LEGAL STATUS OF FIDUCIARY GUARANTEE AUCTION

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Abstract

Regulations in the field of auctions as a system of logical, rational, normative thinking have not been able to solve a practical problem of a legal nature, in principle, auction buyers. In this regard, what needs attention is regarding shares as objects of Fiduciary Guarantees. This problem requires clear regulation, because Law Number 42 of 1999 does not clearly regulate this. Based on the description that has been put forward, the following conclusions can be drawn: First, the Constitutional Court Decision number 18/PUU-XVII/2019 dated January 6 2020 regarding the interpretation of Article 15 paragraph (1-3) of Law No. 42 of 1999 concerning Fiduciary Guarantees regarding default in the execution of fiduciary guarantees. The Constitutional Court gave a different interpretation from the previous article. Now, the fiduciary guarantee certificate, which contains the orders "For the sake of Justice Based on Belief in the One and Only God", no longer automatically has executive power. Second, MK number 18/PUU-XVII/2019 dated 6 January 2020 has provided legal certainty for creditors and debtors considering Article 15 paragraph (1-3) of Law no. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default), this article is interpreted if the debtor (consumer) defaults/breaks a promise, the fiduciary recipient (leasing company) has the right to sell the collateral object with his own power (auction) as in the case of an inkracht court decision.

Keywords*: Collateral, Fiduciary, Auction*

A. Background

Economic development as part of national development is expected to create and make Indonesian society towards a just and prosperous society based on Pancasila and the 1945 Constitution.[1] In order to maintain and continue sustainable development, development actors, both the government and the community, individuals and legal entities, need large funds. Along with increasing development activities, the need for funding also increases, most of the funds needed to meet these needs are obtained through lending and borrowing activities..[2]

Basically, the provision of credit can be given by anyone who has the ability to do so through a debt agreement between the debtor (creditor) on one side and the recipient of the loan (debtor) on the other. After the agreement is agreed upon, an obligation is born to the creditor, namely to deliver the money promised to the debtor, with the right to receive the money back from the debtor on time, accompanied by the interest agreed upon by the parties when the credit agreement is agreed upon by the parties. party.

The rights and obligations of the debtor are reciprocal with the rights and obligations of the creditor. As long as the process does not face problems in the sense that both parties carry out their rights and obligations in accordance with what was agreed upon, then problems will not arise.[3] Usually new problems arise if the debtor fails to repay the loan at the appointed time. If this happens, Article 1131 of the Civil Code determines that all property belonging to a person, both existing and future, will serve as collateral for the engagement. Despite this provision, in practice a debtor is generally not only bound by only one type of obligation. This means that guarantees in general will only cause a creditor to receive a portion of the money that has been lent to the debtor, if this general guarantee is not sufficient to cover all existing debts of the debtor and are due. This general guarantee will apply equally to all creditors.

1 *Ida Musofiana, Andri Winjaya Laksana, Achmad Sulchan, Pandangan Kritis Terkait Pertanggungjawaban Korporasi Perbankan Terhadap Tindak Pidana Pembobolan Rekening Nasabah, JPM: Jurnal Purna Media, Vol 1 No 1 (2022), page 50-63*

2 *Oting Supartini, Anis Mashdurohatun, Dalam rangka memelihara dan meneruskan pembangunan yang berkesinambungan, Jurnal Pembaharuan Hukum, Vol 3, No 2 (2016), page 200-215*

3 *Putri Anggun Puspasari, Ni Luh Made Mahendrawati, Desak Gede Dwi Arini, Penerapan Mediasi dalam Penyelesaian Sengketa Wanprestasi Hutang Piutang di Pengadilan Negeri Gianyar, Jurnal Preferensi Hukum, Vol. 2 No. 1 (2021), page 182-187*

Such conditions cause the creditor to feel insecure and to ensure the return of the money, the creditor will of course ask the creditor to enter into an additional agreement to guarantee the payment of the debtor's obligations at a predetermined and agreed time between the creditor and the debtor. To ensure legal certainty for creditors and debtors, guarantee legal instruments, namely fiduciaries and others, are needed.

Based on the provisions above, that which becomes the object of Fiduciary Guarantees are movable objects including tangible and intangible objects, as well as immovable objects. The ownership rights to objects that become Fiduciary Collateral are transferred to the fiduciary recipient as collateral for debt, while the object remains in the possession of the fiduciary giver. However, if the debtor still cannot pay, the object of the fiduciary guarantee will be confiscated and auctioned off.

An auction is known as an agreement that includes buying and selling in Civil Law and Command Law. Auction institutions regulated through the legal system are intended to meet the needs of society. There are at least three purposes for regulating auctions in law, viz:

1. Memenuhi kebutuhan penjualan lelang, yang diatur dalam banyak peraturan perundang undangan.
2. Memenuhi atau melaksanakan putusan pengadilan atau lembaga penyelesaian penyelesaian berdasarkan undang-undang dalam rangka penegakan keadilan (penegakan hukum).
3. Memenuhi kebutuhan dunia usaha pada umumnya, produsen atau pemilik barang pribadi dimungkinkan melakukan penjualan lelang.[4]

The sale of an auction is governed by the provisions of the Civil Code Book III regarding agreements, in this case regarding buying and selling at auctions and also the basis for selling auctions refers to the provisions of Article 1457 of the Civil Code which reads: "buying and selling is an agreement, with which one party binds himself to handing over an object, and another party to pay a promising price. The auction contains the elements listed in the definition of selling.

The existing auction regulations do not support the development of auctions as buying and selling institutions and do not provide enough protection for the rights of the auctioneer's rights to the goods purchased, because the existing auction laws lack rationality, in particular the auction regulations lack a general "normative" quality. applies to all similar cases, the sanctions are not clear and not systematic. Regulations in the field of auctions as a system of logical, rational, normative thinking have not been able to solve a practical problem of a legal nature, in principle, auction buyers. This problem requires clear regulation, because Law Number 42 of 1999 does not clearly regulate this.

B. Method

In this case the author uses normative legal research methods, namely legal research conducted by researching and using legal materials, namely primary legal materials, secondary legal materials tertiary legal materials obtained from library research. This study also uses a statutory approach and a conceptual approach.

C. Results and Discussion

1. Execution and Auction of Fiduciary Collateral Objects

There are not a few fiduciary providers or debtors who are late in paying or even default in carrying out monthly installment payments for vehicles that are used as objects of fiduciary guarantees, especially since there is a pandemic that has hit all over the world, including Indonesia, which has had a major impact on the financial sector and people's purchasing power. . This is also a factor for late paying debtors and defaults. If this has happened, usually the bank/leasing party as the creditor will give a written warning to the customer as the debtor to immediately pay off or pay the vehicle installment bill that has been guaranteed by a fiduciary guarantee. However, if the debtor does not fulfill his achievements, the next step is the execution of the customer's fiduciary vehicle which is regulated in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees. In carrying out the execution of the debtor's fiduciary vehicle in the field, not a few banks/leasing companies use the services of a third party, namely the Debt Collector. Even though the party authorized to execute the fiduciary vehicle in the field should be the executor, the executor himself is a worker or permanent employee of a bank/leasing company. As explained in article 29 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees which basically states that if the debtor as the fiduciary provider defaults, then the

4 *Naskah Akademik Rancangan Undang-Undang Lelang, Departemen Keuangan Republik Indonesia Direktorat Jenderal Piutang dan Lelang Negara, (Jakarta: Biro Hukum- Sekretariat Jenderal, 18 Februari 2005), page 4.*

execution of the fiduciary guarantee object is carried out by:

a) Creditors can carry out executorial titles;
b) Fiduciary collateral objects that have been successfully executed will then be auctioned and the proceeds from the sale of the auction will be used to pay creditors' receivables;
c) Sales under the hand on the agreement of two parties between the debtor and the creditor will get the highest price so that it benefits the parties.

In letter A it says that the implementation of the executorial title is carried out by the fiduciary recipient, which means that indirectly the execution of the fiduciary guarantee must be carried out by the bank/leasing party as the fiduciary recipient itself, but it is not possible if the execution of the fiduciary guarantee is carried out by the CEO, manager or the head of the branch office of the bank itself. Certainly the bank/leasing authorizes the bank or leasing employee as the executor. And not using outsourced personnel or third parties, namely Debt Collectors to carry out the execution of fiduciary guarantees. Indeed, Article 29 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees does not clearly stipulate that banks/leasing as fiduciary recipients are allowed or prohibited from using third parties in executing fiduciary guarantees, but this is what makes third parties legal. or the Debt Collector does not exist and indirectly the Debt Collector is not authorized to execute fiduciary guarantees in the field.

The auction of fiduciary guarantees is one of the ways or execution to return troubled financing or arrears of bad debts from financing or leasing companies. Fiduciary collateral objects can be in the form of movable objects such as motorized vehicles, factory machinery to stocks and immovable objects such as land and buildings. The distribution of fiduciary guarantee objects is listed in Law Number 42 of 1999 concerning Fiduciary Guarantees.

The types of auctions consist of execution auctions, mandatory non-execution auctions and voluntary non-execution auctions. Execution auctions are auctions to carry out court decisions or orders, other documents that are equated with a court or carry out statutory provisions.

Mandatory non-execution auctions are auctions to carry out the sale of goods which by law are required to be sold by auction. Meanwhile, voluntary non-execution auctions are auctions for private property, individuals or legal entities or businesses that are auctioned voluntarily.

The request for an auction to execute a fiduciary guarantee must be accompanied by a statement from the seller that the goods to be auctioned are in the possession of the seller because they have been submitted voluntarily, and the debtor has agreed that there is a breach of contract (default) and there are no objections from the debtor.

Decision of the Constitutional Court (MK) No.18/PUU-XVII/2019 regarding the interpretation of Article 15 paragraph (2-3) of Law no. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default) in the execution of fiduciary guarantees is still being discussed in society. Initially, this article was interpreted as if the debtor (consumer) breaks his promise, the fiduciary recipient (leasing company) has the right to sell the collateral object under his own power (auction) as is the case with inkracht court decisions.

However, after the issuance of the Constitutional Court Decision No. 18/PUU-XVII/2019 dated 6 January 2020, the Constitutional Court gave a different interpretation to the previous article. Now, the fiduciary guarantee certificate, which contains the orders "For the sake of Justice Based on Belief in the One and Only God", no longer automatically has executive power.

In that decision, breach of contract in the execution of a fiduciary agreement (on movable objects) must be based on the agreement of both parties between the debtor and the creditor. If there is no agreement, one of the parties can take legal action through a lawsuit in court to determine/decide that the breach of contract has occurred.

The government has followed up the Constitutional Court's decision by issuing a policy, namely Minister of Finance Regulation No.213/PMK.06/2020 concerning Instructions for Implementation of Auctions.

The Minister of Finance Regulation stipulates that the application for a fiduciary execution auction must be accompanied by a statement from the seller that the goods to be auctioned are in the possession of the seller because they have been submitted voluntarily. And the debtor has agreed that there will be default and there are no objections from the debtor.

The Minister of Finance Regulation stipulates that the application for a fiduciary execution auction must be accompanied by a statement from the seller that the goods to be auctioned are in the possession of the seller because they have been submitted voluntarily. And the debtor has agreed that there will be default and there are no objections from the debtor.

The position of the statement is important because without an agreement, the fiduciary guarantee auction can be canceled. He gave an example of a creditor or seller who had submitted an application for a fiduciary execution auction and received an auction schedule, but the debtor sent an objection letter, so the auction was cancelled..

If the auction is canceled or there are objections from the debtor, it does not mean that

the fiduciary execution auction cannot be carried out. The auction can still be carried out, but first it must go through a court mechanism. The creditor submits to the execution court and the court submits an auction request to the State Wealth and Auction Service Office (KPKNL).

He explained that fiduciary guarantee auctions can be carried out when the debtor or fiduciary provider defaults. The auction can be done through a public auction or private sale. The government through the Ministry of Finance has an auction agency spread across various regions called the State Wealth and Auction Service Office (KPKNL).

The auction procedure is a series of actions that are carried out before the auction is carried out, when the auction is carried out and after the auction is carried out. As for the auction preparation stage according to Article 10 of Minister of Finance Regulation Number 106/PMK.06/2013 as amended by Minister of Finance Regulation Number 27/PMK.06/2016, a request for auction is submitted in writing by the seller or owner of the goods who intends to sell the goods by auction to the Head of the State Assets and Auction Service Office (KPKNL) to be asked for a schedule for the auction, accompanied by document requirements for the auction in accordance with the type of auction. In the event that the intended auction is in the form of an Execution Auction of the State Receivables Affairs Committee, the request for auction shall be submitted in the form of an Official Note by the Head of the KPKNL State Receivables Section to the Head of the KPKNL. The seller or owner of the auction item may use the Auction Center to provide pre-auction services and/or post-auction services. The existence of the KPKNL in managing receivables always strives to provide optimal service and management of state receivables. With the issuance of the decision of the Constitutional Court (MK) Number 77/PUU-IX/2011 dated 25 September 2012 which confirmed that the Committee for State Receivable Affairs (PUPN) was no longer permitted to manage receivables at State/Regional Owned Enterprises (BUMN/D). then the management of state receivables is currently focused on receivables from government agencies, so the role of the State Wealth and Auction Service Office (KPKNL) is urgently needed in order to manage receivables at local government agencies.

The seller or owner of the goods who intends to sell goods by auction through the Auction Center or Office of Class II Auction Officials, must submit a written request for auction to the Leader of the Auction House or Class II Auction Officials, accompanied by documents of auction requirements in accordance with the type of auction. The auction office determines the general conditions for conducting an auction, while the seller may determine specific auction conditions, which may not conflict with the general auction regulations and the applicable laws and regulations. Tender requirements documents that are general in nature, meaning that they are found in each auction request for each type of auction, such as the Appointment Letter of the Seller and the List of Goods. In an auction request, the Seller is generally not an individual, except for voluntary auctions submitted by individuals. Sellers who are Government agencies, State-Owned Enterprises (BUMN) appoint a person authorized to represent the seller called a "Seller Officer", by issuing a Decree on the Appointment of a Sales Officer. Likewise, the "list of goods" is a document of general auction requirements, because each request for auction must clearly indicate the items requested for auction in the list of goods.[5]

Regulation of the Minister of Finance Article 17 Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Instructions for Conducting Auctions:

a) "The seller/owner of the goods is responsible for the legitimacy of the goods, the document requirements for the auction and the use of auction services by the Auction Center;
b) The seller is responsible for claims for compensation for losses arising from the invalidity of the goods, the documents required for the auction and the use of auction services by the auction house."

If the seller/owner of the goods has complied with the completeness of the general and special auction requirements documents, and has fulfilled the formal legality of the subject and object of the auction, the Head of the KPKNL or the Class II Auction Officer must stipulate and notify the seller or the owner of the goods regarding the auction schedule in writing, which containing:[6]

a) Determination of time and place of auction;
b) Requests to carry out auction announcements and submit proof of the announcement to the Head of the KPKNL or Class II Auction Officers;
c) Other matters that need to be conveyed to the seller or owner of the goods, for example regarding the limit value, physical possession of the movable goods being auctioned and so on.

If all the complete documents required for the auction have been fulfilled, then the next time and place and announcement of other auctions can be made. With regard to the place and

5 *Sianturi Tioria Purnama, 2013, Perlindungan Hukum terhadap Pembeli Barang Jaminan Tidak Bergerak Melalui Lelang, Edisi Revisi, Mandar Maju, Bandung.Page 85*

6 *Rachmadi Usman, Op.cit, page 122.*

time of the auction, Article 5 paragraph (1) Vendu Regulation states that:

"whoever wants to hold a public sale, is obliged to inform this matter to the auctioneer, or the place where the bookkeeper is placed, to the bookkeeper, by notifying on what day or days the sale is to be held".

Based on this provision, the place where the auction is held is in the area where the auctioneer is located. With reference to Article 22 of the Minister of Finance Regulation Number 27/PMK.07/2016, basically the place of auction must be in the work area of the KPKNL or the position area of Class II Auction Officer where the item is located. The arrangement of the place for the auction can be carried out not where the goods are located contrary to Article 1868 of the Civil Code regarding the requirements for an authentic deed. An auction treatise must fulfill three elements of an authentic deed, which are required by Article 1868 of the Civil Code, "a deed in the form determined by law is made before a competent public official at the place where the deed was made". Thus, specifically for immovable property, an auction official is only authorized to make a deed of goods in the place where the auction official has authority. If not, the authenticity of the auction minutes he made is contrary to Article 1868 of the Civil Code or does not meet the requirements for an authentic deed.[7]

This provision needs to be considered in carrying out the auction process so that the immovable property resulting from the sale in the auction can be fully controlled by the auction buyer, by making an authentic deed of auction sale of the immovable property it must be made at the place where the item is located. Provisions for the implementation of the auction are set as follows:[8]

a) The time for carrying out the auction is determined by the Head of the KPKNL, or the Class II Auction Officer, which is held during KPKNL working hours and days, except for Voluntary non-execution auctions, which can be held outside working hours and days with written approval from the Head of the local DJKN Regional Office.
b) Letter of application for approval to conduct auctions outside working hours and days is submitted by the seller or auction owner.
c) The letter of approval for the implementation of the auction outside working hours and days is attached to the Application for Auction.

Furthermore, in Article 51 of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Instructions for Implementation of Auctions, it stipulates that sales by auction are preceded by an announcement of an auction made by the seller. Announcement of auction is notification to the public about an auction with the intention of gathering bidders for the auction and notification to interested parties. As for the purpose of holding this auction, namely:[9]

a) So that it can be known by the wider community, so that those who are interested can attend the auction (gathering bidders or publication aspects.
b) Provide an opportunity for third parties who feel aggrieved to submit objections or verzet (aspect of legality).
c) Shock therapy for the community to create a deterrent effect, so that it is hoped that debtors who were lazy to fulfill their obligations will raise awareness to pay off their obligations, for fear that their belongings may be auctioned off as part of paying off their debts.

2. Legal protection for debtors in terms of legal certainty

In the context of carrying out business activities, business actors generally do not act alone, but they jointly establish a certain form of business. What is meant by business form is a business organization or business entity that is the driving force for every type of business activity, which is referred to as the legal form of a company.[10]

There are guarantees that are born because of the law, and there are also those that are born from the agreement of the parties.[11] Guarantees that are born by law are guarantees whose existence is designated by law, without the agreement of the parties as stipulated in Article 1131 of the Civil Code which states that "All property belonging to the debtor, both existing and new ones that will exist in the future, will be be responsible for all his engagements. From this provision it means that all debtor's objects become collateral for all creditors. If the debtor cannot fulfill the creditor's debt obligations, then the debtor's property will be sold to the public, and the proceeds from the sale of these objects are divided between the creditors, in proportion to the amount of each receivable (Article 1132 of the Civil Code).

Furthermore, the guarantee born from the guarantee agreement made by the parties is in-

7 *Purnama Tioria Sianturi, Op.cit, page 86.*
8 *Rachmadi Usman, Op.cit. page 123.*
9 *F. X. Ngadijarno, dkk, Op.cit, page. 277.*
10 *Abdulkadir Muhammad, Hukum Perusahaan Indonesia, PT. Citra Aditya Bakti, Bandung, 2006, page 2.*
11 *Gunawan Widjaja dan Ahmad Yani, Jaminan Fidusia, PT. Raja Grafindo Persada, Jakarta, 2000, page 79.*

tended to guarantee the repayment or implementation of the debtor's obligations to the creditor. This guarantee agreement is an accessoir agreement that is attached to the basic agreement or principal agreement that issues debts between debtors and creditors.

In addition, in the engagement there are ″schuld″ and ″haftung″. Schuld is interpreted as an obligation to carry out the promised achievements.[12] Meanwhile, haftung is defined as an obligation to guarantee that the promised achievements can actually be realized in reality.[13]

According to its nature, there are general guarantees and special guarantees. A general guarantee is a guarantee given for the benefit of all creditors and concerns all debtors' assets as stipulated in Article 1131 of the Civil Code.[14] Meanwhile, special guarantees are guarantees in the form of the appointment or "delivery" of certain goods specifically as collateral for the payment of the debtor's obligations/debt to certain creditors.[15]

General guarantees as regulated in Article 1131 of the Civil Code are often felt to be insecure because these guarantees apply to all creditors, so if there are many creditors, it is possible that the debtor's wealth will run out and not be sufficient to pay off his debts.[16] For this reason, special guarantee agreements are often made, both material guarantees and individual guarantees [17]

Guarantees that are material in nature, namely the existence of certain objects that are used as collateral. While guarantees that are individual in nature, namely the presence of certain people who are able to pay or fulfill achievements if the debtor defaults or defaults.[18]

In individual guarantees, demands to fulfill the payment of the guaranteed debt can only be made personally by the creditor as the owner of the receivables with the guarantee, and cannot be used to harm other parties for any reason. Whereas in material guarantees, the guarantee is placed on a certain object, if the debtor defaults, through the applicable procedures and legal channels, it can be used as a "means of payment" to pay off the debtor's debt.[19]

Fiduciary is a form of material guarantee institution. Fiduciary or complete fiduciare eigendom overdract (feo) was originally a guarantee institution that arose as a result of societal development. Because fiduciary arises from practice, its existence is not regulated in laws and regulations but is confirmed by jurisprudence and doctrine.

In principle, an object that is the object of collateral is in the power of the creditor. This is felt to impede the growing economic needs of the community, especially if what must be submitted as collateral are capital goods that need to be used to run the guarantor's business. As with the pawn (pawn), the ownership of the collateral remains with the debtor, but physical control of the goods is in the hands of the creditor. Because the movable property that is pledged as collateral is essentially the main business facility for the debtor in his business activities, if the terms of the pledge are used, namely that the collateral must be controlled by the creditor, of course the debtor cannot work or stop his business. Therefore, the way of handing over property rights based on trust was taken. As a result of this community need, the Fiduciary Guarantee institution arose.

The Fiduciary Guarantee Institution has been practiced for a long time without referring to a particular law, but only based on jurisprudence and doctrine. Given that the Fiduciary Guarantee institution has developed quite rapidly, it is deemed necessary to regulate it in a complete and comprehensive law in order to create legal certainty.

The problem of default in the execution of fiduciary guarantees is not immediately resolved through the courts. However, it must be preceded by an agreement between the parties to determine when the alleged breach of contract occurred.

The Constitutional Court's decision regarding the interpretation of Article 15 paragraph (1-3) of Law no. 42 of 1999 concerning Fiduciary Guarantees regarding default in the execution of fiduciary guarantees continues to be a hot topic of discussion in society. Initially, this article was interpreted as if the debtor (consumer) breaks his promise, the fiduciary recipient (leasing company) has the right to sell the collateral object under his own power (auction) as is the case with inkracht court decisions.

However, after the publication of the Constitutional Court's decision number 18/PUU-XVII/2019 dated January 6 2020, the Constitutional Court gave a different interpretation to the

12 *A. Hamzah dan Senjun Manullang, Lembaga Fiducia dan Penerapannya di Indonesia, Ind.Hill Co, Jakarta, 1987, page 11.*

13 *Ibid.*

14 *Gunawan Widjaja dan Ahmad Yani, Op. Cit, page 80.*

15 *Ibid.*

16 *Djuhaendah Hasan, Hak Jaminan Perorangan dan Kepailitan (Security Rights in Personam and Bankruptcy Law), Majalah Hukum Nasional, Badan Pembinaan Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia Republik Indonesia, No.1, 2000, page 83.*

17 *Ibid.*

18 *Gunawan Widjaja dan Ahmad Yani, Op. Cit.*

19 *Ibid, page 81.*

previous article. Now, the fiduciary guarantee certificate, which contains the orders "For the sake of Justice Based on Belief in the One and Only God", no longer automatically has executive power.

In that decision, breach of contract in the execution of a fiduciary agreement must be based on the agreement of the two parties between the debtor and the creditor. If there is no agreement, one of the parties can take legal action through a lawsuit in court to determine/decide that the breach of contract has occurred. Then, what is the basis for the Constitutional Court's decision to interpret Article 15 paragraph (1-3) of the Fiduciary Guarantee Law like that.

The implementation of Article 15 paragraph (2) and paragraph (3) of the Fiduciary Guarantee Law regarding the execution of this fiduciary guarantee in practice results in the arbitrariness of creditors when collecting, withdrawing fiduciary collateral objects (movable objects) under the pretext of a default debtor. Thus, the issue of breach of contract in the execution of fiduciary guarantees is not immediately resolved through the courts. However, it must be preceded by an agreement between the parties to determine when the alleged breach of contract occurred. If there is an agreement between the parties, the creditor can immediately execute it.

The Constitutional Court granted part of the judicial review of Article 15 paragraph (1), paragraph (2), and paragraph (3) of Law no. 42 of 1999 concerning Fiduciary Guarantees regarding fiduciary guarantee certificates that have executive powers. The Constitutional Court decided that a fiduciary guarantee certificate does not necessarily have executive powers. In addition, a breach of contract in the execution of a fiduciary agreement must be based on an agreement between the two parties between the debtor and the creditor or on the basis of legal action (lawsuit to court) which determines that a breach of contract has occurred.

In decision number 18/PUU-XVII/2019, the Constitutional Court declared Article 15 paragraph (2) of the Fiduciary Guarantee Law along with its explanation as long as the phrase "executive power" and the phrase "same as a court decision that has permanent legal force" is unconstitutional as long as it is not interpreted against a fiduciary guarantee that there is no breach of contract agreement (default) and the debtor objects to voluntarily surrendering the fiduciary guarantee object, then all mechanisms and legal procedures for executing the Fiduciary Guarantee Certificate must be carried out and apply the same as executing a court decision that has permanent legal force.

In its consideration, the Court is of the opinion that the norm of Article 15 paragraph (2), (3) of the Fiduciary Guarantee Law is that there is no legal certainty regarding either the execution procedure or the time when the fiduciary giver (debtor) is declared "default" (default) and the loss of opportunity for the debtor to receive sale of fiduciary collateral objects at reasonable prices.

The Constitutional Court's decision number 18/PUU-XVII/2019 has provided legal certainty for creditors and debtors wherein in that decision, breach of contract in the execution of a fiduciary agreement must be based on the agreement of both parties between the debtor and creditor. If there is no agreement, one of the parties can take legal action through a lawsuit in court to determine/decide that the breach of contract has occurred. Without this agreement, the fiduciary guarantee auction can be canceled. If there is a creditor or seller who has submitted an application for a fiduciary execution auction and received an auction schedule, but the debtor has sent an objection letter, so the auction is cancelled. In the theory of legal certainty, when a statutory regulation is made and promulgated with certainty, because it regulates clearly and logically, it will not raise doubts because there are multiple interpretations so that it does not clash or cause a conflict of norms. Norm conflicts arising from uncertainty in laws and regulations can take the form of contesting norms, reducing norms, or distorting norms. But by prioritizing legal certainty it will shift away from justice and the benefits of the law itself.

D. Conclusion

Based on the description that has been put forward, the following conclusions can be drawn: First, the Constitutional Court Decision number 18/PUU-XVII/2019 dated January 6 2020 regarding the interpretation of Article 15 paragraph (1-3) of Law No. 42 of 1999 concerning Fiduciary Guarantees regarding default in the execution of fiduciary guarantees. The Constitutional Court gave a different interpretation from the previous article. Now, the fiduciary guarantee certificate, which contains the orders "For the sake of Justice Based on Belief in the One and Only God", no longer automatically has executive power. Second, MK number 18/PUU-XVII/2019 dated 6 January 2020 has provided legal certainty for creditors and debtors considering Article 15 paragraph (1-3) of Law no. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default), this article is interpreted if the debtor (consumer) defaults/breaks a promise, the fiduciary recipient (leasing company) has the right to sell the collateral object with his own power (auction) as is the case with

court decisions that inkracht.

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