



PENENTUAN CIDERA JANJI SEBAGAI DASAR PARATE EKSEKUSI TERHADAP OBJEK JAMINAN FIDUSIA BERDASARKAN PUTUSAN MAHKAMAH KONSTITUSI NOMOR 18/PUU-XVII/2019

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisa penentuan cidera janji setelah adanya Putusan MK 18/PUU/XVII/2019. Selain itu, penelitian ini juga bertujuan untuk mengetahui dan menganalisa akibat hukum adanya Parate Eksekusi tanpa adanya persetujuan cidera janji dari debitur atas benda yang menjadi objek Jaminan Fidusia.

Penelitian ini merupakan penelitian yuridis normatif yang bersifat deskriptif. Penulis melakukan Studi Pustaka untuk memperoleh data sekunder melalui penelitian dengan cara mempelajari dan mengkaji buku-buku, makalah, jurnal, hasil studi dan/atau penelitian terdahulu, surat kabar, artikel-artikel, serta peraturan perundang-undangan yang berkaitan dengan topik permasalahan dan wawancara terhadap Narasumber yang dilakukan untuk mendukung argument Penulis dalam Penelitian ini. Selanjutnya, data yang diperoleh dianalisa secara kualitatif.

Berdasarkan hasil penelitian, Penulis menyimpulkan, pertama, berdasarkan Putusan MK, adanya cidera janji tidak ditentukan secara sepihak oleh Kreditur melainkan atas dasar kesepakatan antara Kreditur dengan Debitur. Jika tidak ada kriteria cidera janji yang disepakati antara Debitur dan Kreditur dalam isi perjanjian, Debitur enggan menyerahkan objek jaminan fidusia kepada Kreditur, maka Kreditur tidak boleh melakukan eksekusi sendiri melainkan harus mengajukan permohonan pelaksanaan eksekusi kepada pengadilan negeri. Kedua, menurut pendapat ahli yang menyatakan bahwa apabila penjualan objek Jaminan Fidusia dilakukan oleh Kreditur dalam hal Debitur belum terbukti cidera janji, maka Kreditur secara hukum telah dianggap melakukan perbuatan melawan hukum yang dapat digugat secara perdata oleh Pemberi Fidusia berdasarkan Pasal 1365 KUH Perdata dan atau dilaporkan oleh Pemberi Fidusia sebagai tindak pidana. Hal ini mengingat fakta bahwa dalam kasus tersebut, Pemohon mengalami kerugian atas penarikan atau eksekusi objek Jaminan Fidusia yang dilakukan secara sewenang-wenang oleh Kreditur tanpa ada prosedur hukum dengan menggunakan *debt collector* walaupun Pemohon telah secara aktif membayar cicilan atau kredit mobil yang menjadi objek Jaminan Fidusia. Hakim berpendapat dalam pertimbangannya, bahwa sepanjang Debitur telah sukarela menyerahkan benda yang menjadi objek Jaminan Fidusia maka menjadi kewenangan sepenuhnya bagi Kreditur untuk melakukan eksekusi (parate eksekusi).

Kata Kunci: Cidera Janji, Jaminan Fidusia, Parate Eksekusi, Putusan MK

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***DETERMINATION BREACH OF CONTRACT AS THE BASIS OF
PARATE EXECUTION OF FIDUCIA SECURITY OBJECT BASED
ON THE CONSTITUTIONAL COURT DECISION NUMBER
18/PUU-XVII/2019***

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ABSTRACT

This research aims to identification and analyze the determination of breach of contract after the Constitutional Court Decision 18/PUU/XVII/2019. This research also aims to find out and analyze the legal consequences of an Parate Executiron without an agreement on breach of contract from the debtor on the object that is the object of the Fiduciary Security.

This research is a descriptive normative juridical research. The author conducts a Literature Study to obtain secondary data through research by studying and reviewing books, papers, journals, results of previous studies and/or research, newspapers, articles, and laws and regulations relating to the topic of problems and interviews. to the resource persons who were conducted to support the author's argument in this study. Furthermore, the data obtained were analyzed qualitatively.

Based on the research, the authors conclude, first, based on the Constitutional Court Decision, the existence of a breach of contract is not determined unilaterally by the Creditor but on the basis of an agreement between the Creditor and the Debtor. If there are no criteria of breach of contract agreed upon between the Debtor and the Creditor in the contents of the agreement, the Debtor is reluctant to submit the object of the Fiduciary Security to the Creditor, the Creditor may not carry out the execution himself but must submit a request for execution to the district court. Second, according to the expert opinion who states that if the sale of the Fiducia Security object is carried out by the Creditor in the event that the Debtor has not been proven to be in breach of contract, then the Creditor is legally considered to have committed an unlawful act that can be sued civilly by the Fiduciary Provider based on Article 1365 of the Civil Code and or reported by the Debtor as a crime. This is in view of the fact that in this case, the Petitioner suffered a loss from the withdrawal or execution of the object of the Fiduciary Security which was carried out arbitrarily by the Creditor without any legal procedures using a debt collector even though the Applicant had actively paid installments or a car loan which was the object of the Fiduciary Security. The judge is of the opinion in his consideration, that as long as the Debtor has voluntarily surrendered the object that is the object of the Fiduciary Security, it becomes the full authority of the Creditor to carry out executions (parate execution).

Keywords: Breach of Contract, Fiduciary Security, Parate Execution

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