ABSTRAK

TINJAUAN YURIDIS KEKUATAN HUKUM TERHADAP EKSEKUSI HAK TANGGUNGAN SEBELUM ADANYA PUTUSAN PENGADILAN PADA BANK UMUM SYARIAH

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Jaminan kebendaan khususnya Hak Tanggungan, sebagai perlindungan hukum bagi kreditor dari risiko wanprestasi nasabah. Meskipun perbankan syariah berlandaskan prinsip-prinsip syariah praktik jaminan tetap mengacu pada hukum nasional, termasuk penggunaan Sertifikat Hak Tanggungan (SHT) yang memiliki kekuatan eksekutorial. Dalam praktiknya, seringkali timbul sengketa terkait eksekusi Hak Tanggungan sebelum adanya putusan pengadilan, seperti yang terjadi pada Putusan Nomor 6185/Pdt.G/2023/PA.Tgrs. Dalam hal ini, perlu dikaji mengenai kekuatan hukum terhadap eksekusi hak tanggungan sebelum adanya putusan pengadilan pada bank umum syariah dan akibat hukum terhadap eksekusi hak tanggungan sebelum adanya putusan pengadilan pada bank umum syariah.

Metode Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan masalah dilakukan dengan pendekatan kualitatif, yang bertumpu pada kajian terhadap peraturan perundang-undangan, literatur hukum, dan jurnal ilmiah terkait hak tanggungan. Sumber data yang berasal dari bahan hukum primer,sekunder, dan tersier, serta dilengkapi dengan metode pengumpulan data yang berasal dari studi kepustakaan, dokumen, dan melalui wawancara. Metode pengolahan data terdiri dari pemeriksaan data, klasifikasi data, dan penyusunan data.

Hasil penelitian menunjukkan bahwa pelaksanaan eksekusi hak tanggungan tanpa putusan pengadilan *(parate eksekusi)* secara hukum sah berdasarkan Pasal 6 Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan, namun eksekusi tidak dapat dilakukan jika terdapat gugatan dari pihak lain terkait kepemilikan objek jaminan maka ketua pengadilan dapat menunda eksekusi, sebagaimana diatur dalam Pasal 34 ayat (1) PMK Nomor 122 Tahun 2023 dan SEMA Nomor 5 Tahun 2021, meskipun dalam kasus Putusan Nomor 6185/Pdt.G/2023/PA.Tgrs, hakim memutuskan bahwa tindakan bank syariah tidak melanggar hukum karena didasarkan pada Pasal 6 UUHT yang dibuktikan dengan SKMHT dan APHT, serta menekankan pentingnya prinsip keadilan dan menghindari kezaliman sesuai prinsip syariah.

Kata Kunci : Eksekusi, Hak Tanggungan, Bank Syariah.

ABSTRACT

JURIDICAL REVIEW OF THE LEGAL FORCE OF MORTGAGE EXECUTION BEFORE A COURT DECISION IN ISLAMIC COMMERCIAL BANKS

By

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The collateral guarantee, particularly the Mortgage Right, serves as legal protection for creditors against the risk of default by debtors. Although Islamic banking is based on Sharia principles, the practice of collateral still refers to national law, including the use of the Mortgage Right Certificate (SHT), which has executive power. In practice, disputes often arise regarding the execution of Mortgage Rights before a court ruling, as seen in Decision Number 6185/Pdt.G/2023/PA.Tgrs. In this case, it is necessary to examine the legal force of executing mortgage rights before a court ruling in Islamic commercial banks and the legal consequences of executing mortgage rights before a court ruling in Islamic commercial banks.

This research employs normative legal research methods with a qualitative problem approach, focusing on the study of laws and regulations, legal literature, and scientific journals related to mortgage rights. The data sources consist of primary, secondary, and tertiary legal materials, supplemented by data collection methods from literature studies, documents, and interviews. The data processing methods include data examination, data classification, and data compilation.

The research findings indicate that the execution of mortgage rights without a court ruling (parate executie) is legally valid based on Article 6 of Law Number 4 of 1996 concerning Mortgage Rights. However, execution cannot be carried out if there is a lawsuit from another party regarding the ownership of the collateral object, in which case the head of the court may postpone the execution, as regulated in Article 34 paragraph (1) of PMK Number 122 of 2023 and SEMA Number 5 of 2021. In the case of Decision Number 6185/Pdt.G/2023/PA.Tgrs, the judge ruled that the actions of the Islamic bank did not violate the law because they were based on Article 6 of the Mortgage Rights Law, as evidenced by the SKMHT and APHT, and emphasized the importance of the principles of justice and avoiding oppression in accordance with Sharia principles.

Keywords: *Execution, Mortgage Rights, Islamic Banking.*