



## Legal Protection to the Auction Winner with Good Intentions of Mortgage Rights on Grosse Minutes of Auction Number 780/14/2019

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### Article Process Abstract

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*The government has provided legal protection to auction winners who take part in the auction with good intentions and in line with the rules, including those that are specifically regulated in the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines. The auction winner of Grosse Minutes of Auction Number: 780/44/2019 felt helpless and burdened by not being able to own the tangible object of what he purchased in the auction because the previous owner or mortgage giver objected to emptying the tangible object voluntarily. This problem made the auction winner burdened to forcibly vacate the tangible object from the auction he won and results in new legal actions. This research was conducted through library research to collect secondary data from primary, secondary, and tertiary legal sources. The owner of the Grosse Minutes of Auction number 780/44/2019, who won this auction and had good intentions, should be provided legal protection. This is done to uphold the principles of justice and give the auction winner legal security over his ownership of the tangible auction objects (land and building) that had been purchased. Article 1977, paragraph 1, of the Civil Code (hereafter referred to as the Civil Code) provides legal protection for purchasers who have good intentions. In essence, this article protects purchasers of movable property. According to Article 1977, paragraph 1 of the Civil Code, whoever controls movable property that is not in the form of interest and receivables that are not required to be paid to the bearer is declared to be the owner*

**Keywords:** Legal Protection, Auction Winner, Grosse Minutes of Auction

### Abstrak

Pemerintah telah memberikan perlindungan hukum kepada pemenang lelang yang beritikad baik yang mengikuti lelang sesuai dengan ketentuan yang berlaku yaitu yang secara tegas diatur dalam Peraturan Menteri Keuangan Nomor 27/PMK.06/2016 tentang Petunjuk Pelaksanaan Lelang. Pemenang lelang dari Grosse Risalah Lelang Nomor: 780/44/2019 merasa merugi dan terbebani dengan tidak bisa menguasai obyek fisik dari apa yang dibelinya dalam lelang tersebut, karena pemilik sebelumnya atau pemberi hak tanggungan merasa keberatan untuk mengosongkan obyek tersebut secara sukarela, atas hal ini menjadikan pemenang lelang dibebani untuk mengosongkan secara paksa obyek fisik dari lelang yang dimenangkannya dan menimbulkan perbuatan hukum baru. Penelitian ini dilakukan melalui penelitian kepustakaan (library research). Untuk mendapatkan data sekunder berupa bahan hukum primer, sekunder, dan tersier. Pemenang lelang dalam hal ini pemilik Grosse Risalah Lelang nomor 780/44/2019 yang telah beritikad baik sudah seharusnya diberikan perlindungan hukum. Hal tersebut dilakukan demi mewujudkan prinsip keadilan dan memberikan kepastian hukum bagi pemenang lelang atas haknya untuk menguasai dan memiliki fisik (tanah dan bangunan) dari obyek lelang yang telah dibeli. Mengenai perlindungan hukum terhadap pembeli beritikad baik, terdapat Pasal 1977 ayat (1) Kitab Undang-Undang Hukum Perdata (selanjutnya disebut KUHPerdato) dimana pada hakekatnya, pasal tersebut melindungi pembeli benda bergerak yang beritikad baik. Pasal 1977 ayat (1) KUHPerdato mengatakan bahwa terhadap benda bergerak yang tidak berupa bunga, maupun piutang yang tidak harus dibayar kepada si pembawa maka barang siapa yang menguasainya dianggap sebagai pemiliknya.

**Kata Kunci :** Media, dalam Sengketa Perbankan Syariah, di Pengadilan Agama

## I. Introduction

The Indonesian economy as mandated in the fourth paragraph of the Preamble to the 1945 Constitution is to promote general welfare for all the people, which is further regulated in Article 33 of the 1945 Constitution. The point is that the Indonesian economy is an economic democracy, namely an economy that is structured as a joint effort based on the principle of kinship, branches of production for the state and which control the livelihood of the people who are controlled by the state.<sup>1</sup> Often referred to as the welfare state, this ideology idealizes the state's role and duty to address poverty and, in particular, to consider the welfare of its citizens.<sup>2</sup> Systematic manipulations are made to the truth of the law and justice so that it can always alter depending on the type of government.<sup>3</sup> Justice is the central concern in legal theory since it must be in line with or consistent with the legality of the law.<sup>4</sup> With the enactment of Law Number 4 of 1996 about Mortgage Rights on Land and Objects Relating to Land, often known as UUHT, the status of security rights over land, which was formerly in the form of loans, has been replaced by mortgages. Mortgage rights, also known as collateral rights, are imposed on the debtor's land rights in order to satisfy creditors' debts. Furthermore, Law Number 4 of 1996 concerning Mortgages also gives creditors the right to sell the object of the Mortgage on their power through a public auction and to take repayment of their receivables from the proceeds of the sale against debtors who have defaulted, known as the auction of execution of mortgage rights.<sup>5</sup> Execution is a law that regulates the implementation of creditor's rights in debt directed at the debtor's assets when the debt is not fulfilled voluntarily by the debtor.<sup>6</sup>

In accordance with Article 38 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines, the auction is gathering interested parties (auction participants) who have complied with the requirements, such as registering no later than (1) one day before the auction is held and paying a minimum deposit of 20% and a maximum deposit of 50% of the limit value of the auction object. After that, making an agreement is most advantageous to the applicant or seller of the auction object. The selling of objects during an auction may alternatively be described as a public sale with a written or verbal price offer that rises or falls to attain the highest price before the auction is announced.<sup>7</sup>

If there is indeed a debtor in default of the creditor, execution of the mortgage right that was agreed upon at the beginning of the credit will be carried out, based on Article 6 contained in Law Number 4 of 1996 on *Mortgage* concerning the Land Along with Objects Related to Land. It states, "if the debtor is in default, the holder of the first mortgage has the right to sell the object of the mortgage on his power, through a public auction and take repayment of his receivables from the proceeds of the sale".<sup>8</sup> The auction of a property that is subject to a mortgage is intimately tied to the debtor who has defaulted on their obligation to the creditor. The mortgage-followed credit agreement has a default in that the debtor is no longer able to pay his debts to the creditor or has no intention of doing so. As a result, the mortgage's collateral is sold to a third party to cover the debtor's obligations to the creditor.<sup>9</sup>

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<sup>1</sup> elli Ruslina, "Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia," *Jurnal Konstitusi* 9, no. 1 (2012), 50.

<sup>2</sup> Lukman Hakim, "Pemerataan Akses Pendidikan Bagi Rakyat Sesuai Dengan Amanat Undang-Undang Nomor 20 Tahun 2003 Tentang Sistem Pendidikan Nasional," *EduTech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 2, no. 1 (2016), 54.

<sup>3</sup> Simona Vieru, "Aristotle's Influence on the Natural Law Theory of St Thomas Aquinas," *The Western Australian Jurist* 1 (2010), 117.

<sup>4</sup> Made Subawa, "Pemikiran Filsafat Hukum Dalam Membentuk Hukum," *Sarathi: Kajian Teori dan Masalah Sosial Politik, Asosiasi Ilmu Politik Indonesia Denpasar* 14, no. 3 (n.d.).

<sup>5</sup> Bagiyama Fahmi Zaki, "Kepastian Hukum Dalam Pelelangan Obyek Hak Tanggungan Secara Online," *Fiat Justitia Journal Of Law* 10, no. 2 (2018), 372.

<sup>6</sup> M.S Sri Soedewi, *Hukum Jaminan Di Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan* (Yogyakarta: Liberty Offset, 2011), 31.

<sup>7</sup> Zulkifli Suhaila, "Tinjauan Tentang Pelaksanaan Lelang Atas Agunan Hak Tanggungan Dalam Perkara Kredit Macet (Studi Putusan Nomor 86/PDT/2015/PT.MDN)," *Jurnal Hukum Kaidah* 12, no. 2 (2018), 7.

<sup>8</sup> Catur Budi Dianawati and Amin Purnawan, "Kajian Hukum Jaminan Hak Tanggungan Yang Dilelang Tanpa Proses Permohonan Lelang Eksekusi Ke Ketua Pengadilan Negeri," *Jurnal Akta* 4, no. 2 (June 10, 2017), 127.

<sup>9</sup> Fahmi Zaki, "Kepastian Hukum Dalam Pelelangan Obyek Hak Tanggungan Secara Online.", 386

The auction takes place when the debtor defaults or has a terrible credit that is technically past due but has not been paid back to the bank, and when the installment arrears exceed 270 days or 9 months. The debtor has also already received a warning letter for credit arrears three times in a row. Based on the provisions of Article 12 paragraph (3) of Bank Indonesia Regulation Number 7/2/PBI/2005 concerning the Assessment of the quality of commercial bank assets, it is said that those with negative credit are those who are not regarded as refundable. If the principal and/or interest payments are past due by more than 270 days or nine months, the bank will take on the loss on the loan that was granted.<sup>10</sup>

The government has provided legal protection to auction winners who have good intentions who have participated in auctions by applicable regulations, namely those explicitly regulated in Article 4 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines, which confirms that the auction which has been carried out by the applicable provisions, cannot be canceled. From this formulation, it has reflected the principle of legal certainty. This is also stated in Article 200 paragraph (11) HIR and Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning the Implementation of the Formula for the Results of the Plenary Meeting of the Supreme Court Chamber of 2013 as a Guide to the Implementation of Duties for the Court as a real form of protection to facilitate the auction winner to obtain the object. auction of mortgage rights in the District Court.

Such a case is also experienced by the Auction Winner at the Purwokerto State Property Service Office and Auction based on the Grosse Minutes of Auction Number: 780/44/2019. Their auction implementation is based on the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines.<sup>11</sup> The auction winner from Grosse Minutes of Auction Number: 780/44/2019 felt at a loss and burdened by not being able to control the physical object of what he bought in the auction because the previous owner or mortgage giver objected to emptying the object voluntarily. For this matter, the auction winner is burdened with forcibly emptying the physical object from the auction he won and causing a new legal action. Initially, it was only between the creditor as the mortgage holder and the debtor as the mortgage provider. Then after the auction is over, the auction winner must involve the Banyumas District Court to become an applicant in the Emptying Execution of the auction object in real terms at the Banyumas District Court. In addition, the winner is also burdened with other costs of making efforts to force the execution of the Execution Respondent. Thus, the winner of the mortgage auction cannot easily get the rights to the object won in the auction.

The case study that the author analyzes is that there is no balance between the rights and obligations of both the auction winner and the auction seller. This causes a decrease in interest from mortgage auction participants because it always creates new legal problems from year to year. This problem which has occurred for a long time make some people carry out several studies regarding legal protection for auction winners for not having justice and legal certainty.

## II. Problems

- a. How is the validity of the auction mechanism in the Grosse Minutes of Auction number 780/44/2019 based on Article 6 of Law Number 4 of 1996 concerning Mortgage Rights?
- b. How is the legal protection given to the auction winner who has good intentions in the execution of mortgage rights as a result of the auction based on Article 6 of Law Number 4 of 1996 concerning Mortgage Rights?

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<sup>10</sup> Badriyah Harun, *Penyelesaian Sengketa Kredit Bermasalah* (Yogyakarta: PT. Pustaka Yustisia, 2010).

<sup>11</sup> an Interview with Mr. Doni Indarto, Head of the Legal and Information Section of the Purwokerto KPKNL, on Tuesday 15 March 2022 at 10.00 WIB.

### III. Research Methods

The normative juridical method is used as the research method. The normative juridical method is carried out through literature studies to examine mainly secondary data in the form of case studies based on statutory regulations, court decisions, agreements, contracts, or other legal documents, as well as research results, study results, and other references.<sup>12</sup> There are some people with the same opinion saying that a legal research method aims to see the law in a real sense, it can be said to see, to grasp, to examine how the law works in society. This research is supported by the literature related to the problem under study.<sup>13</sup> This research was conducted through *library research* to obtain secondary data in the form of primary, secondary, and tertiary legal materials,<sup>14</sup>

related to the auction mechanism in the Grosse Minutes of Auction number 780/44/2019 based on Article 6 of Law Number 4 of 1996 concerning *Mortgage* on Land Along with Objects Related to the Land. It discusses the legal protection given to the auction winner of the execution of mortgage rights as a result of the implementation of the auction based on Article 6 of Law Number 4 of 1996 concerning *Mortgage* on Land. Along with Objects Related to the Land. The data of this research is descriptively presented. The methods of this study are arranged systematically, logically, and rationally. In terms of the overall meaning of the data obtained, it will be linked to one another according to the subject matter under study. Therefore, it is a unified whole based on legal norms or legal rules and legal doctrines that are relevant to the subject matter. Data analysis was done by compiling the data so that it can be well interpreted. In this case, the data were qualitatively analyzed without measuring or assessing by numbers directly. Therefore, after getting the primary data and secondary data, the complete and related documents can be gathered. This research is descriptive in nature and provides an overview of the legal protection of the winner of the mortgage auction with good intention in the Grosse of the auction minutes number 780/14/2019.

### IV. Result and Discuss

#### 1. The validity of the Auction Mechanism in Grosse Minutes of Auction Number 780/44/2019 based on Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land based on Grosse Minutes of Auction Number 780/44/2019.

There had been a lawsuit from the original owner, but it aimed only to spin out time because it is not focusing on ownership rights. So, the chairman of the court ignored the postponement of the implementation of real executions to fulfill justice for the auction winner. That authority absolutely rests with the head of the local court. If the auction is not by or is contrary to the applicable laws and regulations in the field of collateral law, as well as the law on the execution of the object of the mortgage guarantee, the execution of the auction of the object of the mortgage guarantee does not have legality and legal force. Thus, the aggrieved party can file a lawsuit against District Court to cancel the auction results of the execution of the object of the mortgage guarantee and result in losses for the auction winner.

Execution Auction on Mortgage as referred to in Article 6 of Law Number 4 of 1996 concerns Mortgage on Land and Objects Related to Land. Basically, the execution auction method has the principle of an execution process without court intervention. In this case, the execution is carried out without an execution order from the Head of the District Court (fiat execution). The above rules are the basis for conducting the auction in the Grosse Minutes of Auction Number 780/44/2019. The auction implementation in the Grosse Minutes of Auction Number 780/44/2019 is by the applicable laws and regulations, this is because the execution of the mortgage object execution auction was conducted by PT. Bank Central Asia Tbk. Regional

<sup>12</sup> Badriyah Khaleed, *Legislative Drafting Teori Dan Praktik Penyusunan Peraturan Perundang-Undangan* (Yogyakarta: Medpress Digital, 2014), 41.

<sup>13</sup> Salim HS, *Penerapan Hukum Pada Penelitian Tesis Dan Desertasi* (Jakarta: PT Rajagrafindo, 2013), 26.

<sup>14</sup> Miles Mathew and Michel Huberman, *Analisis Data Kualitatif: Buku Sumber Tentang Metode-Metode Baru* (Jakarta: UI Press, 2014), 102.

Office II Semarang, as a creditor that was legally considered by the applicable legal provisions in the field of collateral law and the law on the execution of the object of execution of mortgage collateral as contained in Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land and PMK Number 27/PMK.06/2016.

The case of the execution of the auction of the object of the mortgage guarantee carried out by PT. Bank Central Asia Tbk. Regional Office II Semarang, which began with an application for an auction to the Purwokerto State Property and Auction Service Office (KPKNL). The auction from Grosse Minutes of Auction Number 780/44/2019 was held at the Purwokerto State Property and Auction Service Office (KPKNL). The action taken by PT. Bank Central Asia Tbk. Regional Office II Semarang is based on the applicable laws and regulations. In this case, an auction is a form of buying and selling events that are packaged in different ways. The definition of buying and selling according to Article 1457 of the Civil Code is an agreement in which one party binds himself to deliver an object, and the other party pays the promised price. The definition above represents several elements contained in the sale and purchase, namely an agreement, the delivery of goods, and the other party paying the promised price. It is referred to in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights. If the debtor defaults, the holder of the first mortgage has the right to sell the object of the mortgage on his power through a public auction and take repayment of his receivables from the proceeds of the sale.

Based on Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land, reinforced by Article 11 paragraph (2) letter e of Law Number 4 of 1996 concerning Mortgage on Land and Objects relating to land, it states that the first mortgage holder has the right to sell on his power on the object of the mortgage if the debtor is in breach of contract. Execution of Mortgage by Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land is in conjunction with Article 20 paragraph 1 letter (a). The execution of Mortgage Rights can be carried out by the mortgage holder on his power through public auction. This means that the implementation of the execution auction based on Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land is an authority granted by law (*ex lege*) to the first mortgage holder in this case PT. Bank Central Asia Tbk Regional Office II Semarang to sell through a public auction of assets that are used as collateral if the debtor is in default. Thus, the law authorizes creditors to execute Mortgage Rights without requiring the approval of any party to settle non-performing loans that are detrimental to the health or stability of the bank.

## **2. Legal protection to Auction Winners who have good intentions in the Execution of Mortgage Rights as a result of the implementation of the auction based on Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land**

Preventive legal protection for auction winners is a form of protection provided for the auction winner before the occurrence of a dispute related to the object of the auction. *Vendu* Reglement provides preventive legal protection to the auction winner regarding the handover of rights to the object of the auction. This is by the provisions in Article 42 of the *Vendu* Regulation. Preventive legal protection for the auction winner is also contained in the Minutes of Auction, which is the official report of the auction made by the auction official as an authentic deed with perfect evidentiary power. Grosse Minutes of Auction contains an executorial title to apply for the execution of voiding in the Local District Court by force can be carried out by the winner of the execution auction, which is repressive in nature. Repressive protection, according to Hadjon, is an effort to obtain legal protection carried out through the judiciary. At the time of forced execution, it was carried out based on Article 200 paragraph (11) HIR and Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA RI) Number 4 of 2014 concerning the Enforcement of the Formulas of the Results of the Plenary Meeting of the Supreme Court Chamber of 2013 as Guidelines for the Implementation of Duties for the Court.

The government has provided preventive legal protection to auction buyers who have good intentions of participating in auctions by applicable regulations, namely those explicitly regulated in Article 4 of the Regulation of the Minister of Finance Number 27/PMK.06/2016

concerning Auction Implementation Guidelines, which confirms that auctions conducted has been carried out by applicable regulations, cannot be canceled. From this formulation, it has reflected the principle of legal certainty for the auction winner. This was also emphasized by Yahya Harahap, that the law enforced by law enforcement agencies accompanied by the task of doing so must guarantee legal certainty for the sake of upholding order and justice in people's lives. Legal uncertainty will cause chaos in people's lives, doing whatever they please and being vigilantes.<sup>15</sup>

Implementation of the auction in the Grosse Minutes of Auction Number 780/44/2019.

The implementation of the auction is based on Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land that has been sold and has been determined as the winner of the auction. Minutes of Auction will be made by the auction official which functions as an authentic deed of the transfer of rights to the land from the old owner (the debtor) to the winner of the auction. Furthermore, based on the Minutes of the Auction, the winner of the auction is to process the change of the name of the certificate of ownership to the Office of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of Banyumas Regency. On the other hand, some phenomena occurred in practice, such as the existence of a lawsuit or rebuttal to the District Court from the debtor addressed to the creditor as the seller, the KPKNL, and the Office of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency as an intermediary for the implementation of the auction and the institution that transfers rights or when converting the name of the Certificate of Ownership, and the thought that the winner of the auction is deemed to have committed an unlawful act. It is in line with Grosse Minutes of Auction Number 780/44/2019 containing a Lawsuit and Verzet (Resistance) which only aims to spin out the time because the substance is not about ownership rights. So, the chairman of the court ignored it and did not delay or postpone the implementation of the real execution for the fulfillment of justice for the auction winner. That authority absolutely rests with the head of the local court. The problem that arises during the auction is the existence of a lawsuit related to ownership or proof of ownership owned by more than one person. This results in the auction being terminated or canceled to safeguard the bidder and give the debtor a chance. As of now, a credit agreement at a notary is required to bind obligations in a bank. This sometimes occurs in lawsuits when the debt is not paid and it turns out that the debtor has other debts. The auction can still go on because this issue is unrelated to ownership documentation. It could be one of the debtor's dirty tricks to postpone the auction.<sup>16</sup>

The facts mentioned above often occur in the community making many people not interested in participating in the auction. It is due to the process which is quite vulnerable to legal remedies that take a long time and costs, such as having to be involved in a lawsuit or Verzet (resistance). Furthermore, the buyer/winner of the auction cannot easily obtain the tangible object of the auction (land and building) that has been purchased or won which should have been his right. Some circumstances, such as the debtor's unwillingness to freely take possession of an object that has been sold at auction to the winning bidder, may result in legal action or verzet (resistance). However, the APHT essentially has a contract for the withdrawal of the mortgage object at the moment the mortgage is executed in line with Article 11 paragraph (2) letter K of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land. There is therefore no longer any justification for the debtor to avoid and deny the emptying of the mortgaged object that has been sold at auction. By being allowed to seek real execution to empty the object of the mortgage that has been auctioned off to the district court without going through a clearing claim first, the auction winner has received oppressive legal protection as a result of the debtor's activities. He was discovered to have sent a real execution request to empty the mortgage object that has been auctioned to the Banyumas District Court, similar to what was done by an auction winner or auction buyer in the Grosse Minutes of Auction Number

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<sup>15</sup> M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHP Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2002).

<sup>16</sup> An interview result with Astawi,S.H. Registrar of Banyumas District Court, On Tuesday 8 March 2022 at 11:00 a.m.

780/44/2019. This can be done after the auction winner submits an application Grosse Minutes of Auction which is an original copy of Minutes of Auction with the head "For Justice Based on the One Supreme Being" to KPKNL Purwokerto.

Minister of Finance Regulation No. 27/PMK.06/2016 concerning Auction Implementation Guidelines has regulated that if the auction winner cannot control his rights due to obstacles from the old owner, the auction winner can submit the Grosse minutes of the auction to the KPKNL to apply to the Court where the object is located so that the object of the auction can be emptied without carrying out a lawsuit process. In addition, the auctions that have been carried out by the provisions of laws and regulations cannot be canceled. It is only a court decision that can cancel an auction that has been carried out. This shows that the winner of the auction is protected by law. Regarding the auction winners at the Purwokerto KPKNL, most of them have obtained the object although it requires quite a long time and procedure. The control of the auction object is the responsibility of the auction winner with some regulated mechanism provisions. Some problems often arise in the implementation of auctions at KPKNL Purwokerto, such as the existence of a lawsuit or objection from the debtor and the condition of the inhabited object of the auction which is not sometimes voluntarily given.<sup>17</sup>

Grosse Minutes of Auction has the same executive authority as a judge's order, which is conclusive and has no appeal rights (*inkracht van gewijsde*). Without having to go through a claim for emptying first, the auction winner who has obtained the Grosse Minutes of Auction may ask for a real execution to empty the mortgage object that has been auctioned to the chairman of the Banyumas District Court. This is by the provisions of Article 200 paragraph (11) of the HIR and the Circular Letter of the Supreme Court (SEMA) Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2013 as Guidelines for the Implementation of Duties for the Court. It states, "For the auction of mortgage rights by creditors themselves through the auction office if the auctioneer does not want to vacate the object of the auction voluntarily, the execution of forced emptying can be directly submitted to the Head of the District Court without going through a lawsuit first".

Furthermore, after the request for execution of the vacancy is submitted to the Chairman of the Banyumas District Court, the Chairman of the Banyumas District Court issues a decision to make two consecutive summonses if the first summons is not attended or the first warning is not fulfilled. Then, at the First Anmaaning trial, the Chairperson of the Banyumas District Court, the Registrar of the Banyumas District Court, the Petitioner for Execution, and the Respondent for the Execution will attend. Later in the trial, the Chairperson of the Banyumas District Court will give a warning to the Execution Respondent to vacate the executed object voluntarily. If the executed object is not voluntarily emptied, then a second Anmaaning which is a final warning will be held. After that, the chairman of the Banyumas District Court issues an execution order to the Registrar or bailiff to notify the parties and the officials involved in the execution.

In the meantime, the petitioner is given the chance to work with other law enforcement agents to assure the implementation of the real execution before it is carried out for emptying. In this situation, the police, TNI (Indonesian Army Forces), Satpol PP (civil service police Unit), Village, and Subdistrict are the applicable law enforcement agencies, and the District Court Chairperson decides who will actually carry out the execution. If the Respondent for execution fights to the district court, the execution is suspended. The Chairman of the Banyumas District Court is the person who is authorized to suspend or continue the execution. However, in this case, Article 200 paragraph (11) of HIR and Circular Letter of the Supreme Court (SEMA) Number 4 of 2014 does not clearly regulate the time limit in the procedure for carrying out real executions for emptying the object of the mortgage. Therefore, an adequate understanding of the existing laws and regulations in principle is important to provide legal protection for the auction winner to control the collateral purchased through the auction and the resistance submitted by the Execution Respondent. The auction winner in this case is the owner of the Grosse Minutes of

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<sup>17</sup> an Interview with Mr. Doni Indarto, Head of the Legal and Information Section of the Purwokerto KPKNL, on Tuesday 15 March 2022 at 10.00 WIB

Auction Number 780/44/2019 who has good intentions and only gets the minutes of the auction and Grosse minutes of the auction after the auction does not directly get the physical object of the auction (land and buildings). Regarding the exercise of the right to control the auction object, this should be protected by law. Because there are several guarantees in the form of land and buildings and generally in any way that the debtor seeks for a postponement of the auction to spin out the time, not all auction winners can instantly obtain their tangible property (land and buildings)<sup>18</sup>

Those were done in order to realize the principle of justice and provide legal certainty for the auction winner for his right to control and own the auction object that has been purchased. The definition of good intention can be interpreted as honesty or trustworthiness. The problem of good intention is more closely related to the order of people's lives, meaning that it involves the legal awareness of the community that requires guidance and regulation.<sup>19</sup> Regarding legal protection for buyers with good intentions, Article 1977 paragraph (1) of the Civil Code (hereinafter referred to as the Civil Code) protects buyers of movable objects with good intentions. Article 1977 paragraph (1) of the Civil Code states that for movable assets that are not in the form of interest, as well as receivables that do not have to be paid to the bearer, whoever controls them is considered the owner.

The Supreme Court of the Republic of Indonesia's Circular Letter Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the Supreme Court Chamber's Plenary Meeting of 2013 as a Guide to the Implementation of Duties for the Court is a revision to the Results of the Civil Chamber's Formulation, which was published at number XIII from March 14 to March 16, 2011 (SEMA Number 7 of 2012). According to Article 200, Paragraph (11) of the HIR, it stipulates that the auction of a mortgage, which is conducted by the creditor directly through the auction office, cannot be emptied if the auction does not want to vacate the object in the auction. Instead, a lawsuit must be brought since the aforementioned auction – which was a voluntary auction rather than an execution auction – was not fully cited by the judge and should have been included in the appendix. Additionally, the judge's citation of SEMA Number 7 of 2012, which is an outdated regulation, is employed. The rule about the most recent emptying procedure statute in use refers to 2014. The execution of the emptying can be offered immediately to the head of the district court without going through a claim for voiding in the case of a mortgage auction that was submitted by the creditor through the auction office and in which the auction does not intend to cancel the object auction.

The General Civil Sub Chamber Number 6 Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA RI) Number 4 of 2014 concerning the Implementation of the Formula for the Results of the Plenary Meeting of the Supreme Court Chamber of 2013 as a Guide to the Implementation of Duties for the Court explains that the execution process or the execution auction has legally been completed if the object of execution or the object of the auction has been delivered to the person or entity that was the subject of the execution or the auction. A lawsuit or *verzet* must be used to object to the submission (resistance). Therefore, if the auction winner has not yet received the object he purchased, s/he may ask the district court to empty the auction object. The auction winner asks for the auction minutes after obtaining the Grosse auction minutes without generally going to court when it comes to fiat execution.

According to the aforementioned analysis, the auction winner, in this case, does not appear to be sufficiently protected due to the ambiguity of the procedural legislation governing the emptying of the auction object. There are regulations that state a buyer with good intentions must be protected in the situation of a buyer who wins with good intentions. However, there are no clear regulations or guidelines about the type of protection that must be provided or how to handle it to get the rights to the object purchased – in this example, the auction's object. Only a Supreme Court Circular, which is subject to periodic amendment, serves as the current set of rules. In this case, the procedural law has changed from the Circular Letter of the Supreme Court of the Republic of Indonesia Number 7 of 2012, which establishes the voiding of the subject of

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<sup>18</sup> *Ibid.*

<sup>19</sup> Djaja S Meliala, *Masalah Itikad Baik Dalam KUH Perdata*, Bandung: (Bandung: Binacipta, 1987).

the auction of execution of Mortgage based on Article 20 paragraph (1) letter A in conjunction with Article 6 of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land, to the Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA RI) Number 4 of 2014 concerning the Enforcement of the Formulas of the Results of the Plenary Meeting of the Supreme Court Chamber of 2013 as Guidelines for the Implementation of Duties for the Court. This provides that the vacant object of the auction may be submitted to the court's chairman without first filing a lawsuit, but it also appears that it has not been properly socialized, leaving some parties in the process of emptying the vacant object of the auction of the execution of the Mortgage who are in mistake. As a result, the buyer's rights as the auction winner in his pursuit of the auction object were not adequately protected in this case due to the ambiguity surrounding the procedure for emptying the auction object. Consequently, the purchaser or auction winner who behaves with good intentions must have legal protection. The rule can be found in the Minister of Finance Regulation Number 27/PMK.06/2016 on Auction Implementation Guidelines by using the auction principles, namely:

1. The time and location of the sale can be determined based on a prior agreement
2. It starts with announcing the bidder/auction-goer in front of the general public;
3. The participants in the auction compete with one another/ are competitive to make price offers, both verbally and in writing; and
4. The bidder will be declared the winner under the condition that the participant submits the highest bid in the auction.

The notion of good intentions regarding rights and obligations in a legal relationship is more dynamic when viewed in a theoretical context. Meanwhile, the nature of honesty at the time of enactment of a legal relationship will be more static. The principle of good faith is very necessary considering that this principle is the basis of a legal relationship between two or more parties. As an illustration of how the good faith principle is put into practice, the seller of auction goods is required to provide information about all pertinent aspects of the goods that will be sold in the auction, and the party that will purchase the goods is required to verify the ownership of the auction object that will be purchased. to prevent future issues.<sup>20</sup> ] In the meantime, if another party seeks to suit the buyer or auction winner, who is the legal owner, he or she can complete it with proof of possession of a piece of property called a "certificate" As everyone is aware, a certificate serves as a letter of evidence of title about physical and legal data that is consistent with the relevant letter of measurement and land book. It is possible to determine that the party already has the right to the ownership of the object he won based on the applicable rules connected to the implementation of the auction if it is based on the stipulation clause for the winning bidder from an official auction institution.<sup>21</sup>

This clause refers to an authentic deed known as a Grosse Minutes of Auction, which is defined as " minutes of auction implementation made by the Auction Officer who is an authentic deed and has perfect evidentiary power" in Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Instructions. If it is not entirely in control of the auction object, the entitled party may file a real execution request for emptying with the district court in the region where the auction object is located. The auction object, which was rightfully won through the KPKNL auction process, will then be forcibly emptied by the court This emptying process is based on the Grosse Minutes of Auction from the KPKNL.<sup>22</sup> KPKNL has stated from the start that it will sell the auction object as is, thus it is not its responsibility to regulate it. Additionally, KPKNL is unaware of any concerns associated with the auction object, such as whether it is inhabited or not. Independent experts assess the situation and identify the seller who has predicted potential risks. The independent team that conducts the evaluation is

<sup>20</sup> Muhammad Faisal, "Upaya Perlindungan Hukum Pemenang Lelang Sebagai Pembeli Beritikad Baik Terhadap Putusan Re-Eksekusi," *Jurnal Hukum & Pembangunan* 44, No. 1 (February 26, 2014), 83.

<sup>21</sup> Megarisa Carina Mboeik, "Hak Sempurna Yang Melekat Pada Pemenang Benda Tidak Bergerak," *Jurnal Kenotariatan Narotama* 1, no. 2 (2019).

<sup>22</sup> Off Jayanti and Agung Darmawan, "Pelaksanaan Lelang Tanah Jaminan Yang Terikat Hak Tanggungan," *Jurnal Ilmu Hukum Fakultas Hukum Universitas Diponegoro* 20, no. 3 (2018): 465.

decided by the seller, and the seller has taken into account potential risks. While KPKNL does not participate as the auctioneer, ethically the buyer or auction winner with good intentions must be protected.<sup>23</sup>

## V. Conclusions

Regarding the Grosse Minutes of Auction Number 780/44/2019 that the author reviewed, it is evident that the mortgage's execution is based on Article 20 Paragraph (1) of Law Number 4 of 1996 Concerning Mortgage on Land and Objects Related to Land, and the Regulation of the Minister of Finance Number 27/PMK.06/2016 Concerning Auction Implementation Guidelines are the fundamental rules applied in the auction implementation of the Grosse Minutes of Auction Number 780/44/2019. Regarding Grosse Minutes of Auction Number 780/44/2019, which is divided into three sections by Minister of Finance Regulation Number 27/PMK.06/2016 regarding Instructions for Implementing Auction Chapter VI Articles 86 to 88, the parties involved in Grosse Minutes Auction Number 780/44/2019 were class I auction officer (Imam Santoso) based on assignment letter Number ST-954/WKN.09/KNL.08/2019 dated 29 October 2019, the seller (PT. Bank Central Asia Tbk Regional Office II Semarang ) that applied with the Application Letter Number 0907/KWII/2019 dated 08 May 2019, and the buyer (Purwoyo). The above rules are the basis for the auction implementation in the Grosse Minutes of Auction Number 780/44/2019. The auction implementation in the Grosse Minutes of Auction Number 780/44/2019 is by the applicable laws and regulations, this is because the execution of the mortgage object execution auction was conducted by PT. Bank Central Asia Tbk. Regional Office II Semarang, as a creditor that is legally considered to be by the applicable legal provisions in the field of collateral law and the law on the execution of the object of execution of mortgage object as contained in Law No. 4 of 1996 concerning Mortgage on Land and Related to Land.

It is legitimate to provide legal protection to the auction winner, in this case, the owner of the Grosse Minutes of Auction number 780/44/2019, who has good intentions. This is done to realize the principle of justice and provide legal certainty for the auction winner for his right to control and own the physical (land and building) of the auction object that has been purchased. In practice, the auction winners find it difficult to get their right to control and to own the tangible of the auction object (land and building) that has been purchased because of a lawsuit or *verzet* (resistance) from the debtor (original owner) who may not want to hand over the object that has been sold in the auction to the auction winners voluntarily. Data from the Purwokerto State Property and Auction Service Office (KPKNL) shows that there were 41 lawsuits in 2019, 43 lawsuits in 2020, 47 litigations in 2021, and 8 cases in 2022 as of March. Article 1977, paragraph 1, of the Civil Code (hereafter referred to as the Civil Code) provides legal protection for purchasers who have good intentions. In essence, this article shields purchasers of movable property. The Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA RI) Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2013 is used as a Guide to the Implementation of Duties for the Court about the regulation regarding the most recent emptying procedure law that is used when referring to the time of the auction. The execution of the emptying can be brought immediately to the Chief Justice without going through a lawsuit if the Mortgage is auctioned by the Creditor through the Auction Office and the Auctioneer does not intend to vacate the object of the auction.

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<sup>23</sup> an Interview with Mr. Doni Indarto, Head of the Legal and Information Section of the Purwokerto KPKNL, on Tuesday 15 March 2022 at 10.00 WIB."

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