

## ABSTRAK

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### **IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI NOMOR 18/PUU-XVII/2019 TERHADAP PERLINDUNGAN HAK KREDITOR DALAM PELAKSANAAN EKSEKUSI OBJEK JAMINAN FIDUSIA**

(vii+114 halaman)

Keberadaan Putusan Mahkamah Konstitusi Nomor 18/PUU-2019 telah membawa perubahan signifikan terhadap pelaksanaan eksekusi jaminan fidusia. Kreditor tidak dapat lagi melaksanakan eksekusi secara langsung melalui titel eksekutorial manaka debitor wanprestasi, Mahkamah Konstitusi dalam putusan *a quo* menyatakan eksekusi melalui titel eksekutorial dapat dilaksanakan apabila debitor mengakui adanya cidera janji dan secara sukarela menyerahkan objek jaminan. Apabila syarat tersebut tidak terpenuhi maka kreditor harus memohonkan penetapan melalui pengadilan dalam pelaksanaan esekusi. Penelitian ini mengkaji perihal pelaksanaan eksekusi pasca adanya putusan *a quo* dikaitkan dengan kedudukan titel eksekutorial dalam sertifikat jaminan fidusia dan perlindungan terhadap hak kreditor dari perspektif filosofis pembentukan Undang-Undang Nomor 40 Tahun 1999 tentang Jaminan Fidusia. Jenis penelitian yang digunakan dalam penelitian ini adalah penelitian normatif dan menggunakan data sekunder yang terdiri atas bahan hukum primer, sekunder dan tersier. Data diperoleh melalui studi kepustakaan dengan menggunakan pendekatan perundang-undangan serta pendekatan konseptual kemudian data dianalisis secara kualitatif. Dari hasil penelitian, diperoleh hasil bahwasanya pelaksanaan eksekusi jaminan fidusia pasca putusan *a quo* dikaitkan dengan kedudukan titel eksekutorial dalam sertifikat jaminan fidusia telah menegasikan aspek efisiensi dan efektivitas dari pranata jaminan fidusia dan didasarkan pada pertimbangan yang inkoheren. Berkaitan dengan perlindungan hak kreditor dalam pelaksanaan eksekusi pasca putusan *a quo*, Mahkamah Konstitusi medasarkan pertimbangannya pada aspek yang inkoheren dimana model *parate eksekusi* dipersamakan dengan model *fiat putusan* yang jelas bertolak belakang dengan filosofis pembentukan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia.

Referensi : 53 (1930-2021)

Kata kunci : Jaminan Fidusia, Eksekusi, Hak Kreditor

## ***ABSTRACT***

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### **IMPLICATIONS OF CONSTITUTIONAL COURT'S DECISION NUMBER 18/PUU-XVII/2019 ON THE PROTECTION OF CREDITORS' RIGHTS IN EXECUTING FIDUCIARY OBJECTS**

(vii+114 pages)

The existence of Constitutional Court Decision Number 18/PUU-2019 has brought significant changes to the execution of fiduciary. Creditors can no longer carry out direct executions through executorial titles where the debtor defaults, the Constitutional Court in the decision stated that executions through executorial titles can be carried out if the debtor admits there is a breach of contract and voluntarily surrenders the collateral object. If these conditions are not met, the creditor must apply for a stipulation through the court in carrying out the execution. This study examines the implementation of executions after the decision is associated with the position of executorial title in fiduciary guarantee certificates and protection of creditors' rights from the philosophical perspective of the formation of Law Number 40 of 1999 concerning Fiduciary. The type of research used in this study is normative research and uses secondary data consisting of primary, secondary and tertiary legal materials. The data were obtained through a literature study using a statutory and conceptual approach and then the data were analyzed qualitatively. From the results of the study, it was found that the implementation of the execution of fiduciary guarantees after the decision is associated with the position of executorial title in the fiduciary guarantee certificate has negated aspects of efficiency and effectiveness of fiduciary guarantee institutions and is based on incoherent considerations. With regard to the protection of creditors' rights in the implementation of execution post-a quo decision, the Constitutional Court based its considerations on an incoherent aspect where the parate execution model is equated with the fiat model of a decision which is clearly contrary to the philosophy of the establishment of Law Number 42 of 1999 concerning Fiduciary.

References : 53 (1930-2021)

Keywords : Fiduciary, Execution, Creditors' Rights