ABSTRAK

Hakim Mahkamah Konstitusi melalui putusan Mahkamah Konstitusi nomor 18/PUU-XVII/2019 memutuskan bahwa jaminan fidusia yang tidak ada kesepakatan cidera janji dan debitor keberatan menyerahkan secara sukarela objek jaminan fidusia, maka segala mekanisme dan prosedur hukum dalam pelaksanaan eksekusi sertipikat jaminan fidusia harus dilakukan dan berlaku sama dengan pelaksanaan putusan pengadilan yang telah berkekuatan hukum tetap. Dapat disimpulkan bahwa pasca putusan MK, eksekusi secara langsung (parate eksekusi) tetap dapat dijalankan asalkan memenuhi persyaratan yang telah diputuskan oleh hakim MK tersebut. Rumusan masalah dalam penelitian ini yaitu mengenai *ratio decidendi putusan* Mahkamah Konstitusi yang mendasarkan kesepakatan para pihak sebagai penentuan lahirnya cidera janji serta urgensi pencantuman klausula cidera janji dalam perjanjian pembiayaan konsumen pasca putusan MK. Penelitian ini menggunakan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Penelitian hukum ini menghasilkan temuan bahwa *ratio decidendi* hakim dalam Putusan MK didasarkan karena ketiadaan kepastian hukum dalam Undang-Undang Jaminan Fidusia kapan lahirnya cidera janji dan seringkali cidera janji ditentukan secara eksklusif oleh kreditor sehingga dalam amar putusan, hakim memutuskan kesepakatan antara Debitor dengan Kreditor sebagai penentu lahirnya cidera janji. Beranjak dari *ratio decidendi* tersebut, momen lahir cidera janji kurang tepat apabila harus didasarkan pada kesepakatan para pihak. Lahirnya cidera janji cukup dengan dilanggarnya kewajiban yang sudah disepakati di awal perjanjian. Selain itu, pencantuman klausula mengenai bentuk dan momentum cidera janji dalam perjanjian pembiayaan konsumen pasca putusan MK akan menimbulkan kepastian hukum. Dengan dirumuskan klausula cidera janji terlebih dahulu di awal perjanjian akan menghindari ketidaksepakatan bentuk dan momentum cidera janji di kemudian hari (langkah preventif).

Kata kunci : **cidera janji, jaminan fidusia, perjanjian pembiayaan konsumen.**

ABSTRACT

The Constitutional Court's verdict number 18/PUU-XVII/2019 decides whereby when a fiduciary security has no agreement concerning defaults and the debtor objects to the execution of the fiduciary security, all mechanisms and procedures in executing the fiduciary security must be equal to the execution of a final and binding court ruling. From the post Constitutional Court's decision number 18/PUU-XVII/2019, it can be concluded that the execution of the fiduciary security called "parate executie" can still be applied as long as there is an agreement concerning defaults and the debtor is voluntary in surrendering the fiduciary security. There are two problem of statements on this research. First, the ratio decidendi of Court Constitutional's decision which decide that the event of default must be agreed between the creditor and the debtor. Second, the urgency of putting breach of contract's clause in consumer financing agreement after Court Constitutional's decision. This research uses statute approach, conceptual approach and case approach. This legal research results that the ratio decidendi of Court Constitutional's verdict are based on two reasons. First, Fiduciary Security Law did not determine when a contract is being breached (event of default). Second, the event of default was mostly determined unilaterally by the creditor. However, the Court's Ratio Decidendi is slightly improper when it comes to urging an agreement concerning defaults among creditors and debtors. Breach of contract occours by violating any of the agreed-upon terms and conditions in agreement/contract. In addition to that, by putting breach of contract's clause in the Consumer Financing Agreement post the Court Constitutional Verdict, it will realize legal certainty. It's essential to ensure that the consumer finance agreement provides a proper clause about event of default as a preventive way.

Keywords** : **event of default, fiduciary security, consumer financing agreement.