

Akibat Hukum terhadap Jual Beli Tanah Dibawah Tangan Dan Dijual Kembali serta Dijadikan Agunan kepada Bank (Analisis Putusan Mahkamah Agung Nomor 164/K/Pdt/2018 Juncto Putusan Pengadilan Tinggi Medan Nomor 36/Pdt/2017/PT.MDN Juncto Putusan Pengadilan Negri Tebing Tinggi Nomor 34/Pdt.G/2015/PN.TBT) = Legal Consequences for The Sale and Purchase of Land in A Private Deed and The Land are Resold and Used as Collateral to The Bank (Supreme Court Decision with The Number of 164/K/Pdt /2018 Juncto The High Court in Medan Decision with The Number 36/Pdt/2017/PT.MDN Juncto The Tebing Tinggi State Court Decision Number 34/Pdt.G/2015/PN.TBT)

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Abstrak

Berdasarkan kasus dalam Putusan Mahkamah Agung Nomor 164/K/Pdt/2018 Juncto Putusan Pengadilan Tinggi Medan Nomor 36/Pdt/2017/PT.MDN Juncto Putusan Pengadilan Negri Tebing Tinggi Nomor 34/Pdt. G/2015/PN.TBT dimana jual beli tanah telah dilakukan dengan dibawah tangan dan atas tanah tersebut dijual kembali oleh penjual secara pura-pura kepada pihak ketiga dan selanjutnya oleh pihak ketiga, tanah tersebut dijadikan agunan dengan Hak Tanggungan kepada Bank. Yang menjadi pokok permasalahan adalah, Bagaimanakah akibat hukum terhadap jual beli tanah dibawah tangan dan dijual kembali serta dijadikan agunan kepada Bank dalam putusan ini berdasarkan ketentuan yang berlaku dan Bagaimanakah Pertimbangan Hakim pada Putusan Pengadilan tersebut dikaitkan dengan kesesuaian dengan norma hukum dan kepatutan. Untuk menjawab permasalahan tersebut maka dilakukan penelitian hukum dengan pendekatan yuridis normatif, mempergunakan data sekunder yang diperoleh dengan studi kepustakaan dan hasil penelitian bersifat preskriptif analitis. Hasil analisis menunjukkan bahwa meskipun jual beli tidak dilakukan di hadapan PPAT, namun syarat-syarat materiil sudah terpenuhi, dan pembeli selaku Penggugat dapat membuktikan dalildalilnya serta Tergugat juga mengakui adanya jual beli yang dilakukan antara Penggugat dan Tergugat I dan II atas tanah tersebut. Maka, sudah sepatutnya jual beli dalam kasus ini adalah sah berdasarkan bukti bukti yang ada dan Bank selaku pemegang Hak Tanggung beritikad tidak baik, tidak menerapkan prinsip kehati-hatian, dan tidak menerapkan prinsip 5 C dalam melakukan penilaian terhadap debitur dan dalam analisis, Tergugat I, Tergugat II, Tergugat III, Tergugat IV, dan Tergugat V terbukti melakukan perbuatan melawan hukum. Oleh karenanya, pertimbangan hakim yang sesuai dengan norma hukum dan kepatutan adalah menolak permohonan kasasi oleh Bank.

.....Based on the Case in the Supreme Court Decision with the number of 164 / K / Pdt / 2018 Juncto the High Court in Medan Decision with the number 36 / Pdt / 2017 / PT.MDN Juncto The Tebing Tinggi State Court Decision Number 34 / Pdt. G / 2015 / PN.TBT where the Sale and Purchase of land rights have been carried out under the hands and the land is resold by the seller pretending to be to a third party and then by a third party, the land is used as collateral with a mortgage to the bank. The main problem is, What is the legal consequence of the sale and purchase of land in a private deed and resales and used as collateral to the Bank in the decision based on the applicable provisions and What is the Judge's consideration in the Court

Decision related to conformity with legal norms and propriety. In order to answer this problem, legal research was carried out with a normative juridical approach, using secondary data obtained by literature study and the results of the research are analytical prescriptive. The results of the analysis show that although the sale and purchase was not carried out before the PPAT, the material requirements had been met, and the Buyer as the Plaintiff could prove his arguments and the Defendant also acknowledged that the sale and purchase was carried out between the plaintiffs and defendants I and II on the land. So it is rightly, for the sale and purchase in this case to be validated based on existing evidence and the Bank as the holder of the Liability Rights is considered has bad intentions, does not apply the principle of prudence, and does not apply the 5 C principle in assessing debtors and in analysis, Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V are proven to have committed illegal acts. Therefore, the judge's consideration in accordance with legal norms and propriety is to reject the appeal by the Bank.