

**PERLINDUNGAN KREDITUR ATAS ITIKAD TIDAK BAIK DEBITUR
DALAM PRAKTIK EKSEKUSI JAMINAN FIDUSIA TERHADAP
DEBITUR WANPRESTASI (Studi Putusan no.182/pdt.g/2023/pn.bpp)**

REZHA MUHAMMAD, SUHERMAN, IWAN ERAR JOESOEF

ABSTRAK

Penelitian ini berangkat dari adanya disharmoni hukum pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 yang membatasi kewenangan kreditur dalam melakukan parate eksekusi, sehingga menimbulkan ketidakpastian hukum ketika debitur melakukan wanprestasi dan menunjukkan itikad tidak baik dengan menolak pelaksanaan eksekusi. Rumusan masalah dalam penelitian ini adalah: (1) bagaimana pelaksanaan gugatan cidera janji terhadap objek jaminan fidusia dalam Putusan No. 182/Pdt.G/2023/PN.Bpp; dan (2) bagaimana seharusnya perlindungan hukum terhadap kreditur atas itikad tidak baik debitur pasca Putusan MK No. 18/PUU-XVII/2019. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan peraturan perundang-undangan dan studi putusan. Hasil penelitian menunjukkan bahwa perlindungan hukum terhadap kreditur pasca Putusan MK lebih menitikberatkan pada perlindungan preventif melalui keharusan adanya kesepakatan eksekusi, serta perlindungan represif melalui penyelesaian sengketa di pengadilan apabila debitur menolak eksekusi. Putusan No. 182/Pdt.G/2023/PN.Bpp menunjukkan bahwa pengadilan menafsirkan Putusan MK sebagai pembatas parate eksekusi, meskipun debitur terbukti wanprestasi. Oleh karena itu, diperlukan penguatan regulasi dan praktik peradilan untuk menjamin keseimbangan perlindungan hukum antara kreditur dan debitur.

Kata Kunci : Fidusia ,Eksekusi Jaminan,Kreditur, Debitur

*Creditor Protection against Bad Faith in the Practice of Fiduciary Security Execution toward Defaulting Debtors (A Study of Decision No. 182/Pdt.G/2023/PN.Bpp) The central issue of this study arises from the legal disharmony following Constitutional Decision"*REZHA MUHAMMAD, SUHERMAN,IWAN ERAR JOESOEF

ABSTRACT

This research is entitled “**Creditor Protection against Bad Faith in the Practice of Fiduciary Security Execution toward Defaulting Debtors (A Study of Decision No. 182/Pdt.G/2023/PN.Bpp)**”. This study arises from the legal disharmony following the Constitutional Court Decision No. 18/PUU-XVII/2019, which restricts creditors’ authority to carry out *parate execution*, thereby creating legal uncertainty when debtors default and act in bad faith by refusing to comply with the execution of fiduciary collateral. The research problems examined are: (1) how the lawsuit for breach of contract concerning fiduciary collateral is implemented in Decision No. 182/Pdt.G/2023/PN.Bpp; and (2) how legal protection for creditors against debtors’ bad faith should be formulated after the Constitutional Court Decision No. 18/PUU-XVII/2019. This study employs a normative juridical method using statutory and case approaches. The findings indicate that legal protection for creditors after the Constitutional Court Decision emphasizes preventive protection through the requirement of mutual agreement on execution, as well as repressive protection through court proceedings when debtors refuse execution. Decision No. 182/Pdt.G/2023/PN.Bpp demonstrates that the court interprets the Constitutional Court ruling as limiting *parate execution*, even when the debtor is proven to be in default. Therefore, strengthening regulations and judicial practices is necessary to ensure a balanced legal protection for both creditors and debtors. Keywords: Fiduciary, Execution of Guarantee, Creditor, Debtor

Keyword: Fiduciary,security execution,creditor,debtor