

ABSTRAK

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“EKSEKUSI JAMINAN FIDUSIA DAN MANAJEMEN RISIKO HUKUM DI PT BCA *FINANCE* PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 2/PUU/XIX/2021”

(xi + 152 halaman)

Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Nomor 2/PUU-XIX/2021 yang berkekuatan hukum tetap, mengesahkan proses eksekutorial jaminan fidusia yang dinilai lebih memberatkan pihak kreditur atau penerima fidusia yang merasa dirugikan dengan adanya ketentuan peraturan hukum yang berlaku mengikat atas eksekutorial jaminan fidusia yang tidak lagi sama dengan yang diatur dalam Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Tujuan penelitian ini adalah untuk memecahkan persoalan hukum serta menganalisis pengaturan hukum tentang eksekutorial jaminan fidusia di Indonesia dan mengembangkan penemuan ilmu hukum dengan menelaah dan mengkaji Implementasi Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 terhadap proses eksekusi jaminan fidusia dan manajemen risiko hukum di PT BCA *Finance*. Metodologi penulisan tesis dilakukan dengan menggunakan jenis penelitian normatif empiris guna memecahkan persoalan hukum dan menganalisis pengaturan hukum tentang eksekutorial jaminan fidusia di Indonesia; serta untuk mengembangkan penemuan ilmu hukum dengan menelaah dan mengkaji Implementasi Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 terhadap proses eksekusi jaminan fidusia dan manajemen risiko hukum di PT BCA *Finance*. Kesimpulan pertama ditemukan bahwa pengaturan tentang eksekutorial jaminan fidusia berdasarkan hukum positif di Indonesia diatur dalam beberapa peraturan hukum, seperti UU Jaminan Fidusia yang kemudian Pasal 15 Ayat (2) telah diajukan permohonan *judicial review* dan dikabulkan melalui Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Nomor 2/PUU-XIX/2021 yang pada intinya tetap menekankan proses eksekutorial jaminan fidusia melalui permohonan pengadilan yang bersifat alternatif yang menimbulkan multitafsir di industri pembiayaan di Indonesia. Kedua, implementasi Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 terhadap proses eksekusi jaminan fidusia dan manajemen risiko hukum di PT BCA *Finance* dilakukan dengan menerapkan kebijakan dan pedoman penerapan manajemen risiko hukum yang tertuang dalam ketentuan internal perusahaan yang didasarkan pada POJK dan SEOJK mengenai manajemen risiko, dengan perubahan klausul dalam perjanjian kesepakatan jenis wanprestasi antara kreditur dan debitur, dan untuk mencegah menumpuknya sengketa di pengadilan, dapat digantikan oleh ketentuan baru pada Pasal 119 UU P2SK yang memperkuat kembali kekuatan eksekutorial melalui sertifikat jaminan fidusia oleh penguasaan kreditur.

Kata Kunci: Eksekusi Jaminan Fidusia, Manajemen Risiko, Mahkamah Konstitusi
Referensi: 50 (1992 – 2021)

ABSTRACT

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EXECUTION OF FIDUCIARY GUARANTEES AND LEGAL RISK MANAGEMENT AT PT BCA FINANCE AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 2/PUU/XIX/2021

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The Constitutional Court Decision Number 18/PUU-XVII/2019 and the Number 2/PUU-XIX/2021 which have permanent legal force, authorize the fiduciary guarantee executorial process which is considered to be more burdensome for the creditor or fiduciary recipient who feels disadvantaged by the provisions of the applicable legal regulations binding on the fiduciary guarantee executorial which are no longer the same as those regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. The purpose of this research is to solve legal problems and analyze the legal arrangements regarding the execution of fiduciary guarantees in Indonesia and develop legal science discoveries by examining and studying the Implementation of the Constitutional Court Decision Number 2/PUU-XIX/2021 on the fiduciary guarantee execution process and legal risk management at PT BCA Finance. The methodology for writing the thesis is carried out using normative empirical research to solve legal problems and analyze legal arrangements regarding the execution of fiduciary guarantees in Indonesia; as well as to develop legal science discoveries by examining and studying the Implementation of the Constitutional Court Decision Number 2/PUU-XIX/2021 on the fiduciary guarantee execution process and legal risk management at PT BCA Finance. The first conclusion is that the regulation on the execution of fiduciary guarantees based on positive law in Indonesia is regulated in several legal regulations, such as the Fiduciary Guarantee Law, Article 15 Paragraph (2) of which has been submitted for judicial review and granted through Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 which in essence still emphasizes the process of executing fiduciary guarantees through alternative court applications which have caused multiple interpretations in the financing industry in Indonesia. Second, implementation of Constitutional Court Decision Number 2/PUU-XIX/2021 on the fiduciary guarantee execution process and legal risk management at PT BCA Finance is carried out by implementing policies and guidelines for the implementation of legal risk management contained in the company's internal provisions based on POJK and SEOJK regarding legal risk management, by changing the clause in the agreement on the type of default between the creditor and the debtor, and to prevent the accumulation of disputes in court, it can be replaced by a new provision in Article 119 of the P2SK Law which reinforces the executorial power through the fiduciary guarantee certificate by the creditor's control.

Keywords: Fiduciary Guarantee Execution, Risk Management, Constitutional Court

Reference: 50 (1992 – 2021)