

## Keabsahan eksekusi gadai saham setelah berakhirnya perjanjian gadai saham (Tinjauan putusan MA No.240/PK/PDT/2006)

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### Abstrak

[<b>ABSTRAK</b><br>

Gadai saham sebagai salah satu bentuk jaminan pada dasarnya berfungsi untuk menjamin terwujudnya pemenuhan kewajiban debitur kepada kreditur, sehingga gadai saham akan timbul dan berakhir seiring dengan timbul dan berakhirnya perjanjian utang piutang yang merupakan perjanjian pokoknya. Hal ini sesuai dengan sifat dari jaminan gadai yaitu bersifat aksesoir. Kitab Undang-Undang Hukum Perdata tidak mengatur secara khusus mengenai akibat hukum dari sifat aksesoir jaminan gadai. Hal inilah yang kemudian menyebabkan terjadinya permasalahan dengan timbulnya perbedaan interpretasi berkaitan dengan sifat aksesoir dari jaminan gadai dimana, sebagian pihak berpendapat sebagai perjanjian tambahan, klausula perjanjian gadai saham tidak diperbolehkan mengatur jangka waktu pengakhiran gadai saham sebelum utang lunas. Sedangkan sebagian pihak lainnya beranggapan sepanjang disepakati kedua belah pihak, perjanjian gadai saham bebas memuat klausula pengakhiran gadai saham mengingat adanya asas kebebasan berkontrak. Berdasarkan putusan MA Nomor :240 PK/PDT/2006 memberikan kemungkinan untuk mengatur klausula pengakhiran gadai saham sebelum utang lunas dan pengaturan mengenai keabsahan eksekusi gadai saham yang dilaksanakan setelah berakhirnya perjanjian gadai saham. Metode penulisan yang digunakan adalah ekplanatoris dengan pendekatan yuridis normatif. Data yang digunakan adalah sumber data sekunder berupa studi dokumen. Tesis ini akan berusaha untuk membahas dan menganalisa secara terperinci mengenai sifat aksesoir dari perjanjian gadai saham beserta akibatnya dan keabsahan eksekusi gadai saham yang dilaksanakan setelah perjanjian gadai saham berakhir menurut ketentuan peraturan perundangan-undangan yang berlaku.

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<b>ABSTRACT</b><br>

Pledge of shares as a form of security principally used to ensure the fulfillment of debtor's obligation to creditor, therefore pledge of shares shall be effective and terminate at the same time with the loan agreement as the principal agreement. This is in accordance with the characteristic of pledge which is aksesoir. The Indonesian Civil Code does not explicitly stipulate the legal consequences of the aksesoir characteristic of pledge. This fact has caused different interpretations of the legal requirements of the aksesoir characteristic of

pledge, some parties are in the opinion that as an additional agreements, the article of pledge of shares agreement are not allowed to set the time of termination of pledge of shares before the debt is paid off. Meanwhile the other parties thought that, as long as the contract was agreed by both parties, the pledge of shares agreement is allow containing an article of termination before the debt is paid off according the principle freedom of contract. According to the decision of the Supreme Court Number: 240 PK/PDT/2006 give the possibility to adjust the article of pledge of shares agreement about the termination before the debt is paid off and the legality procedure of the execution after the pledge of shares agreement has expired. Research methodology used is explanatory with normative juridical approach. Used data is secondary data with the form of documents study. Used data is secondary data with the form of documents study. This thesis will attempt to discuss and analyze the detail about the accesoir characteristic of pledge of shares with its consequences and the legality of the execution after the pledge of shares agreement expired under the provisions of the prevailing law and regulations., Pledge of shares as a form of security principally used to ensure the fulfillment of debtor's obligation to creditor, therefore pledge of shares shall be effective and terminate at the same time with the loan agreement as the principal agreement. This is in accordance with the characteristic of pledge which is accesoir. The Indonesian Civil Code does not explicitly stipulate the legal consequences of the accesoir characteristic of pledge. This fact has caused different interpretations of the legal requirements of the accesoir characteristic of pledge, some parties are in the opinion that as an additional agreements, the article of pledge of shares agreement are not allowed to set the time of termination of pledge of shares before the debt is paid off. Meanwhile the other parties thought that, as long as the contract was agreed by both parties, the pledge of shares agreement is allow containing an article of termination before the debt is paid off according the principle freedom of contract. According to the decision of the Supreme Court Number: 240 PK/PDT/2006 give the possibility to adjust the article of pledge of shares agreement about the termination before the debt is paid off and the legality procedure of the execution after the pledge of shares agreement has expired. Research methodology used is explanatory with normative juridical approach. Used data is secondary data with the form of documents study. Used data is secondary data with the form of documents study. This thesis will attempt to discuss and analyze the detail about the accesoir characteristic of pledge of shares with its consequences and the legality of the execution after the pledge of shares agreement expired under the provisions of the prevailing law and regulations.]