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## Legal Uncertainty of Auction Winners Regarding The Non-Execution of Eviction Due To Lawsuits

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**Abstract:** This study examines the legal uncertainty faced by winners of mortgage execution auctions in obtaining physical possession of auction objects due to lawsuits. The problem arises from the inconsistency between Article 207 paragraph (3) of the HIR, which states that opposition lawsuits do not suspend execution, and the 2019 District Court Execution Guidebook, which permits temporary suspension. Divergent interpretations at the district court level create non-uniform application of law that is detrimental to good-faith auction winners. This research employs a normative juridical method with statute, conceptual, and comparative approaches. The findings demonstrate: first, lawsuits filed by debtors or third parties who cannot prove legitimate ownership rights should not be able to suspend eviction execution; second, auction winners who have obtained the Auction Minutes (Risalah Lelang) as an authentic deed are entitled to full legal protection, both preventive and repressive, including the right to compensation if execution is unlawfully delayed. This study recommends the need for firm and synchronized regulations to guarantee legal certainty for auction winners.

**Keywords:** Auction; Eviction Execution; Legal Certainty; Legal Protection; Mortgage Rights..

### INTRODUCTION

The legal relationship between creditors and debtors generally arises from a credit agreement that reciprocally regulates the rights and obligations of each party. In the construction of a banking credit agreement, the creditor is obliged to deliver the agreed-upon funds, while the debtor is obliged to repay the loan along with interest within the agreed-upon period. To mitigate the risk of default, banks typically require the delivery of collateral by the debtor as a form of guarantee for debt repayment in the event of breach of contract.

Pursuant to Article 1131 of the Indonesian Civil Code (KUHPerduta), all of a debtor's assets may serve as collateral for debt repayment. In banking practice, mortgage rights over land and/or buildings constitute the most dominant collateral instrument, given that land is relatively easy to market, has high value, and tends to appreciate. Law Number 4 of 1996

concerning Mortgage Rights over Land and Objects Related to Land (hereinafter referred to as the UUHT) provides legal certainty regarding the procedures for the imposition, transfer, and execution of mortgage rights.

Article 6 in conjunction with Article 20 paragraph (1) of the UUHT grants the creditor as the first mortgage holder the right to sell the mortgage object through *parate executie* via public auction in the event of debtor default. This mechanism enables the creditor to obtain repayment of receivables without having to undergo lengthy and costly litigation. The technical implementation of the auction is regulated in Minister of Finance Regulation (PMK) Number 122 of 2023 concerning Auction Implementation Guidelines, conducted through the State Assets and Auction Service Office (KPKNL).

An auction winner who has fully fulfilled their obligations legally obtains the status of legitimate owner, evidenced by the Auction Minutes (*Risalah Lelang*) as an authentic deed. Pursuant to Government Regulation Number 24 of 1997 concerning Land Registration, the auction winner is entitled to apply for the transfer of the certificate's name to the National Land Agency (BPN) in order to obtain administrative certainty of rights. Supreme Court Circular Letter (SEMA) Number 4 of 2014 also affirms the protection for auction winners to obtain physical possession of the awarded object.

Nevertheless, the reality of legal practice shows that auction winners are often unable to fully enjoy their ownership rights due to obstruction by opposition or lawsuits from debtors or third parties. This condition forces auction winners to undergo eviction execution proceedings through the district court, which in practice gives rise to legal uncertainty.

The main problem that emerges is the normative inconsistency between Article 207 paragraph (3) of the HIR—which expressly states that opposition lawsuits cannot prevent or delay the implementation of execution—and the 2019 District Court Execution Guidebook, Point 22 number 3 letter a, which actually opens the possibility of temporary suspension of execution due to opposition by parties or third parties. The phrase "parties and/or third parties" in the guidebook creates ambiguity in interpretation, leading some courts to interpret that even a lawsuit from the debtor itself can suspend execution.

A concrete illustration of this problem is evident in the comparison of two cases in East Java. In Case Number 89/Pdt.BTH/2024/PN Sby at the Surabaya District Court, despite the existence of an opposition lawsuit, the eviction execution was still carried out after the opposition was declared inadmissible (NO). Conversely, in Case Number 24/Pdt.Bth/2025/PN.Gsk at the Gresik District Court, the existence of a new lawsuit filed by the debtor—even though the previous opposition had been declared inadmissible—was used as the basis for not carrying out the eviction execution. This disparity in legal interpretation and application creates real legal uncertainty for good-faith auction winners.

Based on the above description, this research formulates two main problems: first, whether a lawsuit filed by the debtor or a third party can suspend the execution of an object that has been sold through auction; and second, what form of legal protection is available for auction winners who cannot execute the eviction of the auction object because it has been suspended by the court due to a lawsuit.

## **METHOD**

This research employs the type of normative juridical legal research, which aims to find coherence truth, namely to test the conformity between applicable legal rules and legal norms, as well as to analyze the synchronization between norms within the existing legal system. Normative legal research is conducted through the examination of primary, secondary, and tertiary legal materials.

This research uses three approaches simultaneously. First, the statute approach is conducted by examining all relevant regulations, including the Civil Code, HIR, RBg, Rv,

UUHT, Government Regulation Number 24 of 1997, PMK Number 122 of 2023, and SEMA Number 4 of 2014. Second, the conceptual approach is used to examine the views and doctrines of legal science that have developed in relation to legal certainty, execution, auctions, lawsuits, and legal protection. Third, the comparative approach is applied to compare the application of law in two concrete cases that have similar characteristics but produce different outputs.

Primary legal materials include binding statutory regulations. Secondary legal materials include law books, scientific journals, and relevant prior research. Tertiary legal materials consist of legal dictionaries, language dictionaries, and legal encyclopedias. The collection of legal materials is carried out through library research, while analysis uses an analytical descriptive method that systematically examines the interconnections between norms.

## RESULTS AND DISCUSSION

### Conceptual Framework: Legal Certainty, Execution, Auction, and Legal Protection

Legal certainty is one of the main pillars of the rule of law (*rechtsstaat*). Jan Michiel Otto formulates five prerequisites for realistic legal certainty: (a) the availability of clear, consistent, and easily accessible legal rules; (b) consistent application of rules by government institutions; (c) compliance of the majority of citizens with the rules; (d) judicial independence in applying the law consistently; and (e) court decisions that can be concretely implemented. Drawing from Jan Michiel Otto's perspective, legal certainty does not stop at the normative level alone but must be realized in its practical application.

In the context of this research, execution is understood as the forced implementation of a judge's decision that has obtained permanent legal force (*in kracht van gewijsde*) against the losing party in a case who refuses to voluntarily comply. Article 196 of the HIR / Article 208 of the RBg regulates the execution mechanism in which the chairperson of the district court issues a warning (*aanmaning*) to the losing party within a maximum period of eight days. Real execution—particularly the eviction execution of immovable property—is regulated in Article 1033 of the Rv, Article 200 paragraph (11) of the HIR, and Article 218 paragraph (2) of the RBg.

Specifically regarding the execution of mortgage rights, the UUHT introduces the *parate executie* mechanism, which allows the creditor to sell the collateral object without requiring fiat from the chairperson of the court, without being bound by ordinary civil procedure law, and without involving a bailiff. Article 6 of the UUHT explicitly grants the first mortgage holder the right to sell the mortgage object on its own authority through public auction in the event of debtor default. This mechanism is reinforced by Article 20 paragraph (1) letter a of the UUHT, which establishes *parate executie* as one of the methods for executing mortgage rights.

An auction, as defined in PMK Number 122 of 2023, is the sale of goods open to the public with written and/or oral bids that increase or decrease to reach the highest price, preceded by an auction announcement. The execution auction of mortgage rights falls within the category of execution auctions held by the KPKNL based on the *parate executie* concept of Article 6 of the UUHT. The auction winner who pays in full obtains the Auction Minutes as an authentic deed that has perfect evidentiary force and serves as the basis for registering the transfer of rights at the BPN.

Legal protection, according to Satjipto Rahardjo, is an effort to protect a person's interests by allocating power to that person to act in furtherance of those interests. In the context of auction winners, legal protection encompasses a preventive dimension—in the form of rules that prevent violations of the auction winner's rights—and a repressive dimension—in the form of legal mechanisms to restore rights that have been violated.

### ***Analysis of the First Question: Can a Lawsuit Suspend the Eviction Execution of an Auction Object?***

To answer this question, it is necessary to examine two sources of norms that substantially conflict with each other. Article 207 paragraph (3) of the HIR expressly states: "opposition cannot prevent or delay the execution of a decision, unless the Chairperson has issued an order for it to be postponed pending a Court decision." A similar provision is found in Article 227 of the RBg. This norm contains the basic principle that the filing of opposition does not automatically suspend execution.

Jurisprudence and legal doctrine clarify that opposition (*verzet*) can only suspend execution if the opposing party can prove their ownership rights over the disputed object lawfully and convincingly. That is, the substantive requirement that must be fulfilled is the proof of authentic ownership rights, not merely the filing of a lawsuit. This is consistent with the view of M. Yahya Harahap, who states that execution can only be suspended if there is strong evidence showing that the opposing party has legitimate ownership rights over the object to be executed.

On the other hand, the 2019 District Court Execution Guidebook, Point 22 number 3 letter a, states: "Suspension of execution is temporary in nature, limited to a certain period or certain conditions, for example, suspension on grounds of opposition by a party or third party, in which case the period extends until the opposition case is decided at the first instance level." This formulation contains the phrase "party or third party" which is open to multiple interpretations. If "party" is interpreted to include the debtor itself, then any lawsuit from the debtor has the potential to suspend execution, even though the debtor clearly has no ownership rights over the object that has been lawfully auctioned.

This normative problem is exacerbated by the fact that the Execution Guidebook is merely a technical implementation guideline, which in the hierarchy of legislation is below the HIR and the UUHT. Based on the principle of *lex superior derogat legi inferiori*, the provisions of the HIR, which constitute legislation, should prevail over technical guidelines issued by the Supreme Court. However, in practice, the Guidebook is often used as the basis by district courts to suspend execution, resulting in an inversion of the norm hierarchy that undermines legal certainty.

Furthermore, it is necessary to conceptually distinguish between three subjects who can file opposition or lawsuits in the context of auction execution: first, the debtor (the executed party) itself; second, third parties who have ownership rights over the executed object (*derden verzet*); and third, third parties who do not have ownership rights but file lawsuits on other grounds. For the first and third groups, lawsuits should not be able to suspend execution because they are not based on legitimate ownership rights. Only the second group—legitimate third-party owners—has juridical standing to file opposition that may potentially suspend execution.

Referring to SEMA Number 4 of 2014, good-faith auction winners must be protected and are entitled to obtain possession of the auction object both physically and juridically. The Auction Minutes as an authentic deed have provided certainty of rights to the auction winner, so any disturbance to those rights must be based on very strong juridical grounds, not merely the filing of a lawsuit unsupported by adequate proof of ownership.

A comparative study of two concrete cases reinforces this argument. In Case Number 89/Pdt.BTH/2024/PN Sby, the court continued the execution after the opposition was declared inadmissible, reflecting the application of the principle that an inadmissibility ruling does not prevent the continuation of execution. Conversely, in Case Number 24/Pdt.Bth/2025/PN.Gsk, the court used a new lawsuit as grounds for suspension despite the previous opposition having been declared inadmissible. This disparity reflects the absence of a uniform interpretive standard and creates systemic legal uncertainty.

Based on the above analysis, it can be concluded that, normatively, lawsuits from defaulting debtors or from third parties who cannot prove their legitimate ownership rights should not suspend the implementation of eviction execution. Suspension of execution can only be justified if: (a) the chairperson of the court actively issues a suspension determination based on highly compelling reasons and strong evidence; (b) the opposing party/plaintiff can demonstrate authentic and prima facie evidence of ownership over the disputed object; and (c) the suspension is temporary and limited until the case is decided at the first instance level.

### **Analysis of the Second Question: Legal Protection for Auction Winners Hindered in Eviction Execution**

Legal protection for auction winners operates in two main dimensions: the preventive dimension, which functions to prevent violations of rights before they occur, and the repressive dimension, which functions to restore rights after a violation has occurred.

From the perspective of preventive legal protection, several mechanisms are available within the Indonesian legal system. The UUHT, through Articles 6 and 20, provides strong legitimacy for the creditor as the mortgage holder to carry out *parate executie*. PMK Number 122 of 2023 regulates the technical procedures of auctions aimed at ensuring the validity and orderly conduct of auctions. SEMA Number 4 of 2014 explicitly protects good-faith auction winners. The Auction Minutes as an authentic deed provide perfect evidentiary certainty regarding the transfer of ownership rights.

However, the existing preventive protection has not been sufficiently effective in practice because it is not accompanied by firm and uniform enforcement mechanisms. The absence of clear standards regarding when and under what conditions execution may be suspended—particularly the strict limitation on lawsuits unsupported by proof of ownership—causes the preventive rights of auction winners to be easily eliminated by opportunistic lawsuits.

From the perspective of repressive legal protection, auction winners hindered in eviction execution due to legally unfounded suspension have several legal recourses available. First, the auction winner may submit a request to the chairperson of the district court to revoke the suspension determination if the suspension was carried out without legal basis. Second, if it is proven that the suspension was caused by a lawsuit filed in bad faith (bad faith litigation) by the debtor solely to hinder execution, the auction winner may file a claim for damages based on Article 1365 of the Civil Code regarding unlawful acts. Third, the auction winner may submit a request for supervision of the execution to the high court or the Supreme Court through the judicial supervision mechanism.

The legal consequences of the phrase "parties and/or third parties" in the 2019 Execution Guidebook need to be interpreted systematically and restrictively. Referring to the doctrine of systematic interpretation, the phrase "party" in the context of execution opposition should not be interpreted as including the debtor itself, but only parties who have an independent legal relationship with the object of execution and can prove their ownership rights. An extensive interpretation that includes the debtor as a "party" capable of suspending execution would contradict the spirit of the UUHT and the basic principle of *parate executie*, which is precisely intended to avoid the lengthy litigation process.

Furthermore, it should be emphasized that the legal uncertainty experienced by auction winners not only causes material losses in the form of an inability to utilize the assets purchased at significant prices, but also creates negative systemic effects on the overall execution auction ecosystem. If legal certainty for auction winners cannot be guaranteed, investor interest in participating in execution auctions will decline, which in turn will hinder the effectiveness of bad debt resolution mechanisms through auctions as a banking law instrument.

From a comparative law perspective, civil law countries with mature legal systems such as the Netherlands and Germany have developed mechanisms that strictly separate the right to

file an ownership claim from the right to suspend execution. The principle adopted is that the filing of a lawsuit does not automatically suspend execution; suspension is only possible if the opposing party can demonstrate prima facie evidence of ownership and provide security for costs in case the opposition proves to be unfounded. This model is worth considering as a reference in reforming the auction execution legal system in Indonesia.

### **The Urgency of Regulatory Reform for Legal Certainty of Auction Winners**

Departing from the findings of the analysis above, this research identifies several regulatory gaps that require immediate reform. First, the 2019 District Court Execution Guidebook needs to be revised to: (a) firmly define what is meant by "parties and/or third parties" whose lawsuits or oppositions can have implications for the suspension of execution; (b) affirm that lawsuits from defaulting debtors cannot suspend the eviction execution of objects that have been lawfully auctioned; and (c) require prima facie evidence of ownership as a prerequisite for suspension.

Second, the issuance of a Supreme Court Regulation (PERMA) is needed that specifically regulates the protection of good-faith auction winners and the standard procedures of courts in dealing with efforts to obstruct auction execution. This PERMA needs to contain: provisions on the maximum time limit for suspension of execution; the obligation of judges to assess the seriousness of the grounds for suspension; sanctions for parties filing lawsuits in bad faith solely to obstruct execution; and a compensation mechanism for auction winners harmed by legally unfounded suspensions.

Third, referring to Jan Michiel Otto's theory of legal certainty, the fulfillment of legal certainty requires not only the clarity of norms (legal substance), but also the consistency of application by law enforcement institutions (legal structure) and the compliance of the parties (legal culture). Therefore, in addition to regulatory reform, it is also necessary to enhance the capacity of judges in understanding auction law and mortgage execution, as well as to provide adequate socialization to auction winners regarding the legal rights they possess.

### **CONCLUSION**

Based on the results of the analysis described above, this research produces two main conclusions. First, lawsuits filed by defaulting debtors or by third parties who cannot prove their legitimate ownership rights should not be able to suspend the implementation of eviction execution over auction objects. The provision of Article 207 paragraph (3) of the HIR, which affirms the principle of non-suspension of execution due to opposition lawsuits, must serve as the primary reference. The 2019 District Court Execution Guidebook, which contains the ambiguous phrase regarding "parties and/or third parties," needs to be interpreted restrictively and systematically so as not to contradict the higher-ranking norms of the HIR. The disparity in legal application that occurred between the Surabaya District Court and the Gresik District Court reflects the absence of a uniform interpretive standard and creates systemic legal uncertainty.

Second, good-faith auction winners who have obtained the Auction Minutes as an authentic deed are entitled to comprehensive legal protection, encompassing preventive protection in the form of clear and consistent norms regarding execution rights, as well as repressive protection in the form of mechanisms for revoking unfounded execution suspensions, the right to file unlawful act claims, and the right to compensation for damages. Without effective legal protection, auction winners cannot fully enjoy their rights, which has implications for weakening public confidence in execution auction institutions as instruments for resolving bad debts.

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