

Implications of Executorial Strength of Fiducia Security Certificate after Decision Constitutional Court No. 18/PUU-XVII/2019 Concerning Notary Assets

Sutrisno Purwohadi^{*)} and Theresa Irene Sumartoni^{**)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang email sutrisnophm51@gmail.com

^{**)} Student of Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: theresairene24@gmail.com

Abstract. *Fiduciary material rights are guaranteed. The collateral objects are tangible, intangible and immovable objects that cannot be guaranteed with mortgages. Fiduciary collateral is widely used by finance companies. Debtor defaults, the leasing party executes fiduciary objects unilaterally, this is considered contrary to the 1945 Constitution. Article 15 paragraph (2) and Article 15 paragraph (3) of Act No 42 of 1999 concerning Fiduciary Guarantee is subjected to a material test. After Constitutional Court Number 18/PUU-XVII/2019, Execution of fiduciary guarantees after the decision of the, after Constitutional Court, creditors cannot execution guarantee directly because executorial beslag in fiduciary certificate which have power same with court decision has been canceled. According to Constitutional Court's decision Number 18/PUU-XVII/2019 states that Article 15 paragraph (2) and Article 15 paragraph (3) of Act No 42 Year 1999 is contradictory to the 1945 Constitution. After the Constitutional Court's Decision No. 18/PUU-XVII/2019 states that the execution of guarantees cannot be carried out unilaterally by creditors, but must be through a District Court decision, unless there is an agreement on breach of contract between the debtor and the creditor and the debtor voluntarily submits the object of fiduciary collateral, this matter impact to lack of creditor's interest to give loan with moveable object remember executory process need long time and many cost because execution object fiduciary guarantee must be district court decision. Notary as formulate's agreement must be think carefully to response Constitutional Court Number 18/PUU-XVII/2019 with strengthen clause in fiduciary guarantee deed based on credit agreement which has been made the parties so that occur balanced right and obligation between creditor and debtor. Therefore author take theme about Notary's role to make Notary's deeds especially fiduciary guarantee's deed after Constitutional Court Number 18/PUU-XVII/2019 with research's method use literature research in the form of juridical data. The research is normative juridical and qualitative research type Research methods.*

Keywords: The Executorial Strength; The Constitutional Court; Concerning Notary Assets.

1. Introduction

Fiduciary is a development of guarantee law and the term "Fiduciary" comes from the word *Fiduciare Eigendom Overdracht* (FEO) which literally means the transfer of

property rights in trust. Transfer of ownership rights to an object based on belief provided that the object whose ownership right is transferred remains under the control of the owner of the object. The Fiduciary Guarantee was born to overcome the weaknesses that exist in the pawn as regulated in Article 1152 paragraph (2) of the Civil Code which requires an *inbezitstelling* requirement which means that the pawning item is released from the power of the pawnbroker.

The fiduciary guarantee is an *accessoir* of a basic agreement that creates rights and obligations for the parties to fulfill an achievement (Article 4 of the Fiduciary Guarantee Act). Because fiduciary security is a follow-up agreement, a fiduciary agreement will not be born if it is not there is a principal agreement that precedes it, namely the credit agreement. Article 5 number (1) Fiduciary Security Law, Fiduciary Security Imposition Process through Notary Deed in Indonesian and objects that have been imposed with fiduciary security must be registered at the Fiduciary Registration Office through the online Legal Entity Administration System (SABH) and a Fiduciary Guarantee Certificate will be issued which is a copy of the fiduciary register book containing the identity of the party giving and receiving fiduciary, date, fiduciary guarantee deed number, name and position of the notary that contains the fiduciary guarantee deed, data on the principal agreement guaranteed by fiduciary, a description of the objects that are the object of the fiduciary guarantee, the value of the guarantee and the value of the objects that are the object of the fiduciary guarantee. Fiduciary Guarantee Certificate with the inscription of *irah-irah* "FOR JUSTICE BASED ON ALMIGHTY GOD" which has the same executorial power as a court decision which has permanent legal force, so that if the debtor fails to promise, the recipient of the fiduciary has the right to sell the object which is the object of the guarantee.

To further ensure legal certainty for fiduciary recipients, fiduciary must be registered as formulated in Article 11 number (1) of Act No 42 of 1999 concerning fiduciary security, as well as collateral that is outside the territory of the Republic of Indonesia must be registered as formulated, in article 11 point (2) Fiduciary Guarantee, this needs to be done to fulfill the principle of publicity in the fiduciary guarantee so that the fiduciary security object which is under the control of the debtor is not refused again.

Basically, the principles of guarantee law with fiduciary guarantees are simple and straightforward, especially since the jurisprudents place fiduciary recipients as having preferred or pre-emptive rights over other creditors. This is meant that if there is default, the fiduciary guarantee certificate which has executorial power makes it easier for the fiduciary to fulfill his/her receivables because they have precedence over the results of the execution of the fiduciary guarantee in order to collect their receivables. The prioritized rights of the fiduciary recipient are not canceled due to bankruptcy and/or liquidation of the fiduciary. This is stated in Article (27) of Act No 42 of 1999 concerning Fiduciary Security, which provides legal certainty for Fiduciary Recipients whose goods are under the control of the Fiduciary.¹

Ease of execution of guarantees due to the executorial power in this fiduciary guarantee certificate ends when the Constitutional Court through decision Number

¹ Prajitno, Andreas Albertus Andi. (2010). *Hukum Fidusia*. Cet. 1. Malang: Selaras. p. 2

18/PUU-XVII/2019 states that the enactment of Article 15 paragraph (2) of Act No 42 of 1999 regarding Fiduciary Guarantee which states along the phrase the phrase "executorial power" and is the same as a court decision which is legally enforceable and remains contrary to the Law of the Unitary State of the Republic of Indonesia 1945 and has no binding legal force. This has implications for the Fiduciary Collateral Deeds as binding accessoir agreements on Credit agreements with movable property collateral.²

The Constitutional Court Decision Number 18/PUU-XVII/2019 originated from the existence of a lawsuit against the Fiduciary Guarantee Law filed by debtor applicants Apriliani Dewi and Suri Agung Prabowo against PT. Astra Sedaya Finance (PT ASF) for forcibly taking the Toyota Alphard V car. model 24 A/T 2004 by PT Astra Sedaya Finance (PTASF) because the applicant for the judicial review had not paid debt installments for several months. Starting from this case the Constitutional Court granted the suit for judicial review. With the enactment of the Decision of the Constitutional Court Number 18/PUU-XVII/2019 which invalidates Article 15 paragraph (2) and Article 15 paragraph (3) of this Fiduciary Guarantee Law, Notary who has the legal standing (position to act) as the official who is authorized to make a Fiduciary Security Deed as a guarantee Accessoire Agreement for a Credit agreement with movable property, should reinforce the clauses that formulate Default. This also includes the creation of clauses that emphasize when an action is deemed as a Default/Default and clauses regarding voluntary surrender of collateral, if the Default occurs. All of this is intended so that after the Constitutional Court Decision Number 18/PUU-XVII/2019 no party will be harmed or experience difficulties when a promise injury occurs.

The Constitutional Court Decision Number 18/PUU-XVII/2019 in essence cancels Article 15 paragraph (2) of the Fiduciary Guarantee Law which reads Fiduciary Guarantee Certificate as referred to in paragraph (1) where the Fiduciary Guarantee Certificate has the same executorial power as the decision with the Decision. Courts that have obtained permanent legal force. After this decision it is stated that the Elucidation of Article 15 paragraph (2) of the Fiduciary Law insofar as the phrase "executorial power" is contrary to the 1945 Constitution and has no binding legal force. This is as long as it is not interpreted "against fiduciary guarantees where there is no agreement on default and the debtor objects to voluntarily hand over the object which is the fiduciary guarantee,

As for article 15 paragraph (3) of the Fiduciary Guarantee Law which reads "If the debtor fails to promise, the fiduciary recipient has the right to sell objects that are the object of fiduciary security under his own power. After the decision of the Constitutional Court Number 18/PUU-XVII/2019 is decided, Article 15 paragraph (3) of the Fiduciary Guarantee Law reads as long as the phrase "Default" contradicts the 1945 Constitution and does not have binding legal force as long as it is not interpreted as "existence Default is not determined unilaterally by the creditor, but on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies which determine that the default has occurred.

² Widjaya, Gunawan & Ahmad Yani. (2007). *Jaminan Fidusia*. Jakarta: RajaGrafindo. p. 119.

This decision requires a re-examination for the preparation of Notary deeds related to the Fiduciary Guarantee. The essence of the fiduciary guarantee deed after the decision of the Constitutional Court's decision is that the fiduciary guarantee deed should contain an agreement between the debtor and creditor about when a matter can be categorized as "Default". Another thing that should be stated in the deed is an agreement between the debtor and creditor, in which the debtor in the event that he has agreed with the creditor if something is called "Default" is fulfilled, the debtor willingly submits the object which becomes fiduciary security. This effort needs to be done so that legal certainty for both parties, both creditors and debtors, is guaranteed and that the execution of fiduciary guarantees in case of default can be carried out simply. Based on the above background, the writer is interested in examining the thesis entitled Implications of the Executive Power of the Post-Fiduciary Guarantee Certificate of the Constitutional Court Decision Number 18/PUU-XVII/2019 Against Notary Deeds.

2. Research Methods

The research method used in writing is library research by using secondary data related to fiduciary guarantees in the form of primary legal materials in the form of statutory regulations and court decisions of the Constitutional Court, secondary legal materials in the form of books, internet and tertiary legal materials in the form of you law and Notary deeds at the author's place of work. In conducting the research, the author uses the statute approach, the Constitutional Court Decision Number 18/PUU-XVII/2019, and Notary Deeds as a means of knowing the fiduciary registration process through the Online Legal Entity Administration System (SABH) online until it appears Fiduciary Guarantee Certificate. The statutory approach is to examine all laws and regulations relating to the issue being handled, namely,³In addition, the authors use a comparative approach by comparing the execution of fiduciary guarantees based on Act No 42 of 1999 before and after the Constitutional Court Decision Number 18/PUU/XVII/2019) through written evidence, namely the Authentic Deed at the Blora Regency Notary Office. Secondary data obtained from the results of library research are analyzed systematically, scientifically to answer issues that developing which is formulated in the formulation of the problem. The research conducted was normative juridical, the type of research was qualitative.

3. Results and Discussion

3.1 The Role of Notaries in Formulating Agreements in the Fiduciary Deed to ensure legal certainty between Debtors and Creditors

Notary is a profession that has existed for a long time which facilitates the community's need to write down important points which are then signed by each party. Notaries authenticate these documents with certain marks. Notary as a party

³ Marzuki, Peter Mahmud. (2014). *Penelitian Hukum*. Cet-9. Jakarta: Prenada Media Group. p. 131.

that is obliged to provide private or civil legal services, makes an authentic deed with legal force characteristics.⁴

The notary has the authority to make an Authentic Deed regarding all actions, agreements, and stipulations required by laws and regulations and/or that the interested party wants to be stated in the Authentic Deed, guarantees the certainty of the date of making the Deed, keeps the Deed, provides grosse, copies, and excerpts Deeds, all of which as long as the making of the Deed is not assigned or excluded to other Officials or other people stipulated by law.

In the process of charging a Fiduciary Guarantee, the Fiduciary Security Deed cannot stand alone without a principal agreement because the Fiduciary Guarantee Deed is an additional agreement (*accessoir*) based on the principal agreement, namely the Credit Agreement. The credit agreement is the principal agreement which forms the basis of the follow-up agreement, namely the guarantee binding agreement because to ensure certainty of rights and other legal certainty, it is made with a notary deed. Contains the agreement between the Creditor and the Debtor regarding the rights and obligations as well as the sanctions that will arise if one of the parties is in default or in default.

The Fiduciary Security Deed is authentic evidence because there is a debtor's and creditor's signature which is kept by the Notary and if at any time a legal problem occurs, the Notary can issue the document or certificate as evidence in court.

Notaries as public officials who have the authority to make authentic deeds, especially the Fiduciary Security Deed have an important role in public life, especially in the banking world, even in the Fiduciary Law it requires that the Fiduciary Security Deed be drawn up with a Notary Deed.⁵ The Fiduciary Security Deed is drawn up before a Notary to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for interested parties as well as for society as a whole.

The role of the Notary in formulating Notary Deeds, especially the Fiduciary Security Deed, arises from the obligations and powers granted to him which are legally and bound to take effect since the Notary takes his oath of office as Notary. The oath that has been pronounced should control all actions of the Notary in carrying out his office.⁶

The Fiduciary Guarantee Deed that has been signed by the parties becomes the basis for the Notary to register the Deed on the online Legal Entity Administration System (SABH) site, which then the Ministry of Law and Human Rights issues a fee for Non-Tax State Revenue (PNBP) borne by the creditor.

By registering the Fiduciary Guarantee through a Notary Deed, the object of the fiduciary guarantee has binding power because it fulfills the principle of publicity (*openbaarheid*) which is regulated in article 18 of the Fiduciary Guarantee Law, namely:

⁴ Handoko, Dr.Widhi. (2014). *Dominasi Negara Terhadap Profesi Notaris antara ide dan realitas*. Semarang: Thafa Media. p. 69

⁵ Susanto, Herry.(2010). *Peranan Notaris Dalam Menciptakan Keputusan Dalam Kontrak*. Yogyakarta: FH UII Press. p. 40

⁶ Melati, Gladys Octavinadya. (2015). *Pertanggungjawaban Notaris Dalam Pendaftaran Fidusia Online Terhadap Penerima Fidusia*. Surabaya: FH.Universitas Airlangga. p. 71.

"All information regarding fiduciary objects that are the object of fiduciary security at the Fiduciary Registration Office is open to the public."

Objects. Objects that have been registered through the fiduciary security process in principle cannot be transferred, however, if for some reason the said object is transferred, the guarantee right holder can still pay off the debt. In other words, wherever the object is transferred to it, it remains attached as a guarantee for repayment of debt (asas droit de suite) which is regulated in Article 20 of the Fiduciary Guarantee Law, namely "Fiduciary security still follows the object which is the object of fiduciary security in the hands of whomever the object is, unless the transfer of inventory objects that are the object of fiduciary security".

The fiduciary security deed must meet the elements made by law, including the reading element of the deed and the element of signing the deed at that time and this is clearly stated in the deed. The Fiduciary Security Deed that has fulfilled these elements can be stated that the legality in the Deed is valid and has legal force and fulfills the function of the Deed in a formal manner, namely ensuring legal certainty by tracing. The identity of the Fiduciary Giver and Receiver, data on the principal agreement guaranteed by fiduciary, description of the objects that are the object of the Fiduciary Guarantee, the value of the guarantee, the value of the objects that are the object of the Fiduciary Guarantee and the Fiduciary Guarantee Deed are proof that the fiduciary guarantee has been registered through the Ministry of Law and Human Rights so as to reduce debtor's fraud to transfer, pawn, or rent objects that are the object of fiduciary security.

3.2 The strength of the Fiduciary Guarantee Certificate after the Decision of the Constitutional Court number 18/PUU/XVII/2019 and its implications for notary deeds related to the Fiduciary Guarantee

Fiduciary security according to article 1 paragraph 2 of the Fiduciary Security Law is a guarantee right for movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be burdened with permanent mortgage rights under the control of the fiduciary as collateral for the settlement of certain debts, giving a position which gives priority to the fiduciary recipient of other creditors.

Mechanisms/procedures for granting fiduciary security:

Stage I: The parties agree to enter into a credit agreement with a fiduciary guarantee made by a Notary Deed in Indonesian and constitute a Fiduciary Guarantee Deed (Article 5 paragraph 1)

Stage II: Fiduciary recipients or their proxies or representatives apply for registration of fiduciary security by attaching a fiduciary guarantee statement covering: (Article 13 paragraph 1)

- a. The identity of the fiduciary giver and recipient
- b. date, number, fiduciary security deed, name and domicile of the Notary who made the Fiduciary Security Deed
- c. Basic agreement data guaranteed by fiduciary
- d. A description of the objects that are the object of fiduciary security
- e. Guarantee value
- f. The value of the object which is the object of fiduciary security

Stage III: Notaries register the Fiduciary Deed in the Online Legal Entity Administration System (SABH) and pay Non-Tax State Revenues (PNBP) to the Ministry of Law and Human Rights

Stage IV: The online Legal Entity Administration System (SABH) issues a Fiduciary Guarantee Certificate that reads *irah-irah* "FOR JUSTICE BASED ON ONE ALMIGHTY GOD "and contains notes regarding:

- a. The identity of the fiduciary giver and recipient
- b. date, number, fiduciary security deed, name and domicile of the Notary who made the Fiduciary Security Deed
- c. Basic agreement data guaranteed by fiduciary
- d. A description of the objects that are the object of fiduciary security
- e. Guarantee value
- f. The value of the object which is the object of fiduciary security

Therefore, the fiduciary security was born on the same date as the fiduciary security was recorded in the Fiduciary Security Register Book (Article 14 paragraph 3 of the Fiduciary Security Law). The emergence of a Fiduciary Guarantee Certificate in the AHU system after the registration of the object of guarantee based on the Notary Deed has the same power as the Court's decision due to an order that reads "FOR JUSTICE BASED ON ONE ALMIGHTY GOD "then the creditor has the absolute right to execute the collateral if the debtor defaults on without going through a court decision which is legally binding.

Two petitioners submitted a petition for judicial review of Article 15 Paragraph (2) and Paragraph (3) of Act No 42 of 1999 concerning the Fiduciary Guarantee Act, namely: Apriliani Dewi and Suri Agung Prabowo (husband of Apriliani Dewi), where they both became victims of arbitrary actions by debt collectors who were assigned the task of the Fiduciary to retrieve goods in their possession without going through the correct legal procedures. Regarding the act of arbitrariness, the South Jakarta District Court issued Decision Number 345/PDT.G/2018/PN.Jkt. The cell that determines that the Creditor and Debt Collector is declared to have committed illegal acts and punishes the creditor and debt collector jointly and severally to pay material and immaterial losses to the plaintiff (debtor).

Come out Decision of the Constitutional Court (MK) Number 18/PUU XVII/2019 states that Article 15 paragraphs (2) and (3) as well as the Elucidation of Article 15 paragraph (2) of Act No 42 of 1999 concerning Fiduciary Guarantee apply conditionally unconstitutional) means that these provisions must be deemed contrary to the 1945 Constitution (unconstitutional) if the requirements set by the Constitutional Court are not fulfilled in accordance with the rules of the decision have an impact if the Debtor commits default, then with the awareness that he will hand over collateral with the approval of the debtor or with the agreement of the creditors, the right to execute collateral However, if an agreement is not reached, the dispute case must be brought to the local District Court.

The Fiduciary Guarantee Certificate is the final product in the Notary Deed which has been registered at the Fiduciary Registration Office through the Ministry of Law and Human Rights in the Online Legal Entity Administration System (SABH), which has the principle of publicity and strong legal force for creditors to obtain a position preceded

by repayment (preferred creditors) than other creditors. With the executorial power in the Fiduciary Guarantee certificate, creditors no longer need to file a lawsuit in court which requires a lot of funds and a long time.

With the weak executorial power in the Fiduciary Guarantee Certificate, the creditor's Droit de Preference is ineffective because the process of withdrawal and sale of collateral must go through a court decision which has permanent legal force (*in kracht van gewisjde*) because the court ruled that the debtor was in default or not. With the Constitutional Court's decision regarding the cancellation of Article 15 Paragraph (2) and Article 15 Paragraph (3) of the Fiduciary Guarantee Law, it certainly removes the characteristics of the Fiduciary Guarantee Law which is easy in its execution.

Impact of the Decision of the Constitutional Court Number 18/PUU XVII/2019 regarding Notary Deeds is of course very fundamental, especially in reviewing articles containing the rights and obligations of Creditors and Debtors as formulated in the Credit Agreement. The Constitutional Court decisions tend to weaken the interests of creditors, especially in the process of executing collateral because the Fiduciary Guarantee Certificate is handed down "FOR JUSTICE BASED ON ALMIGHTY GOD" which has a court decision that has legal force which is still no longer effective. Creditors, especially in the banking world, will feel less secure in providing loan funds with movable objects as collateral because the collateral value is relatively small and is not proportional to the costs incurred to execute collateral if the debtor is negligent or in default.

The role of the Notary in making the Fiduciary Guarantee agreement is to regulate balance, certainty and justice for Creditors, Debtors and related parties. The Fiduciary Guarantee is obliged to realize legal protection, both legal certainty and justice for parties who are under a fiduciary agreement and the objects that are guaranteed in the Fiduciary Guarantee agreement.

3.3 The clauses that need to be added to the Fiduciary Guarantee Deed after the Constitutional Court Decision Number 18/PUU-XVII/2019 in order to reduce the occurrence of disputes between debtors and creditors in the event of default

Fiduciary security is a form of engagement between creditors and debtors that is born from an agreement. Fiduciary security is an agreement that follows from a principal agreement, in this case a loan and loan agreement. Fiduciary security as debt collateral is carried out in three stages, namely, the first phase, the obligator agreement phase, which is an agreement in the form of borrowing and borrowing money between creditors and debtors. The second phase, the material agreement phase, is the transfer of property rights from the debtor to the creditor by means of a *constitutum possessorium*, namely the transfer of property rights as an object of fiduciary security without giving up the physical object of the collateral, and the third phase, the loan-use agreement phase, is an agreement that the debtor can still control physical object of fiduciary guarantee.⁷

Fiduciary guarantees as a form of agreement must meet the legal requirements of the agreement as referred to in Article 1320 of the Civil Code, namely their agreement that binds themselves, the ability to make an engagement, a certain subject, and a cause

⁷ Fuady, Munir. (1996). *Hukum Bisnis Dalam Teori dan Praktek*. Bandung : Citra Aditya Bakti p. 191

that is not prohibited. The first and second terms are called subjective conditions because they relate to the parties entering into the agreement, while the third and fourth terms are called objective conditions because they relate to the object of the agreement. If the subjective conditions are not met, the agreement can be canceled, whereas if the objective conditions are not met, the agreement is null and void.

The agreement must be made in the awareness and willingness of both parties. Article 1321 of the Civil Code also confirms that an agreement has no power if it is given due to an error or is obtained by coercion or fraud. The agreement between the parties makes the agreement considered as law for both parties. The parties must respect the agreement and cannot be withdrawn without the agreement of both parties as the application of the *Pacta Sunt Servanda* principle.⁸

Notaries have legal standing (position to act) as Officials who are authorized to make a Fiduciary Security Deed as an Agreement *Accesoire* guarantees of credit agreements with movable property guarantees, namely reinforcing the clauses formulating Default. A fiduciary agreement is made with a notary deed which is read out before the parties knowingly signed it as a form of agreement on the contents of the deed.

A fiduciary agreement is considered binding when the creditor and debtor sign a fiduciary agreement, which means that there is an agreement between the two of them, so the agreement binds both parties and creates rights and obligations for the parties.

After the Decision of the Constitutional Court Number 18/PUU-XVII/2019, the power of the Fiduciary Guarantee Certificate has lost its executorial power which has the same power as a court decision if it does not meet the conditions for an agreement regarding default and the debtor voluntarily submits the object of guarantee to the creditor. The weakness of the Fiduciary Guarantee Certificate certainly has an impact on the decline in the performance of the financing industry, especially banking and leasing institutions because for Creditors, the Fiduciary Guarantee Certificate has legality of ownership of collateral from the debtor as evidence of pre-emptive rights over other creditors.

Notaries as public officials (*openbaar ambtenaar*) need to act wisely and carefully in making a fiduciary guarantee deed to address disputes that often occur between creditors and debtors and fix non-transparent credit agreement clauses at the beginning of the agreement before signing the deed, and notaries are required to read the Deed Credit Agreement and Fiduciary Collateral Deed before signing the Deed so that the debtor understands and complies with the agreement and in the event of default by the debtor, such as being late in paying installments according to the time period determined by several summons from the creditor, the debtor will voluntarily submit the fiduciary guarantee object.

After the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019, the Notary as the lawmaker for the parties (legal drafter) is more careful in making additional clauses whose draft provides protection to creditors as recipients of guarantee institutions and debtors as guarantor based on the credit agreement/principal agreement that has been agreed by both.

⁸ Rufaida, Kifni Kafa dan Rian Sacipto. (2019). *Tinjauan Hukum Terhadap Eksekusi Objek Jaminan Fidusia Tanpa Titel Eksekutorial Yang Sah*. Yogyakarta: FH UII Press. p.21, 26.

Notaries in carrying out their positions, namely making authentic deeds related to fiduciary guarantees, need to explore, follow and understand legal values or what can become law and find a sense of justice for both parties and look for a space or a situation where the mandatory legal values can be was found.⁹

The Constitutional Court's decision has indeed been final in nature, but the Notary through the Indonesian Notary Association (INI) forum can voice votes to overhaul the Fiduciary Guarantee Law and provide input for the addition of articles capable of providing protection to creditors so that they have the same position as legalized debtors by the House of Representatives as well as optimizing the clauses in the Notary Deed as the basis for the agreement by regulating strict provisions and minimizing the potential for differences of opinion and a firm legal position between the parties.

4. Closing

4.1 Conclusion

A certificate of Fiduciary Guarantee which contains a certificate : "FOR JUSTICE BASED ON ALMIGHTY GOD" which has the same executorial power as a court decision becomes invalid due to the cancellation of article 15 paragraph (2) and article 15 paragraph (3) of the Fiduciary Guarantee Law. This weakens the creditor's position to obtain a position preceded by repayment (preferred creditor) than other creditors because the creditor cannot immediately take the object of guarantee through an agreement of both parties and the willingness of the debtor to submit the object of guarantee to the creditor and if it does not reach an agreement then it must be submitted to the local District Court to obtain a court decision that is legally binding (*inkracht van gewisjde*). And a fiduciary agreement is made with a notary deed which is read out before the parties knowingly signed it as a form of agreement on the contents of the deed. As the principle of the agreement, if one of the parties does not agree to the clauses in the agreement, it can submit an objection and offer an agreement with the other party and if no agreement is found between the two parties, one of the parties may decide not to sign the agreement or in other words not bind themselves in the agreement. After the Constitutional Court Decision, the position of Notary Deeds has an important role as the strongest evidence in the event of a dispute between a creditor and a debtor in the Court and The Fiduciary Security Deed made before a Notary has an important role to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties as well as for society as a whole.

4.3 Suggestion

After the decision of the Constitutional Court cancellation of article 15 paragraph (2) and article 15 paragraph (3) of the Fiduciary Guarantee Act which is contained in the

⁹ Yudha, Bhakti. (2012). *Penemuan Hukum Suatu Proses Memahami Ajaran Sumber Hukum, Pidato Purnabakti 70 Tahun*. Fakultas Hukum Universitas Padjadjaran. Bandung: Fakultas Hukum Universitas Padjadjaran. pp. 2.

Fiduciary Guarantee Certificate which has irrevocable; "FOR JUSTICE BASED ON ALMIGHTY GOD" which has the same executorial power as a court decision becomes degraded which has an impact on reducing financing facilities with the object of fiduciary security because the financing institution feels less secure in terms of legal protection for creditors in the event of default by the debtor The Notary Public as the agreement formulator needs to review the Fiduciary Law through the Indonesian Notary Association (INI) forum with the addition of several articles to protect the interests of creditors and there is a balance between the two parties in accordance with the agreement that has been signed.

5. References

Books:

- [1] Yudha, Bhakti. (2012). *Penemuan Hukum Suatu Proses Memahami Ajaran Sumber Hukum, Pidato Purnabakti 70 Tahun*. Bandung: Fakultas Hukum Universitas Padjadjaran.
- [2] Fuady, Munir. (1996). *Hukum Bisnis Dalam Teori dan Praktek*. Bandung : Citra Aditya Bakti.
- [3] Prajitno, Andreas Albertus Andi. (2010). *Hukum Fiducia*. Cet. 1. Malang: Selaras.
- [4] Widjaya, Gunawan & Ahmad Yani. (2007). *Jaminan Fiducia*. Jakarta: RajaGrafindo.
- [5] Marzuki, Peter Mahmud. (2014). *Penelitian Hukum*. Cet-9. Jakarta: Prenada Media Group.
- [6] Handoko, Dr.Widhi. (2014). *Dominasi Negara Terhadap Profesi Notaris antara ide dan realitas*. Semarang: Thafa Media.
- [7] Susanto, Herry.(2010). *Peranan Notaris Dalam Menciptakan Kepatutan Dalam Kontrak*. Yogyakarta: FH UII Press.
- [8] Melati, Gladys Octavinadya. (2015). *Pertanggungjawaban Notaris Dalam Pendaftaran Fiducia Online Terhadap Penerima Fiducia*. Surabaya: FH.Universitas Airlangga.
- [9] Munir Fuady, *Business Law in Theory and Practice 1*. Citra Aditya Bakti.
- [10] Rufaida, Kifni Kafa dan Rian Sacipto. (2019). *Tinjauan Hukum Terhadap Eksekusi Objek Jaminan Fiducia Tanpa Titel Eksekutorial Yang Sah*. Yogyakarta: FH UII Press.