

Optimization of Auction Execution in Dispute Resolution in Class IA Baturaja Religious Court

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Abstract

Basically in inheritance and joint property disputes, the reason for resolving disputes through auctions is because one of the parties does not carry out the decision voluntarily. In addition, in sharia economic disputes there are 3 (three) things that form the basis of auction implementation, namely parties breaking promises (defaults), unlawful acts, and due to coercive circumstances. The purpose of carrying out dispute resolution is to create a law that contains the value of legal justice, the value of legal certainty, and the value of legal benefits. Settlement of disputes through an auction procedure in the Religious Courts is an effort to create legal certainty for justice seekers. This study aims to provide information regarding dispute resolution procedures through auction procedures at the Religious Courts. This research was conducted using the normative-empirical juridical research method, which combines normative legal approaches with the addition of various empirical elements. The results of this study are that in carrying out auction execution, various obstacles are often encountered, one of which is resistance from the executed party or third parties. Apart from that, the condition of the Covid-19 Pandemic also presented obstacles to the process and the determination of the execution schedule. These two obstacles also cause the execution process Case No2/Pdt.Ex/2021/PA. Bta didn't go well.

Keywords

auction; execution; resistance



I. Introduction

One alternative to buying and selling goods that has long been known in the sales system is an auction. Meanwhile, the term auction in Indonesia has been known since 1908. This can be seen from the publication *Vendu Regulation* (Statsblad auction regulations of 1908 Number 189 as amended by Staatsblad of 1940 Number 56). Along with the times and the needs of the community, the complexity of the implementation of the auction also increases. In order to accommodate this, the government issued laws and regulations that specifically regulate the implementation of auctions. This regulation is contained in the form of a ministerial decree of finance as well as a decision of the Director General of Receivables and State Auctions (Tista, 2013).

In this regulation, it is stated regarding the meaning of the auction process, namely the auction or sale of goods held in public with increasing price bids. Furthermore, if during the auction process there are bidders who do not make bids on the auction object, then the guarantee previously provided by the participant for the fulfillment of the auction procedure

will enter into the State treasury. Another consequence of not bidding on auction objects is that for 3 (three) months the auction participants are prohibited from participating in all auction activities held in Indonesia (Sonata, 2012).

Furthermore, the meaning of execution auctions is public selling for the sake of carrying out court decisions or other documents, which are in accordance with the rules in the applicable laws and regulations. In line with that, the auction execution aims to help create law enforcement. The auction of confiscated items of religious court decisions is included in the example of an execution auction. In the banking sector, the purpose of carrying out an execution auction is to disburse a number of customer bills for debtors who break promises (defaults). Moreover, the maximum customer value can be made only if positive influence of marketing and individual environment association does exist (Kusumadewi, 2019). The quality of products that are in great demand by consumers can be seen from several factors including packaging, price, quality, and benefits obtained by consumers (Romdonny, 2019). In this case, if there is an execution of a decision that has reached the auction stage, then the implementation cannot be stopped with resistance from the debtor or a third party (Kamal, 2020).

There are 4 (four) parties in the auction, namely: the first party, the customer, is the party that has borrowed some money from the debtor but has not carried out his obligations as previously agreed. The second party, the Debtor, is a party that is an entity in the form of a bank or an institution that provides capital to customers. The third party is the State Receivables and Auction Agency (BUPLN). The last party is the buyer of collateral, namely the winner in the auction of goods can be a person or entity that has bought or won in the auction of collateral (Salim, 2004).

The issue of executing this auction is increasingly important to study considering that religious courts have the authority to decide and execute auctions in sharia economic cases and it is even more interesting because many people are involved in it. As a result, the potential for disputes will increase. Islamic economics is a business activity carried out based on sharia principles. The implementation of Islamic economics has now been found in various business activities, including Islamic banking, Islamic reinsurance, Islamic mutual funds, Islamic bonds, Islamic securities, Islamic financing, Islamic pawnshops and others. These types of sharia businesses have been accommodated in Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts. Last amended by Law no. 50 of 2009 (Haryanti, 2013).

In practice, in the Baturaja Religious Court there are many sharia economic settlement disputes which are resolved through auction execution. However, in the process there are many factors that influence auction execution at the Baturaja Religious Court, so that it greatly influences whether the auction execution goes well or not. Therefore, in this study the authors are interested in raising the research title, namely "*Optimizing the Implementation of Auction Execution in Dispute Resolution in the Class IA Baturaja Religious Court*".

II. Research Method

This research was conducted using the normative-empirical juridical research method, which combines normative legal approaches with the addition of various empirical elements. Furthermore, this research method is a research approach that emphasizes tracing normative legal provisions or statutory regulations. The author conducts research on positive law and formal legal sources that apply in Indonesia such as laws, Minister of Finance Decrees, Minister of Finance Regulations, Jurisprudence of Judge Decisions, and Doctrine of Legal Experts.

III. Discussion

3.1 Auction Execution Arrangements in Indonesian Positive Law and Muamalah Fiqh Perspective

a. Auction Execution Regulations in Positive Law in Indonesia

Initially, regulations regarding auctions in Indonesia were stipulated in *Vendu Regulation* (Auction Regulations) Ordinance of 28 February 1908 Staatsblad 189 of 1908. *Vendu Regulation* effective from April 1, 1908. Furthermore, the regulation was amended by the publication of Staatsblad 56 of 1940 in conjunction with Staatsblad 3 of 1941. Based on this, it can be said that *Vendu Reglement* is the structural basis for the existence of auctions in Indonesia. Besides In addition, there are also auction implementing regulations, namely *Vendu Instructions* (Statsblad 1908 Auction Instructions Number 190 which has been amended by Staatsblaad 1930 Number 85) (Angin, 1994).

In addition to the structural basis from 2000 to 2008, there was also an operational basis for conducting auctions which further regulated the implementation of auctions. The existence of these regulations aims to improve the mechanism and implementation of the auction so that it can be better and clearer. Further scope of auction regulations is contained in several decrees, among others, as follows:

1. Decree of the Minister of Finance Number: 507/KMK.O1/2000

The essence of the implementation of the auction regulated in the Decree of the Minister of Finance number 507 relates to the bid security deposit that has been deposited by the bidders, the amount of which is determined by the seller, unless otherwise specified. In addition, there is a limit value that has been predetermined by the seller. Furthermore, the limit value is submitted to the Auction Official at the latest when the auction will begin, unless otherwise stipulated by the applicable laws and regulations.

2. Regulation of the Minister of Finance Number 40/PMK.07/2006

This regulation provides guidelines for the Auction Implementation Guidelines which must be carried out in front of the Auction Official unless otherwise stipulated by laws and regulations. This regulation also regulates that auctions that have been held cannot be canceled in accordance with applicable regulations. In addition, it also discusses the procedures for bidding requests.

3. Regulation of the Minister of Finance Number 150/PMK.06/2007

This Regulation of the Minister of Finance in essence discusses the instructions for conducting auctions relating to the place where the auction will be held. There are 3 (three) places where an auction can be held, namely first the auction place must be held in the KPKNL work area, the second place the auction must be held in the Class II Auction Officer's office area where the goods are located, and the location for the third auction can be determined by the KPKNL official.

4. Regulation of the Minister of Finance Number 61/PMK.06/2008

Regulation of the Minister of Finance Number 61 stipulated on 25 April 2008 discusses the guidelines for auction implementation which includes the efficiency and effectiveness of auction announcements, especially for non-execution auctions.

b. Arrangements for Auction Execution in the Perspective of Fiqh Muamalah

Etymologically the auction is usually called *muzayyadah* or according to language it means to increase. Even though it means an increase, the auction is not included in the practice of *usury*. This is because the meaning of increasing in *muzayadah* is offering a higher price in a sale and purchase contract made by the seller. In addition, the meaning of increasing in *muzayadah* at auctions conducted by buyers is a decrease in bids. This is of

course different from increasing the practice of usury. In the practice of usury, what is meant by additional haram is an addition that is not agreed upon in the contract of borrowing money or other ribawi goods (Ahmad, 2004).

There is a difference between the concept of buying and selling in general and an auction, this lies in the bidding. Bidding in buying and selling is generally not allowed to be made when another person is bidding, whereas in an auction it is permissible to bid on goods being bid by other people. At-Thahawi mentions a history from Mujahid (a tabiin scholar, his student Ibn Abbas, w. 104 H), Mujahid said,

نَحْوُ حَصِّ فِي نَكَاحِ إِذَا لِحُجِّ الرَّالِ يَوْمَ سَنَ عَلَيَّ قَاهَدًا ، هَذَا بَوَّحَالِ إِذَا هُمَا
بِأَعْلَالِ مِيسُوَ الِ فَت ، لِحُجِّ أَوْ يَسُوْمَ سَ يَسُوْمُ نَ ، قِ قُ سَوَالِ

“It doesn't matter if someone is bidding on an item that someone else has already bid on if the market is still open (the auction hasn't closed yet). And if the item has been brought by the auction winner, it may not be bid again. (Syarah Ma'ani al-Atsar, No. 3936).

In Islamic law, buying and selling with the concept of auction (muzayadah) is permissible. Ibn Abdi Dar said, "Surely it is not forbidden to sell goods to people with an increase in price (auction), with an agreement between all parties." Apart from that, according to Ibnu 'Abdil Barri, there is an agreement among scholars regarding the permissibility of buying and selling by auction. In fact, this has become a habit that prevailed in the Muslim market in the past (Zuhaili, 2011).

Furthermore, according to Muhammad and Abu Yusuf (classical Islamic economists) it is permissible to sell the creditor's assets (object of mortgage) if the qadhi (judge) has issued a decision regarding this matter and there is no justification for delaying the sale. In all cases the sale is required to be carried out with the knowledge of the qadhi and it is also required to be attended by the parties in the market where the goods are to be sold. The sale can also be done by way of auction or get the highest possible price in accordance with the provisions of the market price at the time the auction is held (Fadhli, 2018).

3.2 Implementation of Auction Execution in Settlement of Sharia Economic Disputes at the Baturaja Religious Court Class 1 A

As mandated by Law no. 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning the Religious Courts, the Religious Courts have the authority to resolve sharia economic disputes. One of the Religious Courts that has this authority is the Baturaja Religious Court. Auction execution is one of the efforts in solving sharia economic problems. The request for auction execution is in principle a settlement of the execution of objects carried out by the KPKNL where the execution is carried out by two parties, namely the Court as the applicant while the creditor is another party who is not a court. Requests for auctions that can be carried out by the court are auctions for the execution of court decisions and auctions for the execution of court orders.

However, in practice the implementation of auction execution in sharia economic disputes at the Baturaja Religious Court is not always carried out properly, there are several obstacles that can occur, namely:

a. Executed Party Resistance

It is not uncommon to find resistance to the execution submitted by the debtor who feels aggrieved by the execution. The debtor can submit an objection to the Religious Court if

there has not been a stipulation of execution and if the execution process has violated the applicable laws and regulations. However, one alternative that is considered effective in thwarting the auction process is intimidation of bidders. The existence of intimidation is one of the factors that causes delays in the execution of auctions at the Baturaja Religious Court (Luthfi, 2016).

b. Third Party Resistance

Third party resistance is often found when the auction has been carried out, the third party suddenly raises objections by arguing that he is the owner of the item/object to be auctioned. The situation that has been described is what is frequently encountered in practice.

What a third party should do if he has objections to the execution is to file a lawsuit against a third party (*derden verzet*). Furthermore, *derden verzet* is carried out officially through a letter of resistance that is registered with the Religious Court in accordance with the jurisdiction of the competent court to try the *derden verzet*. At the time of registration of *derden verzet*, third parties must attach proof of ownership of the object being auctioned.

Our laws and regulations allow for third party resistance to the execution of a decision. This is as stated in Article 195 paragraph (6) HIR / Article 206 Rbg paragraph (6). The mandate of the article is that the only condition that must be met in order to accept the submission of resistance from another party/third party is that the item to be executed belongs to him. It should be noted that *derden verzet* is an extraordinary remedy in civil procedural law, and because of this, the principle of not being able to postpone execution to extraordinary legal remedies is attached (Ka'bah, 2006).

Even though *derden verzet* could not postpone the execution, Yahya Harahap explained that there were conditions that were taken into consideration so that the resistance could postpone the execution, namely that the resistance must be submitted before the execution was executed/carried out (Harahap, 2008). In essence there is no relevance to postpone the execution, if the execution has been carried out. This is in line with the Supreme Court Decision dated August 31, 1977 No. 697 K/Sip/1974, which confirms the formality of submitting a challenge to execution must be submitted before the sale of the auction is carried out (before the execution is carried out). In addition, if the execution has been carried out, the legal remedy that can be taken by a third party to cancel the execution is through a separate lawsuit. This matter is also stated in the Supreme Court Decision No. 786 K/Pdt/1988 which basically emphasizes:

- a. A third party submitting a *derden verzet* objection to execution on the grounds that he is the owner, then this reason can be justified as long as the application is filed before the execution is complete;
- b. In line with this, if an objection is filed at the time the execution confiscation is filed, the District Court is ordered to lift the execution confiscation.

Submission of a lawsuit against execution by the Debtor/executed is carried out with the following formalities (Ka'bah, 2006):

- a. The executed party is a third party;
- b. The third party is the owner of the object of execution, be it the holder of property rights, business use rights, building use rights, usufructuary rights, including guarantors of mortgage rights and rental rights;
- c. If the execution has been completed, a lawsuit can be filed

Resistance to execution by the Debtor/executed is carried out with the following formalities (Ka'bah, 2006):

- a. Submission of resistance must be made before the implementation of the auction sale (before execution);
- b. The reason for the resistance was to delay the execution;

c. The parties that can fight are:

- The third party to be executed who argues that the object to be auctioned belongs to him, may be the holder of property rights, HGU, HGB, usage rights, including underwriting rights, and rental rights;
- Tenants for objects that are not in the form of land; or
- In the event that the execution of the confiscation is not carried out in accordance with the provisions stipulated in the applicable law while the executed has carried out the decision voluntarily, then the objection may be filed by the executed himself.

The object of resistance can be:

- Verstek verdict for the defendant who was not present;
- Confiscation of Execution for the defendant;
- confiscation of conservatoir, confiscation of revindicatoir, and confiscation of execution for third parties;

The period of filing resistance as long as the auction sale has not been carried out (before the execution is carried out).

Based on the things that have been described above, the author can conclude that the executed, in this case is the opponent of the execution, can carry out or file a civil lawsuit or fight against the execution auction by first fulfilling the formalities and conditions as described above.

1. State and Time of Execution

The execution of the auction at the Baturaja Religious Court was also influenced by the circumstances and time of execution. One of those conditions and times was like the Covid-19 pandemic. The Covid-19 pandemic has had an impact on the execution of auctions at the Baturaja Religious Court. The Covid-19 pandemic has created obstacles in determining the execution schedule and the execution process. This causes the execution not to be carried out and finally the auction execution is neglected. This can be found in Case Number2/Pdt.Ex/2021/PA.Bta. Where in practice is the implementation of dispute resolution Case Number2/Pdt.Ex/2021/PA.Bta. related to the execution of the auction did not go well due to the Covid-19 pandemic. This was caused by the COVID-19 pandemic which disrupted the auction execution schedule, where the scheduled execution schedule could not be carried out as it should.

2. Factors of Community Economic Capability During the Pandemic Period

In order to eradicate the spread of Covid-19, the government issued a mobility restriction policy for Indonesian people. This certainly has a significant impact on various aspects of people's lives, especially on economic aspects such as the shrinking of people's purchasing power. Indirectly, the pandemic has also caused problems in the implementation of auctions. There are no people who are interested in buying the auction object, so the auction cannot run.

IV. Conclusion

4.1 Conclusion

1. Auction Execution Arrangements are regulated in Indonesian Positive Law and Muamalah Fiqh Perspective. Positive legal regulations are regulated in the auction laws and regulations in Indonesia which are based on the provisions contained in Vendu Regulation (Auction Regulation) Ordinance of February 28, 1908 Staatsblad 189 of 1908, which Vendu Reglement has been in effect since April 1, 1908. Furthermore, the regulation was amended by the issuance of Staatsblad 56 of 1940 juncto Staatsblad 3 of 1941. So based on this matter, Vendu Regulation can be said as a structural basis for the

existence of auctions in Indonesia. Then the legal operational basis is regulated in the Ministry of Finance Decree Number 507/KMK/.01/2000, the Minister of Finance Decree Number 40/PMK.07/2000, the Minister of Finance Regulation Number 150/PMK.06/2007 and the Minister of Finance Regulation Number 61/PMK.06/2008. Auctions based on the perspective of muamalah fiqh come from the language muzayyadah which means to increase. This does not cause the auction to be included in the practice of usury. This is because in muzayyadah, if there is a sale and purchase contract by the seller, the thing that increases is the offer of a higher price in the sale and purchase contract made by the seller, while the meaning of increasing in the auction carried out by the buyer is a decrease in the bid.

2. The execution of auctions in the resolution of Islamic economic disputes at the Baturaja Class 1 A Religious Court does not always go well. In the process there are several obstacles, namely the existence of executed resistance, third party resistance and Execution Conditions or Time. In the settlement of the dispute over the execution of the auction case Number 2/Pdt.Eks/2021/PA. Bta did not go well, due to the Covid-19 pandemic. The Covid-19 pandemic has created obstacles in the execution of case No 2/Pdt.Ex/2021/PA. Bt namely in determining the execution schedule and execution execution process. This causes the execution to not run as it should and eventually the auction execution is neglected and the execution of the auction cannot be carried out.

4.2 Suggestion

1. It is hoped that special rules will be made for auctions in Indonesia. In this case, special rules regarding the auction can be stipulated in the form of a law or government regulation so that when carrying out the auction, it has a clear and strong legal basis so as to create legal certainty in the implementation of the auction.
2. Legislation is needed that comprehensively regulates sanctions if there are parties who try to impede the procedural law process at the Judiciary Institution. Apart from that, it must also be supported by the firmness of the Head of the Baturaja Religious Court and other stakeholders in enforcing the law regarding auction execution in order to create the rule of law.

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