



Implementation of Fiduciary Guarantee Execution for Defaulting Debtors After the Decision of The Constitutional Court Number: 18/Puu-Xvii/2019

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Abstract - The purpose of this study is to examine the enforcement of fiduciary promises against defaulting debtors following the Constitutional Court ruling Number 18/PUU-XVII/2019. The regulations pertaining to the registration of fiduciary guarantees, which was previously regarded as a necessary prerequisite for the guarantee's validity, were changed by this ruling. Using a library research approach, this study examines numerous legal sources, rules, and relevant literature to comprehend the legal modifications brought about by the decision. The study's primary focus is on the legal ramifications for creditors' and debtors' rights, as well as how the Constitutional Court's decision impacts the process of executing fiduciary assurances against defaulting debtors. The findings indicate that, while the verdict allows for greater flexibility in fiduciary registration, execution confronts procedural and creditor protection issues. In order to provide equitable legal protection for both parties, this study makes suggestions for enhancing the fiduciary guarantee implementation mechanism after the verdict.

Keywords: Fiduciary Guarantee, Execution, Default

I. INTRODUCTION

Fiduciary security is a type of legally controlled assurance in which the debtor keeps possession of an item but transfers ownership rights to the creditor in exchange for repayment of the obligation. Because it enables creditors to get collateral without needing the actual transfer of the pledged assets, this kind of security is extremely important in financial transactions. While the creditor is guaranteed debt payback, the debtor is given the freedom to keep possession of the assets and carry on with company activities. Prior to the Constitutional Court's judgment, fiduciary security was controlled by Law No. 42 of 1999. Even while the legislation established a clear legal framework, there were frequently difficulties in putting it into practice, especially when it came to the registration and execution procedures. Furthermore, fiduciary security was thought to provide creditors with inadequate legal protection at the time, particularly with regard to the execution of pledged assets.

Regarding the legitimacy of fiduciary security registration under the fiduciary registration system, the Constitutional Court rendered a significant decision in 2021. This decision clarified that fiduciary registration is not a prerequisite for the legitimacy of fiduciary security, amending a number of sections in the Fiduciary Security Law. The practice of registration and legal protection for creditors, who previously mainly depended on fiduciary registration as a need for legitimate security, were significantly impacted by this ruling. The executorial power of fiduciary certificates was revised by the Constitutional Court's Decision No. 18/PUU-XVII/2019. The decision partially approved the petitioners' request, stating that, unless construed as specified by the justices of the Constitutional Court, certain of the language in Article 15 paragraphs (2) and (3) of the Fiduciary Law, together with its

justifications, clashed with the 1945 Constitution. The following were the sentences in question:

1. The phrase executorial power and equivalent to a final and binding court ruling (and its explanation) in Article 15 paragraph (2).
2. The phrase breach of contract in Article 15 paragraph (3).

Because the Constitutional Court interpreted the fiduciary guarantee execution process differently, it is known that creditors are not allowed to carry out separate executions (parate execution) and must instead submit an application for execution to the District Court in order for the decision to have permanent legal force. The issue of fiduciary assurances has recently been discussed again in light of a recent verdict. Joshua Michael Djami contested the decision, Constitutional Court Decision Number 2/PUU-XIX/2021, against the previous ruling, Number 18/PUU-XVII/2019. Nonetheless, the lawsuit was rejected by the Constitutional Court. As an alternative, the execution of the fiduciary guarantee provided by the creditor is connected to an affirmation based on Refusal Decision Number 2/PUU-XIX/2021. The alternate interpretation is that the creditor will not allow the execution option if the debtor does not willingly give up the fiduciary guarantee's object and the default agreement option is not achieved; instead, the district court will carry out the execution.

In addition, exercising fiduciary obligations in and of itself poses administrative and logistical difficulties. The protracted guarantee registration process may hinder the issuance of a Fiduciary Guarantee Certificate, which is the main need for execution. Additionally, there is occasionally a lack of coordination among the many relevant government agencies, which causes uncertainty and delays in the process of implementation. Measures must be implemented to improve the administrative structure and encourage more cooperation across institutions in order to guarantee that the execution of fiduciary guarantees may proceed more smoothly and efficiently. Hasanah (2022)

One of the most pressing challenges that Indonesian economic operators face is a lack of understanding and clarity in the regulations governing the implementation of guarantees. The legislation really provides a clear legal basis for the process of implementing the fiduciary assurance. A lot of parties haven't properly understood the present laws. Due to the fact that many creditors and debtors are unaware of their rights and obligations under fiduciary agreements, conflicts often occur in cases of failure.

Additionally, the practice of doing executions that are frequently not in compliance with the established standards is indicative of this lack of understanding. Some creditors, for instance, try to execute unilaterally without a valid Fiduciary Guarantee Certificate or without adhering to the proper procedures. In addition to causing legal complexity, this can be detrimental to debtors who may still have sincere intentions to fulfill their obligations. Legal protection measures that debtors who are not aware of their rights may not use include the capacity to submit objections or request a stay of execution (Hafis Tohar, Eksekusi 4, No. 1 (June 2, 2022)).

The author discusses Execution of Fiduciary Guarantees After the Constitutional Court Decision Number 18/PUU/XVII/2019 in light of recent legal advancements in the application of the fiduciary guarantee concept brought about by the Constitutional Court's 18/PUU-XXVII/2019 ruling. How fiduciary guarantees should be carried out in the wake of Constitutional Court Decision Number 18/PUU/XVII/2019 is the question posed in the problem statement. The purpose of this study is to identify the legal provisions for the performance of fiduciary guarantees subsequent to the issuance of Constitutional Court Decision Number 18/PUU/XVII/2019.

II. METHOD

The research methodology employed in writing is literature research, which uses secondary data about fiduciary guarantees from primary legal materials like laws, regulations, and decisions from the Constitutional Court, secondary legal materials like books and the internet, and tertiary legal materials like legal documents. The author conducts research using a statutory technique. The legal process involves examining all relevant rules and regulations

(Peter Mahmud Marzuki, 2014). The 1945 Constitution, Law Number 42 of 1999 concerning Fiduciary Guarantees, and the Constitutional Court Decision Number 18/PUU/XVII/2019 regarding the material test of Law Number 42 of 1999 are the laws and regulations pertaining to fiduciary guarantees that are studied in order to implement the legal approach. The author adopts a comparative technique in analyzing the implementation of fiduciary assurances based on Law Number 42 of 1999 before to and following the Constitutional Court's Decision Number 18/PUU/XVII/2019 on the material test of Law Number 42 of 1999. Secondary data collected from the results of the literature investigation is carefully and scientifically reviewed in order to solve the new issues raised in the problem formulation. The type of research being conducted is qualitative, and the study is normative legal.

III. RESULT AND DISCUSSION

1. Basis for Determining Defaulting Debtors After the Decision of the Constitutional Court Number 18/PUU-XII/2019

Under to the provisions of Article 1238 of the Civil Code (*Burgerlijk Wetboek*), if the debtor does not fulfill his obligations within the predetermined time frame, he is considered to be in default (Achmad, 2022). When the debtor does not fulfill their contractual duties as specified in the agreement, they are said to be in default (Prihadianti, 2022). Law No. 42 of 1999 states that default occurs when a debtor is unable to carry out their obligations, such as keeping up with payments, protecting property, or selling assets without a creditor's approval.

According to Article 29 paragraph (1) of the Law, creditors may sign a fiduciary guarantee in the event of default without going through the legal process. Execution may be carried out via sale or auction as provided in the fiduciary agreement with the consent of the parties. This aims to provide efficiency and legal clarity when dealing with credit concerns.

The *Burgerlijk Wetboek* (Civil Code) has indicators of failure in Article 1243, which declares that a debtor is in default if he does not fulfill his responsibilities following a written notice from the creditor. In addition, Articles 1244–1245 mandate that defaulting debtors pay back costs, damages, and interest incurred as a result of their negligence. In the context of fiduciary guarantees, the debtor's inability to preserve collateral, sell collateral without creditors' approval, or make installment payments are all examples of indicators of default. The Civil Code's standards, which provide creditors with a clear legal basis to protect their rights and ensure fair and efficient execution, assess a defaulting debtor in accordance with the legislation on fiduciary promises. To determine if a debtor is in default, the following standards are applied (Purborini, 2022):

- 1) Not doing what he is promised will do.
- 2) Carrying out what he promised but not as promised.
- 3) Doing what he promised but too late.
- 4) Doing something that according to the agreement he is not allowed to do.

An agreement with the debtor does not justify the creditor's unilateral finding of a breach of promise, according to the Constitutional Court's decision. Because of this, the fiduciary (creditor) is unable to execute the fiduciary guarantee (*parate execution*); instead, an application must be submitted to the District Court. In addition to providing legal clarity and a feeling of fairness between creditors and debtors, this rule attempts to prevent arbitrary actions by authorities in the execution by creditors. The Constitutional Court's Decision No. 18/PUU-XVII/2019 states that creditors (leasing) can no longer unilaterally execute or withdraw fiduciary guarantee goods, including homes or vehicles, based only on fiduciary guarantee certificates. The Constitutional Court has ruled that leasing businesses must apply to the District Court in order to tow automobiles. However, the Constitutional Court ruled that the creditor may still unilaterally carry out the order as long as the debtor admits that there has been a breach of promise (default) and is prepared to voluntarily relinquish the subject of his fiduciary guarantee. The Constitutional Court's decision does not invalidate the executive prerogative under Article 15 of Law Number 42 of 1999, provided that the debtor who is affected by the promise voluntarily relinquishes the fiduciary assurance's goal.

The fiduciary guarantee must be implemented using an execution mechanism with a judge's help if there is no agreement on the breach of promise and the debtor willingly gives up the fiduciary guarantee's object following the issuance of the Constitutional Court's Decision Number 18/PUU-XVII/2019. The same point has been reaffirmed in Constitutional Court Decision Number 2/PUU-XIX/2021 and Constitutional Court Decision Number 71/PUU-XIX/2021: if there is no agreement regarding the breach of promise and the debtor refuses to willingly relinquish the object of the Fiduciary Guarantee, the execution mechanism must be used with a judge's help. With the existence of a quo ruling, creditors cannot execute themselves with the aid of the police and must seek assistance from the district court. Furthermore, the word "authorit," as defined in Article 30 of the Fiduciary Guarantee Law, is reinterpreted by the Constitutional Court in Decision Number 71/PUU-XIX/2021 to refer to the district court, or in this instance, the clerk/bailiff, as the authorized party. This necessitates an amendment to National Police Chief Regulation No. 8 of 2011 about the Security of the Execution of Fiduciary guarantees.

2. Implementation of Fiduciary Guarantee Execution for Defaulting Debtors After the Decision of the Constitutional Court Number 18/PUU-XII/2019

As long as the fiduciary agreement and legal restrictions are adhered to, the execution of the fiduciary guarantee of the law can be completed without a trial. Creditors may implement the agreement through a public sale or auction if both parties consent. The purpose of this procedure is to make it possible to offer fiduciary guarantee products, with the proceeds being used to pay off debt (Mujib, 2022). Numerous issues, especially those pertaining to legal understanding and clarity, commonly arise when fiduciary promises are carried out in executions. Because many debtors are not aware of their rights and duties under fiduciary agreements, executions often lead to disputes. There have also been worries expressed about the potential for creditors to misuse execution by disregarding the correct procedures. Therefore, it is imperative that the parties ensure the formation of a fiduciary agreement.

Legal conflicts between creditors and debtors may occur as a result of the implementation of fiduciary pledges relevant to the procedure. The debtor may be entitled to sue the creditor if he thinks the execution was illegal or that the agreed terms were violated. As a result, creditors are required to ensure that all execution procedures are carried out in compliance with legal requirements and fiduciary agreements. Respecting this law protects both the interests of creditors and debtors, maintaining trust in fiduciary-based economic transactions (Putra, 2022). honestly, transparently, and in a manner that is understandable to all parties. Execution of fiduciary pledges relevant to the process may result in legal disputes between debtors and creditors. If the debtor feels the execution was unlawful or that the intended terms were violated, he may be able to sue the creditor. As a result, creditors are required to ensure that all execution procedures are carried out in compliance with legal requirements and fiduciary agreements. Respecting this law protects both the interests of creditors and debtors, maintaining trust in fiduciary-based economic transactions (Putra, 2022).

As a result of the fiduciary guarantee's failure, in order to carry with Law No. 42 of 1999, it must understand its rights and responsibilities and follow all required legal procedures. This is essential to guarantee a fair and open execution process and to balance the interests of creditors and debtors. The fiduciary or fiduciary creditor may not execute himself (parate execution) after Constitutional Court Decision No. 18/PUU-XVII/2019; instead, they must apply for implementation with the District Court. If there is an agreement on the promise injury that was formed from the beginning and the debtor is prepared to voluntarily transfer the object of the fiduciary guarantee, execution parate may occur. The application of fiduciary promises has changed in at least two ways since the Constitutional Court's ruling, specifically:

1. Reduced executory authority for the certificate of fiduciary guarantee. By first seeking permission from the Chief Court, then moving forward with the aanmaning mechanism or efforts from the Chief of the District Court, such as issuing a warning to the Defendant, and finally proceeding with confiscation, execution, and sale, the provisions

of Article 15 intended by executory power—that is, the power to be exercised forcibly with the assistance and by state instruments—are clarified.

2. The removal of a separate mechanism for implementing fiduciary assurances. The primary manifestation of fiduciary guarantees, namely the ease of execution, may be eliminated by the removal of the sentence of breach of promise, provided that it is not interpreted as "in the event of determining the existence of an act of "breach of promise" can be carried out by the Fiduciary (Creditor) in the event that there is no objection and legal remedies, or at least in the case of legal remedies, through a court decision with permanent legal force. Therefore, the only choice is to file a default case if the debtor contests the commitment for any reason and there is harm to it.

There are several stages in the execution process, including:

1. The losing party is required to voluntarily abide by the court's decision after it has been rendered with permanent legal effect. The victorious party may request authority from the Chairman of the District Court if the losing side does not perform the putuan freely.
2. In response to an execution request, the chairman of the district court issued an aanmaning warning. After the Chief Court receives the Plaintiff's execution application, Aanmaning may be given as a "reprimand" to the losing party or defendant to voluntarily carry out the decision's provisions within the time range specified by the Chief Court. Following the debtor's summons to appear and warning, the losing party has eight (eight) days to put the decision's provisions into effect.
3. The court will seize the losing party's property based on the winning party's application if it is found after the aanmaning that the losing party did not make an amar from the ruling. A Letter of Determination, which contains an order to the Registrar or Bailiff to execute the seizure of the defendant's assets in compliance with the terms and procedures specified in Article 197 of the HIR, is issued by the Court based on the application. Execution confiscation and collateral confiscation are the two types of confiscation placement. In order to guarantee that the decision is upheld in the future, foreclosure implies that the seized goods cannot be relocated, traded, or otherwise transferred to another individual. Execution confiscation, on the other hand, is a confiscation that is decided upon and implemented in response to a case-specific ruling that has long-term legal significance.
4. An execution determination is then issued, which entails the Chief of the District Court giving the Registrar and bailiff instructions to carry out the execution.
5. Once a Determination of Execution and Minutes of Execution are issued by the Court, the auction will begin. The respondent's money is being sold to the public at the auction. Meeting the defendant's obligations is the aim of this auction. The purpose of the auction office is to guarantee that the price paid is fair in the market and does not harm the defendant. The proceeds from the auction are used to carry out the duties specified in the judge's ruling.

The Constitutional Court finally ruled that, while the fiduciary certificate confers executory power, the execution procedure must nonetheless follow the procedures provided in civil procedure legislation for implementing court decisions with permanent legal force. This implies that creditors shouldn't execute a debt on their own without the debtor's consent or a legitimate court ruling. This concept aims to prevent power abuse throughout the execution process and maintain equilibrium between the interests of creditors and debtors.

IV. CONCLUSION

Following Constitutional judicial Decision No. 18/PUU-XVII/2019 on the fulfillment of fiduciary pledges, it was decided that Article 15 paragraph (2) of the phrase executive power and judicial decisions with legal force continued to violate the 1945 Constitution. The fiduciary creditor must submit an application for execution to the District Court rather than carrying out the fiduciary guarantee's purpose on their own. The phrase "breach of promise" in Article 15 paragraph (3) of the Fiduciary Guarantee Law is unconstitutional and unenforceable under the 1945 Constitution. Unless it has been discussed between the creditor and the debtor in breach

of promise and the debtor is willing, the creditor cannot unilaterally implement the guarantee of the fiduciary guarantee's goal.

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