

ABSTRAK

Agus Saepudin : *Peralihan hak sertipikat hak milik (shm) karena lelang eksekusi hak tanggungan terhalang oleh pasal 3 peraturan menteri agraria tata ruang kota/badan pertanahan nasional atr/bpn no.13 tahun 2017 tentang tata cara blokir dan sita.*

Penelitian ini dilatar belakangi oleh adanya kesenjangan hierarki perundang-undangan terkait lelang, yaitu dalam Pasal 3 Peraturan Menteri Agraria No 13. Tahun 2017 tentang Tata Cara Blokir dan Sita dengan Pasal 6 Undang-Undang Nomor 4 tahun 1996 Tentang Hak Tanggungan yang mengakibatkan terhambatnya proses peralihan hak atau balik nama terhadap kreditur sebagai pemenang lelang karena terjadinya pemblokiran oleh eks debitur.

Tujuan penelitian ini untuk memperjelas aturan mengenai lelang dan meluruskan peraturan perundang-undangan terkait hak tanggungan dan proses terjadinya peralihan hak milik dalam lelang serta memberikan gambaran terkait proses upaya hukum yang ditempuh bagi subjek hukum yang mempunyai itikad baik.

Penelitian ini dilandaskan oleh beberapa teori, yaitu teori negara hukum sebagai acuan dasar dalam penelitian. Teori lelang menjadi sarana mengetahui permasalahan serta memberikan gambaran terkait persoalan pembatalan hak milik dalam proses lelang. Teori perbuatan melawan hukum menjadi rambu-rambu dalam melakukan pengaplikasian aturan terkait lelang dan hak tanggungan.

Penelitian ini dilakukan dengan menggunakan metode deskriptif analisis, yaitu meneliti, menjabarkan dan memberikan gambaran yang terperinci mengenai gugatan pembatalan lelang berdasarkan perbuatan melawan hukum yang selanjutnya diteliti secara analisis dan sistematis kemudian ditarik suatu kesimpulan.

Hasil penelitian menunjukkan bahwa terjadinya tumpang tindih aturan terkait lelang yaitu ketentuan Pasal 3 Peraturan Menteri Agraria dan Tata Ruang / Badan Pertanahan Nasional - PMATR/BPN No.13 tahun 2017 tentang Tata Cara Blokir dan Sita dengan undang-undang lain yakni Undang-Undang Nomor 4 tahun 1996 tentang Hak Tanggungan dalam pasal 6 yang menyebabkan terhalangnya pergantian hak milik terkait lelang yang dilakukan kreditur terhadap debitur. Terdapat upaya hukum yang dapat dilakukan terhadap subjek hukum yang beritikad baik dalam berperkara yaitu dengan melakukan permohonan kepada pihak BPN terkait tidak bisanya di lakukan proses balik nama dengan melibatkan kantor lelang dan kreditor sesuai peraturan perundang-undangan yang berlaku.

Kata Kunci: Lelang Eksekusi; Hak Tanggungan; BPN

ABSTRACT

Agus Saepudin : *The transfer of ownership right certificate (shm) due to the auction of execution of mortgage rights was hindered by article 3 of the regulation of the minister of agrarian affairs for city spatial planning/national land agency ATR/BPN No.13 of 2017 concerning for blocking and confiscation*

This research is motivated by the existence of a hierarchical gap in the legislation related to auctions, namely in Article 3 of the Regulation of the Minister of Agrarian Affairs No. 13 of 2017 concerning the procedures for blocking and confiscation with Article 6 of Law No. 4 of 1996 concerning Mortgage which resulted in delays in the transition process. rights or transfer of name to the creditor as the winner of the auction due to the blocking by the ex-debtor.

The purpose of this study is to clarify the rules regarding auctions and straighten the laws and regulations related to mortgage rights and the process of transferring ownership rights in auctions as well as to provide an overview of the legal process taken for legal subjects who have good intentions.

This research is based on several theories, namely the rule of law theory as a basic reference in research. Auction theory is a means of knowing problems and providing an overview of the issue of cancellation of property rights in the auction process. The theory of unlawful acts becomes signs in applying the rules related to auctions and mortgages.

This research was conducted using a descriptive analysis method, namely researching, describing and providing a detailed description of the auction cancellation lawsuit based on an unlawful act which was then analyzed and analyzed systematically and then a conclusion was drawn.

The results show that there is an overlap of rules related to auctions, namely the provisions of Article 3 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency - PMATR/BPN No. 13 of 2017 concerning Procedures for Blocking and Confiscation with other laws, namely Law number 4 1996 concerning Mortgage Rights in article 6 which causes obstruction of the change of ownership rights related to auctions conducted by creditors against debtors. There are legal remedies that can be taken against legal subjects who have good intentions in litigation, namely by making an application to the BPN regarding the inability to carry out a name transfer process involving the auction office and creditors in accordance with applicable laws and regulations.

Keywords: Execution Auction; Mortgage right; BPN



uin

UNIVERSITAS ISLAM NEGERI
SUNAN GUNUNG DJATI
BANDUNG