

Tinjauan Yuridis Tentang Diterimanya Tanah Tanah yang Belum Bersertifikat Sebagai Jaminan Fidusia (Studi Kasus Surat Keterangan Ganti Rugi di Pekanbaru)

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Abstrak

Jaminan yang paling banyak digunakan oleh kreditur, mayoritas terdiri atas tanah. Menurut ketentuan yang berlaku, terhadap tanah-tanah yang telah bersertifikat dilakukan pengikatan dengan SKMHT yang kemudian ditindaklanjuti dengan APHT. Sementara di Pekanbaru dijumpai pengikatan jaminan kebendaan berupa tanah yang belum bersertifikat (SKGR). Sehubungan dengan hal tersebut yang menjadi pokok permasalahan adalah apakah tanah yang belum bersertifikat (SKGR) dapat dijadikan jaminan untuk pelunasan kredit di Bank, khususnya di Pekanbaru dan bagaimana perlindungan hukum terhadap kreditur (Bank) penerima fidusia dengan jaminan tanah berupa SKGR. Jika terjadi kredit macet, bagaimana kreditur memproses jaminan tersebut serta mengapa masyarakat Pekanbaru tidak menindaklanjuti SKGR menjadi sertipikat, apa yang menjadi kendala.

Dalam penelitian ini digunakan penelitian kepustakaan, berupa kumpulan data dari literatur dan peraturan perundang-undangan yang berlaku dan data tersebut didukung oleh wawancara dengan beberapa nara sumber, berupa Notaris, Camat, dan Pejabat Bank di Pekanbaru. Fidusia dianggap sebagai jaminan yang paling cocok untuk tanah-tanah yang belum bersertifikat atau belum jelas status haknya. Sementara itu, eksekusi terhadap kredit macet yang di jamin dengan fidusia tunduk pada ketentuan Pasal 29-34 Undang-Undang No. 42 Tahun 1999, yaitu melalui pelaksanaan titel eksekutorial, pelelangan atau penjualan di bawah tangan. Adapun yang menjadi kendala masyarakat dalam pensertipikatan tanah adalah mahalnya biaya pendaftaran pensertipikatan tanah dan kondisi sosial ekonomi masyarakat Pekanbaru yang tidak menjangkau biaya tersebut.

Terhadap pemerintah Pekanbaru, hendaknya mencari solusi yang terbaik untuk masyarakat agar tanah-tanah SKGR menjadi bersertifikat dengan harga yang terjangkau, selain itu penerbitan SKGR wajib ditertibkan untuk menghindari penerbitan SKGR ganda; kepada masyarakat Pekanbaru, berusaha semaksimal mungkin melaksanakan pensertipikatan agar mendapatkan kepastian hukum; dan terhadap Lembaga Keuangan (Bank) di Pekanbaru, penerimaan tanah-tanah berupa SKGR untuk jaminan kredit sebaiknya menggunakan jaminan fidusia dan pembuatan akta jaminan fidusia yang mengikat tanah SKGR harus dilakukan dihadapan notaris sesuai dengan Undang-Undang No. 42 Tahun 1999 tentang Jaminan Fidusia.

.....A warranty that the majority of creditor used is a land property. According to the current law, a certified land property is legalized by the so-called Etherification Letter of Mortgage Rights Imposition (SKMHT), which afterwards supported by Notarial Deed of Mortgage Right Imposition (APHT). However, in Pekanbaru, we fine cases in which the lands are uncertified (Thus, they apply the case, the main problem to be addressed here would be settlement guarantee, particularly in Pekanbaru. How would be the Indonesian law state concerning a matter in which the creditor received this uncertified land as a guarantee? If there is a credit payment problem, how would be the technical aspect of the process of the land? And why the majority of Pekanbaru land owners are not interested to certify their own lands? What are their major

problems/concerns?

In this research, the writer applies literature study approach, which consists of data from the current positive law, and supported as well by several respondents, namely Notary, Camat (Sub district Head), and several Bank Official in Pekanbaru. Fiducia is considered as the most proper guarantee, for an uncertified lands warranty, or lands, which are yet to have any clear legal status. Mean while, execution on an unsettled under the law in the Article 29-34 Law No. 42 Year 1999, which is determined to be proceeded through executorial title, by auction, or selling under private deed. As concerning the major problem being faced by the majority Pekanbaru landowner about certifying their land, it is found out that the main problem lies on the cost. The condition of overall Pekanbaru society cannot afford the high cost imposed to them if they want to undergo a certification process of the land. This is one major problem, and the local government should strive at it's the best to find the solution, so that the Pekanbaru land owners can certify their uncertified land (Certificate of Indemnity/SKGR) to certified (legal) land at an affordable cost. But on the other side, it's also necessary to control the issuing of SKGR, to avoid any possibility of double SKGR issuing.

Based on the elaboration, the writer also would like to suggest a recommendation to the Pekanbaru landowners, that is, to do their best to always try to get legalization of their lands, so they can have legal rights and legal protection. As for the Banking Institution operate in Pekanbaru, it would be better if they implement the fiduciary warranty method in receiving the SKGR lands, as well as fiduciary agreement which binds the SKGR that is drafted before a Notary in order to fulfill all relevant legal requirements.