

Analyzing Legal Ramifications for Auction Winners: A Case Study of Bekasi and Makassar Court Decisions on Auction Cancellations

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Analyzing Legal Ramifications for Auction Winners: A Case Study of Bekasi and Makassar Court Decisions on Auction Cancellations

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ABSTRACT. This article starts with the auction of the valid execution and in accordance with the minutes of auction of the Bekasi State Wealth and Auction Service Office (KPKNL) Number 225/2013 with the winner of the auction in good faith, but the auction was canceled by the court in the decision of the Bekasi State Court Number 412/Pdt.G/2015/PN.Bks on the claim of the legal owner of the collateral object against Auction applicant. The creditor filed for the execution of the dependent rights under Article 6 of the Law on Dependent Rights Number 4/1996 on the basis of default. Furthermore, the decision was appealed and then continued with cassation and finally the Review of case Number 664PK/PDT/2020 with the decision to reject the application for cassation and Judicial Review. Weaknesses in the auction rules result in the rights of auction winners not being accommodated and not protected by law. This article is interesting to researched and is the first time it has happened and has not been regulated in the Technical Guidelines of the Minister of Finance Regulation Number 213/PMK.06/2020. As a comparison, the case in Makassar State Court Number 73/Pdt.G/2023. With the method of statutory approach, cases, and theories of laws, then analyzed in the way of legal reasoning, and interpretation of laws. The results showed the legal consequences of the rights of the auction winners due to court decisions, namely experiencing material losses that must be borne by the Bekasi District Court decision. Solutions offered, updating the *Vendu Reglement Ordonantie* on the conduct of auctions in Indonesia; perfecting PMK Number 2013/PMK.06/2020 concerning technical guidelines legal. The purpose of the study, to examine the legal consequences of the rights of auction winners because the court decision that decided the auction has no legal force.

KEYWORDS. Consequences, Court Decisions, Auction

Analyzing Legal Ramifications for Auction Winners: A Case Study of Bekasi and Makassar Court Decisions on Auction Cancellations

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Introduction

The regulation of eagles in Indonesia is contained in Article 1 of the *Vendu Reglement* (abbreviated VR) *Staatsblaad* 1908:189 as amended several times and most recently by *Staatsblaad* 1941:3 and Regulation of the Minister of Finance (abbreviated as Permenkeu) Number 213/PMK.06/2020 concerning Auction Implementation Guidelines in Article 1 Number 1, It is actually part of the civil procedural law where the parties to the dispute can recover the rights that have been harmed by the other party through the Court and not be a judge for themselves. In an auction the parties to the dispute are debtors and creditors, and the third² party as mediator/breaker is the Auction Officer.

Auctions have several functions, including public functions, private functions, and budgetary functions. The public function will support law *enforcement* in the fields of civil law, criminal law, and taxation. In addition,

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² Nahrudin, Sufirman Rahman, and Anzar Makkuasa, "Penerapan Asas Nebis In Idem Dalam Perkara Perdata: Telaah Putusan Nomor 352/Pdt.G/2019/PA.Mrs.," *Journal of Lex Generalis (JLS)* volume 4, no. 352 (2023): 50–65, <https://pasca-umi.ac.id/index.php/jlg/article/view/1279/1457>

auctions are also part of the execution of a judge's decision with permanent legal force. The role of strategic auction institutions is to drive the Indonesian economy through the execution of Article 6 of Law Number 4 of 1996 concerning Dependent Rights (abbreviated as UUHT). The Bank uses Article 6 of the UUHT to obtain repayment of bad debtor debts which will have a positive impact on the level of financial health of banks. The rights of creditors holding Dependent Rights have been protected by Law Number 4 of 1996 concerning Dependent Rights in Article 20 paragraph 1.³

The emergence of buying and selling in the auction of credit guarantee objects at the Bank because there is a default on the part of the debtor. The bank as the creditor will carry out the auction execution of the bad credit guarantee object. Land objects that become collateral for debt / credit are bound by the right of custody. The granting of Dependent Rights must be registered with the Land Office, and the Land Office issues a Certificate of Dependent Rights containing the letters "*For the sake of justice based on the Almighty God*" (Article 13 paragraph (I), Article 14 paragraph (1) and (2) UUHT). With the *irah-irah* (executory title) in the Certificate of Dependent Rights which binds debtors and creditors, it will give birth to rights and obligations for each party. The *irah-irah* in the Certificate of Dependent Rights are equated in position as in the *irahs* of the head of court decisions of permanent legal force, both having the same executory power. Execution is not only through executory titles (court decisions and *grosse acta*) only, but there are also executions that are not based on executory titles, namely underhand sales and *parate executie*.⁴ Against the defaulting debtor, the holder of the dependent right (Bank) will apply for an execution auction in accordance with article 6 of the UUHT (Dependent Rights of Law). There are three types of Execution of Dependent Rights regulated in the Law of Dependent Rights, namely: *Parate Executie* or execution on one's own power; execution based on executory title and execution under hand.⁵ Often

³ Muh Akbar Ariz Purnomo, "Perlindungan Hukum Bagi Pemberi Hak Tanggungan Yang Bukan Debitur Dalam Perjanjian Kredit," *Unnes Law Journal* 3, no. 1 (2014): 62–68.

⁴ Yusuf Arif Utomo, "Parate Executie Pada Hak Tanggungan Sebagai Perlindungan Aset Kreditor Dan Debitur," *Yuridika* 26, no. 2 (2011): 177–202, <https://doi.org/10.20473/ydk.v26i2.270>.

⁵ Ananda Fitki Ayu Saraswati, "Dilematis Eksekusi Hak Tanggungan Melalui Parate Executie Dan Eksekusi Melalui Grosse Akta," *Jurnal Repertorium* II, no. 2 (2015): 51–59, <https://www.neliti.com/publications/213089/dilematis-eksekusi-hak-tanggungan-melalui-parate-executie-dan-eksekusi-melalui-g>.

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creditors conduct execution auctions without first submitting an application to the Chief Justice of the District Court, but directly to the auction office on the basis of Article 6 of the Dependent Rights Law on Liability Rights on land and objects related to land, while Article 224 HIR (Updated Indonesian Regulation: *Het Herziene Indonesisch Reglement*, Staatsblad 1941-44) and Article 258 RBG (Procedural Law Regulation for Regions Outside Java and Madura: *Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madura*, Staatsblad 1927-227), before the auction is submitted for execution, the creditor must appeal to the Chief Justice of the District Court (abbreviated District Court).⁶

The execution of an executory title based on the Certificate of Liability, the process of selling collateral follows and is subject to the Civil Procedure law as contained in Article 224 H.I.R/258 RBg., the implementation of which takes a long time.⁷ The auction process is carried out before state auction officials through the State Auction Office or the State Wealth and Auction Service Office (abbreviated as KPKNL). Regulation of the Minister of Finance (abbreviated as PMK) Number 153 / PMK.01 / 2006 has undergone several changes and the last is PMK Number 213/ PMK.06 /2020 concerning Auction Implementation Guidelines as a legal umbrella for parties in the auction. In fact, what happened to the KPKNL in the working area of the Regional Office of DJKN Sulseltraba and KPKNL throughout Indonesia, the implementation of auctions based on executory titles with the *irah-irah* "Fore the sake justice based on the Almighty God", both the implementation of auctions at the auction application stage, and auctions have been carried out, whether the object of the auction is sold, there is no offer / has not sold, often hindered / problems arise because of a lawsuit from the legal owner of the collateral object being auctioned, to the Court. A lawsuit was filed to delay the conduct of the auction, or to cancel the transfer of rights through an auction that had been sold to the winner of the auction.

⁶ C 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 (2017): 125, <https://doi.org/10.30659/akta.v4i2.1755> Catur Budi Dianawati and Amin Purnawan, "Legal Study of Collateral Rights Auctioned Without Execution Auction Application Process to the Chief Justice of the District Court," *Journal of Deed* 4, No. 2 (2017): 125, <https://doi.org/10.30659/akta.v4i2.1755>.

⁷ Lydia Kurnia Putri Rosari, Imam Nur Koeswahyono, and Diah Aju Wisnuwardhani, "Implikasi Yuridis Parate Eksekusi Obyek Hak Tanggungan," *Jurnal Cakrawala Hukum* 13, no. 1 (2022): 68–77, <https://doi.org/10.26905/idjch.v13i1.5189>.

Based on PMK 213/PMK.06/2020, it is regulated that auction executions that have been carried out in accordance with applicable and legal provisions cannot be canceled. As also happened in the implementation of the Right to Cover auction at KPKNL Semarang has followed the provisions of PMK No.213 / PMK.06 / 2020.⁸ This is expected to provide certainty and legal protection for the parties, namely the holders of dependent rights and auction winners, but in practice the execution of dependent rights auctions often experience obstacles in its implementation, due to lawsuits filed through the court. Obstacles in the auction of the execution of Dependent Rights were also experienced by the KPKNL Yogyakarta.⁹

Not only delays, auction implementation, even an auction that has been in accordance with the provisions and has been won by the auction winner, can be canceled or can be declared unenforceable due to a court decision. This legal uncertainty was also written by Yenti that the laws and regulations do not explicitly regulate legal protection for auction winners.¹⁰ This is also stated in Natalia's writing, which in essence, because of the legal vacuum, the auction buyer does not get legal certainty. Therefore, it is¹¹ necessary to regulate the special procedural law for the execution of dependent rights so as to provide legal certainty. With this principle of legal certainty, it is hoped that the auction of dependent rights is the last way out for the Dependent Rights Holder in resolving problems when the debtor is injured by the promise.¹²

The implementation of the auction on the execution of the Right to Cover will cause a transfer of land rights to the winner of the auction, and the

⁸ Ayup Suran Ningsih, "Kajian Yuridis Efektifitas Penyelesaian Kredit Macet Melalui Lelang Hak Tanggungan," *Arena Hukum* 14, no. 3 (2021): 546–66, <https://doi.org/10.21776/ub.arenahukum.2021.01403.7>.

⁹ P Winriadirahman, "Pelaksanaan Eksekusi Hak Tanggungan Di Kantor Pelayanan Kekayaan Negara Dan Lelang Yogyakarta," 2017, <https://digilib.uin-suka.ac.id/id/eprint/28578/>.

¹⁰ Yenti Murni and Beatrix Benni, "Perlindungan Hukum Pemenang Lelang Eksekusi Hak Tanggungan Pada Kantor Pelayanan Kekayaan Negara Dan Lelang (KPKNL) Pekanbaru," *Simbur Cahaya* 25, no. 1 (2018): 16–29, <http://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/321/169>.

¹¹ Natalia Maria Liju and Abdul Rachmad Budiono, "Perlindungan Hukum Terhadap Pembeli Lelang Yang Tidak Menerima Objek Lelang Dalam Masa Penyerahan," *Jurnal Cakrawala Hukum* 12, no. 3 (2021): 303–13, <https://doi.org/10.26905/idjch.v12i3.7095>.

¹² Dwi Nugrohohandini and Etty Mulyati, "Akibat Hukum Gugatan Dan Perlawanan Terhadap Lelang Eksekusi Hak Tanggungan," *Jurnal Bina Mulia Hukum* Vol 4, No, no. 114 (2019): 35–52, <https://doi.org/10.23920/jbmh.v4n1.3>.

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winner of the auction has the right to get certainty and legal protection of the Right to Cover as the object of auction, if it has carried out its obligations in accordance with the provisions in the auction regulations. It was also written by Supriadi Jufri that the¹³ control of auction objects by auction winners will get repressive legal protection, namely by filing a claim for compensation to the court for objects that should be controlled by auction winners.¹⁴

Based on data from interviews with Dimar Novensastomo, an auction official of the Makassar KPKNL, the average frequency of annual auctions at the Makassar KPKNL is 1200. The implementation of auctions that are in accordance with the rules can only be canceled by court decisions and in practice many parties try to obstruct the execution of dependent auctions. This can be shown that according to Cahyo Windu Wibowo as Head of the Legal Section of the Regional Office of DJKN Sulseltrabar, the number of auction cases for the execution of dependent rights handled by the KPKNL Makassar as of April 30, 2023 at the first instance is 171 cases, at the appeal level of 19 cases, and at the Supreme Court level of 6 cases. So about 14% per year of these cases occur in Makassar.

If reviewed, there are several types of auctions, namely: 1) Execution Auction, namely the sale and purchase of collateral as a realization of the results of the trial or determined by the assembly or in the context of implementation in the provisions of applicable legal rules; 2) Compulsory Non-Execution Auction, namely the sale and purchase of collateral according to the provisions of the applicable legal rules, must be sold in order of execution of selling collateral goods. 3) Voluntary Non-Execution Auction, which is auctioned voluntarily from the guarantee of ownership of collateral, either the rights of individuals / persons or entities.¹⁵ Based on Article 20 of Law Number 4 of 1996, in principle there are three ways of execution of Dependet Rights.¹⁶ Auction of Execution of Custody Rights in practice can

¹³ Masitoh Miftahul Jannah and Siti Malikhatun Badriyah, "Tinjauan Yuridis Pelaksanaan Eksekusi Lelang Pada Perjanjian Kredit Macet Dengan Hak Tanggungan" 5, no. 1 (2023): 557–66, <https://doi.org/10.37680/almanhaj.v5i1.2493>

¹⁴ Supriadi Jufri, Anwar Borahima, and Nurfaidah Said, "Pelaksanaan Lelang Eksekusi Hak Tanggungan Melalui Balai Lelang," *Jurnal Ilmiah Dunia Hukum* 4, no. 2 (2020): 95, <https://doi.org/10.35973/jidh.v4i2.1379>.

¹⁵ I Dewa Gede Agung Dhira Natsya Ora and Dewa Gde Rudy, "Kedudukan Lembaga Perbankan Sebagai Pembeli Lelang Eksekusi Hak Tanggungan Atas Jaminannya," *Acta Comitas* 6, no. 02 (2021): 310, <https://doi.org/10.24843/ac.2021.v06.i02.p08>.

¹⁶ Offi Jayanti and Agung Darmawan, "Pelaksanaan Lelang Tanah Jaminan Yang Terikat Hak Tanggungan," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (2018): 457–72, <https://doi.org/10.24815/kanun.v20i3.11830>.

be carried out through the principle of Parate Execution and the principle of Fiat Execution. Parate Principles Execution in practice is more in demand because bureaucracy is shorter and costs less.¹⁷ The execution of collateral against non-performing loans is carried out by selling collateral through auction based on the Law on Dependent Rights (UUHT) in Law No. 4 of 1996 Article 6.¹⁸

Compared to the case that occurred in Bekasi, it is precisely because the auction has been held and there is a winner, then there is a lawsuit over the collateral object. This is corroborated by the results of an interview with the Advocacy Bureau of the Secretary General of the Ministry of Finance (Dinta Cahaya Sari): "although it is rare for an execution auction to be successfully canceled due to a lawsuit, the execution must wait until it has permanent legal force through cassation and judicial review.

Other regulations relating to legal protection of auction winners can be found in the Supreme Court Circular (abbreviated as SEMA) Number 4 of 2016 point 4 of the Civil Chamber Law Formulation which regulates the criteria of "good faith buyers". An example of a case in the MARI decision Number 821K/SIP/1974 concerning legal protection for auction buyers in good faith, but there is also an opposite decision, namely the Bekasi District Court decision Number 412 /Pdt.G /2015 / PN Bks. jo High Court (PT) decision Number 222 / Pdt /2017/PT Bdg. Jo cassation decision Number 1552K/Pdt./2018 jo PK decision Number 664PK/Pdt./ 2020 where the decision upholds the Bekasi District Court (PN) decision that the auction has no legal force. Practically here the auction is canceled so that auction buyers in good faith are not protected their rights and legal certainty is not achieved and will result in financial and time losses. How is the analysis so that the auction is decided to be unenforceable and canceled. Another similar case that occurred in Makassar, namely decision Number 72/Pdt.G/2023. According to Putera, Abbas, and Arifin:¹⁹ "Legal Protection for holders of

¹⁷ R. Suharto, "Lelang Eksekusi Hak Tanggungan," *Law, Development and Justice Review* 2, no. 2 (2019): 183–93, <https://doi.org/10.14710/ldjr.v2i2.6315>.

¹⁸ Ora and Rudy, "Kedudukan Lembaga Perbankan Sebagai Pembeli Lelang Eksekusi Hak Tanggungan Atas Jaminanya."

¹⁹ Nugroho Hasan Putera, Ilham Abbas, and Muhammad Ya'rif Arifin, "Pembatalan Sertipikat Hak Atas Tanah Karena Cacat Administrasi Berdasarkan Putusan Pengadilan Yang Telah Berkekuatan Hukum Tetap (Incracht)," *Journal of Lex Generalis (JLS)* Volume 3, (2022): 2006–24. See also Jordy Herry Christian, "Juridical Study of Unlawful Acts as Factors in Cancellation of Auctions on Guaranteed Objects [Kajian Yuridis Perbuatan Melawan Hukum Sebagai Faktor Pembatalan Lelang Atas Objek

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good faith certificates that are requested is void due to administrative defects based on a court decision that has the force of law is still obtained by irrevocable certificate of land rights, if in a court case on which the application for cancellation of the certificate based Binding Land Rights, the holder of the Certificate of Land Rights does not become a party to the case, the holder of the Certificate of Land Rights obtains his rights in good faith, and actually controls well, otherwise if the holder of the Certificate of Land becomes a party to the case in court to defend his rights which then the decision has permanent legal force, the application for cancellation can followed up".

Comparing with several previous studies, among others, Desiana Mulyawardani, with the title: *Legal Protection Against Auction Winners of Execution of Dependent Rights based on Article 6 of Law number 4 of 1996 (Study at the Semarang State Wealth and Auction Service Office)*, whose findings are auction winners/ buyers in good faith do not get legal protection for the execution of dependent rights and what are the obstacles, while the difference with this study lies in the normative study method which discusses the analysis of legal consequences due to the Supreme Court decision Number 664PK/Pdt./2020 which states that the auction has no legal force, even though the auction has been legally carried out but the auction must be canceled. In this case, PMK Number 213 of 2020 ²⁰ concerning auction technical guidelines does not regulate it.

The purpose of the study is to analyze the legal consequences on the winner of the auction because the court decision that decides the auction has no legal force.

Method

This research uses primary legal materials in the form of Dependent Rights Law of 1996, Civil Code, HIR / RBG, *Vendu Reglement*, Minister of Finance Regulation Number 213 of 2020, Court decisions (jurisprudence) and secondary legal materials in the form of books, journals, research results, doctrines, legal certainty theories, legal protection theories, and legal

Jaminan]." *Lex Scientia Law Review* 3, no. 2 (2019): 205-218. <https://doi.org/10.15294/lesrev.v3i2.35401>

²⁰ Desiana Mulyawardani, "Perlindungan Hukum Terhadap Pemenang Lelang Eksekusi Hak Tanggungan Berdasarkan Pasal 6 Undang-Undang Nomor 4 Tahun 1996 (Studi Di Kantor Pelayanan Kekayaan Negara Dan Lelang Semarang)", *Thesis* (Semarang: Diponegoro Semarang, 2012).

principles. Furthermore, legal materials are collected and analyzed to describe the problem using a statutory approach, a conceptual approach and a case approach. Through these approaches, a study is then carried out by means of legal reasoning, legal argumentum and legal interpretation so that conclusions are produced in the form of a prescriptive statement to answer the research objectives.

Legal Consequences for the Rights of Auction Winners Due to Court Decisions That Decide Auctions Have No Legal Force

Based on two cases that have been decided by *inkraacht*, namely the Supreme Court decision Number 664PK/ Pdt.G/ 2020 and the Makassar District Court decision Number 72 / Pdt.G /2023, it shows that the auction winner who has good faith as an auction buyer in the form of collateral objects results in his rights being injured and does not get legal certainty and protection.

A. Analysis of Supreme Court Decision 664PK/Pdt.G/2020

Referring to Kansil's Theory of Legal Certainty: Legal certainty normatively is when a regulation is made and promulgated with certainty because it regulates definitely and logically, and the opinion of Gustav Radbruch who wrote legal certainty is²¹ "*Scherkeit des Rechts selbst*" (legal certainty about the law itself). There are four things that have a relationship with the meaning of legal certainty, including: 1. the law is legislation (*gesetzliches Recht*). 2. The law is based on facts (*Tatsachen*), not on a formulation of judgment later made by the judge, such as good will and decency. 3. That the fact must be clearly formulated in order to avoid errors in interpretation, but that it is also easy to carry out. 4. Positive laws should not be changed frequently.²²

²¹ CST Kansil, *Kamus Istilah Hukum* (Jakarta: Gramedia Pustaka, 2009).

²² Achmad Ali, *Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence) Termasuk Undang-Undang (Legisprudence) Volume I Pemahaman Awal* (Jakarta: Kencana Prenada Media Group, 2010).

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According to John Austin in Dwi Handayani, the rules made by the ruler / positive law must be able to guarantee the certainty of hukum.²³ Legal certainty is an inseparable feature of the law, especially for written legal norms. Clear, precise, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Legal certainty means ²⁴ in line with the facts, namely: there must be clarity, do not cause ²⁵ multiple interpretations, do not cause contradictions, and can be implemented. The law must apply strictly in society, contain openness so that anyone can understand the meaning of a legal provision. Laws from one another should not be contradictory so as not to be a source of doubt.

For auction buyers/ auction winners in good faith based on the Supreme Court decision, it is feasible if the person concerned gets his right to the collateral auction object, but it turns out that the material and time losses he gets even finally have to return the auction object to the legal owner of the collateral object after the decision has permanent legal force. The case is as follows: Based on the results of an interview with Dinta Cahaya Sari, the case handling section of Biro A advocacy of the Ministry of Finance which is one of the powers of the Bekasi KPKNL, explained about the sitting of the case in the decision of the district court (here in after abbreviated as District Court Number 412/ PDT.G/ 2015/PN.Bks yaitu started in 2010 where the certificate of ownership right. (Hak Milik) Number 1962/Jakasetia (object of the case) was guaranteed by Defendant III, namely Medianto Arikusprastyo (one of the children of the deceased Koesdiono), to Defendant I, namely Agus as collateral for a loan of Rp.60,000,000 with repayment deadline for two years, then the certificate of the object of the case by Defendant I was made Akta Jual Beli (hereinafter abbreviated as AJB) on behalf of Defendant II, namely Andy Santoso through the Land Deed Making Officer (hereinafter abbreviated as PPAT) in Bekasi City, namely Luciana Rafi'ie Suprayogi, SH (Defendant VII), with AJB Number 328/2011 dated July 27, 2011 with a selling price of Rp. 300,000,000.-. The AJB was made based on the Deed of Sale and Purchase Engagement Number 60 dated February 26, 2010 drawn

²³ Dwi Handayani, *Prinsip Pembuktian Dalam Perkara Perdata*, ed. Mahmud Falah, pertama (Indonesia: Edu publisher, 2022).

²⁴ R. Tony Prayogo, "Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang," *Jurnal Legislasi Indonesia* 13, no. 2 (2016): 191–202.

²⁵ Nyoman Gede Remaja, "Makna Hukum Dan Kepastian Hukum," *Kertha Widya: Jurnal Hukum* 2, no. 1 (2014): 1–26.

up before Notary Bonar Sihombing, Notary in East Jakarta (Defendant VIII). Furthermore, the object of the case was repetitioned in the name of Defendant II at the local land office (co-Defendant) so that the object of the case was filed in 1962 / Jakasetia on behalf of Koesdiono changed to behalf Andy Santoso. Obyek case by Defendant II was pledged to Bank BRI pursuant to working capital credit agreement number 17 dated September 8, 2010, suplesion and extension of credit period and amendment of credit guarantee number 65 dated June 21, 2011, which then against the object of the case is bound by the right of custody through Certificate Dependant of Rights (Hak Tanggungan) issued by the Bekasi City Land Office headed for the sake of justice based on the Almighty God head number 01651/2012 dated February 20, 2012 and Deed of Granting Rights of Dependents number 422/2011 dated October 27, 2011. Furthermore, Defendant II was declared in default and Defendant IV, namely Bank BRI, submitted an auction application to Defendant V, KPKNL Bekasi through his letter number B.2879-V/KC/ADK/04/2013 dated April 23, 2013, then the auction was held in accordance with the auction provisions on May 22, 2013 and won by Grace Lestari or Defendant VI, as stated in the Minutes of Auction Nomor 225/2013. In this case, the Creditor can execute through parate execution if the certificate contains a provision that the holder of the first Dependent Rights has the Right to sell on his own power to the object of the Dependent Right.²⁶

On September 1, 2015, the object of the case was sued civilly at District Court PN Bekasi with case Number 412/Pdt.G/2015/PN.Bks where the plaintiff was the heirs of the deceased Koesdiono, namely Kun Pudji Lestari (Plaintiff I) as wife and Septiawati Kustandari (Plaintiff II), Yanuar Ari Sambodo (Plaintiff III), and Riani Desinastiti (Plaintiff IV) as children of the deceased Koesdiono, other than Defendant III. In this first instance decision, the plaintiffs won and resulted in the implementation of the auction requested by Bank BRI (Defendant IV), to KPKNL Bekasi cq. DJKN cq. The Ministry of Finance of the Republic of Indonesia (Defendant V) and Grace Lestari as the Auction Winner (Defendant VI) became unenforceable and all Defendant and co- defendants were declared to have committed unlawful acts.

²⁶ Muh Akbar ArizJayanti and Darmawan, "Pelaksanaan Lelang Tanah Jaminan Yang Terikat Hak Tanggungan." *See also* Purnomo, "Perlindungan Hukum bagi Pemberi Hak Tanggungan Yang Bukan Debitur dalam Perjanjian Kredit." *Unnes Law Journal* 3, no. 1 (2014): 62-68. <https://doi.org/10.15294/ulj.v3i1.3635>

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Furthermore, against this first instance decision, the defendants, namely defendants IV, V, and VI, appealed to the West Java High Court where the decision was to strengthen the decision of the Bekasi District Court (decision Number 222 /PDT/2017/PT.BDG, dated June 15, 2017. The next process at the cassation level, the Defendants filed an objection to the Supreme Court (abbreviated as MA) by filing a cassation application which was decided by a panel of cassation judges by rejecting the cassation application from the original cassation applicant Defendant with the decision Nomor 1552 K/Pdt/2018, and finally at the level of judicial review, the application for judicial review was rejected by the panel of judges in the decision Number 664 PK/Pdt/2020. Dinta said at the end of the interview that the auction was canceled / declared unenforceable at the entire level of the verdict, a rare phenomenon at that time.

The researcher examines further the judge's legal considerations and briefly obtains the facts in the decision that there was a formal defect in the object of the dispute as follows:

1. KOESDIONO passed away on July 27, 2002 and left 5 (five) heirs, namely: KUN PUDJI LESTARI, SAPTIAWATI KUSTANDARIYANUAR ARI SAMBODO, RIANI DESINASTITI, S. Ip., and MEDIANTO ARIKUSPRASTYO.
2. That "KOESDIONO" who made the deed of Sale and Purchase Agreement No. 60 dated February 26, 2010, before Notary Bonar Sihombing, Notary in East Jakarta is not the real KOESDIONO;
3. The judge declared the Deed of Sale and Purchase Agreement No. 60 dated February 26, 2010, before Notary BONAR SIHOMBING, Notary in East Jakarta invalid and unenforceable;
4. Sale and Purchase Deed No. 328/2011 dated July 27, 2011 made before LUCIANA RAFPIE SUPRA YOGI, SH, PPAT in Bekasi is invalid and has no legal force;
5. Transfer of rights by Defendant II to Co-Defendant on certificate of ownership rights (Sertifikat Hak Milik) Number 1962/Jakasetia from on behalf of KOESDIONO to on behalf of ANDY SANTOSO: Cancelled.
6. Transfer of rights by Defendant VI to Co-Defendant on certificate of ownership rights (Sertifikat Hak Milik) Number 1962/Jakasetia from on behalf of ANDY SANTOSO to on behalf of GRACE LESTARI: Cancelled.

7. The determination of the Chairman of District Court (PN) Bekasi related to the auction to the seizure of execution of land and buildings with Certificate of ownership rights Number 1962 / Jakasetia, Situation Picture Number 4093/1983 dated 1-9-1983, covering an area of 189 m2 is declared unenforceable.
8. That the title to a piece of land and the building on it in accordance with certificate of property rights (Sertifikat Hak Milik) Number 1962/Jakasetia be returned to the heirs of the deceased KOESDIONO;
9. Defendant VI was sentenced to return certificate of property rights Number 1962/ Jakasetia to the Plaintiffs;
10. Defendants are punished to abide by and abide by the contents of this Judgment;
11. The Defendants are punished to pay the costs of the case arising in this case in the amount of Rp5,831,000 (five million eight hundred thirty-one thousand rupiah).
12. Declaring the inadmissibility of the plaintiff's claim in addition to and in the rest.

As for the points of decision, the panel of judges did not mention the implementation of the auction, but in its decision on point six the panel of judges canceled the transfer of rights by Defendant VI on behalf of Andy Santoso to the name of Grace Lestari which was the result of the auction. This raises questions and the panel of judges is inconsistent.

The basis for the judge's consideration in deciding the auction unenforceable is stated on page 53 of the decision of District Court Bekasi Number 412/Pdt.G/2015 PN.Bks, namely the occurrence of an unlawful act where the grant of power from the late father of defendant III, Koesdiono to a Defendant II to conduct a sale and purchase through the signing of a sale and purchase agreement dated February 26, 2010, Koesdiono passed away on July 27, 2002. In essence, the unlawful act resulted in three processes of transfer of rights that were canceled and/or invalid and/or unenforceable, as follows: 1) The process of sale and purchase agreement and power of attorney to sell number 60 dated February 26, 2010 made before Defendant VIII (Notary Bonar Sihombing, SH, Notary in East Jakarta); 2) The process of Sale and Purchase Deed No.328/2011 dated July 27, 2011, drawn up before Defendant VII (Land Deed Making Officer /PPAT) Luciana Rafi'ie Suprayogi, SH, PPAT in Bekasi City; 3) Reverse transfer of the name certificate of ownership rights (Sertifikat Hak Milik) number 1962/Jakasetia, Situation Picture number 4093/1983, dated 1-9-1983 in the name of

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almarhum Koesdiono to be in the name of Defendant II through Co-Defendant (Bekasi City Land Office).

According to the researcher's analysis, the case is an execution auction and as a mandate from UUHT, where the auction performs its function not only as a means of buying and selling but also as a law enforcement tool. In this case, nothing was violated by Defendant IV, Defendant V and Defendant VI, in exercising their rights as auction applicants related to dependent rights, KPKNL carried out its duties to carry out the auction and the Auction Winner obtained his rights from the implementation of the auction in accordance with the provisions. The judge's decision was that the Plaintiff's suit was granted, punishing Defendant VI (the winner of the auction) to return the title certificate as an object of auction guarantee to the Plaintiffs. So the canceled auction has no binding force anymore so it is considered that there has never been an auction process for collateral objects.

The next impact results in losses for auction winners who do not get legal certainty and protection of their rights as buyers in good faith. This is in line with the nature of legal protection according to Satjipto Rahardjo, which is to provide protection to human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law.²⁷ Furthermore, Philippus M. Hadjon argued that the principle of legal protection for the people against government actions rests and stems from the concept of recognition and protection of human rights.²⁸ Likewise, other opinions that the transfer of rights in the form of movable and immovable goods, namely land and / or buildings is a sensitive matter. In addition to being a source of origin for development capital, land is also a trigger factor for conflicts or disputes that are very vulnerable and have the potential to trigger social crises. In order to prevent these things, a regulation is needed that is able to guarantee the rights of a person or legal entity to his land so that there is definite legal protection.²⁹ A legal protection must have the following elements: 1) The existence of protection from the government against its citizens; 2) The existence of legal amines; 3) Legal certainty; 4) The existence of sanksi bagi pelanggar hukum; 5) The existence of citizen

²⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2000).

²⁸ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: PT. Bina Ilmu, 1987).

²⁹ A Andi Batara Bintang Darnus, Syahrudin Nawi, and Sri Lestari Poernomo, "Analisis Perlindungan Hukum Terhadap Pemegang Sertifikat Hak Milik Atas Tanah Yang Mengalami Sengketa," *Journal of Lex Generalis (JLS)* 3, no. 8 (2022).

rights. During the legal process, citizens are entitled to their rights starting from the investigation process, the judiciary, to the end of the judge's decision. This includes the right to get a lawyer, the right to be treated equally before the law, the right to get an honest and fair court process, the right to appeal, and so on.³⁰

B. Analysis of Makassar District Court Decision Number 72/Pdt.G/2023

Reviewing the decision of Makassar District Court Number 72/Pdt.G/2023 which presents a judgment rejecting the Defendants' exception, stating that Defendant III was not present even though he had been properly summoned and rejected the Plaintiff's claim in its entirety and paid the costs of the case. The case is as follows:

1. The Plaintiffs are Ir.A.Fatma Aarsal (Plaintiff I) and Andi Fahrudin (Plaintiff II)
2. Defendants: Director of KSU Nusa Mandiri domiciled at Jalan Lanto Dg.Pasewang Kec.Makassar Makassar City hereinafter referred to as Defendant I; Head of KPKNL Office / Head of Makassar State Service and Auction Office domiciled at Jalan Urip Sumoharjo Km.4 Kec.Panakukang Makassar hereinafter referred to as Defendant II; Branch Head of PT. Balai Mandiri Prasarana domiciled in Kel.Bontoa Kec.Mandai Maros hereinafter referred to as Defendant III
3. The Plaintiff applied for a credit loan to Defendant I in the amount of Rp.500,000,000,-(five hundred million rupiah) with a guarantee of a plot of land and a two-storey shop house building located in Bumi Tamalanrea Permai Block A/36 Kel.Tamalanrea Kec.Tamalanrea Makassar City SHM No. 20270 / Tamalanrea, the Selling Value of the Shophouse is currently Rp.3,000,000,000,-(three billion rupiah) the urgency of the cooperation and profit-sharing agreement is the core of the agreement but in fact the Plaintiff unilaterally burdened Plaintiff I with interest-bearing interest (Ring Ceiling Practice); That the imposition of interest debt in a short period of time Plaintiff I's credit to Defendant I swelled at the end of 2022 to Rp.3,000,000,000,-

³⁰ Zakky Zakky, "Unsur-Unsur Perlindungan Hukum Beserta Contoh Dan Penjelasannya," *Online*, retrieved from <<https://www.seluncur.id/unsur-unsur-perlindungan-hukum/>>.

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(Three billion rupiah) (Current account attached). And finally due to the charge of interest not following the rules and principles of the cooperative, Plaintiff I's business closed and to pay credit interest was forced by Plaintiff I entrusted his younger brother Andi Fahrudin Aرسال (Plaintiff II) to continue the family business, namely the sale of curtains in the shophouse;

4. Furthermore, on December 7, 2022, Defendant I told 4 of his employees to come to the shophouse of Defendant II to vacate the shophouse by forcibly breaking down the door of the shophouse so that it hit and caused a wound on Plaintiff II's right arm. Based on this action, the Plaintiffs reported the actions of Defendant I's employees to the Tamalanrea Police Station in accordance with the Report Receipt Letter from the Tamalanrea Police Station No. STPL/75/XII/2022-SPKT/Sek.T.Rea/Restabes Mks/Pol South Sulawesi; That Plaintiff II strongly objected because he had been injured and humiliated by the employees of Defendant I therefore it was reasonable (appropriate) for Defendant II to claim immaterial damages to Defendant I in the amount of Rp.3,500,000,000,- (three billion five hundred million rupiah);
5. That in order to guarantee this suit it is appropriate (redijk) Plaintiff II requested that against Defendant I's assets in the form of an office building located at Jalan Lanto Dg.Pasewang be placed a security confiscation (*Conservatoir beslag*) by the Court Bailiff.
6. Furthermore, the Defendants, namely Defendant I have come to their Attorney, namely H.Syamsul Kamar, SH et al. The Advocates of Indonesian citizens of Islam are located at Jalan Lanto Dg.Pasewang No.27-29 Makassar based on a Special Power of Attorney dated March 7, 2023 while for Defendant II also came their Attorney, namely Harmaji, SH. MH et al are all State Civil Apparatus at the DJKN Sulsestrabar Regional Office .q State Wealth and Auction Service Office (KPKNL) located at Jalan Urip Sumoharjo Km 4 Makassar based on a Special Power of Attorney dated March 10, 2023 and for Defendant III did not appear in court even though a summons had been made by the Bailiff based on *relaas* the respective summons for the first subpoena which is Thursday March 16, 2023 and the second summons which is Thursday 30 March 2023 and the third summons which is Thursday April 13, 2023 but also does not

appear before or order his representative or legal attorney so that it is considered not exercising his rights and the trial continues without the presence of Defendant III (Branch Head of PT Balai Mandiri Prasarana);

7. That Defendant I filed an answer/exception *Plurium Litis Consortium*, the Plaintiffs' Petition is unclear, *Ne bis in idem* exception: That the object of the case in the Plaintiffs' lawsuit has been filed and a permanent legal decision has been handed down based on decision Number 40/Pdt.G/2018/PN.Mks dated January 29, 2018. Between Ir Andi Sitti Fatma Arsal, Msc as the debtor (Plaintiff) against the Nusa Mandiri Multipurpose Cooperative (Plaintiff), as the creditor (Defendant) and the case mentioned above has permanent legal force and Ir Andi Sitti Fatma Arsal, Msc as the debtor (Plaintiff) was declared defeated in the case and likewise Plaintiff II (Andi Fahrudin A) has been filed and a decision with permanent legal force has been handed down based on decision Number 162/Pdt.BTH/2021/PN.Mks Juncto, case Number 16/PDT/2022/PT.Mks.
8. Then Defendant II also filed an answer/exception Error in Persona because Defendant II is not a party to this case, meaning that there has been no auction of collateral objects; Exception *obscuur libel*.
9. Both the Plaintiffs and the Defendants each submitted evidence, namely letter evidence and witnesses submitted by the Plaintiff while the Defendants did not present witnesses. Defendant II also submitted letter evidence.
10. Remember and pay attention to the Articles of the Law as well as Other regulations relating to this matter are mainly articles of the RBG; Judge:
In Exception:
 - Rejecting the Defendants' exclusion in its entirety;
 In Subject Matter:
 - Declare that Defendant III despite having been summoned legally and properly but was not present;
 - Dismiss the Plaintiffs' claim in its entirety;

According to the researcher's analysis, the decision of the 2nd case did not cause any losses to the parties in the auction and there was not even a winner of the auction because there had not been an auction process by the Makassar KPKNL office. So cases like what happened in District Court (PN)

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Bekasi rarely occur at KPKNL Makassar considering that before submitting a request for auction of collateral objects when there is a default or illegal act from the debtor, it has been examined in advance whether the collateral object is really valid and does not conflict with auction regulations when a civil lawsuit occurs. In addition, the KPKNL did not violate any legal rules, so it was not appropriate to be positioned as Defendant II in the case because there had not been any legal action (auction process).

Moving from the basis of the lawsuit to the Bekasi District Court decision, if it is examined about default as the basis for a lawsuit, it means that it does not fulfill the obligations as stipulated in the engagement or agreement. Non-fulfillment of obligations in an agreement, caused by two things, namely: a) Due to the debtor's fault, either intentionally not fulfilled obligations or due to negligence; b) Due to force majeure³¹ (*Overmacht*, *Force majeure*), so beyond the debtor's ability, meaning the debtor is innocent.

There are three instances to determine whether a debtor neglected to perform a performance, it is necessary to determine in what circumstances the debtor is said to have intentionally or negligently not fulfilled the performance, namely: a) The debtor does not fulfill the performance at all in this case the debtor does not fulfill the obligation he has been willing to fulfill in an agreement, or does not fulfill the obligation stipulated by law in the engagement arising because of the law³²; b) The debtor fulfills the performance but is not good or mistaken, in fact carries out or fulfills what has been agreed or what has been prescribed by law, but not properly according to the quality specified in the agreement or according to the quality stipulated by law; c) The debtor fulfills the achievement but is not on time, debtor fulfills his achievement but late, the time stipulated in the agreement is not fulfilled. To find out since when the debtor is in a state of default, it is necessary to pay attention to whether the engagement is determined the grace period for the implementation of performance fulfillment or not. In an agreement to give something, or to do something, the parties determine or not determine the grace period for the implementation of performance fulfillment by the debtor.

³¹ Djaja S. Meliala, *Hukum Perdata Dalam Perspektif BW* (Bandung: Nuansa Aulia, 2014).

³² Abdul Kadir Muhammad, *Hukum Perdata Indonesia* (Bandung: PT. Citra Aditya Bakti, 2007).

The consequences of default can be seen in Article 1243 of the Civil Code, stating: "Reimbursement of costs, losses, and interest due to non-fulfillment of an agreement, only begins to be mandatory, if the debtor, after being declared negligent in fulfilling his engagement, continues to neglect it, or if something that must be given or made, can only be given or made within the grace period that has elapsed." So it is clear that the article already regulates if the debtor does not fulfill his obligations in the contract/agreement.

If the debtor defaults, the creditor can choose among several possible claims as referred to in Article 1267 of the Civil Code, namely: "The party against whom the engagement is not fulfilled, can choose whether he, if it can still be done, will compel the other party to fulfill the agreement, or whether he will demand cancellation of the agreement, accompanied by reimbursement of costs, losses, and interest."

The existence of default is based on a credit agreement as stipulated in Article 1 number 11 of Law Number 7 of 1992 concerning Amendments to Law Number 10 of 1998 concerning Banking: "Credit is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off its debt after a certain period of time with interest."

With regard to the execution of the right **of justice, the execution of** a judge's decision or execution constitutes "the realization of the obligation of the party concerned to fulfill the performance stated in the judgment". Based on Article 195 HIR/Article 206 RBg, the implementation of the judge's decision is carried out by order and under the leadership of the Chief Justice of the District Court who hears and decides cases in the first instance.³³

Judgments that have the force of law still contain three types of power, namely binding power, strength of evidence, and power to be executed (executory). The executory power is the power to exercise what is stipulated in the judgment by force by the instruments of the state. The executory power of the judge's decision lies in the head of the judgment which reads, "For Justice Based on the One and Only Godhead."³⁴

³³ Sudikno Mertokusumo, "Hukum Acara Perdata Indonesia. Edisi Ketujuh," *Yogyakarta: Penerbit Liberty*, 2006.

³⁴ Rida Ista Sitepu and Hana Muhamad, "Efektifitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 2 (2022): 7–14, <https://doi.org/10.52005/rechten.v3i2.79>.

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Based on two analyses of the verdict in District Court Bekasi and District Court Makassar, the legal consequences for the auction winner are differences in terms of losses experienced, namely the losses borne by the auction winner in the decision of District Court Bekasi Number 412 /Pdt.G/2015/PN.Bks. jo decision of the High Court (PT) Number 222/Pdt/2017/PT.Bdg. jo cassation decision Number 1552K/Pdt./ 2018 jo PK decision Number 664PK / Pdt. / 2020 includes: 1) The winner of the auction has incurred the cost of purchasing the auction object but has not received the right; 2) To transfer the rights of the auction object, it must wait until the *inkracht* court decision (Judicial Review in the Supreme Court); 3) To get his right back to the auction object, he must file a lawsuit against the Debtor who owns the auction object; 4) There is a loss of time that is wasted just to take care of their rights; 5) The winner of the auction does not get legal certainty as a buyer in good faith with this case, because there is a legal vacuum in the sense that there are no rules in PMK Number 213 of 2020. According to Subhan, the legal consequence of the cancellation of the dependent rights auction is that the auction winner cannot control the object of the dependent rights auction so that the auction winner gets a loss for the execution of the auction.³⁵

Reviewing the definition of a buyer in good faith as stated in the Civil Chamber agreement dated October 9, 2014 in letter a, which was refined in the Supreme Court Circular Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court number 4, it was stated that: "The criteria for a buyer in good faith need to be protected under Article 1338 paragraph (3) of the Civil Code as follows: 1) Conduct a sale and purchase of the land object with valid procedures/procedures and documents as determined by laws and regulations, namely:

- Purchase of land through **public auction** or:
- Purchase of land before the Land Deed Making Officer (in accordance with the provisions of Government Regulation Number 24 of 1997 or;

³⁵ Subhan Amnan, "Tanggung Jawab Bank Atas Hasil Lelang Eksekusi Hak Tanggungan Yang Dibatalkan Pengadilan (Studi Putusan Nomor 24/Pdt.Bth/2017/PN Stb)," *Nommensen Journal of Legal Opinion* 03 (2022): 125–38.

- Purchases of customary/unregistered land carried out according to customary law provisions are: a) made in cash and light (in front of / known to the local Village Head / Lurah); b) preceded by research on the status of the land of the object of sale and purchase and based on the research shows that the land of the object of sale and purchase belongs to the seller.
 - The purchase is made at a decent price.
- 2) Take care by examining matters related to the agreed land object, including: (1) The seller is a person who has the right/ has the right to the land that is oyek sale and purchase, in accordance with the proof of ownership, or; (2) The land/object being traded is not in confiscated status, or; (3) The land that is being bought and sold is not in the status of collateral/liability, or; (4) For certified land, information has been obtained from BPN and a history of legal relations between the land and the certificate holder.

After the auction, the auction buyer will receive a Quotation of Auction Minutes from KPKNL as a Deed of Sale and Purchase, and can also be given *Grosse Minutes* of Auction as needed, this is confirmed in Article 93 paragraph (2) letter a PMK Number 213/PMK.06/ 2020. The deed becomes the basis for the buyer to prove to any party the transfer of rights from the owner of the land and / or building to the auction buyer. So the auction process in case 1 is legally valid.

Conclusion

The legal consequences for the Auction Winner's Rights due to the Court Decision that decided the Auction has no legal force are based on two legal events decided in Bekasi District Court (PN): Supreme Court decision Number 664PK/Pdt.G/2020 and Makassar District Court (PN) Decision Number 72/Pdt.G/2023 which in essence is the loss of rights as the owner of the collateral object (auction winner) whose auction has been legally carried out but canceled by Supreme Court decision No. 664PK/Pdt.G/2020, while what happened in the Makassar District Court (PN) decision Number 72/Pdt.G/2023 did not cause loss of rights to the auction winner, because the auction process had not occurred.

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*At his best, man is the
noblest of all animals;
separated from law and
justice he is the worst.*

Aristotle