

ABSTRAK

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PERLINDUNGAN HUKUM DEBITUR TERHADAP PROSES LELANG EKSEKUSI HAK TANGGUNGAN YANG DILAKUKAN SECARA MELAWAN HUKUM OLEH PEMEGANG JAMINAN HAK

TANGGUNGAN (Studi Kasus Putusan Pengadilan Negeri Kediri Nomor 61/PDT.G/2012/PN.KDR *juncto* Putusan Pengadilan Tinggi Surabaya Nomor 592/PDT/2013/PT.SBY *juncto* Putusan Mahkamah Agung Republik Indonesia Nomor 1908 K/PDT/2014)

Pelaksanaan lelang eksekusi Hak Tanggungan pada dasarnya telah diatur dengan jelas dalam Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah beserta Benda-Benda yang berkaitan dengan Tanah *juncto* Peraturan Menteri Keuangan Nomor 213/PMK.06/2020 tentang Petunjuk Pelaksanaan

Lelang *juncto* Peraturan Direktur Jenderal Kekayaan Negara Nomor PER- 03/KN/2010 tentang Petunjuk Teknis Pelaksanaan Lelang. Akan tetapi dalam penerapannya masih terdapat kreditur dan pranata hukum lainnya yang tidak memenuhi ketentuan hukum sebagaimana dimaksud. Penelitian ini menggunakan metode pendekatan yuridis normatif serta dikaitkan dengan teori-teori hukum dan asas-asas hukum melalui Pendekatan Perundang-Undangan (*Statute Approach*), Pendekatan Kasus (*Case Approach*), dan Pendekatan Konseptual (*Conseptual Approach*). Berdasarkan hasil dari penelitian, bahwa memperhatikan Putusan

Pengadilan Negeri Kediri Nomor 61/PDT.G/2012/PN.KDR *juncto* Putusan Pengadilan Tinggi Surabaya Nomor 592/PDT/2013/PT.SBY *juncto* Putusan Mahkamah Agung Republik Indonesia Nomor 1908 K/PDT/2014, bahwasannya hakim membatalkan proses lelang yang dilakukan oleh kreditur dan Kantor Pelayanan Kekayaan Negara dan Lelang dikarenakan terdapat unsur perbuatan melawan hukum. Hal ini menunjukkan bahwa meskipun debitur merupakan pihak yang telah melakukan perbuatan ingkar janji/wanprestasi atas pelunasan utangnya, namun peraturan perundang-undangan masih memberikan perlindungan hukum bagi debitur berupa melakukan pembatalan terhadap obyek Hak Tanggungan yang dilakukan lelang eksekusi.

Referensi : 55 (1973-2019).

Kata Kunci : Lelang Eksekusi, Hak Tanggungan, dan Pembatalan.

ABSTRACT

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**LEGAL PROTECTION OF THE DEBTOR AGAINST THE AUCTION
PROCESS FOR THE EXECUTION OF LIABILITY RIGHTS PERFORMED AGAINST
THE LAW BY THE GUARANTEE HOLDER (Case Study
Judgement of the Supreme Court of the Republic of Indonesia Number 1908
K/PDT/2014 in conjunction with the Decision of the Surabaya High Court
Number 592/PDT/2013/PT.SBY in conjunction with the Decision of the District Court of
Kediri Number 61/PDT.G/2012/PN.KDR)**

The auction of the execution of Mortgage Rights has basically been clearly regulated in Law Number 4 of 1996 concerning Mortgage on Land and Objects related to Land in conjunction with the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Instructions for Implementation of Auctions in conjunction with Regulations Director General of State Assets Number PER-03/KN/2010 concerning Technical Guidelines for Auction Implementation. However, in its application there are still creditors and other legal institutions that do not meet the legal provisions as intended. This study uses a normative juridical approach and is associated with legal theories and legal principles through the Statute Approach, Case Approach, and Conceptual Approach. Based on the results of the research, whereas pays attention to Judgement of the District Court of Kediri Number 61/PDT.G/2012/PN.KDR in conjunction with the Judgement of the Surabaya High Court Number 592/PDT/2013/PT.SBY in conjunction with the Judgement of the Supreme Court of the Republic of Indonesia Number 1908 K/PDT/2014, whereas the judge canceled the auction process carried out by creditors and the State Assets and Auction Service Office because there were elements of unlawful acts. This shows that even though the debtor is a party that has committed acts of breach of promise/default for the repayment of his debts, however, the laws and regulations still provide legal protection for debtors in the form of canceling the object of Mortgage that is carried out by an execution auction.

References : 55 (1973-2019).

Keywords : Auction, Mortgage Right, and Cancellation.

