

Pelaksanaan eksekusi objek jaminan fidusia sebelum dan sesudah dikeluarkannya putusan Mahkamah Konstitusi nomor 18/PUU-XVII/2019 (Studi kasus pelaksanaan praktek jaminan fidusia di Bank BNI Syariah) = Execution of fiduciary security objects before and after the issuance of the constitutional court decision number 18/PUU-XVII/2019 (Case study of the implementation of fiduciary security practices at Bank BNI Syariah)

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Abstrak

Ketentuan Pasal 15 UU 42/1999 tentang Jaminan Fidusia khususnya yang mengatur mengenai frasa “kekuatan eksekutorial”, menimbulkan berbagai permasalahan terkait dengan pelaksanaan eksekusi jaminan fidusia. Adanya Putusan Mahkamah Konstitusi yang mengabulkan sebagian permohonan para Pemohon mengenai ketentuan eksekusi jaminan fidusia, dimana kekuatan eksekutorial hanya dapat dijalankan apabila terdapat kesepakatan antara debitur dan kreditor bahwa debitur telah melakukan cidera janji, dan apabila tidak ada kesepakatan dan debitur keberatan menyerahkan secara sukarela objek jaminan fidusia maka segala mekanisme pelaksanaan eksekusi harus dilakukan melalui Pengadilan. Putusan tersebut menarik perhatian Penulis untuk meneliti bagaimanakah pelaksanaan eksekusi jaminan fidusia di Bank BNI Syariah sebelum dan sesudah putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019. Untuk itu agar dapat memecahkan permasalahan ini, penulis menggunakan bentuk penelitian yuridis normatif yang bersifat deskriptif analitis, dan didukung oleh data sekunder. Selain itu, penelitian ini menggunakan pendekatan kualitatif dalam menganalisa data yang diperoleh dari studi literatur dan hasil wawancara. Berdasarkan hasil penelitian tersebut, disimpulkan bahwa putusan Mahkamah Konstitusi dapat berdampak pada jalannya bisnis pembiayaan, oleh sebab kreditor harus lebih selektif dalam memberikan pembiayaan kepada calon debitur guna mencegah adanya “debitur nakal” yang berusaha berlindung atau memanfaatkan ketentuan baru sehubungan dengan eksekusi jaminan fidusia dari putusan Mahkamah Konstitusi ini untuk memperoleh keuntungan.

.....The provisions of Article 15 of Law 42/1999 on Fiduciary Security, particularly those that regulate the phrase "executorial power", causes various problems related to the implementation of fiduciary security. There was a Constitutional Court Decision which partially granted the Petitioners' petition regarding the provisions for the execution of fiduciary security, where executorial power can only be exercised if there is an agreement between the debtor and creditor that the debtor has committed a breach of contract, and if there is no agreement and the debtor objected to voluntarily hand over the object of the fiduciary security then all mechanisms for carrying out the execution must be carried out through the Court. This decision attracted the attention of the author to examine how the execution of fiduciary security at Bank BNI Syariah before and after the Constitutional Court decision Number 18/PUU-XVII/2019. For this reason, in order to solve this problem, the author uses a form of normative juridical research which in character of descriptive analytical, and is supported by secondary data. In addition, this study uses a qualitative approach in analyzing data obtained from literature studies and interviews. Based on the results of this study, it is concluded that the Constitutional Court's decision could have an impact on the running of the financing

business, because creditors must be more selective in providing financing to prospective debtors in order to prevent “bad debtors” who seek to take shelter or take advantage of the new provisions in connection with the execution of fiduciary security of decisions of this Constitutional court change of provisions.