

ABSTRAK

Berdasarkan ketentuan-ketentuan yang terdapat di dalam Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, dalam hal debitur berstatus pailit maka kreditor penerima jaminan fidusia akan diklasifikasikan sebagai kreditor separatis. Kreditor separatis berhak melakukan *parate executie* atas jaminan fidusia pada batasan waktu tertentu, yaitu setelah berakhirnya *stay (legal moratorium)* atau selambat-lambatnya dalam waktu 2 (dua) bulan sejak insolvensi. Munculnya Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019 melahirnya 2 (dua) syarat baru pelaksanaan *parate executie* oleh kreditor penerima jaminan fidusia yakni terdapat kesepakatan mengenai adanya cedera janji antara debitur dan kreditor serta debitur secara sukarela menyerahkan objek jaminan fidusia kepada kreditor. Kedua syarat tersebut tentu memperpanjang proses eksekusi jaminan fidusia.

Penelitian ini utamanya memiliki 2 (dua) fokus pembahasan. Pertama, dapatkah seorang kreditor separatis melaksanakan *parate executie* dalam kurun waktu 2 (dua) bulan sejak insolvensi pasca adanya Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019 manakala debitur berstatus pailit. Kedua, apa saja bentuk perlindungan hukum bagi kreditor separatis yang tidak dapat melakukan *parate executie* dalam kurun waktu 2 (dua) bulan sejak insolvensi pasca adanya Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019. Penelitian ini merupakan penelitian doktrinal yang menggunakan pendekatan peraturan perundang-undangan dan pendekatan konseptual.

Penelitian ini menyimpulkan bahwa oleh karena dimilikinya hak separatis oleh kreditor penerima jaminan fidusia yang lahir dari hukum kepailitan serta adanya status pailit yang melahirkan "status cedera janji", maka secara normatif Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019 haruslah tidak memiliki akibat hukum terhadap kreditor separatis untuk melakukan *parate executie* dalam hal debitur berstatus pailit. Di dalam praktik, ambiguitas yang lahir dari eksistensi 2 (dua) syarat *parate executie* yang lahir dari Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019 berpeluang merugikan kreditor separatis. Terkait dengan hal tersebut, perlindungan hukum bagi kreditor separatis terbagi menjadi perlindungan hukum preventif dan represif. Perlindungan hukum preventif ditempuh melalui pendaftaran jaminan fidusia, pengajuan tagihan, dan rapat verifikasi. Sedangkan, perlindungan hukum represif ditempuh melalui *renvooi procedure* dan gugatan lain-lain.

Kata kunci: *Hukum kepailitan, hukum jaminan, jaminan fidusia, parate executie, kreditor separatis, debitur pailit, kurator.*

ABSTRACT

Based on the provisions in the Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligation, in the event a debtor is bankrupt, the creditor receiving fiduciary guarantee will be classified as a secured creditor. A secured creditor is entitled to conduct parate executie of the fiduciary guarantee within certain time limit, namely upon the expiration of stay (legal moratorium) or within 2 (two) months after insolvency. The passing of the Decision of the Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/2019 has established to 2 (two) new requirements for the implementation of parate executie by creditor receiving fiduciary guarantee, which are an agreement between the debtor and the creditor on the existence of breach of contract and the debtor voluntarily submits the object of the fiduciary guarantee to the creditor. Both of the requirements will certainly extend the execution process of a fiduciary guarantee.

This research focuses mainly on 2 (two) issues. First, whether a secured creditor will be able to carry out a parate executie within 2 (two) months after insolvency upon the existence of the Decision of Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/2019 in the event the debtor is declared bankrupt. Second, the forms of legal protection for a secured creditor who are unable to perform a parate executie within 2 (two) months after insolvency upon the existence of the Decision of Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/2019. This research is a doctrinal research which focuses its approach on statute and conceptual study.

This research concludes that due to the possession of separative right by the creditor receiving fiduciary guarantee that is imposed by the bankruptcy law as well as the existence of status of bankruptcy which generate a “status of default”, normatively the Decision of Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/2019 shall have no legal consequences against a secured creditor to carry out a parate executie in the event the debtor is bankrupt. In practice, the ambiguity arising from the 2 (two) requirements of parate executie imposed by the Decision of Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/2019 is likely to harm the interest of secured creditor. In regard to that matter, legal protections for secured creditors are divided into preventive legal protection and repressive legal protection. Preventive legal protection is pursued through registration of fiduciary guarantee, filing of receivables, and verification meetings. Meanwhile, repressive legal protection can be pursued through renvooi procedure and miscellaneous lawsuit.

Keywords: *Bankruptcy law, guarantee law, fiduciary guarantee, parate executie, secured creditor, bankrupt debtor, curator.*