ABSTRACT

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THE TIES BETWEEN THE AMBIGUOUS OF THE THIRD PARTY AND PARATE EXECUTIE IN EXECUTING THE OBJECT OF MORTGAGE

In commercial business area, it is common to have a credit agreement. It raises legal relation between debtor and creditor, which obliges debtor to pay off his debt to creditor. In order to convince the creditor, debtor usually provides certain collateral. The collateral is also useful as the payment of debtor’s bill in case he breaches the agreement. There are many kinds of collateral, and mortgage is one of them. Mortgage gives the right to the holder of first class mortgage to sell the property of debtor, directly when debtor is unable to pay his debt, without requiring the permission of the court. This execution is called parate executie. Law No. 4 year 1996 on Mortgage of Land and The Property Attached to Land implied that the execution of mortgage is easy and definite. The debtor’s inability to pay off his bill is a sufficient reason for creditor to sell his property to recover the debt. The selling is done through public auctions held by the auction office. However parate executie is not absolute. There is regulation that limits the right given by parate executie. It is the Policy of Finance Minister No. 93 year 2010 that allows third party to file a claim on the auction plan. The policy also states that auction office has to cancel the auction when there is claim from the third party. It creates uncertainty in doing parate executie on mortgage object and detriments to creditor.

References: 37 (1957-2011)