

ABSTRAK
PERLINDUNGAN HUKUM BAGI PIHAK KREDITOR (BANK) ATAS
PENOLAKAN PERMOHONAN PERLAWANAN PEMEGANG
HAK TANGGUNGAN

(Studi Kasus tentang Putusan Mahkamah Agung RI)

Penolakan permohonan perlawanan pemegang hak tanggungan (PT Bank Central Asia Tbk) yang ditolak oleh hakim Mahkamah Agung terhadap Sita Jaminan (*conservatoir beslag*) oleh pihak ke-3 Sehingga Kreditor (Bank) selaku pemegang hak tanggungan tidak mendapatkan perlindungan hukum.

Perumusan masalah dalam tulisan ini adalah pemenuhan Perlindungan Hukum bagi Kreditor (Bank) dalam Putusan Mahkamah Agung No. 2118 K/Pdt/2013 dan Akibat Hukum dari putusan Mahkamah tersebut bagi para pihak yang bersengketa.

Penelitian ini menggunakan pendekatan Penelitian Hukum Normatif yaitu. Penelitian hukum yang dilakukan dengan cara meneliti bahan pustaka atau data sekunder.

Berdasarkan Hasil penelitian dan dianalisa dengan Teori Dasar Hukum oleh Gustav Radbruch tentang tiga Nilai dasar hukum yaitu Nilai Keadilan, Nilai Kepastian dan Nilai Kemanfaatan. Bahwa Putusan Mahkamah Agung tersebut dalam memutus perkara pertimbangannya mengesampingkan undang-undang Hak Tanggungan Nomor 4 Tahun 1996 yang salah satunya mengandung asas *Droit de Suite* dan yaitu dari nilai keadilan Hakim tidak memberikan perlindungan serta keadilan kepada pemegang Hak Tanggungan, Nilai Kepastian Hukum secara undang-undang diabaikan oleh Hakim dan Nilai Kemanfaatannya terhadap upaya hukum Kreditor tidak ada hasil.

Akibat Hukum dari Putusan Mahkamah Agung No. 2118 K/Pdt/2013 bagi para pihak yang bersengketa adalah Hak-hak pemegang Hak Tanggungan (PT. Bank Central Asia, Tbk) tidak mendapatkan perlindungan hukum, debitor (PT. Trijaya Kartika) berkewajiban bertanggung jawab melunasi hutangnya kepada kreditor (PT. Bank Central Asia, Tbk).

Saran akibat dari putusan Mahkamah Agung No. 2118 K/Pdt/2013 yaitu bagi Kreditor (PT. Bank Central Asia Tbk) hendaknya mengajukan gugatan kepada debitor dan untuk kreditor (PT. Trijaya Kartika) harus melunasi kewajiban hutangnya kepada kreditor. Bagi PT. Sinar Fontana Raya hendaknya mengajukan sita terhadap objek sita yang lain serta

ABSTRACT

LEGAL PROTECTION FOR CREDITOR PARTY (BANK) TOWARD THE REJECTION OVER APPLICATION RESISTANCE OF THE MORTGAGE RIGHT HOLDER (A Case Study of the Decision of the Supreme Court of Republic of Indonesia)

Rejection over application resistance of mortgage right holder (PT. Bank Central Asia Tbk.) was rejected by the Supreme Court toward collateral confiscation (Conservatoir beslag) by the 3rd party. Therefore, Creditor (the Bank) as the mortgage right holder did not obtain legal protection.

Problem formulation in this paper is the fulfillment of the Legal Protection for Creditor (Bank) in the Decision of the Supreme Court No. 2118 K / Pdt / 2013 and the Legal result from that decision for all parties who were in dispute.

This study used a normativ law research approach that is a law research that is done by studying literature or secondary data.

Based on the result of the research and analyzed using the Basic Theories of Law by Gustav Radbruch about three Basic Law Values namely Justice Value, Certainty Value and Benefit Value; the decision of the Supreme Court, while deciding the case, waive the Mortgage Right Act Number 4 of 1996 that contains Droit de Suite principle and the justice value of the judge didn't give protection and also justice to mortgage right holder. The legal certainty value in law was neglected by the judge and the benefit value toward the legal remedy of the creditor was no result.

Legal effect of the Decision of Supreme Court No. 2118 k/Pdt/2013 for all the parties who were in dispute was that the rights of Mortgage Right Holder (PT. Bank Central Aisa, Tbk) didn't get legal protection. The debtor (PT. Trijaya Kartika) was obligated to repay the debts to the creditor (PT. Bank Central Asia, Tbk).

There were some suggestions as a result of the decision of the Supreme Court No. 2118 K/Pdt/2013. First, the creditor (PT. Bank Central Asia Tbk) should file a lawsuit againts the debtor and the creditor (PT. Trijaya Kartika) must repay their debts obligations to creditor. Second, PT. Sinar Fontana Raya should file a confiscation toward other confiscation goods and as well as the National Land Agency (Badan Pertanahan Nsional) should run the Head of National Land Agency Regulation No. 1 of 2010 about the Service Standard which is good and right.