

ABSTRACT

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Legal Protection of Creditor of Mortgage Rights Holders against the Collateral Object that was Confiscated by the State in Criminal Act of Corruption (Case Study of Supreme Court Decision No. 1731 K/PDT/2011)

The lending or crediting activities in business essentially is a common thing, which will lead to legal consequences in the form of an agreement between a bank institution as the creditor and the business actor as the debtor. In providing credit, neither the bank nor the non-bank institutions usually ask for guarantees from the debtor to convince the creditor that the debtor will be able to fulfill all his obligations at a the agreed time. One form of collateral received by creditors is immovable property such as land or buildings, also known as mortgage rights. However, the problem in this case is when the collateral used as an object of mortgage by the debtor is apparently found to be the result of corruption which requires the object of the mortgage to be confiscated and then auctioned and the results will be deposited in the state treasury. Such a case became the main case in the Supreme Court Decision Number 1731 K/Pdt/2011 where PT. Mega Bank. Tbk., (Plaintiff/ Appellee) filed a lawsuit to the Indonesian Attorney General's Office Cq. Maluku High Prosecutor's Office (Defendant/ Appellant) because it considered that the Defendant/ Appellant had committed an unlawful act by confiscating the object of the mortgage which had been guaranteed by Shanti Haeruddin (Debtor/ Defendant), who became a malefactor in a corruption case, to the Plaintiff/ Appellee as a creditor. This research aims to determine the form of legal protection that can be given to creditors as holders of mortgage rights against collateral objects that was confiscated by the state in corruption cases committed by debtors. In this study, the researcher using an approach of juridical-empirical by examining data in the form of court decisions related to Indonesian positive law. The results of this study concluded that PT. Bank Mega Tbk., has the priority rights over the sale of the object of mortgage right which was confiscated by the state in the corruption case committed by the debtor as the settlement of debtor's legal obligations. In an effort to claim its rights, PT. Bank Mega Tbk., through the litigation process with consideration of the large amount of debt that must be paid by the debtor.

Keywords : Legal Protection, Creditor, Mortgage Rights, Debtor, Collateral Object, Criminal Act of Corruption

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