

# Tinjauan yuridis terhadap pembuatan kuasa menjual oleh notaris atas agunan yang dijamin dalam perjanjian kredit = Judicial review against the making of authority to sell by notary for collateral pledged in credit agreement

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## Abstrak

[<b>ABSTRAK</b><br>

Tesis ini membahas mengenai tinjauan yuridis terhadap pembuatan kuasa menjual oleh Notaris atas agunan yang dijamin dalam perjanjian kredit. Dalam praktek dunia perbankan khususnya dalam kegiatan perkreditan, pembuatan Kuasa Menjual selalu dimintakan kreditor kepada debitur karena dianggap sangat efektif, lebih mudah, serta biayanya murah dan tidak berbelit-belit apabila objek jaminan akan dijual pada saat debitur wanprestasi/cidera janji. Kuasa menjual semuanya dibuat di hadapan Notaris. Adapun pokok permasalahan yang dibahas dalam penelitian ini adalah 1). Bentuk kekuatan hukum dari pembuatan Kuasa Menjual serta pengaruhnya bagi perlindungan hukum terhadap debitur, Kreditor, dan Notaris ditinjau berdasarkan perundang-undangan terkait, 2). bentuk penerapan hukum oleh hakim terhadap tindakan PT. Bank NISP dalam penyelesaian kredit macet dengan menggunakan Kuasa menjual (PT. Bank NISP dalam putusan Mahkamah Agung Nomor 1361K/Pdt/2010 tanggal 29 Oktober 2010). Penelitian ini menggunakan metode penelitian yang berbentuk yuridis normatif dengan sifat eksplanatoris deskriptif. Hasil dari penelitian adalah kuasa menjual memiliki kekuatan hukum yang mengikat namun tidak bersifat eksekutorial. Hal ini dikarenakan kuasa menjual tidak dapat didaftarkan atau bukan merupakan objek pendaftaran tanah. Kuasa menjual semata-mata hanya didasarkan kepada kesepakatan antara debitur dan kreditor. Kuasa menjual menjadi alternatif solusi favorit yang digunakan para pihak sebagai opsi penyelesaian masalah kredit macet. Disamping itu melihat kepada Putusan Mahkamah Agung Republik Indonesia Nomor 1361K/Pdt/2010 tanggal 29 Oktober 2010, hakim Pengadilan Negeri, hakim Pengadilan Tinggi, dan hakim Mahkamah Agung berdasarkan kasus yang ada mengambil pertimbangan bahwa : (1) penggunaan kuasa mutlak adalah hal yang dilarang, (2) Berdasarkan Pasal 6 Undang-Undang Hak Tanggungan jo. Yurisprudensi Mahkamah Agung Republik Indonesia Nomor 2660K/Pdt/1987 tanggal 27 Februari 1987 yang melarang bank (termasuk Bank NISP) untuk melakukan penjualan langsung berdasarkan Akta Kuasa yang diberikan oleh Debitur atau Avalis hutang tersebut, dan diwajibkan bagi Bank untuk melakukan penjualan dengan prosedur lelang melalui Pengadilan Negeri yang berwenang untuk objek jaminan yang telah dibebankan dengan Hak Tanggungan.

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<b>ABSTRACT</b><br>

This thesis discussed about judicial review against the making of Authority to sell by notary for collateral pledged in credit agreement. In world banking practice, especially in lending activities, the authority to sell always requested by the creditor to debtor because it seemed very effective, easier, cheaper, and not difficult in case the collateral is being sold because the debtor's defaults. All of the authority to sell are made by notary. Now the main issues discussed in this research are 1). The legal power of making the authority to sell and its influence for legal protection against a debtor, a creditor, and notary reviewed by relevant regulation, 2). The form of the law enforcement by judges towards PT. Bank NISP for the settlement of non-performing loans by using the authority to sell (The Verdict of Supreme Court for PT. Bank NISP case Number 1361K/Pdt/2010 date 29 October 2010). This research used juridical normative method, with descriptive explanatory result. The results of the research explain that the authority to sell have legal force that bound but not executorial. This results due to the authority to sell cannot be registered and is not the object of land registration. The authority to sell based on an agreement between the debtor and the creditor. The authority to sell is a favorite alternative solutions that are used by the parties as an option resolving the issue of non performing loans. In addition, viewed from the verdict of the Supreme Court of the Republic of Indonesia Case Number 1361K/Pdt/2010 date 29 October 2010, justice of the District Court, High Court judges, and Supreme Court justices took into consideration that: (1) the use of absolute form of the authority is banned, (2) based on article 6 Undang-Undang Hak Tanggungan jo. the jurisprudence of the Supreme Court of the Republic Indonesia Case Number 2660 K/Pdt/1987 on February 27, 1987 prohibit banks (including the Bank NISP) to conduct direct sales based on the letter of authority given by the debtor or Avalist debts and the Banks are required to conduct the sale with auction procedures through the District Court authorized to guarantee that an object has been charged with dependents.;

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