

# The Existence of Law Number 42 Of 1999 on The Execution of Object on Fiduciary Guarantees on Defaulted Debtors

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**Abstract.** Fiduciary means the transfer of property rights based on trust, which gives the debtor a position to retain control of the collateral. The occurrence of fiduciary guarantees through encumbrance by making a notarial deed called the Fiduciary Guarantee Deed. If no settlement is made, direct execution will be carried out in accordance with the provisions of "Article 30 of Law Number 42 of 1999 concerning Fiduciary". This problem can be resolved through the implementation of court decisions in civil cases. The author in conducting research uses normative juridical research. The research is conducted by examining laws and regulations. Furthermore, the research conducts descriptive analysis through a qualitative approach. The results of the research show that if the debtor defaults, the execution of the fiduciary guaranteed object can be carried out in 3 ways, namely executorial execution, sale of the fiduciary guaranteed object under the authority of the fiduciary recipient through auction and sale under the hand. Factors affecting the execution of fiduciary guarantees include internal and external. Internal factors affecting execution are that the debtor does not understand the law, unilateral determination of default, not stipulated in the deed of agreement and the debtor does not voluntarily submit the object of collateral. Meanwhile, the external factors are that the fiduciary guaranteed deed is not registered by the leasing company, the fiduciary guaranteed certificate is not used as collateral.

**Keywords:** Fiduciary; guarantee; debtor; default

## INTRODUCTION

Globalization in industry 4.0 is a very rapid development in the industrial world to improve the economy and welfare. in the industrial world to improve the economy and welfare of society in the form of small and medium enterprises, so that it will require attention and assistance from the government through policies made by the government in improving the economy and welfare of society, one of which is in improving the economy and welfare of the community, one of which is with policies related to financing and funding (Soegianto, Sulistyani & Arifin 2021). Economic development economic development, especially business activities, will always be followed by the development of the need for funds through credit through credit, where the provision of credit facilities will always require collateral (Debora, 2015). Security All agreements must include essential issues, including the criteria for legality, the principles governing the agreement, the rights and duties of the parties, and the structure and composition of the agreement. (Prasnowo & Badriyah, 2019). This safeguards the interests of both the debtor and creditor, ensuring the protection of the cash placed with the creditor. and creditors, ensuring that the monies provided to the debtor are reimbursed within the designated timeframe. returned according to the specified time period. To anticipate risks by the bank or financing institution is realized by the application of collateral. The existence of this collateral is a problem that is closely related to the

bank in the technical implementation of granting credit, closely related to banks in the technical implementation of credit granting.

Fiduciary guarantee is a common type of assurance utilized in society as a whole. The debtor is able to keep control of the collateral even though he is simply a temporary borrower or no longer the owner thanks to the fiduciary transfer of property rights (Ahyani, 2011). Fiduciary guarantee deeds, which are notarized documents, are the means by which fiduciary guarantees can be legally burdened (Olivia, 2023). The registration of fiduciary guarantees is something that has to be done at the Fiduciary Registration Office, which is located in the geographic location of the person who is providing the fiduciary guarantee (Fathoni, Badriyah & Suharto, 2016).

Debtors who make defaults can then execute fiduciary guarantees. The execution of fiduciary guarantees is regulated in "Article 29 of Law No. 42/1999 on Fiduciary Guarantees. The practice of executing fiduciary guarantees often arises from unlawful acts such as vigilantism in resolving fiduciary guarantee disputes". A new dispute is guaranteed to emerge as a result of execution in the settlement of fiduciary matters, taking into consideration the fact that there is a dilemma of interpretation, which eventually manifests itself in the legal ambiguity that takes place.

Prior to the implementation of the Fiduciary Guarantee Law, the recognition of a fiduciary as a security entity was established via jurisprudence. The conveyance of property rights in trust to the creditor's movable assets, while the debtor retains physical possession of the goods, constitutes the fiduciary arrangement as delineated by the prevailing legal framework.

In the beginning, the object of fiduciary responsibility was a piece of transportable property in the form of equipment. On the other hand, in accordance with subsequent developments, the objects of fiduciary objects also include immovable property that is not encumbered by a mortgage and intangible moveable property. The fiduciary recipient (creditor) is "required to register the objects that have been encumbered by fiduciary guarantees by the fiduciary grantor (debtor) at the fiduciary guarantee registration office in accordance with the provisions of article 11, in conjunction with article 13, in conjunction with article 15 of Law Number 42 of 1999 concerning Fiduciary Guarantees by observing and paying attention to the conditions referred to in article 13 of Law Number 42 of 1999 concerning Fiduciary Guarantees". The granting of the application for registration of the fiduciary guarantee, the fiduciary receiver (creditor) will be issued a fiduciary guarantee certificate that includes the words "For the Sake of Justice Based on Almighty God as stated in Article 15 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees. Registration at the Fiduciary Registration Office is a manifestation of principle publicity and legal certainty for creditors and debtors" (Hudiyanto, 2018).

The execution of fiduciary collateral for debtors unwilling to voluntarily surrender the fiduciary object is conducted in multiple stages, emphasizing persuasive measures. This approach entails utilizing non-litigious methods, ensuring that debtors resistant to voluntary submission undergo a rigorous process and are afforded ample opportunity to resolve the matter prior to legal proceedings (Oktaviana & Aminah, 2024). If no settlement is made, direct execution will be carried out according to the provisions of "article 30 of Law Number 42 of 1999 concerning Fiduciary. This problem can be resolved through the execution of a civil court decision if the debtor refuses to surrender the object of fiduciary guarantee to the creditor.

According to Subekti, execution is the attempt of the winning side to obtain what is legitimately his through legal means, and it forces the losing party to carry out the decision through the court system. The police then issued a ruling under "Regulation of the Chief of the Indonesian National Police Number 8 of 2011 regarding the execution of fiduciary guarantees. The Indonesian National Police must provide security during the execution of fiduciary guarantees to ensure that there is no parate execution because the creditor has executorial power and the same binding legal force as a court decision with permanent legal force. The word execution security refers to police action taken to offer security and protection to the executor, execution petitioner, and execution respondent during the execution process" (Feryantini, Dantes & Setianto, 2022).

"Article 15 paragraph (2) of Law No. 42/1999 on Fiduciary stipulates that a fiduciary security certificate has the same executorial power as a court decision that has obtained permanent legal force. And in Article 15 paragraph (3), the fiduciary receiver has the right to sell the object of fiduciary guarantee

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under its own power if the debtor is in default. The material in Article 15 paragraph (2) of Law Number 42 Year 1999 does not provide legal certainty and justice for the debtor. This allows the creditor to execute the fiduciary security object without a court execution mechanism. Unilateral actions have the potential to lead to arbitrary and inhumane actions in the execution of the creditor both physically and psychologically against the debtor who often overrides the rights of the fiduciary. In addition, there is an unconstitutionality in Article 15 paragraph (3) of Law Number 42 Year 1999". The term "injury to promise" fails to elucidate the factors that compel the fiduciary grantor to repudiate the agreement with the fiduciary receiver. The creditor should not unilaterally define the word "injury to promise," but rather via mutual consent with the debtor or legal remedies that ascertain the presence of such an injury within the agreement.

The fiduciary institution and execution procedures in fiduciary have recently become the subject of a judicial review in the "Constitutional Court Decision Number 18/PUU-XVII/2019 in which the South Jakarta District Court issued Decision Number 345/PDT.G/2018/PN.Jkt.Sel with the debtors on behalf of Apriliani Dewi and SuriAgung Prabowo feeling their rights were violated by the withdrawal of vehicles by PT Astra Sedaya Finance in a multipurpose agreement". Meskipun debitur berhasil memenangkan gugatan atas tindakan kreditur di Pengadilan Negeri Jakarta Selatan, kreditur tetap melakukan pengambilalihan secara paksa atas kendaraan bermotor yang menjadi obyek jaminan fidusia, dengan menyatakan hak untuk melakukan eksekusi berdasarkan prinsip titel eksekutorial. with that the debtor who felt aggrieved by the actions that had been carried out above and filed a judicial review of the provisions of article 15 of the Fiduciary Law, which contained provisions regarding the executorial title and provisions regarding parate execution, which was then conditionally granted by the court.

The Constitutional Court modified the method for executing fiduciary security objects in Decision Number 18/PUU-XVII/2019, stating that if the debtor does not deliver them freely, the creditor must file a request for execution with the district court. In terms of judicial review, "Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary, when combined with the above-mentioned Constitutional Court Decision Number 18/PUU-XVII/2019, has legal implications for the execution of fiduciary guarantees, which, as we all know, frequently causes controversy. The preceding description forms the center of this research: The Existence of Default in Law Number 42 of 1999 Against the Execution of Objects on Fiduciary Guarantees". The topic of this study is the extent to which the process of executing fiduciary security objects against debtors who conduct acts of default, as well as numerous supporting circumstances, impact the execution of fiduciary guarantees.

Although after the "Constitutional Court Decision Number 18/PUU-XVII/2019, the parameters for the execution of fiduciary security objects are very different from what has been explained previously, currently the provisions in Article 15 Paragraph (2) of the Fiduciary Guarantee Law apply as the basis for the execution of fiduciary guarantees" (Lodewijk et al, 2024).

According to the findings of prior study undertaken by Mardin Sipayung and Iin Indriani under the title "Legal Protection of Debtors on Forced Execution of Fiduciary Objects by Fiduciary Holders (Creditors) (Analysis of District Court Decision Number 61/Pdt.G/2021/PN. Srg)" (Sipayung & Indriani, 2023). This research examines fiduciary guarantees. If there is no consensus on a breach of promise and the debtor declines to voluntarily relinquish the object serving as the fiduciary guarantee, then all legal procedures for enforcing the fiduciary guarantee must align with those applicable to the enforcement of a court ruling. Moreover, it underscores that the Fiduciary Guarantee is established via a mutual agreement between the creditor and the debtor, rather than through unilateral action by the creditor.

"Article 15 paragraph (2) of the Fiduciary Guarantee Law, based on the constitutional court's decision on fiduciary guarantees, states that if there is no agreement on a breach of promise and the debtor objects to voluntarily surrendering the object of fiduciary guarantee, all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and applied in the same way that a court decision is executed". Furthermore, the provision for a breach of promise, as stipulated in "Article 15 paragraph (3) of The Fiduciary Guarantee Law is not defined unilaterally by the creditor, but rather based on an agreement between the creditor and the debtor or legal remedies that identify the presence of a breach of promise". According to the ruling, unilateral execution by collection agents is manifestly incompatible with consumer protection principles.

The topic issue of this research is the execution of the defaulting debtor's fiduciary promise, as well as the circumstances that can influence the debtor's execution. Based on the description provided briefly on the face of the background above, the author will divide the discussion into two problems: the process of executing fiduciary guarantees against defaulting debtors and the factors that influence the execution of fiduciary guarantees.

The primary goal of this research is to determine the scope of the process of executing fiduciary guarantees against debtors who default on creditors, as well as what factors influence the execution of fiduciary guarantees against debtors, so that this research can be understood as a whole and why debtors can commit such defaults.

## METHOD

The normative legal research technique was used to write this work, which uses secondary data from legal regulations and the statute approach to analyze the topics under discussion (Raja et al., 2021). Research that makes reference to legislative instruments or relevant law is known as normative legal research (Benuf & Azhar, 2020). In the meantime, its method (statute approach) involves looking at all relevant laws and rules regarding the legal matter at hand (Marzuki, 2010).

Through a review of the literature, the researcher gathered secondary data for this study. Among the key legal sources included in this secondary data are court decisions and regulations. Books, journals, and reports published by governmental entities are examples of secondary legal documents. Additionally, there are tertiary legal resources like dictionaries and the internet that offer interpretations of main and secondary legal documents. By examining several laws, court rulings, books, journals, and reports from state agencies pertaining to the research topic, the researcher then gathers primary and secondary legal documents.

## RESULT AND DISCUSSION

### The Process Of Executing Fiduciary Guarantees Against Debtors Who Make Defaults

The term fiduciary originates from the Latin word "fides," meaning trust. The legal relationship between the fiduciary creditor and the fiduciary debtor is largely based on trust (Subekti, 2014). In assessing default, if a debtor fails to perform his obligations as required, the debtor is said to be in default, for example, if payments that should be made on a regular basis are not made by the debtor. In his book, Agus Yudha Hernoko asserts that, under specific conditions, the debtor is not required to provide a negligent statement to demonstrate the occurrence of default, including for the fulfillment of obligations during a critical grace period (fatale termin) applies, the debtor refuses fulfillment, or the debtor admits his negligence (Hernoko, 2014).

Execution is the ultimate measure creditors may pursue if they believe the debtor lacks the capacity and/or will to honor their financial obligations. Tan Kamelo asserts that a fundamental aspect of fiduciary security is the ease of implementation. Execution is required to secure the debtor's performance as stipulated in the fundamental agreement. The basic agreement consists of a loan and borrowing agreement.

The process of executing fiduciary guarantees, of course, must have been preceded by a default by the debtor against the creditor as stated in "Article 1235 of the Civil Code, which states that in every obligation to provide something, including the debtor's obligation to deliver the relevant object" (Dewi, 2024). The execution of fiduciary guarantees possesses equivalent legal authority to a judicial ruling with enduring legal effect. "Article 1235 of the Civil Code states that delivery can be in the form of actual delivery or juridical delivery". In the event that the debtor does not fulfill their obligations properly and there are elements of error, negligence, and intent, there are legal consequences that the creditor can demand from the debtor. "Article 1236 of the Civil Code states, the debtor is obliged to compensate the creditor for costs, losses, and interest." "Article 1243 of the Civil Code states that compensation for

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costs, losses, and interest due to the non-fulfillment of obligations can only be demanded if the debtor, after being declared negligent in fulfilling their obligations, continues to neglect their duties".

Execution of Fiduciary Guarantee in the "Study of Law No. 42 of 1999 on Fiduciary Guarantee, 1999. The execution of fiduciary guarantee is in compliance with Article 29 of Law No. 42/1999 on Fiduciary Guarantee, which reads According to Article 29 of Law No. 42/1999 on Fiduciary Guarantee, if the debtor or fiduciary is in default, the object of the fiduciary guarantee can be executed in three ways: (a) Execution of executorial title by the fiduciary. As stated in Article 15 Paragraph (2) by the Fiduciary Beneficiary. Execution with a title Executorial title indicates that the execution can be carried out immediately via the court under the supervision of the district court's head, or that a fiat of execution must be issued by the district court's head. chairman of the District Court since the fiduciary certificate is considered the same as a court judgment that has permanent legal effect and is final and binding on the parties to carry out the execution. Is final and binds the parties to carry out the ruling. (b) The Fiduciary's own authority sells the item of the Fiduciary Guarantee at a public auction and uses the revenues to repay the obligation. (c) Underhand Sale done pursuant to the Fiduciary's agreement, if the greatest price beneficial to the parties can be acquired in this manner. An underhanded sale is undertaken after one (one) month since it was informed in writing by the grantor and/or the fiduciary to the interested parties and proclaimed in at least two (two) newspapers circulating in the region involved. The fiduciary guarantee legislation additionally states that the fiduciary must renounce the aim of the fiduciary guarantee in order to carry out the fiduciary guarantee. The fiduciary guarantee is executed" (Usanti & Bakarbessy 2014). The requirements on the determination of the process for execution in "Article 29 Paragraph (1) of Law Number 42 Year 1999 offer an understanding that the method of execution of items employed as fiduciary objects is as previously stated, and no other way is feasible. The fiduciary object is as described above, and no alternative technique is available".

The execution of the object of fiduciary guarantee, based on "Article 32 of Law Number 42 Year 1999, is closed, which means that it is not possible to promise in any other way than those governed in Articles 29 and 31 of Law Number 42 Year 1999 respecting fiduciaries, with the danger of null and invalid. There are 2 promises that are prohibited in the execution of fiduciary security objects, namely: (a) A promise to execute the object of fiduciary guarantee in a manner contrary to Articles 29 and 31 of Law Number 42 Year 1999 (Article 32 of Law Number 42 Year 1999), and (b) A promise that authorizes the fiduciary beneficiary (creditor) to own the object of fiduciary security own the object of the fiduciary guarantee, if the debtor defaults" (Article 33 of Law Number 42 Year 1999).

Constitutional Court Decision No. 18/PUU-XVII/2019. Following up on the case at the South Jakarta District Court Number 345/PDT.G/2018/PN Jkt.Sel between the debtor and the leasing company PT Astra Sedaya Finance, the debtor requested a judicial review of Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The Constitutional Court then stated in Decision Number 18/PUU-XVII/2019 that the order in the context of fiduciary guarantee execution, particularly when the creditor wishes to carry out parate execution against a fiduciary guarantee object, regardless of the executorial power possessed by a fiduciary guarantee certificate. The Constitutional Court of the Republic of Indonesia issued Decision No. 18/PUU-XVII/2019 related to the judicial review of Article 15 Paragraph (2) and Paragraph (3) of Law No. 42/1999 on Fiduciary Guarantee. The Constitutional Court interpreted that the executorial power of the Fiduciary Guarantee Certificate is dependent on a situation, namely: (a) If a default agreement is in place and the debtor consents to voluntarily surrender the object of fiduciary guarantee, the fiduciary guarantee certificate possesses the same enforceability as a court ruling with permanent legal authority. (b) In the event of debtor default, the fiduciary beneficiary (creditor) is entitled to autonomously sell the subject of the fiduciary guarantee, contingent upon an agreement with the debtor or judicial actions affirming a violation of contract.

### Factor That Affect The Execution Of Fiduciary Guarantees Against Debtors

Factors that can affect the implementation of parate execution, from internal factors (debtors) and external factors (creditors) that can cause the taking fiduciary security objects in parate execution by creditors. the event of a creditor invoking the fiduciary guarantee during the parate performance of the debtor's fiduciary obligation, during the execution of the debtor's fiduciary guarantee (Darma et al, 2020).

Internal variables influencing the occurrence of defaults include: (a) Debtors who are unaware of the law. Unilateral execution happens when the debtor does not grasp the execution method for the fiduciary security item. The importance of the debtor's comprehension of the creditor's execution in accordance with the procedure, which begins with: (a) a warning letter, and (b) a default determination. Debtor acted alone. The debtor is regarded to have defaulted, and there is no good faith on the part of the debtor to repay the credit in line with the agreed-upon terms and within the agreed-upon period or maturity. (c) Not covered by the Deed of Fiduciary Guarantee Agreement in Debtor Default. Article 4 of Law No. 42/1999 defines a fiduciary arrangement as an accessory agreement. A fiduciary agreement cannot be formed without a main agreement. The principal agreement is a debt and credit arrangement between the debtor and the debtor's estate. (d) When turning over the fiduciary security, the debtor does not make a voluntary statement.

Several external elements contribute to the implementation of fiduciary guarantees against debtors: (a) The Fiduciary Security Certificate is not utilized in line with established legal protocols. The fiduciary guarantee certificate exists, although it is not utilized in accordance with the legal protocols, as evidenced by the situation between the debtor and the leasing business (PT. Astra Sedaya Finance). The South Jakarta court ruling Number 345/PDT.G/2018 concerning a tort lawsuit determined that the leasing company (PT. Astra Sedaya Finance) is liable and must compensate the debtor, holding creditors and debt collectors jointly and severally responsible for both material and immaterial damages to the plaintiff (debtor). Nonetheless, the leasing business (PT. Astra Sedaya Finance) failed to pursue the ruling and instead implemented it through a fiduciary guarantee certificate, which the debtor purportedly undertook due to the protection afforded by the creditor. the debtor dared to take such action because he took refuge behind "Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees. Fiduciary Guarantee. In fact, before executing the object of fiduciary guarantee, there needs to be various stages and legal procedures that must be adhered to, such as filing an application for execution to the Court. submitting a request for execution to the Court". (b) Acts of Vigilantism and the Leasing Company Stating Unilaterally. The occurrence of debtor defaults or defaults encourages leasing companies to apply methods that sometimes lead to acts of arbitrariness. This action usually occurs by hiring debt collector services. In practice, in the field, debt collectors take the law into their own hands such as the case experienced by the debtor against PT Astra Sedaya Finance through the debt collector service. On the other hand, this execution factor occurs not from the debt collector side alone, but from the leasing company. (c) The leasing business has not registered the Fiduciary Deed of Guarantee. A significant advantage for creditors in this case is that the fiduciary guarantee certificate contains the words "For the Sake of Justice Based on God Almighty" article 15 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees, which contains an executorial title (Article 15 paragraph (2) UUJF), implying that the fiduciary guarantee certificate has the same power as a court decision with permanent legal force. Thus, if the leasing business does not register the fiduciary guarantee deed, it will have serious legal ramifications. This is regulated and obviously defies Law No. 42 of 1999 on Fiduciary Guarantees.

## CONCLUSION

When a debtor fails to fulfill their commitments to a creditor correctly, the debtor is considered in default. For example, the debtor fails to make scheduled payments. If the debtor has been declared in default under Articles 1235, 1236, and 1243 of the Civil Code. According to "Law No. 42 of 1999 on Fiduciary Guarantees, if the debtor fails, the execution of the fiduciary guarantee object can be carried out in three ways, namely: Executorial execution, Sale through public auction and can take debt settlement from the sale proceeds and can also be done through sale under Fiduciary Guarantee or direct sale". However, according to the Constitutional Court's ruling, the execution of fiduciary guarantees must first go through the court if the debtor does not voluntarily surrender the collateral and there is an agreement between the debtor and creditor in default.

Factors influencing the execution of fiduciary collateral objects by creditors occur due to two factors, both of which are quite related. Factors that significantly influence the execution of the debtor include internal factors, namely: (a) The debtor is not familiar with legal processes, (b) Unilateral determination of default, (c) The fiduciary security agreement deed is not regulated in the debtor's

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default, (d) The debtor does not voluntarily surrender the fiduciary security object. Not only in terms of internal factors, but parate execution is also greatly influenced by external factors, including: (a) The fiduciary guarantee deed not being registered by the leasing company, (b) The fiduciary guarantee certificate not being used in proper legal procedures (legal order), (c) Vigilante actions and the leasing company making unilateral statements regarding the fiduciary object.

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