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Reconstruction of the Fiduciary Execution Guarantee Post the Decision of Constitutional Court Number 18/PUU-XVII/2019 Based on the Values of Justice with Dignity

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***Abstract*: There is a default from the debtor, which is often determined unilaterally by the creditor. If the debtor is late in paying the instalments, the debt collector will immediately confiscate the vehicle by force. The debt collector does not have the right to execute the object if it is not equipped with a deed or Fiduciary Guarantee Certificate. This case often triggers resistance to actions taken by the fiduciary giver because the fiduciary giver (the debtor) wants to secure the object of the fiduciary guarantee so that creditors do not take it. As a result, it often leads to violence committed by debt collectors. Through the constructivist paradigm, research is directed to produce various reconstructive understandings with the themes of trustworthiness and authenticity. While the approach used is a socio-legal research approach as an effort to understand the law in its context, it is expected to support the reconstruction of social reality by prioritizing the interaction between researchers and what is being studied through sources and informants, as well as paying attention to the context that forms inputs, processes, and research results. The execution of the fiduciary guarantee, which is carried out through the mechanism of Article 29 of the Fiduciary Guarantee Act, does not guarantee proper legal protection for debtors because it is often carried out arbitrarily and degrades human values. The impact of the Constitutional Court Decision Number 18/PUU-XVII/2019 raises pros and cons and has implications for the possibility of widespread testing of other laws and regulations. On the one hand, the debtor will benefit; on the other hand, the creditor or fiduciary recipient will become a new obstacle in doing business. The reconstruction of the execution of fiduciary guarantees based on dignified justice after the decision of the Constitutional Court Number 18/PUU-VXII/2019 was carried out on Article 29 and Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees, and in the Fiduciary Guarantee Deed, it is necessary to include a clause indicating that there is an agreement regarding the condition of default and the debtor voluntarily or based on awareness to hand over the object of the fiduciary guarantee to the Creditor (Fiducia Recipient) to be sold on his power or the debtor may also be allowed to find a prospective buyer himself so that a high price is profitable.**

***Keywords*: Execution implementation, Constitutional court decision, Execution reconstruction.**

1. Introduction

The community's need for funds to drive the wheels of the community's economy is increasing. This situation indicates that some people have excess funds but cannot work on it; on the other hand, there are groups of people who have limited funds and even have no funds at all but can-do business. Therefore, to bring together these different interests, we need an intermediary who acts as a creditor who will provide funds for debtors, so a loan agreement or credit agreement is born.

Bank and non-bank financial institutions still feel that their interests are not adequately protected and face many risks. To overcome this, banks always strive to secure and protect their interests by increasing their position to become separatist creditors (preferred creditors) by requesting special guarantees in the form of material and individual guarantees. Material guarantee is a guarantee carried out by the creditor against a guarantee made by the debtor on his credit. Material guarantees can be made between creditors and debtors or can also be made between creditors and third parties who guarantee the fulfilment of the obligations of the debtor. The provision of material guarantees always separates a part of one's wealth, namely providing guarantees and providing them for the fulfilment (payment of) debts from debtors. This wealth can be in the form of the debtor's wealth or the wealth of a third party. The separation is specifically intended for the interests of certain creditors who have requested it. Therefore, the provision of material guarantees to a certain creditor gives that creditor a special right or position against other creditors [1].

The collateral rights that are material in nature contain the right to pay off the debt only (verhaalsrecht) and do not contain the right to own the object but are given the right by law or the right to agree to the power to sell the object of the guarantee itself, when in the future the debtor defaults.

Many problems are encountered in granting credit with fiduciary guarantees to financial institutions, both bank and non-bank, such as debtors who do not fulfil their obligations to pay instalments or default. Suppose the debtor can no longer

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pay off his debt in the credit agreement with this fiduciary guarantee. In that case, the bank and non-bank financial institutions have the right to execute the object of the fiduciary guarantee [2].

Talking about execution, it is certain that there are legal actions that can be forced because a certain thing causes them, for example, in the event of a default, unlawful act (PMH), and so on. The term execution is often associated with Court Decisions that have permanent legal force (in kracht van gewijsde). This is because, in general, everything related to execution is the court's authority. This opinion is not always true because execution is not always identical to implementing court decisions that have permanent legal force. The main condition in execution is to have an executorial title which reads: " FOR JUSTICE BASED ON THE ALMIGHTY GOD. ONE". It turns out that the title of such execution is not only found in court decisions but also in authentic deeds, such as the Grosse Deed of Debt Recognition, Grosse Deed of Mortgage (now called Mortgage Certificate) as referred to in Article 224 HIR and 258 RBG. also on the Fiduciary Guarantee Certificate, as regulated in Article 15 of the Fiduciary Guarantee Law.

Based on the description above, the researcher is interested in further research, the results of which are poured into a dissertation with the title: "Reconstruction of the Execution of Fiduciary Guarantees after the Decision of the Constitutional Court Number 18/PUU-XVII/2019 Based on the Value of Dignified Justice".

2. Research Objectives

The aims of this research are as follows:

1. To analyze the execution of fiduciary guarantees according to Law Number 42 of 1999 concerning Fiduciary Guarantees.
2. To analyze the impact of the decision of Constitutional Court Number 18/PUU-XVII/2019 on other legislation and society.
3. To reconstruct the execution of fiduciary guarantees after the Constitutional Court Decision Number 18/PUU-XVII/2019 based on the value of dignified justice.

3. Research Method

The paradigm of this research is constructivism, using a socio-legal research approach. This study's data sources consist of primary and secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. The analytical technique used in this research is descriptive analysis, which presents and interprets facts systematically so that they are easier to understand and conclude.

4. Dissertation Research Results

A. Execution of Fiduciary Guarantees According to Law Number 42 of 1999 concerning Fiduciary Guarantees

Research on the implementation of fiduciary guarantees is very important for banks and consumer finance companies as well as pawnshops because, by the function of collateral rights related to lending, it is the "last bumper" so that loans given by banks, consumer finance companies and pawnshops can return and profit, namely by executing/selling the credit collateral and the proceeds are intended for repayment of the debtor's debt, whereas if from the sale proceeds there is a remainder after the payment of the debt has been used, then the remainder is returned to the debtor. Furthermore, if from the proceeds of the sale there is a shortage, then the shortfall must be paid by the debtor but using concurrent rights based on article 1131 of the Civil Code, which is relatively weak. In reality, the rights attached to the credit collateral are not entirely easy to implement.

These facilities have been sought, as regulated in Article 14, paragraph (2) of the Mortgage Law and Article 15, paragraph (2) of the Fiduciary Guarantee Law, which states in the certificate that the certificate is "for the sake of justice based on the ALMIGHTY GOD". Article 14 paragraph (3) of the Mortgage Law and Article 15 paragraph (2) of the Fiduciary Guarantee Law states that the Mortgage Certificate has the same executorial power as a court decision that has permanent legal force; Article 20 of the Mortgage Law and Article 29 of the Fiduciary Guarantee Law indicate that if the debtor is in breach of contract, the object of the guarantee can be carried out through implementing an executive title (as if it has permanent legal force); sell themselves through public auctions; upon agreement, both parties can sell under the hand.

The provisions stipulated in Articles 29 and 31 of the Fiduciary Guarantee Law are binding and cannot be waived at the parties' will. As a form of authority granted by law to fiduciary recipients or financing companies, "The fiduciary giver is obliged to submit objects that are the object of the fiduciary guarantee in the context of executing the fiduciary guarantee (Article 31). Therefore, every promise that is contrary to the two articles is void, according to the provisions, "Every promise to execute objects that are the object of the Fiduciary Security in a way that is contrary to the provisions as referred to in Article 29 and Article 31, is null and void" (Article 32). Therefore, as a realization of this provision, the difference between the receivables of the fiduciary recipient and the proceeds of the sale (auction) must still be returned to the consumer or debtor by the provisions of Article 34 of the Fiduciary Guarantee Law, which stipulate: (1) If the proceeds of execution exceed the value guarantee, the Fiduciary Recipient must return the excess to the Fiduciary Giver. (2) If the execution results are insufficient to pay off the debt, the debtor is still responsible for the outstanding debt.

Observing the provisions of Article 15, paragraphs (2) and (3) of the Fiduciary Guarantee Law related to the theory of legal protection, the executions that have been carried out by business actors or finance companies should not use methods that are not regulated by legal norms such as hiring a collection collector (debt collectors) to facilitate the withdrawal of collateral objects from the hands of debtors with bad intentions. Financial institutions that are domiciled as creditors can hire the services of a collector through a non-debt collector service agency. However, the execution of underhand executions

carried out by creditors always uses the services of debt collectors, sometimes causing new problems between creditors and debtors. This problem is because of how debt collectors execute fiduciary collateral through violence, intimidation and even by seizing fiduciary collateral on the street. This condition causes resistance from the debtor. The practice of debt collectors, or debt collectors, has so far been complained of by the people of Subang Regency because of their haphazard way of working and not a few who use violence. Although many complaints have been submitted by the public, both in the media and on social media, the practice of forcibly taking debtor vehicles that are in arrears by debt collectors continues to occur. The public wants that in carrying out this execution, consumer finance companies must equip themselves with a fiduciary guaranteed certificate after taking a subpoena against the debtor first. In the implementation process, the financing company can appoint or cooperate with third parties (debt collectors /collection service personnel) to execute the transaction (withdrawal of goods) politely and ethically [3].

The parade execution mechanism provided by law is a particular matter to ensure that it can be executed efficiently, quickly, and effectively without court decisions. The creditor can sell the collateral object with power with the execution mechanism. The fiduciary guaranteed law also regulates matters regarding breach of contract that the debtor must submit the object. However, if the debtor does not want to give voluntarily, the fiduciary recipient has the right to take the object and can ask for help from the authorities. In Indonesia, there is not only way to regulate the execution of parate executions. So far, executing the object of collateral follows the general provisions of civil and criminal law. The implementation of Article 30 of the Fiduciary Guarantee Law can be referred to the Regulation of the National Police Chief Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees. In this provision, the withdrawal does not involve the police, but this regulation is only limited to:

a. The execution of the Fiduciary Guarantee can be carried out in an orderly, safe, and accountable manner; and
b. Avoiding things that can cause property loss and life safety.

The regulation of the National Police Chief Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees, which regulates the mechanism for securing the execution of fiduciary guarantees from the hands of buyers, shows how difficult the execution of fiduciary guarantee objects is, which often creates conflict in the community. Correct execution, namely by showing the fiduciary certificate. If the debtor does not submit the collateral, then mediation is carried out with the police or ask for assistance. Through negotiations between the creditor and the debtor, if the collateral can be secured, then the debtor is given another letter in the form of a letter containing the notification of the debt and a notification that if the unit is not repaid, an auction will be conducted by the creditor to cover the debt from the debtor. The remainder is returned to the debtor [4].

The Financial Services Authority (OJK) has required finance companies that handle the billing sector to obtain a billing certification. The agency authorized to administer the certification is the Indonesian Association of Financing Companies (APPI). This agency is by the provisions of Article 48 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 35/POJK.5/2018. Furthermore, the finance company is required to make guidelines that become a reference in the execution of collateral so that the execution does not have the potential to cause turmoil from debtors who often refuse to carry out executions due to inadequate explanations from fiduciary providers or financing companies to consumers, for example regarding the exact amount of debt obligations (Article 50 paragraph 4) which causes the execution to be carried out. It can be seen in the provisions of Article 49 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 35/ POJK.5/2018. Suppose the fiduciary recipient provides adequate information and satisfies all the obligations of the fiduciary giver openly and transparently. In that case, the fiduciary giver (consumer) will be wiser in receiving information submitted to consumers. For this reason, the execution process is by Article 50 of the Regulation of the Financial Services Authority of the Republic of Indonesia No.35/POJK.5/2018 [5].

The execution of fiduciary collateral by business actors does not necessarily carry out an auction directly by the fiduciary recipient but should still communicate with the fiduciary giver. The fiduciary recipient often ignores this condition by directly conducting the auction, so the fiduciary giver loses communication with the fiduciary giver. Whereas in Article 50, the most burdensome for the fiduciary giver is if the object of collateral has been auctioned, but the results of the auction have not covered the debt, then it remains the burden of the fiduciary to pay, following the provisions of Article 51 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 35/ POJK.5/2018.

Fiduciary execution constraints arise if the guarantee cannot be executed quickly, and the process is simple, efficient and contains legal certainty. In the United States, there is a stipulation that creditors can take the object of a fiduciary guarantee as long as it does not cause a commotion (breaking the place), disputes or fights. The goods can be sold through public auctions or privately as long as they are done in good faith. Indeed, in a state of no legal certainty prior to issuing the Fiduciary Guarantee Act, various parties considered that the execution was through the court. This act will take a long time, especially if it has to go through an appeal or cassation, so fiduciary guarantees are not popular. When the Law on Flats No. 16 of 1985 was issued, there was an easy procedure, namely through underhand execution. How to solve the other, the laws and regulations do not explicitly regulate. Inspired by the Mortgage Law in the Fiduciary Guarantee Act, the execution is expected to be fast, cheap and efficient [6].

The problem with the execution of fiduciary guarantees in practice in Bank Financial Institutions and Non-Bank Financial Institutions is a) Not All Fiduciary Guarantees are Registered, b) Fiat Execution (by Using Executional Title), c) Parate Execution, namely by Selling (without the need for a Court

Decision) in front of a Public Auction, d) Sold under the hand by the Creditors themselves, e) Fiduciary Execution by Claim, and f) Fiduciary Execution through Ordinary Lawsuit.

B. Impact of Constitutional Court Decision Number 18/PUU-XVII/2019 on Other Legislations

The Constitutional Court (MK) through Decision Number 18/PUU-XVII/2019 regarding the petition for judicial review of Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law submitted by Apriliani Dewi and Suri Agung Prabowo. Case registration number 18/PUU-XVII/2019. The Petitioner, in his application, argues that Article 15 paragraph (2), which confirms that 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, and Article 15 paragraph (3) that if the debtor is injured promise, the Fiduciary Recipient has the right to sell the object that is the object of the Fiduciary Guarantee on his power which is deemed to have harmed his constitutional rights. The Petitioner also considered that the article was contrary to Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the Constitution of the Republic of Indonesia Year 1945 [7].

The uncertainty contained in Article 15 paragraph (2) of Law Number 42 of 1999, according to the view of the Constitutional Court, also resulted in the emergence of an interpretation that the right to determine the existence of a breach of contract is in the hands of the creditor (fiduciary recipient). Such legal uncertainty automatically results in the loss of the debtor's rights to defend himself and the opportunity to obtain the sale of the object of fiduciary security at a reasonable price. So, according to the Constitutional Court, the lack of clarity or dispute regarding when the default occurred has made the actions of creditors who sell fiduciary collateral unilaterally become flawed [8].

The decision of the Constitutional Court Number 18/PUU-XVII/2019, dated January 6, 2020, has implications for the execution of the object of the guarantee contained in various laws and regulations, as follows:

1. Law Number 42 of 1999 concerning Fiduciary Guarantees

Several things happened after this decision was granted, as follows:

a. Abolition of Executional Power of Fiduciary Guarantee Certificate
b. Reduced Parate Execution Mechanism for Fiduciary Guarantees
c. The right to precede (the principle of droit de preference) of the fiduciary recipient is not lost. Still, it is no longer effective because determining a debtor's default must go through a court lawsuit first.
d. The harmonization of the provisions for the executorial title and execution parate in the Fiduciary Guarantee Law is spread in several articles. For example, in Article 29 and Article 30 of the Fiduciary Guarantee Law, the result of the cancellation of Article 15 of the Fiduciary Guarantee Law will cause the malfunction of several articles related to the mechanism for implementing fiduciary executions.

2. Law Number 4 of 1996 concerning Mortgage Rights

The regulation regarding the Execution Parate in the UUHT aims to provide convenience to the bank as the creditor in executing the mortgage object to get the repayment of his receivables if the debtor is in default/default. It's just that the convenience provided by the UUHT, in reality, cannot be used because there is confusion about arrangements regarding the execution parate in the Mortgage Law, in the General Elucidation number 9 of the UUHT [9].

The implications of the Constitutional Court Decision Number 18/PUU-XVII/2019 on the execution of Mortgage Rights can be identified as follows:

a. Reduced Parate Execution Mechanism for Mortgage
b. Abolition of the Executional Power of Mortgage Certificate
c. The right to precede (droit de preference) Mortgage recipient is not lost but is no longer effective because if the debtor breaks his promise, the Mortgage holder cannot sell directly through a public auction of land that is used as collateral according to the provisions of Article 6 UUHT but must go through a lawsuit. Court first.
d. Harmonization of the provisions of the executorial title and execution parate on UUHT. For example, in Article 6, Article 14 and Article 20 of the UUHT, the Constitutional Court Decision Number 18/PUU-XVII/2019 will have implications for the existence of the norm of Article 14 of the UUHT, which will cause the malfunction of several articles related to the mechanism for implementing the execution of Mortgage Rights.

3. Law Number 37, the Year 2004, concerning Bankruptcy and Suspension of Obligation to Pay Debt

The implication of the Constitutional Court Decision Number 18/PUU-XVII/2019, dated January 6, 2020, to legal protection for Separatist Creditors is the increasingly complicated process of executing fiduciary collateral objects. Preceded by applying for execution and followed by the auction registration process, it will certainly take a lot of time. With the limited time available for Separatist creditors to liquidate objects used as collateral for debt repayment, there will be a greater risk of meeting their receivables. For this reason, separatist creditors must be able to make the best use of their time.

Thus, if the debtor refuses to hand over the object that is used as fiduciary security, the separatist creditor can take legal remedies as follows:

a. Apply to the curator to lift the suspension or change the conditions for the suspension of creditors' execution rights (article 56 paragraph 1 UUKPKPU)
b. If the request to lift the suspension is granted, then the legal remedies taken are a) Separatist creditors can request security assistance from the police to retrieve fiduciary collateral objects by the Regulation of the Head of the Indonesian National Police Number 8 of 2011 Security for Execution of Fiduciary Guarantees,

and b) Separatist creditors can also submit an application for execution to the Commercial Court after the appointment of the suspension period by the Supervisory Judge has been determined.

c. If the Supervisory Judge rejects the application, the creditor may file a challenge to the court within a period of no later than 5 (five) days after the decision is pronounced. The court is obliged to decide on the challenge within a period of no later than 10 (ten) days after the objection is received. No legal remedies are available for this decision, either cassation or review.

The impact of the Constitutional Court's decision Number 18/PUU-XVII/2019 on the community, both business actors (creditors) and the wider community (debtors), as well as legal practitioners, can be identified as follows:

1. Business Actors (Creditors)

For business actors (creditors), both bank financial institutions and non-bank financial institutions and pawnshops, the Constitutional Court Decision Number 18/PUU-XVII/2019 is considered detrimental because the execution process is more difficult to implement. Based on the data analysis, the study's results indicate that most business actors, both bank financial institutions and non-bank financial institutions, and pawnshops think that the Constitutional Court's decision can potentially hinder the execution of the object of fiduciary guarantees. However, after the decision of the Constitutional Court, there will be a judicial process, either through a lawsuit or an application, that will consume energy, time, and money, as well as the potential for accumulation of cases which is still a problem for the judiciary [10].

The Execution Parate Procedure is not specifically regulated. So far, the execution of collateral goods is usually subject to the general provisions of criminal law and civil provisions regarding unlawful acts. Forced withdrawal of collateral items can be categorized as a crime in Article 368 (1) of the Criminal Code. In addition, to implement Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees, it can also be referred to the Regulation of the National Police Chief Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees. This regulation is not intended to involve the police in making withdrawals, but the purpose of this regulation is to regulate the role of the police in the following matters:

a. The execution of Fiduciary guarantees in a safe, orderly, smooth, and accountable manner; and
b. Protecting the safety and security of the Fiduciary Guarantee Recipient, Fiduciary Guarantee Provider, or the public from actions that may cause property loss or life safety. While the withdrawal itself remains the responsibility of the creditor.

In subsequent developments, the Financial Services Authority began to enact regulations on procedures for withdrawing collateral objects. Financial Services Authority Regulation (POJK 68 Number 35/POJK.05/2018 concerning the Implementation of the Business of a Financing Company. As stipulated in POJK No.35 of 2018 concerning a finance company business. The requirement is to provide documents stating that a debtor is proven in default. Then debt collectors must also have certification by applicable regulations. This rule is regulated in Article 29 of POJK 035/POJK.05/2018.

The Constitutional Court, which requires a breach of contract agreement and voluntary submission of a fiduciary object, can be used by the debtor to extend the execution process so that the debtor can still take advantage of the fiduciary object. The existence of differences of opinion regarding breach of contract requires legal action to take a lawsuit to the district court to obtain a default decision. After the decision on whether a default has occurred, the debtor's voluntarism is still required to fulfil the obligations of the court's decision. If the debtor does not fulfil this obligation, the creditor must apply for the execution of the court's decision. On the other hand, if the debtor has acknowledged a breach of contract but does not voluntarily surrender the object that is the object of the fiduciary, then the creditor cannot immediately request assistance from the police but must apply for the execution of the fiduciary guaranteed certificate. The mechanism for implementing fiduciary executions is protracted and requires additional costs.

The lawsuit process in the District Court requires a long process starting from the registration of the lawsuit, the appointment of a panel of judges, the appointment of a substitute clerk, the determination of the trial time, the trial process, replicas, duplicates, evidence until a court decision is obtained. The process of resolving cases at the First Level Court, according to the Circular Letter of the Supreme Court (SEMA) Number 2 of 2014 concerning the Settlement of Cases at the First Level Court and Appeals at the 4 (Four) Court Environment is a maximum of 5 (five) months. This time does not include the time required for cassation and appeal. Referring to the same SEMA, the time given at the appeal level is a maximum of 3 (three) months. In contrast, the maximum period for handling a cassation case and normative review according to the Supreme Court's internal regulations is from submitting the application to the District Court until sending a copy of the decision to the District Court. The Court of Appealing District is 250 days, and in practice, the handling of cassation cases can be longer than the period that the Supreme Court itself has determined. Thus, if accumulated from the first stage in the District Court to the stage of cassation to the Supreme Court, it can reach 490 days or more because it is still possible to exceed the maximum limit if needed [11].

2. Consumer (Debtor)

The existence of the Constitutional Court Decision Number 18/PUU-XVII/2019 will greatly benefit consumers (debtors) because the process of executing the object of a fiduciary guarantee will not be as easy as before the issuance of this decision. In practice, the statement of default before the decision is like what is now interpreted by the Constitutional Court. This condition is because there have always been attempts at negotiation, subpoena, and other efforts to declare the debtor negligent in the past. Thus, the decision provides "fresh air" for debtors so they can always delay the statement of default, even to the point that they have to be brought to court through a lawsuit. In addition, the decision is also considered to place the debtor in a position that is more advantageous than the

creditor and also increases business risk and the ratio of bad loans calculated by banks and financing institutions. In addition, the fact that creditors incur costs in advance to provide credit to debtors is also considered to have the potential to hamper business. When the statement of default or execution of the object of the fiduciary guarantee does not run smoothly. Thus, the existence of such a decision will, of course, change the perspective (mindset) of the parties in formulating a credit agreement, such as the creation of an additional clause that the debtor will not object to the statement of default or the withdrawal of the object of fiduciary security for execution [7].

Decision Number 18/PUU-XVII/2019 also impacts court institutions because it will potentially increase the number of new cases in the District Court. The implications will be contrary to the judicial process, which is simple, fast, and has legal certainty regarding material law. The increase in the number of cases was at least triggered by the phrase "breach of promise", which cannot be determined unilaterally by the creditor but must be based on the agreement of both parties or based on legal remedies available in the court to determine whether there is a breach of contract.

The lawsuit process in the District Court will take a long time, starting from the registration of the lawsuit, the trial process, evidence, and then reading the verdict by the judge. Settlement of cases at the First Level Court according to the Circular Letter of the Supreme Court (SEMA) Number 2 of 2014 concerning Settlement of Cases at the First Level Court and Appeals at the 4 (Four) Court Environment no later than 5 (five) months and does not include the time required if efforts are made cassation and appeal law. Suppose the accumulation is carried out from the first stage in the District Court to the stage of cassation to the Supreme Court. In that case, it can reach approximately 490 (four hundred and ninety) days or more because it is still possible to exceed the maximum limit if needed. After the court's decision, but then the debtor does not voluntarily carry out the execution, it will take more time to execute following the provisions contained in Article 195 to Article 224 HIR, namely execution through court. In this case, movable objects that are pledged usually have a small value. Therefore, the cost of imposing a fiduciary guarantee, including its execution, must also be carefully considered to remain efficient [12].

C. Reconstruction of the Execution of Fiduciary Guarantees after the Decision of the Constitutional Court Number 18/PUU-XVII/2019 Based on the Value of Dignified Justice

It is time for us to have a conception of justice built from the nation's soul, namely Pancasila. In the Pancasila legal system, Pancasila is the nation's soul or the Indonesian Volkgeist. Pancasila is the nation's soul consisting of five precepts, especially the principle of Belief in One God, Just and Civilized humanity, as well as the precepts of Social Justice for All Indonesian People, which is the source of all laws, or the First Agreement.

The theory of dignified justice is an effort to build and develop the law in Indonesia during the many legal problems that exist from legal experts in Indonesia, re-exploring and establishing the noble values of Pancasila as the main source of law by the values of the nation. It can become a source of philosophical law, historical law, and sociological law, all of which are in the law itself.

Measuring the content of the value of justice in the institutionalization of the execution of fiduciary guarantees in Article 15 in conjunction with Article 29 of the Fiduciary Guarantee Law certainly cannot be separated from aspects of the birth of a legal event between the fiduciary giver and the fiduciary recipient. The birth of a fiduciary guaranteed execution institution is part of a legal consequence based on a causal relationship between the two. The relationship between the two requires a rule of the game that regulates the proportion of rights and obligations of both so that the relationship will produce benefits that both parties can enjoy. In this context, discussing the issue of the value of justice from the perspective of a fiduciary guaranteed execution institution cannot be separated from the context of the legal relationship between the two.

Progressive Law places behaviour far more important as a significant factor in law than regulations which are nothing but late texts. Even more authentic are the texts written on paper. According to Satjipto Rahardjo, these legal texts cannot be fully trusted as representations of authentic legal life. What is more authentic is behaviour, an entity within which the law resides. With human behaviour, the law comes alive. Without behavioural events, the law only means text.

On the one hand, this idea is not only logical but also relevant to understanding the law for humans. Because the behaviour referred to in the law is human behaviour in general in society. What and why is called behaviour and its structures are not discussed in Progressive Law. Behaviour related to human order, according to Merleau Ponty, among others, consists of awareness, reflexes, physical, psychological and mental as well as perceptual phenomena. The law can't understand behaviour without these elements.

The superior construction to overcome the problem of implementing the Fiduciary Guarantee is carried out in a way that is built through legal arguments before heading to the formation of law (rechtsvorming) in the form of closing the absence of a rule (rechtsvacuum) to find common ground to answer the legal problems encountered (legal problem solving). . Legal arguments are opinions that are built based on coherence between the provisions of the applicable law to find common ground to answer legal problems faced (legal problem solving) based on the value of dignified justice and Progressive Law, which emphasizes the human side, namely, the service of law for humanity in the form of virtues.

As a reference material to find an ideal construction regarding the execution of a fiduciary guarantee, the author refers to the execution of a fiduciary guarantee in the United States, where the provision applies that creditors can take the object of a fiduciary guarantee as long as it does not cause a commotion (breaking the place), disputes or fights. The goods can be sold through public auctions or privately as long as they are done in good faith.

To conform to the demands of the Supreme Court's Decision

Number 18/PUU-XVII/2009, the authors submit the reconstruction of Article 15 of the Fiduciary Guarantee Law as follows:

1) The Fiduciary Guarantee Certificate, as referred to in Article 14 paragraph (1), shall include the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD".
2) The Fiduciary Guarantee Certificate, as referred to in paragraph (1), is equivalent to the execution of the executorial title, where the fiat execution of the Head of the District Court is.
3) If the debtor is in breach of contract, the Fiduciary Recipient has the right to sell the object, which is the object of the Fiduciary Guarantee, on his power based on a mutual agreement.

Article 29 of the Fiduciary Guarantee Law is as follows:

(1) If the debtor or Fiduciary Provider is in breach of contract, the execution of the object that is the object of the Fiduciary Guarantee can be carried out by:

a. The implementation of the executorial title, as referred to in Article 15 paragraph (2), must go through a simple lawsuit.
b. The sale of objects that are the object of the Fiduciary Guarantee on the authority of the Fiduciary Recipient himself through a public auction and take repayment of his receivables from the sale proceeds based on a mutual agreement.
c. Underhand sales are made based on an agreement between the giver and the Fiduciary Recipient if, in this way, the highest price can be obtained that benefits the parties.

(2) The implementation of the sale, as referred to in paragraph (1) letter c, is carried out after 1 (one) month has elapsed since being notified in writing by the Giver and Fiduciary recipient to interested parties and announced in at least 2 (two) newspapers spread over the area concerned [13]-[15].

The reconstruction of Article 30 of the Fiduciary Guarantee Law is as follows:

The Fiduciary Giver voluntarily surrenders the object that is the object of the Fiduciary Guarantee in the context of the execution of the Fiduciary Guarantee.

Many debtor default lawsuits will be filed by creditors, especially against debtors who do not admit their default and refuse to submit fiduciary guarantees voluntarily. Creditors must pay many consequences in filing a lawsuit, including down-payment fees, costs incurred during the trial process, and attorney's fees when using the services of a lawyer, as well as a long and complicated trial process. To realize the administration of justice on the principle of simple, fast, and low cost with the difference in the value of objects and claims as well as the simplicity of the evidence, the Supreme Court, through Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits as amended by Supreme Court Regulation Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits (hereinafter referred to as Perma Simple Lawsuits) introduces case settlement through the Simple Lawsuit mechanism.

The rationale for the establishment of the Supreme Court Regulation Number 2 of 2015 is as follows:

a. The application of the principle of justice in Indonesia is that the administration of justice is carried out on the principle of simple, fast and low cost.
b. The procedure for settling a lawsuit with a small value needs to be regulated separately outside the generally applicable civil procedural law.

In principle, the Constitutional Court has given signs to modify the crown of fiduciary guarantees. For legal certainty and justice, the policy reforms must consider all parties' interests, creditors, debtors, and fiduciary objects. However, let's look at executing the Fiduciary Guarantee using the mechanism regulated in Article 224 HIR or Article 208 Rbg. The case settlement process at the First Level Court is according to the Circular Letter of the Supreme Court (SEMA) Number 2 of 2014 concerning the Settlement of Cases at the High Court. First and the level of appeal in 4 (four) court circles for a maximum of 5 (five) months. This time does not include the time required for cassation and appeal. Referring to the same SEMA, the time given at the appeal level is a maximum of 3 (three) months.

In contrast, the maximum period for handling a cassation case and normative review according to the internal regulations of the Supreme Court is from the submission of the application to the District Court until the sending of a copy of the decision to the District Court. The District Court is 250 days. Even in practice, handling cassation cases can be longer than the time that the Supreme Court Thus, if accumulated from the first stage in the District Court to the stage of cassation to the Supreme Court, it can reach 490 days or more because if needed it is still possible to exceed the maximum limit [6].

5. Conclusion and Suggestion

A. Conclusion

1. The execution of fiduciary guarantees before the Constitutional Court Decision number 18 /PUU-XVII/2019, which was carried out by financial institutions, both banks and non-banks, was carried out with the mechanism as stipulated in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees, where if the debtor defaults, then financial institutions, both banks and non-banks, tend to directly execute Fiduciary Guarantee objects in cooperation with third parties (debt collectors). This method is taken on the one hand for efficiency and effectiveness of cost, effort and time. On the other hand, such execution does not guarantee proper legal protection for debtors because it is often carried out arbitrarily and degrades human values.
2. The impact of the Constitutional Court Decision Number 18/PUU-XVII/2019 will certainly cause pros and cons, especially on the juridical implications of understanding the implementation of the execution of

fiduciary guarantees as referred to in Article 15 and Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees against the possibility of widespread testing of Article 59 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, and examination of Article 6, Article 14 and Article 20 of Law Number 4 of 1996 concerning Mortgage. Suppose a similar understanding is used to test the Mortgage Law. In that case, it will also have implications for the auction business process because the auction of the object of the Mortgage Guarantee is categorized as an Execution Auction, as is the Execution Auction of a fiduciary guarantee. The philosophical basis for the abolition of the executorial title and restrictions on the execution of the object of fiduciary security is more directed at creating a balance or equal position between the parties in the transaction, reflecting more substantive justice than procedural justice, especially concerning the determination of qualifications and the mechanism for breach of contract, and solely the eyes to be able to present the law as a solution to humanitarian problems that arise as a result of forced efforts made by debt collectors when directly withdrawing the object of fiduciary security to create a more humane dispute resolution effort by the second principle of Pancasila. The community greatly benefits from Constitutional Court Decision Number 18/PUU-XVII/2019 because it solves the constitutional rights problem, where the court's execution permit mechanism protects their rights from arbitrary collection or withdrawal methods. As for financing business actors as creditors, the decision is certainly a new obstacle in doing business. It is no longer easy for them to reduce the risk of loss. In addition, another implication is that the courts will also be much more active due to many cases of fiduciary guarantees, especially in the field of bailiffs, so that creditors will incur more expensive and inefficient costs or fees. Courts must have sufficient resources to deal with disputes between creditors and debtors.

3. Reconstruction of the execution of fiduciary guarantees after the Constitutional Court Decision number 18/PUU-XVII/2019, which is based on dignified justice, is carried out against Articles 15, 29 and 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees, which in terms of Fiduciary execution guarantees are carried out based on an agreement, where the debtor voluntarily or based on awareness to hand over the object of the fiduciary guarantee to the Creditor (Fiducia Recipient) to be sold on his power or the debtor may also be allowed to find a prospective buyer himself so that a high price will be obtained that is profitable. For both parties, so that this will ensure justice for both parties because it uses a dispute resolution mechanism that is based on the values of Pancasila, especially the Second Precepts of Pancasila. If the agreement is not reached, it can be reached through a mechanism in court, either through a simple lawsuit or an ordinary civil lawsuit.

B. Suggestion

1. The government and the DPR should revise Law Number 42 of 1999 concerning Fiduciary Guarantees or make regulations in the form of Government Regulations that regulate the mechanism for the execution of Fiduciary Guarantees so that in the future it will provide more justice, both creditors and debtors so that a position will be created. The balance between the parties.
2. The government and the DPR should revise Law Number 4 of 1996 concerning Mortgage Rights and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations by the demands of the Constitutional Court Decision Number 18/PUU-XVII/2019 so as that create a more humane dispute resolution effort by the second principle of Pancasila.
3. In the implementation mechanism, fiduciary guarantees should be executed based on an agreement. If the agreement is not reached, it can be done through a simple lawsuit mechanism which is commonly called the Small Claim Court (SCC) as regulated in Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits as amended by Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Regulation of the Supreme Court Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits, and through ordinary lawsuits as regulated by the Civil Procedure Code.

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