

Implementasi Fiat Eksekusi Jaminan Fidusia Di Pengadilan Negeri Pasca Amar Putusan Mahkamah Konstitusi No. 18/PUU-XVII/2019 = Implementation of Fiat Fiduciary Guarantees in District Courts After the Decision of the Constitutional Court No. 18/PUU-XVII/2019

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Abstrak

Tesis ini membahas tentang Implementasi Fiat Eksekusi Jaminan Fidusia di pengadilan negeri sebagai akibat hukum dari adanya amar Putusan dari Mahkamah Konstitusi Nomor 18/PUU-XVII/2019, yang mana setiap hukum atau peraturan perundangan tertulis seharusnya dapat memberikan kepastian hukum, keadilan hukum dan kemanfaatan bagi masyarakat sebagaimana tujuan dari amar putusan Mahkamah Konstitusi diatas. Namun setelah dilakukannya penelitian dengan metode analisis deskriptif pada subjek dan objek penelitian dapat disimpulkan jika implementasi fidusia di pengadilan negeri pasca amar putusan Mahkamah Konstitusi ternyata tidak dapat diimplementasikan dikarenakan masih terdapatnya keterbatasan pengaturan hukum acara perdata formil yang berlaku dalam Pasal 196 H.I. R.Bg/207 R.Bg , Pasal 197 H.I.R/208 R.Bg karena masih mempersamakan proses fiat eksekusi fidusia dengan permohonan fiat eksekusi hak tanggungan pada hal sifat kebendaan dari kedua hukum jaminan tersebut sangatlah berbeda, serta ditemukan jika yurisdiksi juru sita pengadilan negeri juga memiliki yurisdiksi atau wilayah kerja yang limitasi area kerja untuk eksekusi objek fidusia yang merupakan benda bergerak, sehingga harus dilakukan pendelegasian eksekusi dari satu pengadilan negeri ke pengadilan negeri lainnya, jumlah SDM juru sita di pengadilan negeri yang terbatas dalam memberikan layanan eksekusi fidusia serta mahal biaya anmaning dan biaya fiat eksekusi fidusia yang ditetapkan oleh masing-masing ketua pengadilan negeri secara berbeda-beda serta mahal juga menjadi kendala implementasi fiat eksekusi fidusia yang kesemua kendala tersebut akan dibahas dan diuraikan dalam penelitian ini.

.....This thesis discusses the implementation of the Fiat Execution of Fiduciary Guarantees in the district court as a legal consequence of the ruling of the Constitutional Court Number 18/PUU-XVII/2019, in which every written law or regulation should be able to provide legal certainty, legal justice, and benefits for the community. Society as the purpose of the above decision of the Constitutional Court. However, after conducting research using descriptive analysis methods on the subject and object of research, it can be concluded that the implementation of fiduciary in the district court after the decision of the Constitutional Court could not be implemented due to the limitations of the formal civil procedural law regulations that apply in Article 196 H.I. R.Bg/207 R.Bg, Article 197 H.I.R/208 R.Bg because they still equate the fiat execution process of fiduciary with a fiat application for mortgage execution in terms of the material nature of the two guarantee laws are very different, and it was found that the jurisdiction of the bailiff of the district court also has jurisdiction or work area that limits the work area for the execution of fiduciary objects which are movable objects, so it must be delegated implementation from one district court to another district court, the number of bailiff's human resources in the district court is limited in providing fiduciary execution services and the high cost Security and costs of fiat fiduciary executions set by each head of the district court are different and expensive are also obstacles to the implementation of fiat fiduciary executions, all of which will be discussed and described in this study.