

Legal Responsibility of the Auction Organizer and Seller to the Winning of Auction With Good Faith For Auction Objects That Do Not Confirm the Announcement (Study of Manado High Court Decisions Number: 14/PDT/2019/PT MND)

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ABSTRACT

Auction is the sale of goods that are open to the public with a written and/or verbal price offer that is increasing or decreasing to reach the highest price, which is preceded by an Auction Announcement. The auction process itself is carried out by the State Property and Auction Service Office (KPKNL) where KPKNL is the organizer of the auction requested by the buyer. Then, in the auction process, a legal action is created, namely buying and selling between the seller and the buyer, which is basically a sale and purchase carried out by an agreement. Therefore, the agreement must have a principle of good faith and also fulfill the conditions of the agreement. In the decision of the Manado High Court Number: 14/Pdt/2019/PT Mnd there was a case where the buyer, the winner of the auction, had good intentions to carry out the auction process, but after paying off the auction object it turned out that the shape of the auction object was different from what was announced. Then, the winner files a lawsuit for the losses suffered by the auction winner or the buyer, both material and immaterial losses. The result of the research is that there is no legal responsibility for the buyer and also no legal protection or legal certainty for the winner of the auction.

Keywords: Land, Sale and Purchase, Good Faith, Auction, Legal Liability, Auction Management.

1. INTRODUCTION

Land is one of the basic human needs, which is to become an agricultural, plantation and residential area. In addition, land can also lead to investment in this current era. Regarding ownership of land rights in Indonesia, it is explained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter claimed as the 1945 Constitution) which declares that the earth, water & natural resources contained therein are controlled by the State & used as much as possible. people's prosperity. So, the article above states that the state is the highest body authorized to regulate and monitor land rights. Furthermore, land is regulated in Law Number five of 1960 concerning Agrarian Principles (hereinafter claimed to be UUPA) where in this Law there is still an article regarding the dominance of a plot of land, namely Article 16 paragraph (1) of the UUPA which stipulates that Land rights consist of property rights, cultivation rights, building rights, use rights, lease rights, land clearing rights, rights to collect

forest output & other rights that are not included in the rights mentioned above which will be determined using laws and rights that are ad interim in nature are mentioned in article 53 of the UUPA, according to that article it can be seen that there are several land rights. Land Law based on Effendi Warin is written as well as unwritten regulations that regulate rights to land domination & forums and concrete rule interactions. In the lives of residents, land is most often used as a settlement because it is a place to live. There are various types of residence, one of which is a house. Houses on land domination rights include property rights, property rights based on article 20 paragraph (1) of the UUPA Property rights are hereditary, strongest and most complete rights that people can have on land, then property rights can be transferred to control.

The transfer of ownership rights to land can be carried out & this is explained in the UUPA Article 20 paragraph (2) which stipulates that property rights can be transferred & transferred to other parties. Then, synchronous property rights using article 24 of the UUPA can be used as debt collateral using mortgage rights. The mortgage right itself is a collateral right that is imposed in a land right to pay off

a debt, this is stated in Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land (hereinafter referred to as UUHT). So, a land can be used as collateral for the debtor who has a debt to the creditor. This resulted in an agreement between the debtor and creditor in which an agreement has valid conditions as regulated in the Civil Code (hereinafter claimed to be the Civil Code) which still exists in Article 1320 of the Civil Code, namely their unanimous decision to bind themselves, the ability to form an engagement, an exclusive thing & a lawful cause, therefore both parties must fulfill the conditions mentioned above. Then on the mortgage there is a regulation that regulates when the debtor commits a breach of contract which is regulated in Article 20 of the UUHT which can be concluded that the sale of the mortgage object is carried out through an auction on the power of the first mortgage holder, then the sale is through a generic auction of the executorial title on the certificate. Mortgage rights under the laws and regulations for settlement of debts of mortgage holders using previous rights under other creditors. With the auction process, this causes a buying and selling process to occur. The buying and selling process itself is regulated in the Civil Code where buying and selling is included in the third book of the Civil Code which contains the engagement. The definition of buying and selling is in Article 1457 of the Civil Code which can be concluded that buying and selling is an agreement between 2 parties, namely the seller and the buyer to surrender the rights to an object followed by using the buyer to pay according to what has been promised by the seller. Then, the sale and purchase results in an agreement when a valid condition of the agreement has been fulfilled, therefore the agreement formed has binding legal force (*beginzel dercontract vrijheid*) into law for those who made it or it is also claimed as *pacta sunt servanda* & this is stated in Article 1338 Civil Code. The valid conditions according to the agreement are still the term unanimous decision, where the meaning according to the term unanimous decision is what one party wants, the other party must want. Synchronous using Article 1321 of the Civil Code, an agreement may not contain errors (*dwaling*), not due to coercion (*dwang*) and also not due to fraud (*bedrog*) by one party against another party in a reciprocal manner. Therefore, the agreement must have a good faith which is stated in the Civil Code in Article 1338 paragraph (3) of the Civil Code. The principle of good faith in the Civil Code has 2 (2) meanings, namely, the first is in a subjective sense & the second is in an objective sense. The principle of good faith in a subjective sense, namely, good faith that still exists in one's behavior in the agreement and can be interpreted as one's honesty. While the principle of good faith in the objective sense can be interpreted that the agreement is formed & implemented while the habit of decency & morality which means it must be formed & implemented in such a way without harming

one of the parties. In classical contract law theory, the principle of good faith can be applied if the agreement has fulfilled the requirements, certain conditions, and this principle applies when the legal conditions of the agreement have been fulfilled [1].

According to Robert S. Summer, good faith in a negotiation and contract preparation which includes negotiations without a serious intention to enter into a contract, abuse of privilege to thwart negotiations, not explaining materially and taking advantage of the weak bargaining position of the other party to the contract [2].

In practice, it is possible that the principle of good faith (utmost good faith) is often violated. Taking a deeper look, one of these violations can be reviewed with a sale and purchase agreement. In this case, the writer is interested in writing and at the same time analyzing more deeply about the limitations of the existence of the utmost good faith in terms of buying and selling houses in a case. One of the violations of the principle of good faith in buying and selling houses is in the Manado High Court Decision Number: 14/Pdt/2019/PT Mnd. In this case, a lawsuit was previously filed to the Manado District Court Number: 123/Pdt.G/2018/PN.Mnd. The case began precisely on December 15, 2016, where the late Mrs. Ester Femmy Waworuntu participated in an auction conducted by Co-Defendant I on November 26, 2016 and ACCUSED PT. Bank Mandiri (Persero) Tbk. RCCR X/Sulawesi and Maluku as bidders, Denta Oktaviantha as selling officers, based on the sales official's letter of assignment. Then, Al. Mrs. Ester Femmy Waworuntu (parent of the Plaintiff) has won the land and building auction located at JL. Kambang, Sario Tumpaan District, District. Sario, Manado City, which has SHM No. 274/sario tumpaan on behalf of Vany Desiree samsu, covering an area of 176 m², with a purchase price of the auction object of Rp.471,000,000 (four hundred and seventy one million rupiah), as the object of the auction desired by the Plaintiff and the late Mrs. Ester Femmy Waworuntu at the time received information from the print media / Tribun Manado newspaper. However, after Alm. The mother's parents are declared valid as the winning bidders, the late parents of the Plaintiff's mother carry out the settlement of the auction payment obligations for all forms of payment in terms of settlement of the object of the auction of a plot of land with an area of 176 m² along with the building on it, according to SHM no. 274/Sario Tumpaan. Then, after making the payment and also after receiving the documents related to the object of the auction, the object of the auction with SHM No. 274/Sario Tumpaan, dated 08-08-1984 on behalf of Vany Desiree Samsu, the object of the auction which has become the property of the Plaintiff and the late. Mother's parents can not be controlled, because there are other parties who control the object, and even do not want to get out of the object. With this, Alm. The Plaintiff's mother's parents took the initiative to directly check the auction object which had become property, and it

turned out that the facts on the ground were found that the shape of the object of the land and building auction was in accordance with SHM No. 274/Sario Tumpaan, on 08-08-1984 on behalf of Vany Desiree Samsu, different/different from the shape of the building in the printed media of the Manado Tribune newspaper issued by Co-Defendant I, namely picture 1 (one) of PT. Lucvan Jaua Abadi as auction object. This then resulted in the Plaintiff and the late. The Plaintiff's parents only lived in a boarding house, and even resulted in the late. Mrs. Ester Femmy Waworuntu (parent of the Plaintiff) passed away, due to mental burden and lack of financial needs. It is of course. has harmed the Plaintiff materially and even immaterially, so that it is clearly an act that is against the law. In the District Court, the judge's decision is in fact in favor of the Plaintiff because the lawsuit filed by the Plaintiff has been completely proven, and the Defendant and Co-Defendant II have reflected the nature of not having good faith. Also Defendant II in the exception has questioned the Plaintiff who did not state his complete identity, namely not including the Government of the Republic of Indonesia, the Ministry of Finance of the Republic of Indonesia, the Directorate General of State Assets, and the Regional Office of the Directorate General of State Assets of North, Central Sulawesi, Gorontalo and North Maluku in the lawsuit. which is the superior agency of the Co-Defendant II. However, at the District Court, the Judge declared that although the Plaintiff did not mention the identity of Co-Defendant II in detail, it did not violate the civil procedural law because it would not harm the Co-Defendant II in dealing with the Plaintiffs' lawsuit, so there is no urgency to mention the agency. the supervisor of Co-Defendant II in the Plaintiff's lawsuit. In the District Court, the Plaintiff's claim was partially accepted and the exception of Co-Defendant II was rejected in its entirety. However, this made Co-Defendant II dissatisfied and then filed an appeal. Unfortunately, in the High Court, the judge accepted the exception from the Appellant who was originally a Co-Defendant II, and even declared that the appeals of the Appellants were initially unacceptable. This is what makes the writer even more interested in the case that has been explained because it is clear that the existence of the principle of good faith (utmost good faith) has been omitted and was not considered at all by the Judge in the High Court. In fact, the previous District Court's decision should be a consideration for judges in deciding a case. Which, in the District Court, it was clearly proven that there was no good faith on the part of the Defendant and Co-Defendant. It is not in accordance with applicable law if the judge arbitrarily ignores the existence of the principle of good faith which should be taken into consideration in deciding a case.

1.1. Related Work

Based on the description above, the title of the research entitled : “Legal Responsibility of The Auction Organizer And Seller To The Winning of Auction With Good Faith For Auction Objects That Do Not Confirm The Announcement (Study of Manado High Court Decisions Number: 14/PDT/2019/PT MND)”

1.1.1. The existence of the principle of good faith

Good faith is a legal principle and Sudikno Mertokusumo is of the opinion that the principle of law is not a legal regulation but the principle of law is a basic thought that is open or the background of a concrete regulation contained in and behind every legal system that is embodied in legislation. the invitation and the judge's decision which is a positive law and can be found while looking for open characteristics in the concrete regulation [3].

Furthermore, the principle of good faith is contained in Article 1338 paragraph 3 of the Civil Code, which states that an agreement must be made in good faith. This principle explains that the parties are obliged to implement and make an agreement based on a definite trust and also a will from each party. This principle emphasizes that the parties in creating an agreement must be based on good faith and propriety, which means that in making an agreement it must be based on honesty in order to achieve the common goals that have been made. As one of the conditions for the validity of the agreement, the agreement means that both parties reach a consensus (consensual). Furthermore, the Hoge Raad decision which was the opinion of one of the judges in the Netherlands declared that good faith refers to a rationality and a propriety (*redelijkheid en billijkheid*) that lives and develops in society [4].

According to Subekti, good faith is an honesty which is stated in Article 1338 paragraph (3) of the Civil Code that all agreements must be made in good faith [5].

In a sense, what one party wants, is also wanted by the other party. There is no negligence factor (*dwaling*), not due to coercion (*dwang*), nor is it due to reciprocal deception (*bedrog*) from one party to another (Article 1321 BW). Therefore, the agreement must be accompanied by good faith or goodwill, (see Article 1338 (3) BW).). If one party is malicious (your term: one of the parties is malicious), then in our opinion, the parties have been malicious (*fraud*) to the other party from the start and therefore do not meet the conditions for the agreement made. compel. This means that an agreement that contains elements of fraud carried out by one or both parties and intends to be carried out in opposite circumstances certainly does not meet the requirements of a valid agreement. In other words, if the

terms of the agreement are not met (*fraud*) openly, then the agreement can be canceled (illegitimate). However, because the omitted condition is a subjective requirement (i.e., the element of "agreement"), if one party is not satisfied with the agreement that contains an element of fraud, the other party can cancel it (cancel). That is, parties who do not like the agreement (which contains elements of fraud), can make an attempt to cancel it, and it does not cancel itself (null and void). Likewise, if a condition of the agreement has been fulfilled (agreed by the parties), then if the other terms of the agreement are fulfilled, the agreement must have binding legal force (*beginzel dercontract vrijheid*) and also the agreement is a law for the parties concerned. parties who make it in accordance with the principle of *pacta sun servanda*.

1.1.2. legal responsibilities of the auction organizer and seller to buyers

The auction itself has a definition, one of which was put forward by Polderman who declared that general sales were a tool to make an agreement that was most profitable for the seller while gathering interested parties [6]. In article 1 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 auction is the sale of goods that are open to the public while a written and/or verbal price offer is increasing or decreasing to reach the highest price, which is preceded by an announcement of the auction. In the auction process there is an institution that takes care of the auction process, namely the State Property and Auction Service Office (KPKNL). KPKNL has never examined the object to be auctioned, but KPKNL has checked object documents in the form of certificates and then documents from the Public Appraisal Service Office and equated whether the certificate number, area and address listed are the same or not where the document was given by the seller or applicant auction to the KPKNL when you want to conduct an auction. After that, the KPKNL also receives photos of the auction object provided by the seller or bidder. Based on the Regulation of the Minister of Finance of the Republic of Indonesia (hereinafter referred to as PMK) Number 213 of 2020 concerning Auction Implementation Guidelines which stipulates that the KPKNL has no obligation to examine the object of the auction. dalam hal bilamana ada perbedaan objek atau permasalahan lainnya itu merupakan tanggung jawab penuh dari pihak penjual atau pemohon lelang. Karena sebelum melakukan lelang penjual membuat surat pernyataan yang memaklumkan bahwasanya benar objek lelang dengan nomor SHM, yang beralamat, dan gambar sesuai serupa objek lelang. The KPKNL is like a notary where the KPKNL is only in charge of buying and selling auctions and ratifying the results of the auction process and after that it is the full responsibility of the seller. After that, the seller must also submit a photo of the last auction object before being auctioned so that there is no misunderstanding.

1.2. Our Contribution

Based on the background and problem formulation, the objectives in this research are to find out the the mechanism for the existence of the principle of good faith in the agreement and the legal responsibilities of the auction organizer and seller to buyers in good faith on different auction objects.

1.3. Paper Structure

This paper structure is using research method to collect data, manage data, and conclude data according to the problem formulation. This legal research is to study the particular law. This legal research is carried out with a series of scientific activities based on methods, systematics, and a certain thought. The type of research in this legal research is normative research. The definition of normative research is research that provides a systematic explanation of the rules governing a certain legal category, as well as analyze the relationship between regulations and future development. The author uses four legal materials that obtain from the results of a literature review, library material, and legal material.

2. BACKGROUND

2.1. The Principle of Good Faith

An agreement is an act by which one or more persons bind themselves to one or more other persons. This article does not explain that an agreement must be made in writing, this is stated in article 1313 of the Civil Code. R. Setiawan also argues that the agreement is a legal act between two or more people who bind themselves together [7].

The principle of good faith in an agreement is contained in Article 1338 paragraph (3) of the Civil Code which stipulates that every agreement must be made in good faith. The agreement itself has a valid condition where the legal conditions are things that must be fulfilled in an agreement and if it is not fulfilled then the agreement is invalid. An agreement has a valid condition contained in the Civil Code and more precisely contained in Article 1320 of the Civil Code, namely the conditions are:

a. Agree

In the agreement both parties must agree with each other in order to live or fulfill what has been agreed. This means that while agreeing, both parties have bound themselves into an agreement. If there is no agreement then the agreement is not valid. Then, in the agreement there is also an adjustment of the will with the statement in which the statement that is

seen because of the will may not be seen or known by the other party [8].

b. Legal Proficiency

Both parties who enter into an agreement are required to be legally competent. According to R. Soeroso, that skill is someone who has the ability in law to make an agreement and has room to take legal action [9].

In Article 1330 of the Civil Code, competence is someone who is not legally capable if he is not yet 21 years old or has not married. Then, someone who is under guardianship, namely people who experience mental illness, low thinking power and extravagance.

c. A Certain Thing

The purpose of a certain matter is if the two parties who have entered into an agreement and a dispute arises, then the intended goods do not need to mention the price and amount provided that the goods can be calculated and determined

d. lawful cause

Because the lawful reason can be interpreted that there is no other reason than what is in the agreement that has been made.

The four legal conditions in the agreement must be fulfilled. The legal terms of the agreement contain an agreement which means that the agreement is desired by both parties in the agreement. In accordance with article 1321 of the Civil Code, where the agreement must not contain elements such as the following:

1. Mistake (*dwaling*);
2. Not under duress (*dwang*) and;
3. Nor is it due to fraud (*bedrog*) from one party to another in a reciprocal manner.

if the general terms of agreement are not fulfilled, the agreement can be canceled (voidable). However, because the conditions that are not met are subjective conditions, therefore if one party does not like and does not accept the agreement that contains a fraud, then the other party can cancel (voidable). It can be interpreted that the terms of the agreement there are differences, namely objective and subjective conditions. Then, the agreement is included in the subjective terms in which the condition can only be canceled by the party who does not like the agreement or the party who is harmed in the agreement. Then, the agreement is included in the subjective terms in which the condition can only be canceled by the party who does not like the agreement or the party who is harmed in the agreement. So, in the agreement there should be no element of oversight, coercion, and fraud. In the case that the author took, namely PT. Bank Mandiri (Persero), Tbk. as the seller of the auction object who sells the auction object and is advertised through the Manado Tribune print media so that it attracts the attention of one of the buyers or auction winners who are interested in participating in the auction

after viewing the advertisements in the Manado Tribune. The auction winner or buyer immediately follows the auction process and wins the auction. However, it turns out that the object of the auction is physically different from the picture in the Manado Tribune. Whereas the winner of the auction has done and paid for everything requested before the object of the auction is handed over to the winner of the auction. Here it can be seen that the buyer has good intentions to fulfill the obligations of the auction properly. However, after fulfilling the obligations, it turns out that the object of the auction is not the same as what was advertised at the time of the auction announcement. This is where losses arise for the auction winner or the buyer. Therefore, the winner of the auction as well as the buyer filed a lawsuit that he had suffered a loss and felt cheated by the seller regarding the difference between the object of the auction and the picture in the Manado Tribune. In the case raised, the author has shown that the seller did not act in good faith because he had made an error in submitting the image to the Manado Tribune. Then, the existence of a principle of good faith in an agreement is very closely related while the legal terms of the agreement where good faith is included in the subjective requirements. As explained by the author that if an agreement does not meet the subjective requirements, the agreement can be canceled by the affected party or do not like the agreement. an agreement must be made in good faith and the party concerned, namely the seller, has had bad intentions from the start (to commit fraud or oversight) against the winning bidder or buyer so that it does not meet the conditions for the validity of the agreement and it means that this agreement can be canceled by the winning bidder or buyer. Good faith is not only emphasized in Article 1338 paragraph (3) of the Civil Code but also emphasized in Article 1339 of the Civil Code which declares an agreement not only to bind what is specified in the agreement, but also something based on the nature of the agreement is required based on propriety, custom, or law. Invite. In the sense that in making and carrying out an agreement it must be based on a propriety, custom, or law and good faith is a principle that should be a basic thought of legal regulation on the meaning of that principle must be fulfilled.

2.2. Legal Responsibilities

Every legal action will cause legal consequences because every action must have a consequence. Therefore, a consequence also wants to bring up a responsibility that must be carried out and fulfilled by the parties who carry out legal actions. Legal responsibility itself will be carried out based on statutory regulations and other regulations that are certain and applicable in an area where the legal action is carried out. Then, laws and regulations or other regulations must have legal certainty because if the regulations are multi-interpreted, it can lead to the absence of legal certainty. Then, a legal action that causes legal

consequences and ultimately must carry out the legal responsibility in carrying out its responsibilities must be based on existing regulations. Cannot be charged with a responsibility without a legal basis. In civil law legal actions are divided into several parts, one of which is the sale and purchase agreement contained in article 1457 of the Civil Code which stipulates that an agreement while one party binds himself to deliver an item, and the other party to pay the promised price. The sale and purchase itself is carried out on an agreement so that the seller and buyer are mutually bound in the buying and selling process to fulfill the rights and obligations of each party. The buying and selling process is a legal act that is often carried out by the community, one of which is buying and selling auctions. The auction is included in the sale and purchase agreement where the definition of auction is contained in Article 1 paragraph 1 of the Regulation of the Minister of Finance of the Republic of Indonesia number 27 of 2016 concerning Auction Implementation Guidelines which states that Auction is the sale of goods that are open to the public while a written and/or verbal price offer is increasingly increase or decrease to reach the highest price, preceded by the Auction Announcement. Then, in the decision of the PN blabla, there is a problem due to buying and selling auctions where the auction winner is harmed because the auction object has a different physical form that was advertised at the time of the auction announcement and also the auction object is still occupied by the previous owner, then, in the decision of the Manado District Court Number Number : 123/Pdt.G/2018/PN.Mnd the decision was made while the minutes of the auction were canceled and the seller was obliged to compensate. However, Defendant II appealed to the plaintiff because he felt he was not guilty and did not have to be responsible, then the High Court accepted the appeal applicant while canceling the previous District Court decision. In this decision, there is no legal responsibility in which the buyer or the winner of the auction has suffered material or immaterial losses and also since the beginning the seller has made a mistake by inserting an image into the Manado Tribune. So that the seller is not careful and has made an error in accordance with Article 1321 of the Civil Code which stipulates that an agreement must not contain elements, one of which is an oversight (dwaling). Then, this was strengthened by the results of the author's interview with Mr. Arief Ar Rosyid as a young expert auctioneer who declared that before conducting the auction the seller made a statement declaring that the object of the auction was correct on the SHM number, address, and pictures according to the object of the auction. then, he added that in his statement that KPKNL does not have the authority to inspect the object first, it is completely left to the seller and if there is a difference. object then it is the full responsibility of the seller and KPKNL can only cancel the minutes of the auction. However a legal responsibility KPKNL is obliged to return the auction money collected through the national

inventory to the auction winner as soon as possible, unless the KPKNL violates regulations and is represented by an auctioneer, and losses due to the auction are the responsibility of the KPKNL. from the auctioneer In article 52 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 concerning Auction Implementation Guidelines which contains the announcement of the auction which at least includes:

1. Seller's Identity;
2. The day, date, time and place where the auction is held;
3. Type and quantity of goods;
4. Location, area of land, types of land rights, and the presence or absence of buildings, especially for immovable property in the form of land and/or buildings;
5. Specification of goods, specifically for movable goods;
6. The time and place of *aanwijzing*, in the event that the Seller performs *aanwijzing*;
7. Auction bid guarantee includes the amount, period, method and place of deposit, in the event that an auction bid guarantee is required;
8. Limit Value, except for first-hand Timber and Other Forest Products Auctions and Voluntary Non-execution Auctions for movable goods;
9. Auction bidding method;
10. The period of obligation for auction payment by the Buyer;
11. The domain address of the KPKNL or Auction Hall conducting auctions on auction bids via the internet, or the email address of the KPKNL or Auction Hall or 'Class II Auction Officials conducting auctions with auction bids via electronic mail (email); and

12. 12. Additional terms from the Seller (if any).

It can be seen in article 52 paragraph (1) point 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 concerning Auction Implementation Guidelines which reads "additional conditions from the seller". Indonesia Number 27 of 2016 concerning Auction Implementation Guidelines which stipulates that Sellers may submit additional auction terms to bidders, namely:

1. The period of time for Bidders to review,
2. Physically examine the goods to be auctioned;
3. The period for picking up the goods by the Buyer;
4. Schedule of auction explanations to Bidders prior to the auction (aanwijzing).

In the article, it is said that the seller can apply for additional conditions, namely to give participants time to view the auction object. In the lawsuit filed by the auction winner on the decision of the Manado District Court Number: 123/Pdt.G/2018/PN.Mnd the winner of the auction is declared to be the winner of the auction on December 15, 2016 and also the winner of the auction immediately pays the obligation to pay the auction on the same date has nominal Rp 480,420,000, - (four hundred eighty million four hundred and twenty thousand rupiah). Here it can be seen that the seller does not submit additional conditions to the auction winner to provide an additional period of time to view the physical object of the auction. . In article 17 paragraphs (1), (2), and (3) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 concerning Auction Implementation Guidelines which stipulates:

1. Seller is responsible for:
 - a. The legality of ownership of the goods;
 - b. The validity of the tender requirements document;
 - c. Delivery of movable and/or immovable goods

d. Submission of ownership documents to the Buyer; and

e. Determination of Limit Value.

2. The Seller is responsible for civil lawsuits and/or criminal charges arising from the non-compliance of the laws and regulations in the Auction field by the Seller.

3. The seller is responsible for the claim for compensation for the losses incurred, in the event that it does not fulfill the responsibility as referred to in paragraph (1).

Based on paragraph 2 (two) the seller is responsible for the civil lawsuit that arises, then the seller is strictly responsible for indemnifying the loss from the buyer. In the problem that the author examines in the Manado District Court decision Number: 123/Pdt.G/2018/PN.Mnd the defendant, namely PT. Bank Mandiri (Persero), Tbk as the seller did not dispute the plaintiff's claim regarding the mistake of inserting the image into the Manado Tribune print media. However, in the appeal, namely in the decision of the Manado High Court 14/PDT/2019/PT Mnd, the seller was released from responsibility to the winning bidder or buyer. The seller has harmed the winner of the auction or the buyer in article 1365 of the Civil Code which stipulates that "Every act that violates the law and causes harm to others, obliges the person who caused the loss due to negligence to replace the loss." Then an act can be said to be against the law if it has fulfilled the 4 (four) elements, namely:

1. The act must be against the law (onrechtmatig);
2. The act must cause harm;
3. The act must be carried out by negligence;
4. There must be a causal relationship between the act and the loss.

The seller must be responsible for causing a loss even if it's just a problem with a different image similar to the original object, because that's the image that attracts buyers to buy. Then, in the auction process the seller also does not submit additional requirements as described in Article 19 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 concerning Auction Implementation Guidelines. If the seller enters

additional conditions in the form of additional conditions to the KPKNL in the auction announcement, the buyer will automatically get time to check the auction object first before paying off the bill for the auction object. The Manado KPKNL has carried out and led the auction process while correctly in accordance with the laws and regulations and the seller's actions are the seller's actions. However, in the decision of the Manado High Court 14/PDT/2019/PT Mnd, the Panel of Judges did not consider the loss to the buyer for the actions of the seller who did not have good intentions and made a mistake. Actually, in the decision of the Manado District Court Number: 123/Pdt.G/2018/PN.Mnd, the Panel of Judges decided and declared: Stating the actions of the Defendant who had sold publicly the object of SHM No. 274/Sario Tumpaan, on behalf of Vany Desiree Samsu, which is located at JL. Flower, Ex. Sario Tumpaan, Kec. Sario, Manado City, North Sulawesi Province, through the assistance of Co-Defendant II is an act against the law Sentencing the ACCUSED to pay for all material and immaterial losses suffered by the Plaintiff that from the decision of the judge the defendant is the seller who must compensate and the seller who has committed an unlawful act which is in accordance with the responsibility that must be carried out by the seller to the buyer. However, in the High Court all District Court decisions were annulled. In terms of emptying the auction object, the Panel of Judges should issue a stipulation to order the bailiff or the authorities to empty the auction object. in accordance with Article 200 paragraph (11) of the Herzien Inlandsch Reglement ("HIR") where it is said that in the event the execution is reluctant to leave the goods (immovable goods) that have been sold at auction, the Head of the local District Court orders the bailiff so that the goods can be left vacated by the executor. At the same time, the winner of the auction or the buyer can control the auction object that has been purchased by him in good faith. In this case, the theory of justice was not created because the decision of the Manado High Court Panel of Judges did not consider the losses suffered by the buyer and also did not provide legal protection to the loser. Then the theory of legal certainty also does not work here because there is no legal certainty for buyers who have good intentions to pay off the object of the auction but the buyer actually suffers a loss and there is no legal certainty for the loss suffered by the buyer. According to E. Utrecht, the law is said to have certainty because the law is made to regulate social life and must be obeyed by the whole community. If it is violated or does not comply with regulations, there will be actions from the government on the community [10]. so in law if there is no certainty then the creation of a justice. even though justice is an important element because the law was created to create justice. Thomas Hobbes justice can be said to be fair when an act has been based on an agreement [11].

3. CONCLUSION

Based on the results of research and problem analysis that has been carried out, the following conclusions can be drawn:

1. The existence of the principle of good faith in the Manado High Court Decision Number: 14/Pdt/2019/PT Mnd. The principle of good faith in an agreement is contained in Article 1338 paragraph (3) of the Civil Code which stipulates that every agreement must be made in good faith. The legal terms of the agreement contain an agreement which means that the agreement is desired by both parties in the agreement. In accordance with article 1321 of the Civil Code, where the agreement must not contain elements such as the following:

- a. Error (dwaling);
- b. Not by coercion (dwang) and;
- c. Nor is it due to fraud (bedrog) from one party to another in a reciprocal manner.

That an agreement must be made in good faith and in the case of the party concerned, namely the seller, from the beginning there had been bad intentions (to commit fraud or oversight) against the winning bidder or buyer so that he did not meet the conditions for the validity of the agreement and it means that this agreement can be canceled by the other party. auction winner or buyer.

2. Legal responsibilities of the organizers and sellers of land auctions to buyers who have good intentions in the Manado High Court Decision Number: 14/Pdt/2019/PT Mnd The auctioneer does not have to be responsible for the losses suffered by the buyer because he has led and carried out the trial process in accordance with regulations. The seller is the party who must be responsible for the buyer because he has caused a loss even if it is just a problem that is different from the image of the original object, because that image makes the buyer interested in buying. Because in article 1365 of the Civil Code it proclaimed that all actions that violate the law and cause harm to other people are those who are obliged to compensate. In Article 17 paragraph 2 (two) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 concerning Instructions for Implementation of Auctions, the seller is responsible for civil lawsuits that arise, the seller is strictly responsible for indemnifying the loss of the buyer and also the seller does not file additional requirements as described in article 19 paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27 of 2016 concerning Auction Implementation Guidelines. Then, the decision of the Manado High Court Number: 14/PDT/2019/PT MND has completely removed the seller's responsibility for the buyer and resulted in no legal responsibility for the buyer who suffered a loss.

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