

ABSTRAK

May Amilush, NIM : 128502203011, Pertimbangan Hakim dalam Menolak Permohonan Eksekusi Jaminan Fidusia Tanpa Putusan Pengadilan Ditinjau Dari Perspektif Maqashid Syariah Jaseer Auda (Study Putusan Mahkamah Konstitusi Nomor 2/Puu-Xix/2021), Prodi Hukum Ekonomi Syariah, UIN Sayyid Ali Rahmatullah Tulungagung, 2022. dengan Promotor Dr. H. M Darin Arif Mu'allifin, S.H., M.Hum. dan Dr. Zulfatun Ni'mah, S.HI., M.Hum.

Kata Kunci: Pertimbangan Hakim, Eksekusi Objek, Jaminan Fidusia, Maqashid Syariah, Jaseer Auda

Penelitian ini dilatar belakangi oleh, hubungan transaksi antara kreditur dan debitur, hanya pihak yang terkait saja yang berhak menyelesaikan masalah apabila terjadi sengketa. Namun realitanya sering adanya perbuatan kesewenang-wenangan disalah satu pihak yang mengakibatkan ketidakadilan terhadap debitur maupun kreditur sehingga perlu adanya pengadilan untuk menyelesaikan masalah apabila keduanya ada yang melakukan *wanprestasi*.

Rumusan masalah dalam penulisan tesis ini adalah (1) Apa pertimbangan hakim dalam menolak eksekusi jaminan fidusia tanpa putusan pengadilan pada putusan MK Nomor 2/Puu-Xix/2021? (2) Bagaimana pertimbangan hakim dalam menolak eksekusi jaminan fidusia tanpa putusan pengadilan pada putusan MK Nomor 2/Puu-Xix/2021 ditinjau dari perspektif maqashid syariah Jaseer Auda?

Metode penelitian ini menggunakan metode pendekatan yuridis normatif, yaitu penelitian dengan menggunakan data sekunder atau data kepustakaan. Jenis penelitian yang digunakan peneliti disebut sebagai penelitian literer atau riset kepustakaan (*library research*) yaitu penelitian yang memanfaatkan sumber perpustakaan untuk memperoleh data penelitiannya di mana obyek penelitian yang digali lewat beragam informasi kepustakaan (buku, jurnal ilmiah dan artikel ilmiah).

Pertimbangan hakim perumus putusan MK Nomor 2/Puu-Xix/2021 dalam menolak permohonan eksekusi objek jaminan fidusia tanpa putusan pengadilan adalah Mahkamah Konstitusi memiliki wewenang mengadili permohonan peninjauan kembali, pemohon memiliki kedudukan hukum untuk bertindak sebagai Pemohon dalam permohonan *a quo*, permohonan Provisi Pemohon dinyatakan tidak beralasan menurut hukum dan pokok permohonan Pemohon tidak beralasan hukum. Pertimbangan hakim dalam putusan MK Nomor 2/Puu-Xix/2021 yang menolak eksekusi objek jaminan fidusia tanpa putusan pengadilan ditinjau dari perspektif maqashid syariah Jasser Auda selaras dengan prinsip menjaga kehormatan (*hifdz al-'ird*) yakni perlindungan harga diri manusia dan menjaga hak asasi manusia dan konsep penjagaan harta (*hifdz al-Mal*).

ABSTRACT

May Amilush, NIM : 128502203011, Judge's Consideration in Rejecting Application for Execution of Fiduciary Guarantee without a Court Decision Judging from the Perspective of Maqashid Syariah Jaseer Auda (Study of Constitutional Court Decision Number 2/Puu-Xix/2021), Sayulymat Ali Tulungulung Syariah Economic Law Study Program, 2022. with Promoter Dr. H.M Darin Arif Mu'allifin, S.H., M. Hum. and dr. Zulfatun Ni'mah, S.HI., M. Hum.

Keywords: Judge's Consideration, Object Execution, Fiduciary Guarantee, Maqashid Syariah, Jaseer Auda.

This research was motivated by in a transaction relationship between a creditor and a debtor, only the related party has the right to resolve the problem in the event of a dispute. However, the reality is that there are often arbitrary acts on one side that result in injustice to debtors and creditors, so there needs to be a court to resolve the problem if both of them are in default.

The formulation of the problem in writing this thesis is (1) What are the judges' considerations in rejecting the execution of fiduciary guarantees without a court decision on the Constitutional Court's decision Number 2/Puu-Xix/2021? (2) What is the judge's consideration in refusing the execution of fiduciary guarantees without a court decision on the Constitutional Court's decision Number 2/Puu-Xix/2021 in terms of Jaseer Auda's maqashid sharia perspective?

This research method uses a normative juridical approach, namely research using secondary data or library data. The type of research used by the researcher is referred to as literary research or library research, namely research carried out in libraries where the object of research is explored through various library information (books, scientific journals and scientific articles).

The consideration of the judge formulating the Constitutional Court's decision Number 2/Puu-Xix/2021 in refusing the request for execution of the object of fiduciary security without a court decision is that the Constitutional Court has the authority to hear the petition for review, the applicant has legal standing to act as the Petitioner in the a quo petition, the Petitioner Provisions petition is declared unreasonable according to law and the subject matter of the Petitioner's petition has no legal ground. The judge's consideration in the decision of the Constitutional Court Number 2/Puu-Xix/2021 which rejected the execution of the object of fiduciary security without a court decision from the perspective of maqashid sharia Jasser Auda was in line with the principle of maintaining honor (*hifdz al-'ird*), namely protecting human dignity and protecting human rights. humans and the concept of property protection (*hifdz al-Mal*).