

ABSTRAK

Persaingan bisnis di era globalisasi membuat pelaku usaha di Indonesia bergantung pada lembaga pembiayaan terutama pembiayaan konsumen dengan jaminan fidusia agar dapat memperoleh modal, namun mekanisme jaminan fidusia dan pelaksanaannya menghadirkan permasalahan hukum dan ketidakpastian, terutama setelah dikeluarkannya Putusan MK No. 18/PUU-XVII/2019; kondisi ini menimbulkan kebutuhan penelitian untuk diteliti.

Penelitian ini mengangkat dua rumusan masalah: (1) bagaimana kepastian hukum dalam jaminan fidusia pasca dikeluarkannya putusan MK No. 18/PUU-XVII/2019; dan (2) bagaimana perlindungan hukum terhadap kreditur atau pemegang jaminan fidusia pasca dikeluarkannya putusan MK. Tujuannya Adalah untuk mengetahui dan menganalisis kepastian hukum serta perlindungan hukum bagi kreditur pasca dikeluarkannya putusan MK tersebut.

Metode Penelitian yang digunakan adalah yuridis normatif dengan pendekatan deskriptif analitis. Data diperoleh melalui studi kepustakaan dan studi lapangan dengan melakukan wawancara ke dua lembaga pembiayaan. Data kemudian dianalisis secara kualitatif dan kemudian dilakukan penarikan Kesimpulan secara induktif.

Putusan MK No. 18/PUU-XVII/2019 mengubah karakter eksekusi jaminan fidusia di Indonesia dengan menegaskan bahwa sertifikat jaminan fidusia tidak lagi memiliki kekuatan eksekutorial otomatis seperti putusan pengadilan. Eksekusi hanya dapat dilakukan jika debitur mengakui wanprestasi dan menyerahkan objek jaminan secara sukarela, atau setelah ada penetapan pengadilan yang menyatakan wanprestasi. Putusan ini menegaskan prinsip keadilan dan kepastian hukum yang seimbang antara kreditur dan debitur, sekaligus membatasi praktik parate eksekusi sepihak yang semula diatur dalam Pasal 15 UUF. Implikasinya, kreditur perlu memperjelas klausul kontrak mengenai wanprestasi dan mekanisme penyerahan objek, serta mengoptimalkan perlindungan hukum preventif dan represif untuk menjaga haknya pasca putusan MK.

Putusan MK mensyaratkan bahwa eksekusi jaminan fidusia hanya dapat dilakukan jika wanprestasi disepakati atau melalui putusan pengadilan jika debitur menolak menyerahkan objek secara sukarela, sehingga pelaksanaan eksekusi otomatis tidak berlaku dan mempersulit kreditur. Oleh karena itu, kreditur perlu memperjelas klausul wanprestasi, prosedur peringatan dan eksekusi serta Berita Acara Serah Terima, menyiapkan litigasi dan sanksi perdata, serta memanfaatkan SEMA No. 3 Tahun 2000 agar pelaksanaan putusan yang menetapkan wanprestasi dapat segera dijalankan secara adil.

Kata Kunci: Kepastian Hukum, Jaminan Fidusia, Putusan Mahkamah Konstitusi Nomor 18/PUU-XVI/2019

Abstract

Business competition in the era of globalization has made business actors in Indonesia highly dependent on financing institutions, particularly consumer financing secured by fiduciary guarantees, in order to obtain capital. However, the mechanism and implementation of fiduciary guarantees have given rise to legal issues and uncertainty, especially following the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019. This condition has created a need for further legal research.

This study raises two main issues: (1) how legal certainty in fiduciary guarantees is ensured after the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019; and (2) how legal protection for creditors or holders of fiduciary guarantees is provided after the issuance of the Constitutional Court decision. The purpose of this study is to examine and analyze legal certainty and legal protection for creditors following the issuance of the Constitutional Court decision.

The research method used is normative juridical research with a descriptive-analytical approach. Data were obtained through literature review and field studies conducted by interviewing two financing institutions. The data were then analyzed qualitatively, and conclusions were drawn inductively.

Constitutional Court Decision No. 18/PUU-XVII/2019 altered the character of fiduciary guarantee execution in Indonesia by affirming that fiduciary guarantee certificates no longer possess automatic executorial force equivalent to a court judgment. Execution may only be carried out if the debtor acknowledges default and voluntarily surrenders the collateral object, or after a court determination declaring the occurrence of default. This decision emphasizes a balanced principle of justice and legal certainty between creditors and debtors, while also limiting unilateral parate execution practices previously regulated under Article 15 of the Fiduciary Guarantee Law. As a consequence, creditors must clarify contractual clauses concerning default and mechanisms for surrendering collateral, as well as optimize preventive and repressive legal protections to safeguard their rights after the Constitutional Court decision.

The Constitutional Court's decision requires that the enforcement of fiduciary security can only be carried out if the default is agreed upon by both parties or by a court ruling if the debtor refuses to surrender the collateral voluntarily, which means automatic execution is no longer valid and complicates the creditor's position. Therefore, the creditor needs to clarify the default clause, warning and execution procedures, and the Minutes of Handover, prepare litigation and civil sanctions, and utilize Supreme Court Circular Letter No. 3 of 2000 so that the enforcement of a ruling that establishes default can be carried out promptly and fairly.

Keywords: *Legal Certainty, Fiduciary Guarantee, Constitutional Court Decision No. 18/PUU-XVII/2019*