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The Meaning of Default in the Execution of the Object of Fiduciary Security Based on Law Number 42 of 1999 Concerning Fiduciary Guarantees

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Abstract
The Constitutional Court's Decision Number 18/PUU/XVII/2019) brings new changes to the procedure for implementing the execution of the guarantee object. The fiduciary recipient or creditor can no longer execute the object of the guarantee unilaterally, forcibly using the services of a third party to withdraw the object of the guarantee from the hands of the debtor or fiduciary giver who is in breach of contract. This research is classified as normative legal research, namely research that examines the legislation in a coherent legal system. Based on the decision of the Constitutional Court, Article 15 Paragraph (2) and Paragraph (3) are declared still valid and have legal force, the meaning of these articles is limited by the execution in the field, namely: Has there been an agreement on breach of contract (default) between the parties? Does the debtor have no objection to voluntarily surrendering the object as a fiduciary guarantee? Even though the fiduciary guarantee certificate has an executive title which means that it can be implemented as a court decision that has permanent legal force, the procedure or procedures for the execution of the fiduciary certificate must follow the procedures for carrying out the execution as referred to in Article 196 HIR or Article 208 RBg..
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1. Introduction

Fiduciary is one of the guarantee institutions, material rights that provide guarantees. Fiduciary arises because of the community's need for credit with movable objects as collateral, but still requires these objects for their own use. Fiduciary is a follow-up agreement born of a main agreement that creates obligations for the parties to fulfill achievements (Article 4) Law Number 42 of 1999 concerning Fiduciary Guarantees. The emergence of fiduciary is preceded by a loan agreement or loan agreement as the principal agreement. Furthermore, as a guarantee for repayment of debt, an additional agreement / follow-up agreement is made in the form of an agreement with a fiduciary guarantee. When the principal agreement is settled, then the additional agreement in the form of a fiduciary guarantee agreement will automatically terminate as well. The birth and expiration of a fiduciary guarantee agreement depends on the principal agreement of accounts payable.

Based on Article 1 point 2, the leasing company runs its business using a fiduciary guarantee. The leasing company provides motor vehicle or car loans to the debtor (credit recipient) as collateral for the vehicle, the ownership rights are transferred to the debtor or credit recipient based on trust. The agreement between the debtor leasing company or the credit recipient is bound by a standard agreement determined unilaterally by the leasing company. (Budiwati, 2013). The standard agreement determined unilaterally by the leasing company does not have a bargaining position between the foreign company (creditor) and the debtor. If the debtor signs the leasing agreement, then an agreement is born and the parties are bound by the signed agreement.

Since there was an agreement on the leasing agreement, the vehicle has transferred ownership rights to the credit recipient based on the trust of the lender (leasing) and debtor (credit recipient). If the debtor (credit recipient) defaults, the leasing company (credit provider) can execute the object of credit guarantee based on Article 29 of Law Number 42 of 1999 concerning Fiduciary guarantees. However, the fact that many leasing companies are credit providers in executing the object of collateral when a breach of contract occurs is not in accordance with applicable legal procedures.

Several cases that occurred in the past year resulted in legal uncertainty in the execution of the object of the fiduciary guarantee, in the Covid-19 condition, leasing through a third party forcibly pulled the vehicle that was the object of the fiduciary guarantee from his hands without any prior notification to the debtor. Whereas in the clause in the leasing agreement it is determined that if the debtor defaults, the leasing company as a creditor prior to carrying out the execution to make a subpoena to the debtor to perform its achievements. This provision is not heeded by, the good intentions of the debtor to pay the installments are not accepted by the leasing company. The leasing company is closed due to the Covid 19 condition, the debtor is dealing with the debt collector, the debt collector will return the vehicle to the debtor if,

Furthermore, Article 1 point 2 of Law Number 42 of 1999 concerning Fiduciary Guarantees, states that

fiduciary guarantees are collateral rights to movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in the Act. Number 4 of 1996 concerning Liability Rights remains under the control of the Fiduciary Giver. The position of the creditor or fiduciary recipient is prioritized in paying off debts to other creditors.

If the fiduciary giver makes a breach of contract, the fiduciary recipient can execute the fiduciary guarantee in accordance with the provisions stipulated in Article 29 of Law 42 of 1999. However, the reality is that a financing institution (leasing) in carrying out its business carries out a credit agreement that is bound by a fiduciary guarantee. In a credit agreement with a fiduciary guarantee, if the credit recipient makes a breach of contract, then to carry out the execution of the object of the fiduciary guarantee is regulated in Article 29 of Law Number 42 of 1999. However, in reality it is still found that a financing company (leasing) which carries out the execution of the object of the guarantee does not in accordance with the provisions of Article 29 of Law Number 42 of 1999. The leasing company unilaterally carries out arbitrary actions, forcibly by using the services of a deb collector to execute the collateral object. The debt collector withdraws the vehicle as collateral for the object of the fiduciary security by force without prior notification to the debtor as the fiduciary giver.

With the issuance of the Constitutional Court's Decision Number 18/PUU/XVII/2019) brought new changes to the procedure for the execution of the object of guarantee. The fiduciary recipient or creditor can no longer execute the object of collateral unilaterally, act arbitrarily, forcibly use the services of a third party to withdraw the object of collateral from the hands of the debtor or fiduciary giver who is in breach of contract. The decision of the Constitutional Court (MK) Number 18/PUU-XVII/2019 on January 6, 2020 regarding the judicial review of Law Number 42 of 1999 Article 15 paragraph (2) and paragraph (3), made some finance companies (leasing) restless, because it is no longer allowed to carry out its own execution (parate execution) of the object of the Fiduciary Guarantee. The decision of the Constitutional Court Number 18/PUU-X-XVII/2019 has brought new legal developments for the implementation of the object of fiduciary security.

2. Problems

a. What is the Legisl Ratio of the Constitutional Court Decision Number 18/PUU/XVII/2019 related to the phrase meaning of breach of contract in fiduciary guarantees
b. What are the implicationsthe execution of the fiduciary guarantee after the issuance of the Constitutional Court Decision Number 18/PUU/XVII/2019)?

3. Literature Review

The term fiduciary comes from Roman law, known as pawning goods, rights to banda based on an agreed trust as collateral for the repayment of creditors' debts. Subekti said that "the fiduciary contains the word "fides" which means trust, the debtor believes that the debtor has the goods only for collateral." Mahadi explained that "the word fiduciary comes from the Latin word which is a noun which means trust in someone or something, great hope. In addition, there is the word "fidio" which is a verb which means to believe in someone or something.

The definition of fiduciary according to Article 1 paragraph 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees: "Fiducia is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object". By adhering to the words "on the basis of trust" in the definition of fiduciary according to the Fiduciary Guarantee Act above, it can be interpreted that with such delivery the creditor does not actually become the owner of the collateral object, that by adhering to the interpretation that has so far been in effect, it means that the fiduciary guarantor believes that if later the debt provided with the fiduciary guarantee is repaid, the ownership rights to the collateral object will return to the fiduciary guarantee provider.

From this understanding, the main elements or elements of fiduciary guarantees are:

a. Fiduciary guarantees are collateral for debt repayment.
b. Debt that is guaranteed a certain amount.
c. Fiduciary guarantee objects are tangible or intangible movable objects, immovable objects, especially buildings that cannot be encumbered with Mortgage Rights whose control of the collateral objects is still in the power of the fiduciary giver.
d. Fiduciary guarantees give preferential rights or rights to certain creditors over other creditors.
e. The ownership rights to the collateral object are transferred to the creditor on the basis of trust, but the object is still in the control of the owner of the object.

The construction of the fiduciary guarantee for the transfer of ownership rights is carried out by means of a constitutum possessorium, namely the transfer of ownership rights to an object belonging to the debtor to the creditor while physical control of the object remains with the debtor. In a fiduciary guarantee, the transfer of ownership rights is intended solely as a guarantee for debt repayment, not to be permanently owned by the fiduciary recipient. This is the essence of the meaning of fiduciary guarantee Article 1 paragraph 2 of Law

Number 42 of 1999 concerning Fiduciary Guarantee. Even in accordance with Article 33 of Law Number 42 of 1999 concerning Fiduciary Guarantees, any promise that gives the fiduciary recipient the authority to own objects that are the object of fiduciary security if the debtor breaks the promise will be null and void by law.

4. Research Method

This research is classified as normative legal research, namely research that examines the laws and regulations in a coherent legal system. (Hadjon. And Djalmiati, 2005) In this case, positive law applies at a certain time and is issued as a product of certain political powers that have legitimacy. There are also those who state that when the problems and research objectives of legal studies reflect the ideal realm of law (philosophy, legal principles, legal rules, systematic logic and basic understandings of law), the research is normative or doctrinal. (Hadisuprapto, 2005:5). Legal research that uses normative juridical methods has the ability and scope to use secondary data sources, namely legislation, legal theory,

5. Discussion

5.1 *Legisl Ratio*The Constitutional Court's decision Number 18/PUU/XVII/2019 is related to the meaning of breach of contract in fiduciary guarantees

Implementation of credit agreements with fiduciary guarantees as regulated in Law no. 42 of 1999 Article 5 paragraph (1) which requires the existence of a note deed is intended for the purpose of proof for the creditor as a fiduciary recipient in the event of a dispute in the future, especially in dealing with debtors with large loans. Before the birth of Law no. 42 of 1999 there is no fiduciary requirement to be made in a certain form, except for a few things that are confirmed in various laws and regulations. (Hapsari, 2017). In other words, the fiduciary form is free. Fiduciary can be made orally or in writing, this written form can be an authentic deed or a private deed. The observations made by Rachmad Budiono and H. Suryadin Ahmad resulted in the analysis that:hand".(Badrulzaman, 1994).)

The existence of an agreement between the creditor and the debtor is contained in a standard form (a blank provided by the creditor) signed by both parties. Not done with a notarial deed because the nominal is not too large and this has been done since before the enactment of Law no. 42 of 1999 concerning Fiduciary Guarantees. People use private deeds with more practical considerations, not through complicated and economical procedures. With the issuance of Law no. 42 of 1999 concerning Fiduciary Guarantees where in Article 5 it is described about fiduciary security with a notary deed, it is assumed that the use of a notary akfa is carried out on a fiduciary guarantee with a nominal value of Rp. 25 million, while for under Rp. 25 million, a private deed or notarial deed can be obtained.

This requirement in written form and even authentic deed is intended for (1) legal certainty and (2) the principle of publicity. In terms of legal certainty, the existence of a fiduciary guarantee deed in the form of a notary deed is actually very good. However, this provision does not take into account practical interests, because debts of relatively small value guaranteed by fiduciary, if they must be made in the form of a notary deed, will be burdensome for the parties in terms of financing. Usually this fee is charged to the debtor. "Indeed, of course with some exceptions, a fiduciary guarantee deed is sufficient to be made in written form." (Hamzah, 2006).

However, in fact the legislators have sufficient reasons to determine that the fiduciary guarantee deed must be in the form of a notarial deed. The existence of fiduciary collateral objects in the hands of the fiduciary giver causes a high risk to be borne by the fiduciary recipient, especially if the debtor (fiduciary giver) has bad intentions. Debtors who have bad intentions can (1) pawn, (2) fiduciary money to other parties, (3) sell and other actions that mean to transfer fiduciary collateral objects. By making a fiduciary guarantee deed in a notary deed, which this deed has perfect proof of power, and then followed by registration, the various possible actions of the fiduciary giver who have bad intentions can be minimized (not eliminated), because there are certain sanctions that accompany these obligations and obligations. In this regard, Fred BG Tumbuan asserted that: "Considering that the object of collateral is generally a movable object that is not registered, it is only natural that the form of an authentic deed is considered to be the most capable of guaranteeing legal certainty regarding the object of a fiduciary guarantee." (Bachrudin, Gunarto, and Eko Soponyono , 2019)

Construction of the legal system of fiduciary guarantees, broadly speaking, general norms can be found in the UUJF concerning Fiduciary Guarantees, describing Fiduciary Guarantees which are intended to provide legal certainty and protection for interested parties. The inconsistency of norms in UUJF is contained in the rules of Fiduciary Guarantee, as follows: The regulation of Article 2 of UUJF confirms that this law applies to every agreement that aims to burden objects with fiduciary guarantees. It is hoped that this Article 2 will provide more legal certainty and be able to provide legal protection for interested parties so that complete provisions regarding fiduciary guarantees are formed to support activities in the business world. However, the legislators, without realizing it, Article 2 is in conflict with Article 38 and Article 37 of the UUJF. Article 38 of the UUJF as long as it does not conflict with the provisions of this law, all fiduciary laws and regulations remain in effect until they are revoked, replaced or renewed. The norm that regulates (Article 38 UUJF) actually still recognizes the

existence of FEO (Fiduciaire Eigendoms Overdracht) which he wants to replace. FEO should be revoked and abolished because there is a legal basis to replace it, so that in practice, the fiduciary holder still uses fiduciary rules based on FEO's recognized existence based on jurisprudence, the legal basis is weak. Article 37 paragraph (1) to paragraph (3) of the UUJF: (1) The imposition of objects that are the object of the Fiduciary Guarantee that existed before the enactment of this law, remains valid as long as it does not conflict with the law. (2) Within a period of no later than 60 (sixty) days from the establishment of the Fiduciary Registration Office, all Fiduciary Guarantee agreements must comply with the provisions of this law, except for the provisions concerning the obligation to make a Fiduciary Guarantee deed as referred to in Article 5 paragraph (1). (3) If within the period as referred to in paragraph (2) no adjustment is made, then the Fiduciary Guarantee agreement is not a collateral for the material as referred to in this law.

With the understanding of Article 37 paragraph (1) to paragraph (3), the creditor receiving the fiduciary who does not register his guarantee bond, can still register his rights based on the agreement of the parties in the guarantee bond, customary law, and jurisprudence. The conflict of norms contained in Article 15 paragraphs (2), (3) and Article 29 paragraph 1 point a UUJF essentially regulates the implementation of executions carried out by creditors themselves which are known to be contrary to Article 29 paragraph (1)b, (1)c and Article 31 UUJF and Article 32 UUJF.

The execution of fiduciary guarantees according to UUJF actually only recognizes two ways of execution even though the formulation seems to follow three ways. The two methods are: 1) Carrying out the title of execution by selling the object of the fiduciary guarantee through an auction on the authority of the fiduciary recipient himself by using the Execution Parate. 2) Selling the fiduciary guarantee object under the hands on the basis of an agreement between the giver and the recipient of the fiduciary guarantee. As in the UUHT, this UUJF sale under the hands of a fiduciary object also contains several requirements that are relatively heavy to be implemented.

In the law of fiduciary guarantees, a problem that often creates juridical problems is when the debtor providing the fiduciary guarantee does not carry out an obligation that should have been agreed upon. The debtor's negligence is evidence of a default. The definition of breach of contract, according to Subekti, is: If the debtor (the debtor) does not do what he promised, it is said that he is in default, meaning that the debtor is negligent or negligent or breaks his promise, or violates the agreement, if he does or does something. which he cannot do" (Munir, 2000).

When the debtor defaults, the thing that will be done by the creditor to get the debt repaid is to sell the object that is guaranteed by the debtor. However, the problem will be more complicated if it is known that the debtor also has more than one creditor in the fiduciary guarantee agreement. With the existence of more than one creditor, of course, UUJF provides a different position among these creditors. "The creditor who is the first to register an object that is the object of a fiduciary guarantee is given priority rights as specified in Article 28 of the UUJF." (Tartib, 2016).

After the issuance of UUJF, it became clear and explicitly stated that fiduciary guarantees have preferential rights. What is meant by preferential rights are: "The right of a creditor holding a certain guarantee to be given his right (compared to other creditors) for the settlement of his receivables taken from the proceeds of the sale of the debt collateral". Preferred rights in UUJF are regulated in Article 27 paragraph (2) which explains that: "The precedence right as referred to in paragraph (1) is the right of the fiduciary recipient to take repayment of his receivables on the results of the execution of objects that are objects of fiduciary guarantees".

On January 6, 2020, the Constitutional Court of the Republic of Indonesia has issued Decision Number 18/PUU-XVII/2019 ("Constitutional Court Decision") which determines that the phrases "executory power" and "equal to a court decision with permanent legal force" in Article 15 Paragraph (2) Law Number 42 of 1999 concerning Fiduciary Guarantees ("Law No. 42/1999"), is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted "towards fiduciary guarantees in which there is no agreement on breach of contract and debtors. object to voluntarily surrendering the object that is a fiduciary guarantee. In addition, the phrase "breach of promise" in Article 15 Paragraph (3) of Law no. 42/1999 is also stated to be contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted that "the existence of a breach of contract is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine that a breach of contract has occurred." The Constitutional Court has given a legal interpretation that the executorial power of the Fiduciary Guarantee Certificate is not immediately enforceable, but depends on certain circumstances, for example: an agreement on breach of contract by a creditor and debtor, and/or the willingness of the debtor to submit the object of a fiduciary guarantee voluntarily.

This decision has an impact on the creditor because the Fiduciary Guarantee should have an easy nature in execution if the debtor defaults (Explanation of Article 15 Paragraph (3) of Law No. 42/1999), but currently if the debtor refuses to cooperate, then the creditor must obtain a court decision first before executing.

If you pay attention to the sound of Article 15 of Law no. 42/1999, it can be concluded that the legislators

want to provide guarantees and protection of legal certainty to Fiduciary Recipients (Creditors) in providing credit to Fiduciary Givers (Debtors). This is very understandable because in a debt agreement where the collateral is, among others: movable objects, where the control is in the hands of the debtor, then there must be a legal mechanism that can provide more protection to creditors, especially in terms of execution of fiduciary guarantee objects.

The government's view is certainly closely related to Article 29 Paragraph (1) of Law no. 42/1999 which distinguishes the execution of objects that are objects of collateral in 3 ways, namely: 1) the implementation of the executorial title as referred to in Article 15 Paragraph (2) by the Fiduciary Recipient; 2) sale of Objects that become the object of Fiduciary Guarantee on the authority of the Fiduciary Recipient himself through a public auction and take settlement of his receivables from the proceeds of the sale; 3) underhand sales carried out based on the agreement of the Fiduciary Giver and Recipient if in this way the highest price can be obtained that benefits the parties. With the provisions regarding the determination of execution procedures in Article 29 Paragraph (1)

The Fiduciary Law provides an understanding that the method of execution of objects that are used as fiduciary objects is as mentioned above, and no other method is possible. Finally, on January 6, 2020, the Constitutional Court of the Republic of Indonesia issued Decision Number 18/PUU-XVII/2019 (“Constitutional Court Decision”) related to the judicial review lawsuit against Article 15 Paragraph (2) and Paragraph (3) of Law Number 42 Year 1999 concerning Fiduciary Guarantees ("Law No. 42/1999"), among others as follows:

> "-Declaring Article 15 Paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security insofar as the phrase "executory power" and the phrase "the same as a court decision with permanent legal force" is contrary to the 1945 Constitution of the Republic of Indonesia and does not has binding legal force as long as it is not interpreted "with respect to fiduciary guarantees where there is no agreement on breach of contract (default) and the debtor objected to voluntarily surrendering the object as a fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same with the execution of court decisions that have permanent legal force;

The Constitutional Court interprets that the executive power of the Fiduciary Guarantee Certificate is dependent on a situation, namely: 1) if there is an agreement on breach of contract (default) and the debtor does not object to voluntarily submitting the object that is the fiduciary guarantee, the Fiduciary Guarantee Certificate has the same executive power. with a court decision that has obtained permanent legal force; 2) If the debtor defaults, the fiduciary recipient has the right to sell the object which is the object of the fiduciary guarantee on his own power, provided that on the basis of an agreement between the creditor and the debtor, or on the basis of legal remedies that determine that a breach of contract has occurred.

Although in Article 1 point 1 of Law no. 42/1999 mentions the transfer of ownership rights, but according to Trisadini Prasastinah Usanti and Leonora Bakarbessy, in truth, the fiduciary legal relationship is not in the sense of the actual transfer of “ownership”, as the meaning of “levering” in Article 528 BW, but which needs to be observed and seen is the intention of the parties, in this case the fiduciary giver and recipient, that the object is used as an object of collateral, not intending to transfer the object in the context of a sale and purchase agreement. If there is a transfer of ownership in the true sense, the creditor (fiduciary recipient) has no obligation to return what should be his. (Khifni, 2019).

The purpose of Law no. 42/1999 is to guarantee legal certainty to interested parties, especially the creditors, on the grounds that the objects which are collateral goods for the settlement of debts are under the control of the debtor. The problem that often occurs is the existence of resistance when taking the object of the guarantee object from the fiduciary giver. Therefore, the Police as an instrument of the State play a role in securing the execution process of the Fiduciary Guarantee. Meanwhile, the billing function can be carried out in collaboration with other parties. Article 47 POJK No. 35/POJK.05/2018, which in practice is better known as the Debt Collector.

The Constitutional Court Decision Number 18/PUU-XVII/2019 has given meaning to Article 15 Paragraph (2) and Paragraph (3) of Law No. 42/1999 as mentioned in the introduction to this paper. Thus, based on the decision of the Constitutional Court, Article 15 Paragraph (2) and Paragraph (3) are declared still valid and have legal force, but the meaning or meaning of these articles is limited by the execution in the field, namely: Has there been an agreement on breach of contract? default) between the parties? And does the debtor have no objection to voluntarily surrendering the object that is a fiduciary guarantee?

5.2 ImplicationExecution of Fiduciary Guarantees After the issuance of the Constitutional Court's Decision Number 18/PUU/XVII/2019

In general, the parties involved in a leasing agreement are the lessor (the lessor) and the lessee (the lessee). In a lease agreement, anyone can become a lessor, while in a leasing agreement only companies that have obtained permission from the minister of finance can become a lessor and the public is the lessee.wide. (Herowati, 2008).

In the sense of execution according to M. Yahya Harahap's opinion in his book "Scope of Execution

problems in the Civil Sector", he gives the following understanding: "Execution as a legal action carried out by the court to the losing party in a case, is a further rule and procedure in the examination process. case. Therefore, there is no continuous execution of the entire civil procedural law process. In general, execution is the implementation or decision of the court or deed, then the decision to settle the obligations of the creditor through the sale of certain objects belonging to the debtor. Meanwhile, what is meant by a fiduciary agreement is an agreement between creditors and debtors that involves guarantees. The position of the guarantee is still in the control of the guarantee owner.

The action to carry out the execution of the object of the fiduciary guarantee, the fiduciary giver is obliged to submit the object that is the object of the fiduciary guarantee. If the object that becomes the object of the fiduciary security consists of trading objects or securities that can be sold on the market or on the stock exchange, the sale can be made at those places in accordance with the applicable laws and regulations. The execution process of embezzled fiduciary guarantees against bad loans began with the issuance of warning letters in stages 3 (times) to the debtor, but because there was still no good faith from the debtor, the bank finally decided to execute the object of the fiduciary guarantee.

In the event that the fiduciary giver is not willing to hand over the object that is the object of the fiduciary guarantee at the time the execution is carried out, the fiduciary recipient has the right to take the object that is the object of the fiduciary and, if necessary, can request assistance from the authorities. This refers to Article 30 of the fiduciary guarantee law, which states: The fiduciary giver is obliged to submit the object that is the object of the fiduciary guarantee in the context of the execution of the fiduciary guarantee. In Article 34 it is stated, in the event that the results of the execution are not sufficient to pay off the debt, the remainder is still the responsibility of the debtor, and in the event that the results of the execution are in excess, the fiduciary recipient is obliged to return it to the debtor.

Fulfillment rights from creditors are carried out by selling/melting collateral objects from creditors where the result is for the fulfillment of debtors' debts, the sale of these objects can occur through public sales because of a promise/beding in advance (parate execution) of the goods. certain objects that are used as collateral. UUJF has provided rules regarding the execution of the Fiduciary Guarantee object, but the fact is that in the field the execution carried out by financial institutions does not comply with the applicable laws and regulations. Not infrequently the implementation of executions carried out by financial institutions occurs irregularities and acts against the law.

The specialty of the parate right of execution of the fiduciary creditor in Article 15 paragraph (3) of the Fiduciary Guarantee Law is that he can sell the collateral goods after the debtor giving the fiduciary fails to do so without going through a confiscation procedure first and therefore without involving a bailiff, without intermediary or Court permission, basically as if he was auctioning his own goods. He doesn't even need to use a notary deed grosse. The law of execution is regulated in the Civil Procedure Code, so here the fiduciary recipient creditors carry out outside the Procedural Law. (Rufaida, Khifni, and Sacipto, 2019).

By using this parate execution facility, the creditor receiving the fiduciary has a cheaper, simpler and more readily available facility to be applied at any time. That is why it is said that the creditor receiving the fiduciary has a means of making repayments which is not only prioritized (separatically) but also simpler so that it is said to have a means of execution that is ready to be handled. The implementation of this executorial title has many weaknesses and can be detrimental to various parties, especially the debtor. On the legal side, there is an imbalance where the debtor is powerless when the goods are simply executed without his knowledge or without his knowing fault. This executorial right does not have a fixed element of legal certainty.

Based on the decision of the Constitutional Court, the Constitutional Court has interpreted the breach of contract in Article 15 paragraph (2) and paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees. In the case of the execution of the object of fiduciary security by the creditor, the meaning of "breach of promise" must be agreed upon by both parties providing fiduciary rights (debtor) and fiduciary recipient (creditor). As long as the fiduciary rights giver (debtor) has acknowledged the existence of a "breach of promise" and voluntarily surrenders the object that is the object in the fiduciary agreement, then it becomes the full authority of the fiduciary recipient (creditor) to be able to carry out his own execution. However, if the opposite happens,

It can be concluded that the relationship between this Constitutional Court Decision and the executive rights is that in the execution of fiduciary guarantees, the meaning of the word "breach of promise" must be agreed upon by both parties. Breakage of promise‟ should not be interpreted unilaterally by the creditor. Breakage of promise‟ must be seen whether there are objections between the two parties, because so far the default has been determined unilaterally by the creditor. If there are still objections to the debtor, they must follow the applicable legal procedures, namely to file a lawsuit in court.

This regulation provides legal protection to debtors, so that creditors do not act arbitrarily in executing the object of a fiduciary guarantee. The fiduciary recipient (creditor) is prohibited from forcibly taking the fiduciary object from the hands of the fiduciary giver (debtor). If this is done by the Fiduciary Recipient (Creditor), then

according to the law, the Fiduciary Recipient can be considered to have committed an "act of vigilantism" (eigenrichting) which is prohibited by law.

In addition, the implications of this decision have an impact on the court so that it will be much more active due to the large number of fiduciary guarantee cases, especially in the field of bailiffs, so that creditors will incur costs or fees that are more expensive and inefficient. Courts must have sufficient resources to deal with disputes between creditors and debtors. Therefore, it is necessary to efficiently handle disputes in court between creditors and debtors, if the value of the fiduciary guarantee is not so large. With the obligation to wait for a court decision that has permanent legal force, there will be potential debtors who deliberately buy time by using the court route. There are several things that happened after this decision was granted, namely as follows (Harahap. 2001)

1) The reduced executive power of the fiduciary guarantee certificate
   Article 15 paragraph (2) stipulates that the provisions for granting irah-irah for the sake of Justice in the One Godhead and subsequently having the same executorial power as court decisions that have obtained permanent legal force are reduced. It should be understood that the essence of the executive title is the power to be enforced by force with the help and by state instruments. The mechanism for implementing the executive title itself is carried out by asking for permission from the Head of the Court, which is then followed by a security mechanism, until finally followed by confiscation of execution and sale. This means that if this article is omitted, the fiduciary guarantee holder will no longer be able to apply for execution to the court.
2) then based on Article 15 (3) of the Fiduciary Guarantee Act, creditors are allowed in their own power to make sales of collateral objects. This is understandable, considering that movable objects have a different character from immovable objects.

In the execution, there are also new stages carried out, namely as follows:

1) The existence of a request for execution after a court decision has permanent legal force, basically the fulfillment of the decision must be carried out by the losing party voluntarily. Execution will be carried out if the losing party does not carry out the decision voluntarily, by submitting a request for execution by the winning party to the competent Head of the District Court.
2) Aanmaning, the request for execution is the basis for the Head of the District Court to make a warning or aanmaning. Aanmaning is an action and effort made by the Head of the District Court who decides the case in the form of a "reprimand" to the Defendant (who loses) so that he carries out the contents of the decision voluntarily within a specified time after the Chairman of the Court receives the request for execution from the Plaintiff. The losing party is given a period of 8 days to implement the contents of the decision since the debtor is summoned to appear to be given a warning.
3) Application for confiscation of execution After the assessment is carried out, it turns out that the losing party does not also carry out the order from the decision, the court confiscates the execution of the property of the losing party based on the request of the winning party. The application is the basis for the Court to issue a Letter of Determination containing an order to the Registrar or Bailiff to confiscate the execution of the defendant's assets, in accordance with the terms and procedures regulated in Article 197 HIR. The determination of the seizure of execution is a continuation of the determination of security. Broadly speaking, there are 2 (two) ways to place confiscations, namely confiscation of guarantees and confiscation of execution. Security confiscation means that, in order to guarantee the implementation of a decision in the future, the confiscated goods cannot be transferred. traded or otherwise transferred to another person. Meanwhile, execution seizures are confiscations that are determined and carried out after a case has a decision that has permanent legal force.
4) Execution Determination The issuance of an Execution Decree which contains an order from the Head of the District Court to the Registrar and the bailiff to carry out the execution.
5) Auction Court issues the Execution Determination and the Minutes of Execution, then the next stage is the auction. Auction is a public sale of the respondent's assets that have been confiscated, execution or public selling of the respondent's confiscated property is carried out in front of an auctioneer or auction sale is carried out through the intermediary or assistance of the auction office and the method of selling it is by increasing the bid price or decreasing it through the auction. offer in writing (offer with registration).

In the normalization system, the Fiduciary Guarantee Law does not reflect the values of Pancasila, there are still inconsistencies in the norms, so it is important to renew the substance of the normalization system, so that in practice it does not cause problems, so that neither party is harmed. This is a manifestation of certainty and justice in realizing the goals of the Fiduciary Guarantee Law. The process of identifying and formulating policy problems which are then outlined in a law product is largely determined by the actors involved, both individually and in groups in society. In addition, social, economic, political, cultural and other environmental factors can influence and become material or input for the political system consisting of the legislative, executive, judicial, political parties, community leaders and so on. Everything interacts in an activity or process to convert input into output. This process, by Eiston called within inputs, conversion process and the black box. (Hadjon,

2005).

Based on the opinion above, the frame of mind of the legislators, in this case the Fiduciary Security Law, should be oriented towards God (religious morals), humanity (humanistic), and society (social justice), so that the resulting law products does not cause problems in its implementation. Legal culture serves as a bridge that connects the rule of law with the behavior of all citizens. This component of legal culture should be distinguished between internal legal culture, namely the legal culture of lawyers and judges, and external legal culture, namely the legal culture of the wider community. (Hadjon, 2005).

According to Agus Yudha Hernoko, there are times when under certain circumstances to prove the existence of a debtor's default, a negligent statement is no longer needed, among others: for fulfillment of achievements a fatal grace period (fatal terms) applies, the debtor refuses to fulfill or the debtor admits his negligence. (Hernoko, 2014). If any of the requirements are not met, then the execution with the executorial title, or the right to sell the object that is the object of the fiduciary guarantee, can only be carried out through the fiat executor first. Fiat execution is interpreted as a court order to implement a court decision if the party defeated in the decision refuses to implement it voluntarily. In addition, fiat executie is defined as the granting of power for the execution of an executorial decision (which is enforceable).

6. Conclusion

a. The Constitutional Court Decision Number 18/PUU-XVII/2019 gives meaning to Article 15 Paragraph (2) and Paragraph (3) of Law No. 42/1999. Based on the decision of the Constitutional Court, Article 15 Paragraph (2) and Paragraph (3) are declared still valid and have legal force, but the meaning or meaning of these articles is limited by the execution in the field, namely: Has there been an agreement regarding breach of contract (default)) between the parties? Does the debtor have no objection to voluntarily surrendering the object as a fiduciary guarantee?
b. Court decisions that have permanent legal force and documents whose legal force is the same as court decisions with permanent legal force or executorial nature, including Mortgage Certificates and Fiduciary Guarantee Certificates. Even though the fiduciary guarantee certificate has an executive title which means that it can be implemented as a court decision that has permanent legal force, the procedure or procedures for the execution of the fiduciary certificate must follow the procedures for carrying out the execution as referred to in Article 196 HIR or Article 208 RBg. .

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