EXECUTORIAL POWER OF FIDUCIARY GUARANTEE CERTIFICATES POST CONSTITUTIONAL COURT RULING NUMBER 18/PUU-XVII/2019 AND CONSTITUTIONAL COURT RULING NUMBER 2/PUU-XIX/2021

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ABSTRACT

This research aims to examine and analyze the executive power of fiduciary guarantee certificates in the implementation of fiduciary guarantee execution based on the Fiduciary Guarantee Law. With the Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021, there have been changes to the executorial nature of fiduciary guarantee certificates. The research method used in this research is normative juridical. This research is prescriptive legal research with a conceptual approach. The theory of legal effectiveness put forward by Lawrence M. Fiedman is the basis for analysis to see changes in legal structure, substance and culture after the Constitutional Court decision. The results of the research show that the executorial power of the fiduciary guarantee certificate in the execution of fiduciary guarantees before the Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 has permanent legal force equivalent to the court decision as regulated in article 15 paragraph (1), (2) and (3). Changes in substance, structure and legal culture occurred based on Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021, the Constitutional Court set limits on the interpretation of the executorial power of the Fiduciary Guarantee Certificate. After the Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUUXIX/2021, the Constitutional Court's decision degraded the executive power of fiduciary guarantee certificates so that creditors no longer have legal certainty to immediately withdraw the object of fiduciary guarantee when the debtor refuses to hand it over voluntarily. . The institutional structure that has the right to carry out executions is then limited to only district courts.

Keywords: executive power, fiduciary guarantee certificate, law enforcement

INTRODUCTION

Business people who carry out business activities always need funds for operational activities. These funds can be obtained from one's capital or credit. Providing credit requires the existence of a guarantee that functions to protect the interests of the creditor so that the funds given to the debtor can be returned within the specified time. This condition means that the owner of the funds (creditor), namely the banking institution or financing institution, requires the existence of a guarantee in the distribution of credit for the security of the funds—and legal certainty (Soegianto et al., 2019). Collateral can be permanent collateral, for example, land and buildings, or collateral for movable goods. One of the guarantees in banking is a Fiduciary guarantee. A fiduciary is the transfer of ownership rights to an object as collateral, but the debtor can still use the object used as collateral (Lidya Mahendra et al., 2016). The Fiduciary Agreement was born because of weaknesses in pawn institutions, as stated in Article 1150 and Article 1160 of the Civil Code, where debt collateral must be under the authority of the creditor so that the debtor cannot use the collateral to facilitate his business (Ari Wirya Dinata, 2020, p. 2).

According to Government Regulation Number 86 of 2020 Regarding Procedures for Registration of Fiduciary Guarantees and Costs for Making a Fiduciary Guarantee Deed, every person or business entity that receives credit facilities from a bank has gained trust, especially with a fiduciary guarantee, so the next step is for the bank and the credit applicant to carry out a credit agreement, which can be made before a notary in the form of a deed or private credit agreement with sufficiently stamped and then followed by a guarantee agreement. The guarantee agreement is an agreement that follows (accessory) to the main agreement or main agreement, namely the credit agreement. About Fiduciary, the guarantee agreement that follows the main agreement is outlined in the form of a deed, namely a fiduciary guarantee deed made before a notary in the form of an authentic deed, which is then registered so that a Fiduciary Guarantee Certificate is issued to provide banks with more guarantee, legal protection, and legal certainty. Regarding fiduciary guarantees it is regulated in Law Number 42 of 1999, which is regulated in articles regarding explanations of guarantees, registration procedures, and rules relating to the execution of fiduciary guarantees if the debtor defaults on the agreed credit agreement. One of the deeds that must be made with a Notarial deed is the Fiduciary Guarantee Deed. This authority follows Article 15, paragraph (1) of Law Number 42 of 1999 concerning fiduciary guarantees (UUJF).

Based on Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, it is stated that "The Fiduciary Guarantee Certificate as intended in paragraph (1) has the same executorial power as a court decision which has obtained permanent legal force" and is further clarified in Article 15 paragraph (3) which reads "If the debtor breaks his promise, the Fiduciary Recipient has the right to sell the object which is the object of the Fiduciary Guarantee at his discretion." Based on these articles, it can be interpreted that if the bank has held and has a Fiduciary Guarantee Certificate, it already has solid legal protection. Protecting its credit will be safe because if the debtor breaks his promise or defaults, the creditor already has the legal power to take or execute the guarantee accompanied by a Fiduciary Guarantee certificate.

Prior to the Constitutional Court Decision Number 18/PUU-XVII/2019, fiduciary guarantee certificates were used as evidence as stated in Article 15 paragraph (1) of the Fiduciary Guarantee Law, which is stated in the *irah-irah* "For the sake of Justice Based on Belief in One Almighty God," so that it has executorial power which is equivalent to a court decision which has permanent legal force. Based on norms, in a fiduciary guarantee certificate, there is inherent executorial power to carry out the execution given to the creditor without asking for court assistance if the creditor considers the fiduciary or debtor to have breached his

contract. The development of guarantee law has experienced several problems in theory and practice. Problems arise when the execution of a fiduciary guarantee, in its implementation, is considered to give rise to creditor arbitrariness when collecting payments on the debtor's debt and even confiscating the object of the fiduciary guarantee (movable object) because the debtor breaks his promise, this gives rise to the creditor's position being higher than that of the debtor, a previously equal position. It needs to be more aligned.

This problem, as discussed in the article in Constitution Magazine Number 155 of 2020 and following the decision of the Constitutional Court Number 18/PUU-XVII/2019, started with a husband and wife named Apriliani Dewi and Suri Agung Prabowo as debtors in the form of a Toyota Alphard V model car. 2.4 A/T 2004 was purchased and registered on the fiduciary certificate Number W11.01617952.AH.05.01, and under the agreement, the Petitioner has paid the installments on time, but PT. Astra Sedaya Finance (PT. ASF), as the fiduciary recipient, sent a representative to take the fiduciary collateral object for reasons of default, resulting in the taking over of the collateral object using the services of a debt collector and without going through the correct legal procedures. There are several moments of forced action without showing evidence and official documents, without authority, by attacking individuals, honor, and dignity, and threatening to kill debtors. Furthermore, a lawsuit was filed at the South Jakarta District Court Number 345/PDT.G/2018/PN/Jkt/Sel, stating that the creditor had committed an unlawful act. So, the judge decided to impose material and immaterial fines on the creditor. However, the creditor still withdrew the object of the fiduciary guarantee on January 11, 2019, because the fiduciary agreement was considered to have permanent legal force based on the provisions of the requested article. Based on this, the constitutional losses experienced by the debtor are specific and actual. If the provisions in this article do not exist or at least cannot be interpreted as a request, then the constitutional loss of the fiduciary will not occur.

The fiduciary giver considers that the provisions in Article 15 paragraph (2) and paragraph (3) of the Fiduciary Guarantee Law mean that fiduciary recipients are allowed to act arbitrarily by oppressing the dignity and honor of fiduciary givers so that mutatis mutandis, constitutional losses are experienced by the givers. Fiduciary is specific and actual; the losses experienced have a cause-and-effect relationship (causality). These fiduciary providers have fulfilled the quality and capacity in testing the Fiduciary Guarantee Law against the 1945 Constitution of the Republic of Indonesia as specified in Law Number 24 of 2003 concerning the Constitutional Court.

This executorial power is strengthened again in Article 15 paragraph (2) and the Elucidation to Article 15 paragraph (2); what is meant by "executorial power" is that it can be exercised directly without going through court and is final and binding on the parties to implement the decision. This explanation shows that the power of execution is without going through court and is final and binding on the parties to implement the decision.

Problems will arise if the creditor has executorial rights without being given the option of asking the court for assistance if the debtor is deemed to have breached his contract. The positions of creditors and debtors, which were previously equal, become unequal because the bargaining position of creditors is higher than that of debtors. Execution of fiduciary guarantees in its implementation gives rise to arbitrariness by creditors when collecting payments on debtors' debts and even confiscating fiduciary collateral objects (movable objects) because debtors break their promises.

Another problem is the timing of the breach of contract due to the absence of explanation in Article 15, paragraph (2) and paragraph (3) of the Fiduciary Guarantee Law. The lack of clarity in the law means there is no explanation regarding the time of the breach of contract, whether the instalments are still in progress, or when they are due. This lack of clarity creates the potential for arbitrary action by creditors because creditors have the freedom to determine whether there is a breach of contract committed by the debtor, so in practice, the implementation of the fiduciary law creates legal uncertainty. In particular, applying Article 15, paragraphs (2) and (3) of the Fiduciary Guarantee Law often ignores the protection of justice for debtors.

Based on this problem, the Panel of Judges at the Constitutional Court pronounced a Decision on the Case for reviewing Legislative Regulations, namely Law Number 42 of 1999 concerning Fiduciary Guarantees (Fiduciary Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945). This decision "Grants the Petitioners' petition in part" and further states that several phrases and their explanations contained in Article 15 paragraph (2), along with their explanations and paragraph (3) of the Fiduciary Law, are contrary to the 1945 Constitution of the Republic of Indonesia as long as they are not interpreted as per the interpretation given by the Panel of Judges of the Constitutional Court contained in the relevant decision. The phrases in question are, first, the phrase "executorial power" and "the same as a court decision with permanent legal force" (along with explanations) contained in Article 15 paragraph (2) and second, the phrase "default" contained in Article 15 paragraph (3) of the Fiduciary Law (Shanti Riskawati, 2021).

On August 31 2021, the Constitutional Court again issued a decision in which Constitutional Court Decision Number 2/PUU-XIX/2021, the problem with this second decision actually confirmed and strengthened the previous Constitutional Court decision (Constitutional Court Decision Number 18/PUU-XVII/2019) which stated Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "regarding fiduciary guarantees where there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily handing over the object which is the fiduciary guarantee, then all legal mechanisms and procedures in carrying out the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision which has permanent legal force"; Declare that Article 15 paragraph (3) of the Fiduciary Guarantee Law "default" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted to mean that "the existence of a breach of contract is not determined unilaterally by the creditor but on the basis of an agreement between creditor with debtor or based on legal action that determines whether a breach of contract has occurred"; Declare an explanation of Article 15 paragraph (2) of the Fiduciary Guarantee Law as long as the phrase "executorial power" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as a fiduciary guarantee where there is no agreement regarding breach of contract and the debtor objects. Voluntarily hand over the object, which is the fiduciary guarantee. All legal mechanisms and procedures in executing the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision, which has permanent legal force. Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

The Constitutional Court's decision then certainly has implications for the UUJF implementation process. The analysis will be based on the theory of legal effectiveness put forward by Lawrence M. Friedman to see the impact of the Constitutional Court. In

this theory, it is stated that the substance, structure, and culture of a law can affect the implementation of a law (Friedman, 1994). In the context of this study, changes in the UUJF caused by the Constitutional Court's decision interpreting the norms in the law will undoubtedly impact changes in the structure, substance, and culture of the law. These aspects will then be analyzed as a basis for considering the implications that arise from the decision. The analysis carried out using normative juridical research methods will answer the question regarding the executorial power of fiduciary guarantee certificates after the existence of Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021.

METHODS

This type of research is prescriptive and applied legal research, which is carried out by examining cases relating to the issues at hand, especially in this case relating to the executorial power of fiduciary guarantee certificates as regulated in the applicable laws and regulations using an approach conceptual. The types of legal materials used are primary legal materials and secondary legal materials. The technique for collecting legal materials in legal research is carried out by library study of legal materials, both primary legal materials, secondary legal materials, and non-legal materials. The legal material analysis technique used in this research is deductive syllogism. A deductive syllogism is used to find the concept of the executorial power of a fiduciary guarantee certificate after the Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021 and statutory regulations related to fiduciary guarantees and court decisions.

Theoretical Framework: Implementation of the Law According to Friedman

The effectiveness of implementing a legal rule will significantly depend on the substance, structure, and culture of the law. For Friedman, these three aspects cannot be separated from one another. (Lawrence M. Friedman, 1977) Concerning this view, Friedman has indirectly stated that the success of the implementation process of a legal rule does not only come from internal factors. In this case, legal substance is the only internal factor of a law. This aspect is generally static because it does not change. The material content contained as legal substance is the values that will then be implemented. If we refer to the ideal regulatory model, according to Fuller, the material content contained in a legal rule should be able to last for an extended period. This condition is essential to ensure that the people who are subject to the law can easily understand what they should do and what they should not do. When a legal rule continues to change, legal uncertainty will form. This aspect makes the legal substance static.

After understanding that a regulation has substance that must be implemented, it is then necessary to examine the implementation process of the policy. According to Friedman, this process is significantly influenced by the legal structure. Specifically, legal structure in the context of legal system effectiveness refers to the authority of state institutions tasked with implementing these policies. This factor then makes the implementation process of a policy more dynamic. Even though the substance of the regulations has been created ideally, the success of the implementation process of these regulations will be influenced by the readiness of the authorized institution to be the implementer.

Third, the factor that must be considered is the legal culture that lives in society. Legal culture is closely related to a group's level of education and understanding of the rights and obligations they have. Based on this view, their thinking logic will be formed, determining their rationality in acting. This legal culture is not only influenced by how written legal rules work but is also influenced by the social norms that shape their behavior. Friedman then stated that the legal culture factor is an aspect that makes the implementation process of a policy very dynamic. Even though regulations have been made as ideal as possible and their implementers have the readiness and capacity to carry out their duties, if the legal culture in society does not support these things, then the policy implementation process will also be in doubt.

In the context of this study, the process of handling fiduciary guarantees that experience disputes will be carried out following UUJF provisions. In this law, it is stated that the financing process accompanied by a fiduciary guarantee certificate can certainly provide legal certainty for creditors when debtors experience default, which results in a breach of contract. The executorial power of the fiduciary guarantee certificate as the substantive content of the UUJF means that this evidence has the same legal force as a court decision, which has permanent legal force. From this substantive content, it is implied that creditors as holders of fiduciary rights have the authority as a 'structure' that is permitted to carry out the execution of fiduciary collateral objects in the event of a breach of contract. Concerning the substance and structure of the law, so far, finance companies and banks in Indonesia often use third-party services to execute fiduciary collateral objects when a breach of contract occurs. They assume that this is legal to do because they have a fiduciary guarantee certificate. Based on the legal understanding and culture that has been formed, people also believe that when they fail to fulfill their obligation to pay installments, the creditor will give authority to someone to take the collateral.

DISCUSSION

The Executorial Power of the Fiduciary Guarantee Certificate in the Execution of Fiduciary Guarantees Before and After the Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021

Execution of fiduciary guarantees are executed before a Constitutional Court decision is made if the debtor or fiduciary commits a breach of contract or default. Default means that the debtor cannot fulfill his obligations according to what has been determined in the agreement or agreement. Failure to fulfill its obligations is caused by the debtor's intentional or negligent mistake due to compelling circumstances. Based on Article 11 of the Fiduciary Guarantee Law, objects used as fiduciary collateral must be registered at the fiduciary registration office at the Ministry of Law and Human Rights office. Article 13 paragraph (1), the application for fiduciary registration is carried out by the fiduciary recipient. After registration, a fiduciary certificate will appear issued by the fiduciary registration office, which is the same as the date of receipt of the fiduciary application (Article 14). Article 15 paragraph (1), the guarantee certificate includes "For Justice Based on Belief in One Almighty God." Article 15 paragraph (2), a fiduciary guarantee certificate has the same executorial power as a court decision that has obtained permanent legal force. Based

on Article 15 paragraphs (1) and (2), if the fiduciary recipient does not register the fiduciary guarantee at the fiduciary registration office, then the fiduciary guarantee does not have executorial power and cannot be forcibly executed through the court if the debtor has defaulted. Registration of fiduciary collateral objects aims to protect the interests of creditors as recipients of fiduciary collateral. If, in the future, the debtor defaults, the creditor can carry out direct execution of the fiduciary collateral object. Before the Constitutional Court's decision, the execution of fiduciary guarantees was regulated in Article 29 Chapter V concerning the execution of fiduciary guarantees.

Constitutional Court Decision Number 18/PUU-XVII/2019 contains the principle of erga omnes, namely that the decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (inter parties) but must also be obeyed by everyone (erga omnes). The principle of erga omes is reflected in the provisions, which state that the Constitutional Court's decisions can be implemented directly without requiring the decision of an authorized official unless the statutory regulations provide otherwise. The provisions above reflect binding legal force, and because of their public legal nature, they apply to anyone, not only to the parties involved in the lawsuit. The principle of erga omnes binding decisions mentioned above is reflected in the final character sentence in the Constitutional Court's decision in this Law, which also includes binding legal force (final and binding). Erga omnes comes from Latin, which means it applies to everyone (toward everyone). The principle of erga omnes Law or legal act applies against every individual, person, or state without distinction.

Based on this principle, the Constitutional Court Decision gives birth to a norm of what should be or legal action that applies to every individual, person, or country without distinction so that it can be concluded that the executorial power of a fiduciary guarantee certificate after the Constitutional Court Decision is automatic because it has been confirmed that the Court Decision The Constitution is final, that is, the decision of the Constitutional Court immediately gains legal force from the moment it is pronounced and no legal action can be taken. The final nature of the decision of the Constitutional Court in this Law also includes binding legal force (final and binding). A right or obligation that is erga omnes in nature can be implemented and enforced against any person or institution if this right is violated or fails to fulfill an obligation. The public, whether people or institutions, is obliged to implement every legal action taken, including those related to fiduciary guarantees, if, before the decision of the Constitutional Court, every person or institution related to handling debtors who experience default on their credit is regulated and implemented based on Article 15 paragraph (2) and Article 15 paragraph (3) in Law Number 42 of 1999 concerning Fiduciary Guarantees. Regarding the execution of fiduciary guarantees, it is regulated in Article 29 Chapter V concerning the execution of fiduciary guarantees. Article 29 of Law Number 42 of 1999 regulates 3 (three) ways of executing fiduciary collateral objects, including the following:

1. The implementation of the executorial title as regulated in Article 15 paragraph (2) by the fiduciary recipient, in this case, the creditor. The article reads, "The Fiduciary Guarantee Certificate as intended in paragraph (1) has the same executorial power as a court decision that has obtained permanent legal force." The fiduciary guarantee certificate issued by the Fiduciary Guarantee Registration Office includes the words "For the sake of justice based on belief in the Almighty God," so this fiduciary guarantee certificate has the same executorial power as a court decision which has permanent legal force.
2. Sale of fiduciary collateral objects under the authority of the fiduciary recipient himself through a public auction. Sales using a mechanism like this are known as execution parate institutions and must be sold publicly (auction). Therefore, separate execution is the authority given by law or a court decision to one of the parties to forcibly carry out the contents of the agreement themselves if the debtor cannot fulfill its achievements (default). So, suppose the debtor cannot fulfill its achievements (default). In that case, the financial institution can sell the fiduciary collateral object through a public auction to repay the debt.
3. Private sales are carried out based on an agreement between the fiduciary and the fiduciary if, in this way, the highest price can be obtained, which is beneficial to the parties. This mechanism can be carried out after 1 (one) month has passed since being notified in writing by the fiduciary giver and fiduciary recipient to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned. So, in principle, private sales are implemented by the fiduciary/debtor himself. The sale proceeds are handed over to the fiduciary/creditor to pay off the debt of the fiduciary (debtor) as an implementation of the Execution of Fiduciary Guarantees According to the Regulation of the Head of the Indonesian National Police No. 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

So after the Constitutional Court decision Number 18/PUU-XVII/2019, which states:

1. Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executorial power" and the phrase "are the same as the court decision has permanent legal force" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "for fiduciary guarantees where there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in executing the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force;
2. Declare Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "default" is contrary to the State Constitution Republic of Indonesia of 1945 and does not have binding legal force as long as it is not interpreted to mean that "the existence of a breach of contract is not determined unilaterally by the creditor but based on an agreement between the creditor and the debtor or based on legal action to determine whether a breach of contract has occurred;
3. Declare Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executorial power" is contrary to the State Constitution Republic of Indonesia of 1945 and does not have binding legal force as long as it is not interpreted as "for fiduciary guarantees where there is no agreement regarding breach of contract and the debtor objects to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in executing the fiduciary guarantee certificate must be carried out and applies the same as the execution of court decisions that have permanent legal force;

Constitutional Court Decision Number 2/PUU-XIX/2021, where the decision is "rejecting the Petitioner's Petition in its entirety," it can be emphasized that the Constitutional Court only confirms the previous Constitutional Court Decision. The implementation of the execution of fiduciary guarantees changed the decision of the Constitutional Court, in which the term "executorial power" in Article 15 Paragraph (2) and court decisions that have legal force remain contrary to the 1945 Constitution and do not have binding legal force as long as they are not interpreted without agreement in the event of a breach of contract and the debtor objects to hand over the object which is a fiduciary guarantee voluntarily. Legal procedures for implementing fiduciary guarantees must be carried out, and the same is true for the execution of court decisions that have permanent legal force. On the other hand, if a default agreement has been agreed between the debtor and creditor at the beginning of the agreement, the finance company can directly carry out its execution without going to court. After the decision of the Constitutional Court, creditors can no longer carry out unilateral execution of fiduciary collateral objects. However, they must go through the District Court unless there is a breach of contract agreement at the beginning of the agreement between the debtor and creditor, and the debtor voluntarily hands over the fiduciary collateral object to the creditor.

Legal Consequences of the Implementation of Constitutional Court Decision Number 18 /PUU-XVII/2019 and Number 2/PUUXIX/2021 regarding Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees

The existence of the Constitutional Court Decision gave birth to new norms which have an impact on the executorial power of fiduciary guarantee certificates, as contained in Article 15 paragraphs (2) and (3), as well as on the executorial power in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees. After the Constitutional Court Decision Number 18/PUU-XVII/2019, recipients of fiduciary guarantees or creditors cannot carry out the execution themselves (parate execution) but must submit a request for execution to the District Court. Parate execution can be implemented if there is an agreement regarding a breach of contract determined at the beginning of the agreement and the debtor is willing to voluntarily hand over the object of fiduciary collateral. The Constitutional Court's decision states that not all executions of fiduciary guarantee objects must be carried out through the courts. Regarding fiduciary guarantees, where there is no agreement regarding breach of contract between the creditor and the debtor, and the debtor objects to handing over the object of the fiduciary guarantee voluntarily, then all legal mechanisms and procedures for implementing the fiduciary guarantee. It must be applied like a court decision with permanent legal force.

The decision of the Constitutional Court is final and binding, so there is no legal effort to test the decision issued by the Constitutional Court. The final nature of the decision of the Constitutional Court in this Law also includes binding legal force (final and binding). A right or obligation that is erga omnes in nature can be implemented and enforced against any person or institution if this right is violated or fails to fulfill an obligation. So that the public, whether people or institutions, is obliged to implement it in every legal action taken, including those related to fiduciary guarantees.

The author's opinion is contrary to the Constitutional Court decision Number 18/PUU-XVII/2019 and Decision No. 2/PUU-XIX/2021 because the fiduciary guarantee certificate contains the instructions "For the sake of justice based on belief in the Almighty God" where these instructions already have the same legal force as a court decision which has permanent legal force, so this does not require again, a court decision stated that the debtor was in breach of contract because in this case, the regulation was detrimental to creditors, who in executing the fiduciary guarantee object experienced difficulties in the form of requiring a long time, expensive costs and tiring so that it was not practical for the creditor. In contrast, it was possible for the economic value of the guarantee that will be executed to decrease or be damaged. According to the author, if analyzed using the sociological theory of jurisprudence, it contains Roscoe Pound's opinion that according to Roscoe Pound, legal theory is a tool of social engineering (law as a tool of social engineering). Pound's thinking about the reciprocal influence between law and society and the interests that must be protected by law can be systematically divided into several groups: public, community, and personal.

According to the author, the constitutional court aimed at the wrong target, so its decision castrated Law Number 42 of 1999. The main problem that should be studied is not the review of Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 but rather the inappropriate use of debt collectors because of the personal interests of debtors who feel specifically harmed, namely because of the use of debt collectors who work without following the rules. Regarding this act of arbitrariness, the South Jakarta District Court decided that the creditor/ fiduciary guarantee recipient and debt collector were declared to have committed an unlawful act and punished the creditor/ fiduciary guarantee recipient and debt collector jointly and severally to pay material and immaterial losses to the debtor/ guarantee provider. Fiduciary. However, the creditor/recipient of the fiduciary guarantee did not implement the decision of the South Jakarta District Court by forcibly towing the vehicle of the debtor/fiduciary guarantee in the presence of the police. According to the author, the constitutional court made the wrong target.

The Ideal Form of the Executorial Power of the Fiduciary Guarantee Certificate regarding the Principal Agreement and the Fiduciary Guarantee Deed, which are the basis for making the fiduciary guarantee certificate after the Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021

Constitutional Court Decision No. 2/PUUXIX/2021 causes the executorial power of the Fiduciary Guarantee Certificate, as stated in Article 15 paragraphs (2) and (3), to be abolished and degraded if there is no agreement and willingness from the debtor; this has an impact on all financing institutions in Indonesia because The decision of the Constitutional Court is final so that all interested parties must comply with the decision. However, conflicts arise for various reasons and problems, especially the conflict of interest between the parties (creditors and debtors). Previously, the creditor and debtor had signed a Principal Agreement in the form of a Multipurpose Financing Agreement along with an *accessoir* agreement in the form of a Fiduciary Agreement in the form of a Fiduciary Guarantee Deed.

If an agreement between the lessor, lessee, and supplier is reached, rights and obligations arise for the parties according to the clauses in the leasing agreement. Between the lessor and the supplier, there is a cooperative/partner relationship, where the supplier is the party who owns the goods needed by the lessee. In contrast, the lessor is the party who owns the goods capital. The legal relationship between the lessor and the supplier is limited to financing the goods the lessee needs, then the supplier hands over the

goods to the lessee and assists in processing the vehicle documents. Meanwhile, between the lessor and the lessee, there is a legal relationship based on a leasing agreement, where the lessor is the owner of the capital goods and the lessee is the borrower/user of the capital goods as long as the instalments have not been paid in full. Then, between the supplier and the lessee, the construction is based on a sale and purchase agreement with the lessor as an intermediary by writing it down in a joint statement letter so that there are three forms of legal relationship, namely between the supplier and the prospective debtor (lessee) based on the sale and purchase agreement with a joint statement letter, between the supplier and the creditor (lessor) based on a cooperative/partner relationship and between the lessor and the lessee based on a leasing agreement(Tjukup et al., 2016, pp. 5–6).

Based on the agreement, the legal construction of the lessor is the owner of the capital goods, in the sense that the lessor is the renting party and the lessee is the borrower/user, that is, the one who has the right to enjoy, meaning that as long as the lessee's installments to the lessor have not been paid off, the lessee's status is as the borrower/user. However, when the installments are paid off, the lessee becomes the owner of the capital goods. As regulated in Article 3 Paragraph (3) of the Decree of the Minister of Finance of the Republic of Indonesia No. 1251/KMK.013/1988 concerning Provisions and Procedures for the Implementation of Financing Institutions that "As long as the lease agreement is still in force, the ownership rights to the capital goods of the object of the lease transaction are vested in the leasing company."

Suppose someone looks at the leasing financing mechanism for new vehicle capital goods. In that case, the BPKB processing can be directly carried out in the lessee's name as the first party to own the vehicle, even though the installments to the leasing financing company have not been paid off. So here, the lessor is not the owner of capital goods but only as a funder for the lessee. Based on Article 65 paragraph (2) of Law Number 22 of 2009 concerning Road Traffic and Transportation, it is explained that "As proof that the Motorized Vehicle has been registered, the owner is given a Motor Vehicle Ownership Book, a Motor Vehicle Registration Certificate, and a Motor Vehicle Registration Certificate." So, the lessee is the vehicle's legal owner based on the BPKB. Even though the lessor holds the BPKB as fiduciary collateral, the BPKB holder does not mean the legal owner of the capital goods. This fiduciary guarantee is only a guarantee of repayment of the lessee's installments to the lessor. So, the provisions of Article 3 Paragraph (3) of the Decree of the Minister of Finance of the Republic of Indonesia No. 1251/KMK.013/1988 are contrary to Article 65 paragraph (2) of Law Number 22 of 2009 concerning ownership rights of a leasing object.

The leasing agreement must meet the requirements for a valid agreement based on Article 1320 of the Civil Code. The first two requirements (agree and be competent) are subjective because they relate to the person or subject who agreed. If subjective conditions are not fulfilled in an agreement, the party who feels disadvantaged can request cancellation. Then, the last two conditions (a sure thing and a lawful cause) are objective because they relate to the agreement itself or the object of the legal action being carried out. If the objective conditions are unmet, an agreement is null and void.

As for the compatibility between the conditions for the validity of an agreement based on Article 1320 of the Civil Code and a leasing agreement in a Multipurpose Company, namely, the first condition is "agree," the multipurpose agreement entered into between the lessor and the lessee has fulfilled the first condition because it was made based on an agreement between both parties which states "That in connection with the above matters, the parties agree to mutually bind themselves to make this agreement with the terms and conditions." However, the lessee only needs to understand and sign it. The second condition is "capable," and the third is "a certain thing," where an agreement must have a particular object. Based on the multipurpose agreement, the object agreed upon is a motorized vehicle rented for business. The fourth condition is "a lawful cause," the provisions in the Multipurpose agreement still contain differences in the arrangements between the agreement and Article 65 paragraph (2) of Law no. 22 of 2009 concerning Road Traffic and Transportation relating to the legal ownership rights of motorized vehicles which are marked with the name listed in the BPKB.

As happened in the case contained in Constitution Magazine article Number 155 of 2020 and following the decision of the Constitutional Court Number 18/PUU-XVII/2019, it started with a husband and wife named Apriliani Dewi and Suri Agung Prabowo as debtors in the form of a Toyota Alphard car. V model 2.4 A/T 2004 was purchased and registered on the fiduciary guarantee certificate Number W11.01617952.AH.05.01, and following the agreement, the Applicant has paid the installments on time—however, PT. As the fiduciary recipient, Astra Sedaya Finance (PT. ASF) sent a representative to take the fiduciary collateral object for default reasons. There was a takeover of the collateral object using the services of a debt collector without going through the correct legal procedures. There are several moments of forced action without showing evidence and official documents, without authority, by attacking individuals, honor, and dignity, and threatening to kill debtors.

Furthermore, a lawsuit was filed at the South Jakarta District Court Number 345/PDT.G/2018/PN/Jkt/Sel, stating that the creditor had committed an unlawful act. So, the judge decided to impose material and immaterial fines on the creditor. However, the creditor still withdrew the object of the fiduciary guarantee on January 11, 2019, because the fiduciary agreement was considered to have permanent legal force based on the provisions of the requested article. Based on this, the constitutional losses experienced by the debtor are specific and actual. If the provisions in this article do not exist or at least cannot be interpreted as a request, then the constitutional loss of the fiduciary will not occur.

In the research article, leasing agreements with multipurpose companies contradict Article 65, paragraph (2) of the Road Traffic and Transportation Law. When viewed from Article 1337 of the Civil Code, "a cause is prohibited, if it is prohibited by law, or if it is contrary to good morality or public order." So, the agreement between the creditor and debtor should not conflict with the law, where this issue is reviewed from Law No. 22 of 2009. Although based on Article 1338 paragraph 1 of the Civil Code, "all agreements made legally apply as law for those who make them," so it can be said that the agreement applies as law for the parties agreeing, its existence cannot be contrary to law, morality or public order.

However, if it is related to an agreement that does not fulfill one of the legal requirements based on Article 1320 of the Civil Code, which is the objective requirement of an agreement, then the agreement will be null and void. The Multipurpose Agreement contradicts Article 65 paragraph (2) of Law no. 22 of 2009 concerning ownership rights of a leasing object, so the multipurpose financing agreement should be null and void. Article 1337 of the Civil Code supports this: "A cause is prohibited if it is prohibited by law or contrary to good morality or public order." Apart from that, Article 1335 "An agreement without cause, or made based on a false or prohibited cause, has no force." From Article 1337 and Article 1335, it can be concluded that an agreement has no legal force if it is made based on a prohibited reason, one contrary to law, morality, or public order.

Specifically for motor vehicle leasing in a leasing agreement, the parties should agree to waive the provisions of Article 65 paragraph (2) of Law no. 22 of 2009 concerning Road Traffic and Transportation regarding legal ownership of motorized vehicles because motor vehicle ownership rights are marked with BPKB, where in leasing agreements for new vehicles, the name listed in the BPKB is the name of the lessee. This means that the person who has legal ownership rights should be the lessee, not the lessor. However, in a leasing agreement, the lessee is constructed as the tenant and the lessor as the owner. If you look at the name listed in the BPKB, the lessor should not be constructed as the owner but only as the provider of financing facilities. In fact, in leasing activities, also known as leasing, the person who has the right to rent out should be the owner, so the parties should set aside or waive Article 65 paragraph (2) of the Road Traffic and Transportation Law in terms of legal ownership rights, as in vehicle leasing agreements. The parties agreed to waive Article 1266 of the Civil Code for the debtor/lessee because the company was aware that overriding Article 1266 of the Civil Code meant something wrong with the standard agreement they had made. So, as a form of legal protection for companies in the agreement, a clause is made regarding overriding Article 1266 of the Civil Code.

The conclusion that can be drawn is that one ideal form is that before making a main agreement, especially a leasing agreement, both parties must pay attention to whether the agreement meets the requirements for the validity of the agreement, which will result in the agreement being cancelled or null and void, thereby causing a loss. A fiduciary agreement is an accessory agreement to the main agreement. A fiduciary agreement is not an independent agreement, but its existence depends on the main agreement. If the main agreement is annulled/cancelled, the fiduciary agreement is also invalidated/cancelled. If seen from the perspective of the Constitutional Court's decision, one of the essential points at issue is related to breach of promise/default, based on the Pancasila theory of justice, which states that justice is for all Indonesian people, in this case, according to the author of the Constitutional Court's decision, it is not yet fair, the Agreement Fiduciary is an acquittal agreement that follows the main agreement, related to breach of contract/default. The Constitutional Court considered the points of the petition relating to the condition of breach of contract, confirming that the existence of provisions governing breach of promise creates legal uncertainty because Law Number 42 of 1999 concerning Fiduciary Guarantees does not explicitly regulate when a debtor is declared injured. Promise and to whom the authority to determine the condition of breach of promise is given, this will have implications for legal uncertainty regarding when the debtor has committed a "breach of promise," which results in the emergence of absolute authority on the part of the creditor to sell the object which is the object of the fiduciary guarantee which is in debtor power.

According to the author, although Law Number 42 of 1999 concerning Fiduciary Guarantees does not explicitly regulate when a debtor is declared to be in breach of contract and to whom the authority to determine the state of breach of contract is given, remember that a Fiduciary Agreement is an *accessoir* agreement that follows the main agreement. The principal agreement is an agreement that was created because of an agreement. The principal agreement stipulates that the debtor must pay his obligations in instalments.

CONCLUSION

Constitutional Court Decision Number 2/PUU-XIX/2021 confirms that creditors can no longer carry out unilateral execution of fiduciary collateral objects but must go through the District Court unless there is a breach of contract agreement at the beginning of the agreement between the debtor and creditor, and the debtor voluntarily surrenders the object of the fiduciary guarantee to the creditor. The decision of the Constitutional Court is final and binding, so there is no legal effort to review the decision that has been issued by the Constitutional Court so that the public, both people and institutions, are obliged to implement it in every legal action taken, including related to fiduciary guarantees.

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