

Juridical Analysis of Land Registration Certificate as an Absolute Requirement in the Mortgage Execution Auction

Adine Alimah Maheswari  ORCID Link:
Faculty Of Law, Universitas Negeri Semarang
Email : -

Suhadi
Faculty Of Law, Universitas Negeri Semarang
Email : -

Abstract

SKPT is a document that is a mandatory requirement in an auction application. The SKPT must be submitted by the creditor to the KPKNL when requesting an auction. However, many auctions were canceled by the KPKNL Office due to the lack of complete SKPT requirements which were not fulfilled by the creditors. This research aims to find out the regulations and urgency of the SKPT document as a condition for holding an auction. The research method used in this research is a normative juridical method through statutory and conceptual approaches. The data source used in this research is secondary data through reviewing legal regulations, books, journals, articles and other sources. In this research, it was found that there are still many creditors who do not know that the SKPT document is a mandatory requirement for holding auctions. The government should be able to provide outreach regarding the importance of the SKPT document as a condition for carrying out mortgage rights execution auctions.

Keywords: SKPT, Auction Implementation, Auction Canceled.

Introduction

Welfare is something that the state must strive for its people. One of the state's efforts to realize state prosperity is through economic



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development. Economic development is an important element in national development in creating a prosperous country. In order to develop a good national economy, financial strength is needed for the country and its people. This can be done by lending and borrowing money between debtors and creditors. Where, the creditor is the lender of money or capital to the debtor as the party who needs to borrow money as capital (Jufri et al., 2020: 1).

As time goes by, lending and borrowing activities are now increasingly complex. Currently, the existence of collateral is required as collateral for debt repayment in lending and borrowing activities in terms of debt coverage. The purpose of having these collateral objects is to guarantee the repayment of debts from debtors who default or break promises in fulfilling their achievements. This material guarantee gives material rights to the security holder to sell or pay off debts on the object that is used as collateral. One type of property that is often used as material collateral in debt and receivable agreements is land. Land objects are often used as collateral objects in credit agreement activities between debtors and creditors. Land objects are often used in credit guarantee activities because they are considered to have relatively high economic value (Rapiq and Hapsari, 2022:106).

Land is a very important asset for a nation and state. The role of land is so important for a nation that it is considered to be able to demonstrate the sovereignty of the existing nation (Suhadi and Wahanisa, 2011:70). Basically, in its use, land functions as a strategic spatial element (Suhadi, 2017:7). Land also has a very high selling value, and has a strong emotional bond with humans because there is an attachment to all human activities on it. Land is considered eternal and its existence will never be destroyed except in the event of the destruction of the earth or the apocalypse. Thus, many debtors use land as an object in their debt and receivable agreement activities. To carry out a transfer of ownership of a land object as collateral for material goods, land rights transfer activities are usually carried out.

The transfer of land rights can be carried out in several aspects, including through auction sales. According to its nature, an auction is a lawful activity of transferring land rights. The auction is carried out by bringing together sellers and buyers by bidding at the highest price compared to others to obtain the land object. In this case, it needs to be clarified that the concept of land ownership is not that the land belongs to an individual, but rather that the State gives a person the right to use it as a form of manifestation of prosperity in society. Because, universally land is controlled by the State for the greatest prosperity of the people, which is in accordance with the regulations in Article 33 paragraph (3) of the 1945 Constitution (Putri Nur Megawati, 2020: 265). Based on this, it is clear that land as a natural resource can be utilized by humans in terms of all the wealth within and on it in order to create prosperity for the people. (Suhadi & Muhtada, 2019:70).

Lending and borrowing activities do not always run smoothly. Sometimes the debtor cannot fulfill his achievements or defaults so the creditor has the right to make a decision to continue fulfilling the credit payments. In this regard, in dealing with bad credit due to default, banks can carry out civil executions. Execution according to R. Subekti is an effort made to obtain the fulfillment of rights by the party declared victorious in a decision, with the help of legal force to force the losing party to carry out the verdict. In general, the type of execution of mortgage rights is the activity most often carried out by creditors in fulfilling the debtor's debt repayment. Execution of birth mortgage rights to fulfill the rights of creditors which can be carried out by force in repayment of debts of debtors who are in breach of contract, where the objects are encumbered with mortgage rights.

The legal basis regarding the execution of mortgage rights is regulated in Article 20 paragraphs (1) and (2) of Law Number 4 of 1996 concerning Mortgage Rights, namely:

If the debtor defaults, then based on:

- a. The right of the first Mortgage Rights holder to sell the Mortgage

Rights object as intended in Article 6, or

- b. The executorial title contained in the Mortgage Rights certificate as intended in Article 14 paragraph (2), the Mortgage Rights object is sold through a public auction according to the procedures specified in the statutory regulations for repayment of the Mortgage Rights holder's receivables with pre-emption rights over other creditors.
- c. Upon agreement between the giver and the holder of the mortgage right, the sale of the object of the mortgage right can be carried out privately if by doing so the highest price can be obtained which is profitable for all parties.

According to Article 6 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, it is explained that if the debtor breaks his contract, the holder of the first Mortgage Rights has the right to sell the Mortgage Rights object under his own authority through a public auction and collect the repayment of the receivables from the sales proceeds. This means that creditors, in this case, as holders of land rights encumbered with mortgage rights, can carry out their own auction execution by submitting an auction request to the State Property and Auction Services Office without needing execution approval from the Chief Justice (Putra & Kunarti, 2022: 249). Furthermore, the creditor in this case also has the right to take precedence over the level of debt repayment (*droit de preference*) (Ningsih, 2021: 88).

The process of selling or carrying out an auction for mortgage objects must first go through the auction application registration stage which is carried out by the seller or creditor. An auction request is a request for an auction sale made by the seller or creditor to the Head of the State Property and Auction Services Office, hereinafter referred to as KPKNL, accompanied by the auction requirements documents. Submission of execution auction requests can be done online via the website or in writing by registering the auction request directly at the KPKNL office. Furthermore, the auction

applicant is required to submit the required documents which must be provided when registering the auction application. Then, the auction application that has been registered will be verified and re-checked by KPKNL.

However, not all auctions are approved by auction officials. Many auctions have been canceled by the KPKNL Office due to lack of complete requirements. One of the important documents that is often not completed by auction applicants in the required documents is the Land Registration Certificate, hereinafter referred to as SKPT. In fact, SKPT is one of the documents that is a mandatory requirement for holding an auction. Many people do not understand the urgency and importance of SKPT in the auction registration requirements at the KPKNL office (Hermawan & Adjie, 2023: 4).

Based on the background above, the problem formulation used in this research is

1. What is the juridical analysis of the Land Registration Certificate (SKPT) in the mortgage execution auction?
2. What is the urgency of the Land Registration Certificate (SKPT) in the mortgage execution auction?

Method

A. Understanding Mortgage Rights

Mortgage Rights are control rights given specifically to creditors for the security rights imposed on land. In this case, the creditor has the authority to carry out land sales by auction or privately with the aim of taking part or all of the proceeds from the land sale ahead of other creditors, as repayment of debts from debtors who are in breach of contract. According to Sutan Remy Sjahdeini, explains that mortgage rights are a right that is used to guarantee a debtor's debt by giving the creditor as the collateral holder the primary right to take precedence over other creditors, if

the debtor experiences a breach of contract. He also explained that mortgage rights are a type of pledge, mortgage and fiduciary (Arba and Diman, 2020:3-5).

Basically, mortgage rights as a type of security right were only recognized after Indonesia became independent. At that time, the government established Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations, the government realized the need for increasingly developing economic institutions. For example, cooperative institutions that lend large amounts of money require material collateral from the borrower as proof of seriousness in repaying the loan (Arba and Diman, 2020:3-5).

For this reason, the government regulates several articles in the UUPA which contain mortgage rights, namely Articles 23, 33, 39, and 51. These regulations ultimately formalize mortgage rights having their own regulations, which are contained in the Mortgage Rights Law Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Thereon.

Mortgage rights function to guarantee debts agreed to in a credit agreement or debt agreement (Urip Santoso, 2007:99). Article 3 of the Mortgage Rights Law contains the conditions for debts that can be secured by mortgage rights, including:

1. Debt whose repayment is guaranteed by a Mortgage Right can be a debt that already exists or has been agreed upon for a certain amount or the amount that at the time the application for execution of the Mortgage Right is submitted can be determined based on a debt- receivables agreement or other agreement that gives rise to the debt-receivables relationship in question.
2. Mortgage rights can be granted for a debt originating from one legal relationship or for one or more debts originating from several legal relationships.

Meanwhile, the nature of a strong land security rights

institution must contain the following characteristics (Supriadi, 2016:162):

1. *Droit de Preferenceis* to give priority position to creditors holding mortgage rights over other creditors.
2. *Droit de Suiteis* that the object of debt collateral always remains in the hands of whoever the object is in.
3. Fulfills the principles of specialization and publicity so that it can always provide legal certainty for interested parties and bind third parties.
4. Easy execution and sure implementation.

Article 4 of the UUHT states that land rights that can be encumbered with mortgage rights are property rights, business use rights, building use rights and use rights over state land which can be transferred according to applicable provisions and must be registered. Objects of mortgage rights that can be encumbered by mortgage rights must have 4 conditions, namely:

1. Can be valued in money
2. Included in the rights registered in the general registration
3. It is transferable
4. Requires appointment by law.

B. Definition of Auction

An auction is a sale of goods that is carried out in public and is open to the public. According to the Big Indonesian Dictionary, an auction is defined as a sale carried out in front of a large number of people led by an Auction Officer with an increasing bid price to get the highest price. Meanwhile, based on Article 1 PMK Number 122 of 2023, it explains that the meaning of auction is the sale of goods that are open to the public either directly or through electronic media by means of verbal and/or written price offers which are increasingly increasing to reach the highest price which is preceded by efforts to

collect interested parties via auction announcements. Auction classifications are divided into two, including:

a) Execution auction

An execution auction is a type of auction in which a public sale follows the execution of court decisions and orders or documents that are equivalent to court decisions, such as Mortgages, Mortgage Rights or Fiduciary Guarantees. In this way, it means that the execution auction is a public sale carried out by the Court of the goods belonging to the defendant which have been placed under confiscation (Yuniza, 2021:15).

b) Non-execution auction

Non-execution auction is a type of auction where the implementation of the sale is generally outside the implementation of court decisions or orders. This execution auction is carried out on voluntary auctions of privately owned goods and auctions of goods owned by the state. Basically, the implementation of an auction has a function that is not only for the recipient and holder of rights to objects, but also for the country and its economy (Kumala, 2021:180).

Auctions have a private function that is useful as a means of buying and selling goods and can facilitate the flow of trade transactions. The public function is very attached to auctions, namely a function that functions in managing and ordering the administration of assets controlled by the state. Apart from that, auctions also have a budgetary function where in this case the auction is subject to income tax (PPh) and (BPHTB) on the collection of state revenues in the form of Auction Fees. Of course, this can increase the country's economic tax income (Kumala, 2021:180).

To carry out the buying and selling process at auction, there are several principles that must be met (Kumala, 2021 : 10),

among others:

1. The auction must be carried out in the presence of the auction official;
2. The auction must still be held even if only one participant participates;
3. Auction minutes must be prepared at the time of the auction that has been carried out;
4. If there are no bidders during the auction, then the auction must still be held and minutes of the hearing must be drawn up.
5. The auction cannot be cancelled, if the auction is in accordance with the applicable provisions.

C. Understanding Land Registration Certificate (SKPT)

Land Registration Certificate (SKPT) is a certificate that is informative in land services. The SKPT contains information regarding land owner data, land location, land area and other records related to land services. The SKPT document is one of the mandatory documents that must be present at the tender application stage, so it is necessary to make an SKPT if the document does not yet exist or has expired. This is because the detailed historical land status information contained in the SKPT is used to examine physical and juridical data on a particular plot of land (Putri Nur Megawati, 2020: 267).

This regulation regarding SKPT is regulated in the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, namely that for every auction of land plots, the Head of the Auction Office (KPKNL) is obliged to request an SKPT from the Head of the Land Office for the land plot to be auctioned no later than 7 (seven) days before the auction. Next, the Head of the Land Office will issue an SKPT no later than 5 (five)

days after receiving the request from the Head of KPKNL (Putri Nur Megawati, 2020: 267).

Regulations regarding SKPT are regulated in Article 40 (1) of Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Instructions, namely:

- (1) The process of arranging and costing a land certificate or a land registration certificate/a certificate of flat registration/a certificate of the object to be auctioned or a certificate of the village head/village head/flat manager/flat owner's association is the responsibility of the Seller.
- (2) In carrying out the processing of documents as intended in paragraph (1), the position of the Seller is that of proxy or representative of the Head of KPKNL or Class II Auction Officer.

According to information from the Bekasi Regency Government Public Services Mall website. The amount of the SKPT fee charged to the applicant is IDR. 50,000, (Public & Bekasi, 2024). The costs for making the SKPT are taken care of by the private creditor and the payment is made directly to the National Land Agency (BPN). Making this SKPT is used as one of the requirements for completing the SKPT file documents at the auction application stage so that the auction implementation stage can be carried out.

Result and Discussion

A. Juridical Analysis of Land Registration Certificates (SKPT) in Mortgage Execution Auctions

Generally, an execution auction is an effort to fulfill achievements made by the creditor due to an act of broken promise or default committed by the debtor to the creditor (Herry Christian, 2019: 213). Execution of mortgage rights is the fulfillment of the creditor's rights

which can be carried out by force in paying off the debt of a debtor who is in breach of contract, where the object is encumbered with mortgage rights (Enel Reza Hafidzan and Ery Agus Priyono, 2018: 9-10). The execution of mortgage rights is the basis for auctioning auction objects which is usually carried out by creditors. The creditor in this case is Bank BNI using the execution of mortgage rights in accordance with the provisions of Article 6 of the Mortgage Rights Law.

Execution of Mortgage Rights according to Article 6 UUHT is usually called Execution Parate, namely that the creditor has the right to sell the object of mortgage rights with his own authority through a public auction if the debtor defaults (Rizalni Kurniawan et al., 2023: 512- 513). This method requires the creditor to immediately submit a sale through an auction request directly to the State Property and Auction Service Office without having to make a court decision because of a lawsuit from a third party other than the debtor or the debtor's husband or wife who has a connection with land ownership (Widyanti et al., 2020: 137).

KPKNL as the agency authorized to carry out the auction must comply with the provisions of the applicable laws and regulations. Where, KPKNL is not allowed to reject every auction request that comes in. The State Property and Auction Service Office (KPKNL) is not allowed to reject every auction request that comes in in accordance with the applicable Minister of Finance Regulations. However, if the requirements for the application documents submitted by the applicant are incomplete, then KPKNL has the right to cancel the auction proposed by the applicant as creditor.

Cancellation of the auction due to the lack of completeness of the documents submitted by the applicant can be canceled directly by the KPKNL. In Article 43 of the Minister of Finance Regulation Number 122 of 2023 concerning Instructions for Implementing Auctions, it is explained that a Land Registration Certificate (SKPT) for each Auction

implementation for Auction Objects in the form of plots of land, apartment units, or immovable goods other than land is based on statutory regulations. The invitation must be registered and must be accompanied by a certificate from the authorized agency.

SKPT is a certificate issued by the Land Office due to a written request from the Head of the KPKNL Office at the auction of existing mortgage objects. The function of the SKPT at the auction itself is as a basic assessment for auction officials in deciding on the implementation of the auction that will be carried out in order to confirm and avoid auctions whose object is not clear. This is because the SKPT contains information regarding up-to-date sources of information regarding the land and/or building that will be auctioned, while the HT certificate only proves ownership (Hermawan & Adjie, 2023: 4).

The Land Office is obliged to issue an SKPT letter no later than 5 (five) working days or 7 (seven) calendar days after receiving the request from the Head of the KPKNL Office. However, if the relevant SKPT letter is not issued or released at the specified auction time, then the auction remains scheduled but the auction is immediately declared ended. This is due to the lack of completeness of the specified document requirements (Putri Nur Megawati, 2020: 267). However, the Bank as the applicant party in the auction sale can continue to strive to fulfill the required auction requirements. If the specified document requirements are deemed complete, BNI as the creditor can submit a re-auction no later than 60 days after the first auction.

In this way, the SKPT document is a very important document and must be present in the auction for the execution of Mortgage Rights. Thus, the cancellation of the auction carried out by the KPKNL Office is in accordance with applicable regulations and does not conflict with the law. This is in line with the provisions of Article 44 of the Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Guidelines, namely that an Auction that will be held

can only be canceled by the Auction Officer based on:

- i. Seller Request;
- ii. Court ruling or ruling ordering the postponement/cancellation of the Auction; and/or
- iii. other matters regulated in this Ministerial Regulation.

Article 47 of the Minister of Finance Regulation Number 122 of 2023 concerning Instructions for Implementing Auctions, is the basis for the reasons that Auction Officials can cancel auctions that will be held including:

- a) There is no land certificate or land registration certificate for auction of land plots or apartment units, apartment registration certificate for auction of apartment units with proof of ownership, certificate of ownership of the building for the apartment unit, or certificate for auction of immovable property. other than land which, based on statutory regulations, must be registered;
- b) at a Compulsory Auction in the form of an Execution Auction, the goods to be auctioned are in the status of criminal confiscation or criminal blocking from the investigating agency or public prosecutor;
- c) there is a lawsuit regarding the plan to carry out the Execution Auction for the object of mortgage rights in accordance with Article 6 of the Mortgage Rights Law from a party other than the debtor/executed husband or wife of the debtor/executed who is related to the ownership of the Auction Object;

Therefore, cancellation of the auction by the auction official may occur due to a lack of required documents, one of which is the SKPT document. Because the existence of the SKPT document is very important for auction officials to carry out inspections of the land objects to be auctioned in order to find out the history of the land objects with mortgage rights in the auction process.

B. The Urgency of the Land Registration Certificate (SKPT) in

the Auction for the Execution of Mortgage Rights

The initial principle that must be guided by in the transfer of rights, especially in buying and selling, is the basic conditions for the validity of the agreement as intended in Article 1320 of the Civil Code, where there are conditions of agreement, competence, a certain object and lawful causes. Regardless of the object, even in the context of immovable property specifically related to land rights, the guidelines in Article 1320 still apply as the main implementation of the transfer of land rights through buying and selling (Putri Nur Megawati, 2020: 268).

The conditions that must be complied with in the transfer of rights, especially buying and selling, are in accordance with the regulations contained in Article 1320 of the Civil Code, namely that the conditions for the validity of the agreement are the presence of an agreement, capacity, a certain object and a halal cause. This principle must be followed regardless of the object. Auctions include the transfer of buying and selling rights to any object, whether movable or not. Although, in the transition of buying and selling auctions on land rights there are several other things that are required but they must still comply with the regulations in Article 1320 (Putri Nur Megawati, 2020: 268).

The transfer of land rights at auction must first involve registration of the encumbrance of mortgage rights on the land. Encumbrances of mortgage rights placed on property rights, building use rights, business use rights, rental rights, use rights and apartment unit rights can be registered if proven by a deed that has been made by PPAT or an authorized Land Deed Making Officer based on statutory regulations. valid invitation. This means that the granting of mortgage rights granted by the person giving the mortgage rights to the creditor does not just happen, but must go through a recording process which is recorded in the land book at the local land office and in the case of granting collateral it must have a deed made by an authorized Land Deed Making Officer. This is intended to ensure legal certainty so that both givers and recipients of mortgage rights are

guaranteed legal protection in accordance with applicable laws and regulations (Hermawan & Adjie, 2023: 6).

However, the principle of land registration in Indonesia adheres to a negative publication system. Where, the land rights certificate is applied for by the applicant and/or the land rights owner himself to the Land Office. In this case, the Land Office is passive because it cannot provide complete legal certainty if problems arise regarding land disputes. Therefore, ownership and proof of land rights have not been given maximum legal protection by the State even though the nature of land rights certificates, especially Ownership Rights Certificates, is the strongest and most complete (Hermawan & Adjie, 2023: 7).

Land Registration Certificate (SKPT) is a certificate issued by the Land Office. This product from the Land Office contains information regarding physical data and juridical data on land which is used by auction officials as consideration in conducting auctions. The existence of an SKPT is very urgent considering the importance of information regarding the history of the land to find out information about whether there are any blocking, encumbrances, transfers and disputes on the land. Although SKPT does not have binding legal force, its position is very vital in the current practice of land auctions and transfers (Hermawan & Adjie, 2023: 8).

In essence, the requirements for fulfilling SKPT documents in the transfer of land rights are considered very important in the current transfer of rights procedures, because SKPT is used as an instrument to bring fulfillment of legal certainty for the parties in the agreement and ownership of land rights. This is in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 19 of 2020 concerning Electronic Land Information Services. The land information service regulations regulate one of the positions of the SKPT which is intended for land rights holders, Surveyor Services Offices, banks, PPATs, Auction Offices, Notaries and other parties determined by the Minister. This information service is a form

of innovation to provide accelerated services. land easily, efficiently and quickly (Hermawan & Adjie, 2023: 8).

In fact, the position of SKPT has its own section in Minister of Finance Regulation Number 122 of 2023 concerning Instructions for Implementing Auctions. This is found in Part Four of the Land Certificate or Land Registration Certificate, Flat Unit Registration Certificate, and other Certificates. Article 39 paragraphs (1) and (2) explain the urgency of SKPT's existence in the auction, namely:

- 1) Every Auction held for Auction Objects in the form of plots of land, apartment units, or immovable goods other than land which, based on statutory regulations, must be registered, must be accompanied by a certificate from the authorized agency.
- 2) The certificate as intended in paragraph (1) is in the form of:
 - a) land certificate or land registration certificate from the local land office, for goods in the form of plots of land or apartment units with proof of ownership of the apartment unit ownership certificate;

Therefore, the SKPT is used as the basis for carrying out the auction because at the auction there will be a legal act of transferring land rights to the auction winner. The auction winner as buyer of this auction object is submitted by the Auction Office to the Land Office. If the SKPT which contains physical data and juridical data in Article 2 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 19 of 2020 concerning Electronic Land Information Services is not fulfilled, then this will be detrimental to the auction winner. This is because the auction winner does not have data and/or information regarding the legal subject that controls the final land or the history of the land in question. Of course, this is very important for auction buyers who have good intentions because the existence of an SKPT can provide legal protection and prevent potential interference from third parties.

Conclusion

Thus, the application of SKPT is very important in providing information to auction officials regarding the history of the land to be auctioned as a basis for auction considerations. Apart from that, SKPT also functions to provide legal protection for auction winners and prevent potential interference from third parties. However, regulations regarding the urgency of SKPT have not been regulated in detail in the law, so further regulation of this matter is needed in order to provide legal certainty, especially for the Auction Office and auction buyers.

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