

Eksekusi jaminan fidusia pada lembaga pembiayaan: analisis putusan Mahkamah Agung Republik Indonesia nomor 89/K/Pdt/2016 = Fiduciary security execution at financing institution: study case of supreme court verdict number 89/K/Pdt/2016

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Abstrak

Ditemukan dalam suatu putusan Mahkamah Agung Republik Indonesia Nomor 89/K/Pdt/2016 kreditur mohon eksekusi benda yang menjadi objek jaminan fidusia tidak sesuai dengan peraturan perundang ndash;undangan. Kreditur dalam putusan juga mohon sita eksekusi atas harta benda debitur yang sudah dibebankan dengan Hak Tanggungan oleh kreditur lain, untuk pelunasan piutang yang pelunasannya sudah dijamin dengan Jaminan Fidusia. Rumusan permasalahan dalam skripsi ini adalah bagaimana ketentuan tentang pelaksanaan eksekusi jaminan fidusia dan bagaimana kesesuaian permohonan eksekusi oleh kreditur penerima jaminan fidusia atas objek jaminan fidusia dan harta benda debitur yang telah dijamin dengan hak tanggungan menurut ketentuan pelaksanaan eksekusi jaminan fidusia pada putusan Mahkamah Agung Republik Indonesia Nomor 89/K/Pdt/2016. Tujuan penelitian skripsi ini adalah mengetahui dan menganalisis permohonan eksekusi oleh kreditur penerima jaminan fidusia atas objek jaminan fidusia dan kebendaan milik debitur yang telah dijamin dengan hak tanggungan. Metode penelitian pada skripsi ini adalah yuridis normatif dengan menganalisis undang ndash; undang dan yurisprudensi mahkamah agung untuk menentukan apakah sudah tepat permohonan eksekusi kreditur pemegang jaminan fidusia atas objek jaminan fidusia dan kebendaan milik debitur yang sudah dijamin dengan hak tanggungan kepada kreditur lain.

Dari hasil penelitian, dapat disimpulkan bahwa pelaksanaan eksekusi jaminan fidusia, lelang eksekusi objek jaminan dan dalam hal pemberi Fidusia tidak bersedia menyerahkan benda yang menjadi objek Jaminan Fidusia, penerima Fidusia mengambil objek Jaminan Fidusia dengan bantuan pihak yang berwenang sudah diatur saat ini berdasarkan hukum positif. Permohonan eksekusi oleh kreditur penerima jaminan fidusia atas objek jaminan fidusia dan kebendaan milik debitur yang telah dijamin dengan hak tanggungan kepada kreditur lain pada putusan Mahkamah Agung Republik Indonesia Nomor 89/K/Pdt/2016 adalah tidak tepat, menurut sifat kedudukan kreditur pemegang jaminan kebendaan berdasarkan Undang ndash; Undang Jaminan Fidusia dan Undang ndash; Undang Hak Tanggungan. Hasil penelitian menyarankan bahwa kreditur pemegang jaminan fidusia seharusnya memahami hak ndash; hak yang timbul atas jaminan kebendaan yang telah diletakkan terhadap perikatan pokok antara kreditur dan debitur.

.....It is found in a verdict of the Supreme Court of the Republic of Indonesia No 89 K Pdt 2016, that the request of an execution of objects by creditor which is the object of fiduciary security is not in accordance with legislation. Creditors in the verdict also request the execution of the confiscation of property of the debtor that has been charged by Indonesian Security Right upon Land by another creditor, for the repayment that has been secured by the Fiduciary Security. The research problem in this thesis is how is the provisions on the execution of fiduciary security and how the application of the execution that is request by creditor for the object of fiduciary security and property of the that has been secured by security rights under the terms of the execution of fiduciary is accordance with the prevailing law. The purpose of this thesis research is to

learn and analyse the application of execution by creditors which receive the fiduciary security for the object of fiduciary and property of the debtor who has been pledged with mortgage rights. The research method in this thesis is normative judicial method with analysing the regulation and jurisprudence of supreme court to determine whether the application of execution creditor holders of fiduciary and material objects belonging to the debtor that has been secured by deed of mortgage to another lender is in accordance with the law. From the results, it can be concluded that the execution of the fiduciary, tender execution security object and in terms of giving Fiduciary is not willing to give up things that become the object of Fiduciary, the receiver Fiduciary retrieve fiduciary objects with the help of the authorities that has been set at this time is based on the positive law. Request of an execution by creditors that receive fiduciary security on fiduciary objects and material belonging to the debtor which has been secured by deed of mortgage to another lender in the decision of the Supreme Court of the Republic of Indonesia Number 89 K Pdt 2016 is not appropriate, according to the nature of the position of creditors holders of Guarantees material based The Fiduciary Security Act and the Insurance Rights Act. The results suggest that fiduciary lenders should understand the rights arising from material security that has been laid against the principal bond between the creditor and the debtor.