

## ABSTRAK

### PERBUATAN MELAWAN HUKUM (PMH) KREDITUR DALAM PENENTUAN JUMLAH SISA UTANG PADA LELANG EKSEKUSI HAK TANGGUNGAN (Studi Putusan Nomor 78/Pdt.G/2024/PN Tjk juncto Putusan Nomor 120/PDT/2024/PT TJK)

Oleh

**BAGUS INDRAWAN**

Eksekusi Hak Tanggungan melalui parate eksekusi memberikan hak istimewa kepada kreditur, namun pelaksanaannya kerap memicu sengketa Perbuatan Melawan Hukum (PMH) akibat pengabaian transparansi dan kepatutan. Permasalahan ini tercermin dalam Putusan Nomor 120/PDT/2024/PT TJK, di mana debitur menggugat bank atas penentuan sisa utang miliaran rupiah secara sepihak menjelang lelang. Penelitian ini bertujuan untuk menganalisis pemenuhan unsur PMH dalam pelaksanaan lelang tersebut, mengevaluasi kesesuaian pertimbangan hakim terhadap Prinsip Kehati-hatian dan Itikad Baik Objektif, serta mengkaji akibat hukum putusan tersebut terhadap keadilan para pihak.

Jenis penelitian ini adalah penelitian hukum normatif dengan tipe penelitian deskriptif. Pendekatan yang digunakan meliputi pendekatan perundang-undangan (*statute approach*) dan pendekatan kasus (*case approach*). Data penelitian bersumber dari data sekunder yang dikumpulkan melalui studi kepustakaan dan penelaahan dokumen putusan. Seluruh data tersebut kemudian dianalisis secara kualitatif untuk menghasilkan kesimpulan yang preskriptif.

Hasil penelitian menunjukkan bahwa meskipun lelang memenuhi syarat administratif PMK Nomor 122 Tahun 2023, tindakan bank memaksakan angka utang secara materiil merupakan PMH karena mencederai asas Itikad Baik. Pertimbangan hakim tingkat banding dinilai terjebak pada formalisme yuridis yang mereduksi makna Prinsip Kehati-hatian sebatas formalitas surat somasi, sehingga gagal menguji keadilan substantif terkait anomali matematis sisa hasil lelang. Akibat hukum putusan ini sangat tidak seimbang; memosisikan debitur pada kejatuhan ganda (kehilangan aset dan terikat utang sepihak), menciptakan preseden buruk bagi ketertutupan perbankan, namun di sisi lain berhasil memberikan perlindungan hukum dan kepastian bagi pemenang lelang sebagai pembeli beritikad baik.

**Kata Kunci:** Eksekusi Lelang, Perbuatan Melawan Hukum, Prinsip Kehati-hatian

## **ABSTRACT**

***CREDITOR'S UNLAWFUL ACT (PMH) IN DETERMINING THE  
REMAINING DEBT AMOUNT IN THE  
MORTGAGE EXECUTION AUCTION  
(Study of Decision Number 78/Pdt.G/2024/PN Tjk juncto Decision Number  
120/PDT/2024/PT TJK)  
By***

**BAGUS INDRAWAN**

*The execution of Mortgage Rights (Hak Tanggungan) through parate executie grants privileges to creditors, yet its implementation frequently triggers Unlawful Act (Perbuatan Melawan Hukum/PMH) disputes due to the disregard for transparency and fairness. This issue is reflected in Decision Number 120/PDT/2024/PT TJK, where a debtor sued a bank for unilaterally determining the remaining debt of billions of rupiah right before an auction. This research aims to analyze the fulfillment of the Unlawful Act elements in the auction's execution, evaluate the alignment of the judge's legal considerations with the Prudential Principle and Objective Good Faith, and assess the legal consequences of the decision regarding justice for the parties.*

*This research is a normative legal study employing a descriptive research type. The approaches utilized include the statute approach and the case approach. The research relies on secondary data collected through library research and the examination of court decision documents. All of the gathered data is then analyzed qualitatively to draw prescriptive conclusions.*

*The results indicate that although the auction met the administrative requirements under the Minister of Finance Regulation (PMK) Number 122 of 2023, the bank's action of enforcing an aggregated debt figure materially constitutes an Unlawful Act as it violates the principle of Good Faith. The appellate judge's consideration is deemed trapped in legal formalism, reducing the essence of the Prudential Principle to the mere formality of a warning letter, thus failing to examine substantive justice concerning the mathematical anomaly of the remaining auction proceeds. The legal consequence of this decision is highly disproportionate: it subjects the debtor to a double downfall (loss of assets and bound by a unilateral debt) and creates a bad precedent for banking opacity, although, on the other hand, it successfully provides legal protection and absolute certainty for the auction winner as a purchaser in good faith.*

***Keywords: Auction Execution, Prudential Principle, Unlawful Act.***