

The Implementation of Auction Cancellation as a Legal Remedy for Auction Execution Under Law No. 4 of 1996

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Abstract

The issues arising in the implementation of auction cancellation and the sale of auctioned objects based on mortgage rights are related to objections or lawsuits from the debtor, as well as objections from the debtor regarding the auction carried out by the creditor through an auction house. The research questions in this research includes: 1) How is the implementation of auction cancellation as a legal remedy for objections against the auction process according to Law No. 4 of 1996, and 2) What are the obstacles in the implementation of auction cancellation as a legal remedy for auction execution under Law No. 4 of 1996. To address these issues, this research employs a sociological empirical method, where the researcher conducts field research to obtain both primary and secondary data relevant to the research topic. The research is descriptive, aiming to describe the research findings by analyzing statements clearly, in detail, and comprehensively. Based on the research findings, the implementation of auction cancellation and the examination process in the auction involves several stages, such as registration, submission, examination, proof, and decision. On the other hand, obstacles faced in the implementation of auction cancellation include rejection by the defendant, the sale of auctioned objects, and execution.

Keywords: Implementation of Auction Cancellation, Legal Remedies, Law No. 4 of 1996

1. Introduction

Human beings have complex needs that cannot be fulfilled independently but require cooperation with others. As social beings, humans interact with one another, and such interactions do not always proceed harmoniously; conflicts may arise. To address these conflicts, institutions that act as mediators are necessary. In the context of a nation-state, these institutions take the form of judicial bodies. For instance, when individuals excessively exercise their rights, causing harm to others, or neglect their obligations—whether intentionally or unintentionally—such situations may lead to disputes (Toguan, 2018).

The orderliness of society is closely linked to legal certainty, as order forms the foundation of certainty itself. Order allows individuals to engage in necessary social activities (Toguan, 2019). In civil law, legal disputes may arise from breaches of contract, unlawful acts, or actions causing harm to others. However, certain actions, such as abuse of circumstances, do not fall under unlawful acts (Ali, 2005).

Legal disputes require a structured resolution process. The procedure for filing lawsuits is governed by Article 118 of the *Herziene Indonesische Reglement* (HIR) and Article 142 of the *Rechtsreglement voor de Buitengewesten* (RBg), which state that civil lawsuits must be submitted in writing to the Chairman of the District Court. Importantly, the court only intervenes upon request; it does not proactively engage in dispute resolution. This principle underscores that civil procedural law is non-compulsory.

Furthermore, Article 118 HIR and Article 142 RBg contain critical elements that must be understood for their proper application. Civil cases generally involve two parties—the plaintiff and the defendant—seeking judicial resolution. However, in certain instances, a court ruling is sought without an opposing party, in which case the petitioner requests a decision without litigation. Individuals who believe their rights have been violated and are unable to resolve the matter independently must submit a lawsuit for judicial intervention. Lawsuits must be filed in writing and signed by the plaintiff or their legal representative (Article 118 HIR/Article 142 RBg). If the plaintiff is illiterate, they may submit an oral lawsuit to the Chairman of the District Court, who will document it (Article 120 HIR/Article 144 RBg). However, legal representatives cannot file oral lawsuits on behalf of plaintiffs.

The content of a lawsuit is not strictly regulated under HIR or RBg, but it must provide a clear legal basis. A lawsuit lacking a legal foundation will be deemed inadmissible. Therefore, a lawsuit must include essential legal arguments (*posita*) that outline the facts underlying the dispute and the plaintiff's claims (*petitum*). The *posita* consists of factual grounds (*fundamentum petendi*) and legal grounds (*rechtsgrond*) (Abdurrachman, 1994). Meanwhile, the *petitum* is divided into a primary claim (*petitum primair*), which outlines the main relief sought—such as contract termination or specific performance with monetary penalties—and a subsidiary claim (*petitum subsidair*), which allows the judge discretion in granting alternative relief (Subekti, 2002).

In the context of auction execution, objections can arise regarding debtor assets. These objections may be filed by the executed party if there are judicial errors, including potential judicial bias. The legal system provides remedies to prevent and correct such errors. If the execution has been completed based on a legally binding court decision, the legal status of the assets has changed, and objections must be filed as a regular lawsuit (Bachar, 1995). Lawsuits against auction execution generally relate to ownership disputes over collateral, credit agreements, institutional execution errors, and auction procedures, such as auction pricing and eviction. Plaintiffs typically include debtors, collateral owners, or third parties suffering losses, while defendants comprise creditors, auction offices, auction buyers, and other related parties. Such disputes arise when one party feels their rights have been violated, necessitating a court ruling to determine the rightful party (Retowulan & Iskandar, 1997).

The legal framework governing auctions in Indonesia is outlined in the *Vendu Reglement Staatsblad 1908* and *Vendu Instructie Staatsblad 1908*. Auctions are conducted through an open sale with the highest bid, preceded by an official announcement. According to Indonesian law, auctions are classified as a special sales method with procedures different from conventional sales. Article 200, paragraph 1 of HIR, and Article 216, paragraph 1 of RBg state that the sale of seized goods must be conducted through an auction office. This provision is reinforced by Minister of Finance Regulation No. 93/PMK.06/2010, which stipulates that auctions must be conducted before an auction official. Auctions are consensual, wherein a legally binding agreement occurs when the highest bid is accepted by the auction official. However, ownership rights are transferred only after the buyer fulfills their obligations (Zulkarnain, 2017).

Auction officials, as authorized parties, are responsible for preparing and conducting auctions. Based on the *Vendu Reglement* and Minister of Finance Regulations, auction officials are classified into two categories: Class I auction officials, who are specially appointed by the government, and Class II auction officials, comprising civil servants or individuals designated as auctioneers (Usman, 2016).

As part of economic development within the framework of national development, the Indonesian government strives to implement equitable development to benefit all levels of society and achieve fair and prosperous welfare based on Pancasila and the 1945 Constitution. This objective is outlined in Law Number 4 of 1996 concerning Mortgage

Rights on Land and Objects Related to Land. Therefore, substantial funding is required, along with a strong guarantee institution that provides legal certainty for stakeholders. Additionally, this aims to increase public participation in development. Economic growth depends significantly on adequate funding, most of which is obtained through credit financing (Toguan, 2020).

In credit provision, two main parties are directly involved: the creditor, who provides the credit, and the debtor, who receives the credit. When credit is granted, the party with funds provides money to the party in need, with the agreement that the money will be repaid within a specified period along with interest as counter-performance. Thus, in economic terms, credit can be understood as a deferral of payment for a performance currently provided, whether in the form of money, goods, or services. However, every bank inevitably faces the issue of bad loans. A bank without problematic loans is uncommon; however, creditors naturally seek to avoid losses due to non-performing loans. To mitigate this risk, banks implement guarantee mechanisms as a preventive measure. These guarantees can be used for debt repayment if the debtor defaults.

In banking practice, securing funds disbursed by creditors to debtors requires additional protection through a special type of guarantee. The most commonly used guarantee in banking activities is property collateral in the form of land. The use of land as collateral for both productive and consumptive credit is based on the consideration that land has high economic value and is regarded as the safest asset. This type of collateral is known as a mortgage right.

The sale of mortgage right objects through auction has advantages over other sales methods. Auctions are open to the public, ensuring the highest possible price and guaranteeing legal certainty for all parties. However, in practice, the execution of auctions often encounters various challenges (Tsani, 2018). Research conducted at the Pekanbaru District Court indicates that various issues arise before, during, and after auction execution. Internal factors contributing to these issues include administrative irregularities in the execution of mortgage right auctions, while external factors include objections or lawsuits filed against the auction execution by debtors or other concerned parties.

Based on the issues outlined above, the research questions are formulated as follows:
(1) How is the implementation of auction cancellation as a legal remedy for objections

against the auction process according to Law No. 4 of 1996? (2) What are the obstacles in the implementation of auction cancellation as a legal remedy for auction execution under Law No. 4 of 1996?

Hence, the researchers are interested to conduct research entitled “The Implementation of Auction Cancellation as a Legal Remedy for Auction Execution Under Law No. 4 of 1996”.

2. Research Methods

This research is an empirical investigation employing a qualitative and descriptive approach. It is categorized as field research since primary data is directly obtained from informants at the research site through interviews, while secondary data is collected from various supporting sources. The descriptive method is used to systematically gather data to illustrate the phenomenon under investigation.

The research was conducted at the Pekanbaru District Court, located at Jalan Teratai No. 85, Pekanbaru, Riau. This location was chosen to facilitate data collection, as the researcher resides in Pekanbaru. The research population includes the Chief Judge of the District Court, bailiffs, and all parties involved in auction cases. The population is defined as a generalized group consisting of objects or subjects with specific characteristics determined by the researcher for examination and analysis. From this population, a research sample was selected as the data source, deemed representative of the entire population. According to Arikunto (2018), a sample is a subset of the population selected to reflect the overall characteristics of the researched group.

The data sources in this research comprise primary and secondary data. Primary data is obtained directly from the source without intermediaries, primarily through interviews with relevant informants. Meanwhile, secondary data is collected indirectly through various sources such as books, journals, official documents, and other literature that support the research analysis. Several data collection techniques were employed, including literature review, observation, and interviews. The literature review involved analyzing official documents, books, journals, and other relevant sources. Observation was conducted by directly examining the research object, not only through visual assessment but also by recording and documenting the information provided by respondents. Interviews served as the primary method for obtaining in-depth

information from informants to explore data comprehensively and understand their perspectives on the research topic.

For data analysis, this research applied a qualitative analytical method, emphasizing deductive and inductive reasoning. It aims to comprehend the relationships between observed phenomena based on scientific logic (Arikunto, 2018). By adopting this method, the research seeks to provide a comprehensive understanding of the examined issue.

3. Results and Discussion

Settlement Process in Auctions

An auction that has been conducted in accordance with legal provisions cannot be canceled except by a court ruling, as stipulated in Article 3 of Minister of Finance Regulation (PMK) No. 106/2013. Specifically, cancellation before the auction can only be carried out at the seller's request or based on a court decision, which must be announced to the participants. Furthermore, if the cancellation occurs due to the seller's absence, the auction cancellation fee applies in accordance with government regulations.

In cases of objections to the auction results, the aggrieved party may file a lawsuit with the District Court. Notably, the lawsuit can be submitted through the e-COURT application of the Supreme Court of the Republic of Indonesia or directly by attaching supporting documents, including an identity card (KTP) and lawsuit documents. After paying the court fees, the plaintiff will then wait for a hearing summons.

Moreover, the auction winner may submit a Grosse Risalah Lelang to the State Property and Auction Service Office (KPKNL) to obtain executorial power. Based on Article 200, paragraph (1) of the Herziene Indonesisch Reglement (HIR) and Supreme Court Circular (SEMA) No. 4/2014, an application for execution of eviction can be submitted directly to the Chief Judge of the District Court without a lawsuit. Consequently, the Chief Judge will issue an *aanmaning* determination as a warning to the execution respondent. If the respondent refuses to vacate the auctioned object and files a resistance, the court will decide whether the execution proceeds or is postponed.

The civil case examination process at the District Court consists of several stages. First, a lawsuit must be filed in accordance with Article 118 HIR. Then, mediation takes place based on Article 130, paragraph (2) HIR and Supreme Court Regulation (PERMA) No. 2/2003. Following this, the defendant submits an answer, which is subsequently followed by replication and duplication. Next, evidence submission is conducted based on Article 164 HIR. Finally, the judge delivers a decision. If the decision is not complied with, execution can then be carried out with the assistance of state authorities (Utami, 2005).

This research was conducted at Pekanbaru District Court regarding mortgage auction applications in 2019, involving a total of 37 cases. Specifically, 26 auctions were completed, 6 were not executed, 5 were withdrawn, and 5 were settled through reconciliation. The failure to execute auctions was generally due to administrative constraints, while withdrawals occurred because the respondent settled their debt.

Furthermore, Article 27 of PMK No. 106/2013 regulates conditions for auction cancellations beyond the authority of the auction official, including the absence of a Land Certificate (SKT) or Land Registration Certificate (SKPT), the auction object being under criminal seizure, lawsuits from related parties, as well as technical disruptions or force majeure. Based on Article 27 of the 2016 Implementation Guidelines (Juklak), an auction cancellation is only valid if based on the seller's request or a court ruling. Additionally, Article 28 of PMK No. 106/2013 affirms that auction participants who have deposited a guarantee are not entitled to claim compensation if the auction is canceled. For example, a cancellation case after execution occurred in the decision of the Pekanbaru District Court Number 285/Pdt.Plw/2019/PN Pbr (Elsanti, 2015).

Based on an interview with Mr. Anggi, a Bailiff at the Pekanbaru District Court, issues in auction cancellations may arise due to both internal and external factors. On the one hand, internal factors generally relate to administrative order in the execution of mortgage auctions. On the other hand, external factors include objections or lawsuits against the auction process by debtors or other interested parties.

According to Article 3 of PMK No. 106/PMK.06/2013, an auction conducted in accordance with procedures cannot be canceled. Nevertheless, the aggrieved party still

has the right to file a lawsuit in court based on Articles 118 and 142 of the Reglement op de Burgerlijke Rechtsvordering (RBg).

The parties authorized to request auction cancellations include: (1) the Head of the State Revenue and Auction Service Office (KP2LN) or the Head of the State Receivables Committee in execution auctions by the State Receivables Affairs Committee (PUPN), (2) the mortgage holder, such as a bank or court, in mortgage execution auctions, and (3) the respective court in cancellations based on a court ruling.

Furthermore, based on Article 14 of PMK No. 40/PMK.07/2006, an auction cancellation can be executed through a court ruling or at the seller's request. A court ruling must be received by the auction official at least one day before the auction, while a cancellation request by the seller must be submitted no later than three days before the auction.

If cancellation occurs before the auction, the seller and auction official must announce it to the participants. Additionally, the auction official also has the authority to cancel the auction beyond the established provisions. It is important to note that auction participants who have deposited a guarantee do not have the right to claim compensation if the auction is canceled.

Based on an interview with Mr. Ahyar, a Clerk at the Pekanbaru District Court, mortgage execution auctions can be canceled by the court, depending on the substance of the lawsuit filed by the plaintiff. For instance, in case number 285/Pdt.Plw/2019/PN Pbr, the plaintiff's lawsuit was declared inadmissible (Niet Ontvankelijk Verklaard/N.O.) as it was deemed unfounded. Therefore, the judge ruled that the auction conducted by the creditor and KPKNL remained valid.

In conclusion, the court has the authority to cancel an auction, especially if the auction has been executed and the auctioned object has been transferred to the winner. Auction cancellations ultimately depend on legal considerations by the panel of judges. Importantly, an auction can only be canceled if procedural irregularities are found, and such cancellation can only be carried out through a court ruling with permanent legal force. This provision aligns with Article 24 of PMK No. 106/PMK.06/2013.

The the obstacles in the implementation of auction cancellation as a legal remedy for auction execution under Law No. 4 of 1996

Auctions as a legal institution have been regulated under statutory provisions. However, their voluntary use remains rare due to prevailing negative public perceptions. Auctions are often associated with court proceedings, as most of their implementation is indeed based on court rulings against losing parties in litigation. This reluctance has hindered the government's objective of promoting auction utilization, thereby preventing its benefits from being fully realized.

Obstacles in the execution of auctions for collateralized debt objects in district courts, based on interviews with relevant parties, include: (a) the debtor's uncooperative attitude, (b) price discrepancies, and (c) legal resistance from the debtor.

In the analyzed case, the creditor filed a lawsuit for auction annulment, arguing that the debtor did not acknowledge default, the auction price was too low, and there was negligence on the part of the debtor. However, the court rejected the lawsuit, ruling that the auction was legally valid. If the lawsuit had been granted, the annulment of the collateral auction would have led to several legal consequences. Ownership of the auctioned asset would revert to the original owner—whether the debtor, a third party, or the execution respondent—while retaining its status as collateral before the auction. Furthermore, the auction buyer's rights over the asset would be revoked, regardless of whether physical handover or title transfer had occurred at the land office. The auction proceeds would have to be refunded by the entity representing the seller, such as the creditor bank or the collateral holder.

From the seller's perspective, auction annulment eliminates their right to enforce the credit agreement, requiring the return of auction proceeds to the buyer while the asset reverts to its original collateral status. If the lawsuit originates from a third party, the seller's rights over the collateralized asset would also cease, even though the debtor's debt remains. Additionally, the debtor's obligations persist because with the annulment of the auction, the execution and its results are deemed never to have existed.

The asset and collateral return to their original state, and the debtor's debt must still be settled according to the initial agreement (Diana, 2017).

Obstacles in the implementation of auction annulments may arise from various aspects. A major challenge is resistance from the defendants, whether the executed party or a third party. Debtors often oppose execution by claiming they are unfairly disadvantaged, sometimes even resorting to intimidation to obstruct the auction process. Third-party opposition frequently emerges post-auction, with claims that the auctioned asset belongs to them. In such cases, third parties should file an official resistance lawsuit (*derden verzet*) in the district court with ownership evidence. Debtors or execution respondents may also file resistance before the auction takes place, intending to delay execution. This resistance can be submitted by any party holding rights over the auction object, such as the property owner, lessee, or an execution respondent who has voluntarily complied with a court ruling.

Further challenges arise in selling auctioned assets, particularly when there are no interested buyers or the asset remains unsold after multiple re-auctions. In practice, common solutions include gradually lowering the reserve price to attract buyers and executing property clearance beforehand to allow potential buyers to inspect the auction object. The costs of execution clearance are initially borne by the execution applicant and later reimbursed after the asset is successfully auctioned.

Another issue relates to the execution of mortgage rights. Execution is often linked to final court rulings or deeds with executorial titles under formal civil law. Challenges in execution can generally be anticipated by creditor banks, considering that similar events have occurred in past practices. Therefore, creditors should take preventive measures to minimize potential obstacles. As long as no specific regulations on mortgage execution exist, execution must proceed under the prevailing laws, despite its lengthy and costly process. Additionally, the possibility of resistance from debtors or third parties prolongs the execution timeline.

A viable solution to overcoming auction annulment obstacles is ensuring that every stage of credit binding is conducted meticulously, thoroughly, and in compliance with banking procedures and legal regulations. Credit agreements and mortgage encumbrances must be legally sound to serve as strong evidence in execution processes. Furthermore, banks should accurately assess the coverage value of collateralized assets

to prevent potential legal disputes that could serve as a basis for resistance during execution.

Auction annulment can occur due to two main reasons. First, annulment by the creditor bank or debtor through a private sale. Second, annulment based on a court ruling due to lawsuits or specific legal considerations. According to Article 27 of the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016, auctions can only be annulled at the seller's request or based on a judicial ruling. Additionally, Article 28 stipulates that annulments based on judicial determinations or rulings must be submitted in writing and received by the auction official before the auction commences. If the annulment occurs before the auction, the seller or auction official must announce the decision to auction participants at the time of implementation.

Based on an interview with Mr. Anggi, a court bailiff at the Pekanbaru District Court, several obstacles arise in the auction process. The primary challenge is the debtor's refusal to vacate the property or relinquish control over the collateralized land, as well as indications of resistance from the collateral owner. Even when auction prerequisites are met and the process is underway or nearing announcement, such obstacles may prompt the seller or bank to request auction annulment pending a court ruling. In cases involving lawsuits, plaintiffs often request asset seizure on the collateralized object to prevent its transfer, thereby halting the auction process.

If obstacles arise from a debtor's refusal to vacate the property or surrender the collateral, the creditor may petition the court for an execution auction to avoid further complications. However, in practice, even scheduled executions may face resistance from debtors who persist in maintaining control over the collateralized property.

A similar perspective was shared by Mr. Hendri, another bailiff at the Pekanbaru District Court. He noted that auction implementation is often hindered by objections from parties who feel disadvantaged by the auction of their assets. Property or collateral owners frequently struggle to accept that their assets will be auctioned. However, if the auction process meets legal requirements and adheres to statutory regulations, it must proceed. In cases of mortgage right disputes, banks can submit petitions to the court for auction permission through the Pekanbaru District Court bailiff.

In practice, the execution of mortgage right auctions does not always proceed smoothly. Various obstacles arise from legal, regulatory, social, and economic factors. Legally, the Mortgage Law (UUHT) contains provisions that may hinder auctions. One example is Article 11(2)(a), which restricts mortgage grantors from leasing mortgage objects without creditor consent or an agreement on immediate vacancy. Additionally, Article 11(2)(j) mandates that mortgage grantors vacate the object upon default. However, this provision lacks binding force, often resulting in execution challenges. This situation is further complicated by the limited authority of the State Wealth and Auction Service Office (KPKNL), which cannot enforce auction object clearance, as such authority rests with the district court under the Indonesian Civil Procedure Code (HIR).

Beyond legal and regulatory barriers, social and technical factors also hinder mortgage right auctions. A common issue is low public interest in auctioned assets due to factors such as unfavorable locations, difficulties in post-auction clearance, and social stigma against auctioned properties. Furthermore, non-certified collateral deters potential buyers. If an auctioned object remains unsold, the auction official issues an auction report and grants the applicant the right to request a re-auction, subject to necessary conditions.

Ultimately, executing mortgage right auctions faces multiple challenges from legal, regulatory, social, and technical aspects. To enhance auction effectiveness, stricter regulations on mandatory clearance of auctioned objects are necessary, along with improved coordination between KPKNL, district courts, and relevant stakeholders to ensure smoother execution and legal certainty for all parties involved.

4. Conclusion

Based on the result and discussion above, it can be concluded that the implementation of auction cancellation and the examination process at Pekanbaru District Court include the stages of registration, submission, examination, evidence presentation, and decision-making. The issues arising from auction cancellations are caused by internal factors, such as administrative problems, and external factors, such as objections or lawsuits against the auction execution of collateralized assets.

Furthermore, several obstacles hinder the implementation of auction cancellations, including the defendant's refusal, the sale of auctioned objects, difficulties in execution, the debtor's uncooperative behavior, price discrepancies, and legal resistance from the debtor.

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