

Pelaksanaan parate eksekusi hak tanggungan yang dilelang dibawah harga pasar dan menyebabkan kerugian bagi debitur (Kasus putusan Nomor: 1962 K/PDT/2011) = Implementation of parate execution on mortgage auctioned below market prices and cause losses for debtor (Case number 1962 K/Pdt/2011)

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Abstrak

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Praktik pengikatan kredit dengan jaminan Hak Tanggungan dalam kegiatan perbankan hendaknya dilaksanakan sesuai ketentuan yang telah diatur dalam Undang-Undang Hukum Tanggungan (UUHT). Dalam UUHT dijelaskan bahwa perlindungan kepada para pihak diberikan melalui suatu lembaga hak jaminan, yang dapat memberi kepastian hukum bagi para pihak terkait. Penyaluran pinjaman atau kredit kepada masyarakat yang dilakukan oleh bank sebagai lembaga perantara (intermediary) keuangan, selalu dituangkan dalam suatu perjanjian sebagai landasan hubungan hukum diantara para pihak, yaitu pemberi kredit (kreditur) dan penerima pinjaman (debitur). Dengan demikian, kreditur dapat mendapatkan pembayaran atas hutang debitur melalui pelelangan umum berdasarkan hak tanggungan jika suatu waktu debitur wanprestasi dalam melaksanakan prestasinya. Hal tersebut diatur dalam Pasal 6 Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan. Cara untuk melakukan pelelangan tersebut diatur juga dalam Peraturan Menteri Keuangan Nomor 93/PMK.06/2010 tentang Petunjuk Pelaksanaan Lelang, yang menjelaskan bahwa lelang dapat dilakukan melalui penjualan barang yang terbuka untuk umum dengan penawaran harga secara tertulis dan/atau lisan yang semakin meningkat atau menurun untuk mencapai harga tertinggi, namun lelang tersebut harus dimulai dengan suatu pengumuman agar masyarakat luas dapat ikut serta dalam proses lelang tersebut. Pada prakteknya, masih terdapat pelanggaran yang dilakukan oleh kreditur dengan cara melakukan proses pelelangan secara sepihak dan penjualan dengan harga di bawah pasar. Hal tersebut dapat dilihat dari putusan perkara Nomor 1962/K/Pdt/2011 Tanggal 15 Maret 2011. Dalam putusan tersebut, Bank Panin selaku kreditur serta Kantor Pelayanan Kekayaan Negara dan Lelang Makassar (KPKNL Kota Makassar) telah melakukan pelanggaran dengan cara melakukan proses pelelangan secara sepihak sehingga tidak memberikan rasa keadilan bagi debitur karena nilai pelelangan di bawah harga pasar. Terdapat kesalahan dari pihak KPKNL Kota Makassar karena tidak melakukan pemeriksaan harga apresial objek hak tanggungan sehingga merugikan PT. Anugrah Cemerlang Indonesia (ACI) selaku debitur. Berdasarkan hal tersebut debitur mengajukan gugatan terhadap kreditur. Gugatan tersebut pada akhirnya ditolak dengan alasan salah alamat (error in persona) dan tidak jelas (obscuur libel). Namun upaya hukum dapat dilakukan melalui pembatalan putusan pengadilan agar dapat tercipta keadilan bagi debitur dan kepastian hukum bagi pihak-pihak yang dirugikan.

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<b>ABSTRACT</b><br>

The practice of credit activities with Mortgage as guarantee should be carried out in accordance with the provisions set out in the Law of Mortgage (LMA). In LMA explained that the protection of the parties are given through a collateral rights institutions, which can provide legal certainty for stakeholders. Lending or

credit to the community made by the bank as an intermediary financial, always stated and entered in an agreement as the basis for the legal relationship between the parties, such as lender (creditor) and the borrower (debtor). Thus, creditors may obtain payment of the debt through a public auction based on the mortgage if a debtor defaults. It is regulated in Article 6 of Law No. 4 of 1996 on Mortgage. The way to do auctions are arranged also in the Ministry of Finance Regulation No. 93/PMK.06/2010 on Guidelines for the Implementation of the Auction, which explains that the auction can be done through the sale of goods which is open to the public at a price quote in writing and/or oral increasing or decreased to achieve the highest price, but the auction shall begin with an announcement that the public can participate in the auction process. In practice, there are still violations committed by creditors by way of auction process unilaterally and selling at a price below the market. This can be seen from the decision of Case Number 1962/K/Pdt/2011 Date of March 15, 2011. In the decision, Panin Bank as creditor and the State Property Office and Auction of Makassar (Makassar City KPKNL) has committed an offense by carrying out the auction process unilaterally with the result not to give a sense of justice for debtors because the value of the auction was below market prices. There was an error committed by Makassar City KPKNL for not checking the appraisal price of mortgage object to the detriment of PT. Anugrah Cemerlang Indonesia (ACI) as the debtor. Based on the event, debtor filed a lawsuit against the creditor. The lawsuit was eventually dismissed by the court due to wrong address/subject (error in persona) and unclear (obscure libel). However, legal action can be done through the cancellation of the court decision in order to create justice for debtors and legal certainty for the parties aggrieved., The practice of credit activities with Mortgage as guarantee should be carried out

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