

Bank Responsibility for Coverage Rights Auction Objects That Cannot be Controlled by the Auction Winner



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ABSTRACT: Article entitled Bank Responsibility for Objects of Mortgage Auctions That Cannot Be Controlled by the Auction Winners. The transaction process for the transfer of land and building rights through an auction is quite easy and simple. As long as the parties involved fulfill their respective rights and obligations in accordance with the provisions of the applicable laws and regulations. Based on the explanation of Article 20 paragraph (1) of Minister of Finance Regulation Number 213/06.PMK/2020 regarding instructions for implementing auctions, auctions must run efficiently, effectively and provide legal certainty. This study aims to develop knowledge regarding bank responsibilities and legal protection for buyers of goods who are unable to exercise control over the object of the mortgage execution auction object. The form of research used in this research is normative, which is researched on legal principles, which are carried out on positive laws made in writing. The conclusion of this study: The bank is fully responsible for the juridical and physical leveraging of the auction object to the auction winner, based on Article 17 of the 2016 Auction Guidelines and Article 13 of the 2020 Auction Guidelines stating that the Seller, in this case Bank X, is responsible for the delivery of movable objects and/or immovable objects. Because basically, the law has regulated that the seller is obliged to guarantee the possession of the goods being sold safely and securely to the buyer. This form of accountability can be in the form of providing mediation so that the debtor wants to vacate the auction object voluntarily or by providing proper direction and coordination to the buyer to apply for an emptying execution or if as a last option, namely by returning payment of the auction price paid by the auction buyer. So that in the future the bank can facilitate the levering process and participate in guaranteeing the mastery of the collateral to hand over the auction object as a form of accountability, it is necessary to make a statement stating that if the debtor defaults, the debtor is obliged to voluntarily vacate the land and building of the mortgage, so that in the future the bank can obtain convenience in handing over the auction object and is also free from claims for compensation filed by the buyer.

KEYWORDS: responsibility; bank; auction; mastery

I. INTRODUCTION

Basically, the transaction process of transferring land and building rights through an auction is quite easy and simple. As long as the parties involved fulfill their respective rights and obligations in accordance with the provisions of the applicable laws and regulations. Based on the explanation of Article 20 paragraph (1) of Minister of Finance Regulation Number 213/06.PMK/2020 regarding instructions for implementing auctions, auctions must run efficiently, effectively and provide legal certainty.¹ However, sometimes there are various difficulties and obstacles for an auction buyer to be able to control the object of the auction. As a result, the process of claiming vacancy through the judiciary has become the choice taken by the auction buyer. Over time, the Supreme Court has provided solutions to cases like this by utilizing the Grosse Minutes of Auction. However, someone's lack of understanding of this and the procedure for proceedings in court can slow down the process of mastery of the object of the auction itself.

Auction is a buying and selling activity that is familiar and has been known in Indonesia since 1908. This buying and selling activity is carried out based on the agreement of a seller and a buyer to cause rights and obligations for the parties. In the legal system in Indonesia, auctions are categorized as one of the special selling mechanisms where the mechanism is not the same as buying and selling in general. Therefore, the auction sale mechanism is explained in special legislation which has the nature of *Lex Specialis*. The auction is said to be special because of the nature of the auction which is transparent, open, and competitively priced. In addition, the regulation also requires that the auction be chaired by an auction official.²

¹ Peraturan Menteri Keuangan Republik Indonesia Nomor 213/PMK.06/2020 tentang Petunjuk Pelaksanaan Lelang, Penjelasan Pasal 20.

² Habib Adjie, 2015, *Bahan Bacaan Mahasiswa Program Studi Magister Kenotariatan Universitas Sebelas Maret Surakarta*, Surabaya, p. 20.

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In connection with the above case the Supreme Court has issued provisions in the Supreme Court Circular Letter Number 4 of 2014 regarding the Enforcement of the Formulation of the Results of the 2016 Supreme Court Plenary Chamber Meetings, as Guidelines for the Implementation of Duties for the Court which stipulates in it that the execution of voiding the auction object of mortgage rights can submitted directly to the Chairman of the District Court in the absence of a lawsuit.

This proves that there is no proper synchronization and coordination by the judiciary in Purbalingga Regency, so that it can accept this type of auction voiding lawsuit when the Supreme Court has provided facilities to facilitate the execution process of auction object emptying. In addition, several parties such as the Purwokerto KPKNL and Bank X should also be expected to be able to provide clear directions to the auction winner so that they can carry out the execution of emptying the auction object, namely the purchase. With the existence of this judicial process which consumes time, effort and costs incurred by the winning bidder, a question arises about the strength of proof of an auction minutes deed grosse.

Basically, with an executorial title owned by the grosse deed, the minutes of the auction can shorten the process of executing the object of the auction. This is interesting because since the issuance of the regulation regarding requests for execution without going through lawsuits, it has been found that buyers did not use the facilities provided by the Supreme Court. So that the obstacles in the series of proposals for the auction object to be emptied are that these problems can occur. In the end, a form of accountability on the part of the bank in facilitating the process of clearing the execution at the KPKNL felt necessary. This research will also discuss legal protection that can be given to OHL by analyzing the Purbalingga District Court decision case number 15/Pdt.G/2020/PN.Pbg and resolving disputes for possession of auction objects efficiently and effectively, so that buyers in good faith can obtain legal certainty for collateral objects that have been purchased.

II. FORMULATION OF THE PROBLEM

According to the background of the problems described above, the problem to be examined in this thesis is how is the responsibility of the bank for the object of the mortgage auction which cannot be controlled by the auction winner?

III. RESEARCH METHODS

The form of research used in this research is normative.⁹ The thing that is examined in this study is regarding the legal principle, which is carried out against positive law which is made in writing.¹⁰ This research was conducted in an effort to find the truth by looking at the principles contained in various laws and regulations, auction instructions, and auction implementing regulations, especially those related to auction execution and the bank's responsibility in providing goods in a clean & clear condition to the buyer. in good faith in the tender process. This form of research will answer the problems contained in this study, namely regarding what form of legal protection should be received by a good-faith buyer in the process of executing the emptying of the auction object, analyzed according to existing legal principles, positive law related to the problem, and several supporting theories.

IV. DISCUSSION

Position Case

This case originated with Bank X which provided a credit facility to NA and his wife jointly borne jointly in the amount of Rp. 300,000,000.00 (three hundred million rupiahs) as stated in the Credit Agreement Letter Number X in 2012. After the passage of time NA and his wife received an additional credit of IDR 300,000,000.00 (three hundred million rupiah). With the remaining debt, the total ceiling received by NA and his wife is Rp. 525,000,000.00 (five hundred and twenty-five million rupiahs) as stated in the Supplementary and Changes in Credit Term Agreement Letter No. 28 of 2013.

Against this credit, NA handed over assets in the form of SHM owned by NA as collateral/loan collateral that had been bound by Mortgage Rights, according to Mortgage Certificate Number 1 on the basis of APHT number X/2013.

In its development, NA and his wife's debtors were unable to fulfill their obligations to repay the loan in an orderly manner according to what was agreed in the credit agreement. Due to this condition Bank X issued warnings, as follows:

- a. First Warning Letter dated 7 October 2015;
- b. Second Warning Letter dated 1 February 2016;
- c. Third Warning Letter dated 19 March 2016.

Until the credit maturity date, the debtor does not carry out the obligation to pay off the credit, whether principal, interest, or fines. As a result, Bank X issued a Statement of Default dated 22 June 2016.

Due to a breach of contract between NA and his wife, Bank X as the Mortgage Holder conducted an execution auction on his own authority (parate execution) on the Mortgage object mentioned above by submitting an application for auction to the

⁹ Penelitian yuridis normatif merupakan penelitian yang secara khusus meneliti hukum dan mengadakan sistematisasi terhadap bahan-bahan hukum tertulis. Sri Mamudji, et.al., 2005, *Metode Penelitian dan Penulisan Hukum*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, p. 68.

¹⁰ Soerjono Soekanto, 2006, *Pengantar Penelitian Hukum*, Universitas Indonesia, Jakarta, p. 51.

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Purwokerto KPKNL. Based on the auction request, the schedule for carrying out the auction is determined by the Purwokerto KPKNL. After that, in accordance with the provisions of Article 53 of the 2020 Auction Manual which stipulates that the auction must be preceded by an auction announcement, the auction announcement is carried out as follows:

1. First Auction Announcement Number 338/VII/KC/ADK/01/2019 dated 24 January 2019;
2. Announcement of the Second Auction in the daily newspaper on 08 February 2019.

The auction was held on 22 February 2019 based on the Minutes of Auction Number 062/44/2019 dated 22 February 2019. The items being auctioned were NA's SHM which was used as collateral. The limit value is determined by Bank X in the amount of IDR 650,000,000.00 (six hundred and fifty million rupiah). In this auction, OHL won the auction object with a purchase price of IDR 663,102,000.00. After deducting the Seller's Auction Fee of IDR 13,002,000.00 and Pph of IDR 16,252,500.00, Bank X as the seller receives the net auction proceeds of IDR 620,845,500.00. Bank X submitted a Letter of Notification of the Results of the Auction to the debtor by letter number B.3729KC/VII/ADK/01/2019 dated January 28 2019. That until the time this lawsuit was filed and terminated, NA and his wife refused to leave the auction object that had been purchased by OHL. The process of transferring land rights to the Freehold Certificate has also been completed on behalf of OHL as the owner of the land.

Based on the description above, it can be argued that the judicial submission of the object of this auction has been achieved. But it is this physical submission that is at issue in this case. Because OHL, as an auction buyer, had difficulty controlling the land and buildings he purchased, OHL filed a lawsuit for vacancy through the Purbalingga District Court in July 2020. In December 2020, the Panel of Judges at the Purbalingga District Court issued a decision that partially granted OHL's claim, stating OHL (Plaintiff) as the legal owner of a plot of land and buildings as stated in the Certificate of Ownership Number 1 covering an area of 392 square meters under the name OHL which is in Bobotsari Village, Purbalingga Regency and states according to law that NA and his wife (Defendant) have committed an unlawful act by not voluntarily handing over the auction object mentioned above and punishing the Defendant or anyone who controls and occupies a plot of land and a building as stated in the Property Rights Certificate Number 01 covering an area of 392 square meters in the name of OHL, which is in Bobotsari Village, Bobotsari District, Purbalingga Regency, to empty it unconditionally. The decision with case number No.15/Pdt.G/2020/PN.Pbg has been inkracht because there was no appeal from NA and his wife (Defendant).

Bank's Responsibility for the Object of the Mortgage Auction

Based on the Big Indonesian Dictionary (KBBI) responsibility, namely the obligation to carry out responsibility for all things if something is claimed, blamed, or disputed arises. In the legal dictionary, responsibility is a necessity for someone to carry out something that already has an obligation to him.¹¹ Responsibility is an impact of a consequence of individual freedom related to actions related to ethics and morals in the implementation of an action. Then based on the Quarterly Point, accountability needs to have a reference, namely something that results in the emergence of legal rights for a person in prosecuting another party also in the form of something that embodies the other party's legal obligations in providing accountability.¹²

Based on civil law, liability is divided into two, namely liability based on fault and liability without fault, which is known as risk responsibility or absolute responsibility (strict liability). The basic principle of accountability on the basis of mistakes means that a person must be responsible because he made a mistake if he made a mistake because it harmed others.

Based on the description above, it appears that the responsibility of Bank X is not limited to liability based on fault. This arises from the existence of rights and obligations on the basis of a sale and purchase through an auction conducted by Bank X with OHL. As a legal subject, Bank X is unable to fulfill its responsibilities as a seller to guarantee the physical delivery of land and buildings for the auction object to the auction buyer. This responsibility is not limited to the actions he has committed, but also for every dependent and goods under his supervision that should be clean & clear.

Clean means that the land is not being used for other economic activities or is being occupied by other parties who do not have rights. While clear means that the size of the land is appropriate, like what is on the certificate, and according to the limits. Especially for Bank X to be able to give confidence that the auction object for Certificate of Property Rights Number 1 in Bobotsari Village, Purbalingga Regency, which is in the form of land, buildings and all the things contained, therefore has a clear and clean status. This is especially crucial when the assessment is carried out with the use of transference, due to an opportunity legal risk that exists.¹³

In essence, the auction is a buying and selling process. So as long as it is not regulated specifically in the laws and regulations in the field of auctions, then it is subject to general buying and selling arrangements as regulated in Articles 1457-1540 of the Civil Code. Buying and selling is basically a consensual agreement. However, there is also a sale and purchase agreement which includes a formal agreement, which must be drawn up in a written form in the form of an authentic deed, including the sale and

¹¹ Andi Hamzah, 2005, *Kamus Hukum*, Ghalia Indonesia, Jakarta, p. 201.

¹² Titik Triwulan, 2010, *Hukum Perdata dalam Sistem Hukum Nasional*, Prenada Media Group, Jakarta, p. 48.

¹³ ¹³ Artikel DJKN, www.djkn.kemenkeu.go.id/artikel/baca/10264/Pentingnya-Status-Tanah-Clear-and-Clean-untuk-Penilaian-Real-Property-Dalam-Rangka-Pemindahtanganan.html, 4 Mei 2020.

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purchase of immovable objects. Included in this is the auction.¹⁴ This auction process is a contract in which 1 (one) party, that is known to the seller, binds himself to deliver an object, while another party, known as the buyer, binds himself in paying the price of the item in the amount of the auction price that has been agreed upon by the bidders.

As in this case, the auction buyer, namely OHL, obtained the purchase of land with SHM Number 01388/Desa Bobotsari, based on the results of the auction from the Head of the State Property and Auction Service Office (KPKNL Purwokerto), which was carried out with a series of auctions as follows:

1. Bank X has submitted an application for an auction to the Purwokerto KPKNL in order to comply with the provisions of Article 11 of the Minister of Finance Regulation (PMK) Number 27/PMK.06/2016 regarding the Instructions for Implementing the Auction;
2. Based on this request, the Purwokerto KPKNL has set a schedule for carrying out the auction, namely on Friday 22 February 2019, which was submitted by letter Number S.234/WKN.09/KNL.08/2019 dated 23 January 2019;
3. After that the KPKNL issues an Announcement of the Auction in accordance with the provisions of section nine Article 51 – Article 62 of the Minister of Finance Regulation (PMK) Number 27/PMK.06/2016 regarding the Instructions for Conducting the Auction;
4. Announcement of the First Auction was made on January 24, 2019;
5. Announcement of the Second Auction in the Merapi Daily newspaper, published on 08 February 2019;
6. The KPKNL also submitted a Tender Notice to the Defendant by letter Number B.3729- KC/VII/ADK/01/2019 dated 28 January 2019;
7. KPKNL has also submitted a Letter of Notification of Tender Results to Mr. NA and Wife on August 13, 2019.

The auction which was conducted from the State Asset Service Office and the Purwokerto Auction (KPKNL Purwokerto), at the request of PT Bank X Purbalingga Branch, for the object of the auction in the form of a plot of land and a building which was built on behalf of the NA is included in the type of execution auction of Article 6 UUHT which explains rights to the owner of the First Mortgage Right to make the sale by himself by auction for the object of Mortgage right if the debtor defaults.

In accordance with his description and the facts in the trial, starting from the credit agreement, collateral binding, and the procedure for executing the mortgage auction have been carried out in accordance with applicable legal provisions. So that OHL is the legal buyer of the auction and Bank X is determined as the seller of the auction items, while KPKNL is the intermediary stipulated by law. Then there are two main obligations from Bank X after the price of goods has been paid by OHL, namely:

1. Handing over the goods being traded to the buyer.
2. Bear or guarantee the goods.¹⁵

The obligation to hand over goods that are traded from Bank X to OHL, is already common knowledge that everyone understands, because the main purpose of an individual buying an object is so that he can own the object that is being purchased. According to Article 1491 of the Civil Code, there are two other aspects that need to be covered or guaranteed by the seller for the object being sold, namely:

1. Guarantee control over the goods being sold safely and securely.
2. Carry out hidden defect guarantees for the object, which can then be used as a reason for canceling the agreement.

Referring to the explanation which it consists of, it can be described that the KPKNL is a vertical agency of the Directorate General of State Assets which was established to provide services in the field of auctions based on the provisions of the Law. Its main authority is to sell the auction object for and on behalf of the bidder or seller, in this case the bank is a bank. The bank also determines the limit value of the auction, the bank as the auctioneer is the party that has responsibility for the legitimacy of ownership of the goods; the legality of the auction requirements document, the delivery of movable and immovable objects; submission of ownership documents to the Buyer.¹⁶ Banks as bidders or sellers have the obligation to take physical control of movable objects that will be auctioned, except for intangible objects, including billing rights, copyrights, brands and patents which are stipulated in Article 17 of the 2016 Auction Manual.

To realize auction implementation that is more efficient, effective, transparent, accountable, fair, guarantees legal certainty and in the context of providing the concept of fair legal protection for auction sellers and buyers. The Government of Indonesia made improvements to the regulations for implementing auctions contained in several regulations of the Minister of Finance. Starting from the stipulations related to the direction of the implementation of the auction which is explained through the Regulation of the Minister of Finance Number 93/PMK.06/2010 regarding the instructions for the Implementation of the Auction as amended by the Regulation of the Minister of Finance Number 106.PMK.06/2013. Up to the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 regarding the Implementation Guidelines for Auctions which are used as the legal basis in this thesis research. The reason is that this case occurred in early 2020 so that the judge's consideration in

¹⁴ Ahmad Miru, 2010, *Hukum Kontrak & Perancangan Kontrak*, Raja Grafindo Persada, Jakarta, h. 127.

¹⁵ Munir Fuandy, 1996, *Hukum Perkreditan Temporer*, PT. Citra Aditya Bakti, Bandung, p. 25.

¹⁶ Riduan Syahrani, 2000, *Seluk Beluk dan Asas-asas Hukum Perjanjian*, Alumni, Bandung, p. 138.

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the Purbalingga District Court decision number 15/Pdt.G/2020/PN.Pbg used the 2016 Auction Juklak Regulations, which will henceforth be referred to as the 2016 Auction Juklak.

Whereas based on Article 17 paragraph 1 especially letter C of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 regarding the Instructions for the implementation of the Auction which states:

"Seller is responsible for:

- a. Legitimacy of ownership of goods
- b. The validity of the tender requirements document
- c. Delivery of movable and/or immovable goods
- d. Submission of ownership documents to the buyer and
- e. Limit value setting"

After that, on December 22, 2020, Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.06/2020 was issued regarding the Guidelines for Auction Implementation, which was formalized on December 23, 2020 and enforced 3 (three) months starting when it was made official (23 March 2021).¹⁷ Hereinafter referred to as the 2020 Auction Manual.

Article 13 of the 2020 Auction Guidelines explains more or less the same thing as article 17 of the 2016 Auction Guidelines, namely, the seller has an obligation on the validity of the ownership and authority to sell goods, the validity of the auction requirements document, the validity of additional auction conditions, the validity of the Auction Announcement, the formal and material correctness of the Limit Value, formal and material correctness of statements related to the absence of changes in physical data and juridical data on land parcels or apartment units or objects that will be auctioned, the correctness of the letter material and the delivery of letters carried out from the Seller to the party concerned, adjusted the goods against the Auction Object document, delivery of movable and immovable objects, submission of original ownership documents to the Buyer, except for the Auction Object in the form of Right to Enjoy the Goods or at the Auction which is not accompanied by ownership documents.

In this case, it is clear that there is a problem with the physical delivery of the auction object. Although there has never been a specific promise regarding guarantees for levering and guarantees for safe and secure possession of the auction object. However, this guarantee is the responsibility of the seller, so Bank X is obliged to hand over all items sold and hidden defects that were not notified at the time of the transfer of sale and purchase are the responsibility of Bank X. Therefore, bank X is responsible for making a refund of the purchase price which has been paid from the buyer, or Bank X can be responsible by helping to become a mediator in terms of amicable mediation in any way so that the levering of the auction object can be controlled immediately by the auction buyer, namely OHL. As long as OHL has not been able to control the auction object it has purchased, during that time Bank X should not allow the auction winner to try to own the auction object. Because this is the full responsibility of the Seller to the buyer which is protected by law. Or at least Bank X should be able to take other preventive measures by making a statement from the debtor stating that if the debtor defaults, NA and his wife are obliged to leave and vacate the house voluntarily and peacefully, so that in the future the occurrence of lawsuit about emptying auction execution like this.

Actually in Article 20 UUHT there are several options for executing the mortgage object. First, the sale of mortgage objects underhand against the approval of the debtor/mortgage giver and creditor/mortgage holder based on Article 20 (2) UUHT. The second option is the execution of the mortgage object auction based on Article 20 paragraph (1) letter a jo. Article 6 UUHT. After the enactment of Law Number 4 of 1996 regarding Mortgage Rights, article 6 stipulates the clause "promise to sell on one's own power". If the Deed of Underwriting of Mortgage contains this clause, then the holder of the first rank Mortgage can auction the object of Mortgage in the event that the debtor defaults. This clause or promise is generally enacted as law for the parties that compose it. As stipulated in Article 1338 of the Civil Code, "All agreements made in accordance with the law apply as laws for those who make them." This provision is called the Freedom of Contract Principle and is also known as the *pacta sunt servanda* principle. So, everything that was agreed upon needs to be implemented as long as it does not contradict the provisions of Article 1339 of the Civil Code. The third option is the execution of the mortgage object auction according to Article 20 paragraph (1) letter b jo. Article 14 UUHT. Based on these provisions, in the event that the debtor defaults, the mortgage holder can auction off the mortgage object through the court. The execution of the auction on the mortgage object is carried out with the assistance of the court based on the executorial title contained in the mortgage certificate (Article 20 in conjunction with article 14 paragraph 2 UUHT). So, the bank submits an application for execution of the mortgage auction to the court and then the head of the court submits an application for the auction to the KPKNL based on the provisions of the HIR/RBG.

In this case it seems impossible to carry out the first option, considering that the debtor does not have the good faith to pay off his debts. So the second option is carried out, namely *parate execution*/direct execution on mortgage rights based on Article 20 paragraph (1) letter a in conjunction with Article 6 UUHT when the debtor (giver of mortgage rights) defaults. Bank X as the owner of the first mortgage to its own attorney carries out the sale of the object of mortgage by public auction or collects the settlement by the proceeds of the sale. With regard to the second option for execution of the mortgage right, according to SEMA

¹⁷ A.Y. Dhaniarto, 2021, *Lelang Teori dan Aplikasi*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, p. 115.

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Number 4 of 2014, regarding the Enforcement of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting, as a Guideline for the Implementation of Duties for the Court, it is emphasized that "Regarding the auction of mortgage rights by the creditor himself through the auction office, if the auctioneer does not want to vacate the auction object, the execution of the vacancy can be directly submitted to the Chairman of the District Court without going through a lawsuit." It's a shame that OHL, as the buyer of the auction, did not take advantage of the ease of emptying the procedure as emphasized in SEMA Number 4 of 2014. As a result, OHL experienced difficulties in physically controlling the auction object.

With regard to Bank X's responsibilities, in the event that OHL continues to experience difficulties in physically controlling the auction object, then Bank X which is unable to fulfill its obligations must return the price of the sale proceeds from the auction. This is in line with the provisions of Article 17 paragraph 3 of the 2016 auction manual which states "Sellers are responsible for claims for compensation for losses incurred, in the case of not fulfilling the responsibilities referred to in paragraph (1)"

According to Riduan Syahrani in his book, civil disputes that cannot be ended on the basis of kinship can be ended in court. Parties who feel that their rights are experiencing a loss can submit a dispute to the court in order to obtain an appropriate settlement, through filing a lawsuit against the party deemed to have caused the loss.¹⁸ In a lawsuit, there are two or more people who think that their rights or the rights of the parties have been violated, but the party who feels that their rights or rights have been violated does not wish to voluntarily carry out the request. In determining the right party and having rights, a judge's decision is needed.¹⁹

According to Article 1246 of the Civil Code, the lawsuit in the form of compensation includes costs, losses and interest which the creditor may be required to reimburse. Regarding compensation, it consists of reimbursement of costs, losses and interest. Costs, meaning all expenses or expenses which have actually been issued by a party. Loss is defined as a loss due to damage to property, the debtor, which results in a debtor's mistake, while interest is a loss in the form of loss of profits that have been imagined or calculated from the creditor.²⁰

The claim for compensation is filed by the aggrieved party, in this case OHL as the winner of the auction, with evidence of the Minutes of Auction that needs to be protected by law, but in reality they cannot immediately enjoy the object of the auction, so they suffer losses because these rights must be pursued by suing on the basis of unlawful acts. The losses suffered by OHL are both material and immaterial, material losses have taken part in the auction, paying for the auction object, court costs and others and immaterial losses at least by not being able to immediately occupy the auction object, bear the moral burden including the length of time the case is processed in court hearings. Liability on the basis of unlawful acts as referred to in Article 1365 of the Civil Code. The definition of an unlawful act in Indonesia is translated from the Dutch term "onrechtmatige daad": an unlawful act according to Rosa Agustina:

"The term "violating" is inherent in active and passive nature. Active nature can be seen when you intentionally do something that causes harm to other people, so you deliberately make a move so that the active nature of the term "violating" is clearly visible. On the other hand, if he is deliberately silent or in other words, if he is passive, causing harm to others, then he has "violated" without having to move his body.²¹

The claim for compensation is borne by Bank X which caused the loss and must be responsible for the losses incurred. The losses suffered by OHL occurred after the auction, which means that the auction was held in accordance with the pre-auction procedure, the auction was held and after the auction, the minutes of the auction were published with the legal auction winner being OHL's brother.

V. CLOSING

Conclusion

Based on the description of the discussion and analysis that has been explained previously, it can be concluded: The Bank is fully responsible for the juridical and physical leveraging of the auction object to the auction winner, based on Article 17 of the 2016 Auction Manual and Article 13 of the 2020 Auction Manual, it states that the Seller in In this case, Bank X is responsible for the delivery of movable and/or immovable objects. Because basically, the law has regulated that the seller is obliged to guarantee the possession of the goods being sold safely and securely to the buyer. This form of accountability can be in the form of providing mediation so that the debtor wants to vacate the auction object voluntarily or by providing proper direction and coordination to the buyer to apply for an emptying execution or if as a last option, namely by returning payment of the auction price paid by the auction buyer.

¹⁸ Riduan Syahrani, 2010, *Seluk Beluk dan Asas-asas Hukum Perjanjian*, Alumni, Bandung, p. 21.

¹⁹ Retnowulan Sutantio dan Iskandar Oeripkartawinata, 1998, *Hukum Acara Perdata dalam Teori dan Praktek*, Cetakan Kesebelas, Mandar Maju, Bandung, p. 6.

²⁰ R. Subekti, 2001, *Hukum Perjanjian di Indonesia*, Pustaka Yutisia, Jakarta, p. 47.

²¹ Rosa Agustina, 2003, *Perbuatan Melawan Hukum*, Penerbit Pasca Sarjana FH UI, Jakarta, p. 49.

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SUGGESTION

Suggestions that can be given based on the results of the analysis of the problems in this study are: In order for the bank to facilitate the leveraging process in the future and participate in guaranteeing the mastery of collateral items to hand over the auction object as a form of accountability, it is necessary to make a statement stating that if the debtor defaults, the debtor is obliged to voluntarily vacate the land and building mortgage rights, so that in the future the bank can obtain convenience in handing over the auction object and is also free from claims for compensation filed by the buyer.

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