ABSTRAK

PERBUATAN MELAWAN HUKUM DALAM PENARIKAN PAKSA OBJEK JAMINAN FIDUSIA
(Tinjauan Yuridis Putusan Nomor 54/Pdt/2020/PT. Kdi)

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Skripsi dengan judul "Perbuatan Melawan Hukum Dalam Penarikan Paksa Objek Jaminan Fidusia (Tinjauan Yuridis Putusan Nomor 54/Pdt/2020/PT. Kdi)" ini, dilakukan untuk menganalisisa perkara banding terhadap pelaksanaan penarikan objek jaminan fidusia oleh Tergugat. Perkara ini berawal dari adanya perjanjian kredit antara Penggugat dengan Tergugat dengan objek jaminan berupa Mobil Nissan All New March dan diikat jaminan fidusia. Ketika debitur melakukan wanprestasi, Tergugat dengan menggunakaan jasa debt collector melakukan penarikan secara paksa objek jaminan fidusia. Adapun tujuannya adalah untuk menganalisis pertimbangan hukum hakim dalam mengkualifisir kriteria-kriteria perbuatan melawan hukum dalam Putusan Nomor 54/Pdt/2020/PT. Kdi. dan untuk menganalisis pertimbangan hukum hakim dalam mengabulkan tuntutan ganti kerugian di dalam Putusan Nomor 54/Pdt/2020/PT. Kdi. Metode penelitian yang digunakan adalah metode yuridis normatif, dengan spesifikasi penelitian deskriptif analitis dan analisis secara normatif kualitatif.

Hasil penelitian menunjukan, pertama, bahwa hakim mengkualifisir perbuatan Tergugat yang melakukan pengamanan barang jaminan dengan cara penarikan paksa kendaraan/mobil Penggugat dalam garasi rumah Penggugat dengan menggunakan jasa debt colletor sebagai perbuatan melawan hukum yang melanggar kriteria kewajiban hukum si pelaku berupa melanggar Putusan MK Nomor 18/PUU-XVII/2019. Pertimbangan Hakim ini sejalan dengan kriteria-kriteria perbuatan melawan hukum yang bersifat alternatif. Menurut penulis, akan lebih tepat apabila pertimbangan hukum hakim terhadap tindakan penarikan tersebut bertentangan dengan Putusan MK Nomor 18/PUU-XVII/2019 karena dilakukan tidak atas dasar kesukarelaan Penggugat untuk menyerahkan objek jaminan serta Pasal 48 ayat (2) dan Pasal 48 ayat (3) huruf (c) jo Pasal 65 ayat (5) POJK Nomor 35/POJK.05/2018 tentang Penyelenggaraan Usaha Perusahaan Pembiayaan karena tidak adanya perjanjian kerjasama antara Tergugat dengan jasa debt collector tersebut dan jasa debt collector yang digunakan belum tersertifikasi profesi di bidang penagihan yang terdaftar di Asosiasi Perusahaan Pembiayaan Indonesia (APPI). Kedua, Hakim mengabulkan tuntutan ganti kerugian dalam bentuk pembayaran sejumlah uang terhadap Penggugat sejumlah Rp. 76.779.600,00- (tujuh puluh enam juta tujuh ratus tujuh puluh sembilan ribu enam ratus rupiah). Menurut penulis ganti kerugian yang diterapkan oleh Hakim termasuk kategori ganti rugi atas kerugian dalam bentuk berupa ganti kerugian atas rugi (*schaden*).

Kata Kunci: Perbuatan Melawan Hukum, Perusahaan Pembiayaan, Penarikan Paksa Objek Fidusia.

ABSTRACT

UNLAWFUL ACTS IN THE FORCED WITHDRAWAL OF FIDUCIARY BAIL OBJECTS

(Juridical Review Of Verdict No. 54/Pdt/2020/Pt. Kdi)

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Thesis with the title "Unlawful Acts in The Forced Withdrawal of Fiduciary Bail Objects (Juridical Review of Verdict No. 54/Pdt/2020/PT. Kdi)" is done to analyze the appeal case against the implementation of the withdrawal of the fiduciary guarantee object by the Defendant. This case stems from the existence of a credit agreement between the Plaintiff and the Defendant with the object of the guarantee in the form of a Nissan All New March Car and tied to a fiduciary guarantee. When the debtor defaults, the Defendant by using the debt collector's services forcibly withdraws the fiduciary guarantee object. The purpose is to analyze the judge's legal considerations in qualifying the criteria of unlawful acts in Decision No. 54/Pdt/2020/PT. Kdi. and to analyze the judge's legal considerations in granting the claim for damages in Decision No. 54/Pdt/2020/PT. Kdi. The research method used is a normative juridical method, with descriptive analytical research specifications and qualitative normative analysis.

The results of the study showed, first, that the judge qualified the defendant's actions that secured the collateral goods by means of the forced withdrawal of the Plaintiff's vehicle/car in the garage of the Plaintiff's house by using the services of debt colletor as an unlawful act that violates the criteria of legal obligations of the perpetrator in violation of Mk Decision No. 18/PUU-XVII/2019. The judgment of this Judge is in line with the criteria of unlawful acts that are alternative. According to the author, it would be more appropriate if the judge's legal consideration of the withdrawal action is contrary to The Court's Decision No. 18/PUU-XVII/2019 because it is done not on the basis of the plaintiff's willingness to submit the object of guarantee and Article 48 paragraph (2) and Article 48 paragraph (3) letter (c) jo Article 65 paragraph (5) POJK Number 35/POJK.05/2018 concerning the Implementation of Financing Company Business because there is no cooperation agreement between the Defendant and the debt collector service and the debt collector services used have not been certified profession in the field of billing registered with the Association of Indonesian Financing Companies (APPI). Second, the Judge granted the claim for damages in the form of payment of a sum of money against the Plaintiff amounting to Rp. 76,779,600.00-(seventy-six million seven hundred seventy-nine thousand six hundred rupiah). According to the author of the damages applied by the Judge including the category of compensation for losses in the form of damages for damages (schaden).

Keywords : *Unlawful Acts, Financing Companies, Forced Withdrawal of Fiduciary Objects.*