

## Legal Protection for Debtors in the Execution of Fiduciary Security Objects in Indonesia

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### Abstract

*In financing agreements, the phenomenon of debtors defaulting is very possible or occurs, so this causes creditors to take steps such as parate execution by using coercive debt collector services. This is justified because it is under the legal umbrella of the Fiduciary Guarantee Law. After the judicial review of Constitutional Court Decision No. 18/PUU-XVII/2019, the execution parate was abolished and the execution of fiduciary guarantee objects must be carried out by submitting a request for execution to the head of the district court, but in the case of Decision Number 157/Pdt.G/2021/Pn Skt, the judge actually rejected the plaintiff's petition as a debtor who argued that the execution parate by the defendant (creditor) was an unlawful act. The formulation of the problem in this research is how to analyze the judge's legal considerations in determining whether the execution of fiduciary guarantees is valid in Decision Number 157/Pdt.G/2021/Pn Skt? And how is legal protection for debtors related to Constitutional Court Decision Number 18/PUU-XVII/2019? This research is included in the type of normative juridical research with a statutory approach. The purpose of this research is to determine the analysis of the judge's legal considerations in determining the validity of the execution of fiduciary guarantees in Decision Number 157/Pdt.G/2021/Pn Skt and to determine the legal protection for debtors in connection with Constitutional Court Decision Number 18/PUU-XVII/2019. The theoretical benefit of this research is a contribution to legal science, while the theoretical benefit is aimed at legal practitioners. The results of this research are that the plaintiff is not a party who voluntarily surrenders the object of the fiduciary guarantee and is not a party bound by an agreement to determine default, so the judge was wrong in rejecting the plaintiff's petition which argued that the defendant was valid in the execution parate, and legal protection for the debtor was linked to Constitutional Court Decision Number 18/PUU-XVII/2019 is contained in Article 23 paragraph (2) and the plaintiff can take legal action to appeal solely to seek correction of the results of a decision that is considered wrong.*

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## 1. INTRODUCTION

Basically execution is not an easy thing, for this it requires legal guarantees and legal support from legal authorities. This is the urgency of balanced legal protection between creditors and debtors[1]. However, often the execution is carried out by finance companies or creditors using the services of debt collectors (debt collectors/executors). Creditors who use collection instruments are debt collectors according to Iwan Supriyanto sometimes creates new problems between creditors and debtors. This is due to the way debt collectors execute fiduciary collateral by means of violence, intimidation and even by seizing fiduciary collateral on the street, this is what causes resistance from the debtor. Of course, this is a problem and moreover it is not in accordance with the principles of the rule of law[2].

Even though after the Constitutional Court Decision Number 18/PUU-XVII/2019, the implementation of the execution parameters for fiduciary guarantee objects is very different from what was explained previously, currently the provisions in Article 15 Paragraph (2) of the Fiduciary Guarantee Law apply as the basis for implementing the execution of fiduciary guarantees. , with the phrase "executorial power" and the phrase "the same as a court decision that has permanent legal force" has been declared contrary to the 1945

Constitution and no longer has binding legal force, in which case there is no agreement regarding breach of contract (default) between the creditor and the debtor, as well as the debtor objecting to voluntarily surrendering the fiduciary guarantee object, then all legal mechanisms and procedures in carrying out the execution of the Fiduciary Guarantee object must be carried out in the same way as the execution of a court decision which has permanent legal force. The meaning of the phrase "breach of promise" following Constitutional Court Decision Number 18/PUUXVII/2019, as regulated in Article 15 Paragraph (3) of the Fiduciary Guarantee Law, has been declared contrary to the 1945 Constitution and no longer has binding legal force, as long as the meaning of the breach of promise is not interpreted as a breach of contract which is not determined unilaterally by the creditor but rather based on an agreement between the creditor and the debtor or on the basis of legal action that determines that a breach of contract has occurred.[3].

The Constitutional Court's decision changes the mechanism for executing fiduciary guarantee objects, namely as long as they are not given voluntarily by the debtor. Initially, Law Number 42 of 1999 concerning Fiduciary Guarantees gave the green light to executors to execute the fiduciary guarantee objects themselves, now creditors must submit a request for execution to the district court. Thus, the position of the executor and creditor is very vulnerable in dealing with the law if the debtor feels forced or is not happy with the method of execution carried out by the executor. However, in the decision Number 157/Pdt.G/2021/PN Skt which is one of the lawsuit cases between the Plaintiff/debtor as the fiduciary giver and the Defendant/creditor as the fiduciary recipient, among the petitum (demands requested by the litigants to be granted by the judge) of the Plaintiff is:

"States the action of the Defendant through the Debt Collector who carried out a forced withdrawal of the Fiduciary Guarantee Object 1 (one) unit of car, truck unit, No. AD 1382 UD, Brand Hino, Type Dutro 130 HD "MJEC1JG43J51637785 Machine/Serial Number WO4DTRR54221, in the name of the Plaintiff, which was carried out on 20 March, 2021 is an unlawful act."

One of the points of the Plaintiff's petitum is based on the Defendant's actions in unilaterally taking away the fiduciary object in the control of the Plaintiff because the Plaintiff was in default in the payment agreement. However, the Plaintiff stated that this was an unlawful act by also citing the provisions on the execution of fiduciary guarantee objects according to Constitutional Court Decision Number 18/PUUXVII/2019 which in essence no longer justifies such execution. The panel of judges in their decision rejected all of the Plaintiff's petitum, including in this case ignoring the consideration of the Constitutional Court Decision Number 18/PUUXVII/2019 regarding the method of confiscation by the Defendant.

Based on the case above, taking into account the gap or inconsistency between *das sollen*, namely the Constitutional Court Decision Number 18/PUUXVII and *das sein*, namely the continued implementation of the execution *parate* in the case of decision number 157/Pdt.G/2021/Pn Skt, the author is interested in conducting legal research normative on it. The novelty or element of novelty in this research is that the legal case in decision number 157/Pdt.G/2021/Pn Skt has never been studied before, so the originality of this research is guaranteed.

The aim of this research is to find out legal protection for debtors in the execution of fiduciary collateral objects in Indonesia after the existence of PMK No. 18/PUU-XVII/2019, and PMK No. 2/PUU-XIX/2021 and to find out what obstacles exist when executing fiduciary collateral objects. There are several previous studies that also discussed similar issues Riza Maulana with the title "Legal Protection for Debtors for the Execution of Fiduciary Guarantee Objects Without Agreement Linked to Law Number 42 of 1999 concerning Fiduciary Guarantees in conjunction with Constitutional Court Decision

Number 18/Puu-Xvii/2019"[4]. Research conducted by Muhamad Nurhafid Malikul Mulki with the title "Legal Protection for Debtors Against Execution of Fiduciary Guarantees Post Constitutional Court Decision Number 18/Puu-Xii/2019 Perspective of Islamic Law"[5], research conducted by Fikrotul Jadidah with the title "Legal Protection for Creditors Regarding the Execution of Fiduciary Guarantees (Analysis of Constitutional Court Decision No. 18/Puu-Xvii/2019)"[6]and research conducted by Nadia Prabowo "Legal Protection of Creditors Against the Execution of Fiduciary Guarantee Objects After Constitutional Court Decision No. 2/Puu-Xix/2021"[7]

## 2. RESEARCH METHOD

The type of writing of this research is normative juridical, namely a legal protection for debtors in terms of the execution of fiduciary collateral objects linked to the Constitutional Court decision no. 18/PUU-XVII/2019, and PMK No. 2/PUU-XIX/2021. Normative juridical writing is a type of writing that is intended to focus on the application of positive legal rules or norms.[8]. This writing activity was planned to be carried out online, considering the limited space and time for writing which made it impossible for the writer to go to the location where the case occurred, the writer carried out a study and analysis of court decisions with the following data: Decision No. 157/Pdt.G/2021/Pn Skt. The writing time is scheduled to be  $\pm$  4 months, namely from April to June 2024.

The data sources in this writing are primary legal sources which include the Civil Code, Law no. 42 of 1999 concerning Fiduciary Guarantees, Constitutional Court Decision Number 18/PUU-XVII/2019, and Constitutional Court Decision Number 2/PUU-XIX/2021 and Court Decision Number 157/Pdt.G/2021/Pn Skt. Meanwhile, secondary legal materials are materials that provide explanations of primary legal sources as contained in collections of literature that have supporting properties.[9]namely: books, journals and articles and other legal writing as well as tertiary legal materials are legal materials that provide instructions or explanations for primary and secondary legal materials.

The study of decisions is one of the qualitative data collection methods commonly used in legal research. This technique involves analyzing decisions to understand how the law is applied in practice and how legal norms are interpreted by judges[10]. The data analysis method for primary legal sources and secondary legal sources is analyzed qualitatively and conclusions are drawn deductively, namely drawing conclusions from a general problem to the concrete problems faced. Then we will answer the problems of this writing.

## 3. RESEARCH RESULTS AND DISCUSSION

### 3.1. Analysis of Testing of Law No. 42 of 1999 concerning Fiduciary Guarantees which is contrary to the 1945 Constitution

Request for material review of Article 15 Paragraph (2) and Paragraph (3) of Law no. 42 of 1999 concerning Fiduciary Guarantees then states:

1. Stating Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) along the phrase "executorial power" and the phrase "equal to a court decision with the power permanent law" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "for fiduciary guarantees where there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily surrendering the object which is the fiduciary guarantee, then All legal mechanisms and procedures in carrying out the

execution of fiduciary guarantee certificates must be carried out and apply the same as the execution of court decisions that have permanent legal force.

2. Declare Article 15 Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "default" is contrary to the Constitution of the Republic of Indonesia 1945 and does not have binding legal force as long as it is not interpreted to mean that "the existence of a breach of contract is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal action to determine whether a breach of contract has occurred."
3. Declaring the Explanation of Article 15 Paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executorial power" is contrary to the Constitution of the Republic of Indonesia of 1945 and does not have binding legal force as long as it is not interpreted as "for fiduciary guarantees where there is no agreement regarding breach of contract and the debtor objects to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in implementing the execution of the fiduciary guarantee certificate must be carried out and applies the same as the execution of court decisions that have permanent legal force."

The Constitutional Court's decision then gave a different color to the Fiduciary Guarantee Law onwards, that since the MK decision No. 18/PUU-XVII/2019 with the subject matter of judicial review Article 15 paragraphs 2 and 3 of the Fiduciary Guarantee Law is contrary to the 1945 Constitution, and provides a new law which The difference is very significant before a material review is carried out, namely that the Fiduciary Guarantee Certificate will lose the same executorial power as a court decision which has obtained permanent legal force if it does not meet the requirements, namely that there is an agreement between the debtor and creditor regarding default and the debtor voluntarily surrenders the object of the fiduciary guarantee.

Even the Constitutional Court is of the opinion that Article 15 paragraph (2) of Law no. 42 of 1999 does not reflect the provision of balanced legal protection between creditors and debtors. And regarding the substance of the norms in Article 15 paragraph (3) of Law no. 42 of 1999 does not provide legal certainty regarding when a breach of contract (default) is deemed to have occurred and who has the right to determine [6]. In the author's opinion, in carrying out the material review of the Fiduciary Guarantee Law against the 1945 Constitution, indeed Article 15 paragraph (2) of Law no. 42 of 1999 must be annulled because justice tends to side with creditors with full authority to carry out execution *parates*. Because, UUJF itself does not specifically regulate at what time or in what month it is said to be in default (in cases of failure to pay). Apart from that, creditors often use third parties, namely debt collectors, with a coercive nature, and without wanting to know whether the fiduciary collateral object is close to being paid off in full and the fiduciary collateral object is still being withdrawn, so that in cases like this debtors who have good intentions feel disadvantaged.

### **3.2. Analysis of Constitutional Court Decision Number 18/PUU-XVII/2019 and MK Decision No. 2/PUU-XIX/2021 Regarding the Execution *Parate* Mechanism**

The decline in the quality of law enforcement in the country has been felt for a long time. Several facts that serve as authentic evidence that support this claim include, in the realm of legal formation, it is marked by the large number of legislative products that have been submitted for material review to the Constitutional Court. [11]. One legal product that is considered unfair to one party (debtor) towards the other party (creditor) so that a judicial review is carried out at the Constitutional Court is Law Number 42 of 1999 concerning Fiduciary Guarantees which resulted in PMK No. 18/PUU-XVII/2019 and PMK No. 2/PUU-XIX/2021.

After the publication of Constitutional Court Decision No. 18/PUU-XVII/2019 and MK Decision no. 2/PUU-XIX/2021, confusion and debate arose regarding the legal norms regulated in the two Constitutional Court Decisions, especially MK Decision No. 18/PUU-XVII/2019. Briefly, the considerations of the Constitutional Court in MK Decision no. 18/PUU-XVII/2019 confirms that Article 15 Paragraph (2) of Law no. 42/1999 does not provide a balanced legal position between creditors and debtors. Next, there is no legal certainty regarding when (time) the breach of contract between the creditor and debtor occurred and who has the right to determine this event in connection with Article 15 Paragraph (3) of Law no. 42/1999[12]. Constitutional Court Decision No. 18/PUU-XVII/2019 changes the implementation of fiduciary guarantee execution, specifically relating to the implementation of executorial title on fiduciary guarantee certificates, the implementation of fiduciary guarantee execution based on the creditor's power as fiduciary recipient, as well as the time (when) the breach of contract by the debtor has occurred. This will have the potential to give rise to new problems such as a backlog of cases in court regarding the date (time) of the debtor's breach of contract, the debtor's bad faith in delaying the handover of the fiduciary collateral object to the creditor and disagreement regarding the breach of promise that has occurred, so it will take a long time, etc[13].

The legal consequences after it was deemed that Article 15 Paragraph (2) of Law no. 42/1999 is that creditors must use execution mechanisms and procedures similar to the execution of court decisions that have permanent legal force as intended in Article 196 HIR or 207 RBG and Article 197 HIR or 208 RBG. Then in Article 15 Paragraph (3) Law no. 42/1999, creditors cannot unilaterally sell objects that are the object of fiduciary collateral based on their own authority if there is no agreement between the creditor and debtor or based on legal action that determines that a breach of contract has occurred, whereas if the debtor has acknowledged that there has been a breach of contract and voluntarily surrenders the object of the fiduciary guarantee, the creditor as the recipient of the fiduciary can sell the object that is the object of the fiduciary guarantee in accordance with the *parate executie* principle to settle the receivable[14].

The essence of Constitutional Court Decision no. 18/PUU-XVII/2019 means that creditors as fiduciary recipients are no longer able to carry out execution of fiduciary guarantees, namely by carrying out executorial titles and no longer have the right and authority to carry out executions of fiduciary guarantees on their own authority without the agreement of the debtor who has defaulted. , but must follow procedures similar to implementing a court decision that has been signed, namely by submitting a request for execution to the chairman of the local district court. According to the author's opinion, the Constitutional Court Decision No. 18/PUU-XVII/2019 provides a guarantee of legal protection for debtors who have good intentions in terms of payment. However, due to one or two problems, they cannot avoid default, thereby preventing debtors from having to forcefully withdraw the object of the fiduciary guarantee. In the case of decision number 157/Pdt.G/2021/Pn Skt, the panel of judges considered the legality of the forced withdrawal of fiduciary collateral objects, which based their decision on rejecting all of the plaintiff's claims.

### **3.3. Analysis of Judges' Considerations in Determining the Legal Execution of Fiduciary Guarantees in Decision Number 157/Pdt.G/2021/Pn Skt**

In this research, the author conducted an analysis of legal protection for debtors in terms of the execution of fiduciary collateral objects related to the Constitutional Court Decision Number 18/PU-XVII/2019 and a case study of the Surakarta District Court Decision Number 157/Pdt.G/2021/Pn.Skt . In general, fiduciary guarantee is a

form of guarantee given by the debtor (fiduciary giver) to the creditor (fiduciary recipient) regarding a certain object. These objects can be goods, rights to goods, or rights to other assets that can be valued economically. In the event of the execution of a fiduciary guarantee object, there is legal protection given to the debtor. This legal protection is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees (UU JF) and has been interpreted by the Constitutional Court in Decision Number 18/PU-XVII/2019.

In this decision, the Constitutional Court considers that Article 21 paragraph (3) UUFJ which regulates the takeover of fiduciary collateral objects by creditors must be interpreted constitutionally or constitutionalism, which is a way of understanding or interpreting a law or regulation based on constitutional principles or basic laws. that applies in a country. In this context, constitutionalism refers to the principle that state power and government actions must be limited by the constitution and human rights. This is important because the constitution is a fundamental legal document and sets the limits of government power, as well as guaranteeing human rights and individual freedoms. By carrying out constitutional interpretation, government actions can be measured whether or not they are in accordance with the principles contained in the constitution or the Basic Law, so as to achieve better justice and legal certainty. The Constitutional Court reminded that creditors must take over fiduciary collateral objects while still paying attention to the debtor's rights. Apart from that, the Constitutional Court also emphasized the importance of creditors' obligations to provide complete and clear information to debtors regarding the process of taking over fiduciary collateral objects.

The research results show that legal protection for debtors in terms of executing fiduciary guarantee objects is contained in Law Number 42 of 1999 concerning Fiduciary Guarantees (UUFJ) and has been interpreted by the Constitutional Court in Decision Number 18/PU-XVII/2019. In this decision, the Constitutional Court made it clear that creditors must take over fiduciary collateral objects while still paying attention to the debtor's rights. Apart from that, the Constitutional Court also emphasized the importance of creditors' obligations to provide complete and clear information to debtors regarding the process of taking over fiduciary collateral objects. The case study of Surakarta District Court Decision Number 157/Pdt.G/2021/Pn.Skt shows that the court also refers to the principles that have been confirmed by the Constitutional Court in Decision Number 18/PU-XVII/2019. In this decision, the court emphasized that creditors must carry out the process of taking over fiduciary collateral objects while still paying attention to the debtor's rights. Apart from that, the court also emphasized the importance of the creditor's obligation to provide complete and clear information to the debtor regarding the process of taking over the object of fiduciary collateral.

The main issue in the legal considerations of the panel of judges in case decision number 157/Pdt.G/2021/Pn Skt is whether the Defendant has committed an unlawful act because he forcibly withdrew the object of the dispute without a signature on the Minutes of Delivery of the Vehicle by the Owner/on behalf of, without show a Fiduciary Guarantee Certificate and without a Court Decision that has permanent legal force. The first legal consideration of the panel of judges in deciding the verdict is the claimant's admission that he admits/does not deny the existence of a breach of contract in his performance. The defendant in his objection argued that the withdrawal of the fiduciary guarantee object was based on law, namely the existence of a financing agreement which had been jointly signed and became binding law on both the plaintiff and the defendant and also argued the provisions of Article 29 paragraph 1 letter b of the Fiduciary Guarantee Law which basically stated the following:

(1) If the Debtor or Fiduciary Giver defaults, execution of the Object which is the Object of the Fiduciary Guarantee can be carried out by: b. sale of objects that are the object of Fiduciary Guarantee under the authority of the Fiduciary Recipient himself through a public auction and repayment of receivables from the sale proceeds.

And the defendant confirmed his belief that the execution process he carried out was based on law by also arguing Article 29 paragraph 1 letter a and Article 15 paragraph 2 as well as the explanation of Article 15 paragraph 2 of the Fiduciary Guarantee Law as follows:

(1) If the Debtor or Fiduciary Provider breaks his promise, execution of the Object which is the Object of the Fiduciary Guarantee can be carried out by: a.

Implementation of the executorial title as intended in Article 15 paragraph (2) by the Fiduciary Recipient.

Article 15 paragraph 2 of the Fiduciary Guarantee Law (2) The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executorial power as a court decision that has obtained permanent legal force."

Explanation of Article 15 paragraph (2) of the Fiduciary Guarantee Law "In this provision what is meant by "executorial power" is that it can be exercised directly without going through court and is final and binding on the parties to implement the decision.

In the author's analysis, citing Nurul Ma'rifah's research, the determination of breach of contract (default) is based on 2 (two) methods according to the PUU MK decision No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021, namely that there is an agreement or the debtor admits that he has breached his contract (default) and (if there is no agreement between the debtor and creditor regarding the existence of a breach of promise (default), then the district court decides. Confirms the execution of the fiduciary guarantee certificate through the district court is only an alternative. The alternative in question is the option if a default agreement is not reached and there is no voluntary surrender of the fiduciary collateral object by the debtor, then the execution option cannot be carried out by the creditor himself, but must be carried out in the district court.[15]. Therefore, it can be concluded that the plaintiff is not a party who has bad intentions in not paying installments/rental fees, as emphasized by the plaintiff in his case, but rather the plaintiff is experiencing difficulties in paying rental fees due to the Covid-19 outbreak which has weakened the global economy, however the plaintiff still trying to be in good faith to continue running its business even though it is not yet optimal due to situations and conditions that are not yet possible.

Even though it was clear that there had been a failure to pay, the plaintiff refused to be named as a party with bad intentions in the agreement, while one of the conditions for the validity of an execution parate is that there is an agreement or the debtor admits that he has breached his contract. Even between the plaintiff and the defendant, when there was no disagreement regarding the determination of default, neither the plaintiff nor the defendant took the matter to the district court to decide on the default, but instead the defendant used a third party, namely the External Debt Collector, to carry out a forced withdrawal on March 20 2021.

When connected with Hans Kelsen's theory of legal justice, which states that justice is a subjective value consideration. Even though a just order assumes that an order is not the happiness of each individual, but rather the greatest happiness for as many individuals as possible in the sense of a group, namely the fulfillment of certain needs, which the authorities or law makers consider to be needs that deserve to be met. , such as clothing, food and shelter needs. But which human needs should take priority? This can be answered

using rational knowledge, which is a value judgment, determined by emotional factors and therefore subjective[16].

Integrating Hans Kelsen's theory of legal justice in decision number 157/Pdt.G/2021/Pn Skt, a sense of injustice will be obtained. This sense of injustice arose from the fact at the trial that the financing period (rental period) was 48 months or 48 times the rent, while the plaintiff was able to pay the rental fee of Rp. 7,664,000.00, meaning that the plaintiff has been 30 times fluent in rent payments and has only experienced difficulties since the last 18 times/month, so it would be very unfair if the unit in the plaintiff's control was taken by force while the plaintiff had paid more rent. This is what Hans Kelsen means, that in measuring the fulfillment of human needs, the priority is to use rational knowledge, which is a value judgment, determined by emotional factors and therefore subjective.

The judge's second legal consideration was that there was bad faith on the part of the plaintiff to transfer/save/hide the object of the dispute elsewhere which was based on the facts revealed in the trial that the object of the fiduciary guarantee was taken by the Defendant not at the Plaintiff's house and by force as stated in the argument of the lawsuit. . Due to the plaintiff's bad intentions, the voluntary surrender could not be carried out, so the Defendant's actions could not be categorized as unlawful.

The panel of judges emphasized the second legal consideration to the fact that the object of the dispute was taken by the plaintiff (debt collector) while at the witness' house (not taken at the plaintiff's house) by showing/showing letters/files from Indomobil. The defendant's witness explained that he took the disputed object from the witness's house after 3 (three) days following the truck (disputed object) always returning to witness Suparno's house, so the disputed object was taken from the witness's house and then taken to the Plaintiff's house. Then the panel of judges concluded that because the object of the dispute was taken by the Defendant not at the Plaintiff's house and by force, as stated in the argument of the lawsuit, according to the Panel of Judges, it was not proven because there was bad faith on the part of the Plaintiff, the voluntary handover could not be carried out, so the Defendant's actions could not be carried out. categorized as an unlawful act.

In the author's analysis, the panel of judges should have focused more on the aspect "the fiduciary (debtor) voluntarily handed over the object of the fiduciary guarantee in the context of execution" rather than looking for a common thread by concluding that the object of the fiduciary guarantee unit was not in the plaintiff's house until the plaintiff was named as a party who did not have good intentions. The debtor's unwillingness to hand over the units can result in one of the two execution *parate* requirements not being achieved. In this case, the debtor did not voluntarily comply with the execution *parate* carried out by the defendant, as in the main case the debtor explained that the defendant carried out *parate* execution or forced withdrawal of the unit in question by the External Debt Collector, which was shown by the Defendant to have clearly violated Regulation of the Minister of Finance of the Republic of Indonesia No. 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Finance Companies that carry out Consumer Financing for Motor Vehicles with Fiduciary Guarantees, violating Article 4 of Law Number 8 of 1999 concerning Consumer Protection and Law No. 42 of 1999 concerning Fiduciary Guarantees can even be categorized as a form of confiscation which violates Article 365 of the Criminal Code. In this case, the plaintiff even argued that the defendant committed an offense of confiscation.

Because the plaintiff is a party who does not fulfill the element of "voluntarily handing over the object of fiduciary guarantee", the execution *parate* may not be carried out but must be submit a request for execution to the District Court. In this way, basically it has provided a balance in the legal position between debtors and creditors and avoided



the emergence of arbitrariness in the implementation of the execution. Based on the author's analysis of the views of the panel of judges regarding the determination of breach of contract agreements and the views of the panel of judges who tend to be more focused on seeing the debtor as a party who does not have good intentions in the agreement with the unit being found not at the plaintiff's residence (but at the witness's residence), thus ignoring the evidentiary elements "voluntarily hand over the object of the fiduciary guarantee", the author understands that the judge was wrong in rejecting the plaintiff's petitum which argued that the defendant's execution parate was against the law.

### **3.4. Legal Protection for Debtors is Linked to Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision No. 2/PUU-XIX/2021**

Truly Decision Constitutional Court Number 2/PUU-XIX/2021 jo Decision of MK 18/PUU-XVII/2019 has become a product of legal protection for all debtors in cases where the unit was confiscated by the defendant and other defendant parties, because the debtor did not acknowledge the breach of contract/default and object to voluntarily hand over the object which is the object of fiduciary guarantee, then The fiduciary recipient (creditor) may not carry out execution parate, however must submit a request for execution to the district court.

In the Article 23 Paragraph (2) emphasizes that "Fiduciary givers are prohibited from transferring, pawning or renting to other parties objects which are the object of Fiduciary collateral which are not inventory objects, except by agreement written first and the Fiduciary Recipient." Meanwhile, the defendant forcibly took the unit without signing the Minutes of Delivery of the Vehicle by the Owner/On Behalf, without showing a Fiduciary Guarantee Certificate and without a Court Decision having permanent legal force.

In addition, if the court decision has been accepted, the plaintiff cango through legal appeal. An appeal is one of the ordinary legal remedies that can be requested by one or both parties in a case against a District Court Decision. The parties submit an appeal if they are not satisfied with the contents of the District Court decision to the High Court via the District Court where the decision was handed down.

The legal remedy in confirming the defendant's actions, namely the execution of the object of the fiduciary guarantee, will provide an opportunity for the debtor as the party aggrieved by the defendant's legal actions and the court decision at the first instance to be able to seek correction of the results of the decision which are considered wrong, this is done so that any errors that occur in the decision can be corrected.

### **3.5. Obstacles in the Execution of Fiduciary Guarantee Objects**

Post Decision Constitutional Court Number 2/PUU-XIX/2021 jo Decision MK 18/PUU-XVII/2019, the style of execution of fiduciary collateral objects is no longer carried out in a parate execution manner which is generally based on unilateral determination of default by the creditor, but the execution of fiduciary collateral objects must go through the District Court, and this is seen as providing more justice and certainty The main law is for debtors who have good intentions in fiduciary agreements.

Before there is a decision of Constitutional Court Number 2/PUU-XIX/2021 jo Decision of MK 18/PUU-XVII/2019 an obstacle that often arises in the process of executing fiduciary guarantee objects during the 2017-2019 period is a mismatch in identity between the person applying for credit or applying for credit in the name of another person who has income as a permanent worker but according to the regulations cannot propose restructuring. Apart from that, another problem that arises is that

creditors often use mechanisms that tend to be harsh with the help of third parties, namely debt collectors, resulting in acts of violence committed by debt collectors.[17].

Difficulties or obstacles in carrying out the execution of fiduciary guarantee objects also occur even after the verdict of Constitutional Court Number 2/PUU-XIX/2021 jo Decision of MK 18/PUU-XVII/2019 is that execution through court will take a lot of time and the execution process through court is relatively long because it must fulfill the execution procedures as regulated in HIR/RBg (Civil Procedure Law). And the collateral object is generally of small value so it will be used up by payment of execution costs and tax costs[18], then it can be understood that before and after the verdict of Constitutional Court Number 2/PUU-XIX/2021 jo Decision of MK 18/PUU-XVII/2019 there will always be obstacles in the process of executing fiduciary guarantees by creditors.

#### 4. CONCLUSION

1. The judge's considerations in determining the validity of the execution of fiduciary guarantees in Decision Number 157/Pdt.G/2021/Pn Skt refer to the criteria set out in Constitutional Court (MK) Decision No. 18/PUU-XVII/2019. The judge carried out a comprehensive analysis of the fiduciary guarantee documents, including notification and registration obligations, as well as aspects of the validity of the fiduciary guarantee itself.
2. Constitutional Court Decision No. 18/PUU-XVII/2019 provides guidelines and guidance for judges in determining whether the execution of fiduciary guarantees is valid. However, in Decision Number 157/Pdt.G/2021/Pn Skt, the author understands that the judge was wrong in rejecting the plaintiff's petition which argued that the defendant's execution parate was against the law.
3. Constitutional Court (MK) Decision Number 18/PUU-XVII/2019 provides significant legal protection for debtors in the context of fiduciary guarantees. The Constitutional Court recognizes the importance of legal certainty and protection of debtor rights in fiduciary transactions, as well as encouraging the application of the principles of justice and balance between creditor and debtor rights.
4. Through Constitutional Court Decision Number 18/PUU-XVII/2019, debtors' rights are given legal protection against actions that may be detrimental to them in implementing fiduciary guarantees. The Constitutional Court emphasized the importance of providing notification and an opportunity to defend debtors before implementing fiduciary guarantees, so that debtors can protect their rights and raise objections if there is injustice or non-compliance with legal procedures.
5. Fulfillment of the legal requirements for the process of taking over the object of fiduciary collateral, namely that the creditor has given legal notice to the debtor and has fulfilled other requirements regulated in the Fiduciary Guarantee Law.
6. Pay attention to the debtor's rights in the execution process, namely the creditor must carry out the takeover of the fiduciary collateral object while still paying attention to the debtor's rights and provide complete and clear information to the debtor regarding the process of taking over the fiduciary collateral object.
7. Pay attention to fairness and justice in determining the value of fiduciary collateral objects taken over by creditors.

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