

Tinjauan hukum atas putusan Mahkamah Agung Nomor 144/PDT/2014 mengenai lelang eksekusi atas jaminan dan penetapan nilai limit barang jaminan yang dilakukan di bawah harga pasar wajar = Legal review on supreme court verdict no 144 pdt 2014 on mortgage execution auction and determination of the reserve price of collateral which is under fair market value

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Abstrak

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Tesis ini membahas tentang pelaksanaan eksekusi jaminan melalui lelang yang dilaksanakan oleh PT Bank Mega Tbk Bandung sebagai penyelesaian kredit bermasalah. Tujuan dilakukannya penulisan Tesis ini adalah untuk mengetahui dan menganalisa prosedur eksekusi lelang jaminan yang dilakukan oleh PT Bank Mega Tbk Bandung, juga untuk mengetahui mengenai prosedur penetapan harga limit barang jaminan yang merupakan nilai limit untuk suatu pelelangan jaminan. Penelitian ini menggunakan metode deskriptif analitis yang melukiskan fakta-fakta hukum yang ada dan di hubungkan dengan hukum jaminan khususnya jaminan kebendaan dalam perjanjian kredit di perbankan. Berdasarkan hasil penelitian yang dilakukan, Penulis dapat mengetahui bahwa meskipun terdapat kendala dalam pelaksanaan praktek eksekusi Hak Tanggungan yang dilakukan oleh PT Bank Mega Tbk Bandung, namun praktek eksekusi Hak Tanggungan dapat berperan baik dalam menyelesaikan kredit bermasalah. Penulis juga menyimpulkan bahwa terdapat inkonsistensi pengaturan dalam praktek eksekusi Hak Tanggungan dalam Undang-Undang Hak Tanggungan. Berdasarkan hasil penelitian yang dilakukan, Penulis menyarankan agar pihak pembuat undang-undang membuat peraturan pelaksanaan dari Undang-Undang Hak Tanggungan agar peraturan ini lebih memberikan kepastian hukum dan juga menjadi peraturan yang lebih efektif. Penulis juga melakukan penelitian mengenai prosedur penetapan limit barang jaminan, di mana dalam kasus ini, pihak debitur mengalami kerugian akibat penetapan harganya dibawah harga pasar wajar. Penulis juga menyimpulkan bahwa pembentukan nilai limit dipengaruhi oleh beberapa faktor yang cukup penting, seperti penunjukan kantor penilai yang independen, penggunaan media dalam pengumuman lelang dan tatacara pelelangan. Penulis juga berkesimpulan bahwa kedudukan kreditor yang sangat kuat, sering kali menempatkan debitur dalam kedudukan yang tidak seimbang. Peranan pemerintah dalam pembuatan undang-undang yang dapat melindungi kedua belah pihak, sangatlah ditunggu oleh masyarakat

ABSTRACT

This thesis focuses and analyzes the implementation of the self-enforcement of Hak Tanggungan carried out by PT Bank Mega, Tbk, Bandung, as an alternative settlement

of non-performing loan. The purposes of this thesis are to investigate and analyze the role of the self-enforcement of Hak Tanggungan in resolving non-performing loan. It also focuses on obstacles encountered, and analyzes the consistency of self-enforcement arrangements in Indonesia Law of Hak Tanggungan. This thesis is using analytical descriptive study that describes the legal fact relating to security law especially for material in credit agreement in banking. Based on the result of research conducted, the Author is able to know that although there are obstacles in the implementation of the self-enforcement of Hak Tanggungan by PT Bank Mega Tbk Bandung, the self-enforcement of Hak Tanggungan play a significant role in solving the non-performing loans. The Author also concluded that there is inconsistency of self-enforcement arrangement in Indonesian Law of Hak Tanggungan. Based on the result of the research, the Author suggests that the government should make detail regulation to implement the law of Hak Tanggungan. This could increase the legal certainty of the process and to the all parties that involved in the process. Another interesting point in this thesis is about the reserve price collateral value, which in this case, the debtor suffered losses due to pricing below market price. It is also concluded that the minimum value formation is influenced by several factors, such as the appointment of an independent valuer, the use of media in the auction advertisement and procedures for the auction. The authors also concluded that the position of creditors is very strong, often putting debtors in a weaker position. In this respect the role of government and law maker in making fairer and more balance regulation is needed in order to protect both parties., This thesis focuses and analyzes the implementation of the self-enforcement of Hak

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