

ABSTRAK

ANALISIS KASUS PENGAMBILALIHAN PAKSA OBJEK JAMINAN FIDUSIA DISEBABKAN PEMBIAYAAN KREDIT MACET (STUDI PUTUSAN NOMOR 36/Pdt.G.S/2023/PN Pdg)

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(xii + 151 halaman, 2 tabel, 4 lampiran)

Lembaga Keuangan merupakan badan yang bertujuan memberikan fasilitas keuangan kepada masyarakat yang tujuan dasarnya menghimpun dana dan disalurkan dalam pinjaman atau kredit, disebabkan lembaga keuangan membutuhkan kepastian hukum, maka hadirlah Jaminan Fidusia. Penelitian ini bertujuan untuk mengetahui perlindungan hukum yang diperoleh debitur maupun kreditur dalam pengambilalihan paksa Objek Jaminan Fidusia atas pemberian kredit macet serta memahami pertimbangan hakim dalam mewujudkan perlindungan hukum dan keadilan pada Putusan Nomor 36/Pdt.G.S/2023/PN Pdg. Metode penelitian yang digunakan dalam penelitian ini menggunakan metode penelitian hukum normatif yang dikaji menggunakan bahan hukum primer, sekunder, dan tertier.

Hasil penelitian dan analisis yang diperoleh dalam penelitian pertama adalah perjanjian yang dibuat oleh debitur dan kreditur akan menciptakan perikatan dan timbul kewajiban yang harus dipenuhi. Apabila terdapat salah satu pihak yang tidak mampu memenuhinya, maka akan dinyatakan wanprestasi. Pengertian wanprestasi telah dijelaskan dalam 1243 KUHPer dan kembali dibahas pada Undang-Undang Jaminan Fidusia. Akan tetapi, dalam Undang-undang tersebut terdapat pengertian yang samar-samar mengenai wanprestasi serta kekuatan eksekusi Objek Jaminan Fidusia. Disebabkan, Objek Jaminan Fidusia hanya bisa dilakukan eksekusi apabila terdapat perbuatan wanprestasi dan perbuatan tersebut harus dimuatkan dalam perjanjian. Sehingga, apabila Objek Jaminan Fidusia dieksekusi tanpa dijelaskan pemahaman wanprestasi dan kekuatan eksekutorial dalam perjanjian, maka eksekusi tersebut akan digolongkan sebagai perbuatan pengambilalihan paksa. Hasil penelitian kedua adalah PT Maybank dituntut dan dihukum melakukan pengambilalihan paksa Objek Jaminan Fidusia dan perbuatan melawan hukum terhadap Objek Jaminan milik Yurneli Darti dan Dwiki Maulana disebabkan telah melakukan pemberian kredit macet. Dimana, pertimbangan Majelis Hakim dilandaskan dengan Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 yang secara tidak langsung melemahkan hak kreditur untuk melakukan ekskusi terhadap Objek Jaminan Fidusia.

Kata Kunci: Pengambilalihan Paksa Objek, Jaminan Fidusia, Pemberian, Kredit Macet

Refrensi : 8 buku, 16 jurnal

ABSTRACT

ANALYSIS OF THE CASE OF FIDUCIARY TRANSFER OF OWNERSHIP OBJECTS DUE TO NON-PERFORMING LOAN FINANCING (STUDY OF DECISION NUMBER 36/Pdt.G.S/2023/PN Pdg)

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Financial Institutions are entities aimed at providing financial facilities to the public, primarily to collect funds and distribute them as loans or credit. Due to the need for legal certainty, seizure of objects were established. This study aims to analyze the legal protection available to both debtors and creditors in the forced repossession of fiduciary guarantee objects due to non-performing loans and to understand the judge's considerations in achieving legal protection and justice in Decision Number 36/Pdt.G.S/2023/PN Pdg. The research methodology used in this study is normative legal research, reviewed through primary, secondary, and tertiary legal materials.

The results and analysis of the first study revealed that the agreement between the debtor and creditor creates an obligation that must be fulfilled. If one party fails to meet these obligations, they will be declared in default (wanprestasi). The concept of default is explained in Article 1243 of the Indonesian Civil Code (KUHPer) and further discussed in the Fiduciary Guarantee Law. However, the law contains ambiguous definitions of default and the enforceability of fiduciary guarantee objects. Execution of fiduciary guarantee objects can only occur if there is an act of default explicitly stated in the agreement. Consequently, if fiduciary guarantee objects are executed without a clear understanding of default and executorial power outlined in the agreement, such execution will be categorized as an act of forced repossession. The second study found that PT Maybank was sued and punished for the forced repossession of fiduciary guarantee objects and for committing unlawful acts involving the fiduciary objects owned by Yurneli Darti and Dwiki Maulana due to non-performing loans. The panel of judges based their considerations on Constitutional Court Decision Number 18/PUU-XVII/2019, which indirectly weakened creditors' rights to execute fiduciary guarantee objects.

Keywords: *Forced Repossession, Fiduciary Transfer of Ownership, Financing, Non-Performing Loans*

References: 8 books, 16 journal