

Perlindungan hukum bank dalam pelaksanaan eksekusi objek hak tanggungan: studi putusan Mahkamah Agung nomor 3147 k/pdtq/144 = Legal protection of bank in carrying out the object execution of the amenability right: case study of the supreme court decision number 3147 k/pdtq/144

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Abstrak

Dalam kasus yang diteliti, terdapat gugatan perbuatan melawan hukum dari debitur kepada bank selaku kreditur karena melakukan eksekusi objek hak tanggungan milik debitur melalui pelelangan umum. Dasar gugatan dari debitur karena dalam Addendum Perjanjian Kredit maupun dalam Akta pembebanan Hak Tanggungan, para pihak telah sepakat memilih domisili hukum dalam penyelesaian sengketa yang timbul, yaitu di Kepaniteraan pengadilan Negeri Pacitan. Pengadilan Negeri Pacitan mengabulkan gugatan debitur dengan pertimbangan bahwa perjanjian berlaku sebagai undang-undang bagi pembuatnya (Qua facta iure servanda). Putusan Pengadilan Negeri Pacitan dikuatkan oleh Pengadilan Tinggi Surabaya. Selanjutnya Mahkamah Agung membatalkan putusan Pengadilan Tinggi Surabaya dan Pengadilan Negeri Pacitan dengan pertimbangan bahwa proses lelang adalah sah karena telah sesuai dengan ketentuan Pasal 6 Undang-Undang Nomor 4 Tahun 1996, yaitu dengan parate eksekusi. Permasalahan yang diangkat yaitu bagaimana perlindungan hukum terhadap bank dalam pelaksanaan eksekusi objek hak tanggungan ketika terjadi kredit macet dan bagaimana analisis pertimbangan Putusan Mahkamah Agung RI Nomor: 3147 WPDTI/2014 yang membatalkan Putusan pengadilan Tinggi Surabaya Nomor: 56/PDT/2014/PT.SBY jo. Pengadilan Negeri Pacitan Nomor: 041Pdt.G/2012/PN.Pct. Metode penelitian adalah yuridis normatif dengan pendekatan undang-undang (statute approach) dan pendekatan kasus (case approach). Prosedur pengumpulan bahan hukum dilakukan melalui proses identifikasi dan inventarisasi bahan hukum primer dan sekunder, yang selanjutnya bahan hukum tersebut dilakukan penyeleksian untuk mendapatkan kumpulan bahan-bahan hukum yang relevan untuk penulisan tesis ini, yaitu yang dapat menjawab rumusan masalah. Hasil penelitian menyimpulkan bahwa perlindungan hukum terhadap bank dalam melaksanakan eksekusi objek hak tanggungan ketika terjadi kredit macet, berdasarkan UUHT, yaitu dengan penjualan melalui pelelangan umum dan penjualan di bawah tangan. Pertimbangan putusan Nomor 3147 WPDI/2014 sudah tepat karena membenarkan parate eksekusi yang dilakukan pihak bank karena telah sesuai dengan ketentuan Pasal 6 Undang-Undang Hak Tanggungan.

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On the studied case, there is a lawsuit on Act against the law, initiated by a debtor versus Bank as the creditor, for executing an Amenability object belongs to the debtor, through a public auction. The legal basis used by the debtor is because inside the Credit Agreement Addendum, as well as what was written inside the Amenability Deed, each parties has agreed to choose a legal domicile should a legal dispute arise, which is at the Registrar of Pacitan Distic Court. Paciton District Court grant the debtors

claim, with a consideration that the agreement applied each parties as of constitution to those who made it (pacta sunt servanda). Pacitan District Courts Ruling, was upheld by Surabaya High Court. Subsequently, The Supreme Court overruled both Surabaya High Court and Pacitan District Court verdict, with a consideration that the auction process is legal, because it is in accordance with Section 6 of the Amenability Act, which is with separate execution procedure. The issues that are being raised in this study would be how is the bank legal protection in implementing the execution of the amenability rights object when a bad credit occurred, and how is the analysis of the legal considerations in the Supreme Court Ruling Number 3147 K/PDT/2014 that overturned Surabaya High Court Ruling Number 56/PDT/2014/PT.SBY jo. Pacitan District Court Ruling Number 04/Pdt.G/2012/PN.Pct. The study would use juridical nonnative research method, with a statute approach, and case approach. The legal materials collecting procedure is using an identification process also a primary and secondary legal materials inventory, which then will be selected to get the relevant legal materials for this thesis, which means, that could answer the issues- The results of the study, concluded that the bank legal protections in implementing the execution of amenability rights object when a bad credit occurred, based on Amenability Act, that is by selling through a public auction, and under-sales. The legal considerations in the Supreme Court Ruling Number 3147 K/PDT/2014 are appropriate because it justifies the separate execution procedure that has been done by the bank, because it is in accordance with Section 6 of the Amenability Act.