

Prinsip Kerelaan dalam Parate Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 = The Principle of Willingness in the Fiduciary Guarantee Execution Parate After the Decision of the Constitutional Court Number 18/PUU- XVII/2019.

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Abstrak

Sebelum terbitnya putusan MK. No. 18/PUU-XVII/2019, parate eksekusi Jaminan Fidusia kerap dilakukan oleh Pemegang Fidusia dengan kekuasaan sendiri baik dengan persetujuan maupun tanpa persetujuan Pemberi Fidusia/Nasabah. Namun, setelah lahirnya putusan MK. No. 18/PUU-XVII/2019, pelaksanaan parate eksekusi Jaminan Fidusia harus didasarkan dengan kesepakatan antara Pemegang dan Pemberi Fidusia/Nasabah mengenai wanprestasi dalam perjanjian pokoknya serta Pemberi Fidusia bersedia menyerahkan barang Jaminan Fidusia kepada Pemegang Fidusia secara sukarela untuk dijual melalui lelang. Istilah kerelaan adalah hal yang baru dalam parate eksekusi Jaminan Fidusia yang berdasarkan hukum positif. Istilah kerelaan dikenal dalam hukum Islam yang merupakan salah satu rukun dalam akad, sehingga menimbulkan pertanyaan bagaimana esensi prinsip kerelaan dalam parate eksekusi Jaminan Fidusia dalam putusan MK tersebut dan kesesuaiannya dengan prinsip kerelaan dalam hukum Islam. Metode yang digunakan dalam penelitian ini adalah metode penelitian normatif yang bersifat deskriptif analitis dan menggunakan alat pengumpulan data berupa data sekunder yang meliputi bahan hukum primer dan sekunder. Berdasarkan penelitian yang telah dilakukan ditemukan bahwa esensi kerelaan dalam putusan MK No. 18/PUU-XVII/2019 yakni tidak boleh ada pihak yang dirugikan dan disakiti dari pelaksanaan parate eksekusi Jaminan Fidusia. Kewenangan Pemegang Fidusia untuk melakukan eksekusi Jaminan Fidusia atas kekuasaan sendiri tetap melekat sepanjang Pemberi Fidusia/Nasabah mengakui bahwa ia telah wanprestasi dan secara sukarela menyerahkan barang jaminan kepada Pemegang Fidusia. Prinsip Kerelaan dalam parate eksekusi Jaminan Fidusia sesuai dan sejalan dengan prinsip hukum Islam dalam rangka menjaga kemaslahatan bagi Pemegang dan Pemberi Fidusia/Nasabah.

.....Before the Constitutional Court's decision Number 18/PUU-XVII/2019 came out, the execution of fiduciary guarantees was often carried out unilaterally by fiduciaries with or without agreement from the debtor. However, after the Constitutional Court's decision Number 18/PUU-XVII/2019, the implementation of the fiduciary guarantee execution parate must be based on an agreement between the fiduciaries and debtor about injures the promise in the main agreement and the debtor is willing to give fiduciary collateral to the fiduciaries voluntarily to be sold through auction. The term of willingness is a new thing in the execution of fiduciary guarantees based on positive law. The term willingness is known in Islamic law which is one of the pillars in the contract, thus raising the question of how the essence of the principle of willingness in the execution of fiduciary guarantees is in accordance with the principle of willingness in Islamic law. The method used in this research is a normative research that is descriptive analytical and uses data collection tools in the form of secondary data which includes primary and secondary legal materials. Based on the research that has been done, it was found that the essence of willingness in the Constitutional Court's decision Number 18/PUU-XVII/2019 is there is no side should be harmed and hurt from the implementation of the fiduciary guarantee execution parate. The authority of fiduciaries to execute the

fiduciary guarantee on their own rules remains attached as long as the debtor acknowledges that they have injured the promise and voluntarily give the fiduciary collateral to the fiduciaries. The principle of Willingness in the execution of fiduciary guarantees is in accordance with and in line with the principles of Islamic law in order to maintain the benefit of the fiduciaries and debtor.