

The Execution of Fiduciary Guarantees after Constitutional Court Decision No.2/PUU-XIX/2021

Lathifah Hanim^{*)}, Munsharif Abdul Chalim^{**)} & MS.Noorman^{***)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia, E-mail: lathifah.hanim@yahoo.co.id

^{**)} Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia, E-mail: munsharif@unissula.ac.id

^{***)} Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia, E-mail: msnoorman43@gmail.com

Abstract. *The Constitutional Court stated that the Irah-irah for the sake of justice based on belief in the One and Only God does not automatically have executive powers. The research objective is to analyze the Execution of Fiduciary Guarantees Post Constitutional Court Decision No.2/PUU-XIX/2021 and analyze the obstacles and solutions in implementing the Execution of Fiduciary Guarantees Post Constitutional Court Decision No.2/PUU-XIX/2021. The research method is empirical juridical, supported by primary data and secondary data, with data collection techniques in the form of literature and interviews. Execution of Fiduciary Guarantees after Constitutional Court Decision No.2/PUU-XIX/2021, namely that creditors cannot carry out forced executions themselves, for example by asking for assistance from the police, if there is a breach of contract (default) by the fiduciary right giver (debtor) against the creditor which is still not recognized by the debtor and the debtor objects to voluntarily handing over the objects that are the object of the fiduciary agreement. The Court has reaffirmed in the Constitutional Court Decision Number 2/PUU-XIX/2021 that creditors must submit a request for execution to the District Court. and analyzing the obstacles and solutions in implementing the Execution of Fiduciary Guarantees after the Constitutional Court Decision No.2/PUU-XIX/2021. that is, many consumers do not understand that when they enter into a leasing agreement, they will only rent-buy, they are actually renting their vehicle, every month they have to pay the rent, so when they are in arrears, even if they only have three months left, the vehicle must be taken by the creditor. This is an unfair regulation for consumers. On the one hand, the consumer has paid the specified down payment, on the other hand, the vehicle can be picked up at any time, regardless of how many months the remaining arrears are. There are deficiencies in Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law which do not explain the procedure for executing the Fiduciary Guarantee Certificate, and do not regulate the mechanism for determining "default debtor". Thus giving rise to the understanding that this article gives legitimacy to creditors to carry out executions immediately without proper legal procedures and creates arbitrariness on the part of recipients of fiduciary guarantees.*

Keywords: Court; Execution; Fiduciary; Guarantee.

1. INTRODUCTION

In accordance with the provisions of Article 1 of Act No. 42 of 1999 concerning Fiduciary Guarantees point (1), what is meant by Fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object. Fiduciary Guarantee is a guarantee right over movable objects both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Act No. 4 of 1996 concerning Mortgage Rights which remain in the control of the fiduciary giver, as collateral for the repayment of certain debts, which gives a priority position to fiduciary recipients over other creditors.

The proportional principle and the principle of balance in agreements in practice are often deviated to the point of ignoring the debtor's rights. The creditor seems to be taking advantage of the condition of the debtor who is in a position of needing a fiduciary object. Debtors in fact often get unfair treatment. Since the beginning of the signing of the fiduciary agreement, the debtor is presented with letters that are not understood, until the delivery of the debtor's book of fiduciary object rights is often charged with a fee that was not agreed beforehand.

On the other hand, when the debtor is unable to pay the debt repayments, the creditor, through the hands of a third party or debt collector, forcibly withdraws the fiduciary object, not infrequently using violence and coercion. Then after the fiduciary object is in the power of the creditor, the debtor is forced to pay off the debt, and if it is not repaid, the creditor auctions off the fiduciary object unilaterally. The creditor's actions insofar as this is due to the fact that the fiduciary guarantee certificate has executive power as is the case with court decisions with permanent legal force (*inkracht van gewijsde*), as referred to in Article 15 paragraph (2) and (3) of Act No. 42 of 1999 concerning Fiduciary Guarantees (UUJF), which reads Article 15 paragraph (2) states:

"The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force."

Article 15 paragraph (3) states:

"If the debtor breaches the contract, the Fiduciary Recipient has the right to sell objects that are the object of the Fiduciary Collateral under his own authority."

The constitutionality of the two articles above has been tested by the Constitutional Court (MK) on the request for judicial review. Based on this request, the Constitutional Court has issued Decision Number 18/PUU-XII/2019. The Petitioner argues that Article 15 paragraph (2) and (3) UUJF contradicts Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) The 1945 Constitution which contains:

Article 1 paragraph (3) states:

"The State of Indonesia is a state of law." Article 27 paragraph (1) states:

"All citizens have the same position before law and government and are obliged to uphold that law and government without exception."

Article 28D paragraph (1) states:

"Every person has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law."

Article 28G paragraph (1) states:

"Everyone has the right to protection for himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right."

Article 28H paragraph (4) states:

"Everyone has the right to have private property rights and these property rights may not be taken over arbitrarily by anyone."

The Petitioner questioned the phrases "executive power" and "the same as a court decision that has permanent legal force" in Article 15 paragraph (2) of the Fiduciary Guarantee Law, also questioned the phrases "the debtor defaults" and "Fiduciary Recipients have the right to sell Objects that become objects of Fiduciary Guarantees on their own power" in Article 15 paragraph (3) of the Fiduciary Guarantee Law.

The phrase "executive power" means that the Fiduciary Guarantee Certificate has the same execution power as a court decision that has obtained permanent or definite legal force (inkracht van gewijsde). This shows that the article is more in favor of creditors or financing institutions which incidentally are the owners of capital. Because it provides more legal certainty for fiduciary recipients (creditors) than fiduciary givers (debtors) by way of creditors being able to execute fiduciary objects immediately, according to Article 15 paragraph (2) UUJF.

In connection with the phrase "debtor defaults" (default), according to the applicant, it raises issues regarding the method of determining when a debtor has "default," as long as this is determined unilaterally by the creditor, without a clear mechanism and evaluation procedure in looking at the actions of the debtor who is considered "default". That. The fiduciary giver (debtor) is not given an equal legal mechanism to test the truth. After it is unilaterally determined by the creditor that the debtor is "defaulting", the creditor can execute the fiduciary guarantee object by taking over and then selling the fiduciary guarantee object itself, according to the contents of Article 15 paragraph (3) UUJF.

There are deficiencies in Article 15 paragraphs (2) and (3) UUJF which do not explain the procedure for executing Fiduciary Guarantee Certificates, and do not regulate the mechanism for determining "default debtor". Thus giving rise to the understanding that this article gives legitimacy to creditors to carry out executions immediately without proper legal procedures and creates arbitrariness on the part of recipients of fiduciary guarantees. Supposedly, when equating the execution of a Fiduciary Guarantee

Certificate with a court decision that has permanent legal force (inkracht van gewijsde), rules regarding procedures and procedures for execution should be followed. The absence of these rules has implications for ignoring the principle of legal certainty and the principle of legal justice and ignoring the protection of the private property rights of the fiduciary giver.

So far, the "executive power" creates arbitrariness on the part of creditors in taking over the object of fiduciary guarantees. Without following the execution mechanism for court decisions that have permanent legal force (inkracht van gewijsde) by submitting a request for execution to the Chief Justice as stipulated in Article 196 Herzien Inlandsch Reglement (HIR) which states:

"If the defeated party does not want or is negligent in complying with the contents of the decision peacefully, then the winning party submits a request, either verbally or in writing, to the chairman of the district court referred to in the first paragraph of Article 195, to carry out the decision the chairman of the court orders summons the defeated party and warns, so that he fulfills the decision within the time determined by the chairman, which is a maximum of eight days."

The creditor should be guided by the provisions of Article 196 HIR, not carry out a forced withdrawal which results in disruption of the rule of law. According to the Constitutional Court in its consideration that in the perspective of constitutionality the norms of Article 15 paragraph (2) of the Fiduciary Guarantee Law above do not reflect the provision of equal legal protection between parties bound in fiduciary agreements and also objects that become Fiduciary Guarantees, both protection law in the form of legal certainty and justice.

This shows that, on the one hand, there are exclusive rights granted to creditors and, on the other hand, there has been a neglect of the debtor's rights which should also receive the same legal protection, namely the right to submit/get an opportunity to defend oneself against an alleged breach of contract. (default) and the opportunity to obtain proceeds from the sale of fiduciary guarantee objects at a fair price.

Observing several issues related to the constitutionality of the norm of Article 15 paragraph (2) of the Fiduciary Guarantee Law which gives "executive titles" and "equalizes with court decisions that have obtained permanent legal force" can actually have an impact on unilateral executions without going through the execution process as should be an execution of a court decision that has permanent legal force, that is, it should be by first submitting an application to the District Court. As a logical consequence, unilateral actions taken by creditors as recipients of fiduciary rights have the potential (even actually) to lead to arbitrary actions and to be carried out in a less "humane" way.

From all of this, it creates legal uncertainty related to the procedure for execution and uncertainty about the time when the fiduciary giver (debtor) is declared "default" (default), whether since there are installment stages that are late or not fulfilled by the debtor or since the maturity of the debtor's loan. must be paid for. Such uncertainty also results in the emergence of the interpretation that the right to determine the "default" debtor rests with the creditor (fiduciary). By itself it results in the loss of the debtor's rights to defend himself and the opportunity to obtain the sale of fiduciary

collateral objects at a fair price.

Besides that, it often causes "coercion" and "violence" from people who claim to be parties who have the power to collect loans from debtors, and have even given birth to arbitrary actions that have implications for demeaning the dignity of debtors. The Court is of the opinion that the exclusive authority possessed by the recipient of the fiduciary right (creditor) can remain attached as long as there are no problems with the certainty of the time regarding when the grantor of the fiduciary right (debtor) has "defaulted" (default) and the debtor voluntarily surrenders objects that are the object of fiduciary agreements to creditors for self-sales. The fiduciary giver (debtor) admits that he has "defaulted" so that there is no reason not to hand over the object which is the object of the fiduciary agreement to the fiduciary recipient (creditor) for self-sale by the fiduciary recipient (creditor). Then it becomes the full authority for the fiduciary recipient (creditor) to be able to carry out the execution himself (parate execution).

At the applicant's request, the Constitutional Court stated that the norms of Article 15 paragraph (2) of the Fiduciary Guarantee Law, in particular the phrase "executive powers" and the phrase "same as a court decision that has permanent legal force" can only be said to be constitutional as long as it means "against a fiduciary there is no agreement regarding the occurrence of "default" (default) and the debtor objects to voluntarily surrendering the object that is a fiduciary guarantee, all legal mechanisms and procedures in executing the Fiduciary Guarantee Certificate must be carried out and apply the same as executing a court decision that has legal force still". Meanwhile,

The Constitutional Court does not automatically eliminate the enforcement of laws and regulations relating to the execution of fiduciary guarantee certificates that aim to provide legal protection to parties bound by fiduciary agreements, as long as they are in line with the considerations and stance of the a quo Constitutional Court. Thus, whether executions are carried out by the creditors themselves because there has been an agreement with the debtor or executions submitted through a district court, assistance from the police is still possible on the grounds of maintaining security and order in the execution process. Such assistance is commonplace in every district court carrying out its function in implementing court decisions that have permanent legal force in civil cases in general.

It was declared unconstitutional regarding the phrase "executive power" and the phrase "same as a court decision that has permanent legal force" in the norms of Article 15 paragraph (2) and the phrase "default" in the norm of Article 15 paragraph (3) UUJF, even though the Petitioner did not request a review of the Explanation Article 15 paragraph (2) UUJF but because the considerations of the Constitutional Court have an impact on the Elucidation of Article 15 paragraph (2) UUJF, then the phrase "executive power" and the phrase "same as a court decision that has permanent legal force" in the Elucidation of the norms of Article 15 paragraph (2)) by itself must be adjusted to the meaning of Article 15 paragraph (2) UUJF with the meaning "against fiduciary guarantees where there is no agreement regarding breach of contract and the debtor objects to voluntarily surrendering objects that are fiduciary guarantees, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the implementation of the execution of a court decision that has permanent legal force.

What distinguishes the a quo case from Case Number 18/PUU-XVII/2019 is related to the basis for testing, namely the a quo petition tests Article 15 paragraph (2) and the Explanation of Article 15 paragraph (2) of the Fiduciary Guarantee Law against Article 27 paragraph (2), Article 28D paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution and related reasons for the application are also different, namely the creditor's opinion as the party affected by the a quo Court Decision. Therefore, substantially regardless of whether the a quo petition is justified or not.

The Constitutional Court decided that the breach of contract in the Fiduciary Guarantee was not determined unilaterally, but on the basis of an agreement between the creditor and the debtor or on the basis of a legal remedy which determines that a breach of contract has occurred. This was stated in the Constitutional Court decision No.18/PUU-XVII/2019 regarding the judicial review of Article 15 paragraph (1), paragraph (2), and paragraph (3) of Law No.42 of 1999 concerning Fiduciary Guarantees. There are several problems in the implementation of fiduciary guarantees, including the problem of withdrawing vehicles and debt collector behavior because these 2 (two) things often occur in the field and are detrimental to consumers because they originate from unfair agreements or unfair regulations and also practices in the field that violated or violated by the perpetrator.

Many consumers do not understand that when they enter into a leasing agreement, they will only rent-buy, they are actually renting their vehicle, they have to pay the rent every month, so when they are in arrears even if they only have three months left, the creditor must collect the vehicle. This is an unfair regulation for consumers. On the one hand, the consumer has paid the specified down payment, on the other hand, the vehicle can be picked up at any time, regardless of how many months the remaining arrears are. The way out is to make a standard agreement made by the OJK. The goal is that there is a balance of justice for debtors and creditors.

2. RESEARCH METHODS

This research is based on legal research conducted using a doctrinal and non-doctrinal approach. This research is also based on the legal positivist concept which argues that legal norms are synonymous with written norms made and promulgated by authorized state institutions. This study uses a qualitative method¹, researchers start from certain informants or from certain social situations to be interviewed or observed from which it will roll like a snowball. It is the first informant who usually needs to be stated in a qualitative research proposal/design. The process of rolling further will stop when it reaches a certain point².

3. RESULTS AND DISCUSSION

3.1. Implementation Execution of Fiduciary Guarantees After Constitutional Court Decision No.2/PUU-XIX/2021

In general, execution is the implementation of a court decision or deed. Execution of

¹Sugiyono, 2010, *Statistika untuk Penelitian*, Alfabeta, Bandung.

²Suharnoko, 2004, *Hukum Perjanjian Teori dan Analisa Kasus*, Cet.VI, Kencana Prenada Media Group, Jakarta.

fiduciary guarantees is the confiscation and sale of objects used as objects of fiduciary guarantees.³The purpose of carrying out the execution of fiduciary guarantees is to sell fiduciary guarantees as payment for debtor obligations that have not been fulfilled. The creditor has the right to collect the debtor's achievements including collecting all installments and other fees that have not been paid by the debtor, and has the right to execute the leasing object that is used as collateral without having to return the excess price from the sale of the object.⁴

The Constitutional Court (MK) declared "authorized parties" to assist in the implementation of the execution of fiduciary guarantee objects, namely the district court as stated in the Explanation of Article 30 of Act No. 42 of 1999 concerning Fiduciary Guarantees (Fiduciary Guarantee Law). This is stated in Decision Number 71/PUU-XIX/2021 which was read out at the hearing for pronouncing the decision on 24 February 2021. In this decision, the Court granted part of the petition submitted by the husband and wife, Johannes Halim and Syylfani Lovatta Halim.

"Given the petition of the Petitioners in part. Stating the phrase 'authorized party' in the Explanation of Article 30 of Act No. 42 of 1999 concerning Fiduciary Guarantees is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as 'district court'.

The Petitioner argues that the Petitioner argues the unconstitutionality of the norm of Article 30 of Act No. 42 of 1999 and its Explanation. The Petitioner reasoned that the a quo norm was inseparable from the review of the Elucidation of Article 15 paragraph (2) of Act No. 42 of 1999 which was decided by the Constitutional Court in the Constitutional Court Decision Number 18/PUU-XVII/2019, dated January 6 2020 and has been reaffirmed in Constitutional Court Decision Number 2/PUU-XIX/2021 dated 31 August 2021.

Regarding the Petitioner's argument, that in the Constitutional Court Decision Number 18/PUU-XVII/2019 and the Constitutional Court Decision Number 2/PUU-XIX/2021, the Court has clearly outlined the procedure for handing over fiduciary objects. The Petitioners' concerns about unilateral executions or arbitrary withdrawals by creditors will not occur. This is because the Court has also considered the procedure for executing a fiduciary guarantee certificate which is regulated in other provisions in Act No. 42 of 1999 so that it is adjusted to the Constitutional Court Decision Number 18/PUU-XVII/2019.

The a quo decision regarding the Elucidation of Article 15 paragraph (2) does not stand alone because the provisions of other articles in Act No. 42 of 1999 relating to the procedure for execution must also follow and adapt to the a quo decision, including the provisions of Article 30 of Act No. 42 1999 and its explanation. Thus, creditors cannot carry out forced executions themselves, for example by asking for assistance from the police, if there is a breach of promise (default) by the fiduciary right (debtor) against

³Rachmadi Usman, 2011, *Hukum Kebendaan*, Sinar Grafika, Jakarta, p.295.

⁴Ni Kadek Candika Prawani, Nyoman Mas Ariani, *Perlindungan Hukum Leassor Terhadap Objek Leasing Apabila Lesse Wanprestasi*, Jurnal Fakultas Hukum Universitas Udayana, Denpasar, Vol.06 No.06, p.7, URL:<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/33282> accessed on 10 October 2021.

the creditor which is still not recognized by the debtor and the debtor objects to surrender voluntarily the object object in a fiduciary agreement.

A fiduciary agreement is a legal relationship that is civil (private). The authority of the police apparatus is limited to securing the execution if necessary, not as part of the executor, unless there is an action containing criminal elements, the new police apparatus has the authority to enforce the criminal law. With regard to the phrase "authorized party" in the Elucidation of Article 30 of Act No. 42 of 1999, it means "district court" as the party requested for assistance to carry out the execution.

Based on the description of the legal considerations above, the Petitioners' argument regarding Article 30 of Act No. 42 of 1999 has created legal uncertainty as set forth in Article 28D paragraph (1) of the 1945 Constitution and eliminated the right to protection for oneself, family, honor and dignity as set out in Article 28G paragraph (1) of the 1945 Constitution is unreasonable according to law.

"Meanwhile, the arguments of the Petitioners regarding the Elucidation of Article 30 Number 42 of 1999 have created legal uncertainty as set forth in Article 28D paragraph (1) of the 1945 Constitution and eliminated the right to protection for oneself, family, honor and dignity as set forth in Article 28G paragraph (1) of the 1945 Constitution is legally justified in part.

The Petitioners examined Article 372 of the Criminal Code and Article 30 of the Fiduciary Guarantee Law which were deemed not to provide certainty and legal protection. This is because it is guided by the Constitutional Court Decision Number 18/PUU-XVII/2019, which in essence states that the assessment of default must be based on the agreement of the debtor, including the fiduciary guarantees that want to be executed, must also be submitted voluntarily. However, if the debtor objects, then the creditor has no right to execute except for legal remedies which state the debtor has defaulted.

The Petitioners actually experienced unilateral execution by BCA Finance by taking the vehicle registration and original keys from the Toyota Voxy car (object of fiduciary guarantees). The Petitioners acknowledged that they had obtained a Relaxation Approval Letter for delaying the payment of installments from a fiduciary guarantee and had also applied for a second relaxation given the difficult economic conditions due to the impact of the Covid-19 pandemic. However, to make matters worse, BCA Finance actually criminalized Petitioner I and was eventually detained at Polda Metro Jaya.

A comparison of the Decision of the Constitutional Court Number 18/PUU-XVII/2019 and the Decision of the Constitutional Court Number 2/PUU-XIX/2021, can be seen in the table below:

Table 1

The Comparison of Rulings of the Constitutional Court Number 18/PUU-XVII2019 and the Constitutional Court Number 2/PUU-XIX/2021

No. Comparison of Rulings on Judgments

	MK Decision Number 18/PUU-XVII/2019	Decision of the Constitutional Court Number 2/PUU-XIX/2021 is related
1.	<p>birth Decision Court Constitution Number 18/PUU- XVII/ 2019 related the law Invite Guarantee Fiduciary, make up some companies financing (leasing/creditor) frustrated because I can't anymore do execution Alone (parate execution) to goods/assets/fiduciary collateral. In other party, as if consumer finance (Lesse/ debtor) "won" because in condition certain "assume" can defend the goods under his control from direct execution by creditors.</p>	<p>Birth Amar Constitutional Court Decision (MK) Number 2/PUU- XIX/2021 confirm, execution certificate fiduciary through Court Country only if there is no agreement between creditors and debtors, Good related with default nor submission in a manner volunteer object guarantee from debtor to creditors.</p>
2.	<p>There is no legal certainty regarding fiduciary guarantees no can be executed without judgment court. In side certificate other, have guarantee strength the same executorial as court decisions that have obtain strength law still. In words other, current financing company</p>	<p>Regarding object debtor For deliver object guarantee in the event of occurrence incident "injury promise/default" is form deviation And violation agreement. Matter the No may harm the rights of creditors to carry out the execution object guarantee based on</p>

	No vehicle, application District Court.	can interesting except more to	Again with Formerly	Articles 29, 30 and Article 31
				Constitution Guarantee
				Fiduciary. It is as
				contained in the Decision Letter
				MK Number 2/PUU-XIX/2021
				non-binding for all
				condition including to
				Fiduciary Agreement. this condition
				will injure principle
				universal justice, all at once
				violation to principle
				certainty law Which
				contained in Articles 29, 30
				and Article 31 of the Law
				Guarantee Fiduciary,
				whereas
				the norm does not become
				the norms tested by MK.
3.	Chapter 15 paragraph (2) the law Act No. 42 of 1999	Guarantee Fiduciary		Specifically, the Verdict
	about contrary to the law			MK Number 2/PUU-XIX/2021
	Constitution of the Republic of Indonesia in 1945 and no			detrimental to constitutional rights
	have tie interpreted fiduciary agreement on default (default)	strength throughout "to guarantee Which No There is	law No	collector internal in field
	object to handing over	And debtor		billing. This condition as
				the impact of the enactment of the norm
				requested for testing,
				namely the right to
				get legal protection
				and a decent life.
				From That, seen exists
				connection causal between
				presumption Applicant about

	voluntary object that becomes fiduciary guarantee.				loss with Constitution right validity constitutional norm h requested so that granted, such a loss no longer happens.
4.	Chapter 15 paragraph (2) And (3) Constitution tee Fiduciary problem Because law, related to governance method nor time, when the fiduciary giver (debtor) promise" or default as well as loss of the opportunity for the debtor to obtain the sale of the fiduciary collateral object at a reasonable price.	there is problem unconstitutional No There is certainty implementation execution regarding with stated "injury as	Guaran		Lack of proportionality in a manner constitutional for party affected if assessed through proportionality test. this test as a result of existence some companies leasing who hired collectors do not certified (thug).
5.	In implementation execution, often causes action "coercion" and "violence" from person claiming to be party to collect debts debtor to deed	Which get power even give birth arbitrary			There is no guarantee that execution of fiduciary guarantee objects through court will running effectively. This matter Because No all petition for execution of the case finished held, as well as No exists protection

	made by the recipient			just law as
	fiduciary (creditor) as			guaranteed Article 28D paragraph (1)
	well as			Constitution 1945, for industry
	condescending dignity And			financing because
	debtor's dignity.			magnitude cost Which
				issued (for execution)
				more big than
				income from (goods)
				fiduciary himself.
6.	Amar decision Court			Give room for
	Constitution Number 18/PUU-			happening crime
	XVII/ 2019 does not provide			Because
	legal breakthrough that is			provide loopholes for debtors
	fundamentals change principle			For stall time
	or principle guarantee fiduciary,			run goods, so that
	In this decision, the MK			contrary to principle
	only formulate solution			Country Law. However,
	practice related implementation			formally request a
	execution, when the fiduciary			quo based on Article 60 paragraph
	guarantee not clearly agree			(2) the Constitutional Court Law and Article 78 paragraph (2)
	injured promise And debtor			Decision Court
	object to handing over the goods			Constitution Number 2/PUU-
	guarantee voluntarily.			XIX/2021 reasoned For
				can be resubmitted.

Source: from various literature through google media.

Referring to several comparisons of rulings between the Constitutional Court Ruling Number 18/PUU-XVII2019 and the Constitutional Court Number 2/PUU-XIX/2021, it is important for the Court to emphasize the arguments that are used as the basis for filing an application in the a quo case, including the process long executions, execution costs are greater than the income of fiduciary goods, and the potential for the loss of collateral objects in the hands of the debtor, are actually more to concrete problems. This can only happen in interpersonal legal relations which are very specific and complex in nature. Within the limits of reasonable reasoning, these matters cannot be

accommodated by always harmonizing the norms of the law in question. What's more, there are no constitutional problems with norms. Moreover, the norms requested by the Petitioner have been considered and decided in the Constitutional Court Decision Number 18/PUU-XVII/2019. Therefore, there are no fundamentally different legal reasons and conditions for the Court to change its stance on the main issues related to the execution of fiduciary guarantee certificates.

The Constitutional Court Decision Number 2/PUU-XIX/2021 explains the implementation of the Fiduciary Guarantee execution for the Constitutional Court Decision Number 18/PUU-XVII/2019 which had caused debate due to multiple interpretations. The meaning of "voluntary during the execution" in Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2) of Law 42 of 1999 as interpreted by the Constitutional Court in the Constitutional Court Decision Number 18/PUU-XVII/2019, is contrary to the principle of a rule of law state should guarantee rules that prevent the occurrence of potential crimes. If the debtor has good intentions, the debtor must ask for restructuring instead of involuntarily handing over the goods.

The execution of fiduciary guarantees is permitted to use collector services. This refers to the Regulation of the Financial Services Authority (POJK) Number 35/POJK.05/2018 concerning Business Conduct of Financing Companies, there are a number of requirements that need to be met by collectors in order to withdraw fiduciary guarantees. Several documents that need to be brought by collectors in the process of executing fiduciary guarantees are identity cards, professional certificates from official institutions, assignment letters from finance companies and proof of fiduciary guarantees. In practice, collectors may not act arbitrarily and use violence. If an agreement occurs, the collector and the debtor settle it with the authorities, in this case the Police.

Execution of fiduciary guarantees can be carried out by requesting assistance from the Police, as stated in the Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2011 concerning Security for the Execution of Fiduciary Guarantees, where there is a statement that the Indonesian National Police is a state instrument whose duty and function is to maintain security and public order, law enforcement, protection, protection and service to the community and as a tool of the state, the Indonesian National Police has the authority to provide security assistance for the implementation of court decisions or the execution of fiduciary guarantees, activities of other agencies and community activities.

The execution of Fiduciary guarantees has the same binding legal force as a court decision that has permanent legal force, so it requires security from the Indonesian National Police. If it is carried out with the assistance of the Police, it is hoped that the implementation of the Fiduciary Guarantee execution can be carried out in a safe, orderly, smooth and accountable manner and the safety and security of the Recipient of the Fiduciary Guarantee, the Giver of the Fiduciary Guarantee, and/or the public are protected from actions that can cause property loss. objects and/or soul safety.⁵

⁵Ayu Wikha Noviyana, Eksekusi Jaminan Fidusia Pasca Putusan mahkamah Konstitusi nomor 79/PUU-XVIII/2020 dan Nomor 2/PUU-XIX/2021, Jurnal Ikamakum, <http://openjournal.unpam.ac.id/index.php/IKAMAKUM/article/view/15519/8428>, p.693

3.2. Obstacles and solutions in implementing the Execution of Fiduciary Guarantees Post Constitutional Court Decision No.2/PUU-XIX/2021

One of the obstacles both related to law and in practice with fiduciary guarantees is the process of executing objects used as fiduciary guarantees. To fill the legal void and provide clearer legal rules in society, the Constitutional Court expressly provides an answer through the enactment of the Constitutional Court Decision Number 18/PUU-XVII/2019 concerning the judicial review of the provisions of Article 15 paragraph (2) and paragraph (3) of the Law -Law No. 42 of 1999 concerning Fiduciary Guarantees.

Execution of fiduciary guarantees based on Article 15 paragraphs (2) and (3) of Act No. 42 of 1999 concerning Fiduciary Guarantees turns out to cause problems and is felt to not provide a legal balance between the debtor and creditor parties. The decision of the Constitutional Court Number 18/PUU-XVII/2019 changed the provisions of Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law. Therefore, the Constitutional Court issued Constitutional Court decisions Number 79/PUU-XVIII/2020 and Number 2/PUU-XIX/2021.

According to article 1 of PMK No.130/PMK.010/2012, a leasing company that conducts consumer financing for motorized vehicles with the imposition of fiduciary guarantees is required to register the said guarantee at the fiduciary registration office in accordance with the law governing fiduciary guarantees. In Act No. 42 of 1999 concerning Fiduciary Guarantees, it provides guarantees to debtors and creditors (leasing) in the process of executing or withdrawing vehicles with bad credit. Without a fiduciary certificate, debt collectors may not execute on the street because it has the potential to cause criminal offenses.⁶

The Constitutional Court decision Number 18/PUU-XVII/2019 changed the provisions of Article 15 paragraphs (2) and (3) of Act No. 42 of 1999 concerning Fiduciary Guarantees which raises several problems because so far there have been many interpretations regarding this decision. The Constitutional Court has rejected the review of Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2) of Act No. 42 of 1999 concerning Fiduciary Guarantees regarding the execution of fiduciary guarantee certificates. Constitutional Court Decision Number 2/PUU-XIX/2021 emphasized that the execution of a fiduciary guarantee certificate through a district court is only an alternative. The alternative in question is an option if a default agreement is not reached and there is no voluntary surrender of the object of the fiduciary guarantee by the debtor, then the choice of execution may not be made by the creditor himself. but asked for the assistance of the district court to carry out the execution. The Constitutional Court emphasized that the execution of the fiduciary guarantee certificate through the district court was only an alternative that could be carried out. The Constitutional Court seeks to ensure equal position between debtors and creditors, in which legal action is taken if there is disagreement regarding default, as well as the voluntary surrender of fiduciary collateral objects. This is expected to provide justice for both parties, namely between debtors and creditors. where the legal route is taken if there is disagreement related to default, as well as the voluntary surrender of fiduciary guarantee objects. This is expected to provide justice for both parties, namely

⁶Atikah, Perusahaan Leasing dan Debt Collector Dalam Penagihan Kredit Macet Kendaraan Debitor, *ADALAH Buletin Hukum dan Keadilan*, Volume 2 No. 8c (2018): 75-76.

between debtors and creditors. where the legal route is taken if there is disagreement related to default, as well as the voluntary surrender of fiduciary guarantee objects. This is expected to provide justice for both parties, namely between debtors and creditors.

4. CONCLUSION

Execution of Fiduciary Guarantees Post Constitutional Court Decision No.2/PUU-XIX/2021, namely that creditors cannot carry out forced executions themselves, for example by asking for assistance from the police, if there is a breach of contract (default) by the fiduciary right giver (debtor) against the creditor which are still not recognized by the debtor and the debtor objects to voluntarily handing over objects that are the object of the fiduciary agreement. The Court has reaffirmed in the Constitutional Court Decision Number 2/PUU-XIX/2021 that creditors must submit a request for execution to the District Court.

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