

Kendala pada saat pelaksanaan Parate Executive objek hak tanggungan bagi bank sebagai kreditor

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Abstrak

ABSTRAK

Penelitian dimaksud untuk mengetahui penerapan pengaturan hukum pelaksanaan Parate Eksekusi objek Hak Tanggungan di Indonesia berdasarkan Undang-Undang No 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah dan kendala-kendala yang dihadapi bank dalam pelaksanaan lelang objek Hak Tanggungan berdasarkan Parate Esekusi

Penelitian ini menggunakan metodologi penelitian yuridis normatif, yaitu metode penelitian yang mengacu kepada norma-norma hukum yang terdapat dalam peraturan perundang-undangan dengan jalan mengidentifikasi dan mengkualifikasi fakta-fakta. Penelitian ini dilakukan melalui 2 (dua) tahap yaitu tahap penelitian kepustakaan untuk memperoleh data primer dan sekunder dan tahap penelitian lapangan. Tehnik pengumpulan data dilakukan dengan cara wawancara dengan narasumber dan dari kepustakaan. Analisis data dilakukan secara kualitatif yaitu tanpa menggunakan statistik dan matematika. Diharapkan penjelasan melalui uraian kalimat tersebut dapat dimengerti, dipahami dan dipertanggungjawabkan secara ilmiah.

Hasil penelitian ini: Pertama Penerapan pengaturan parate eksekusi sudah mulai ada perubahan yakni dapat dilaksanakan, sebelumnya kewenangan PUPN (sekarang KPKNL -Kantor Pelayanan Kekayaan Negara dan Lelang-) sering tumpang tindih dengan kewenangan pengadilan, banyak kasus sita yang saling tindih terhadap suatu barang pada waktu yang bersamaan, padahal sesuai dengan prinsip, tidak boleh diletakan sita atas sita terhadap suatu barang dalam waktu bersamaan Dalam menyelesaikan debitur yang wanprestasi, Parate eksekusi yang dilakukan baru terhadap debitur yang diyakini tidak akan melakukan bantahan atau gugatan, dan biasanya nilai piutangnya relatif tidak besar. Kedua, Pasal 6 UUHT tentang pelaksanaan Parate Eksekusi tidak konsisten dengan penjelasannya, dari sisi pelaksanaannya dilaksanakan melalui pelelangan umum tetapi juga diatur proses parate eksekusi harus menggunakan ketentuan pasal 224 HIR, kemudian mengenai pengaturan parate eksekusi, disatu sisi parate eksekusi diberikan oleh undang-undang melalui pasal 6 UUHT, di sisi yang lain parate eksekusi harus diperjanjikan dahulu. Ketiga, Kendala yang dihadapi kreditor dalam pelaksanaan Parate Eksekusi adalah adanya gugatan dan bantahan dari debitur sehingga kreditor dalam pelaksanaan parate eksekusi akan terhambat, dan memilih melaksanakan titel eksekutorial sejak awal daripada ketika sedang melakukan proses parate eksekusi harus berurusan lagi dengan pengadilan akibat gugatan atau bantahan dari pihak debitur atau pihak yang lain.

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ABSTRACT

The research is meant to find out how is the implementation of legal stipulation in the enforcement of Parate Execution over the object of Mortgage Right in Indonesia based on Law No. 4 of the Year 1996 regarding Mortgage Right over Land together with Goods related to Land and obstacles encountered by banks in the

execution of public sale (auction) over the object of Mortgage Right based on Parate Execution.

This research uses normative juridical research methodology, which is, method of research referring to legal norms contained in statutory regulations by identifying and qualifying facts. This research is conducted in 2 (two) stages, which are, documentary research stage to obtain primary and secondary data and field research stage. Data collection technique being used is by means of interview with resource persons and from literature. Data analysis is conducted in qualitative manner which is without using statistic and mathematic. It is expected that explanation by means of such sentences are scientifically understandable, comprehensible and accountable.

The results of this research are: First, Implementation of parate execution stipulation has already started to experience a change which is it can be carried out, previously, the authorities of State Receivables Affairs Committee [PUPN] (presently KPKNL - State Assets and Public Sale (Auction) Service Office) were often overlapped with the authorities of the courts, many cases of confiscation overlap one another against certain goods at the same time, whereas according to the principle, may not be placed any confiscation on other confiscation over certain goods at the same time. In settling the case of defaulting debtor, Parate execution is only applied to debtor who is believed that he will not assert any protestation or claim, and usually the amount of the receivables is not relatively significant. Second, Article 6 of the Mortgage Right Law regarding the implementation of Parate Execution is not consistent with its elucidation, from the point of view of its implementation, it is conducted by means of public sale (auction), however, it is also stipulated that parate execution process must use the provision of article 224 of HIR, and then, regarding the stipulation of parate execution, on one side, parate execution is conferred by law through article 6 of the Mortgage Right Law, on the other side, parate execution must first be agreed upon. Third, Obstacles encountered by creditor in the implementation of Parate Execution are: the presence of claims and protestations from the debtor, therefore, the creditor in the implementation of parate execution is always impeded; and to choose of carrying out executorial title from the beginning instead of having a condition in which while in the middle of parate execution process, the creditor must once again deals with the court due to the claim or protestation from the debtor or the other party.