HAK ATAS LINGKUNGAN HIDUP SEHAT DAN HAK ATAS TANAH SERTA TEMPAT TINGGAL LAYAK DALAM PENILAIAN
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Ariel Ebenhaizer Tandian, Dr. Mahaarum Kusuma P, S.H., M.A., M.Phil.
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THE RIGHT TO A HEALTHY ENVIRONMENT AND THE RIGHT TO LAND AND ADEQUATE HOUSING IN THE CREDITWORTHINESS ASSESSMENT OF CORPORATE DEBTORS AT BANK MANDIRI

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ABSTRACT

This study aims to analyze the urgency of assessing corporate compliance with the right to a healthy environment and the right to land and adequate housing as substantive factors in evaluating the creditworthiness of prospective corporate debtors at Bank Mandiri, as well as to examine mechanisms for integrating such compliance into the Enhanced Due Diligence (EDD) process in corporate credit granting at the bank. This study is motivated by the continuing linkage between bank financing in high-risk sectors and systemic human rights violations.

This research employs a juridical-empirical legal method. Primary data were obtained through in-depth interviews with nine internal respondents from PT Bank Mandiri (Persero) Tbk consisting of policy drafters for internal credit regulations, credit analysts, and relationship managers with tenure ranging from five to fifteen years, conducted online via the Zoom application. Secondary data were collected through library research on legislation, official documents, books, journals, reports, and court decisions. The research applied statutory, conceptual, and analytical approaches, and data were analyzed qualitatively with deductive conclusions.

The study concludes that assessing compliance with the right to a healthy environment and the right to land and adequate housing is imperative and pressing. Empirically, bank financing to high-risk sector corporations continues to generate systemic human rights violations, including cases such as PT Agro Nusa Abadi and oil palm plantations in Central Kalimantan. Juridically and conceptually, this obligation derives from Article 28H paragraph (1) of the 1945 Constitution, human rights and environmental legislation, the prudential principle under the Banking Law, POJK No. 51/POJK.03/2017 on Sustainable Finance, and Presidential Regulation No. 60 of 2023 on the National Strategy on Business and Human Rights, reinforced by the doctrines of financial complicity, unjust enrichment, and the reconstructed 5C principles. Integration into EDD at Bank Mandiri has been partially implemented through ESG/LST and Industry Acceptance Criteria at the acquisition, monitoring, and settlement stages, but remains predominantly risk-based and formal compliance-oriented and has not yet fully adopted a rights-based human rights due diligence approach as mandated by the UN Guiding Principles on Business and Human Rights and Stranas BHAM.

Keywords:

Urgency of Human Rights Compliance, Right to a Healthy Environment, Right to Land and Adequate Housing, Corporate Debtor Creditworthiness Assessment, Enhanced Due Diligence (EDD), Financial Complicity, Sustainable Finance, Bank Mandiri

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HAK ATAS LINGKUNGAN HIDUP SEHAT DAN HAK ATAS TANAH SERTA TEMPAT TINGGAL LAYAK DALAM PENILAIAN KELAYAKAN CALON DEBITUR KORPORASI DI BANK MANDIRI

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INTISARI

Penelitian ini bertujuan untuk menganalisis urgensi penilaian kepatuhan korporasi terhadap hak atas lingkungan hidup yang sehat serta hak atas tanah dan tempat tinggal yang layak sebagai faktor substantif dalam penilaian kelayakan calon debitur korporasi pada Bank Mandiri, serta mengkaji mekanisme integrasi kepatuhan tersebut ke dalam proses Enhanced Due Diligence (EDD) pada pemberian kredit korporasi di bank tersebut. Penelitian ini dilatarbelakangi oleh masih adanya keterkaitan pembiayaan bank pada sektor berisiko tinggi dengan pelanggaran HAM sistemik.

Penelitian ini merupakan penelitian hukum yuridis-empiris. Data primer diperoleh melalui wawancara mendalam terhadap sembilan responden internal PT Bank Mandiri (Persero) Tbk yang terdiri dari pembina ketentuan internal perkreditan, credit analyst, dan relationship manager dengan masa kerja lima hingga lima belas tahun yang dilaksanakan secara daring melalui aplikasi Zoom. Data sekunder diperoleh melalui penelitian kepustakaan terhadap peraturan perundang-undangan, dokumen resmi, buku, jurnal, laporan, serta putusan pengadilan. Pendekatan yang digunakan meliputi pendekatan perundang-undangan, konseptual, dan analisis dengan analisis data secara kualitatif serta penarikan kesimpulan secara deduktif.

Penelitian ini menghasilkan kesimpulan bahwa penilaian kepatuhan terhadap kedua hak tersebut bersifat imperatif dan mendesak. Secara empiris, pembiayaan bank kepada korporasi sektor berisiko tinggi masih berkaitan dengan pelanggaran HAM sistemik, seperti pada kasus PT Agro Nusa Abadi dan perkebunan sawit di Kalimantan Tengah. Secara yuridis dan konseptual, kewajiban tersebut merupakan kelanjutan logis dari Pasal 28H ayat (1) UUD 1945, peraturan perundang-undangan di bidang HAM dan lingkungan hidup, prinsip kehati-hatian dalam UU Perbankan, POJK No. 51/POJK.03/2017 tentang Keuangan Berkelanjutan, serta Perpres No. 60 Tahun 2023 tentang Stranas BHAM yang diperkuat doktrin *financial complicity*, *unjust enrichment*, dan rekonstruksi prinsip 5C. Integrasi kepatuhan tersebut dalam EDD di Bank Mandiri telah terlaksana secara parsial melalui kerangka ESG/LST dan *Industry Acceptance Criteria* pada tahap akuisisi, monitoring, dan penyelesaian kredit, namun masih dominan *risk-based* dan *formal compliance* sehingga belum sepenuhnya beralih ke pendekatan *rights-based human rights due diligence* sebagaimana diamanatkan UNGP dan Stranas BHAM.

Kata Kunci:

Urgensi Kepatuhan HAM, Hak Atas Lingkungan Hidup yang Sehat, Hak Atas Tanah dan Tempat Tinggal yang Layak, Penilaian Kelayakan Debitur Korporasi, Enhanced Due Diligence (EDD), Financial Complicity, Keuangan Berkelanjutan, Bank Mandiri