

Akibat hukum pengalihan objek jaminan fidusia oleh pemberi fidusia :
studi kasus Putusan Mahkamah Agung nomor 213 K/Pid.Sus/2010 =
Legal consequence of transfer of an object of fiduciary security by a
fiduciary grantor : case study of Supreme Court Decision no. 213
K/Pid.Sus/2010 / Paula Sidharta

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Abstrak

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UU Nomor 42 Tahun 1999 tentang Jaminan Fidusia (UU Fidusia) memberikan pengaturan mengenai pengalihan objek Jaminan Fidusia dalam hal Jaminan Fidusia telah didaftarkan, namun dalam prakteknya dapat saja terjadi kasus dimana benda jaminan yang telah diperjanjikan untuk dibebankan dengan Jaminan Fidusia dialihkan oleh debitur sebelum dilakukan pendaftaran Jaminan Fidusia. Penelitian ini membahas apakah debitur dapat mengalihkan benda jaminan sebelum dilakukan pendaftaran Jaminan Fidusia dan bagaimana pendapat Mahkamah Agung atas perbuatan debitur yang mengalihkan benda jaminan sebelum dilakukan pendaftaran Jaminan Fidusia. Putusan Mahkamah Agung Nomor 213 K/Pid.Sus/2010 yang menjadi studi kasus dalam penelitian ini menyatakan debitur bersalah melakukan tindak pidana melanggar UU Fidusia, meskipun Jaminan Fidusia belum didaftarkan. Penelitian ini merupakan penelitian hukum normatif yang didasarkan pada data sekunder dan bersifat yuridis normatif. Hasil penelitian menyarankan bahwa pendaftaran Jaminan Fidusia harus dilakukan dengan segera untuk menghindari hal-hal yang merugikan kreditur dengan tidak didaftarkannya Jaminan Fidusia, serta Mahkamah Agung seharusnya memberikan pertimbangan hukum yang sesuai dengan peraturan perundangundangan yang berlaku dalam memutuskan permasalahan yang dibahas dalam penelitian ini.

ABSTRACT

Law Number 42 of 1999 regarding Fiduciary Security (Fiduciary Security Law) governs the transfer of an object of Fiduciary Security for registered Fiduciary Security. However, in practice, it may happen that guaranteed goods which have been agreed to be secured by a Fiduciary Security is transferred by a debtor before a registration of Fiduciary Security is conducted. This research discusses whether or not a debtor could transfer the guaranteed goods before the registration of Fiduciary Security is conducted or and how is the opinion of the Supreme Court regarding the conduct of the debtor who transfers the guaranteed goods before the registration of Fiduciary Security is conducted. The Supreme Court Decision No.213 K/Pid.Sus/2010 which serves as the case study of this research stated that

the debtor is guilty for his criminal conduct on violating the Fiduciary Security Law, although the Fiduciary Security has not been registered. This research is a normative legal research based on secondary data and has juridical normative characteristic. The result of research suggests that the registration of Fiduciary Security must be conducted promptly to avoid matters that causes loss to a creditor whose not registering its Fiduciary Security and that the Supreme Court should have given proper legal considerations which are consistent with the prevailing laws and regulations in deciding the case which is discussed in this research.