

ABSTRAK

Monica Tjahjono (01656190014)

TINJAUAN YURIDIS TENTANG KESESUAIAN PERJANJIAN KREDIT SINDIKASI YANG MENERAPKAN KLAUSUL NEGATIVE PLEDGE OF ASSETS DENGAN PRINSIP KEHATI-HATIAN PADA BANK UMUM

(xii + 198 halaman; 2 tabel)

Sindikasi merupakan salah satu upaya untuk menekan konsentrasi kredit dalam penyediaan dana besar oleh bank. Salah satu risiko yang dihadapi dalam penyediaan dana besar adalah risiko kredit yang dihadapi oleh beberapa kreditur dalam kredit sindikasi. Apabila debitur gagal melaksanakan kewajibannya, maka agar pelunasan piutang antar kreditur dapat dilaksanakan dengan adil, dapat digunakan klausul *Negative Pledge of Assets* tanpa pengikatan jaminan benda. Namun, ketiadaan agunan dalam perjanjian kredit tidak selaras dengan Prinsip Kehati-Hatian yaitu Prinsip 5C yang salah satunya mengharuskan adanya *collateral*. Oleh karena itu, diperlukan penelitian agar penerapan klausul *Negative Pledge of Assets* dalam kredit sindikasi dapat memenuhi prinsip Kehati-Hatian. Penelitian ini dilakukan secara normatif dengan pendekatan undang-undang, historis, perbandingan, serta konseptual. Dari penelitian ini disimpulkan bahwa dari prinsip kehati-hatian tidak dapat berdiri sendiri, melainkan harus didukung dengan prinsip itikad baik secara objektif berupa keadilan dalam bertransaksi. Selain itu klausul *Negative Pledge of Assets* dapat didukung dengan kewajiban persetujuan kreditur apabila debitur ingin berutang kepada pihak ketiga seperti di Singapura, dan klausul *Disposal Restriction* untuk menjaga nilai aset seperti awal analisa kredit seperti di Belanda. Dengan demikian, penggunaan klausul *Negative Pledge of Assets* sekalipun dapat memenuhi prinsip kehati-hatian, termasuk prinsip *collateral*.

Referensi : 99 (1972-2019)

Kata Kunci : Klausul *Negative Pledge of Assets*, Perjanjian Kredit Sindikasi, Bank Umum, Prinsip Kehati-Hatian

ABSTRACT

Monica Tjahjono (01656190014)

LEGAL STUDY ON THE COMPLIANCE OF A SYNDICATED LOAN AGREEMENT THAT APPLIES NEGATIVE PLEDGE OF ASSETS CLAUSE WITH PRUDENTIAL BANKING PRINCIPLE FOR GENERAL BANK

(xii + 198 pages; 2 tables)

Syndication is a way for banks to reduce credit concentration when providing large funds. One of the risks in providing large funds is credit risk, which all the creditors providing the syndicated loan are exposed to. In the event of default, to pay off all the accounts receivable fairly, the Negative Pledge of Assets clause can be used without mortgage. However, a syndicated loan agreement without any mortgages does not comply with the Prudential Banking Principle, the 5C Principle, which demand a collateral. Therefore, it is necessary to evaluate the usage of Negative Pledge of Assets clause in a syndicated loan agreement that complies with the Prudential Banking Principle. This is a normative research with legislation, historical, comparative and conceptual approach. From this research, it is found that Prudential Banking Principle is better to be applied with Good Faith Principle objectively, which is a fair dealing between the creditors and the debtor. Aside from the Negative Pledge of Assets clause, a syndicated loan agreement should include the clause where the debtor must have the creditors permission before making another loan agreement to the third party, which is applied in Singapore and Disposal Restriction clause to maintain the assets value, which is applied in Netherland. Therefore, the Negative Pledge of Assets clause could comply with the Prudential Banking Principle, including the collateral principle.

References : 99 (1972-2019)

Keywords : Negative Pledge of Assets Clause, Syndicated Loan Agreement, General Bank, Prudential Banking Principle