

Pembatalan perjanjian utang piutang disebabkan batalnya perjanjian penjaminan (analisis putusan Mahkamah Agung nomor 754k/Pdt/2011) = Credit agreement cancellation caused by collateral agreement cancellation (supreme court decision number 754k pdt 2011 analysis) / Milanda Afratya

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Abstrak

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Perjanjian kredit merupakan perjanjian pinjam meminjam uang antara bank dengan nasabah bank. Perjanjian kredit ini biasanya terkait dengan jaminan sebagai agunan, umumnya atas tanah dengan lembaga Hak Tanggungan, yang diikat dengan suatu perjanjian penjaminan. Sifat perjanjian penjaminan dikonstruksikan sebagai perjanjian yang bersifat accessoir dengan akibat-akibat hukum seperti halnya perjanjian accessoir lainnya. Putusan Mahkamah Agung Nomor 754K/PDT/2011 mengabulkan pembatalan Hak Tanggungan beserta perjanjian kreditnya, dimana gugatan diajukan pihak ketiga dengan alasan pembebanan Hak Tanggungan dilakukan oleh pihak yang tidak berwenang atas tanah objek Hak Tanggungan. Berdasarkan hasil penelitian, ditemukan bahwa hal tersebut tidak dapat dibenarkan, karena kebatalan perjanjian penjaminan Hak Tanggungan tidak serta merta menyebabkan batalnya perjanjian kredit yang menjadi perjanjian pokoknya. Perjanjian kredit terjadi antara dua perseroan terbatas yang masing-masing merupakan subjek hukum, meskipun jaminan kredit diajukan oleh pihak ketiga. Karena itu, perjanjian kredit ini mengikat pihak-pihak yang membuatnya, yaitu pihak debitur dan pihak kreditur. Permohonan pembatalan perjanjian kredit tidak dapat diajukan oleh pihak ketiga.

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**ABSTRACT**

Credit agreement is a loan agreement between the to the bank customers. The agreement is usually associated with a guarantee as collateral, generally over land rights with Mortgage institution, bound with a collateral agreement. The nature of the collateral agreement is constructed as an agreement that is accessoir, with legal consequences as well as other accessoir agreements. Supreme Court Decision No. 754K PDT 2011 granted cancellation of both the credit agreement and its Mortgage, where the lawsuit was filed by a third party by reason of the imposition of Mortgage encumbrance was performed by unauthorized person of the land rights. Based on this research, it was found that this can not be justified, because Mortgage agreement nullification does not necessarily lead to the cancellation of the credit agreement as the principal agreement. The credit agreement was done between two public limited companies each of which is subject to the law, although credit guarantees were submitted by a third party. Therefore, this agreement binds the parties who made it, the debtor and the creditor. Cancellation request of a credit agreement can not be filed by a third party.