

KAJIAN YURIDIS TERHADAP TIDAK DICANTUMKANNYA BENTUK HARTA DALAM PERKAWINAN PADA PERJANJIAN KREDIT DAN PERJANJIAN PENJAMINANNYA MENURUT HUKUM DI INDONESIA

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INTISARI

Tujuan penelitian : (1) menemukan dan menganalisis latar belakang tidak dicantumkannya pilihan bentuk harta perkawinan dalam draft aplikasi kredit dan perjanjian penjaminan dalam bisnis perbankan, (2) mengetahui dan menganalisis akibat hukum tidak dicantumkannya pilihan bentuk harta perkawinan dalam dokumen perjanjian kredit dan dokumen perjanjian penjaminan atas Harta Bersama maupun Harta Pribadi, (3) mengetahui dan menganalisis harmonisasi antara hukum jaminan dan hukum harta perkawinan sehingga keduanya dapat melindungi harta suami dan istri yang menikah baik dengan perjanjian kawin maupun tanpa perjanjian kawin.

Penelitian ini adalah penelitian hukum normatif yang didukung dengan data empiris. Penelitian kepustakaan dilakukan dengan mengkaji norma dan asas yang selanjutnya dilengkapi dengan data empiris dari lapangan. Data empiris yang merupakan data primer diperoleh melalui penyebaran kuesioner dan wawancara terhadap responden dan narasumber. Data dianalisis secara kualitatif dan disajikan secara deskriptif untuk menjawab permasalahan.

Hasil penelitian ini : *Pertama*, latar belakang Bank tidak mencantumkan pilihan bentuk harta dalam perkawinan dalam perjanjian kredit dan perjanjian penjaminannya karena adanya persetujuan dari pasangan kawin debitur, sehingga prinsip bisnis perbankan yang mengharuskan proses cepat dan aman dirasa terpenuhi. Alasan lain, Bank menganggap masalah pilihan harta dalam perkawinan bukan hal yang prinsip sepanjang ada persetujuan pasangan kawin. *Kedua*, akibat hukum tidak dicantumkannya bentuk harta dalam perkawinan adalah adanya akibat pertanggungjawaban debitur dan pasangan kawin yang bervariasi : tanggung renteng terbatas, tanggung renteng tak terbatas, tanggung jawab penuh dari debitur, tanggung jawab penuh dari pasangan kawin yang memberikan persetujuan. *Ketiga*, harmonisasi antara hukum jaminan dan hukum harta perkawinan dilakukan dengan menambah dan/atau mengamandemen produk hukum berkaitan dengan Hukum Harta Kekayaan dan Hukum Jaminan, antara lain mengakomodasi pelaporan perjanjian kawin dibawah tangan, mencantumkan informasi bentuk harta kekayaan, perjanjian kawin beserta perubahan-perubahannya (di bawah tangan atau notariil) pada draft perjanjian kredit beserta perjanjian pembebanan jaminannya, keberadaan persyaratan persetujuan pasangan kawin sebagai prasyarat perjanjian kredit dan pembebanan jaminannya harus disesuaikan dengan bentuk harta dalam perkawinan, serta memfasilitasi permohonan sertifikat bersama atas nama suami istri untuk Harta Bersama.

Kata kunci : Kajian yuridis, Harta dalam Perkawinan, Jaminan, Perjanjian Kredit.

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PADA PERJANJIAN KREDIT**

DAN PERJANJIAN PENJAMINANNYA MENURUT HUKUM DI INDONESIA

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**JURIDICAL STUDY OF THE NON INCLUEDEMENT OF FORM OF MARITAL PROPERTY
IN LOAN AGREEMENT ACCORDING TO LAW IN INDONESIA**

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ABSTRACT

This Dissertation is aimed to find and to analyse (1) the reason behind the non-specified option of the form of marital property in the draft of credit application and the guarantee agreement in terms of banking business; (2) the legal consequence of such non-specification to the joint treasure as well as to the individual treasure in marriage; (3) the harmonization between guarantee law and marital property law, so that both laws can protect the property of married spouse with marriage agreement as well as without marriage agreement.

This is a normative legal research which is supported by empirical data. The literature research was conducted by reviewing norms and principles then it was equipped with empirical data which were obtained from by distributing questioners and by interviewing respondents and interviewees. Such data were analysed qualitatively and presented descriptively to answer the problem.

Results generated from this research is that, first, bank's reason in not specifying the option of the form of marital treasure in their credit and guarantee agreements is because there was already a consent from the debtor's spouse, so that the banking principle which requires fast and secure processes are perceived to be fulfilled. Another reason is that bank considers that the option of marital property is not fundamental as long as there is a spouse consent. In addition, the credit applicants rarely convey the form of their marital treasure. Second, legal consequences bring about various consequence of debtor and spouse's responsibilities ranging from limited joint responsibility, full joint responsibility, full debtor's responsibility, full responsibility from spouse giving their consent. Such responsibilities depend on the position of debtors and their spouse, and assets ownership in the credit and guarantee agreements. Third, the harmonization of guarantee law and marital treasure law is conducted by adding and/or amending the legal products related to the marital treasure law and guarantee law, i.e. by accommodating the report of under hand marriage agreement, by specifying the information on the form of wealth, marriage agreement including the amendments – either signed under hand or notarial – in the credit agreement along with the imposition of warranty, the existence of the requirement to adjust spouse' consent – as the requirement of credit agreement and imposition of warranty – with the form of marital treasure, and the attempt to minimize the difference between juridical ownership and factual ownership in the asset certificate especially the land asset by involving the Land National Agency to facilitate the joint certificate request in the name of husband and wife for joint treasure or unity treasure.

Keywords: Juridical Study, Marital Property, Guarantee, Loan Agreement.

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