

ABSTRAK

Konsekuensi Hukum Putusan Mahkamah Konstitusi Atas Eksekusi Jaminan Fidusia

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Eksistensi hukum tidak semata-mata memberikan perlindungan yang pasti dan adil, melainkan juga bertujuan untuk mewujudkan kemanfaatan. Berdasarkan tujuan tersebut, maka produk hukum yang dibuat oleh pemerintah haruslah memberikan manfaat bagi pihak-pihak terkait.

Keunikan dari Jaminan Fidusia terletak dalam kekuatan eksekutorial karena dapat langsung dilaksanakan tanpa melalui pengadilan dan bersifat final serta mengikat para pihak, mengingat benda yang menjadi jaminan berada dalam penguasaan debitur, sehingga eksekusi perlu dapat dilaksanakan agar fungsi jaminan dapat menjadi efisien dan efektif. Namun, dengan adanya Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 tanggal 25 November 2019 yang dibacakan pada tanggal 06 Januari 2021 (selanjutnya disebut “Putusan MK 18/PUU/2019”), telah melahirkan ketentuan baru untuk mengintepretasikan ketentuan eksekusi Jaminan Fidusia yang diatur dalam Pasal 15 ayat (2) dan ayat (3) UUJF. Putusan tersebut dipertegas dengan adanya Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 tanggal 18 Juni 2021, dibacakan tanggal 31 Agustus 2021 (selanjutnya disebut “Putusan MK 02/PUU/2021”).

Penerapan Putusan MK 18/PUU/2019 pada Pasal 15 ayat (2) dan (3) UUJF memiliki arti bahwa eksekusi jaminan fidusia dapat dilakukan langsung oleh penerima fidusia (Kreditur) apabila memenuhi syarat sebagai berikut:

- a) adanya kesepakatan telah terjadinya cidera janji (wanprestasi) antara pemberi fidusia dan penerima fidusia; dan
- b) pemberi fidusia (Debitur) menyerahkan objek jaminan fidusia secara sukarela dalam rangka eksekusi.

Artinya eksekusi secara langsung baru dapat dijalankan apabila ada kedua hal tersebut diatas. Namun kendala yang seringkali muncul adalah pada saat eksekusi Jaminan Fidusia, apakah Debitur dapat secara sukarela menyerahkan objek jaminan Fidusia. Bila demikian, apa manfaat jaminan bagi debitur dan kreditur, serta kepentingan dan pertimbangan bisnis terkait, khususnya sehubungan dengan eksekusi Jaminan Fidusia.

Pasca Putusan MK 18/PUU/2019 dan Putusan MK 02/PUU/2021, penting untuk memahami bagaimana eksekusi Jaminan Fidusia sesuai dengan ketentuan dalam UUJF dan setelah Putusan MK 18/PUU/2019 & Putusan MK 02/PUU/2021, dan bagaimana kedudukan hukum debitur dan kreditur atas eksekusi Jaminan Fidusia. Untuk memahami lebih lanjut, perlu untuk mencermati ketentuan hukum yang berlaku, termasuk alternatif dan solusi bagi debitur dan kreditur mengenai eksekusi Jaminan Fidusia.

Referensi: 59, (1966-2022)

Kata Kunci: Eksekusi Fidusia; Mahkamah Konstitusi Fidusia; *Judicial Review* Fidusia.

ABSTRACT

Legal Consequences of the Constitutional Court's Decision on Fiduciary Security Execution

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The existence of the law is not just for legal certainty and fairness, but also to achieve its purpose. Based on such purpose, law creation made by the government must provide utility for all concerned parties.

The uniqueness of Fiduciary Security lay in executorial power which can be directly performed without court and is final and binding to the parties. Considering that the object as collateral is in the control of the debtor, therefore execution needs to be directly performed for efficiency and effectiveness related to the function of the security itself. However, by the Constitutional Court's Decision Number 18/PUU-XVII/2019 dated November 25, 2019, which read on January 6, 2021 (hereinafter referred to as "CC Decision 18/PUU/2019"), new provisions have been presided over for interpreting the provisions for the execution on Fiduciary Security which regulated in Article 15 paragraph (2) and paragraph (3) of Law Number 42 Year 1999 on Fiduciary Security (hereinafter referred to as "Fiduciary Law"). Such Constitutional Court's Decision has been confirmed by another Constitutional Court's Decision Number 2/PUU-XIX/2021 dated June 18, 2021, read on August 31, 2021 (hereinafter referred to as "CC Decision 02/PUU/2021").

The implementation of CC Decision 18/PUU/2019 in Article 15 paragraphs (2) and (3) of the Fiduciary Law means that the execution of a fiduciary security can be performed directly by the fiduciary recipient (the creditor) upon fulfilling conditions as follows:

- a. there is an agreement on breach event between the fiduciary transferor and fiduciary recipient; and*
- b. the fiduciary transferor (Debtor) hands over the object of the fiduciary security voluntarily for execution.*

This means that execution can only be performed upon both conditions are fulfilled. However, the challenge that arises is whether at such execution of such Fiduciary Security, whether the debtor can voluntarily hand over such object of the fiduciary security. If such, what will be the purpose of security for the debtor and creditor, also its interest and business consideration, especially related to the execution of fiduciary security.

Post CC Decision 18/PUU/2019 and CC Decision 02/PUU/2021, it is essential to understand how the execution of Fiduciary Security in accordance with the provisions of Fiduciary Law and after CC Decision 18/PUU/2019 and CC Decision 02/PUU/2021, and what will be the legal standing of the debtor and the creditor related to the execution of the Fiduciary Security. For understanding such matters, it is necessary to examine the norms of the applicable laws and regulations, including alternatives and solutions for debtors and creditors regarding the execution of Fiduciary Security.

Reference: 59, (1966-2022)

Keywords: Fiducia Execution; Constitutional Court Fiducia; Fiducia Judicial Review.