ABSTRAK

Efektivitas Penegakan Hukum Terhadap Penarikan Paksa Objek Jaminan Fidusia Yang Berujung Tindak Pidana

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Penarikan paksa objek jaminan fidusia oleh perusahaan pembiayaan atau pihak ketiga (*debt collector*) merupakan fenomena yang masih sering terjadi di masyarakat dan kerap menimbulkan persoalan hukum. Meskipun Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia telah memberikan hak eksekutorial kepada kreditur, pelaksanaannya tidak dapat dilakukan secara sepihak tanpa memperhatikan prosedur hukum yang berlaku. Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 telah mempertegas bahwa eksekusi objek fidusia hanya dapat dilakukan apabila terdapat kesepakatan mengenai wanprestasi dan penyerahan sukarela dari debitur, atau melalui mekanisme peradilan apabila terjadi sengketa. Dalam praktiknya, penarikan paksa sering dilakukan dengan ancaman, intimidasi, atau kekerasan yang berpotensi memenuhi unsur tindak pidana sebagaimana diatur dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Penelitian ini bertujuan untuk menganalisis pengaturan hukum mengenai penarikan dan eksekusi objek jaminan fidusia menurut Undang-Undang Nomor 42 Tahun 1999 dan Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019, mengkaji praktik penarikan paksa objek jaminan fidusia dan menilai efektivitas penegakan hukum terhadap penarikan paksa objek jaminan fidusia.

Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan kasus (*case approach*). Bahan hukum yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan dan putusan pengadilan, serta bahan hukum sekunder berupa literatur dan jurnal ilmiah yang relevan.

Hasil penelitian menunjukkan bahwa secara normatif pengaturan hukum mengenai eksekusi jaminan fidusia telah cukup jelas dan memberikan perlindungan hukum bagi kreditur maupun debitur. Namun, dalam praktiknya masih terjadi penarikan paksa yang melampaui prosedur hukum dan berpotensi memenuhi unsur tindak pidana seperti pemerasan, pengancaman, perampasan, penganiayaan, dan perusakan barang. Efektivitas penegakan hukum terhadap praktik tersebut belum optimal karena masih terdapat inkonsistensi dalam penerapan hukum oleh aparat penegak hukum, lemahnya pengawasan terhadap perusahaan pembiayaan, serta rendahnya kesadaran hukum masyarakat. Oleh karena itu, diperlukan penguatan regulasi teknis, konsistensi penegakan hukum, dan peningkatan literasi hukum guna mewujudkan kepastian dan keadilan hukum dalam praktik jaminan fidusia.

Kata Kunci: Jaminan Fidusia, Penarikan Paksa, Tindak Pidana, Efektivitas Penegakan Hukum;

ABSTRACT

Effectiveness of Law Enforcement Against Forced Withdrawal of Fiduciary Guarantee Objects Leading to Criminal Acts

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Forced seizure of fiduciary collateral by financing companies or third parties (debt collectors) is a common occurrence in society and frequently raises legal issues. Although Law Number 42 of 1999 concerning Fiduciary Collateral grants creditors the right of execution, its enforcement cannot be carried out unilaterally without regard to applicable legal procedures. Constitutional Court Decision Number 18/PUU-XVII/2019 has emphasized that the execution of fiduciary collateral can only be carried out if there is an agreement regarding default and voluntary surrender by the debtor, or through judicial mechanisms in the event of a dispute. In practice, forced seizures are often carried out through threats, intimidation, or violence, potentially fulfilling the elements of a criminal offense as stipulated in Law Number 1 of 2023 concerning the Criminal Code. This study aims to analyze the legal provisions regarding the withdrawal and execution of fiduciary collateral objects according to Law Number 42 of 1999 and Constitutional Court Decision Number 18/PUU-XVII/2019. It examines the practice of forced withdrawal of fiduciary collateral objects, and assesses the effectiveness of law enforcement regarding forced withdrawal of fiduciary collateral objects.

The research method used is normative legal research with a statute approach, a conceptual approach, and a case approach. The legal materials used include primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of relevant literature and scientific journals.

The results indicate that, normatively, the legal provisions regarding the execution of fiduciary collateral are quite clear and provide legal protection for both creditors and debtors. However, in practice, forced withdrawals still occur that exceed legal procedures and have the potential to meet the elements of criminal acts such as extortion, threats, confiscation, assault, and destruction of property. The effectiveness of law enforcement against these practices is less than optimal due to inconsistencies in law enforcement enforcement, weak oversight of financing companies, and low public legal awareness. Therefore, strengthening technical regulations, consistent law enforcement, and improving legal literacy are necessary to ensure legal certainty and justice in fiduciary guarantee practices.

Keywords: Fiduciary Guarantee, Forced Withdrawal, Criminal Act, Effectiveness of Law Enforcement;