



LEGAL PROTECTION OF FIDUCIARY HOLDERS BASED ON CONSTITUTIONAL COURT RULING NUMBER. 18/PUU-XVII/2019

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ABSTRACT

Background. Legal certainty is significantly enhanced by fiduciary guarantees as a result, the research aimed (a) to develop knowledge of business law, especially banking law, especially regarding credit with Fiduciary Guarantees, (b) to contribute parties related to activities that often use contracts with fiduciary guarantees such as banking and society

Research Method. The type of research used is a normative juridical approach to answer existing research problems, using legal principles, statutory regulatory materials, and theoretical frameworks. The analysis of library materials and secondary data to gain a comprehensive understanding of the subject matter.

Findings. The results showed (a) the procedure of carrying out an object of fiduciary guarantee requires submitting an execution request to the District Court. This court functions as an intermediary, granting permission for execution to aggrieved creditors. If the agreement itself has the power of execution, then the fiduciary guarantee can be executed immediately (b) The recent Constitutional Court decision Number 18/PUU-XVII/2019, states that every person has the right to recognition, guarantees, protection, fair legal certainty and equal treatment before the law. This law functions to enforce human rights contained in the 1945 Constitution, guaranteeing justice and protection all society.

Conclusion. Constitutional Court decision No. 18/PUU-XVII/2019 raises various problems that are not in line with the provisions of Law No. 42 of 1999 concerning Fiduciary Guarantee. Following this decision, banks as creditors no longer carry out executions unilaterally. If the debtor is in default and has created injustice and ambiguity for creditors by eliminating the authority.

Keywords: Constitutional Court, Fiduciary Guarantee, Legal Protection.

BACKGROUND

The Fiduciary Guarantee Law prohibits the execution of guarantees according to the method determined by Banks as creditors who do not have the authority to directly execute fiduciary collateral objects. On the other hand, the execution process requires the creditor to file a civil lawsuit at the District Court through appropriate legal procedures. Only after a judge's decision is obtained which has legal force can the execution be carried out[1].

Following up on Constitutional Court decision No.18/PUU-XVII/2019, it was concluded that the inclusion of the phrase "executorial power" in Article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees contrasts with the provisions of the Constitution. 1945 Constitution. This phrase has no legally binding force unless it is interpreted in the context of fiduciary guarantees, especially in the event the debtor refuses to intentionally and without coercion provide the mortgaged object material[2].

The problems faced revolve around uncertainty which is detrimental to creditors in implementing the law. This is because the settlement results related to the execution of Constitutional Court Decision No.18/PUU-XVII/2019 are currently not in accordance with the principle of balance. The principle of balance must prioritize the rights and obligations of both creditors and debtors. In addition, the agreement is executed in good faith. rooted in good intentions and honesty. The principle of good faith can also be based on propriety,

which requires individuals to behave appropriately to carry out agreements or fulfill obligations[3].

It is important for parties, especially customers who act as debtors, to uphold credit agreements based on the principle of good faith. This is because the bank as a lender has provided credit or receivables with good intentions. Unfortunately, there are times when customers fail to fulfill their obligations, deliberately delaying debt payments without the creditor's knowledge. In cases like this, it is clear that the customer does not have good intentions[4-7].

Based on Constitutional Court Decision Nom.18/PUU-XVII/2019, violations of contract provisions and criteria must be included in both credit agreements and fiduciary agreements. This rule indirectly eliminates the legal validity of fiduciary guarantee certificates. Fiduciary guarantee certificates no longer have authority as court decisions have permanent legal force. If it does not meet the required criteria, both parties must reach an agreement regarding the breach of contract. The customer who acts as the debtor is then obliged to be willing to hand over his collateral. If the customer refuses to comply, the creditor is prohibited from using any form of coercion to confiscate or enforce the fiduciary guarantee.

RESEARCH METHODS

The type of research used is a normative juridical approach to examine and analyze various sources of information, such as legal principles, statutory regulatory materials, and theoretical frameworks, to answer existing research problems[8]. The focus of this research is to analyze the legal framework that regulates the authority of executive titles in cases where the legal agreement was executed before the Constitutional Court Decision No. 18/PUU-XVII/2019, as well as exploring legal protection efforts for fiduciary security holders following the Constitutional Court Decision mentioned above. This research will use a Normative Juridical approach, namely examining positive laws related to fiduciary holders.

The research methodology also involves analysis of library materials and secondary data to gain a comprehensive understanding of the subject matter[9]. The types of legal materials used in this research are: a) Primary legal materials, namely legal materials that are binding, 6 (six) Primary legal materials that will be used in this research are in the form of laws and regulations relating to issues, such as the *CIVIL CODE*, concerning Mortgage Rights and other regulations. B) A variety of sources, including research findings, legal publications, journals, and papers, offer detailed explanations of primary legal materials. These secondary legal materials include books, magazines, journals, research results, works from legal circles that contain the thoughts and opinions of legal experts on this topic. C) Tertiary Legal Materials, namely materials that provide instructions and explanations for primary and secondary legal materials. Encyclopedias and electronic media articles are examples of materials that can provide guidance on primary legal materials and the Big Indonesian Dictionary (KBBI), English Dictionary.

FINDINGS

1. Carry out the execution of fiduciary guarantees after the Constitutional Court Decision Number. 18/PUU-XVII/2019

The system of executing Fiduciary guarantees after the Constitutional Court Decision Number 18/PUU-XVII/2019 is carried out with 2 probabilities, the first is constant in its implementation considering Regulation Number 42 of 1999 concerning Fiduciary Certification. regarding the circumstances of the default that occurred. Second, the implementation of fiduciary guarantees should be based on the court's choice which has strong legal force, in the event that the implementation does not fulfill the elements described above. According to Article 15 Paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees, the power of execution is considered equivalent to a court decision that has permanent legal force. These powers cannot be resolved through any other means, unless they specifically relate to breach of contract or tort situations not covered by detailed

agreement. Furthermore, the same Article 15 paragraph (3) states that creditors can immediately execute the object of collateral, but only if the debtor has defaulted and is willing to hand over the collateral to the fiduciary recipient without any form of coercion, especially if the collateral is handed over to the fiduciary recipient. debt collectors are involved[10-14].

According to the Constitutional Court, the process of executing an object of fiduciary guarantee requires submitting an execution request to the District Court. This court functions as an intermediary, granting permission for execution to aggrieved creditors. If the agreement itself has the power of execution, then the execution can be done immediately[15]. The District Court authorizes the fiduciary recipient to carry out the executive power contained in the registered fiduciary guarantee certificate. Article twenty-nine of the Fiduciary Guarantee Law regulates the procedures for implementing fiduciary collateral:

- a. The fiduciary recipient has the authority to sell objects used as fiduciary collateral through a public auction and use the proceeds from the sale to pay off the debt. The auctioneer is responsible for carrying out the auction according to the recipient's request.
- b. A private sale occurs when the grantor and fiduciary agree that it will result in the most favorable price for both parties involved. In order to enforce execution, creditors have the option to ask for court assistance, as stated in Article 196 HIR. This includes a request for confiscation of the debtor's assets, which will serve as a substitute for the amount of debt, until the court deems it sufficient.

2. Legal Protection for Fiduciary Security Holders Based on Constitutional Court Decision Number-18/PUU-XVII/2019

Provisions regarding fiduciary guarantees function to provide protection for creditors who provide credit for the direct implementation of fiduciary objects. Registration of fiduciary collateral objects is in line with the basic principles of fiduciary collateral, known as the principle of publicity. This principle states that all collateral obligations must be registered openly, without any confidentiality[16-18]. Furthermore, Article 15 paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees reaffirms the right of the fiduciary recipient to use their authority to sell objects that are the subject of fiduciary guarantees in the event of default.

According to Article thirteen of Law No. 42 of 1999 concerning Fiduciary Guarantees, creditors who receive fiduciary guarantees are required to register them at the Fiduciary Registration Office. Apart from that, you are obliged to notify him if the fiduciary guarantee is canceled and provide a statement regarding the cancellation of the debt, release of rights, or on the other hand the obliteration of the article that is the ensure. Debtors are strictly prohibited from transferring, pawning, renting or redistributing fiduciary items they have registered to third parties without the written consent of the fiduciary recipient[19-20].

According to Law Number 42 of 1999 concerning Fiduciary Guarantees, the imposition and registration of fiduciary guarantees is required. As stated in Article 15 paragraph (2) of the same law, a fiduciary guarantee certificate has the same authority as a court decision which has permanent legal force. The purpose behind the fiduciary letter is "FOR JUSTICE BASED ON GOD ALMIGHTY", the same as the court decision. Therefore, a fiduciary certificate is direct evidence of the execution without requiring a trial or court examination, and the decision is final and binding on the parties involved.

The recent Constitutional Court decision, namely Decision Number 18/PUU-XVII/2019, assesses Article 15 paragraphs (2) and (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees[21]. contrary to Article 28 D paragraph (1). 1945 Constitution. According to Article twenty-eight D paragraph one of the one thousand nine hundred and forty-five Constitution, every person has the right to recognition, guarantees, protection, fair legal certainty and equal treatment before the law. This law functions as a means of enforcing human rights contained in the 1945 Constitution, guaranteeing justice and protection for all members of society without exception

The lawsuit filed was granted through MK Decision Number 18/PUU-XVII/2019. According to Article 15 paragraph (2) of Law No. 42 of 1999, the phrase "executorial power" and the phrase "equal to a court decision which has permanent legal force" are contrary to the 1945 Constitution of the Republic of Indonesia. These expressions do not have binding legal force unless interpreted as a fiduciary guarantee. In the event that there is no default agreement, the debtor has the right to refuse to hand over the fiduciary collateral voluntarily. Therefore, every lawful component and methodology for implementing the Fiduciary Guarantee Certificate must be implemented in the same way as implementing court decisions[18].

In accordance with the Constitutional Court's decision in case no. 18/PUU-XVII/2019, it was determined that creditors receiving fiduciary guarantees do not have the authority to unilaterally enforce the collateral object if default occurs. This interpretation is based on the understanding that the phrase "default" is contrary to the 1945 Constitution of the Republic of Indonesia and is not legally valid. On the other hand, the determination of default must be carried out through mutual agreement between the creditor and debtor.

DISCUSSIONS

Fiduciary agreement, all parties are bound by responsibility to fulfill their obligations, namely creditors or debtors. If the debtor does not fulfill the agreement, then this is considered a breach of contract and has legal consequences. Common examples of debtor default include failure to make debt payments or meet bank credit. If a default occurs, the collateral recipient is given the authority to sell objects or other valuable materials to be pawned[20]. Thus, a debtor is considered to be in default under a fiduciary agreement if he fails to fulfill his obligations. disparity of privileges which brings about additional advantages to the borrower despite the fact that it has been specified in the arrangement. be that as it may, does this right mean there is no equity for the guardian beneficiary because of the shortfall of clear conditions in regards to how and when the default happens.

The fiduciary guarantee ends when the debtor's debt has been forgiven and the parties are freed from further responsibilities and rights. credit and obligations related to the agreement are repaid, the agreement is deemed fulfilled, and the deletion of the agreement results in the elimination of fiduciary guarantees[1,8,17].

The process of paying off the amount of money involved auctioning off the defendant's confiscated assets. After receiving a warning, the confiscation was carried out by issuing a warrant. This marks the next stage in the execution process, which requires compliance with the procedures for the auction sale order, culminating in an auction sale conducted by the auction office. does this not make a difference reasonably to the beneficiary of trustee privileges since, supposing that there is still pure intentions in taking care of the obligation.

CONCLUSION

The process of imposing fiduciary guarantees includes making a deed which is registered at the Fiduciary Guarantee Registration Office. However, the Constitutional Court's decision Number 18/PUU-XVII/2019 raises various problems that are not in line with the provisions of Law Number 42 of 1999. Following this decision, banks as creditors no longer carry out executions unilaterally, To settle fiduciary collateral objects, creditors now require the debtor's acknowledgment or agreement regarding default, as well as the immediate handover of registered fiduciary collateral objects. There is no clear clause explaining the default by one of the parties, the case is resolved at the Court. It will decide whether a breach of contract has occurred or whether it is outside the scope of execution of the fiduciary guarantee object. The power to sell objects that are fiduciary collateral rests with the fiduciary recipient, who can choose to carry out a public auction or sell the object privately with an implementation permit from the PN. However, the recent Constitutional Court Decision No. 18/PUU-XVII/2019 has created injustice and ambiguity for creditors by eliminating the authority.

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