Execution of Fiduciary Guarantees Post Constitutional Court Decision Number 18/PUU-XVII/2019 According to Legal Justice Theory

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Abstract

Execution of fiduciary guarantees is a right for creditors holding fiduciary guarantees. The condition for a creditor to be able to execute a fiduciary guarantee is that the breach of promise of the debtor providing the fiduciary guarantee is fulfilled. According to Article 19 of Law Number 42 of 1999 concerning Fiduciary Guarantees (Fiduciary Law), creditors can execute objects that become fiduciary collateral if the debtor providing the fiduciary guarantee defaults. However, the creditor's rights above are not in accordance with other regulations because execution cannot simply be carried out. To carry out execution, the creditor must submit an application to the District Court. It should be understood that the birth of this fiduciary guarantee is to streamline the economic system, namely to make it easier for people to obtain financing for the purchase of movable objects without having to place the objects purchased as collateral in a financing institution. The debtor can still use the movable object in the hope that it will be used to improve the debtor's economy. This reality in the field is also confirmed by the decision of the Constitutional Court (MK) Number 18/PUU-XVII/2019 which interprets Article 15 of the Fiduciary Law which essentially states that the execution of fiduciary guarantees must carry out a request for execution in the District Court. The formulation of the problem in this research is 1. What is the law on voluntary execution of fiduciary guarantees in Indonesia? 2. What is the impact of the Constitutional Court (MK) decision Number 18/PUU-XVII/2019 on the protection of creditors holding fiduciary guarantees according to the theory of legal justice? This legal research method is normative legal research using a statutory regulation approach. The result of this research is the implementation of post-judgment fiduciary guarantee execution No.18/PUU-XVII/2019 has not provided legal certainty that provides justice because there are still differences in interpretation regarding fiduciary guarantees.

Keywords: Fiduciary, Execution, Justice

A. Background of the problem

The existence of law is based on the needs of society. Although it often happens that society develops too quickly and abandons the law. In accordance with the legal adage *het recht hink achter de feiten aan* (law is a science that always lags behind the development of society). In connection with this situation, the guarantee law in Indonesia is also experienced. Various guarantee institutions have been regulated in Indonesia, including fiduciary guarantee institutions. The history of fiduciary guarantees before being regulated in Indonesia was still only known as pawn guarantees. Pawning is regulated in Article 1150 of the Civil Code (KUHPer). Pawn collateral is a secondary agreement that arises from a credit agreement or debt and receivables agreement. The mechanism for implementing a pledge guarantee is that the creditor is given the right to retain the debtor's property. Guarantee law continues to grow and develop until finally the pawn guarantee institution cannot continue to accommodate the needs of the community. Until finally the need for fiduciary guarantees began. Fiduciary comes from the word fiduciary, namely trust. People need funds from banking institutions and financial institutions with collateral for movable objects such as motorbikes, cars, heavy vehicles and so on, but they can still use these collateral objects for activities to earn income or improve the economic status of the community.

In this article, society in Indonesia will narrow its meaning as a legal subject. Legal subjects are every person who has rights and obligations. In law, people who have these rights and obligations can be humans or legal entities. The person who acts as the debtor in a fiduciary guarantee is also known as the fiduciary. The obligation of the debtor must be to carry out its achievements to the creditor. In the case of a credit agreement, the debtor's achievement is to make regular payments

on the debt until it is paid off to the creditor in accordance with the agreement. This statement is also in accordance with Article 1234 of the Civil Code which states that one form of achievement is giving something.

Every guarantee institution appears not only for the interests of debtors, but also for the interests of creditors. The hope is that this guarantee institution can provide legal certainty to both parties, both debtors and creditors. Different from general guarantees, the guarantee institutions referred to in this paper are special guarantee institutions. Special guarantees will provide more specific, stronger legal force and certainty as a basis for solving the parties' problems. It is not that general guarantees do not provide legal protection, it's just that this general guarantee is still too broad and cannot provide certainty to parties in dispute. Special guarantees have better protection because this guarantee directly confirms that the special collateral object will be responsible for repayment of the debtor's debt if the debtor defaults on the creditor.

New fiduciary regulations began to appear in Indonesia since the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantee Institutions (Fiduciary Law). According to Article 1 number 1 of the Fiduciary Law, Fiduciary is the transfer of ownership rights to an object based on trust, provided that the object whose ownership rights are transferred remains in the control of the owner of the object. This granting of trust cannot simply be done without a solution if a dispute occurs in the future. Of course, the issue of trust here is the relationship between creditor and debtor. Creditors must be protected in order to obtain repayment from debtors, as well as debtors must also be protected from arbitrariness by creditors using their power over ownership of collateral objects.

The solution if there is a problem between creditors and debtors at fiduciary institutions that will be emphasized in this article is default by the debtor. Default comes from the Dutch language Wanprstatie which means failure to fulfill achievements or obligations in an agreement. According to the Big Indonesian Dictionary (KBBI), default is a condition where one party performs poorly due to negligence. Default as explained in Article 1238 of the Civil Code is a condition where the debtor is declared negligent by means of a warrant, or by means of a similar deed, or based on the strength of the agreement itself, namely if this agreement results in the debtor being deemed to be in default after the specified time has passed.

The legal consequences of a debtor's default are that the creditor can demand compensation from the debtor. In the credit agreement there is a clause regarding default according to the agreement between the parties. If in the context of a credit agreement followed by a fiduciary agreement, the legal consequences of default will be subject to the Fiduciary Law. The reason for choosing a fiduciary institution as an accecoir agreement to a credit agreement is to protect creditors so that fiduciary creditors take precedence over other creditors. Priority here means that it is given repayment first because it is tied to an object that is specifically guaranteed by the debtor and is registered on the fiduciary list of the Ministry of Law and Human Rights.

Apart from the right of precedence, creditors holding fiduciary collateral have the right to execute the object of the fiduciary guarantee directly if the debtor defaults according to the promise stated in the Fiduciary Law. Of course, investors, both individuals and companies, are willing to transact with parties requesting capital because of legal protection from special provisions from fiduciary institutions. The promise of the Fiduciary Law lies in Article 29 of the Fiduciary Law which reads as follows:

"If the debtor or fiduciary breaches his contract, execution of the object that 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;
b. sale of objects which 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;
c. private sales carried out based on an agreement between the Giver and the Fiduciary Recipient if in this way the highest price that is profitable for the parties can be obtained.

There are still many differences in views regarding the provisions regarding execution because the statutory regulations and implementing regulations do not consistently interpret fiduciary guarantees, especially in relation to the execution of collateral objects. In addition, with the presence of the Constitutional Court Decision Number 18/PUU-XVII/2019 which reviews Article 15 of the Fiduciary Law, it is no longer possible for creditors holding fiduciary guarantees to carry out direct execution if the debtor providing the fiduciary guarantee defaults. Uncertain rights and obligations regarding the right to execute fiduciary guarantees have the potential to harm society both now and in the future. So, it is necessary for us to examine how the actual execution of fiduciary guarantees is from a just legal perspective. The reasons above are the basis for the author to research the Execution of Fiduciary Guarantees After the Constitutional Court Decision Number 18/PUU-XVII/2019 According to the Theory of Legal Justice.

B. Formulation of the problem

How is the Fiduciary Guarantee Executed After the Constitutional Court Decision Number 18/PUU-XVII/2019 According to the Theory of Legal Justice?

C. Research Method

This research uses normative legal research methods. This research was conducted using a statutory approach. The sources for this research are primary sources, namely legislation, legal theory, expert opinions contained in books, journals and so on.

D. Discussion

Law is all the rules that society must follow. Law has a hierarchy; this opinion was stated by Hans Kelsen. Law is something that exists naturally. The law is free from any interests; therefore, it must be used as a basis by society without any need for doubt. Likewise with law in Indonesia, especially regarding guarantee law. Guarantee law is the law that regulates subsequent agreements to the main agreement, namely guarantees from the agreement which will give rise to debts and receivables between the parties.

The guarantee agreement is made to support the main agreement. The emergence of guarantee law is a necessity to provide protection and trust from investors to capital seekers. This capital provider can be an individual or a legal entity. Meanwhile, capital seekers can be individuals, companies, institutions, foundations, limited liability companies and so on who require disbursement of funds for their needs. Legal acts that use fiduciary guarantees are quite large in Indonesia. One of the businesses related to fiduciary guarantees is buying and selling motor vehicles. According to data from Indonesia, in 2021 alone domestic purchases of new vehicles reached 761,000 (seven hundred and sixty-one thousand). Motor vehicle financing is not without problems. The increase in motor vehicle loans was also followed by an increase in non-performing loans. According to data from the Financial Services Authority (OJK), until May 2023 the total value of financing from commercial banks to individuals (non-bank/non-business) for motor vehicle ownership loans nationally reached IDR 123.9 trillion. In May 2023, the NPL value of vehicle loans from commercial banks nationally reached IDR 2.2 trillion, increasing 4.8% monthly (mom) and growing 9.5% annually. In this period, the ratio of non-performing loans (NPL) reached 1.8% of total financing.

Fiduciary institutions in Indonesia are a driving factor for economic growth. Without a fiduciary institution, society will have difficulty accessing capital, as well as banking companies and finance companies will have difficulty disbursing funds. The difficulties mentioned above lead to issues of trust and legal certainty. Before there was a fiduciary institution, trust only existed after the debtor handed over the movable objects that would serve as collateral to the creditor. Providing a collateral object from a debtor to a creditor is known as a pawn. Of course, with the development of movable object products, they are no longer just movable objects according to law but are indeed movable in nature and purpose, such as motorbikes, cars or heavy equipment. In the past, movable objects which by their nature could move, such as the gold we are familiar with, would be pledged as collateral using the pawning method. However, if it is a motorbike, car or heavy equipment, it will be difficult to guarantee it using the pawning method because there is limited space to store it and also the fiduciary collateral object is really needed by the debtor for his business or daily needs. Therefore, a guarantee institution is needed that can solve the shortcomings of pawn guarantee institutions.

The presence of a fiduciary institution cannot be separated from historical factors and the urgency for the enactment of the Fiduciary Law.

History of the Fiduciary Guarantee Institution

Fiduciary institutions have long been known in the Netherlands and other countries in the world. Fiduciary is not a new practice, it's just that in Indonesia it was only enacted in 1999. According to Sri Dewi Machsun Sofwan, fiduciary has been used for a long time for business purposes. Fiduciary is part of the guarantee institutions in Indonesia. This fiduciary is specifically intended for movable objects. Apart from fiduciary, the Civil Code has previously recognized a guarantee institution for movable objects, namely Gadai (Pand).

Fiduciary is a solution to the needs of people who want to use movable objects as collateral but cannot comply with the pawn provisions.

In 1989, Paul Finn's stated that fiduciary is loyalty, good faith. The fiduciary must act for the benefit of the fiduciary. Fiduciary recipients must not only think about their interests. Legal experts at that time had different opinions about whether fiduciaries were included in public or private law.

The birth of the Fiduciary Law in 1999 was a solution in business development to guarantee creditors' rights to debtors to obtain a return of money that had been given to debtors as collateral for movable objects, both tangible and intangible. Fiduciary grants privilege rights (priority) to the sale of the collateral objects mentioned above. Of course, this is also a solution so that creditors of movable objects, whether tangible or intangible, can obtain privilege rights after the mortgage regulations are regulated, and Mortgage Rights do not accommodate collateral for movable objects.

The Importance of Fiduciary Institutions

Fiduciary institutions have a strategic position in the Indonesian legal system. Many people need this fiduciary guarantee institution because there is a system of transferring ownership rights from debtors to creditors regarding fiduciary collateral objects. Meanwhile, the right to control the fiduciary collateral object rests with the debtor so that it can be used by the debtor to carry out productive activities. This fiduciary guarantee is not only beneficial for people who will or have become debtors, it also provides legal protection to creditors because creditors who hold fiduciary guarantees have privilege rights. This privilege right is a preferential right or right that takes precedence over other ordinary creditors for debt repayment from the debtor.

The most prominent feature of this fiduciary guarantee is the privilege provisions and execution rights regulated in Article 15 in conjunction with Article 29 in conjunction with Article 30 of the Fiduciary Law. Just like

guarantees that provide other privileges, creditors holding fiduciary guarantees are given the right to carry out execution on the object of the fiduciary guarantee if the debtor defaults. Default is more likely to result in the debtor not paying the debt on time.

Execution of Fiduciary Guarantees

The execution of fiduciary guarantees is a mechanism that makes fiduciary institutions attractive. According to the author, there is the authority to be able to carry out executions even if the impression is negative in society, like it or not, this is the bargaining power given by this fiduciary institution to be used by the public. Apart from fiduciary guarantee institutions, actually the regulations regarding guarantees have already been regulated in the Civil Code.

According to Article 1131 of the Civil Code, it is known in the world of law as a general guarantee. This general guarantee provides protection for creditors to claim all of the debtor's assets, both existing and future, as collateral for repayment of debts to creditors.

Perhaps due to the absence of the creditor's authority to execute fiduciary guarantees, this fiduciary guarantee may be less attractive because it is the same as the general guarantee. When talking about business, this fiduciary institution is actually a business field for the government because registration is subject to fees in the form of non-tax state revenues.

In relation to this execution authority, the government should strictly regulate it, if the debtor defaults then in accordance with the words of the Fiduciary Law, the creditor has the right to sell the collateral object to pay off the debtor's debt. In this way, the government is consistent in conveying the fiduciary law to the public, especially business people. Or if not, the inclusion of the right to execution is simply removed from the norms of fiduciary guarantee institutions so that the public can choose with certainty what kind of guarantee law to use or develop new forms of agreements that may not have existed before.

Creditors holding mortgage rights related to defaults committed by debtors have the right to take precedence. This right of precedence is based on Article 27 paragraph (2) of the Fiduciary Law to collect repayment of receivables from the proceeds of the execution of objects that are the object of Fiduciary Guarantee. It's just that the Fiduciary Law provides limits on what creditors holding mortgage rights can do to carry out this execution so that arbitrary actions do not occur. These limits are regulated in Article 29 of the Fiduciary Law regarding the execution mechanism, namely:

"If the debtor or fiduciary breaches his contract, execution of the object that 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;
b. sale of objects which 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;
c. "Private sales are carried out based on an agreement between the Giver and the Fiduciary Recipient if in this way the highest price can be obtained which is profitable for the parties."

We need to first understand that based on Article 15 paragraph (2) of the Fiduciary Law, there are the words "FOR JUSTICE BASED ON THE ALMIGHTY GOD" on the fiduciary certificate. permanent legal force. If we review Article 29 of the Fiduciary Law again, there is still ambiguity and inconsistency among the legislators because on the one hand, fiduciary certificates already have execution parate provisions, but it seems as if the article does not say clearly which options have a position. strongest to be executed first. Article 29 of the Fiduciary Law only provides options, but does not provide a hierarchy in the mechanism for executing fiduciary collateral objects.

Talking about the execution of the Fiduciary Law, we can draw out several types of execution, namely:

1. Voluntary execution.

This voluntary execution does not seem like an execution. As we know the meaning of execution itself is

The execution according to the Karanganyar District Court is:

"Execution in civil cases is a tiring process, consuming energy, money and thought. Civil decisions do not have any meaning when the defeated party is not willing to carry out the decision voluntarily. Real victory can only be achieved after going through a long process of execution to realize that victory. The execution process becomes long and complicated because the defeated party finds it difficult to accept the verdict and does not want to carry out the obligations imposed on him. "The culmination of a civil case is when the judge's decision which has permanent legal force *(inkracht van gewijsde*) can be implemented."

Execution can be carried out in 2 (two) ways, namely voluntarily and forced execution by court order. Voluntary executions are carried out according to the judge's decision, but the implementation is based on the good faith of the party given the decision. Then a forced execution based on a court order can only be carried out if the party being executed does not want to carry out the court decision. So forced execution can only be carried out if the executed party does not want to implement a court decision which has permanent legal force.

In carrying out the execution, there are stages carried out as follows:

1. There is a request for execution
   After there is a court decision that has permanent legal force, basically the fulfillment of the decision must be carried out by the losing party voluntarily. Execution can be carried out if the losing party does not carry out the verdict voluntarily, by submitting a request for execution by the winning party to the competent Head of the District Court.
2. Aanmaning
   A request for execution is the basis for the Chairman of the District Court to issue a warning or warning. Aanmaning is an action and effort carried out by the Chairman of the District Court who decides the case in the form of a "reprimand" to the Defendant (who lost) so that he carries out the contents of the decision voluntarily within the specified time after the Chairman of the Court receives the petition for execution from the Plaintiff. The losing party is given a period of 8 (eight) days to implement the contents of the decision starting from the time the debtor is summoned to appear to be given a warning.

Application for confiscation of execution

After the aanmaning is carried out, it turns out that the losing party has not carried out the decision, so the court confiscates the execution of the losing party's assets based on the request of the winning party. This application is the basis for the Court to issue a Determination Letter containing an order to the Registrar or Bailiff to carry out confiscation execution on the defendant's assets, in accordance with the terms and procedures regulated in Article 197 HIR. The determination of confiscation of execution is a continuation of the determination of aanmaning. Broadly speaking, there are 2 (two) types of methods for placing confiscations, namely collateral confiscations and execution confiscations. Confiscated collateral means that, to guarantee the implementation of a decision at a later date, the confiscated goods cannot be transferred, traded or otherwise transferred to another person. Meanwhile, an execution confiscation is a confiscation that is determined and implemented after a case has a decision that has permanent legal force.

After there is a request for confiscation of execution, the next stage is the issuance of a Determination of Execution which contains an order from the Chairman of the District Court to the Registrar and bailiff to carry out the execution. After the Court issues the Execution Determination along with the Minutes of Execution, the next stage is the auction. An

auction is a public sale of the respondent's assets which have been confiscated by execution or a public sale of confiscated goods belonging to the respondent which is carried out in front of an auctioneer or the auction sale is carried out with the intermediary or assistance of the auction office and the method of sale is by increasing or decreasing the bid price. through a written offer (offer with registration). The purpose of this auction is to fulfill the defendant's obligations. The use of an auction office is intended so that the price obtained is not detrimental to the defendant and is in accordance with a reasonable price in the market. The auction proceeds are used to pay the obligations stipulated in the judge's decision

In connection with the execution of fiduciary guarantees, to maintain conduciveness in society, the Indonesian National Police issued the National Police Chief Regulation No. 8 of 2011 which specifically regulates the procedures for executing fiduciary objects. In the National Police Chief's Regulation, to carry out the execution of fiduciary collateral objects, they must fulfill the requirements, namely:

There is a request from the applicant;
The object has a fiduciary guarantee deed;
The fiduciary guarantee object is registered at the fiduciary registration office;
The Fiduciary Guarantee Object has a fiduciary certificate;
Fiduciary guarantees are in the territory of Indonesia.

Further information regarding securing the execution of fiduciary guarantees is stated in article 7 of National Police Chief Regulation no. 8 of 2011, where the application for securing the execution must be submitted in writing by the recipient of the fiduciary guarantee or his legal representative to the Police Chief at the place where the execution is carried out. The applicant is required to attach a power of attorney from the recipient of the fiduciary guarantee if the application is submitted by the attorney for the recipient of the fiduciary guarantee.

Legal Justice Regarding the Execution of Fiduciary Guarantees

In cases of default by debtors providing fiduciary guarantees, the Fiduciary Law gives creditors the right to carry out execution. It should be noted that in a fiduciary the object of collateral is not held by the creditor but is in the control of the debtor. The debtor still has the right to control, while the creditor, with the issuance of a fiduciary certificate, legally holds the ownership rights to the collateral object. Based on Article 1 point 1 of the Fiduciary Law, it is stipulated that a fiduciary is the transfer of ownership rights to an object based on trust, provided that the object whose ownership rights are transferred remains in the control of the owner of the object.

Control of collateral objects that are in the debtor's power is a problem because the privilege rights that should be able to be used by fiduciary creditors are merely words of law without being enforceable. The problem is when the debtor is unwilling or not in good faith to hand over the object of the fiduciary guarantee to be resolved according to the Fiduciary Law and legal regulations. Article 29 of the Fiduciary Law as above does not provide us with an explanation regarding whether immediate execution can be carried out by creditors holding fiduciaries when the debtor is in default. To explain this, we need to remember that Indonesia adheres to the separation of powers. The authority to make laws rests with the House of Representatives, the authority to implement laws rests with the President and his subordinate executives, while the authority to resolve problems resulting from incompatibility of laws with the behavior of people or citizens rests with the judiciary, namely the Supreme Court and lower courts. . After the reform period, the Constitutional Court was formed, one of whose powers was to review laws against the 1945 Constitution.

The Constitutional Court's decision is final and binding, meaning that there are no other legal remedies for the parties after the Constitutional Court's decision is read. Constitutional Court Decision No. 18/PUU-XVII/2019 has a positive, more equitable

impact on the execution of fiduciary guarantees. In considering the legal considerations of a quo decision, the Constitutional Court has stated that it takes into account the principles of legal certainty and justice which are fundamental requirements for the enactment of a statutory norm. The MK in its decision said the phrase "breach of promise" is contained in Article 15 paragraph (3) UUJF. The problem is the size or when a "default" is considered to have occurred and who has the right to determine? This is what the Constitutional Court calls an absence of clarity in UUJF norms, which has juridical consequences in the form of legal uncertainty, especially for debtors, which has consequences for the creditor's understanding that it is the creditor who determines breach of contract unilaterally.

Even though based on the principle of justice, determining breach of contract must require an understanding between the two parties, the creditor and the debtor. Therefore, the Constitutional Court then said that the phrase "default" in Article 15 paragraph (3) UUJF must be a breach of contract that 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 whether a breach of contract has occurred. So, if a debtor admits that he is in breach of contract, the creditor can carry out the execution himself.

Furthermore, a quo Constitutional Court decision also questioned the phrase "executorial power" and the phrase "the same as a court decision with permanent legal force" contained in Article 15 paragraph (2) UUJF. The Constitutional Court stated that these two phrases do not have binding legal force as long as they are 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 that is the fiduciary guarantee, then all legal mechanisms and procedures in carrying out the execution of the guarantee certificate Fiduciary duties must be carried out and apply in the same way as the execution of a court decision which has permanent legal force. This means that the executorial power of the creditor becomes invalid if there is no agreement between the creditor and the debtor.

The provisions regarding Article 15 paragraph 2 and Article 15 paragraph (3) of the Fiduciary Law which had been deemed invalid with several provisions felt by the Constitutional Court Judge at that time were in the interests of creditors and debtors. The authority to execute fiduciary collateral objects by creditors in the specifics of the Fiduciary Law needs to be exercised by requesting a court decision. This court decision can only be requested if the agreement contains clear provisions regarding default. Default or breach of contract must be clearly regulated so that it is easy to determine when it occurred and what practices caused the default. If the provisions for default in the fiduciary agreement are not clear then a court decision cannot be requested, but a lawsuit can be filed in accordance with the civil procedural code.

The requirement for creditors to request a court decision regarding their desire to execute the object of fiduciary collateral is an effort to protect the debtor's interests from arbitrariness from creditors in determining that a breach of contract has occurred. Regarding responding to this problem based on the theory of legal justice, it is necessary to link legal justice with legal certainty. It is very necessary to interpret legal justice by continuing to maintain legal certainty. Gustav Radbruch stated that there should be 3 (three) things in law, namely justice, legal certainty and legal benefits. Then John Rawls also emphasized that legal justice is closely related to legal sovereignty. In contrast to Gustav Radbruch and John Rawls, Hans Kelsen stated that legal justice does not lie in a person, but rather in the consistent application of rules. Justice will be difficult to relate to humans because there will be subjectivity regarding the meaning of justice itself. Hans Kelsen stated that justice is more directed at the practice of enforcing rules, while the rules themselves are not a problem as long as they are enforced consistently regardless of differences. This statement is different from Huijbers who stated that justice is not only about enforcing rules but also about

respecting human rights so that the contents of the rules must also have the value of justice. According to Huijbers, law is not law if it is not fair.

Legal justice still has a lot of debate. Especially on the issue of implementing the execution of fiduciary guarantees. The meaning of fiduciary which has already developed in the realm of legal science means that in law fiduciary guarantees have a special position. The specialty is that when this institution was first born, it was designed to accommodate economic interests by bringing together the needs of capital owners with those who need capital. Of course, we don't just limit it to banking or financing matters. Freedom of contract has given parties the opportunity to determine the agreement they want to make. The scope of fiduciary is related to agreements which will ultimately give rise to the right to obtain something of monetary value and the obligation to return something of that monetary value. Fiduciary institutions were created to provide certainty for creditors with ease of execution if the debtor defaults.

Taking the words of legal justice according to Hans Kelsen, that it is difficult to determine justice that can satisfy all parties, so good rules just have to be implemented consistently so that legal justice is created. In fact, creating a debt and receivable agreement or other agreement that can be burdened with fiduciary guarantees also goes through stages that are not short. According to the Fiduciary Law, the fiduciary guarantee deed must be made before a Notary. Notaries who have the authority to make fiduciary guarantee deeds also have moral ethics and the obligation to carry out verification so as not to take sides with one party and be neutral. No agreement to make a fiduciary guarantee which is felt to be full of fraud which will benefit creditors should be made by a notary. So immediately after the fiduciary guarantee certificate which has the intention of Justice Based on Belief in the Almighty God or also known as the Execution Parate, when Article 15 paragraphs (2) and (3) were still in effect before the Constitutional Court's decision was a characteristic of the fiduciary guarantee institution.

Based on the previous description, the Constitutional Court through its decisionThe Constitutional Court's decision No.18/PUU-XVII/2019 is indeed good, but the resolution of justice issues of course does not stop there. Justice must exist in the content of laws or regulations and of course in enforcementthe law. Justice cannot be obtained simply by annulling some of the provisions in the fiduciary law which will create legal uncertainty regarding the unique characteristics of fiduciary institutions. As a result, uncertainty regarding fiduciary guarantee regulations will have the potential to give rise to injustice for every party who uses fiduciary guarantee institutions.

CLOSING

Conclusion

Implementation of the execution of post-judgment fiduciary guarantee objectsMK No.18/PUU-XVII/2019 underwent radical changes. Creditors who hold fiduciaries no longer have the authority to directly execute the objects of fiduciary guarantees if the debtor breaks their promise. Forced executions must be submitted to the District Court. Implementation of fair execution of fiduciary guarantees is consistent between the rules and their enforcement. According to the theory of justice, the contents of the rules for executing fiduciary guarantees must provide justice to all parties, both creditors and debtors.

Suggestion

a. Changes must be made to the rules regarding fiduciaries, from the law to the implementing regulations, so that there is compatibility between the content of the law and its enforcement.
b. Re-socialization must be carried out regarding the new spirit of fiduciary guarantees as a result of the decision of MK No.18/PUU-XVII/2019

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