Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.129, 2023

Reconstruction of Fiduciary Collateral Execution Regulations Due to False Debtors Based on Justice Value

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Abstract
Execution of Fidusiary guarantee objects is an important issue in line with the growing development of granting credit with Fidusiary guarantees in credit agreements. The execution of Fidusiary guarantee objects is regulated in articles 29 to 34 of Law no. 42 concerning Fidusiary Guarantees, wherein the provision stipulates that if a debtor defaults, the execution of the object of Fidusiary guarantees can be carried out in two ways, namely through parate execution and private sales, but in practice, these provisions are difficult to implement properly. Based on these matters, it is necessary to study further when how a creditor can be said to have defaulted or defaulted, how is the process of executing Fidusiary guarantee objects in banking, and what are the obstacles that hinder carrying out the execution process of Fidusiary guarantees. The research method in writing this dissertation uses a juridical normative method with an explanatory research type, namely by examining and analyzing the relationship between the practice of executing Fidusiary guarantee objects in banking based on regulations related to this matter. In this study, secondary data was used, where to To obtain secondary data, the data collection tool used was a document study conducted using written data in the form of primary, secondary and tertiary legal materials, and then the data was analyzed qualitatively. Regulatory reconstruction of Article 15 paragraph (2) and paragraph (3) of the Fidusiary Security Act relating to the execution of Fidusiary guarantees in practice raises the creditor's arbitrariness when collecting, withdrawing Fidusiary collateral objects (movable objects) under the pretext of the debtor in breach of promise.
Keywords: regulation, execution, agreement, default, value of justice.
DOI: 10.7176/JLPG/129-03
Publication date: February 28th 2023

A. Introduction

As a result of the enactment of a general guarantee for all creditors without the right to precedence and covering all the property of the debtor, it is possible for the creditor not to be repaid for all his receivables. In the event of such an event, the payment of the debtor's obligations is made in accordance with the size of each creditor's receivables in a balanced manner.[1] The advantage of the general guarantee is that it applies automatically based on the law (by operation of the law) without the need to be promised or go through certain procedures. In addition to general guarantees, there are special guarantees that provide preference for the creditor in the event of a defaulting debtor. [2]This is as stated in Article 1132 of the Civil Code. By having a preferred position, the creditor is more guaranteed in terms of repaying his debts. This type of guarantee is generally agreed between the debtor and the creditor with a certain object as collateral.[3]

Special guarantees born because of agreements are of two kinds. First is the personal guaranty. Next is a special treasury guarantee consisting of a Lien, Fiduciary[4], Dependent Rights, Mortgage and warehouse receipt. In an individual special guarantee, it is appointed or agreed that there is a certain person or legal subject who will guarantee the payment of the debtor's obligations in the event of a debtor default[5].

The understanding of hermeneutics in legal science means that the interpreter in the process of understanding must be able to see the meaning of legal texts based on actuality or present conditions, pay attention to changes in the environment (practical level in society), reconstruct the original meaning of legal formulations. Delving into the meaning of law with its entire expanse of application, and considering the historical changes (historical traces) experienced by law in order to formulate a new normative function of law. Historical knowledge can only be gained by looking at the past in its contunuity with the present which is done precisely by the jurist in his practical work, in ensuring the continuous continuity of the law in defending the

[1] Yeltriana, Anis Mashdurohatun, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019].
[2]Anis Mashdurohatun, Ideal Construction on Credit Agreement with Fiduciary Guarantee Based On Justice Value, TEST, Maret-April 2020. pp.2760-2765.
[3] Bambang Setyabudi, Anis Mashdurohatun, Reconstruction of Legal Protection Regulations for Debtors and Third Parties in Credit Agreements with the Object of Fiduciary Based Guarantee, Scholars International Journal of Law, Crime and Justice, 2022.
[4] Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, Jurnal Akta. Volume 9 No. 3, September 2022.
[5] C.S.T. kansil, *Modul Hukum Perdata termasuk asas-asas Hukum Perdata*,Pradnya paramitha hakarta, 1995.

legal mind.

In addition to the study of legal hermeneutics, it is also necessary to study and analyze the decision of the Constitutional Court a quo which will assess whether the aquo decision has reflected the principle of proportionality or not. Therefore, the proportionality test formula and the study of the principle of proportionality in the dimension of rights exchange in financing agreements after the aquo ruling are relevant things to be applied in reviewing this principle of proportionality.

For business actors, this is a very profitable business opportunity because of the large demand from the community so that business actors cannot meet these needs. Where people's purchasing power is still low to buy cash, the Indonesian government is looking for solutions so that people's needs are met. Namely by repaying the price through installments (credit). Article 29 of Law No. 42 of 1999 concerning Fiduciary Guarantees, concerning Execution, which states that the execution of objects that are the object of fiduciary guarantees can be carried out by means of the implementation of the excuratorial title as article 15 paragraphs (2) and (3) by the fiduciary recipient. The Fiduciary Guarantee Certificate has the same executory power as a court decision that has obtained permanent legal force, so the effect is that no more ordinary legal remedies can be made, such as verset (resistance), appeal, cassation.[1]

In terms of taking the legal basis in Article 15 paragraph (2) and paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees as the focus of research in our dissertation. With the hope of being able to contribute comprehensive thinking in legal development in Indonesia, especially those related to the issue of execution of fiduciary guarantees of defaulting debtors and based on the background of the problems that have been raised above, several problems can be formulated as follows: Why the regulation of the execution of fiduciary guarantees due to debtor default has not been based on the value of Fairness.What are the weaknesses of the fiduciary guarantee execution regulation due to debtor default.How to Reconstruct Regulation of the regulation of the execution of fiduciary guarantees due to debtor default Based on the Value of Justice.

B. Research Methods

The research method used in this study uses a paradigm of post positivism called social contructivists who try to redefine what is meant by social reality, where researchers want to produce a new thought, understanding or idea and theory by trying to reconstruct the regulation of Article 15 paragraph (2) and paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees based on the value of justice, with a sociological juridical approach as the main approach with the specifics of this research is sociological legal research (sociologic research), is a descriptive research that is explanatory and explaining which aims to describe systematically, factually, accurately and completely about the legal conditions applicable in the community to the execution of the fiduciary guarantee of the defaulting debtor. And based on the type of research used in this study is sociological juridical, so to obtain objective data[2], the type of data needed is primary data and is supported by secondary data.[3]

C. Research Results

Justice is inseparable from law. The famous dictum of St.Augustin describes the relationship, lex inusta non est lex or unjust law is not law, unjust law is not law or as it says immoral rules are not legally valid, rules that are contrary to morals are not legally valid. Accordingly, in case of conflict between legal certainty and justice, absolute priority is given to justice. Another classic phrase to describe the inseparability of justice from the law, that a law whose injustice is severe enough can and should be refused to have a legal character, citizens and courts, morally and juridically entitled to treat as, or as if it were not law.

From the academic side, the relationship between law and justice is the main problem of legal theory. The idea of external standards of justice, whether derived from eternal commandments or human nature, or both, has played an important role in the development of legal analysis, whether expressed in such terms or not. Legal and political theorists since plato's time have wrestled with the issue of whether justice is part of the law or merely a moral judgment about the law. Justice is not only the business of jurists, but also the center of moral and social philosophy.[4]

Pancasila is not only a source of laws and regulations, but also a source of morality, especially in the implementation and administration of the State.The 2nd precept which reads "Just and civilized humanity" is a source of moral value for national and state life. Pancasila values are also objective because they correspond to

[1] Anis Mashdurohatun, Adhi Budi Susilo, Bambang Tri Bawono, Copyright Protection towards the Society 5.0, Journal of Southwest Jiaotong University, Volume. 56. Issue 2. 2021.
[2] Anis Mashdurohatun, Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce), International Conference on Law Reform (INCLAR 2019), Atlantis Press,2020.pp.70-75.
[3] Anis Mashdurohatun, Danialsyah, Reconstruction of Mediation in Environmental Disputes Settlement Based on Pancasila Justice, Volume.24 Issue 3. Journal Of Law And Political Sciences, 2020.
[4] Mawardi Muzamil, Anis Mashdurohatun, Perbandingan Sistem Hukum (Hukum Barat, Adat dan Islam), Madina Semarang, Semarang,2014

reality and are general. Meanwhile, the subjective nature is due to the results of the thinking of the Indonesian nation.

The Pancasila values contained in the 5th precept, namely: social justice for all Indonesians, are a reflection of social life to be just in carrying out rights and obligations in social life.

The approach to justice theory that will be used as an analysis knife is the value of justice Pancasila.Where the main idea is the Pancasila Values contained in the 5th precept, namely; social justice for all Indonesians, is a reflection of social life to be fair in carrying out rights and obligations in social life, in carrying out financing agreements including words guaranteed fiduciary based on the provisions of Article 14 paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees (UUJF), *newborn fiduciary guarantees on the same date as the date of recording of Fiduciary guarantees in the Fiduciary Register Book*. Article 15 paragraph (1) of Law No. 42 of 1999 concerning Fiduciary Guarantees: "*In the Fiduciary Guarantee Certificate as referred to in Article 14 paragraph (1) the words "FOR THE SAKE OF JUSTICE lLAN BASED ON THE ALMIGHTY GODHEAD" are included*. Article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees: "*The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executory power as a court decision that has obtained permanent legal force." Article 15 paragraph (3) of Law No. 42 of 1999 on Fiduciary Guarantees: "If the debtor defaults on a promise, the Fiduciary Beneficiary has the right to sell the Object that is the object of the Fiduciary Guarantee on his own power*."

The philosophy of Pancasila is the result of thinking or thinking as deeply as possible from the Indonesian nation which is considered, believed and believed to be something (reality, norms, values) that is the truest, fairest, wisest, best and most suitable for the Indonesian nation.[1]

According to Lawrence Meir Friedman, a legal sociologist from Stanford University, according to Lawrence Meir Friedman, the legal system consists of three elements that influence each other, namely:

(1) Legal Substance
that is, it includes regulations that are not only on positive legislation, but include norms and patterns of behavior that live in society. The emphasis lies on the living law, not just on the rules in the book of laws.
(2) Legal Structure
is a pattern that shows how the law is carried out according to its formal provisions. The structure includes two things, namely: the legal institution and the legal apparatus.
(3) Legal Culture
is the attitude of man to the law and the legal system of beliefs, values, thoughts, and expectations

These three elements are interconnected with each other and cannot be separated massively. No matter how well the structuring of the legal structure to carry out the established rule of law and no matter how good the legal substance is made without the support of the legal culture by the people involved in the community system, then law enforcement will not run effectively, as the current law enforcement is unsystematic, overlapping and reactive to various violations of the law that occur. This is inseparable from the various factors that influence it, especially the relationship between the three elements, namely legal structure, legal substance, and legal culture.[2]

Applied Theory The theory applied in writing this scientific paper is the Evidentiary Power of the Deed in the form of a Sale and Purchase Binding Deed, whether the deed is authentic evidence showing that the sitergugta is the one entitled to possess. Proofing by writing is done with authentic writing or with writing under the hand. The deed has the function of formil (formality causa) and the function as evidence (probationis causa) The deed as a formil function means that a legal act will become more complete if a deed is made.

According to Satjipto Rahardjo, progressive law enforcement is to carry out the law not just the black-and-white words of the regulation (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the law or law. Law enforcement is not only intellectual intelligence, but rather with spiritual intelligence. In other words, law enforcement is done with determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find another way than is usually done.

As a result of modren's law paying great attention to aspects of procedure, Indonesian law is faced with two major choices between courts that emphasize Damage and deterioration in the hunt for justice through modren law due to the game of procedure which causes the question "is the court seeking justice or victory?". Court proceedings in a country that is very loaded with procedures (heavly proceduralizied) carry out procedures well placed above all else, even above the handling of substance (accuracy of substance). Such a system provokes innuendo of trials without truth.[3]

According to Satjipto Raharjo, Legal Protection is to provide protection to the human rights of those harmed by others and that protection is given to the community so that they can enjoy all the rights granted by

[1] https://123dok.com/article/teori-keadilan-pancasila-sebagai-grand-theory.q7wg30rr
[2] Komisi yudisial RI, Problematika Hukum dan Peradilan di Indonesia, Diterbitkan oleh Sekretariat Jenderal Komisi Yudisial Republik Indonesia Cetakan Pertama, Juli 2014, Hlm.124
[3] http://repository.unissula.ac.id/18417/7/BAB%20I_1.pdf

law.

According to Philipus M. Hadjon argued that Legal Protection is the protection of dignity and dignity, as well as the recognition of human rights possessed by legal subjects based on the legal provisions of the authority. Definition of Fiduciary Guarantee In the provisions of article 1 number 1 of law number 42 of 1999 concerning Fiduciary Guarantees that what is meant by fiduciary is "Transfer of ownership rights of an object on the basis of trust provided that the object to which the right of ownership is held remains in the possession of the owner of the object."

As for what is meant by fiduciary guarantee according to article 1 number 2 of law number 42 of 1999, namely: "The right of guarantee for movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be burdened with dependent rights, as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the fiduciary provider, as collateral for the review of certain creditors, which gives the fiduciary beneficiary a position of precedence over other creditors.

D. Research Results

Regulation is a rule made by the government or other authorities to control the way things are done or the way people behave. It is further explained that, regulation is a set of rules to control an order that is made so that it is free from violations and obeyed by all its members. The definition of regulation in legal science means legislation in written form, because it is a written decision, then legislation as a rule of law is commonly referred to as written law. Laws and regulations formed by officials or office environments (bodies, organs) that have the authority to make regulations that apply are generally binding (aglemeen). Legislation is generally binding, not intended to always be binding on everyone. General binding merely indicates that a statutory event does not apply to a specific concrete or individual event.

If the same Object is the object of the Fiduciary Guarantee of more than 1 (one) Fiduciary Guarantee agreement, then the right that takes precedence as referred to in Article 27, is granted to the right to first register it with the Fiduciary Registration Office. If the debtor or Fiduciary Giver defaults on the promise, the execution of the Object of the Fiduciary Guarantee can be carried out by:

a. Implementation of the executory title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient.
b. Sale of Objects that are Objects of Fiduciary Guarantee on the fiduciary recipient's own power through public auction and taking repayment from the proceeds of the sale.
c. Underhand sales made under the agreement of the Fiduciary Giver and Receiver if in such a manner the highest price may be obtained in favour of the parties.

The execution of the sale is carried out after the lapse of 1 (one) month from the time it is notified in writing by the Fiduciary Giver and Receiver to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned. The Fiduciary Grantor shall submit the Object of the Fiduciary Guarantee in the course of executing the Fiduciary Guarantee. In the event that the Object of a Fiduciary Guarantee consists of trading objects or securities that can be sold on the market or on the exchange, the sale of which may be made at such places in accordance with applicable laws and regulations. Where the execution proceeds exceed the value of the guarantee, the Fiduciary Beneficiary shall return the excess to the Fiduciary, but if the proceeds of the execution are insufficient for repayment of the debt, the debtor remains liable for the outstanding debt.

It is fair to question whether the fiduciaries practiced in a number of finance companies are relevant to Islamic business law. The Islamic economic fatwas that have been present, technically present a model of development and even the renewal of fiqh muamalah maliyah (economic fiqh). Functionally, fatwas have the functions of tabyin and tarjih. Tabyin means explaining the law which is a practical regulation for financial institutions, especially those requested by economic practitioners to the DSN (National Sharia Council), while tarjih is to provide guidance and enlightenment to the wider community about Sharia economic norms. DSN's Sharia economic fatwas are not only binding for practitioners of Sharia economic institutions but also for citizens of the Indonesian Islamic community, moreover, these fatwas have been made positive law through Bank Indonesia regulations (PBI). In fact, the House of Representatives has amended Law Number 7 of 1989 concerning religious courts which expressly includes sharia economic issues as the authority of religious courts.

Based on the Regulation of the Minister of Finance (PMK) Number 84 / PMK.012 / 2006 concerning finance companies, it is stated that finance companies are business entities outside the Bank and Non-Bank Financial Institutions that are specifically established to carry out activities that are included in the business field of financing institutions. As with the previous KMK, the business activities of the Financing Company consist of 4 things, namely: Leasing, Factoring, Credit Card Business, and / or consumer financing. For business activities that can be carried out by the Financing Company, it is possible to apply Sharia Principles in its operations.

Parate execution[1] according to Subekti is to run alone or take for himself what is rightfully his, in the sense of being without the intermediary of a judge, who is shown on a collateral item to subsequently sell the goods themselves. The execution rate at the fiduciary guarantee institution is regulated in two articles, namely, Article 15 Paragraph (3) which states:

"In the event of a debtor's default, the fiduciary beneficiary has the right to sell the object of the fiduciary's guarantee on his own power";

Section 29 Ayal (1) Letter (b) of the Fiduciary Act, which states:

"If the debtor or fiduciary is injured, the execution of the object of the fiduciary guarantee may be carried out by: ... b. the sale of the object of the fiduciary's guarantee of the fiduciary's own power by public auction and taking repayment of its receivables from the proceeds of the sale."

If you look at the arrangement of the above articles, the requirement of "mature" authority to carry out execution parate, is almost the same as the previous discussion of special guarantee institutions. It's just that what distinguishes it from a mortgage (and its similarity to a lien) is that, the right of execution parate in a fiduciary is granted by law (by law) without the need to be promised by the parties.

Man is a fairly unique being, in addition to being equipped with creation, taste, and character, man also has norms, ideals and conscience as characteristics of his humanity. To him is also derived religion, so that in addition to having a relationship with his fellow man, there is also a relationship with the Creator.This relationship with the Creator is part of the nature that is the nature of man as a created being. In the study of transpersonal psychology, this dimension is covered in the study of Extra Sensory Perception (ESP) which is known as the sublime potential of human beings.

Almost all psychiatrists agree that what is truly man's desires and needs is not only limited to the needs of eating, drinking, clothing or other needs. Based on the results of research and observation, they concluded that in humans there is a kind of universal desire and need. This need outweighs other needs, even overcoming the need for power. The desire for that need is a natural need, in the form of a desire to love and be loved by God.

Based on the above conclusions, man wants to devote himself to God or something that he considers to be the substance that has the highest power. That desire exists in every group, class or society of human beings from the most primitive to the most modern.

If dissected with the theoretical approach of the work of law William Chambliss and Robert B.Seidman, which in his book entitled "Law Order and Power", gives the understanding that this theory sees the balance of legal functions. According to Seidman, there are 3 (three) factors that are the basis for the work of law in society, namely:

(1) Law Making Process;
(2) Law Implementing Process;
(3) and Role Occupant

The first factor is the Law-Making Process; is an institution authorized to legitimize the making of legislation. The regulatory institution related to this research is the House of Representatives of the Republic of Indonesia as a legislative institution. The House of Representatives in the 1945 Constitution has 3 (three) functions, namely the functions of legislation, budget, and supervision. The legislative function emphasizes the position of the DPR as a legislative body that exercises the power to form laws.

The consideration of the Constitutional Court (MK) in its decision No.18/PUUXVII/2019 explained that the material in Article 15 Paragraph (2) of the Fiduciary Law, has the issue of unconstitutionality. According to him, the position of the debtor who objected to surrendering the object of fiduciary guarantee was weaker because the creditor could execute it without a court execution mechanism". Unilateral acts of potency give rise to arbitrariness and inhumanity, both physical and psychic, against debtors who often override the rights of fiduciaries.

In addition, the Constitutional Court (MK) detected unconstitutionality' in Article 15 Paragraph (3) regarding the phrase "injury of promise", did not explain the factors that caused the fiduciary grantor to renege on the agreement with the fiduciary beneficiary, further saying "this resulted in the loss of the fiduciary's right to defend himself and sell the object at a reasonable price". Therefore, the Constitutional Court (MK) reinterpreted the constitutionality of Article 15 Paragraph (2) on the phrases "executory power" and "equal to a court decision that has obtained permanent legal force" so that it becomes: "Against a fiduciary guarantee for which there is no agreement on injury of promise or default and the debtor objects to voluntarily surrendering the object of the fiduciary guarantee, then all legal mechanisms and procedures in the execution of the fiduciary guarantee certificate shall be carried out, and shall apply equally to the execution of a judgment of a court which has permanent legal force"

Meanwhile, the phrase "promise injury" in Article 15 Paragraph (2) must be interpreted as the existence of a

[1] Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017.

promise injury not determined unilaterally by the creditor but rather on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine the occurrence of the promise injury.

The second factor is the Law Implementing Process; is an implementing agency that expressly carries out the orders contained in the law without discrimination. In this study, in terms of implementing the provisions of Article 15 paragraphs (2) and (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees, namely the Establishment and / or Financing Institution as a law implementing process. Therefore, the obstacle to the implementation of the debtor's right to exercise his religious beliefs is due to the low legal awareness on the part of the Banking management1.

In the context of legal consciousness, there is no sanction in it, this is a formulation from the legal circles regarding the assessment, which has been done scientifically, the value that is contained in man about the existing law (Ius kontitum) or about the law that is expected to exist or that is aspired to (ius constituendum)".

The problem of the frequency of auction requests is slightly caused by the existence of alternative ways of execution which have actually been regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. Underhand sales are still the primary preference in executing fiduciary guarantee objects because they are more effective and efficient than through public auctions. Moreover, the Constitutional Court decision makes execution through public auctions not the main choice for finance companies.

Incomplete requirement document constraints. The required documents in question are an affidavit of possession of the object and an agreement of recognition of the promise injury as well as the object has been voluntarily submitted. The document is an additional document that must exist after the Constitutional Court Decision.

The reformulation of the mind caused the author to construct Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees and should read

"If the debtor and the creditor agree on the injury of the pledge, the Fiduciary Beneficiary shall have the right to sell the Object which is the object of the Fiduciary Guarantee on its own power".

Do not construct Article 15 paragraph (2) to maintain the legal mind felt by the creditor. 6) With the addition of the word "agree" it will accommodate the debtor's mind of justice, the creditor's mind of expediency, and the mind of legal expediency for both. This is also supported by the Constitutional Court Decision Number 71/PUU-XIX/2021 which provides restrictions on the meaning of the authorities in the Explanation of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees.

The characteristics of the leasing financing structure have specificity because there are elements of financing value, principal installments, security deposits, residual value, interest, options and business lease period. Related to the treasury that is the object of the leasing transaction is the value of the financing provided by the lessor during the lease period, if the principal installment of the financing has not been repaid juridically the treasury belongs to the lessor not the lessee, so that in the event of negligence or default of the lessee, the lessor or leasing company can withdraw the treasury. It is subject to legal protection in the legal institution of bail with the execution parate contained in Section 15 Subsection (2) of the Fiduciary Act.

From the results of research on legal knowledge, legal understanding, low legal attitudes, the pattern of legal behavior will be low as well, then the patient as a Role Occupant from the provisions of Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees becomes low, the demands of debtors who default to banks.

The law is a picture/reflection of the society in which the law applies. The law in force in Indonesia will be effective if the law comes from the spirit of the society that creates the law itself, namely the Indonesian legal society. Meanwhile, Reconstruction is interpreted to show a process of restoring a state that is no longer running normally, so that the reconstruction results are very likely to be different from the initial appearance.

The word "Reconstruction" in English is reconstruction, according to the Black Law Dictionary it is defined as follows:

“The act or process of rebuilding, re-creating, or reorganizing something, or A rebuilding of a broken, worn-out, or otherwise inoperative patented article in such a way that a new article is created, thus resulting in an infringement.”[2]

Reconstruction is interpreted to indicate a process of restoring a state that is no longer running normally, so the reconstruction results are very likely to be different from the initial appearance. Reconstruction which means building or returning something based on the original event, where in the reconstruction there are primary values that must remain in the activity of rebuilding something according to the original condition. In the interests of rebuilding something, whether it be events, historical phenomena of the past, to the conception of thought that has been issued by earlier thinkers, the obligation of the reconstructors is to look at all sides. So that then

[1] Sri Soedewi Masjchoen Sofwan, Hukum Perdata Tentang Hak Atas Benda (Ed.Stone, Richard, *The Modern Law of Contract*, Routledge, London, 9th edition,2011.

[2] Bryan A.Graner,Black Law Dictionary,Seventh Edition,Dallas:West Group ST,1999, hlm.1416

something that is trying to be rebuilt according to the actual state of affairs and avoids excessive subjectivity, which can later obscure the substance of the thing to be built.

Reconstruction of Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, by reconstructing article 36 If it still does not pay off the debt payment, the Bank will conduct an auction of the object of the fiduciary guarantee to pay off the debtor's debt. According to the author, if the fiduciary grantor sells the object used as fiduciary guarantee to a third party without the written knowledge and consent of the fiduciary beneficiary (creditor) the fiduciary recipient can be prosecuted for having committed a criminal offence as mentioned in Article 36 of Law No. 42 of 1999 concerning Fiduciary Guarantee that the fiduciary grantor transfers, mortgages, or rents the object of the fiduciary guarantee as referred to in Article 23 Paragraph 2, which is carried out without the prior written consent of the fiduciary recipient, shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 50,000,000,- (fifty million rupiah).

E. Conclusion

That the existence of the petitioner's constitutional rights and authority is considered to be harmed by the enactment of Article 15 paragraph (2) and Explanation of Article 15 paragraph (2) of the Fiduciary Law as interpreted by the Constitutional Court in Constitutional Court Decision No. 18/PUU-XVII/2019 as a loss of constitutional rights and/or authority as referred to by Article 51 paragraph (1) of the Constitutional Court Law, with the following legal facts: In Article 15 paragraph (2) of the Fiduciary Law as interpreted by the Constitutional Court in the decision of the Constitutional Court No. 18/PUU-XVII/2019 states that against fiduciary guarantees for which there is no agreement on the injury of promises (defaults) and debtors object to voluntarily surrendering the object that is 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 as the execution of the execution a court ruling that has permanent legal force. The author contends that the change in the phrase of Article 15 Paragraph (2) of the Fiduciary Law based on the decision of the Constitutional Court (MK) No.18/PUU- XVII/2019 dated January 06, 2020 and corroborated by decision No.2/PUU- XIX/2021 dated August 31, 2021 caused inconsistencies between various legal institutions, namely the legal institutions of guarantees, book III of the Civil Code relating to the principle of punishment of Pacta Sunt Servanda where the leasing agreement that has been made by the parties is included in it contains a clause containing an agreement on the withdrawal of collateral (execution bares) in the event of a default, and provisions governing the civil procedure law (HIR / RBg) relating to the executory power of the grosse deed, the certificate of the right of guarantee, including a fiduciary certificate that already has executory power so that it can be carried out as a judgment of the District Court. The change in the above phrase makes a mistake in the understanding of the concept of execution parate that has been in force for centuries and is recognized as a legal institution that provides legal certainty[1]. The constraints of less intense bidding competition. Although the goods sold are still selling well, the executed fiduciary guarantee goods are classified as less attractive to the public. In addition to the auction factor of no interest (price, condition of goods, marketing and other legal issues), another thing that causes a lack of competition is the bad stereotype in society that considers that execution goods are problematic goods and it is too risky to spend more money to buy them.Reconstruction is interpreted to indicate a process of restoring a state that is no longer running normally, so the reconstruction results are very likely to be different from the initial appearance. Reconstruction which means building or returning something based on the original event, where in the reconstruction there are primary values that must remain in the activity of rebuilding something according to the original condition.

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