

**ANALISIS YURIDIS TERHADAP PERBUATAN MELAWAN HUKUM DALAM
EKSEKUSI OBJEK JAMINAN FIDUSIA**

(Studi Putusan Nomor 163/Pdt.G.S/2023/PN Plg)

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ABSTRAK

Penelitian ini menganalisis perbuatan melawan hukum dalam eksekusi objek jaminan fidusia berdasarkan Putusan Pengadilan Negeri Palembang Nomor 163/Pdt.G.S/2023/PN Plg. Penelitian ini bertujuan untuk menganalisis pertimbangan hukum hakim dalam mengkualifikasikan kriteria perbuatan melawan hukum yang dilakukan oleh kreditur terhadap debitur serta pertimbangan hakim dalam mengabulkan besaran ganti kerugian akibat perbuatan tersebut. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan undang-undang, pendekatan konseptual, dan pendekatan kasus dengan spesifikasi penelitian preskriptif analitis. Data bersumber dari data sekunder. Metode pengumpulan data dilakukan dengan studi kepustakaan, dengan menggunakan metode analisis normatif kualitatif.

Berdasarkan hasil penelitian dan pembahasan, maka dapat disimpulkan bahwa Hakim belum secara jelas mempertimbangkan kriterium perbuatan melawan hukum yang dilakukan oleh tergugat. Penulis berpendapat bahwa perbuatan Tergugat memenuhi kriterium melanggar hak subyektif orang lain berupa melakukan eksekusi jaminan fidusia secara paksa di jalan raya dan bertentangan dengan kewajiban hukum sendiri yaitu melanggar ketentuan Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 tentang Eksekusi Jaminan Fidusia. Majelis hakim juga belum secara jelas mempertimbangkan syarat-syarat mengajukan tuntutan ganti rugi sesuai Pasal 1365 KUHPerdara, dimana Penggugat mengklaim kerugian materiil berupa ditariknya kendaraan yang menjadi objek jaminan fidusia dan kerugian sebesar Rp. 101.700.000.- (seratus satu juta tujuh ratus ribu rupiah) serta pembayaran angsuran yang tertunggak selama 5 bulan ditambah denda keterlambatan sebesar Rp. 22.569.000.- (dua puluh dua juta lima ratus enam puluh sembilan ribu rupiah), sehingga muncul hubungan kausal antara kerugian penggugat dengan tindakan tergugat. Majelis hakim juga belum menjelaskan mengenai tuntutan uang paksa (*dwangsom*) yang tidak dikabulkan.

Kata kunci : Eksekusi Jaminan Fidusia, Ganti Kerugian, Perbuatan Melawan Hukum.

***Juridical Analysis of Unlawful Acts in the Execution of Fiduciary Security Objects
(A Study of Court Decision Number 163/Pdt.G.S/2023/PN Plg)***

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ABSTRACT

This research analyzes unlawful acts in the execution of fiduciary collateral objects based on the Decision of the Palembang District Court Number 163/Pdt.G.S/2023/PN Plg. The study aims to examine the judge's legal considerations in qualifying the criteria for unlawful acts committed by the creditor against the debtor, as well as the judge's considerations in granting the amount of compensation resulting from such acts. This research uses a normative juridical method with a statutory approach, conceptual approach, and case approach, with a prescriptive analytical research specification. The data used is secondary data. Data collection was conducted through literature study, using qualitative normative analysis.

Based on the research findings and discussion, it can be concluded that the judge has not clearly considered the criteria of the unlawful act committed by the defendant. The author is of the opinion that the defendant's actions meet the criterion of violating another person's subjective rights by forcibly executing the fiduciary collateral on a public road and contradicting their own legal obligations, namely violating the Constitutional Court Decision Number 18/PUU-XVII/2019 concerning Fiduciary Collateral Execution. The panel of judges also did not clearly consider the requirements for filing a compensation claim in accordance with Article 1365 of the Indonesian Civil Code, in which the plaintiff claimed material losses due to the repossession of the vehicle that was the object of the fiduciary collateral and damages amounting to IDR 101,700,000 (one hundred one million seven hundred thousand rupiahs), as well as overdue installment payments for five months plus a late payment penalty of IDR 22,569,000 (twenty-two million five hundred sixty-nine thousand rupiahs), thereby establishing a causal relationship between the plaintiff's losses and the defendant's actions. The panel of judges also did not provide an explanation regarding the claim for coercive money (dwangsom) which was not granted.

Keywords: Compensation, Fiduciary Security Execution, Unlawful Act.