

Abstrak

Penelitian ini bertujuan untuk: untuk mengetahui bagaimana kekuatan hukum proses eksekusi hak tanggungan terhadap objek yang di jaminkan kepada debitur yang cacat janji. Metode pendekatan dalam penelitian ini adalah hukum yuridis empiris, sumber data diperoleh dari kepustakaan dan bahan hukum yang digunakan yakni bahan hukum primer, skunder, bahan hukum tersier yang kemudian dianalisis dengan cara analisis kualitatif.

Berdasarkan hasil penelitian ini dapat disimpulkan bahwa pelaksanaan eksekusi objek jaminan hak tanggungan terhadap debitur wanprestasi bahwa Hal ini dilatarbelakangi oleh pasal 6 Undang-Undang No 4 Tahun 1996 Tentang Hak Tanggungan yang menyatakan bahwa “Apabila debitur cedera janji, pemegang Hak Tanggungan pertama mempunyai hak untuk menjual objek Hak Tanggungan atas kekuasaan sendiri melalui pelelangan umum serta mengambil pelunasan piutangnya dari hasil penjualan tersebut.

Maksud dari pasal ini adalah jika debitur terbukti wanprestasi, maka kreditur pemegang Hak Tanggungan berhak untuk melaksanakan eksekusi terhadap objek jaminan melalui pelelangan umum dengan ada atau tidak adanya janji menjual yang tertera dalam APHT. Jika dalam APHT tidak terdapat janji ataupun objek jaminan mengalami masalah maka eksekusi terhadap objek jaminan tetap melalui Penetapan Pengadilan Negeri. Hal ini didasarkan pada SE-23/PN/2000 tentang petunjuk pelaksanaan lelang hak tanggungan khususnya butir 3 yang menyatakan bahwa “pelaksanaan lelang tanpa melalui penetapan pengadilan tidak dapat dilakukan jika didalam APHT tidak termuat kata janji sebagaimana dimaksud dalam pasal 6 Jo pasal 11 ayat 2 huruf (e) UUHT atau adanya kendala/gugatan dari pihak Debitur/pihak ketiga, jika terjadi hal demikian, maka pelaksanaan lelangnya memerlukan penetapan dari Pengadilan Negeri.

Pelaksanaan lelang menurut pasal 6 UUHT yaitu seharusnya lelang dapat dilaksanakan terhadap seluruh objek jaminan yang dibebani hak tanggungan tanpa melihat ada atau tidak adanya janji serta meskipun masih adanya kendala berupa gugatan dari pihak debitur/pihak lain terhadap objek jaminan. Hal ini dimaksudkan agar pihak kreditur tidak lagi mengalami kesulitan dalam melaksanakan eksekusi terhadap objek jaminan hak tanggungan, karena kesulitan-kesulitan yang selama ini menyebabkan kreditur terus mengalami kerugian.

Sedangkan dipihak lain perombakan terhadap peraturan-peraturan tentang eksekusi hak tanggungan diharapkan dapat menciptakan sinkronisasi didalam peraturan itu sendiri serta dapat memberikan kepastian hukum bagi kreditur dalam melaksanakan eksekusi objek jaminan hak tanggungan tanpa harus melalui pengadilan karena proses dipengadilan memerlukan waktu yang lama serta biaya yang mahal

Kata kunci : Eksekusi Hak Tanggungan; Kreditur; Debitur; Wanprestasi.

Abstraction

This study aims to: to find out how the legal force of the execution process of mortgage rights against objects guaranteed to debtors with defects in promise. The approach method in this research is empirical juridical law, the data source is obtained from the literature and the legal materials used are primary, secondary and tertiary legal materials which are then analyzed by means of qualitative analysis.

Based on the results of this study it can be concluded that the execution of the object of guarantee of mortgage rights against debtors in default is motivated by article 6 of Law No. 4 of 1996 on Mortgage which states that "If the debtor is defaulted, the first Mortgage holder has the right to sell. the object of the Guarantee Right on his own power through a public auction and taking the payment of the debt from the sale proceeds.

The purpose of this article is if the debtor is proven to be in default, then the creditor holding the Mortgage has the right to carry out the execution of the collateral object through a public auction with or without the promise to sell as stated in the APHT. If in APHT there is no promise or the object of guarantee has problems, then the execution of the object of guarantee remains through a District Court Decision. This is based on SE-23 / PN / 2000 regarding instructions for auction implementation of mortgage rights in particular point 3 which states that "auction implementation without going through a court order cannot be carried out if the APHT does not contain the word promise as referred to in article 6 Jo article 11 paragraph 2. letter (e) UUHT or there is an obstacle / lawsuit from the Debtor / third party, if this happens, then the implementation of the auction requires an order from the District Court.

The auction according to article 6 of the UUHT, namely that the auction should be able to be carried out on all collateral objects that are encumbered with mortgage rights regardless of whether or not there is a promise and even though there are still obstacles in the form of a lawsuit from the debtor / other party against the object of guarantee. This is intended so that the creditor will no longer experience difficulties in executing the object of the guarantee of mortgage, because of the difficulties that have caused creditors to continue to experience losses.

Meanwhile, on the other hand, the reform of the regulations regarding the execution of mortgage rights is expected to create synchronization in the regulation itself and can provide legal certainty for creditors in executing the object of guarantee of mortgage rights without having to go through court because the process in court takes a long time and is expensive.

Keywords: Mortgage Execution; Creditors; Debtor; Negligence