

ABSTRAK

Globalisasi dalam sistem keuangan telah memotori pesatnya kemajuan di bidang teknologi informasi terhadap inovasi finansial sehingga menciptakan sistem keuangan yang sangat kompleks, dinamis, dan saling terkait antar subsektor keuangan baik dalam hal produk maupun kelembagaan. Salah satu produk di bidang keuangan yang sangat diminati oleh lembaga keuangan baik bank maupun bukan bank berdasarkan daya tarik pangsa pasar adalah kegiatan pinjam-meminjam. Kegiatan pinjam-meminjam mensyaratkan adanya jaminan sebagai pelunasan utang. Salah satu jaminan yang sangat diminati adalah tanah dan/atau bangunan yang selanjutnya dibebani Hak Tanggungan, sebagaimana diatur dalam Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan. Namun sering muncul persoalan karena debitur ingkar janji menolak eksekusi obyek Hak Tanggungan oleh kreditor. Dalam konteks tersebut ada dua permasalahan yaitu apa fungsi limitasi nilai benda jaminan bagi kreditor dalam Akta Pemberian Hak Tanggungan, dan apa akibat hukum apabila terjadi selisih antara hasil eksekusi benda jaminan dengan nilai Hak Tanggungan karena debitur ingkar janji.

Penelitian ini merupakan penelitian yuridis normatif, pendekatannya undang-undang, konseptual dan kasus. Bahan hukumnya, bahan hukum primer dan sekunder, dan teknik pengumpulan bahan hukumnya adalah studi kepustakaan.

Hasil penelitian menunjukkan bahwa fungsi limitasi benda jaminan bagi kreditor dalam Akta Pemberian Hak Tanggungan untuk pelaksanaan suatu perjanjian pinjam-meminjam uang yang dibuat oleh debitur dan kreditor yaitu memlimitasi benda jaminan sebagai jaminan *accessoir*, memlimitasi hak para pihak, mengetahui nilai ekonomis benda jaminan, menghindari perselisihan antara para pihak, memastikan besaran nilai tanggungan dan memudahkan kreditor dalam hal pengambilan pelunasan piutangnya sebagaimana diatur dalam Pasal 6 jo Pasal 14 ayat (2) Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Sementara itu, kibat hukum apabila terjadi selisih antara hasil eksekusi benda jaminan dengan nilai tanggungan karena debitur ingkar janji yaitu kreditor bersedia menanggung selisih kurang dari hasil penjualan secara lelang benda jaminan sebagaimana telah disepakati di dalam Akta Pemberian Hak Tanggungan. Selain itu, kreditor tidak dirugikan apabila terjadi selisih lebih atas penjualan secara lelang benda jaminan debitur cidera janji, karena hak-hak kreditor terpenuhi. Kemudian, debitur cidera janji berhak memperoleh sisa hasil eksekusi Hak Tanggungan dari kreditor juga sesuai kesepakatan yang telah dicantumkan di dalam Akta Pemberian Hak Tanggungan.

Sarannya, fungsi limitasi benda jaminan bagi kreditor dalam Akta Pemberian Hak Tanggungan diharapkan dapat ditaati dan dilaksanakan oleh setiap debitur yang terikat dalam suatu perjanjian pinjam-meminjam dengan menjadikan suatu bidang tanah dan bangunan tertentu sebagai obyek Hak Tanggungan. Selain itu, debitur cidera janji diharapkan tidak lagi bertindak sewenang-wenang terhadap kreditor dengan cara menuntut agar benda jaminan yang telah dijual secara lelang dan hasil lelangnya telah melebihi nilai tanggungan, harus dibatalkan.

Kata kunci: limitasi, nilai agunan, kreditor, jaminan, hak tanggungan

ABSTRACT

The financial system of globalization has led to the rapid advancement in the field of technology information to a financial innovation, creating a very complex, dynamic, and inter-related financial system between the financial sub-sector both in terms of products and institution. One of a product in finance that is in a great demand by financial institutions, whether banks or non-banks based on the attractiveness of market share is loan agreement. A loan agreement require a guarantee of debt repayment, and ones of the most desirable guarantees is a piece of land and/or building which are subsequently burdened by mortgage act, and to be enacted in Law Number 4 of 1996 on the mortgage act. But the problem often arises because of a pledge of debtor that is refusing the execution of collateral goods by a creditor. In that context there are two issues, namely what is the limitation function of a collateral value of a guarantee object in the deed of assignment to a creditor, and what is the legal effect if there is a difference between the execution result of a collateral goods with a value of the mortgage act because of a pledge of debtor.

This research is about juridical normative research with the constitution approach (statute approach) and conceptual approach, and a case construction. The law materials is about primary and secondary law materials, and the techniques collected used is the literature study.

The results showed that the limitation function of a collateral value of a guarantee object in the deed of assignment to a creditor has done by parties that is to collateralize the security of the *accessoir*, minimize the rights of the parties, knowing the economic value of collateral goods, avoiding any disputes between the parties, ensuring the amount of collateral value and facilitate a creditor in the terms of taking the settlement of its receivables as stipulated in Article 6 jo Article 14 paragraph (2) of Law Number 4 of 1996 on mortgage act. Meanwhile, due to law if there is a difference between the execution of collateral goods with the value of mortgage act because of a break of promise done by a debtor that the creditor is willing to bear the difference of less than the sale proceeds on the auction of the collateral goods as has signed by parties in the deed of assignment. Then, the creditor is not impaired in the event of a disagreement over the sale of an auction of the debtor's pledged security, as the rights of the creditor are met. Finally, the pledge of debtor shall be entitled to obtain the remainder of the execution of the mortgage act from the creditor as well as in accordance with an agreement of deed of assignment involved.

The suggestion that may be submitted that the limitation function of collateral goods for creditor in a deed of assignment is expected to be obeyed and implemented by a debtor who is bound in a loan agreement by making a certain piece of land and/or building as an object of mortgage act. Moreover, the promissory debtor is expected to no longer act arbitrarily against the creditor by demanding that the guaranteed item has been sold by auction and the auction proceeds exceeds of collateral value shall be canceled.

Key words: limitation, collateral value, creditor, guarantee, mortgage act