

Reconstruction Of The Interpretation Of Default In The Fiduciary Agreement On Execution After The Decision Of The Constitutional Court Number 18/Puu-Xvii/2019

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Abstract

In financing practices in Indonesia, fiduciary guarantees play a crucial role for both creditors and debtors. However, their implementation often creates inequality because the determination of default is made unilaterally by the creditor. Constitutional Court Decision No. 18/PUU-XVII/2019 presents a new interpretation that emphasizes justice, legal protection for debtors, and the importance of the judicial process. The purpose of this study is to understand the impact of this shift in the interpretation of default on the validity and implementation of fiduciary guarantees in financing practices in Indonesia, as well as to analyze the legal considerations of Constitutional Court Decision No. 18/PUU-XVII/2019 regarding the validity of execution and legal protection for creditors and debtors. This study uses a normative juridical methodology with a statutory and conceptual approach. Data were collected through a literature review of legal norms, Constitutional Court decisions, scientific doctrines, legal writings, and supplemented with secondary data from the Financial Services Authority (OJK) and the Indonesian Financing Companies Association (APPI). The results of the study indicate more specifically that after the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019, there was a 35% decrease in reports of disputes over the execution of fiduciary guarantees in district courts during the 2020–2023 period, reflecting increased compliance by financing institutions with the principle of due process of law. Determination of default can no longer be made unilaterally by creditors, but must be done through a fair and proportional legal mechanism. This decision strengthens legal protection for debtors, affirms the principle of due process of law, and requires system adjustments by financing institutions, thus making an important contribution to civil law reform, particularly in the implementation of fairer, more equal, and constitutional fiduciary guarantees in Indonesia.

1. Introduction

In the dynamics of modern economic life, financing activities are one of the important elements in supporting the survival of people's lives and the growth of the business sector. (Adrianto, 2020) The need for individuals and business entities for fresh funds for various purposes, both consumptive and productive, drives the high demand for financing products offered by financial institutions, both banks and non-banks. (Wilbert et al., 2024) This mechanism for providing credit or financing does not only involve an element of trust, but also requires guarantees as a form of legal protection for the funder. (Supriyadi, 2020) Therefore, collateral in financing practice has a crucial role in ensuring the fulfillment of creditors' rights in the event of injury to promises or defaults on the part of the debtor.

Some of the types of collateral that are widely applied in various financing practices are fiduciaries. This form of guarantee is considered superior because it provides an opportunity for the debtor to remain in control of the pledged object. (Johannes Ibrahim Kosasih, 2021) This provides flexibility for debtors to continue to use the collateral object to support their business activities, which can ultimately strengthen their capacity in paying off obligations to creditors. Juridically, the regulation regarding fiduciary guarantees is contained in Law Number 42 of 1999 concerning Fiduciary Guarantees. Based on the provisions of Article 1 number 1, fiduciary is defined as the transfer of ownership of an object based on a relationship on the basis of trust, provided that the object remains in the possession of the party who transfers its ownership. (Article 1 number (1), Law Number 42 of 1999 concerning Fiduciary Guarantees) (Habibie et al., 2025). With such characteristics, fiduciaries are the main choice in financing transactions, especially those that are mobile such as the purchase of motor vehicles and other consumptive goods.

The application of the fiduciary guarantee mechanism creates a proportionate benefit for all parties involved in the agreement. From the creditor's side, the existence of a fiduciary guarantee provides legal certainty, because the fiduciary certificate has the power of direct execution as well as a court decision that cannot be contested. This provision gives the creditor the authority to carry out the execution of the collateral object without the need to file a lawsuit first, thus providing effective and efficient legal protection. (Susanti Sembiring, 2024) That way, they are given the right to execute the collateral directly without the need to go through judicial procedures in the event of default from the debtor. On the other hand, the debtor can still use the object applied

in the practice of personal life and the business world, without losing the economic benefits of the object. This mechanism encourages the formation of a balance between the principles of efficiency, flexibility, and legal certainty in the contractual relationship between creditors and debtors. (Ryamizard Haritzidane Kasyfi Aditya and Yunanto, 2025)

However, in practice, the implementation of execution of the object of fiduciary guarantee often poses problems that are not simple. Unilateral execution carried out by creditors often occurs without first obtaining approval or acknowledgment from the debtor. Under certain conditions, executions are even carried out through unlawful and ethical methods, such as forced withdrawals, the use of force, or intimidating acts against the debtor. (La Ode Muhammad Irman Djalali, 2020) This creates an imbalance in legal and social relations between the parties, and opens up space for violations of the debtor's rights that should be protected by law.

This situation gives rise to the urgency of reviewing the executory power of fiduciary certificates, particularly with regard to the interpretation of default as the basis for execution. In the practice of financing agreements, the determination of default is generally based on an agreement clause that contains payment terms, such as the maturity time and the amount of installments. (Farid Wajdi and Muhammad Yusrizal, 2024) If the debtor exceeds the agreed payment deadline, the creditor unilaterally determines that the debtor has defaulted and then proceeds with the execution of the collateral object. The use of purely contractual benchmarks is a source of judicial debate, especially when a default is interpreted without a fair process of clarification, mediation, or proof.

In response to these problems, the Constitutional Court through the Decision has established a new interpretation of the provisions of Article 15 paragraph (2) and paragraph (3) in Law Number 42 of 1999 concerning Fiduciary Guarantees. (Sigit Nurhadi Nugraha and Nurlaili Rahmawati, 2021) In its consideration, the Court emphasized that the executory power of the fiduciary certificate cannot necessarily be enforced in the event of a dispute or refusal on the part of the debtor. The ruling affirmed that the phrases "executory power" and "equal to a court decision that has permanent legal force" cannot be interpreted as an absolute right that allows the creditor to carry out execution on the fiduciary object without going through court procedures. Execution can only be carried out directly if the debtor voluntarily

surrenders the object of the guarantee, or if there is an acknowledgment of default from the debtor, or if there has been a court decision declaring the debtor in default.

Also, the Court also interprets the phrase "default" in Article 15 paragraph (3) as a legal situation that cannot be determined unilaterally by the creditor. The determination of default must be based on the agreement of the parties or decided by the competent judicial institution. This ruling marks an important shift in the legal construction of fiduciary guarantees, from a model that previously gave full discretion to creditors, to one that emphasizes the principles of justice and due process of law. The Court views the protection of debtors' rights as part of the state's responsibility in ensuring the balance of legal relations and preventing the abuse of power by the more dominant party.

The application of the Constitutional Court Decision has important consequences for the implementation of fiduciary guarantee agreements in the field. The creditor no longer has absolute authority to interpret the default and execute the object of the guarantee unilaterally. Legal protection for debtors is strengthened through the necessity of a judicial process or mutual recognition of the condition of default. But on the other hand, there are also challenges to the effectiveness of fiduciary guarantees as a debt guarantee instrument. This provision has the potential to add complexity to the execution process, slow down the recovery of receivables, and increase the legal costs that must be borne by creditors.

This situation raises the urgent need to conduct an in-depth juridical study of the interpretation of default in the context of fiduciary guarantees as determined by the Constitutional Court. (Constitutional Court Decision Number 18/PUU-XVII/2019) This study is important to assess whether the interpretation is in line with the basic principles of Indonesian civil law, especially related to the principle of freedom of contract and the applicability of agreements as law for the parties. In the Indonesian legal system, the principle of *pacta sunt servanda* is the main pillar that guarantees the binding force of a contract. Therefore, changes or reinterpretations of the substance of the agreement, including the mechanism for determining default, must be placed within a legal framework that can guarantee justice, certainty, and balance between the parties to the legal relationship in the agreement.

As explained in a similar study on the implementation of the Constitutional Court Decision Number 18/PUU-XVII/2019 (2024) in the Notary journal entitled "The Implementation of the Constitutional Court Decision Number 18/PUU-XVII/2019

Reviewed from the Perspective of Creditors and Debt Collectors," the subject of discussion is about changes in the regulation and implementation of fiduciary guarantee execution after the Constitutional Court's decision, especially from the perspective of creditors and debt collectors. (Hasna Farida and Siti Malikhatun Badriyah, 2024) debt collector in field practice. However, the study does not discuss in depth the juridical interpretation of the concept of default in the context of the Constitutional Court's decision, especially from the perspective of civil law and the principle of pacta sunt servanda, so that this is a renewal or novelty in this study.

The purpose of this study is to comprehensively understand how the shift in interpretation of the concept of default affects the applicability and implementation of fiduciary guarantees in financing practices in Indonesia. As well as the special purpose of conducting a juridical analysis of the basis of legal considerations in the Constitutional Court Decision Number 18/PUU-XVII/2019, by assessing its implications for the validity of the implementation of fiduciary guarantees and legal protection for the parties, both creditors and debtors. The results of this study are expected to make a real contribution to the development of civil law doctrine in Indonesia, especially in terms of interpretation of defaults in financing schemes based on fiduciary guarantees as an instrument of guarantees.

Based on the above description, the main hypothesis of this study is that the new interpretation of the concept of default in the Constitutional Court Decision Number 18/PUU-XVII/2019 has a positive influence on the legal balance between creditors and debtors in the practice of fiduciary guarantees. Furthermore, this hypothesis is detailed into two aspects: (1) changes in the interpretation of default increase legal protection for debtors, thereby reducing the potential for unilateral execution and violations of debtor rights; and (2) these changes do not reduce legal certainty and the effectiveness of protection for creditors, so that the fiduciary guarantee mechanism continues to function as an effective debt guarantee instrument. Therefore, this hypothesis confirms that the Constitutional Court decision is able to create a fairer and more proportional legal balance in the implementation of fiduciary guarantee agreements in Indonesia.

2. Research Method

The research method uses normative legal methods with the main focus on analyzing the juridical interpretation of the concept of default in the fiduciary guarantee agreement after the birth of the Constitutional Court Decision Number 18/PUU-XVII/2019. The approach used

includes a legislative approach, which is focused on the analysis of legal norms in the Civil Code and provisions in Law Number 42 of 1999 concerning Fiduciary Guarantees, a conceptual approach to understand the principle of *pacta sunt servanda* in the relationship of engagement and the principle of default in civil law doctrine, as well as the concept of legal protection for the parties to the financing contract. This research uses secondary data consisting of primary legal materials, such as laws and regulations and Constitutional Court Decision Number 18/PUU-XVII/2019, secondary legal materials such as academic literature and relevant journal articles, and tertiary legal materials, such as legal dictionaries, encyclopedias, and indexes that support the analysis of primary and secondary legal materials. Data were collected through a literature study, which involved the collection of legal documents, academic literature, and other supporting references that fit the focus of this study, as well as document analysis that included a study of the text of the law, court decisions, and contract theory to understand the paradigm shift in the determination of default.

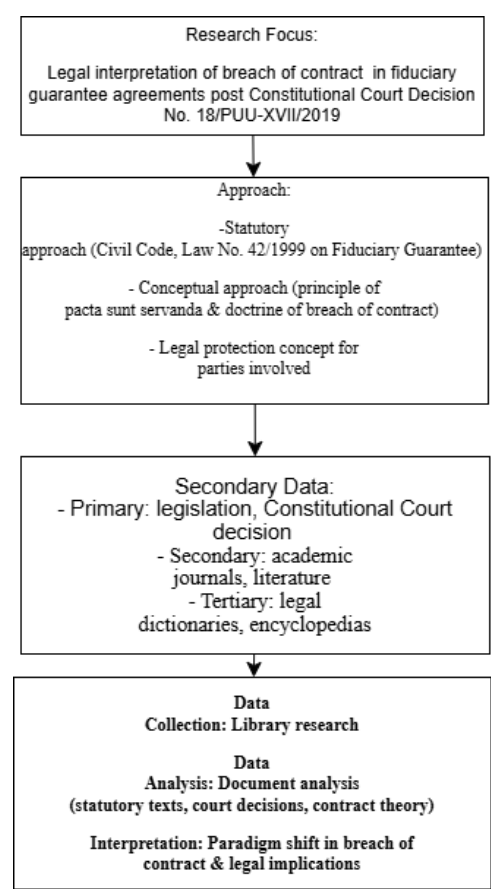


Figure 1 Research Chart

3. Results and Discussion

Shift in the Interpretation of Default in Fiduciary Legal Relations after the

Constitutional Court Decision Number 18/PUU-XVII/2019.

In the Indonesian civil realm, the concept of default is an important pillar in assessing the legal obligations of each party in an engagement relationship born from an agreement. Breach or injury of promise refers to a situation when one of the parties fails to fulfill or neglect a legally agreed obligation. However, in order for a person to be said to be in default, it must first be proven that there is a valid obligation, as stipulated in Article 1320 of the Civil Code, which requires four elements: agreement of the parties, legal competence, a certain matter, and a halal cause. If there is no valid agreement, then it is impossible for a default to arise. (Joko Sriwidodo and Kristiawanto, 2021) The form of default according to Subekti can be in the form of not doing what is promised, doing improperly, being late in implementing, or doing things that are prohibited. (R. Subekti, 2005)

The assessment of default in the Civil Code is based on Article 1238, namely that the debtor is considered negligent if it has been warned through a warrant or summons, or if in the agreement it has been expressly determined that the default occurs automatically after the agreed time has passed. (Article 1238 of the Civil Code (KUHPerdata).) Summons is a tool that turns ordinary negligence into legally valid negligence, which opens up space for creditors to claim compensation in accordance with the provisions of Article 1243 of the Civil Code. Therefore, the determination of default in civil law emphasizes more on objective proof through agreements, omissions, and warning letters, rather than relying on unilateral confessions from the debtor. In this case, the concept of default in the fiduciary agreement has direct consequences for the execution of the object of the guarantee, so its interpretation should not be carried out unilaterally and must be subject to generally applicable civil law principles. (Aditya and Yunanto, 2020)

Prior to the issuance of the Judgment, legal practice related to fiduciary agreements in Indonesia predominantly gave creditors broad authority to designate debtors in default. (Farida and Badriyah, 2024) This provision is based on Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees which gives legal legitimacy to fiduciary certificates as an instrument that has executory power equivalent to a judgment that can no longer be filed for legal remedies. Based on these provisions, the execution of the object of fiduciary guarantee can be carried out directly by the creditor without the need to go through court procedures, as long as the debtor is considered to have been injured by promises or

defaults. (Nugraha and Rahmawati, 2021) This practice allows creditors to conduct an independent and unilateral assessment of the debtor's default condition, which is generally based on parameters that have been formulated in the financing agreement such as delay or negligence in paying installments on time.

However, such a system opens up considerable space for potential inequality in the legal position between creditors and debtors. Unilateral determination of default by creditors without an external juridical testing mechanism that causes the legal relationship in the agreement to be biased. This is prone to disproportionate execution of guarantees, even in many cases leading to violations of the debtor's civil rights. (Sandrarina Hertanto and Gunawan Djajaputra, 2024) Because, in reality, not all forms of delay or failure to fulfill achievements are forms of intentionality or negligence that can be classified as default in the legal sense. Moreover, the absence of a neutral forum such as the court in verifying a claim of default has the potential to ignore the principles of prudence and procedural fairness that should be inherent in every execution process.

In the absence of verification or defense procedures from the debtor before the execution is carried out, this practice also has the potential to be contrary to the principles of civil law that uphold the principles of balance and good faith in contractual relationships. In an agreement, default is not only a matter of breach of contract, but is also closely related to moral and legal liability that must be proven through legitimate objective and procedural parameters. (Kristiane Paendong and Herts Taunaumang, 2022) Thus, the system that prevailed before the Constitutional Court's decision was considered by many to be a system that placed absolute contractual power in the hands of creditors, without providing a fair defense space for the debtor.

This situation then became the background for various criticisms and requests for judicial review of the provisions of Article 15 of the Fiduciary Guarantee Law, which culminated in the Constitutional Court Decision Number 18/PUU-XVII/2019. (Dicky Bagus Sanjaya and Tamsil, 2023) The decision not only revises the practice that has been in effect, but also provides a new direction to the legal interpretation related to the determination of defaults and execution procedures in fiduciary law relations in Indonesia.

However, the mechanism in practice has drawn criticism for creating an imbalance of positions between creditors and debtors. Unilateral executions carried

out without independent verification open the space for arbitrary actions, even in some cases leading to violations of the debtor's rights. When the default is interpreted solely from the creditor's point of view, and there is no room for defense or judicial process for the debtor, then the principle of substantive justice cannot be realized. These criticisms are one of the main reasons for the Constitutional Court to review the legal construction of default in the context of the execution of fiduciary guarantees (Badriyah & Suharto, 2020).

The Constitutional Court Decision Number 18/PUU-XVII/2019 fundamentally revises the mechanism and framework of thinking regarding the interpretation of default in fiduciary law relations. (Merva Putri Salvia and Luh Putu Yeyen Karista Putri, 2024) In its decision, the Court emphasized that the executory power of the fiduciary certificate cannot be enforced automatically if the debtor refuses to surrender the collateral object or does not admit that he has committed a default. Thus, the determination of the debtor in a state of default can no longer be done unilaterally by the creditor, but must be proven through legal procedures, namely by filing a lawsuit with the court to obtain a decision stating that the debtor has defaulted. This provision creates a profound shift from the previous approach that was formal and contractual to one that prioritizes the principles of procedural fairness and legal protection. The ruling shifts the orientation of the implementation of fiduciary agreements from the dominance of standard clauses to the need for objective juridical testing that respects the rights of debtors as equal legal subjects.

The new interpretation given by the Constitutional Court strengthens the principle of protection of debtors and prioritizes the principle of due process of law. (Fikrotul Jadidah, 2022) In this case, the determination of default is no longer sufficient to be proven by the objective parameters contained in the financing contract clause, but must also go through a legal test that ensures the creation of an equal position between creditors and debtors. This principle emphasizes that the execution of the object of fiduciary guarantee cannot be carried out unilaterally, but must respect the debtor's objections and ensure that there is room for argument and legal defense for the debtor.

To understand whether the interpretation of the Constitutional Court in Decision Number 18/PUU-XVII/2019 is in line with Indonesia's positive legal system, it is necessary to make a comparison with other material guarantee institutions such as pawns and mortgages. (Farida and Badriyah, 2024) In the Civil Code, both pawns

and mortgages still provide flexibility for creditors to carry out direct execution of the collateral object through the execution *parate* mechanism if the debtor has been negligent, without requiring an acknowledgment of default from the debtor. For example, Article 1155 of the Civil Code regarding pawns states that creditors have the right to sell pawned goods if the debtor is negligent after the specified period of time. (Suparji, 2021) Meanwhile, in mortgages, especially execution ship mortgages, execution is also possible without going through a court process because mortgage deeds have executory power.

When the Constitutional Court's Decision cancels the unilateral mechanism of fiduciary execution, it creates a difference in legal treatment between fiduciary and pawn or mortgage. In fact, all three are forms of material guarantees that contain similar principles, namely convenience, efficiency, and legal certainty in guaranteeing debts. (Suparji, 2021) This raises serious questions about the consistency of the property guarantee legal system in Indonesia. Even in fiduciary, the risk of losing the collateral object by the creditor is higher because the object remains in the debtor's hands, in contrast to a lien that physically hands over the object to the creditor. Therefore, the restriction of fiduciary execution is actually considered to weaken the creditor's legal position and has the potential to cause uncertainty.

As well as restrictions on the execution of fiduciary guarantees as decided by the Constitutional Court have the potential to create additional burdens for financing institutions. In practice, it is very rare for debtors to voluntarily admit to default or provide a written statement for execution (Pramudyaningtyas & Pujiyono, 2023). If every execution process has to go through a lawsuit to the court, then the financing institution faces administrative obstacles, high costs, and longer time. This not only slows down the asset recovery process, but also reduces the effectiveness of the national financing system, especially for the micro business sector and lower-middle-class consumers who rely heavily on fast and efficient financing.

Therefore, although the Constitutional Court's decision strengthens legal protection for the debtor, at the same time it shifts the balance of basic principles in the law of property guarantees. There is a need for further alignment in derivative regulations so as not to cause fragmentation in the implementation of guarantee execution in Indonesia. The harmonization of the law on material guarantees is crucial so that the implementation of execution, whether in fiduciary, mortgage, or mortgage, still guarantees justice for both parties without sacrificing the effectiveness of the

financing system. In this case, the default is no longer sufficiently proven by the objective parameters contained in the contract, but must also be reviewed through a legal process that guarantees a balance of the positions of the parties. A default determination must now take into account the debtor's objections or defenses, and cannot be based solely on a standard clause in the agreement. (Ilham S. Kasim, 2016). This provides space for the debtor to present legal arguments for the delay or non-fulfillment of obligations, which may occur due to force majeure reasons or economic conditions that complicate the execution of the agreement.

The implications of this shift in interpretation are far-reaching. In financing practices, financial institutions must now be more careful in drafting agreements and implementing execution mechanisms. They can no longer use a single standard in assessing defaults, but must open up a space for dialogue with the debtor or bring the dispute to the judicial realm in the event of a rejection. On the other hand, the debtor obtains the assurance that his rights are protected and that the execution of the guarantee will not be carried out arbitrarily. This reflects a paradigm shift from the principle of absolute contract power to the principle of balance and justice in the implementation of contracts.

From a doctrinal perspective, this Constitutional Court Decision also challenges orthodoxy in the doctrine of the law of engagement. Previously, the principle of *pacta sunt servanda*, which placed the agreement as a law for the parties, tended to be interpreted rigidly. However, with this decision, it appears that the implementation of the content of the agreement remains subject to the supervision of the principles of justice and legal protection. That is, even if an agreement has been legally agreed, its implementation cannot violate the principle of substantive justice. In this case, default is not enough to be proven just by violating the clauses of the agreement, but must also be assessed from the balance of the relationship and good faith of the parties. This interpretation is also in line with the views of Indonesian legal scholars such as Subekti and J. Satrio. In this case, Subekti stated that default is considered to occur if the debtor is negligent in carrying out the performance as stated in the contract, performing improperly as intended, late in performing, or doing things that are prohibited in the agreement. (Subekti, 2005) Meanwhile, J. Satrio emphasized the importance of summons based on Article 1238 of the Civil Code to determine the debtor's negligence as a form of default. (J. Satrio, 2014) Both are of the view that violation of the content of the contract is the main indicator of default,

without demanding recognition from the debtor. Thus, the Constitutional Court's view, which requires further recognition or proof of default, introduces a new interpretation that expands the protection of debtors but also deviates from the established doctrinal construction in Indonesian civil law.

The shift in the interpretation of default in fiduciary law relations after the Constitutional Court Decision Number 18/PUU-XVII/2019 is not just a technical shift during the execution of execution, but a conceptual transformation that strengthens the legal position of the debtor, emphasizes the importance of a fair legal process, and provides a new direction in the development of contract law doctrine in Indonesia. This transformation reflects a systemic shift from a normative-formalistic approach to a juridical approach that prioritizes substantive justice and protection of the weaker in contracts. For this reason, it is crucial for legal practitioners, academics, and policymakers to understand and adapt to this new paradigm in order to create a more fair and humanistic civil legal system.

Constitutional Court's Consideration of the Execution of Fiduciary Guarantees and the Impact of Interpretation of Default on the Validity of Execution and Legal Protection.

The Constitutional Court Decision Number 18/PUU-XVII/2019 is an important milestone in the restructuring of the mechanism for the execution of fiduciary guarantees in Indonesia, especially related to the limitations on the use of fiduciary certificates as an execution tool that has permanent legal force. On November 25, 2019, the Decision was handed down by the Constitutional Court in the case of testing Law Number 42 of 1999 concerning Fiduciary Guarantees against the provisions of the 1945 Constitution of the Republic of Indonesia. (H Kurniawati and A Rengga, 2016) Through its ruling, the Constitutional Court granted part of the applicant's application and stated that the phrases "executory power", "equal to a court decision with permanent legal force", and "injury to promise" in Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law are contrary to the 1945 Constitution of the Republic of Indonesia. Prior to this ruling, the provision gave a very large authority to creditors to carry out direct execution of the collateral object simply by relying on a fiduciary certificate, without going through a judicial mechanism. (Merry Arfiani, 2022) The provision states that a fiduciary certificate has legal force equivalent to a final and

binding court decision, until the creditor is given the authority to execute the object of the guarantee directly without the need to go through a judicial institution first.

However, the Constitutional Court in its decision views that this provision has the potential to create injustice and inequality in the juridical relationship between creditors and debtors. For this reason, the Court considers that the executory power of the fiduciary certificate cannot be enforced automatically without taking into account the objection of the debtor (Haroen, 2022). One of the main legal considerations of the Constitutional Court is the importance of guaranteeing the debtor's right to obtain procedural justice (due process of law) and adequate legal protection. In its consideration, the Court emphasized that if the debtor denies any breach of the agreement and refuses to voluntarily surrender the collateral object, then the creditor is not allowed to execute directly. In such a condition, the creditor is obliged to file a lawsuit with the court to prove in advance that the debtor has really committed a default.

The Court's consideration is aimed at strengthening the principles of balance and good faith in contractual relationships. Execution carried out unilaterally by creditors is considered not in line with the principle of proportionality and can harm the debtor's civil rights. The Court affirmed that although the fiduciary agreement contains an execution clause, it cannot be enforced automatically in the event of a dispute or objection from the debtor. This Court's affirmation also limits the scope of the application of the voluntary execution clause in fiduciary agreements, which has often been used as a justification by creditors to confiscate or withdraw the object of collateral without legal process.

And the Constitutional Court also considers the importance of the role of the judiciary as a forum to objectively assess the existence of defaults and the validity of execution. The assignment of exclusive authority to creditors to determine default unilaterally is considered contrary to the principle of checks and balances in the Indonesian legal system (Saifulloh, 2018). Therefore, the Court requires creditors to pursue a civil lawsuit mechanism in the event of rejection from the debtor. These considerations suggest that execution in a fiduciary context cannot be based solely on contractual power, but must also be subject to legal scrutiny and court proceedings as a form of substantive justice guarantee.

The Court also recognizes the need to maintain efficiency in the practice of financing and asset recovery, but the principle of efficiency cannot be used as an

excuse to ignore the rights of the debtor. For this reason, in its consideration, the Court emphasized the need for further arrangements that provide protection space for debtors, but still do not hinder the effectiveness of financing. In this case, the Court calls for an adjustment of regulations by the lawmakers so that there is a point of proportional integration between the legal certainty guaranteed to creditors and the legal protection provided to the debtor.

The Constitutional Court's consideration also reflects a shift in the paradigm of guarantee law in Indonesia. It no longer only focuses on the formal power of contracts, but also emphasizes the importance of substantial justice, balance, and harmony in the application of living legal norms in society. The Court's emphasis on the principles of due process of law, the principle of proportionality, and procedural justice is a concrete form of efforts to ensure that the execution process does not cause abuse of power or inequality in legal relations between the parties. This approach is in line with the views of William J. Chambliss and Robert B. Seidman in the theory of how law works, which states that the implementation of law is strongly influenced by social, economic, cultural, and political contexts. (Abdul Aziz Nasihuddin et al., 2024) Therefore, a decision of the Constitutional Court must reflect the value of substantive justice in accordance with the aspirations and needs of the community.

Satjipto Raharjo also emphasized that compliance with the Constitutional Court's decision does not only depend on the existence of the rule of law itself, but is highly determined by respect for the principle of the rule of law, the spirit of constitutionalism, and a lively legal culture. (Sundari Rizka Aditya, 2024) Therefore, the Constitutional Court's ruling limiting the executorial power of fiduciary certificates is not only a correction to the unilateral dominance of creditors, but also an impetus to build a more responsive and inclusive legal system. Thus, the Constitutional Court's legal considerations in this decision must be understood as an effort to transform towards legal justice that is not only formalistic, but also substantial and applicable in the midst of a pluralistic society.

In line with the principle of freedom of contract, the legal relationship between creditors and debtors in a fiduciary agreement should be built on the basis of consensus, in accordance with the provisions listed in Articles 1320 and 1338 of the Civil Code. (Amrun Kahar et al., 2024) In addition to the classical thinking about freedom of contract influenced by Adam Smith, Jeremy Bentham's ideas through the theory of utilitarianism also provide the perspective that law should realize the

greatest benefit for the parties. Bentham emphasized that everyone is considered to have the best understanding of his or her personal interests, so state intervention in contractual affairs should be limited in order to ensure fairness and avoid inequality in legal relations. (Vincenzo Verano M Keraf, 2021) This principle emphasizes that a contract is a law for the legally binding parties and must be respected, but it must still be carried out in good faith and without overriding the balance of interests. In this case, the Constitutional Court's consideration of limiting the executorial power of the fiduciary certificate is in line with the spirit of contract theory that rejects the dominance of one party, especially in terms of the exercise of contractual rights such as the execution of the object of guarantee. When one party wants to exercise its rights, such as to execute on the basis of a default, contract theory emphasizes the importance of objective proof of the breach of contract, not mere unilateral claims. Therefore, the Constitutional Court's Decision restores the fundamental principle that the existence of default as the basis for execution must be legally proven through an impartial forum, namely the court, especially if there is an objection from the debtor.

This ruling is an important reference for legal practitioners, banks, and financial institutions to adjust the governance of fiduciary contracts that are not only legally legal, but also fair and substantively balanced. In addition, it is also important for lawmakers to formulate implementing regulations that are consistent with the spirit of this ruling, so that the limitation of execution does not become an administrative obstacle, but rather becomes a form of legal control that protects the rights of all parties to the contract.

However, this paradigm was corrected through the Constitutional Court Decision Number 18/PUU-XVII/2019 which was read on November 25, 2019. The Court stated that the phrases "executory power", "equal to a court decision with permanent legal force", and "injury of promise" described in Article 15 paragraph (2) and (3) of the Fiduciary Guarantee Law are contrary to the Constitution of the Republic of Indonesia of 1945, in particular Article 28D paragraph (1) concerning guarantees for equal treatment before the law, Article 28G paragraph (1) concerning the right to personal protection and property rights, and Article 28H paragraph (4) which states that everyone has the right to own personal property and that property rights must not be arbitrarily taken over by anyone. For this reason, the provision is declared to have no binding legal force as long as it is not interpreted constitutionally. (Ega Dwi Prilia, 2023) The correct interpretation according to the Court is that the

determination of default cannot be made unilaterally by the creditor, but must be based on the joint commitment of the parties or through the evidentiary process in court.

Prior to the issuance of the Constitutional Court Decision, practice in the field showed that creditors had full power to unilaterally designate debtors in default, simply based on a fiduciary guarantee certificate. This leads to an imbalance in the legal position between creditors and debtors because there is no room for debtors to defend themselves. One of the cases that illustrates the negative impact of this practice is the case of forced withdrawal of motor vehicles by debt collectors from PT. Adira Finance in Kendari, which later became the object of study in the *Sulawesi Law Review* (2020). In such cases, the debtor's vehicle was forcibly towed on a public road by a third party commissioned by the financing company, without a court ruling or the debtor's approval, thus triggering resistance and commotion in public places. (Djalali, Niasa, and L, 2020)

This situation reflects the weak legal protection for debtors before there is a correction by the Court. The debtor is often not given the opportunity to prove that he or she has not committed a legal default, and in many cases, the execution is carried out by coercion, using threats, intimidation, or even violence. This kind of forced withdrawal is not in line with the principle of due process of law because there is no objective proof before a neutral forum such as the court. It also opens up space for abuse of power by creditors or third parties who represent them. For this reason, the Decision is present as a constitutional corrective that emphasizes that the power of execution can only be exercised through a legal mechanism, not unilaterally, in order to guarantee individual rights in accordance with Article 28H paragraph (4) of the 1945 Constitution (Lesmana, Ardiansah, & Azmi, 2022).

In its consideration, the Constitutional Court considered that there had been an imbalance in terms of legal protection between creditors and debtors. At the time the fiduciary agreement is agreed, the debtor as the party who submits the guarantee, legally transfers the title of the fiduciary object to the creditor (Sunardi & Alfiana, 2023). However, in practice, the transfer process often takes place in situations that show an imbalance in the bargaining position between the two parties, so that the debtor does not have the full discretion stated in his will. This condition is contrary to the principle of freedom of contract, which is a fundamental element in determining the validity of an agreement based on the provisions of Article 1320 of the Civil Code.

And the Court highlighted the normative ambiguity in Article 15 paragraph (3) of the Fiduciary Guarantee Law, especially in terms of determining when the debtor is considered to have committed "breach of promise" and who has the authority to declare it. (Nugraha and Rahmawati, 2021) This ambiguity has juridical consequences in the form of giving absolute authority to creditors to execute the object of the guarantee, which is contrary to the principles of justice and legal certainty. In the context of the state of law, unilateral execution without fair proof is a form of abuse of power and injures the rights of the debtor.

As a consequence of this new interpretation, creditors can no longer automatically execute execution parates solely on the basis of fiduciary certificates. It is necessary to prove that there has been a default through a fair and transparent mechanism, namely through a court or agreement that has been agreed in written form explicitly in the contract. This marks an important shift from a formalistic legal approach to a more substantive justice oriented approach.

As a result, financing institutions as creditors must make adjustments, both in the preparation of financing contracts and in the mechanism for settling non-performing loans. They can no longer rely on a fiduciary certificate as the sole basis for executing, but must instead involve a formal legal process that guarantees the protection of the debtor's rights. On the other hand, the debtor is also expected to understand that a default is a breach of an agreement that has legal consequences, and therefore must carry out its obligations in good faith.

This decision also provides space for strengthening the court's function as a guardian of justice and a balance of power between the parties in the agreement. When a dispute arises, the court is expected to be able to assess objectively whether there has indeed been a default, so that the execution is truly based on evidence and not only on unilateral claims. This will improve the quality of the implementation of the rule of law and increase the legitimacy of the legal system in the eyes of the national community.

The application of this principle is reflected in the case involving PT Mandiri Tunas Finance, where the execution of the fiduciary guarantee object is still carried out even though the debtor refuses to hand over the goods voluntarily. This practice is clearly not in line with the spirit of the Constitutional Court Decision Number 18/PUU-XVII/2019, which requires proof of default before the court if there is no agreement between the parties. This kind of unilateral execution shows that in

practice, some financial institutions have not fully adapted to the new constitutional interpretation. This case became a public spotlight and prompted the birth of the Constitutional Court Decision Number 2/PUU-XIX/2021, which reaffirmed that executory power can only be enforced if the debtor admits default or if there is a court decision with permanent legal force. (Kris Juliantika, 2022) Thus, the new interpretation of default as stipulated in the Constitutional Court Decision has a major impact on the fiduciary guarantee execution system. In addition to strengthening legal protection for debtors, this interpretation also requires adjustments to legal procedures for creditors in executing guarantees. This decision emphasizes the importance of the values of justice, legal certainty, and proportionality in contractual relationships. In the future, it is hoped that this decision will be a milestone in the practice of fiduciary guarantees in Indonesia that is more equitable and respects the human rights of all parties involved.

4. Conclusion

- 1) The shift in the interpretation of default in fiduciary law relations after the Constitutional Court Decision Number 18/PUU-XVII/2019 marks an important transformation in Indonesian civil law practice. The Court emphasized that default can no longer be unilaterally determined by creditors, but must go through a fair and objective legal process. This ruling strengthens legal protection for debtors, prioritizes the principles of balance and procedural justice, and shifts the practice of security enforcement from a formal-contractual approach to a juridical-constitutional approach. Thus, this ruling not only limits the potential for arbitrariness in the execution of contracts, but also enriches the doctrine of contract law by placing due process of law as the main pillar in the implementation of fiduciary agreements.
- 2) The Constitutional Court Decision Number 18/PUU-XVII/2019 marks an important paradigm shift in the practice of fiduciary guarantee execution in Indonesia, by making it clear that default is not possible to be unilaterally determined by creditors. The Court is of the view that the executory power of the fiduciary certificate must be subject to the principle of due process of law, and that execution can be carried out solely if the debtor admits default or there has been a valid court judgment. These considerations strengthen legal protections for debtors, limit potential abuse of power by creditors, and affirm the importance of balance and procedural fairness in contractual relationships. As a result, financial institutions must adjust the execution mechanism that was

previously very formalistic to be more constitutional, transparent, and accountable, thereby strengthening legal legitimacy and ensuring the human rights of all parties proportionately.

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