

**EKSEKUSI JAMINAN FIDUSIA PASCA PUTUSAN MAHKAMAH KONSTITUSI  
NOMOR 18/PUU-XVII/2019 BERDASARKAN KLAUSUL  
PERJANJIAN KREDIT DAN DITINJAU DENGAN  
PERSPEKTIF KEPASTIAN HUKUM  
(Studi Kasus Putusan Nomor 229/PDT.G/2022/PNJKT.PST)  
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**INTISARI**

Penelitian ini didasarkan pada studi kasus dalam perkara nomor 229/PDT.G/2022/PNJKT.PST yang bertujuan untuk (1) mengetahui dan menganalisa pengaturan eksekusi Jaminan Fidusia pasca putusan Mahkamah Konstitusi No. 18/PUU-XVII/2019 dan peraturan yang berlaku (2) mengetahui dan menganalisa pertimbangan Hakim pada Putusan Nomor 229/PDT.G/2022/PNJKT.PST telah memberikan kepastian hukum bagi para pihak.

Penelitian ini dilakukan dengan menggunakan metode penelitian hukum normatif. Penelitian yuridis normatif menitikberatkan pada data sekunder secara kepustakaan serta menguraikan, menganalisis beberapa permasalahan yang ada, kemudian kembali diuraikan menggunakan kajian berdasarkan konsep dan teori hukum berbasis perundang-undangan.

Berdasarkan hasil penelitian, pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 diterbitkan, dalam penentuan cidera janji serta pelaksanaan eksekusi, kreditur tidak dapat serta merta secara sepihak menentukan adanya cidera janji dan melakukan eksekusi. Cidera janji wajib disepakati terlebih dahulu dengan debitur serta debitur sukarela menyerahkan objek jaminan fidusia kepada kreditur. Apabila tidak ada persetujuan dan debitur keberatan dilaksanakannya eksekusi, maka segala pelaksanaan eksekusi harus dilakukan dan berlaku sama dengan putusan pengadilan yang berkekuatan hukum tetap. Putusan perkara Nomor 229/Pdt.G/2022/PN Jkt.Pst tanggal 23 Februari 2023 masih belum memberikan kepastian hukum bagi para pihak, khususnya debitur. Pertimbangan Majelis Hakim yang berdasarkan perjanjian semata tanpa mempertimbangkan salah satu hukum positif yaitu PMK No. 18/2019 dan PMK No. 2/2021 terhadap kasus eksekusi Jaminan Fidusia tidak tepat. Pertimbangan Majelis Hakim seharusnya menggambarkan Konstruksi hukum positif harus meliputi bahan-bahan yang positif (*Contructive moet de positive stof dekken*).

**Kata Kunci : Jaminan Fidusia, Putusan Mahkamah Konstitusi, Eksekusi, Kepastian Hukum, Perjanjian.**

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**EXECUTION OF FIDUCIARY GUARANTEES AFTER THE DECISION OF  
THE CONSTITUTIONAL COURT NUMBER 18/PUU-XVII/2019 BASED ON**

## **THE CREDIT AGREEMENT CLAUSE AND REVIEWED FROM THE PERSPECTIVE OF LEGAL CERTAINTY**

**(Case Study of Verdict Number 229/PDT.G/2022/PNJKT.PST)**

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### **ABSTRACT**

This research is based on a case study in case number 229/PDT.G/2022/PNJKT.PST which aims to (1) identify and to analyze the regulation of the execution of the Fiduciary Guarantee after the decision of the Constitutional Court No. 18/PUU-XVII/2019 and the applicable regulations (2) identify and to analyze the Judge's consideration in Verdict Number 229/PDT.G/2022/PNJKT.PST has provided legal certainty for the parties.

This research was conducted using juridical -normative research methods. The juridical -normative research is carried out by focusing on secondary data in the literature and describing, analyzing several existing problems, then re-described using studies based on statutory-based legal concepts and theories.

Based on the results of the research, after the Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021 were issued, in determining a default and carrying out execution, creditors cannot automatically unilaterally determine a default and carry out execution. Breach of promise must be agreed upon in advance with the debtor and the debtor voluntarily surrenders the object of fiduciary guarantee to the creditor. If there is no agreement and the debtor objects to the execution, then all executions must be carried out and apply the same as a court decision with permanent legal force. The verdict in case Number 229/Pdt.G/2022/PN Jkt.Pst dated February 23, 2023 still does not provide legal certainty for the parties, especially the debtor. The consideration of the Panel of Judges based solely on the agreement without considering one of the positive laws, namely PMK No. 18/2019 and PMK No. 2/2021 on the case of the execution of the Fiduciary Guarantee is not appropriate.. The consideration of the Panel of Judges should describe that the construction of positive law must include positive materials (*Constructive moet de positive stof dekken*).

**Keywords : Fiduciary Guarantee, Constitutional Court Decision, Execution, Legal Certainty, Agreement.**

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