

**ANALISIS KEDUDUKAN AKTA PERJANJIAN PENGIKATAN JUAL BELI
YANG DIBUAT BERDASARKAN PERJANJIAN HUTANG PIUTANG
(Studi Kasus Putusan Pengadilan Negeri Bandung Nomor
90/Pdt.G/2017/PN.Bdg jo Putusan Pengadilan Tinggi
Bandung Nomor 507/PDT/2017/PT.Bdg jo Putusan
Mahkamah Agung Nomor 1570 K/Pdt/2018)**

Oleh

Deska Agriana Permatasari¹ dan Ari Hernawan²

INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis pertimbangan hakim dalam memandang kedudukan akta perjanjian pengikatan jual beli yang dibuat berdasarkan perjanjian hutang piutang serta perlindungan hukum bagi kreditur dalam hal debitur wanprestasi pada perjanjian hutang piutang yang ditindaklanjuti dengan akta perjanjian pengikatan jual beli.

Penelitian ini merupakan penelitian normatif yang bersifat deskriptif. Data diperoleh dengan penelitian kepustakaan bahan hukum primer, sekunder dan tersier dengan menggunakan alat berupa studi dokumen. Penelitian didukung dengan wawancara kepada narasumber dengan menggunakan alat berupa pedoman wawancara. Data hasil penelitian dianalisis secara kualitatif.

Hasil penelitian menunjukkan bahwa (1) Dalam memandang kedudukan akta perjanjian pengikatan jual beli yang dibuat berdasarkan perjanjian hutang piutang, Hakim Pengadilan Negeri Bandung dan Hakim Pengadilan Tinggi Bandung mengedepankan Asas Konsensualisme, Asas Kebebasan Berkontrak, Asas *Pacta Sunt Servanda*, Asas Kemanfaatan dan menilai terdapat Itikad Baik dari Kreditur serta mengesampingkan prinsip larangan milik *Beding*. Hakim Mahkamah Agung mengedepankan Asas Kepastian Hukum dan menilai tidak terdapat Itikad Baik dari Kreditur. Hutang piutang yang tidak mampu dibayar berubah secara otomatis menjadi hubungan jual beli tidak diperkenankan, sehingga akta perjanjian pengikatan jual beli yang dibuat berdasarkan perjanjian hutang piutang adalah batal, cacat hukum dan tidak memiliki kekuatan mengikat. (2) Terdapat 2 (dua) macam perlindungan hukum bagi kreditur dalam hal debitur wanprestasi pada perjanjian hutang piutang yang ditindaklanjuti dengan akta perjanjian pengikatan jual beli, yaitu perlindungan hukum preventif berdasarkan Pasal 1131 dan Pasal 1132 KUH Perdata dan perlindungan hukum represif melalui gugatan wanprestasi ke Pengadilan Negeri.

Kata kunci: Akta, Perjanjian Pengikatan Jual Beli, Perjanjian Hutang Piutang, Putusan Pengadilan, Perlindungan Hukum

¹ Jalan Kapten Suparman, Magelang, Jawa Tengah

² Guru Besar Hukum Perdata, Fakultas Hukum, Universitas Gadjah Mada, Yogyakarta

***ANALYSIS OF THE POSITION OF THE DEED OF SALE AND
PURCHASE BINDING AGREEMENT WHICH MADE
UNDER THE DEBT RECEIVABLE AGREEMENT
(Case Study of Bandung District Court Decision Number
90/Pdt.G/2017/PN.Bdg in connection with Bandung High
Court Decision Number 507/PDT/2017/PT.Bdg in
connection with Supreme Court Decision
Number 1570 K/Pdt/2018)***

By

Deska Agriana Permatasari¹ and Ari Hernawan²

ABSTRACT

This research was intended to determine and analyze the judge's considerations in viewing the position of the deed of sale and purchase binding agreement which made under the debt receivable agreement and legal protection for creditor in the event that the debtor defaults on the debt receivable agreement which is followed up by the deed of sale and purchase binding agreement.

This research is a descriptive normative research. Data obtained by library research on primary, secondary and tertiary legal materials using a document study tool. The research was supported by interviews with informants using a tool in the form of interview guidelines. The research data were analyzed qualitatively.

The results of the study indicate that (1) In viewing the position of the deed of sale and purchase binding agreement which made under the debt receivable agreement, Bandung District Court Judges and Bandung High Court Judges put forward the Principle of Consensualism, the Principle of Freedom of Contract, the Principle of Pacta Sunt Servanda, the Principle of Expediency and considered that there was a good faith from Creditor and overriding Beding's prohibition principle. Judges of the Supreme Court put forward the Principle of Legal Certainty and considered that there was no good faith from Creditor. Debt that cannot be paid automatically turn into a sale and purchase relation is not allowed, so the deed of sale and purchase binding agreement which made based on the debt receivable agreement is void, legally flawed and has no binding force. (2) There are 2 (two) types of legal protection for creditor in the event that the debtor defaults on the debt receivable agreement which is followed up with a deed of sale and purchase binding agreement, namely preventive legal protection based on Article 1131 and Article 1132 of the Civil Code and repressive legal protection through a default lawsuit against the creditor to the District Court.

***Keywords:* Deed, Sale and Purchase Binding Agreement, Debt Receivable Agreement, Court Decision, Legal Protection**

¹ Kapten Suparman Street, Magelang, Jawa Tengah

² Professor of the Civil Law, Faculty of Law, Gadjah Mada University, Yogyakarta