

# Disparitas Putusan Hakim Terkait Pelaksanaan Eksekusi Jaminan Fidusia Berdasarkan Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi No.2/PUU-XIX/2021 = Disparity In Judges' Decisions Regarding The Execution Of Fiduciary Guarantees Based On Law Number 42 Of 1999 Concerning Fiduciary Guarantees After Constitutional Court Decision No.2/PUU-XIX/2021

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## Abstrak

Terbitnya Putusan MK No.2/PUU-XIV/2021 telah menjadi acuan baru debitur dan kreditur yang terlibat dengan persoalan eksekusi jaminan fidusia akibat dari adanya wanprestasi. Penelitian ini bertujuan untuk mengetahui dan menganalisis disparitas putusan hakim terkait proses eksekusi objek jaminan fidusia berdasarkan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia Pasca Putusan MK No.2/PUU-XIX/2021. Penelitian yang menggunakan pendekatan perundang-undangan (statute approach) dan pendekatan kasus (Case Approach), tipe penelitian hukum bersifat normatif (normative legal research), dan Analisis bahan hukum menggunakan analisis deskriptif kualitatif. Putusan Mahkamah Konstitusi Nomor 2/PPU-XIX/2021 menegaskan bahwa eksekusi sertifikat jaminan fidusia melalui Pengadilan Negeri hanya sebuah alternative, dan menjadikan titel eksekutorial sertifikat jaminan fidusia tidak serta merta mempunyai kekuatan hukum tetap pada keadaan tertentu. Hingga terdapat disparitas putusan hakim terkait eksekusi objek jaminan fidusia pasca putusan MK tersebut. Maka terlihat masih belum adanya kepastian hukum bagi kreditur pasca putusan MK. Maka dengan itu perlunya ada surat edaran Mahkamah Agung dalam menyikapi Putusan MK Nomor 18/PUU-XVII/2019 dan Nomor 2/PUU-XIX/2021 sebagai bahan pertimbangan oleh Majelis Hakim dalam memutus perkara eksekusi jaminan fidusia, sehingga dapat menghindari terjadinya disparitas Putusan kedepannya. Diperlukan peraturan pelaksanaan atas Undang-Undang Jaminan Fidusia untuk mengakomodir terkait eksekusi jaminan fidusia sesuai dengan Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Nomor 2/PUU-XIX/2021 sehingga dapat memberikan kepastian hukum bagi debitur dan kreditur terkait tata cara eksekusi jaminan fidusia dan tidak membuat salah satu pihak kesulitan dalam terjadinya eksekusi jaminan fidusia. Terlebih dengan tidak jelasnya mengenai penentuan cidera janji sehingga memperlambat proses eksekusi objek jaminan fidusia.

.....issuance of Constitutional Court Decision No.2/PUU-XIV/2021 has become a new reference for debtors and creditors involved in the issue of the execution of fiduciary guarantees due to default. This study aims to determine and analyze the disparity in judges' decisions regarding the process of executing fiduciary security objects based on Law Number 42 of 1999 concerning Fiduciary Guarantees after Constitutional Court Decision No.2/PUU-XIX/2021. This research uses a statutory approach (statute approach), the type of legal research is normative (normative legal research), and the analysis of legal materials uses qualitative descriptive analysis. Constitutional Court Decision Number 2/PPU-XIX/2021 confirms that the execution of a fiduciary security certificate through the District Court is only an alternative, and makes the executorial title of the fiduciary security certificate not necessarily have permanent legal force in certain circumstances. Until there is a disparity in judges' decisions regarding the execution of fiduciary security objects after the

Constitutional Court's decision. So it appears that there is still no legal certainty for creditors after the Constitutional Court's decision. Therefore, there is a need for a Supreme Court circular letter in response to the Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 as a material consideration by the Panel of Judges in deciding cases of fiduciary guarantee execution, to avoid disparity in future decisions. An implementing regulation is needed for the Fiduciary Guarantee Law to accommodate the execution of fiduciary guarantees by the Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 to provide legal certainty for debtors and creditors regarding the procedures for executing fiduciary guarantees and not make it difficult for one party to execute fiduciary guarantees. Moreover, the lack of clarity regarding the determination of a breach of promise slows down the process of executing a fiduciary security object.