The Creditor's Position After the Constitutional Court's Decision on the Examination of Article 15 of the Fiduciary Guarantee Law

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Abstract
The Constitutional Court Decision Number 18/PUU-XVII/2019 provides a transformation regarding the process of execution of fiduciary guarantees by creditors against debtors by changing the substance of the regulation that cannot be carried out unilaterally without permanent legal standing. The purpose of this research is to look further after the Constitutional Court's decision regarding the position of execution on financing that provides loans to creditors. This research method is a normative research that examines the decision of the Constitutional Court regarding the execution of fiduciary guarantees. The results of this study show that first, the essence of the Constitutional Court's decision is that execution by financing institutions cannot be carried out unilaterally before the court gives an official decision. Secondly, that the decision only shows specifically between debtors and creditors so that this decision cannot be used as a legal argument related to other auction processes and including as a basis for changes in legislation related to auctions outside the problems between debtors and creditors. The implication of this decision is that the institution cannot take actions outside of the court decision.
I. Introduction

The Fiduciary Guarantee Law is a vital legal foundation in the context of civil law in Indonesia. The enactment of this law provides a clear framework for regulating fiduciary guarantee transactions, which are one of the important instruments in business and financial financing. Through the Fiduciary Guarantee Law, parties involved in fiduciary transactions, both creditors and debtors, gain clarity and legal certainty in their rights and obligations, thereby facilitating smoother execution of transactions and avoiding unwanted legal conflicts.

The role of the Fiduciary Guarantee Law is crucial in providing protection to the parties involved in fiduciary transactions. For creditors, this law provides the right to demand debt repayment using fiduciary collateral if the debtor fails to fulfil its obligations. On the other hand, for debtors, this law provides protection for their rights and provides clear limitations on the actions that creditors can take in collecting debts. Thus, the Fiduciary Guarantee Law acts as an instrument that creates a balance between the rights and obligations of both parties, and increases trust in conducting business transactions.

In addition, the Fiduciary Guarantee Law also plays a role in promoting economic growth by facilitating access to capital for business people. With a clearly regulated fiduciary guarantee, financial institutions and other creditors are more motivated to provide loans to businesses, as they have strong legal protection regarding the return of their investment. As such, the Fiduciary Guarantee Law is not only an important legal instrument in civil law, but also one of the main drivers in supporting Indonesia’s economic growth by providing easier access to capital for businesses.

Financing institutions are providers and/or capital quickly and precisely to help the community's needs in developing business activities. Institutions as a means of carrying out activities of saving and borrowing goods or objects are absolute conditions that must be fulfilled by creditors and debtors to be agreed upon. However, the process of lending and borrowing often occurs in default due to non-compliance of both the creditor and the lending institution. Njatrijani et. al. Disputes often arise due to mechanism factors at the execution stage.

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After the Constitutional Court’s decision regarding the execution of fiduciary guarantees by creditors, the activities are carried out formally through court decisions as a fundamental basis for executing when there is a default by the debtor. Junaidi reported that the changes related to execution follow the development of needs through the provision of facilities when carrying out the execution. The existence of court facilities and court decisions is minimal risk mitigation for both the fraud institution and the lender (the creditor) to the debtor if there is a defect in the fiduciary agreement.

The fiduciary guarantee was born out of jurisprudence, which provides space for the fiduciary grantor to control the collateral so that it can be used as a medium in carrying out business activities financed by loans on the basis of trust. To date, 90% of fiduciary guarantee registrations have been recorded and the fiduciary guarantee is a form of economic growth for consumers. Therefore, fiduciary guarantees are a necessity for entrepreneurs to obtain capital loans by pledging property against creditors.

The characteristic of a fiduciary guarantee is that the guarantee is bound by trust in the object/goods as collateral and is still in the power of the debtor. Adding to the characteristics of the fiduciary guarantee is the way in which the creditor can execute the object of the fiduciary guarantee without going through the court, known as parate execution. However, the execution process after the issuance of the Constitutional Court Decision has undergone a transformation that execution cannot be carried out unilaterally without involving the court. Execution without a court decision is a criminal act of looting by the creditor against the debtor.

Execution without a court decision is a criminal act of looting by the creditor against the debtor (Tabb, 2015). The Constitutional Court’s decision has a significant impact.
on the role and rights of creditors in performing their duties in the enforcement of fiduciary security rights. First of all, the decision affirms the importance of fairness and protection of creditors’ rights in fiduciary security transactions. In addition, the Constitutional Court’s decision also provides a new direction in the interpretation and implementation of the Fiduciary Guarantee Law, which in turn affects the practice of civil law in Indonesia as a whole. By providing clearer guidance on creditors’ obligations and rights, the judgement facilitates more efficient and fair dispute resolution between creditors and debtors. This is important to ensure legal certainty and stability in the business environment, which in turn can boost investor confidence and promote economic growth.

However, while the Constitutional Court’s decision provides a clearer framework for creditors, challenges remain in dealing with situations where debtors experience financial difficulties or fail to fulfil their obligations (Arief et al., 2023). Therefore, further measures are needed, both in terms of regulation and legal practice, to strengthen the position of creditors and ensure effective enforcement in cases of breach of fiduciary guarantees (Simbolon, 2024). This includes efforts to increase transparency in fiduciary transactions, enhance the capacity of law enforcement agencies, and strengthen alternative dispute resolution mechanisms. As such, the Constitutional Court’s decision is an important first step in improving legal protection for creditors in Indonesia, but much work remains to be done to achieve a more effective and fair legal system in the context of fiduciary guarantees.

2. Research Method

This research is a qualitative research can be used. This method allows the researcher to go deep into understanding the complex legal context and its impact on civil law practice in Indonesia. The first step is to conduct a thorough literature review to deeply understand the relevant legal basis as well as the Constitutional Court’s interpretation of it. Next, field research can be conducted through interviews with civil law experts, legal practitioners, and representatives of relevant institutions to obtain first-hand views on how the decision affects creditors’ strategies and practices in the enforcement of their rights in fiduciary security transactions. By combining descriptive and analytical approaches, this research can provide a comprehensive insight into the dynamics that occurred after the Constitutional Court’s decision.
3. Results and Discussion

The Essence of the Constitutional Court Decision Number 18/PUU-XVII/2019 on the Review of Article 15 of the Fiduciary Guarantee Law

Fudusia is defined as the transfer of property rights on the basis of trust, the meaning of fiduciary emerged based on the Dutch Hoge Raad with the legal figure of fiduciare eigendomsoverdracht. The decision of the Hoge Raad is famously known as the Bierbrouwerij arrest of 1929 in which a Cafehouder needed credit from the Bier Factory, but had no other objects to pledge other than his inventory. If this inventory was handed over to the Bier Factory, the Cafehouder would no longer be able to work. In order to overcome this difficulty, an action was taken to surrender the title to the collateral with the agreement that the surrender of the title was a guarantee for the return of the loan capital (money).

The verdict is a renewal of the law of collateral that shows that the security of objects controlled by the creditor is burdensome for the debtor in running his business. However, according to Tan Kamelo, the term fiduciary has meaning as an object and a trait. The meaning of fiduciary as an object is that a person who is given a trust in order to take care of the interests of third parties in good faith, is careful, careful and straightforward. A person in trust is burdened with the obligation to perform actions for the benefit of others. Meanwhile, the meaning of nature in the term fiduciary, which shows the understanding of things related to trust.

The Fiduciary Guarantee Law explains in relation to goods or objects that the ownership rights remain controlled and attached to the owner. This is shown in the contents of the law as follows: a) The guarantor debtor believes that the fiduciary object submitted is not controlled by the fiduciary recipient but only as collateral for the debt; b) The element of trust for the fiduciary recipient that the goods (objects) that serve as collateral will be fully cared for by the debtor; c) The element of remaining in the possession of the owner of the goods/objects; d) The collateral object remains in the hands of the fiduciary; e) The right of precedence (preference).

This explanation means that fiduciary security is a form of debt collateral that transfers ownership of goods or objects based on the trust of the parties. The trust given by the fiduciary beneficiary is that the fiduciary will pay the debt on time, even though this trust carries a high risk. Therefore, the fiduciary/debtor is required to provide debt collateral in the form of collateral (certain property) that has high economic value (money), high quality, and is easily liquidated so that the minimum value of the collateral object is as much as the amount of debt given to him. The guarantee is a risk mitigation effort for the creditor’s business security, namely certainty over the repayment of the debtor’s debt or the performance of an achievement by the debtor or by the debtor’s guarantor.

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emphasises that the existence of collateral for the debtor is a protection for the security of capital (business capital) and legal certainty for the capital provider.\(^\text{13}\)

The transfer of property rights on the basis of trust is one of the reasons why fiduciary guarantees are increasingly "favoured" by business actors, especially those who need bank credit with debt collateral in the form of movable objects and can still be used to develop their business without having to physically relinquish power over the collateral object.\(^\text{14}\) The object of fiduciary security must be registered by the creditor to obtain a fiduciary security certificate so as to fulfil the principle of publicity and provide legal certainty for the creditor. This requirement is emphasised in Minister of Finance Regulation No. 130/PMK.010/2012 on the Registration of Fiduciary Guarantees.

The fiduciary guarantee certificate is a guarantee of legal protection for the creditor to execute the fiduciary guarantee object, if in the future the debtor commits a breach of promise. This provision is expressly regulated in Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999 on Fiduciary Guarantee, which reads as follows: Article 15 paragraph (2): The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executorial power as a court decision that has obtained permanent legal force. The provision explains that the fiduciary guarantee certificate contains the irah-irah "For the Sake of Justice Based on God Almighty" which means that the fiduciary guarantee certificate has the same power of execution as a court decision that has obtained permanent legal force. Article 15 paragraph (3) reads that if the debtor is in default, the Fiduciary Receiver has the right to sell the object of the fiduciary guarantee under its own power. The purpose of this provision is that the UUJF gives the creditor the right to execute the object of fiduciary guarantee through parate executie or by its own power without a court order and is final and binding on the parties.

**b. Material Test of the Fiduciary Guarantee Law**

Based on this, Aprilliani Dewi and Suri Agung Prabowo filed an application for judicial review of Article 15 of the UUJF. Prior to submitting the application to the Constitutional Court, the applicants were originally debtors (fiduciaries) who were factually actively involved in the payment of instalments or car loans that were the object of fiduciary guarantees, but when the withdrawal of collateral by creditors was deemed not in accordance with the execution mechanism in general, causing losses to debtors, both material and immaterial losses.

According to the Applicants, during the execution, the creditor as the executor took forced actions, did not show evidence and official documents, without authority, by attacking the personal identity, honour, dignity and threatening to kill the Applicants. Therefore, Applicants Aprilliani Dewi and Suri Agung Prabowo requested the Constitutional Court to grant the petition for judicial review of UUJF norms with the following petitions: First, To accept and grant the petition for judicial review of the UUJF; Second, The executorial power in Article 15 paragraph (2) of the


\(^\text{14}\) Keraf.
UUJF is contrary to the 1945 Constitution of the Republic of Indonesia, if the mechanisms and legal procedures for the execution of fiduciary security certificates must be carried out and apply the same as the execution of court decisions that have permanent legal force; Third, the court decision related to the object of the derivative agreement and the main agreement, then the execution of the fiduciary guarantee object, refers to the relevant court decision; Fourth, in the case of determining the existence of a breach of promise, it can be carried out by the fiduciary recipient (Creditor) as long as there is no objection and take legal action, or there is legal action through a court decision with permanent legal force.\textsuperscript{15}

The power of execution carried out with physical and psychological violence and without the supervision of proper legal mechanisms is an action that is not in accordance with legal procedures. On that basis, the creditor's actions cannot be justified in a state of law because they violate the debtor's constitutional rights as a citizen contrary to Article 27 paragraph (1) Article 28D paragraph (1), Article 28G paragraph (1), Article 28H paragraph (4) of the 1945 Constitution. The fiduciary rights violated by the fiduciary recipient are the right to equality and equal treatment before the law, the right to protection and legal certainty, the right to personal protection, the right to protection of property rights. Violation of the debtor's (fiduciary) constitutional rights is one of the Judge's considerations (ratio decidendi) in issuing a decision.

\textbf{b. Constitutional Court Decision: Changes in the Interpretation of the Fiduciary Guarantee Law}

The petitum was requested by the applicant, the Constitutional Court assessed the petitum based on Decision No. 18/PUU-XVII/2019 which granted part of the petition. The Constitutional Court gave a different interpretation regarding the execution of fiduciary guarantees in the UUJF as follows: 1) If there is no agreement on default, the fiduciary security certificate has no binding legal force; 2) If the debtor objects to voluntarily surrendering the fiduciary security object, all legal mechanisms and procedures in the execution of the fiduciary security certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force; 3) If the default is determined unilaterally by the creditor, the fiduciary receiver is not entitled to execute on its own power because it has no binding legal force; 4) Determination of a default must be based on an agreement between the creditor and the debtor or on the basis of legal remedies that determine that a default has occurred.\textsuperscript{16}

For the sake of ease in reading the provisions of Article 15 paragraph (2) along with its explanation and paragraph (3), both before and after the reading of the Constitutional Court’s decision, it can be seen in the following table:

\begin{table}[h]
\centering
\begin{tabular}{l|l|l}
\hline
Fiduciary Guarantee & Phrases & Constitutional Court Decision No \\
\hline
\end{tabular}
\end{table}

\textsuperscript{15}Lihat Putusan Mahkamah Konstitusi Nomor 18 Tahun 2019 \\
\textsuperscript{16}Lihat Putusan Mahkamah Konstitusi Pada Nomor 18/Puu-Xvii/2019
<table>
<thead>
<tr>
<th>Law</th>
<th>18 Year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Fiduciary Janinan Certificate in paragraph (1) has the same executorial power as a court decision that has obtained permanent legal force.</td>
<td>Fiduciary Guarantee burdens the debtor due to the voluntary surrender system of the creditor, so it can be considered fair if there is a court decision as a permanent legal force.</td>
</tr>
<tr>
<td>Article 15(2)</td>
<td>The article is not interpreted to mean &quot;there is&quot; evidence of a breach of promise so that the article can be applied unilaterally and cause problems because the meaning does not indicate the existence of an agreement and legal remedies in the event of a breach of promise.&quot;</td>
</tr>
<tr>
<td>If the debtor defaults, the Fiduciary Receiver has the right to sell the object of the Fiduciary Guarantee under its own power.</td>
<td></td>
</tr>
</tbody>
</table>

Source: official website of the Ministry of Finance 2022.\(^{17}\)

This interpretation clarifies the position of the execution process in the event of default between the parties. Default can be made when the court has issued an instruction as a permanent legal basis. The purpose of the Constitutional Court's decision is to emphasise legal certainty in action so that violations that can harm the parties can be resolved legally and do not cause further problems.

Wardoyo analysed procedural matters related to assets in the event of default that a court decision can provide a solution and considering that it has a permanent and binding legal decision and cannot be revoked and/or withdrawn.\(^{18}\) Therefore, the interpretation of the Constitutional Court regarding the execution of fiduciary

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guarantees has confirmed the position of execution. The Constitutional Court ruled that if the fiduciary (debtor) does not recognise a breach of promise and does not surrender the fiduciary security object voluntarily, then the fiduciary beneficiary (creditor) must apply for execution of the fiduciary security object at the Court.

The decision of the Constitutional Court shows a research report conducted by Firman Floranta Adonara\(^{19}\) and Depri Liber Sonata.\(^{20}\) which shows that fiduciary execution can be executed without having a court decision cannot be a reference. Given the Constitutional Court’s decision that every decision is binding and final for both individuals and groups or related institutions. So that the decision is an instrument in the event of execution without a court decision or official court order.

One of the factors that execution is carried out based on a court decision is that it is detrimental to the debtor in practice. Execution is carried out by means of its own power such as intimidation, violence, and execution through debt collector services.\(^{21}\) This practice shows that execution has the potential to cause conflict because it is carried out unilaterally even though there has been a previous agreement between the parties. On the other hand, Law No. 24/1999 confirms that fiduciary guarantees do not give creditors the authority\(^{22}\) to make forced efforts without the help of authorised parties unless they have a licence evidenced by a professional certificate.\(^{23}\)

Based on this, the National Police Chief issued Police Chief Regulation No. 8/2011 on Securing the Execution of Fiduciary Guarantees. The existence of Polri in the execution is not as an executor. The police have discretionary authority to secure the execution of fiduciary guarantees in protecting the safety of the recipient and grantor of fiduciary guarantees and/or the public from acts that cause property loss and/or life safety.\(^{24}\) In addition, the Ministry of Finance has issued a regulation that prohibits finance companies from forcibly withdrawing vehicles from customers who are in arrears on vehicle loans. This is stated in the Minister of Finance Regulation (PMK) No.130/PMK.010/2012, regarding the registration of fiduciary guarantees for finance companies that conduct consumer financing for motorised vehicles by encumbering fiduciary guarantees.\(^{25}\)

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\(^{22}\) Pasal 30, Undang-Undang No. 42 Tahun 1999 Tentang Jaminan Fidusia, 1999.

\(^{23}\) Pasal 48, Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 35 /Pojk.05/2018 Tentang Penyelenggaraan Usaha Perusahaan Pembiayaan, 2018.

\(^{24}\) Pasal 2, Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2011 Tentang Pengamanan Eksekusi Jaminan Fidusia, 2011.

c. Protection for Creditor's Position after the Constitutional Court Decision Number 18/PUU-XVII/2019

If we look further, Constitutional Court Decision Number 18/PUU-XVII/2019, it is more related to the execution process, which chronologically can be placed in the pre-auction period. This picture shows the background of the petition for judicial review of the JF Law by the petitioners to the Constitutional Court. The decision by the Panel of Judges of the Constitutional Court also included quite a number of interpretations of the process of execution of fiduciary collateral between the creditor and the debtor, all of which must have occurred during the period before the creditor submitted a request for sale by auction to the State Property and Auction Service Office (KPKNL).

Njatrijani el, all. revealed the execution of fiduciary agreements (creditors and debtors) transformation related to technical and execution procedures. Execution procedures related to instrument agreements and execution steps based on district court decisions have not shown technical procedures other than the conceptual side of the constitutional court interpretation so that it can have an impact on prosecution of the debtor with the tools used by the creditor.

Clarity of execution contrary to the court’s decision on interpretation if not followed up, it can have implications for future legal problems. One of them is that the pre-auction by the KPKNL is sometimes the reason for the debtor to file a lawsuit regarding the implementation of the auction. However, the Minister of Finance Regulation No. 27/2016 has regulated that the implementation of auctions can be categorised into three major stages including Auction Preparation, Auction implementation and Post-Auction. The auction preparation period is referred to as the most impactful stage due to the Constitutional Court’s decision, which can be understood as the stage of activities carried out or fulfilled before the auction is held.26

The main objective of the auction preparation stage with the decision of the Constitutional Court can be carried out in accordance with the position of formal legality (subject and object of the auction). Fulfilment of formal legal elements shows several positive impacts 1) the fulfilment of data (documents) occupation from the court (court decision), and 2) reducing legal conflicts or claims of the debtor when the auction process takes place. Therefore, the interpretation of the Constitutional Court regarding fiduciary guarantees clarifies the legal position and legal certainty of the execution process by the creditor.

The decision of the Constitutional Court a quo is a conceptual step of executorial title that state instruments are used for execution based on the decision of the judge in court. So that when the execution is carried out there is no other alternative but to use the court instrument. This shows the firmness of the Constitutional Court’s

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26Kegiatannya Adalah Permohonan Lelang, Penjual, Tempat Pelaksanaan Lelang, Penetapan Waktu Pelaksanaan Lelang, Surat Keterangan Tanah/Surat Keterangan Pendaftaran Tanah (Bila Berkaitan Objek Tanah), Pembatalan Sebelum Lelang, Jaminan Penawaran Lelang, Nilai Limit Dan Pengumuman Lelang Dikses Pada Tanggal 15 September 2022 Pukul 08.13 Wita)
decision to show one set of instruments so that there are no choices of instruments in execution. Therefore, the firmness of the decision shows the certainty of legal steps and fiduciary execution.

1. Implications of the Constitutional Court Decision

The Constitutional Court’s decision shows that there is no agreement on breach of promise or default and the debtor in a situation of objection voluntarily surrenders the object of fiduciary guarantee. All executions are carried out based on the implementation of court decisions with permanent legal force. The existence of a court decision as evidence or documents will minimise conflict and debtor claims in the event of an auction execution process carried out by a creditor institution.27 This is based on the fact that there is often a lawsuit by the debtor during the auction execution process because the terms of execution are carried out unilaterally without having supporting documents such as court decisions.

Nevertheless, conceptually the execution is carried out by the debtor 3 basic concepts of execution in the execution of fiduciary security certificates in the JF Law, namely first: execution based on executorial title; Second, the institution of parate executie through public auction and; Third, execution under the hand.2829 Automatically, such actions cannot be justified and will contradict the Constitutional Court’s decision which states that execution can be carried out if the court has given a decision regarding the collateral. On the other hand, execution can be carried out without a court decision if the parties have agreed (contract) to sell the object or item.30

In practice, the implementation of fiduciary security objects is mostly carried out by Parate executie because the settlement process is simple, fast, precise, lighter costs so that it benefits both parties.31 On that basis, the Constitutional Court’s Decision No. 18/PUU-XVII/2019 on the review of Article 15 of Law No. 42/1999 on Fiduciary Guarantee which interpreted that a debtor who does not voluntarily surrender the object of fiduciary guarantee, the execution is considered the same as a decision that has permanent legal force. The decision does not protect the interests of creditors.32

Surrendering a fiduciary security object is a legal obligation of the debtor in fulfilling the creditor’s rights to what has been agreed in an agreement based on the principle of good faith. This principle is a requirement for the parties to carry out the rights and obligations of the contract on the basis of good faith. The principle of good faith is the main foundation of and in making and implementing an agreement, so that the

28 Pasal 15 Ayat (2) Undang-Undang No. 42 Tahun 1999 Tentang Jaminan Fidusia.
29 Pasal 15 Ayat (3), Ibid.
30 Pasal 29 Huruf C, Ibid.
agreement can later be implemented by the parties. According to Werry, good faith applies not only at the contract execution stage but also at the signing stage and the pre-closing stage.

Thus, voluntarily handing over the object is part of the implementation of legal obligations to avoid losses for the parties, especially for creditors as capital providers. Oey Hoey Tiong elaborates that in the fiduciary security institution there are risks for creditors: First, the debtor breaks his promise (cidera janji); second, the debtor does not hand over the object of fiduciary guarantee in the context of execution; third, the debtor transfers, mortgages or leases to another party the object of fiduciary guarantee which is not an inventory object; fourth, the fiduciary debtor re-fiduciates; fifth, the debtor does not replace the object of fiduciary guarantee with a fiduciary guarantee object with an equivalent object; sixth, the debtor is declared bankrupt and or liquidated by the Commercial Court.

The amount of risk borne by the creditor, the law provides protection to the creditor through a fiduciary security certificate that has executorial power. Therefore, a defaulting debtor must act in good faith in voluntarily surrendering the fiduciary security object, thus providing security and legal certainty for the creditor that the credit granted can be recovered on time. In addition, voluntary surrender has implications for the existence of the institution of execution, which is no longer needed.

Thus, the delivery of the fiduciary security object in good faith is a manifestation of the debtor's trust as a fiduciary in protecting the interests of the creditor as a fiduciary recipient so as to provide the value of justice for the debtor and creditor. John Rowls argues that the value of justice is contained in the principle of fairness, which is generally associated with obligations in the form of legal obligations.

On the other hand, if the debtor objects to voluntarily surrendering the object of fiduciary guarantee, then based on the Constitutional Court’s decision all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force (inkracht van gewijsde). Therefore, the creditor as the applicant must submit a request for execution to the Chief Justice of the Court based on their respective jurisdictions.

34 Yahman, Karakteristik Wanprestasi Dan Tindak Pidana Penipuan (Yang Lahir Dari Hubungan Kontrakual) (Jakarta: Prenada Media Group, 2014), Pp.77.
35 Putra, “Karakteristik Pembebanan Jaminan Fidusia Pada Benda Persediaan Dan Penyelesaian Sengketa Saat Debitor Wanprestasi.”
2. Execution of Fiduciary Guarantee Based on Court Decision

The UUJF has regulated the execution of fiduciary security objects in the event of a breach of promise by the debtor, but the mechanism for implementing the execution of fiduciary security objects concerning movable objects has not been comprehensively regulated in laws and regulations. This means that the UUJF substantially ignores the principles of legal certainty and legal justice for the interests of the parties, namely the fiduciary grantor and beneficiary. The execution of a fiduciary security object refers to the civil execution mechanism in general, because the UUJF does not explicitly regulate the mechanism or procedure for execution through a judicial institution. The procedure for execution through judicial institutions is as follows:

First, the fiduciary beneficiary submits an oral and written request for execution to the President of the District Court; Second, Anamaning (warning), Article 1243 BW states that generally default occurs after the debtor is declared negligent (ingebreeke). On that basis, debtors who are declared negligent are required to be warned by specifying a period of time to fulfil the performance. The purpose of anmaning is to convey that the creditor wants the performance at a certain time. Third, the stipulation of execution confiscation, in the execution of payment of a sum of money which means the fulfilment of debts/obligations that can be valued in money, the forced effort to fulfil the decision as intended is carried out by first selling by auction the goods/assets belonging to the execution respondent to obtain money for the fulfilment of its obligations as contained in the ruling of a court decision that has permanent legal force (inkracht van gewijsde); Fourth, the order for auction sale is carried out after an announcement is made in accordance with applicable regulations and finally the delivery of the money from the auction.

If the execution of a fiduciary security certificate through a judicial institution is equated with civil execution in general, it will be detrimental to creditors, because it requires costs, a very long time that allows the object of fiduciary security to change hands to a third party or the economic value of a debt collateral object to shrink or a decrease in price. Thus, the execution of fiduciary security certificates with long and procedural stages is not in accordance with the characteristics of fiduciary guarantees, which are easy to execute. The obstruction of the fiduciary guarantee dispute resolution process is one of the factors affecting Indonesia’s ranking in the ease of doing business.

Ideally, the decision of the Constitutional Court Number 18/PUU-XVII/2019 should not only guarantee protection to debtors but still consider the interests of creditors. Therefore, there needs to be a special arrangement in regulating the execution of fiduciary security certificates comprehensively with a more effective and efficient mechanism to ensure legal certainty and provide the position of the parties based on the principles of justice and balance.

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38 Yahman, Karakteristik Wanprestasi Dan Tindak Pidana Penipuan (Yang Lahir Dari Hubungan Kontrakual).
40 Fadiya, Purnama, And Yani.
The Constitutional Court’s decision can be used as a momentum in improving the orderliness of laws and regulations relating to auctions, especially at this time the DJKN is currently perfecting the Draft Law on Auctions. The Constitutional Court’s decision also raises other issues that are expected to be answered in the future by the Draft Law on Auction as a ius constituendum. One of them is the problem of confusion in the case of auction requests with objects in the form of fiduciary collateral. The current regulation distinguishes between the Execution Auction of Fiduciary Guarantee and the Court Execution Auction.

Based on the Constitutional Court Decision Number 18 of 2019, it can be understood that under certain conditions the executorial title cannot be implemented immediately unless an execution order has been requested to the court. The condition that the execution of a fiduciary collateral must be preceded by a court decision, then this is what creates confusion in categorising it into the category of Fiduciary Collateral Execution Auction or Court Execution Auction. Similarly, problems in the verification process of auction application documents at the KPKNL and the possibility of widespread testing of the Mortgage Rights Law also need to be answered in the Draft Auction Law. Thus, the momentum of the birth of Constitutional Court Decision Number 18 of 2019 must also be utilised to realise a better auction its constituent. In addition to the regulation of the execution of fiduciary guarantees, it will improve the financing industry so that it can increase business which in turn can encourage economic growth and improve the welfare of the community.

4. Conclusion

The essence of the Constitutional Court’s Decision Number 18/PUU-XVII/2019 on the Review Test of Article 15 of the JF Law is that it does not abolish the creditor’s authority to execute on its own power as long as the fiduciary security object is submitted voluntarily with the aim that the execution process is carried out safely and conducively. If the debtor does not submit the fiduciary security object voluntarily, then execution through the parate executie institution is not justified, because there is a concern that the execution will not be in accordance with the procedure, thus harming the debtor's constitutional rights as a fiduciary recipient. Therefore, the Constitutional Court decided that if the surrender is not made voluntarily, then the execution is carried out through the assistance of the Court. On that basis, the essence of the Constitutional Court’s decision Number 18/PUU-XVII/2019 provides legal protection for the interests of the debtor as a fiduciary against the execution of fiduciary security objects.

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