

Perlindungan hukum bagi penerima fidusia terhadap objek jaminan fidusia yang mendapat perlawanan dari pihak ketiga berdasarkan Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia (Studi kasus: Putusan Mahkamah Agung RI no. 319 PK/PDT/2015) = Legal protection for fiduciary right beneficiary acceptor against fiduciary collateral object in case of third party's attack based on Act Number 42 Year 1999 Concerning Fiduciary Warranty: A case studi on Supreme Court's Decision 319 PK/PDT/2015)

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Abstrak

Penulisan tesis ini dilatarbelakangi adanya permasalahan perlindungan hukum bagi penerima fidusia baik dalam perundang-undangan maupun dalam praktek peradilan. Dalam perundang-undangan memberi perlindungan namun dalam praktek peradilan sesuai hukum acara perdata pihak ketiga dapat mengajukan gugatan perlawanan terhadap penetapan sita eksekusi atas objek jaminan fidusia dan hal ini menjadi problematika bagi perlindungan penerima fidusia. Penelitian ini menggunakan metode pendekatan yuridis normatif yang bersifat diskriptif kemudian dianalisa secara kualitatif. Penelitian ini juga didukung dengan studi kasus dalam praktek peradilan dengan menganalisis perkara gugatan perlawanan pihak ketiga atas penetapan sita eksekusi jaminan fidusia dalam perkara PT Bank Mandiri Persero Tbk.

Hasil Penelitian yang diperoleh bahwa: Pertama, ketentuan Pasal 24 Undang-Undang Nomor 42 Tahun 1999 secara tegas memberikan perlindungan terhadap penerima jaminan fidusia dengan tidak mempertimbangkan bagaimana barang jaminan tersebut diperoleh pemberi fidusia. Kedua, akibat hukum dari gugatan perlawanan pihak ketiga apabila dikabulkan maka sita eksekusi atas jaminan fidusia menjadi batal sehingga penerima fidusia tidak mendapat perlindungan. Ketiga, pertimbangan putusan pengadilan yang dianalisis tidak mempertimbangkan ketentuan Pasal 24 Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia melainkan mendasar pada bunyi perjanjian Jual Beli barang jaminan fidusia menurut hukum Inggris yang pada pokoknya jual beli terjadi apabila telah dilakukan pembayaran secara lunas sehingga pengadilan memutus membatalkan sita eksekusi jaminan fidusia.

<hr />The background of this thesis is based upon legal protection issues for fiduciary recipients from both legislation and judicial practices point views. In the former case, it definitely provides a protection to the fiduciary recipients. In contrast, the later case as per the law of civil proceedings, it gives an opportunity to a third party to file a lawsuit against the determination of the execution seizure of the fiduciary object which may rise a protection issue for the fiduciary recipients. This research uses a descriptive methodology approach of normative juridical and a qualitative analysis. To support the research a case study on judicial practice of third party resistance of the determination of confidential fiduciary execution, a case from PT Bank Mandiri Persero Tbk is presented.

The research has resulted into there conclusions. Firstly, the provision of article 24 on Act Number 42 Year 1999 expressively provides protection to fiduciary guarantee beneficiaries by not considering how the

collateral is obtained by fiduciary guarantor. Secondly, it was found that in the case of the law suit by the third party is granted by the court, the confiscation fiduciary guarantee will void and consequently the fiduciary receiver legal protection right is also lost. Thirdly, it was recognized that the consideration of the court ruling applied onto the case did not take into account the provisions of article 24 on Act Number 42 Year 1999 regarding fiduciary. The ruling by the court is based solely upon the sale and purchase agreement of fiduciary merchandise according to the English law which purports that the sale is only took place when a full payment has been made. In this case, hence the court had decided to cancel the fiduciary guarantee execution.