, so that the authority of the State Assets and Auction Service Office of Malang in carrying out auctions is guaranteed by the Regulation. The State Assets and Auction Service Office of Malang,<sup>37</sup> in its authority, acts solely as the party entrusted with the execution of the auction, while the proceeds from the auction are handed over to the creditor up to the amount of the debt, and the remaining balance is given or returned to the debtor.

The theory of evidence can serve as the underlying reasoning in resolving issues arising from a lawsuit. The theory of evidence refers to the process in which evidence is used, presented, and maintained in accordance with the applicable legal proceedings. In this context, evidence serves as the fundamental process through which the judge to examine the case in order to provide certainty regarding the events presented. Therefore, in this matter, evidence can guide the truth and substantiate the facts of the case.<sup>38</sup>

## CONCLUSION

The sale of collateral objects through the The State Asset and Auction Service Office Malang doesn't always proceed smoothly. Several obstacles have been encountered by

the The State Asset and Auction Service Office Malang in conducting the foreclosure auction of collateral objects, including incomplete documentation, failure to attract buyers, the determination of the collateral object's Limit Value being considered too low, difficulties in vacating the auctioned object, and the existence of lawsuits.

The State Asset and Auction Service Office of Malang efforts in overcoming obstacles in the execution auction of mortgage objects include: Seeking Information and Building Communication, Conducting a Repeat Auction, Agreement on the Reserve Price and Appraisal by an Appraiser, Grosse Risalah Lelang, Aanmaning actions, Non-litigation settlement, and delays in the auction process due to lawsuits such as in case number 92/Pdt.G/2023/PN Mlg, case number 55/Pdt.G/2024/PN Mlg, and case number 98/G/2019/PTUN.SBY. In the decisions of these cases, not a single plaintiff was successful, meaning that the State Asset and Auction Service Office of Malang had carried out the auction procedures and process correctly and in accordance with the applicable laws and regulations.

## RECOMMENDATION

It's advisable for the debtor to be more cooperative in the execution auction of the mortgage object, and it's hoped that the

<sup>37</sup> Muhtar, Jabatan Pelaksana Bagian Lelang KPKNL Malang.

<sup>38</sup> Lydia Fransiscani Br Turnip, "Pelaksanaan Undang-Undang Nomor 19 Tahun 2016 Terhadap Keabsahan Penerbitan Risalah Lelang Elektronik Platform E-Marketplace," *Jurnal Interpretasi Hukum* 5, no. 1 (3 Januari 2024): 735, <https://doi.org/10.22225/juinhum.5.1.8378.733-741>.

principle of good faith will be applied by the debtor. The debtor should also make payments as agreed upon with the creditor, so that their collateral is not sold through an auction if the debtor defaults.

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