

ABSTRAK

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TINJAUAN HUKUM AKTA JAMINAN FIDUSIA DENGAN DASAR SURAT KUASA DI BAWAH TANGAN

(xi+105 halaman; 2 Lampiran)

Dalam praktek di lingkungan perbankan dan kegiatan usaha masyarakat adalah hal yang lazim bila pihak kreditor menggunakan Surat Kuasa di bawah tangan, surat kuasa dipergunakan untuk melakukan penandatanganan Perjanjian Kredit bersamaan dengan Surat Kuasa Pembebanan Jaminan Fidusia. Dengan adanya Surat Kuasa di bawah tangan tersebut, kreditor dapat membebani atau membuat akta jaminan fidusia di hadapan notaris tanpa turut sertanya debitur selaku pemberi objek jaminan. Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia tidak mengatur tentang keharusan pihak debitur untuk hadir pada saat membuat akta jaminan fidusia. Secara umum memang perjanjian dianggap sah oleh kedua belah pihak sesuai Pasal 1338 Kitab Undang-Undang Hukum Perdata, Tetapi dari perspektif keotentikan satu akta, hal itu mengandung kelemahan karena surat kuasa di bawah tangan tersebut hanya berlaku bagi kedua belah pihak. maka apabila surat kuasa hanya di bawah tangan maka akta tersebut mempunyai kelemahan dari proses pembuktian. Dengan digunakannya Surat Kuasa sebagai dasar pembebanan atau pembuatan akta fidusia, berdasarkan ajaran kausalitas maka keabsahan akta fidusianya akan bergantung pada keabsahan Surat Kuasa tersebut. Dalam hal demikian, hak-hak istimewa yang dimiliki oleh kreditor sebagai kreditor preference akan berubah menjadi kreditor konkuren. Metode Penelitian hukum yang digunakan didalam penulisan tesis ini adalah Metode Penelitian Hukum Normatif Empiris.

Referensi : 40 (1980-2021)

Kata Kunci : Akta Jaminan Fidusia, Surat Kuasa dan Notaris

ABSTRACT

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LEGAL REVIEW OF FIDUCIARY GUARANTEE ACT ON THE BASIS OF POWER OF ATTORNEY UNDER HAND

(xi+105 pages; 2 attachments)

In practice in the banking environment and community business activities are common when creditors use power of attorney under hands, power of attorney is used to sign a Credit Agreement in conjunction with the Fiduciary Guarantee along Power of attorney. With a Power of Attorney under the hand, creditors can burden or make a fiduciary guarantee deed in the presence of a notary public without the participation of the debtor as the giver of the collateral object. Law No. 42 of 1999 concerning Fiduciary Guarantee does not regulate the necessity of the debtor to be present at the time of making a fiduciary guarantee deed. In general, the agreement is considered valid by both parties in accordance with Article 1338 of the Civil Code, but from the perspective of authenticity of one deed, it contains weaknesses because the power of attorney under the hand only applies to both parties. If the power of attorney is only under the hands of the deed has the weakness of the evidentiary process. With the use of power of attorney as the basis for the imposition or creation of a fiduciary deed, based on the teachings of causality, the validity of the fiduciary deed will depend on the validity of the Power of Attorney. In such case, the privileges that the creditor has as a creditor preference will turn into concurrent creditors. The legal research method used in the writing of this thesis is the Empirical Normative Law Research Method.

Reference : 40 (1980-2021)

Keywords : Fiduciary Guarantee Act, Power of Attorney and Notary Public