



Procedure of the auction of shares which is a credit guarantee for repayment of debt

Ayuni Marbun

Master of Law, Faculty of Law, Jayabaya University, Jakarta, Indonesia

Abstract

Auction procedures and legal remedies in the form of shares in debt repayment. The purpose of this research is to get better understanding of the procedure for auctioning guarantees in the form of shares in repayment of debt. This research is normative juridical, the approach taken includes an approach based on literature. The results of the study concluded that based on the provisions of Article 200 paragraph (1) HIR/ Article 216 paragraph (1) Rbg stipulates that the auction of confiscated goods is carried out through the assistance of the auction office. The execution respondent has no more power over the goods that have been confiscated, even though the goods are still in the name of the execution respondent.

Keywords: Stock auction, pawn, credit guarantee

Introduction

In a civil trial at the time the decision has been made, then on the results of the decision, the plaintiff often submits an application for the execution of the collateral guaranteed. Items that can be confiscated are in the form of movable or immovable property belonging to the defendant to guarantee his lawsuit so that when the plaintiff wins his case the execution of his sentence is not in vain. Collateral confiscation cannot be carried out on goods belonging to third parties.

The definition of shares is a certificate that shows proof of ownership of a company, and shareholders have the right to claim on profits and assets of the company. Shares are securities that show part of the company's ownership, if the investors invest by buying part of the ownership of the company and the investor is entitled to the profits obtained by the company in the form of dividends.

Shares are securities that are most commonly known outside the public. In the capital market, there are two types of shares that are most common, namely as follows

1. In terms of the way of transition

- a. *Bearer Stock* are shares whose owner's name is not written on the shares so that shares on display are very easily transferred to other parties.
- b. *Registered Stock* are shares whose owner's name is written in the shares. So that the shares in that name are difficult to transfer to other parties, because certain terms and procedures are required.

2. In terms of billing rights

- a. *Common Stocks* are securities sold by companies that have a nominal value (in the form of rupiah, dollars, etc.) in which the holder is given the right to attend the GMS (General Meeting of Shareholders) and EGMS (Extraordinary General Meeting of Shareholders) and has the right to determine whether to purchase the right issue (sale of limited stock) or not, which then at the end of the year will benefit in the form of dividends. Among the securities traded on the capital market, common stock is the most well-known stock in society.

- b. *Preferen stocks* is a securities sold by a company that has a nominal value (rupiah, dollar, etc.) in which the holder will receive a fixed income in the form of dividends which will be received every quarter (three months). Shares that have the characteristics of a combination of bonds and common stock, because they can generate fixed income (such as interest on bonds), however, it can also not bring the results that investors want. Preferred stock is similar to common stock, for two reasons: it represents ownership of equity and is issued without the maturity written on the share and pays dividends.

Gatot Supramono, 2014 ^[2]; The assets belonging to the Defendant/executed that had been placed under confiscation so that payments for the achievements of the executed to fulfill the contents of the decision were sold by auction by the court. To ensure that courts act fairly and give confidence to justice seekers.

The defendant's property that can be confiscated by the court includes shares, because shares are also movable goods that have economic value. Confiscation of shares in physical form as well as scripless shares traded on the stock exchange. The Capital Market Law stipulates that there are 2 (two) forced measures taken by the court against the shares owned by the defendant, namely the confiscation specified in Article 58 paragraph (4) and the blocking specified in Article 59 paragraph (3).

Although the confiscation and blocking procedures are basically the same, however the official authorized to issue the stipulation is in fact regulated differently. The blocking action is carried out by the Head of the High Court, while for confiscation it is the authority of the judge/chairman of the first High Court.

The law regulates the confiscation of collateral, namely in Article 227 paragraph (1) HIR/ Article 261 paragraph (1) Rbg. The items that can be confiscated are either in the hands of the defendant or being controlled by a third party. The court can confiscate collateral based on a request from the plaintiff. An application for confiscation of collateral can be filed by the plaintiff, who in his lawsuit is based on

the defendant's concern about transferring the goods under his control while the trial of the case is in progress.

The final stage after the trial is held in court and has permanent legal force, then an execution auction will be carried out to settle bad loans carried out by the debtor. In execution auctions, most items will be auctioned by force without the voluntarism of the owner of the goods. Many parties who disagree about the auction can usually file a lawsuit in court to protect and fight for their rights related to the object of the auction. Legal protection for debtors and creditors is equally important. The debtor can hinder the execution if the debtor refuses that the debtor has committed negligence using various reasons. In addition to protection for creditors and debtors, protection for the winner of the execution auction must also be considered.

From the description on the background of the problem above, the writer is interested in conducting research on auction procedures for guaranteed shares, therefore the author would like to discuss about the "Procedure of the Auction of Shares Which Is a Credit Guarantee for Repayment of Debt".

Formulation of the problem

1. What is the procedure for auctioning collateral in the form of shares in repayment of debt?
2. What are the legal remedies against execution auctions for collateral in the form of shares in the process of paying off debt?

Research purposes

1. To find out the procedure for auctioning collateral in the form of shares in repayment of debt.
2. To find out legal remedies against execution auctions for guarantees in the form of shares in the process of paying off debt.

Research methods

The research used by the authors in this study is normative juridical. The approach taken by the author is based on literature or studying theories, namely by studying books and applicable laws related to this research. The research method that the author uses is aimed at achieving a settlement of the problem formulation and research objectives raised by the author.

Research results and discussion

Overview of shares in limited liability companies

A limited liability company is a capital partnership divided into shares. It can be said that shares are proof of ownership of equity participation in a limited liability company. According to civil law in Indonesia, shares are classified as movable objects. Based on Article 60 paragraph (1) of the Company Law which reads:

"Shares are movable objects and give the rights as referred to in Article 52 to their owners".

Pawn subject and object

What is meant by pawning is material rights over movable objects belonging to other people which are solely agreed by handing over the bezit of said objects in order to collect payment from the income from the sale of objects in advance from other collectors. In KBBI, pawning is borrowing and borrowing money for a certain time by handing over dependents, if the time has not been redeemed,

the goods will become a right that gives guarantees. In Article 1150 of the Civil Code what is meant by pawning is: "The right obtained by the creditor on movable property handed over to him by the creditor or by his attorney as collateral for the debt and which authorizes the creditor to collect the settlement of his receivables and the said object by preceding other creditors with the exception of selling costs as an implementation of a decision on claims regarding ownership or mastery and cost of salvaging the goods issued after the goods are pledged and must take precedence."

As for the subject of the mortgage, it consists of 2 (two) parties, including the pawn giver (*pandgever*) and pawnbroker (*pandnemer*). *Pandgever* is a person or legal entity that provides collateral in the form of movable objects to the pawnbroker for money loans given to him or a third party. The elements of the pawn giver include:

- a. person or legal entity;
- b. provide collateral in the form of movable objects to the pawnbroker;
- c. there is a money loan.

The pawnbroker (*pandnemer*) is a person or legal entity that accepts the pledge as collateral for a loan of money given to the pawnbroker (*pandgever*). The legal entity appointed to manage the pawnshop is a pawnshop.

Based on the provisions of Article 1150, Article 1152 paragraph (1), Article 1152, Article 1153, Article 1158 paragraph (1) of the Civil Code, the object of pawning or the thing that is pawned is a movable object, both tangible movable objects (*lichamelijke zaken*) except for ships registered in the register and intangible movable objects (*onlichamelijke zaken*) in the form of rights.

1. Auction procedures for collateral in the form of shares in repayment of debt

At the stage of the auction process, an application for confiscation of the defendant's property is first carried out to be carried out to the next stage, namely auction. What is meant by auction is the sale of goods in public or open to the public, so that the results of the sale are also known to the public. The purpose of the auction is to avoid selling underhanded or clandestinely which results in harm to the executed party. The results of the auction will be used to fulfill court decisions (civil penalties).

Based on the provisions of Article 200 paragraph (1) HIR/ Article 216 paragraph (1) Rbg stipulates that the auction of confiscated goods is carried out through the assistance of the auction office. So that the court does not conduct the auction itself, but is obliged to ask for assistance from the local auction office. On this basis, the head of the District Court issued a bidding decision by requesting the assistance of the auction office by specifying the items to be sold and stating the selling limit price. Such an auction is an execution auction because it is based on a court decision that will be executed on collateral.

The respondent for execution of the auction must be notified in advance by the Court, that the collateralized goods have been confiscated and will be auctioned off. The reason for the notification was because even though the goods were confiscated by the court, however, juridically, the ownership still belongs to the Executed Respondent. So that if you are going to do an auction, it is quite natural that the owner should know that the goods will be auctioned. So that the

notification is one of the requirements in submitting an auction to the auction office.

The requirements for the completeness of an execution auction that must be fulfilled in the form of documents are court decisions or orders, stipulation of reprimand or ananming from the Chairperson of the District Court, stipulation of confiscation by the Chairperson of the District Court, minutes of confiscation, details of the debt or amount that must be met, notice of auction to the execution party and proof of ownership of the goods to be auctioned. In the event that proof of ownership is not controlled, there must be a written statement from the seller that the goods are not accompanied by proof of ownership along with reasons.

After everything has been fulfilled, an announcement will be made on the intended auction as a notification to the general public that an auction will be held and an attempt to gather bidders who wish to take part in the auction. By notifying the auction announcement, the public will know the items to be auctioned, who is conducting the auction, who owns the goods, where they are and what the price is. The auction announcement is made by the seller himself, not by the auction office. In the process of executing the grosse deed of acknowledgment of debt, mortgage and lien as the seller is the District Court, because the goods to be auctioned are goods that have been confiscated so that the authority to sell rests with the District Court.

The executioner has no power over the goods that have been confiscated, even though the item is still in the name of the executor. The tools used for bidding information are in the form of daily newspapers, leaflets, patches that are easily known by the public, or electronic media including the internet. The announcement is made at least two weeks prior to the auction. The announcement contains the identity of the seller, the time of the auction, the quantity and type of goods, including the amount of the deposit for the auction bid guarantee. It is necessary to announce the money as a legal requirement for someone to become an auction participant.

The payment obligations are regulated in the Decree of the Minister of Finance No. 304/KMK.01/2002 and No. 450/KMK.01/2002, that the requirements for the validity of bidders are determined by depositing the auction bid security deposit in advance. In principle, the security deposit is paid by the bidder in accordance with the announcement of the auction and the amount is determined by the seller. The bidder who wins the auction or as the buyer of the auction, the money for the security deposit is calculated by paying the auction results. The payment of the results of the auction does not merely pay the auction price, but is also subject to the payment of auction fees and money for the poor. So that the security deposit is not returned directly by the auction buyer.

Auction participants who do not win the auction or are not the buyer of the auction, the security deposit that has been deposited will be returned in full, without any deductions made. The deadline for returning the security deposit is no later than 1 (one) day after receiving a request for a refund from the auction participant.

The auction is carried out in the working area of the local auction office for the goods to be auctioned, in general the place of auction is in the office of the District Court. In accordance with the provisions of Article 200 paragraph (1) HIR/Article 216 paragraph (1) R.Bg is not a district court official who will conduct an auction even though the auction

is held at the District Court. However, those who will carry out the auction are auction office officials, by coming to the District Court office where the auction is held.

The implementation of the auction is carried out by way of auction bidding. Auction bids can be made verbally or in writing. As for what determines the way of bidding, namely in principle the seller can propose an offer in writing. The proposal is submitted to the head of the auction office prior to the announcement of the auction. After the offer letters are opened and it turns out that there are several offers with the same price and the value is above the limit value, then the auction official has the right to continue the auction bidding to obtain the highest bidding price, by bidding verbally or in writing by increasing the bidding value. So that the auction participant who offers the highest value that exceeds the limit that is approved as the winner of the auction by the auction office official.

If during the auction there are no bids from bidders, then the auction office official declares that there are no bids in the auction and the official makes the Minutes of No Bidding Auction. If the seller wishes to re-auction, then the procedure must be carried out again to announce the auction. Auction participants who bid more than the limit price will eventually win the auction. So that the auction winner will be approved by the auction official as a legitimate auction buyer. Payment of the auction money can be made in cash and can also be used with securities in the form of checks or demand deposits. According to the Decree of the Minister of Finance, the payment is determined no later than 3 (three) days, must be paid off.

Basically, the auction that will be held can be postponed or canceled for certain reasons. Those who are blessed postpone or cancel the execution auction can be carried out at the request of the competent district court. The court submits the application to the head of the auction office with reasons that must be related to the items to be auctioned. The reason that often occurs in district courts is that there is resistance from a third party (*derden verzet*) submitted against a confiscation of execution which will delay the implementation of the auction, because the court will determine the ownership of the confiscated goods, whether they really belong to a third party or not.

If the District Court has determined who is the legal owner of the auction item, then the auction can continue. Then the confiscated goods after the auction is carried out, then the results of the auction after deducting the auction fee are then handed over by the auction official to the head of the district court to be paid to the party requesting the execution. If the results of the auction have been paid and there is still some left over, then the left over will be returned to the executioner because it is his right.

Costs for execution through a district court shall be borne by the party executed, stipulated in Article 192 paragraph (1) HIR/Article 208 R.Bg which wishes if the execution respondent has not carried out the decision voluntarily and after being given a warning by the chairman of the district court still does not carry it out either, then the goods both movable and immovable shall be confiscated until the value is estimated to be sufficient to pay the amount stated in the decision plus all costs for carrying out the decision.

2. Legal remedies against the execution auction of guarantees in the form of shares in the debt settlement process

All civil cases decided by the court of first instance legal remedies that can be taken are ordinary legal remedies and extraordinary legal remedies.

1. Ordinary remedies

- a. Resistance (*verzet*) is a civil law remedy against a decision handed down by a court against a decision without the presence of the defendant (*verstek* decision) regulated in Article 125 paragraph (3) jo. Article 129 HIR and Article 149 paragraph (3) jo. Article 153 Rbg.
- b. An appeal is an attempt by one of the parties, both the plaintiff and the defendant, who does not accept a court decision because they feel that their rights have been attacked by the consequences of that decision. Regulated in Article 199 Rbg, Article 6 of Law no. 20 of 1947 and Article 26 paragraph (1) of Law no. 48 of 2009.
- c. Cassation is a legal effort which is the authority of the Supreme Court to re-examine the decision of the court of appeal or the final level of all judicial environments.

2. Extraordinary remedies

- a. Review is an effort made to examine and rebut a previous court decision that has permanent legal force, namely to cancel it. The request for review does not impede the execution or decision that has permanent legal force. Requests for review can only be made 1 (one) time, and can be revoked as long as they have not been decided. If the application for review has been revoked, it cannot be submitted again.
- b. Third party resistance (*derden verzet*) is a resistance carried out by a third party that previously had nothing to do with the case, but this decision has harmed the third party.

In cases decided by special courts, namely cases of intellectual property rights, bankruptcy cases and industrial relations cases, the only legal remedies that can be taken are cassation to the Supreme Court.

Regarding auction execution carried out by the court with the assistance of the auction office, if during the implementation there is a mistake or oversight that results in a loss to the owner of the item being auctioned, the legal remedy is not to fight back, as for the legal remedy that can be taken is to file a civil lawsuit again, because all stages of the case process in court have been completed. Except for the courts, parties that can be sued are parties who have had disputes and the auction office. The lawsuit was filed in court based on Article 1365 of the Civil Code concerning unlawful acts.

In the decision of the Supreme Court No. 1823 K/Pdt/2001 dated 28 September 2006 which rejected the plaintiff's cassation, has justified the decision of the Jakarta High Court No. 631/PDT/1999/PT DKI. dated December 9, 1999 which upheld the decision of the South Jakarta District Court No. 447/PDT.G/1998/PN.JAKSEL dated 1 April 1999 which stated the resistance of the opponents to the Execution Decree No. 30/Eks.Hip/1996/PN.Jak-Sel dated 3 July 1996. This indicates that the execution of the auction cannot be submitted for resistance/*verzet*.

Conclusions

Based on the results of the author's research since the enactment of the Limited Liability Company Law (UUPT) No. 40 of 2007 only recognizes one type of stock. In fact, in the field there are still bearer shares circulating in the community because among the companies there are still companies whose articles of association have not fully complied with the provisions of the law. The shares owned by shareholders can be traded or used as collateral for debt because basically shares have economic value, that the shareholder has the right to receive a share of the company's profits in the form of dividends.

Whereas the shares used as collateral for credit in lien are solely to guarantee the return of debt. When the debtor defaults on his debt, the collateral remains in the position of collateral, not transferring its ownership rights to the creditor's. Guarantee agreements of any type are not intended to transfer ownership of an item. The shares belonging to the executioner that will be auctioned are not the property of the complainant, because they have not changed their ownership so that they are in line with the theory of debt guarantees.

To carry out the execution of a mortgage guarantee in practice, it can be done through a civil lawsuit regarding default on debts or by asking the court for a decision regarding the procedure. The method above is to protect the pawn giver from the arbitrariness of the pawn recipient.

References

1. Ahmad Musadad. Legal Guarantee Positive Legal Perspective and Islamic Law. Literasi Nusantara, Batu, 2020, 99.
2. Gatot Supramono. Stock Business Transactions & Dispute Resolution Through Courts. Prenada Media Group, Jakarta, 2014, 107.
3. Irham Fahmi. Introduction to Portofolio Theory and Analysis of Investment Theory and Questions and Answers. Alfabeta, Bandung, 2012, 81.
4. Khaerul Umam. Syariah Capital Market and Syariah Capital Market Practices. Pustaka Setia, Bandung, 2013, 118.
5. Laila M Rasyid dan Herinawati. Introductory Civil Procedure Law Module. Unimal Press, Aceh, 123-131.
6. R Soebakti. Fundamentals of Civil Law 21st Printing. Intermedia, Jakarta, 1997, 65.
7. Rusdin. Pasar Capital Market Theory of Problems and Policy in Practice. Alfabeta, Bandung, 2008, 68.
8. Anton M Moeliono, Indonesia Dictionary. Library Hall, Jakarta, 1997, 283.
9. Supreme Court Decision No. 3057 K/Pdt/2003 dated, 2005.
10. Article 109 point 1 of Law Number 11 of 2020 Omnibus Law which amends the provisions of Article 1 Number of law Number 1 Undang-Undang Nomor 40 Tahun 2007 about Limited Liability Company ("UU PT")
11. Article 29 of Law Number 14 of 1985 concerning the Supreme Court
12. Bernadetha Aurelia Oktavira, Note! These are 2 Kinds of Civil Law Measures [accessed date 06/08/2023 o'clock 12.20]