

The Role of Class Ii Auction Officials in the Implementation of Movable Goods Auctions Without Fiduciary Certificates

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Abstract

Article 29 Paragraph (1) of Law No. 42 of 1999 concerning fiduciary guarantees has provided regulations regarding the implementation of execution on fiduciary guarantee objects. This research was conducted to find out and analyze the background of the creditor party carrying out execution on movable collateral (motor vehicles) that have been registered for fiduciary guarantee and the legal consequences of implementing execution on movable collateral that is not based on a fiduciary certificate.

The location of this research was conducted at two Private Auction Offices in Medan City, namely Pacific and Astria. The research method used is an empirical legal approach method, where the research specification is descriptive analysis. The data sources used are primary data and secondary data, where primary data is obtained based on data and structured interviews from the two Private Auction Offices in Medan City, while secondary data is obtained based on bills, books, and previous research results. The data analysis method used in this study is qualitative analysis.

The results of the study show that in the case of a defaulting debtor, the creditor (lessor) can take the collateral by using a fiduciary certificate and carry out direct confiscation using the Parate Execution Institution, then sell the collateral execution goods by selling them through an auction by a Class II Auction Official.

1. Introduction

In the provisions of Article 1 A1 Regulation of the Minister of Finance (PMK) of the Republic of Indonesia Number. 27/PMK.06/2016 concerning amendments to Number. 106/PMK.06/2013 concerning amendments to PMK Number. 93/PMK.06/2010 last amended again by PMK Number. 213/PMK.06/2020 concerning Auction Implementation Guidelines which states, Auction is the sale of goods that are open to the public with written and/or oral price offers that increase or decrease to achieve the highest price preceded by an auction announcement.

Definition of Auction based on Article 1 Number 1 of the Regulation of the Minister of Finance Number: 27/PMK.06/2016 concerning Auction Implementation Guidelines is that the types of auction consist of: execution auction, mandatory non-execution auction, and voluntary non-execution auction.

Auction House is an Indonesian Legal Entity in the form of a Limited Liability Company (PT) specifically established to conduct business in the auction sector. According to Article 1 Paragraph 4 of the Regulation of the Minister of Finance of the Republic of Indonesia Number. 176/PMK.06/2010 dated September 30, 2010, it states that the Auction Official who validates the auction transaction is an Official appointed by the Minister of Finance of the Republic of Indonesia, namely: Class I Auction Official and Class II Auction Official.

Fiduciary or in full "Fiduciaire Eigendomoverdracht" or often also called Trust Ownership Guarantee is a form of guarantee for movable property, where the ownership rights are handed over to the creditor while the property remains under the control of the debtor as the owner of the property. In this case, trust is the main requirement in granting credit, where collateral in the form of objects is actually only an additional guarantee to provide greater responsibility for the debtor to pay off his debt.

In Article 1 Paragraph (2) Number 42 of 1999 concerning JFiduciary

collateral is a guarantee right over movable objects, both tangible and intangible, and immovable objects, especially buildings, which cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights, which remain in the control of the Fiduciary Provider, as collateral for the payment of certain debts, which gives the Fiduciary Recipient a priority position over other creditors.

Article 1 Number 4 of Law Number 42 of 1999 states that what is meant by objects that are the objects of fiduciary guarantees are objects that can be owned and transferred, whether tangible or intangible, registered or unregistered, movable or immovable, which cannot be burdened with collateral or mortgage.

Fiduciary Institution is a solution in providing guarantees especially for movable goods. The process or stages of fiduciary burden are as follows :

- a. Make a principal agreement in the form of a credit agreement.
- b. The encumbrance of an object with a fiduciary guarantee is marked by the creation of a Fiduciary Guarantee Deed (AJF), which contains the day, date, time of creation, identity of the parties, data on the main fiduciary agreement, description of the fiduciary object, guarantee value and value of the fiduciary guarantee object.
- c. Registration of the Fiduciary Guarantee Deed (AJF) at the fiduciary registration office which will then issue a Fiduciary Guarantee Certificate to the creditor as the fiduciary recipient.

Based on the introduction above, the author is interested in conducting the Role of Class II Auction Officials in the Implementation of Movable Goods Auctions Without Fiduciary Certificates. The purpose of this study is to analyze the usefulness of fiduciary guarantee certificates in terms of executing movable goods guarantees due to bad debts, analyzing the implementation of movable goods auctions carried out by Auction Houses, and analyzing the legal force of auctions against movable goods auctioned by Class II Auction Officials. Therefore, it is expected to provide benefits and as a source of information for those who need it.

2. Research Method

The location of this research was conducted in Medan City, where two samples were selected as informants based on sampling, which means that the sample has been determined in advance based on the object being studied. This technique was chosen because of the reason that most often carries out auctions. The informants in the research were Budi Setiawan (Operational Manager of Medan Balai Lelang Astria) and Arfina Weddy Harahap (Operational Manager of Medan Balai Lelang Pacific).

The research method used is the empirical legal approach method, so the appropriate data collection method for this study includes library research and field research. The data used in this study are sourced from primary data and secondary data, namely data obtained in the following ways:

- a. Library Studies, where research is carried out by examining library materials in the form of laws and regulations, scientific works, and others presented in various literature, both in the form of books and media which can be divided into three parts, as follows:
 - 1) Primary legal materials, namely legal materials in the form of Laws, Regulations, Ministerial Decrees, and official documents related to the problem, in the form of Law Number 42 of 1999 and Regulation of the Minister of Finance (PMK) of the Republic of Indonesia Number. 27/PMK.06/2016 concerning amendments to PMK Number. 106/PMK.06/2013 concerning amendments to PMK Number. 93/PMK.06/2010 concerning Auction Implementation Guidelines.
 - 2) Secondary legal materials, namely all legal materials which are unofficial document publications including books and scientific works.
 - 3) Tertiary legal materials, namely legal materials that provide explanations of primary legal materials and secondary legal materials, such as legal dictionaries and online media that are still relevant to this research.

- b. Field Study, where primary data is obtained by means of interviews conducted with two informants as sources, starting with several questions to obtain further information, so that data can be obtained that deepens the secondary data.

In general, research usually distinguishes between data obtained directly from the community and data from library materials. Data obtained directly from the community is called primary data, namely through interviews. Interviews are a process of interaction and communication and a way to obtain information by asking the interviewee directly. This interview was conducted with auction actors from the Auction House in Medan City. The results of the questions and answers were developed around the main problem, so that it is relevant to the problem to be discussed.

After obtaining secondary data in this study, namely in the form of primary legal materials, secondary legal materials, and tertiary legal materials, the data is arranged systematically to facilitate the next process, then a deductive conclusion is drawn as an answer to the problem being studied.

Data analysis methods used in pThis research uses qualitative analysis, namely data analysis that uses and understands the truth obtained from research results and seeks the relationship between one material and another, then arranges it systematically.

3. Results and Discussion

1. Implementation of Auctions for Movable Goods Carried Out by Auction Houses
 - a. Implementation of Auctions of Movable Goods by Auction Officials

Class II Auction Officials are authorized to conduct auctions upon the request of the Auction House. As stipulated in Article 8 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016, that the implementation of auctions by Class II Auction Officials is limited to goods owned by BUMN/D in the form of limited liability companies, assets owned by banks in liquidation unless otherwise specified by laws and regulations, goods owned by foreign country representatives, and goods owned by individuals or Private Legal Entities.

After the auction schedule has been determined by the Class II Auction Officer, the seller/owner of the goods or his/her attorney will make an announcement in a local daily newspaper/media, where proof of the auction announcement that has been made in accordance with the provisions must then be submitted to the Auction Officer.

b. Voluntary Non-Execution Auction By Pacific Auction House And Astria Auction House In Medan City

Pacific Lelang Internasional Limited Liability Company and Astria Auction House are Indonesian Legal Entities established under Indonesian law that specifically operate in the auction sector. Carrying out non-execution auctions of movable goods in the form of cars/four-wheeled vehicles which are goods owned by owners/vendors who have collaborated with the Pacific Auction House in Jakarta and have also collaborated with Class II Auction Officials in Medan City.

The announcement of a voluntary non-execution auction is made by the auction house as the seller who has received direct power of attorney from the owner of the goods/owners/vendors, through a daily newspaper published in Medan at least five working days before the auction is held.

The conditions attached by the vendor when submitting an auction request to the Auction Hall are as follows:

- a) Power of attorney to sell by auction from the vendor as the legal owner of the goods to be auctioned to the Auction House.
- b) Statement Letter from the vendor whose contents include the following:
 - 1) That the vendor is the legal owner of the goods to be auctioned.
 - 2) That the goods to be auctioned are not involved in any case, are free from encumbrances and collateral.
 - 3) That the document to be auctioned is in the form of a BPKB which is correct/valid and issued by the authorized agency.

- 4) That the vendor is fully responsible for any criminal or civil lawsuits that may arise in the future regarding ownership of the auctioned goods.
- c) BPKB and invoice for the car/four-wheeled vehicle to be auctioned.
- d) Other cars/four-wheeled vehicles to be auctioned.
- e) STNK if available.
- f) KTP of the power of attorney (vendor).

In accordance with the announcement that has been made with newspapers, daily newspapers that meet the requirements as described above, then three days before the auction day an open house has been held at a predetermined location, where prospective auction participants can see the cars to be auctioned and the cars have been given lot numbers according to those that will be used during the auction. One day before the auction date, prospective auction participants must have deposited the auction bid security money into a bank account designated by the Auction House according to the announcement and the auction committee will create a list of auction participants after the auction participants show proof of deposit and fill out the form that has been prepared and provide the Auction Participant Identification Number (NIPL) to the auction participants.

On the day of the auction, the committee has prepared the facilities and infrastructure, so that all auction processes can run smoothly. The Class II Auction Official reads the Head of the Auction Minutes which have been numbered and dated, which among other things states that the auctioned goods are as is, so that all risks are the responsibility of the buyer, both visible and hidden defects, costs of documents, taxes, and fines as well as the legal condition of the auctioned goods.

After the auction participant who submitted the highest value for the auctioned goods is obtained, then on that day the Auction Officer will validate him as the buyer of the car he bid on, then the auction committee prepares the auction purchase report signed by the Class II Auction Officer who will later after the buyer

deposits the payment in full to the account designated by the Auction House. One day after the payment in full, the Auction House will pay the auction fee to the state treasury of 5% of the formed price and hand over the goods/documents of the car that has been sold to the buyer.

2. Use of Fiduciary Guarantee Certificates in Cases of Execution of Movable Asset Guarantees Due to Bad Credit

Based on the auction minutes signed by the Class II Auction Officer with the BPKB and the seller's ID card (according to what is stated in the BPKB) the buyer can register the car's BPKB (change of name) to the buyer's name at the local Samsat Office, where the car's documents are registered, it is clear that in this auction process from the preparation phase, auction implementation phase, or post-auction phase we do not find a single document stating that the auctioned goods have a fiduciary certificate, while most of these cars we can see are from leasing agreements (already bound by a fiduciary guarantee deed and have been registered at the fiduciary registration office and of course also have a fiduciary certificate) that are in default which are withdrawn by the leasing company and then collected by the leasing company, then asked for help from the Auction House to sell through auction with the help of the Class II Auction Officer.

Sales carried out by creditors/sellers/lessors in selling their goods either directly or through voluntary non-execution auctions are by using the Parate Execution Institution (selling with their own authority) as agreed in the Fiduciary Guarantee Deed, without attaching a Fiduciary Guarantee Certificate.

The Fiduciary Guarantee Certificate is only used for the withdrawal of collateral due to defaulting debtors, because as regulated in Article 11 Paragraph (1) and Article 12 of the Fiduciary Guarantee Law, new creditors can withdraw collateral if the Fiduciary Guarantee Deed for the four-wheeled motor vehicle has been registered at the Fiduciary Registration Office. With the registration of the Fiduciary Guarantee Deed, a legal fictitious effect applies that everyone is deemed

to have known about the provision of the guarantee, so that the guarantee provider can retain the object of the guarantee to/from anyone (principle of publicity). Creditors use the Fiduciary Guarantee Certificate only for the Withdrawal of collateral from anyone's hands, while for the settlement of the debtor's debt (which in reality if the collateral is withdrawn the debtor no longer wants to know about the installments/repayments) of his debt, then the creditor takes the collateral to settle the debtor's debt, while for the sale the creditor immediately takes the position as the seller/owner of the goods to be auctioned with a voluntary non-execution auction, by using the right to sell with his own power (parate execution) which is more practical where there are goods, there is a BPKB and an invoice, you can ask for help from the Auction House in collaboration with a Class II Auction Official, you don't have to go through procedures like the auction of fiduciary certificates which must go through the procedure of a district court decision.

Registered in whose name the proof of ownership of the movable object is sufficient evidence that he is the owner or with the existence of proof of ownership (BPKB) accompanied by other documents such as a power of attorney to sell or a sales receipt that has been signed by the person whose name is listed in the BPKB together with the existence of the movable object, it can be said that he is the actual owner, so that the owner can act as a seller in an auction.

If we examine it more deeply, if the movable object to be sold through auction was previously a former leased item, which was withdrawn by the lessor because the lessee did not pay the installments as agreed in the leasing agreement, then in fact the lessor as a financing company is still the legal owner of the movable object, the debtor has not paid off his installments, so his right to own it at a later time after it is paid off with the option to buy is lost. So the lessor is still the legal owner, therefore in fact the right of parate execution is also not needed, he can make the sale himself or through a voluntary non-execution auction mechanism.

After the auction is closed, the auction committee prepares the Minutes of

the Auction Winner, which describes the number and date of the auction minutes, car data, name of the winner, and the price formed along with other costs that must be paid no later than 5 five working days after the auction is held and signed by the Class II Auction Official, based on the minutes completed with the BPKB and KTP of the buyer, the auction winner can register the BPKB of the car at the Samsat Office where the car is registered.

3. Legal Power of Auctions Against Movable Goods Carried Out by Class II Auction Officials

a. Legal Protection for Auction Buyers

In the auction minutes it is stated that the goods are sold as is (as-is), so all risks are the responsibility of the buyer because the bidder/buyer is deemed to have known what he/she is bidding on, all damage, whether visible or not, is the risk of the buyer.

In this case, legal protection for auction buyers is that even though the laws and regulations do not explicitly regulate it, the Auction Office, Auction House and Auction Official must create legal certainty for buyers as a form of protection for auction buyers who act in good faith, namely as follows:

- 1) The Auction House and Auction Official must examine the auctioned goods first, especially regarding the validity of the seller and the goods to be auctioned, if there are problems with the goods or their ownership or incomplete documents, these must be resolved first before carrying out the auction.
- 2) The Auction Officer provides legal protection in the form of testimony and evidence in the form of providing proof of auction purchase (auction minutes) and other documents.

4. Conclusion

- 1) The Fiduciary Guarantee Certificate for movable property functions as follows:

- a. Publicity, namely with the existence of a Fiduciary Guarantee Certificate, the creditor can withdraw the collateral if the debtor defaults.
 - b. The Executorial Title contained in the Fiduciary Guarantee Certificate can be used to sell collateral, provided that the procedures specified for this have been followed (which could be said to be a long and expensive procedure).
- 2) The Auction House, using the services of a Class II Auction Official, carries out voluntary non-execution auctions of movable goods by attaching the following documents:
 - a. Power of Attorney to sell by auction from the vendor as the legal owner of the goods to be auctioned to the Auction House.
 - b. Statement Letter from the vendor whose contents include the following:
 1. That the vendor is the legal owner of the goods to be auctioned.
 2. That the goods to be auctioned are not involved in any case, are free from encumbrances and collateral.
 3. That the document to be auctioned, namely the BPKB, is correct/valid and issued by the authorized agency.
 4. That the vendor is fully responsible for both criminal and civil matters for any lawsuits that may arise in the future regarding ownership of the auctioned goods.
- 3) BPKB and invoice for the car/four-wheeled vehicle to be auctioned.
- 4) Other cars/four-wheeled vehicles to be auctioned.
- 5) STNK if available.
- 6) KTP of the power of attorney (vendor).
- 3) Class II Auction Officials carry out voluntary non-execution auctions following the auction procedures stipulated in the Regulation of the Minister of Finance of the Republic of Indonesia concerning Auctions, so that the results of the Auction can be

accounted for and the Auction Minutes issued are authentic evidence that has legal force in proof. Legal protection must be provided to buyers of auctioned goods so that the auction winner obtains legal certainty as stated in the Supreme Court Jurisprudence dated August 28, 1976 Number. 821 K/Sip/1974 that good faith plays an important role in buying and selling and legal certainty must be given to buyers who have good intentions. In other words, if an error occurs in the sales process or in the auction implementation procedure, the buyer must still be protected while the responsibility for the error is the full responsibility of the seller.

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