

Tinjauan yuridis mengenai keabsahan karyawan kreditor menjadi peserta dan pemenang lelang (studi kasus Putusan Mahkamah Agung Nomor 1368K/PDT/2011) = Juridical analysis of the validity of creditor employee becoming the participant and auction winner study case supreme court decision number 1368K/PDT/2011)

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Abstrak

[Dalam hal debitor wanprestasi, maka sudah selayaknya kreditor dapat langsung mengeksekusi objek jaminan tersebut melalui lelang. Saat pelaksanaan lelang, siapa saja dapat menjadi peserta lelang, kecuali yang bersangkutan termasuk dalam pihak-pihak yang dilarang sebagai peserta lelang, seperti yang tercantum dalam Pasal 49 ayat (1) PMK No. 40/PMK.07/2006 jo Pasal 69 PMK No. 93/PMK.06/2010. Penulis menganalisis bagaimana keabsahan lelang yang dimenangkan oleh karyawan kreditor beserta pertimbangan Hakim dalam putusan Nomor 1368K/Pdt/2011. Metode penelitian yang digunakan adalah yuridis normatif yaitu menelaah norma-norma hukum tertulis yang berkaitan dengan permasalahan yang diangkat dalam penelitian ini. Dalam penelitian ini tidak ditemukan peraturan yang secara khusus mengatur mengenai boleh atau tidaknya karyawan kreditor menjadi peserta lelang, yang berakibat munculnya dua putusan yang berbeda mengenai hal tersebut, yaitu putusan dalam tingkat pertama dengan putusan dalam tingkat banding dan kasasi. Namun, setelah Penulis menelaah lebih dalam mengenai hal tersebut, tidak ada satu ketentuan yang melarang karyawan kreditor menjadi peserta bahkan Pembeli dalam lelang. Karyawan tersebut dapat menjadi peserta bahkan menjadi pembeli dalam lelang selama yang bersangkutan telah memenuhi seluruh kewajibannya. Dengan demikian, lelang yang telah dilaksanakan pada tanggal 18 September 2007 yang memenangkan Tergugat IV selaku karyawan kreditor adalah sah dan tidak melanggar hukum

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In case when the debtor defaults, the creditor can directly execute the object of mortgage right. Currently the auction, anyone can become and join as a participant in the auction, except the concerned parties including the banned as a participant of the auction, as stated in Article 49 paragraph (1) PMK No. 40/PMK.07/2006 in conjunction with Article 69 PMK No. 93/PMK.06/2010. The author analyzes how the validity of the auction, which was won by the creditor's employees and how about the Judge's consideration when made a decision No. 1368K/Pdt/2011. The method used is a normative juridical norms which examines the written law relating to the issues raised in this study. In this research, there's no regulations specifically regarding whether or not the creditor's employee become a participant in the auction, which resulted two different decisions from

two different courts, there are Jakarta Timur's district court with DKI Jakarta's high court and the supreme court. However, after the author examines more deeply about that problem, there is no specific regulation about the creditor's employee banned as a participant in auction. As long as that employee can fulfilling all of their obligations they can become a participant or the winner of the auction. Therefore, the auction that was held on September 18, 2007 who won by the fourth defendant as a creditor's employee is still valid because he doesn't violates the law., In case when the debtor defaults, the creditor can directly execute the object of mortgage right. Currently the auction, anyone can become and join as a participant in the auction, except the concerned parties including the banned as a participant of the auction, as stated in Article 49 paragraph (1) PMK No. 40/PMK.07/2006 in conjunction with Article 69 PMK No. 93/PMK.06/2010. The author analyzes how the validity of the auction, which was won by the creditor's employees and how about the Judge's consideration when made a decision No. 1368K/Pdt/2011. The method used is a normative juridical norms which examines the written law relating to the issues raised in this study. In this research, there's no regulations specifically regarding whether or not the creditor's employee become a participant in the auction, which resulted two different decisions from two different courts, there are Jakarta Timur's district court with DKI Jakarta's high court and the supreme court. However, after the author examines more deeply about that problem, there is no specific regulation about the creditor's employee banned as a participant in auction. As long as that employee can fulfilling all of their obligations they can become a participant or the winner of the auction. Therefore, the auction that was held on September 18, 2007 who won by the fourth defendant as a creditor's employee is still valid because he doesn't violates the law.]