Abstract

The development of green financing in Indonesia's banking sector, as a manifestation of the sustainable finance commitment, has given rise to a new risk known as greenwashing financing, namely the misuse of environmental claims by debtors that ultimately results in environmental damage, while the Banking Law has not specifically regulated protective mechanisms for banks against such practices. This study aims to analyze the forms of legal protection available to banks against debtor violations in green financing that cause environmental damage. The research employs a normative juridical method with statutory and conceptual approaches, using library research techniques on primary, secondary, and tertiary legal materials analyzed qualitatively. The findings indicate that legal protection for banks manifests in preventive forms, comprising the prudential principle, an expanded 5C credit analysis incorporating an environmental dimension, environmental documentation requirements, environment-based standard contracts, and environmental due diligence; as well as repressive forms, comprising termination of credit facilities, default (wanprestasi) followed by collateral execution, and criminal liability, alongside the potential for reverse liability faced by banks themselves (lender liability) should they fail to conduct adequate due diligence. This study concludes that the strength of banks' legal protection is largely determined by the quality of preventive instruments established from the outset of credit provision, while also confirming a legal vacuum within the Banking Law that urgently needs to be filled through harmonization of sustainable finance regulations and environmental law.

Keywords: legal protection, bank, greenwashing financing, green financing, environmental damage

Abstrak

Perkembangan pembiayaan hijau (green financing) di sektor perbankan Indonesia sebagai wujud komitmen keuangan berkelanjutan menimbulkan risiko baru berupa greenwashing financing, yaitu penyalahgunaan klaim ramah lingkungan oleh debitur yang berujung pada kerusakan lingkungan hidup, sementara Undang-Undang Perbankan belum secara khusus mengatur mekanisme perlindungan bagi bank atas praktik tersebut. Penelitian ini bertujuan menganalisis bentuk perlindungan hukum bagi bank terhadap pelanggaran debitur atas pembiayaan hijau yang menimbulkan kerusakan lingkungan. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual, melalui teknik studi kepustakaan atas bahan hukum primer, sekunder, dan tersier yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa perlindungan hukum bagi bank terwujud dalam bentuk preventif, meliputi prinsip kehati-hatian, analisis kredit 5C yang diperluas dengan dimensi lingkungan, persyaratan dokumen lingkungan, standar kontrak berbasis lingkungan, dan uji tuntas lingkungan; serta bentuk represif, meliputi penghentian fasilitas kredit, wanprestasi dan eksekusi jaminan, serta pertanggungjawaban pidana, dengan catatan adanya potensi tanggung jawab balik bank apabila lalai melakukan uji tuntas. Penelitian ini menyimpulkan bahwa kekuatan perlindungan hukum bank sangat ditentukan oleh kualitas instrumen preventif sejak tahap awal pemberian kredit, sekaligus mengonfirmasi kekosongan hukum pada Undang-Undang Perbankan yang perlu segera diisi melalui harmonisasi regulasi keuangan berkelanjutan dan hukum lingkungan hidup.

Kata kunci: perlindungan hukum, bank, greenwashing financing, pembiayaan hijau, kerusakan lingkungan