RINGKASAN

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TANGGUNG JAWAB PEMEGANG *LESSOR* ATAS KERUGIAN DEBITUR AKIBAT PENARIKAN OBJEK JAMINAN FIDUSIA SECARA PAKSA (Studi Putusan Nomor 35/Pdt.G.S/2021/PN.Pdg).

(Arif Rahman, S.H., M.H dan Dr. Nurarafah, S.H., M.H.)

Jaminan fidusia berdasarkan Undang-Undang Nomor 42 Tahun 1999 merupakan penyerahan hak milik secara kepercayaan. Seiring pertumbuhan ekonomi *leasing* saat ini merupakan perusahaan pembiayaan yang menjadi pilihan solutif bagi masyarakat. Tetapi pertumbuhan perusahaan *leasing* yang begitu pesat tersebut memunculkan beberapa kendala seperti adanya perusahaan *leasing* yang tidak mendaftarkan objek jaminan fidusianya sehingga saat terjadi *wanprestasi* berupa kredit macet oleh *lesse*, *lessor* bertindak sewenang-wenang dan melakukan penarikan paksa kendaraan yang dapat membahayakan *lesse*. Sebagaimana dalam Putusan Nomor 35/Pdt.G.S/2021/PN Pdg terkait eksekusi jaminan fidusia yang dilakukan secara paksa oleh pihak ketiga tanpa memperlihatkan surat penarikan yang dikeluarkan oleh Pengadilan Negeri Tinggi.

Penelitian ini bertujuan untuk mengetahui dan menjelaskan tentang dampak dari tindakan penarikan paksa objek jaminan fidusia terhadap debitur dan dasar pertimbangan hakim terhadap putusan Nomor 35/Pdt.G.S/2021/PN.Pdg. Penelitian ini menggunakan jenis penelitian hukum normatif, yaitu penelitian dengan cara melakukan studi pustaka. Pendekatan penelitian dilakukan dengan pendekatan perundang-undangan (*statue approach*) dan sifat penelitian ini adalah deskriptif yang dilakukan dengan cara menggambarkan tentang eksekusi jaminan fidusia.

Dampak dari tindakan penarikan paksa objek jaminan fidusia dapat menimbulkan kerugian terhadap debitur, yang mana dalam hal ini debitur tidak mendapatkan imbalan atas prestasi angsuran kredit yang telah dilakukan dan debitur tidak dapat memperoleh perlindungan hukum yang jelas. Adapun dasar pertimbangan hakim terhadap putusan Nomor 35/Pdt.G.S/2021/PN.Pdg, yaitu hakim sudah tepat dalam mempertimbangkan dasar-dasar hukum beserta bukti-bukti yang telah diajukan dalam persidangan. Sebagaimana berdasarkan putusan tersebut, dalil-dalil gugatan yang termuat dalam posita gugatan maupun tuntutan yang termuat dalam petitum gugatan menurut majelis adalah berdasarkan hukum dan tidak bertentangan dengan hukum, maka sepatutnya untuk dikabulkan sebagian dengan tanpa hadirnya tergugat (verstek).

Kepada *lessor* diharapkan dalam penarikan objek jaminan fidusia yang menggunakan jasa *debt collector* agar bisa memperhatikan ketentuan peraturan perundang-undangan seperti diberikan sertifikat jaminan fidusia yang orisinil agar bisa diperlihatkan kepada pihak debitur saat penarikan objek jaminan fidusia.

Kata Kunci : *Pemegang Lessor, Debitur, Objek Jaminan Fidusia*.

SUMMARY

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LESSOR HOLDERS' RESPONSIBILITY FOR DEBTOR LOSSES DUE TO FORCED WITHDRAWAL OF THE OBJECT OF FIDUCIARY SECURITY (Study Decision Number 35/Pdt.G.S/2021/PN.Pdg)

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Fiduciary guarantees based on Law Number 42 of 1999 constitute the transfer of property rights in trust. As the economic growth grows, leasing is currently a financing company that has become a solution choice for the community. However, the rapid growth of leasing companies has given rise to several obstacles, such as the existence of leasing companies that do not register their fiduciary collateral objects, so that when a default occurs in the form of bad credit by the lessee, the lessor acts arbitrarily and forcibly withdraws the vehicle which can endanger the lessee. As in Decision Number 35/Pdt.G.S/2021/PN Pdg regarding the forced execution of fiduciary guarantees by a third party without showing a withdrawal letter issued by the High District Court.

This research aims to find out and explain the impact of forced withdrawal of fiduciary collateral objects on debtors and the basis for the judge's consideration of decision Number 35/Pdt.G.S/2021/PN.Pdg. This research uses a type of normative legal research, namely research by conducting a literature study. The research approach was carried out using a statutory approach and the nature of this research was descriptive which was carried out by describing the execution of fiduciary guarantees.

Impact of forced withdrawal of fiduciary collateral objects can cause losses to the debtor, in which case the debtor does not receive compensation for the credit installment achievements that have been made and the debtor cannot obtain clear legal protection. The basis for the judge's consideration of decision Number 35/Pdt.G.S/2021/PN.Pdg, namely the judge was correct in considering the legal bases along with the evidence that had been presented at the trial. As based on the decision, according to the panel, the lawsuit arguments contained in the lawsuit posita and the demands contained in the lawsuit petitum are based on law and do not conflict with the law, so they should be granted in part without the presence of the defendant (verstek).

Lessors are expected to withdraw fiduciary collateral objects using debt collector services to pay attention to statutory provisions such as being given an original fiduciary guarantee certificate so that it can be shown to the debtor when withdrawing the fiduciary collateral object.

Keywords: Lessor Holder, Debtor, Fiduciary Security Object.