

ABSTRAK

Penjualan objek jaminan fidusia oleh debitur tanpa persetujuan kreditur masih sering terjadi dalam praktik pembiayaan konsumen dan menimbulkan kerugian bagi kreditur karena hilangnya jaminan sebagai alat pelunasan piutang apabila terjadi wanprestasi. Secara normatif, Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia telah mengatur kewajiban pendaftaran jaminan fidusia, asas publisitas, serta larangan pengalihan objek jaminan fidusia tanpa persetujuan kreditur sebagaimana diatur dalam Pasal 36. Namun secara empiris, praktik di lapangan menunjukkan masih adanya penyimpangan, yang disebabkan oleh kurangnya pemahaman debitur, ketidaktahuan pihak ketiga terhadap status jaminan fidusia, serta lemahnya pengawasan dari lembaga pembiayaan. Permasalahan dalam penelitian ini terkait mekanisme perlindungan hukum kreditur dalam hal terjadinya penjualan objek jaminan fidusia oleh debitur dan proses penyelesaian sengketa antara pihak-pihak yang terlibat dalam penjualan objek yang masih berstatus sebagai jaminan fidusia? Penelitian ini bertujuan untuk menganalisis bentuk perlindungan hukum bagi kreditur serta mekanisme penyelesaian sengketa atas penjualan objek jaminan fidusia oleh debitur. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual melalui kajian literatur, doktrin, serta putusan pengadilan yang relevan. Hasil penelitian menunjukkan bahwa perlindungan hukum kreditur terdiri atas perlindungan preventif dan represif. Perlindungan preventif diwujudkan melalui pembuatan akta jaminan fidusia dan pendaftaran secara elektronik, sedangkan perlindungan represif dilakukan melalui gugatan wanprestasi, gugatan perbuatan melawan hukum, serta penerapan sanksi pidana berdasarkan Pasal 36 Undang-Undang Jaminan Fidusia. Namun demikian, hambatan tetap muncul pada tahap eksekusi objek jaminan fidusia, khususnya setelah Putusan Mahkamah Konstitusi yang mensyaratkan adanya penetapan pengadilan. Oleh karena itu, diperlukan optimalisasi sistem pendaftaran fidusia, peningkatan edukasi hukum kepada debitur, serta penguatan pengawasan lembaga pembiayaan guna mencegah terjadinya pengalihan objek jaminan fidusia secara melawan hukum.

Kata Kunci: Jaminan Fidusia; Perlindungan Hukum; Perbuatan Melawan Hukum.

ABSTRACT

The sale of fiduciary collateral objects by debtors without the consent of creditors still frequently occurs in consumer financing practices and causes losses to creditors due to the loss of collateral as a means of debt repayment when default occurs. Normatively, Law Number 42 of 1999 concerning Fiduciary Security has regulated the obligation to register fiduciary security, the principle of publicity, and the prohibition on transferring fiduciary collateral objects without the creditor's consent as stipulated in Article 36. However, empirically, practices in the field show that deviations still occur, caused by debtors' lack of understanding, third parties' ignorance of the fiduciary security status, and weak supervision by financing institutions. The problems examined in this research relate to the mechanism of legal protection for creditors in the event of the sale of fiduciary collateral objects by debtors and the process of dispute resolution between the parties involved in the sale of objects that are still subject to fiduciary security. This study aims to analyze the forms of legal protection for creditors and the mechanisms for resolving disputes arising from the sale of fiduciary collateral objects by debtors. The research method used is normative juridical research with a statutory approach and a conceptual approach through the study of legislation, literature, legal doctrines, and relevant court decisions. The results of the study indicate that legal protection for creditors consists of preventive and repressive protection. Preventive protection is realized through the execution of fiduciary deeds and electronic registration, while repressive protection is carried out through claims for default, claims based on unlawful acts, and the application of criminal sanctions under Article 36 of the Fiduciary Security Law. Nevertheless, obstacles remain at the stage of executing fiduciary collateral objects, particularly following the Constitutional Court's decision requiring a court determination. Therefore, it is necessary to optimize the fiduciary registration system, enhance legal education for debtors, and strengthen the supervision of financing institutions to prevent the unlawful transfer of fiduciary collateral objects.

Keywords: Fiduciary Security; Legal Protection; Unlawful Act