

ABSTRAK

LARANGAN TERHADAP KLAUSUL MILIK BEDING PADA PERJANJIAN JAMINAN DALAM PENYELESAIAN WANPRESTASI UTANG PIUTANG

(STUDI PUTUSAN NOMOR 56/PDT.G/2022/PN SBY, PUTUSAN NOMOR
563/PDT/2022/PT SBY DAN PUTUSAN NOMOR 4263 K/PDT/2023)

Oleh:

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Perjanjian utang piutang sering memuat klausul *milik beding* sebagai jaminan pelunasan utang debitur, namun pelaksanaannya menimbulkan persoalan ketika debitur wanprestasi karena memberi hak kepemilikan langsung kepada kreditur. Oleh karena itu, penelitian ini membahas kedudukan klausul *milik beding* serta pertimbangan hakim dalam memutus perkara yang memuat klausul tersebut.

Penelitian ini menggunakan jenis penelitian hukum normatif dengan tipe penelitian deskriptif dan pendekatan yuridis normatif. Data yang digunakan adalah data sekunder, bersumber dari bahan hukum primer, sekunder dan tersier. Metode pengumpulan data dalam penelitian ini dilakukan melalui studi kepustakaan serta studi dokumen berupa putusan pengadilan. Pengolahan data dilakukan dengan tiga tahap yaitu pemeriksaan data, sistematisasi data, dan deskripsi data yang kemudian dianalisis secara kualitatif.

Hasil penelitian menunjukkan bahwa klausul *milik beding* tidak diatur secara eksplisit, tetapi secara tersirat dilarang dalam ketentuan jaminan, seperti Pasal 1154 dan Pasal 1178 KUH Perdata serta Pasal 12 Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan, sehingga batal demi hukum. Larangan ini bertujuan melindungi debitur apabila nilai jaminan melebihi nilai utang. Namun, klausul tersebut sering dianggap sah jika didasarkan pada asas kebebasan berkontrak (Pasal 1338 KUH Perdata). Penelitian ini menemukan bahwa penggunaan klausul milik beding menciptakan dualisme hukum karena meskipun secara hukum dilarang, tetapi dalam praktik klaimnya dilandaskan oleh asas kebebasan berkontrak. Dalam penegakan hukumnya, Putusan Nomor 563/Pdt/2022/PT Sby dan Putusan Nomor 4263 K/Pdt/2023 secara konsisten membatalkan penggunaan klausul ini dengan pertimbangan melindungi debitur dari kesewenang-wenangan.

Kata Kunci: *Jaminan, Klausul Milik Beding, Wanprestasi*

ABSTRACT

PROHIBITION OF BEDING'S PROPRIETARY CLAUSE IN THE GUARANTEE AGREEMENT IN THE SETTLEMENT OF DEFAULTS AND DEBTS RECEIVABLES

**(STUDY OF DECISION NUMBER 56/PDT. G/2022/PN SBY, DECISION
NUMBER 563/PDT/2022/PT SBY AND DECISION NUMBER 4263
K/PDT/2023)**

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Debt and receivables agreements often contain clauses belonging to the bedding as a guarantee for the payment of debtors' debts, but its implementation raises problems when the debtor defaults because it gives direct ownership rights to the creditors. Therefore, this study discusses the position of the bedding clause and the judge's consideration in deciding cases containing the clause.

This study uses a type of normative legal research with a descriptive research type and a normative juridical approach. The data used is secondary data, sourced from primary, secondary and tertiary legal materials. The data collection method in this study was carried out through literature studies and document studies in the form of court decisions. Data processing is carried out in three stages, namely data analysis, data systematization, and data description, which is then analyzed qualitatively.

The results of the study show that the clause belonging to bedding is not explicitly regulated, but is implicitly prohibited in the guarantee provisions, such as Article 1154 and Article 1178 of the Civil Code and Article 12 of Law Number 4 of 1996 concerning the Rights of Dependents, so that it is null and void. This prohibition aims to protect the debtor if the value of the collateral exceeds the value of the debt. However, such clauses are often considered valid if they are based on the principle of freedom of contract (Article 1338 of the Civil Code). This study found that the use of clauses belonging to bedding creates legal dualism because although it is legally prohibited, in practice the claim is based on the principle of freedom of contract. In law enforcement, Decision Number 563/Pdt/2022/PT Sby and Decision Number 4263 K/Pdt/2023 consistently cancel the use of this clause with the consideration of protecting debtors from arbitrariness.

Keywords: Clauses of Beding's Property, Default, Guarantees