

ABSTRAK

Masyarakat saat ini cenderung menggunakan kendaraan pribadi daripada menggunakan jasa transportasi umum. Untuk memenuhi kebutuhan konsumtif tersebut masyarakat memilih jasa perbankan sebagai pemenuhan kebutuhan. Hal itu perlu diimbangi dengan ketentuan hukum yang jelas dan lengkap mengenai lembaga jaminan. Undang-undang nomor 42 Tahun 1999 tentang Jaminan Fidusia sangat berperan bagi dunia perbankan, adapun tahapan pengikatan jaminan sebagai berikut: Pembuatan Perjanjian kredit, Pembuatan Akta Jaminan Fidusia, dan Pendaftaran jaminan fidusia. Praktiknya perjanjian kredit berjalan tidak sesuai dengan keinginan, diantaranya objek yang dijaminan debitur kepada kreditur untuk jaminan hutang telah musnah. Sebab musnahnya objek jaminan fidusia dibedakan menjadi 2 (dua) yaitu: (1) disebabkan oleh kesalahan debitur artinya objek jaminan fidusia tersebut hilang dari penguasaannya akibat dari kecurangan atau itikad tidak baik dari debitur. (2) kedua disebabkan bukan kesalahan debitur yang artinya debitur telah menjaga objek jaminan fidusia tersebut dengan baik, tetapi karena sesuatu hal tertentu membuat objek jaminan tersebut musnah.

Penelitian secara yuridis normatif ini membahas tentang tanggungjawab debitur terhadap musnahnya objek jaminan benda bergerak dalam suatu perjanjian kredit perbankan menurut Undang-undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia, juga membahas tentang akibat hukum bagi kreditur bank atas musnahnya objek jaminan benda bergerak.

Hasil penelitian ini menunjukkan bahwa tanggungjawab debitur sebagai pemberi fidusia atas musnahnya objek jaminan fidusia dapat dibagi menjadi 2 (dua) yaitu (a) Tanggungjawab secara perdata yaitu dengan cara mengganti kerugian kepada kreditur atas musnahnya objek jaminan fidusia, sesuai dengan Pasal 1365 KUHPperdata, dan Pasal 1367 KUHPperdata. (b) Tanggungjawab secara pidana sesuai Pasal 372 KUHP, karena Undang-undang Jaminan Fidusia belum mengatur tentang sanksi debitur yang menghilangkan objek jaminan, yang diatur hanya tentang pengalihan, penggadaian dan tentang menyewakan tanpa ijin debitur. Secara umum debitur bertanggungjawab mengembalikan pinjaman kredit kepada kreditur, walaupun objek jaminan fidusia tersebut diasuransikan maupun tidak diasuransikan. Dengan telah diasuransikan objek jaminan fidusia tersebut tidak serta merta menghapuskan tanggungjawab debitur. Akibat hukum bagi kreditur bank atas musnahnya objek jaminan fidusia adalah melemahnya kedudukan kreditur bank dalam hal pelunasan hutang dari debitur. Hal ini terjadi karena tidak adanya perlindungan dari Undang-undang Jaminan Fidusia yang diberikan kepada kreditur bank. Kreditur bank semula adalah sebagai kreditur preferent dengan musnahnya objek jaminan berubah menjadi kreditur konkuren. Sehingga bank hanya mengandalkan jaminan umum yang tertuang pada Pasal 1131 KUHPperdata dan Pasal 1132 KUHPperdata.

Kata Kunci : Tanggungjawab, musnahnya objek jaminan, akibat hukum

ABSTRACT

Today's society tends to use private vehicles rather than using public transportation. To fulfill that need, they refer to banking service, Utilizing the banking service should require clear and complete legal regulations, particularly concerning security institution. Law no. 42/1999 regarding Fiduciary Transfer of Ownership plays an important role in the word of banking. The binding of the security starts with credit agreement, fiduciary transfer of ownership agreement, and fiduciary transfer of ownership registration. In practice, the credit agreement might not run as planned as, for instance, the object that has become the security is gone or destroyed. The causes of perished fiduciary transfer of ownership are due to the wrong doings committed by the debtor, meaning that it disappears due to some misconduct or the unavailability of good deed from the debtor; and the unintentional deeds from the debtor, in which he or she might have tried to keep the fiduciary transfer of ownership, yet there are other factors contributing to the disappearance of the security. This juridical normative study concerned with the debtor's responsibility toward the disappearance of the security of moving object in the credit agreement according to law No. 42/1999 regarding fiduciary transfer of ownership and the legal penalties for the bank creditor upon the disappearance of the security of moving objects. The results of the study revealed that there were two kinds of responsibility the debtor held as the contributor of fiduciary transfer of ownership, i.e., a) civil liability, in which the debtor indemnifies the creditor upon the disappearance of fiduciary transfer of ownership in accordance with Article 1365 and Article 1367 of Civil Law Act, b) crime penalty in line with Article 327 of Criminal Law Act as the Law of Fiduciary transfer of ownership does not contain the debtor's sanction who destroys the security object. The law only regulates the acquisition, mortgage, and leasing without the debtor's consent. In general, the debtor is accountable to restore the credit loan to the creditor, whether the fiduciary transfer of ownership is insured or not. However, insuring the fiduciary transfer of ownership does not remove the responsibility of the debtor. The legal consequence the creditor endures upon the disappearance of the fiduciary transfer of ownership is the weakening of the bank creditor's position in terms debtor's settlement of the debt. This case happens there is no legal protection for fiduciary transfer of ownership given to the bank creditors. The bank creditors who were preferent creditors at the beginning would become concurrent creditors due to the disappearance of the security object. Therefore, the banks only rely on the general securities stated in Article 1131 and Article 1132 of Civil Law Act.

Key words : responsibility, the disappearance of securities, legal penalties.