

Tinjauan yuridis terhadap bangunan di atas tanah milik pihak lain yang dijadikan objek jaminan fidusia dalam perspektif asas pemisahan horizontal = Yuridical review concerning building on the land owned by other as fiduciary object from horizontal separation principle perspective

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Abstrak

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Tesis ini membahas mengenai penjaminan fidusia atas objek yang berupa bangunan dalam perspektif teori pemisahan horizontal. Pada tesis ini akan dibahas mengenai dua hal. Pertama, pembahasan mengenai penerapan asas pemisahan horizontal terhadap bangunan yang didirikan di atas tanah milik orang lain sebagai objek jaminan fidusia dalam teori dan praktik. Kedua, pembahasan mengenai permasalahan-permasalahan yang selama ini terjadi dalam praktik pemberian fidusia atas objek berupa bangunan. Penelitian ini menggunakan metode penelitian yuridis normatif, dimana data penelitian ini sebagian besar berasal dari studi kepustakaan dan wawancara dengan beberapa narasumber. Hasil dari penelitian ini menyatakan bahwa Fidusia atas bangunan dapat terjadi karena hukum tanah di Indonesia menganut asas pemisahan horizontal yang merupakan warisan dari hukum adat. Asas pemisahan horizontal bertujuan untuk melindungi pihak yang hanya memiliki bangunan tanpa memiliki tanah. Meskipun dalam hukum tanah nasional menganut asas pemisahan horizontal, namun dalam praktiknya fidusia atas bangunan bukanlah suatu pilihan hukum bagi pemilik tanah atau bangunan yang ingin menjaminkan asetnya sebagai jaminan utang secara terpisah. Karena pengaturan fidusia atas bangunan ini telah diatur sedemikian rupa sehingga hanya bangunan yang didirikan di atas hak atas tanah tertentu (yang bukan merupakan objek Hak Tanggungan) yang bisa dijadikan objek jaminan fidusia. Sedangkan kendala-kendala yang banyak menimbulkan permasalahan dalam praktiknya, antara lain disebabkan karena belum adanya sertipikat atas bangunan sebagai tanda bukti kepemilikan, fidusia didaftarkan dengan sistem online sehingga rawan terjadinya fidusia ulang, belum terdapat suatu peraturan yang terintegrasi antara peraturan-peraturan dalam bidang hukum jaminan, kebendaan, dan tanah mengenai fidusia atas bangunan, serta objek jaminan yang hanya mengenai bangunan, maka akan ada kendala eksekusi.

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ABSTRACT

This thesis is concerning about building that is built on the land owned by other as fiduciary object from horizontal separation principle perspective. This thesis is mainly focusing about two problems. Firstly, the horizontal separation principle

that is applied to a building that built on the land owned by other as a fiduciary object in theory and practice. Secondly, issues that occurred from fiduciary of the building that built on the land owned by other. This study uses a normative research, whereby the research data is largely derived from the literature study and interviews. The results of this research stipulates that fiduciary of the buildings can be conducted according to Indonesian land law which is adopting the horizontal separation principle, inherited from Indonesian customary law. The horizontal separation principle aims to protect those who only have a building without having the land. Although the national land law embraces horizontal separation principle, in practice, fiduciary of building is not an option for the owner of the land or buildings who wanted to collateralize their assets separately. Because the fiduciary of the building regulations has been arranged in a way that, only buildings which built on certain land rights (which is not a Mortgage object) that can be classified as fiduciary object. Meanwhile the constraints that cause a lot of problems in practice, is partly due to the absence of the buildings certificate as the proof of ownership. Fiduciary, which registered with the online system, is so prone to re-fiduciary, yet there is no rule that integrates all regulations in the field of security law, material, and land law, furthermore, to the object itself which is only a building that built on the land owned by other, there will be problems in execution process.;

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