FIDUCIARY ASSURANCE AUCTION LEGAL POSITION

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Abstract

Regulations in the field of auction as a system of logical, rational normative thinking have not been able to solve a practical problem that is legal in principle, the auction buyer. This problem requires clear regulation, because Law No. 42/1999 does not clearly regulate this matter.

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

Keywords*: Guarantee, Fiduciary, Auction*

INTRODUCTION

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

On the one hand there are people who have excess funds, but do not have the ability to work on it, and on the other hand there are groups of people who have the ability to do business but are hampered by obstacles, because they have little or no funds at all. To bring the two together, an intermediary is needed who will act as a creditor who will provide funds for the debtor. This is where the loan agreement or credit agreement arises.

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

The rights and obligations of the debtor are reciprocal with the rights and obligations of the creditor. As long as the process does not face problems in the sense that both parties carry out their rights and obligations in accordance with the agreement, then problems will not arise. Usually new problems arise if the debtor fails to return the loan money at a predetermined time. If this happens, Article 1131 of the Civil Code stipulates that all objects belonging to a person, both existing and those that will exist in the

future, will be guaranteed for the engagement. Despite this provision, in practice a debtor in general is not only bound to only one kind of obligation. This means that a general guarantee will only cause a creditor to get a portion of the money that has been lent to the debtor, if this general guarantee is not sufficient to cover all the debtor's existing debts and have matured. This general guarantee will apply equally to all creditors.

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

The existence of a Fiduciary Guarantee in Indonesia has been used since the Dutch colonial period as a guarantee born of jurisprudence. In its development in accordance with the increasing economic activity in general, and the business world in particular which requires legal certainty, Law Number 42 of 1999 concerning Fiduciary Guarantees was issued. In Article 1 point 1 of the Law it is stated that "Fiducia is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object". Then in Article 1 number 2 of the Law it is determined as follows:

> Fiduciary Guarantee is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights that remain in the control of the fiduciary giver, as collateral. for the settlement of certain debts, which gives priority to the fiduciary recipient over other creditors.

Based on the provisions above, that which becomes the object of the Fiduciary Guarantee are movable objects including tangible objects and intangible objects, as well as immovable objects. Ownership rights to objects that become Fiduciary Guarantees are transferred to the fiduciary recipient as debt security, while the object remains in the control of the fiduciary giver. However, when the debtor still cannot pay, the object of the fiduciary guarantee will be confiscated and auctioned.

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

1. To meet the needs of auction sales, which are regulated in many laws and regulations.
2. To fulfill or implement judicial decisions or dispute resolution institutions based on laws in the context of law enforcement.
3. To meet the needs of the business world in general, it is possible for producers or owners of personal goods to conduct auction sales.[1]

Auction sales are controlled by the provisions of the Civil Code Book III concerning engagement in this case regarding buying and selling in auctions and also the basis of auction sales referring to the provisions of Article 1457 of the Civil Code which reads: "sales and purchases are an agreement, with which one party binds himself to hand over an object, and the other party to pay the promised price. The auction contains the elements listed in the definition of selling"

The existing auction regulations do not support the development of auction as a buying and selling institution and do not provide protection for the interests of the auction buyer's rights to the goods he buys, because the existing auction law is less rational, in particular the auction regulations lack a general "normative" quality, applies to all similar cases, sanctions are unclear and less systematic. Regulations in

1 *Academic Paper on the Draft Law on Auction, Ministry of Finance of the Republic of Indonesia Directorate General of State Receivables and Auctions, (Jakarta: Legal Bureau- Secretariat General, February 18, 2005), p. 4.*

the field of auction as a system of logical, rational normative thinking have not been able to solve a practical problem that is legal in principle, the auction buyer. This problem requires clear regulation, because Law No. 42/1999 does not clearly regulate this matter.

Method / Methodology

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

Discussion / Results and Discussion

Execution and Auction of Fiduciary Guarantee Object

Not a few fiduciary givers or debtors who are late in paying or even default in carrying out monthly installment payments for vehicles that are used as objects of fiduciary guarantees, especially because of the pandemic that has hit all over the world, including Indonesia, which has had a major impact on the financial sector and people's purchasing power. . This is also a factor in late paying debtors and breaking promises. If this has happened, usually the bank/leasing party as the creditor will give a written warning to the customer as the debtor to immediately pay off or pay the vehicle installment payment bill that has been guaranteed a fiduciary guarantee. However, if the debtor does not meet his achievements, the next step is the execution of the customer's fiduciary security vehicle as regulated in Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees. In carrying out the execution of the debtor's fiduciary guarantee vehicle in the field, not a few banks/leasing companies use the services of a third party, namely the Debt Collector. Whereas the party authorized to carry out the execution of the fiduciary guarantee vehicle in the field is the executor, the executor himself is a worker or permanent employee of a bank/leasing. As explained in Article 29 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees which essentially contains if the debtor as the fiduciary provider breaks his promise, then the execution of the object of the fiduciary guarantee is carried out by:

a. Creditors may exercise the executorial title;
b. The object of the fiduciary guarantee that has been successfully executed will then be auctioned and the proceeds from the sale of the auction will be used to pay creditors' receivables;
c. Sales under the hands of the agreement of two parties between the debtor and creditor will get the highest price so that it benefits the parties.

Letter A says that the execution of the executive title is carried out by the fiduciary recipient, which means that indirectly the execution of the fiduciary guarantee must be carried out by the bank/leasing party as the fiduciary recipient itself, but it is impossible if the execution of the fiduciary guarantee is carried out by the CEO, manager, or other party. head of the bank's own branch office. Of course, the bank/leasing authorizes the bank or leasing employee as the executor. And not using outsourcing or third parties, namely Debt Collectors to carry out the execution of fiduciary guarantees. Indeed, in Article 29 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees, it does not clearly stipulate that banks/leasing as fiduciary recipients are allowed or prohibited to use third parties in the execution of fiduciary guarantees, but this is what makes it legal. There is no third party or Debt Collector and indirectly the Debt Collector is not authorized to carry out the execution of fiduciary guarantees in the field.

The auction of fiduciary guarantees is one way or execution to return non-performing financing or bad debts from debtors of a financing or leasing company. Objects of fiduciary security can be in the form of movable objects such as motor vehicles, factory machinery to shares and immovable objects such as land and buildings. The division of the object of this fiduciary guarantee is stated in Law Number 42 of

1999 concerning Fiduciary Guarantee.

The types of auctions consist of execution auctions, mandatory non-execution auctions and voluntary non-execution auctions. Execution auction is an auction to carry out court decisions or decisions, other documents that are equivalent to courts or to implement statutory provisions.

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

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

Decision of the Constitutional Court (MK) No.18/PUU-XVII/2019 regarding the interpretation of Article 15 paragraph (2-3) of Law No. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default) in the execution of fiduciary guarantees is still a topic of discussion in the community. Initially, the article was interpreted if the debtor (consumer) is injured/broken, the fiduciary recipient (leasing company) has the right to sell the object of collateral with his own power (auction) as is the case with an inkracht court decision.

However, after the issuance of the Constitutional Court's Decision No. 18/PUU-XVII/2019 dated January 6, 2020, the Constitutional Court gave a different interpretation from the previous article. Now, the fiduciary guarantee certificate, which contains instructions "For the sake of Justice Based on the One Godhead", no longer automatically has executive power

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

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

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

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

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

If the auction is canceled or there are objections from the debtor, it does not mean that the fiduciary execution auction cannot be carried out. The auction can still be done, but first it must go through a

court mechanism. The creditor submits to the execution court and the court submits an auction application to the State Property and Auction Service Office (KPKNL).

He explained that the auction of fiduciary guarantees can be carried out when the debtor or fiduciary giver breaks the promise. The auction can be conducted through a public auction or an underhand sale. The government through the Ministry of Finance has auction institutions spread across various regions called the Office of State Assets and Auction Services (KPKNL).

The auction procedure is a series of actions carried out before the auction is carried out, at the time the auction is carried out and after the auction is carried out. As for the auction preparation stage, according to Article 10 of the Regulation of the Minister of Finance Number 106/PMK.06/2013 as amended by the Regulation of the Minister of Finance Number 27/PMK.06/2016, a written request for auction is submitted by the seller or owner of the goods intending to sell the goods. by auction to the Head of the State Assets and Auction Service Office (KPKNL) to request a schedule for the auction, accompanied by documents for the tender requirements according to the type of auction. In the event that the auction is in the form of an Execution Auction for the Committee for State Receivable Affairs, the auction application is submitted in the form of a Memorandum of Service by the Head of the State Receivables Section of the KPKNL to the Head of the KPKNL. The seller or owner of the auction item may use the Auction Center to provide pre-auction and/or post-auction services.[2] The existence of the KPKNL in managing receivables always strives to provide services and management of state receivables optimally. With the issuance of the decision of the Constitutional Court (MK) Number 77/PUU-IX/2011 dated September 25, 2012 which confirms that the Committee for State Receivable Affairs (PUPN) is no longer allowed to manage receivables from State/Regional Owned Enterprises (BUMN/D). so the management of state receivables is currently focused on receivables from government agencies, the role of the State Assets and Auction Service Office (KPKNL) is needed in order to manage receivables from local government agencies.

The seller or owner of the goods who intends to sell the goods by auction through the Auction Hall or the Office of the Class II Auction Officer, must submit a written application for the auction to the Head of the Auction Hall or the Class II Auction Officer, accompanied by documents required by the auction in accordance with the type of auction. The auction office determines the general conditions for conducting the auction while the seller can determine the terms of the auction which are specific in nature, which may not conflict with the general rules of auction and the prevailing laws and regulations. General auction requirements documents, meaning that they are contained in every auction application for each type of auction, such as the Decision Letter on the Appointment of the Seller and the List of Goods. In an auction application, the Seller is generally not an individual, except for voluntary auctions submitted by individuals. The seller who is a Government agency, State-Owned Enterprise (BUMN) appoints a person authorized to represent the seller, called a "Seller Officer", by issuing a Decree on the Appointment of a Selling Officer. Likewise, the "list of goods" is a document of general tender requirements, because every auction application must clearly state the goods requested to be auctioned in the list of goods.[3]

Regulation of the Minister of Finance Article 17 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines regulates:

a. "The seller/owner of the goods is responsible for the validity of the goods, the documents for the tender requirements and the use of the auction services by the Auction Hall;
b. The seller is responsible for claims for compensation for losses arising from the invalidity of the goods, documents for tender requirements and the use of auction services by the auction hall.

If the seller/owner of the goods has fulfilled the completeness of the tender requirements documents,

2 *Usman Rachmadi, 2016, Hukum Lelang, Cetakan Pertama, Sinar Grafika, Jakarta. Page. 121*
3 *Sianturi Tioria Purnama, 2013, Perlindungan Hukum terhadap Pembeli Barang Jaminan Tidak Bergerak Melalui Lelang, Edisi Revisi, Mandar Maju, Bandung.Page. 85*

both general and special, and has fulfilled the formal legality of the subject and object of the auction, the Head of the KPKNL or Class II Auction Officer must determine and notify the seller or owner of the goods about the auction schedule in writing, which containing:[4]

1. Determination of the time and place of the auction;
2. Requests to carry out auction announcements and submit proof of announcements to the Head of KPKNL or Class II Auction Officers;
3. Other things that need to be conveyed to the seller or owner of the goods, for example regarding the limit value, physical control of the movable goods being auctioned and so on.

If all the documents for the tender requirements have been fulfilled, then further determination of the time and place as well as other auction announcements can be made.

With regard to the place and time of the auction, Article 5 paragraph (1) of the Vendu Regulation states that:

"Whoever wants to hold a public sale, must notify the auctioneer, or the places where the book holder is placed, to the book holder, by notifying on the day or days on what day the sale will be held".

Based on this provision, the place of the auction is in the territory of the auctioneer.

By referring to Article 22 of the Regulation of the Minister of Finance Number 27/PMK.07/2016, basically the place for the auction must be within the KPKNL working area or the Class II Auction Officer position where the goods are located. The arrangement of the auction place can be carried out not where the goods are located, contrary to Article 1868 of the Civil Code concerning the requirements for an authentic deed. A minutes of auction must fulfill three elements of an authentic deed, which is required by Article 1868 of the Civil Code, "a deed in the form determined by law is made before the public official in power for that at the place where the deed was made". Thus, specifically for immovable goods, an auction official is only authorized to make a deed of goods that are in the place where the auction official has the authority. If not, the authenticity of the minutes of auction that he made is contrary to Article 1868 of the Civil Code or does not meet the requirements of an authentic deed.[5]

This provision needs to be considered in the auction process so that the immovable goods sold in the auction can be fully controlled by the auction buyer, by him in making the authentic deed of the sale of the immovable goods auction must be carried out at the place where the position of the goods is located. The terms of the auction implementation time are regulated as follows:[6]

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

Furthermore, Article 51 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines regulates the sale by auction preceded by the announcement of the auction conducted by the seller. Auction announcement is a notification to the public about an auction with the intention of gathering auction enthusiasts and notification to interested parties. The purposes of this auction are:[7]

1) So that it can be known by the wider community, so that those who are interested can attend the auction (gathering auction enthusiasts or aspects of publication.
2) Provide opportunities for third parties who feel aggrieved to file a rebuttal or verzet (legality aspect).

4 Rachmadi Usman, Op.cit, page. 122.
5 Purnama Tioria Sianturi, Op.cit, page. 86.
6 Rachmadi Usman, Op.cit. page. 123.
7 F. X. Ngadijarno, dkk, Op.cit, hal. 277.

3) Shock therapy for the community to create a deterrent effect, so it is hoped that debtors who were lazy to fulfill their obligations will arise awareness to pay off their obligations, for fear that their belongings may be auctioned off as part of paying off their debts.

Legal protection for debtors in terms of legal certainty

In the context of carrying out business activities, generally, business actors do not act alone, but they jointly establish a certain form of business. What is meant by form of business is a business organization or business entity which is the vehicle for driving each type of business activity, which is called the legal form of the company.[8]

Some guarantees are born because of the law, and some are born from the agreement of the parties.[9] Guarantees born because of the law are guarantees whose existence is appointed by law, without the agreement of the parties as regulated in Article 1131 of the Civil Code which states that "All objects belonging to the debtor, both existing and new will exist in the future, will be be responsible for all the engagements. From this provision, it means that all debtor's assets become collateral for all creditors. If the debtor is unable to fulfill his creditor's debt obligations, the debtor's property will be sold to the public, and the proceeds from the sale of the object are divided between the creditors, in balance with the amount of their respective receivables (Article 1132 of the Civil Code).

Furthermore, the guarantee that is born from the guarantee agreement made by the parties is intended to guarantee the settlement or implementation of the debtor's obligations to the creditor. This guarantee agreement is an accesoir agreement that is attached to the basic agreement or principal agreement that issues debts and receivables between debtors and creditors.

In addition, in the engagement there are 'schuld' and 'haftung'. Schuld is defined as an obligation to carry out the promised performance.[10] Meanwhile, haftung is defined as an obligation to ensure that the promised achievements can actually be realized in reality.[11]

According to its nature, there are guarantees of a general nature and guarantees of a specific nature. A general guarantee is a guarantee given for the benefit of all creditors and concerns all debtor's assets as regulated in Article 1131 of the Civil Code.[12] Meanwhile, special guarantees are guarantees in the form of appointment or 'delivery' of certain goods specifically as collateral for the settlement of debtors' obligations/debts to certain creditors.[13]

Guarantees of a general nature as regulated in Article 1131 of the Civil Code are often felt to be insecure because the guarantee applies to all creditors, so that if there are many creditors, the debtor's wealth may run out and be insufficient to pay off his debts.[14] For this reason, special guarantee agreements are often made, both material guarantees and personal guarantees.[15]

Material guarantees are the existence of certain objects that are used as collateral. While guarantees that are individual in nature, namely the existence of certain people who are able to pay or fulfill achievements if the debtor breaks his promise or defaults.[16]

In the case of individual guarantees, the claim to fulfill the repayment of the guaranteed debt can

8 *Abdulkadir Muhammad, Hukum Perusahaan Indonesia, PT. Citra Aditya Bakti, Bandung, 2006, hal.2.*
9 *Gunawan Widjaja dan Ahmad Yani, Jaminan Fidusia, PT. Raja Grafindo Persada, Jakarta, 2000, hal.79.*
10 *A. Hamzah dan Senjun Manullang, Lembaga Fiducia dan Penerapannya di Indonesia, Ind.Hill Co, Jakarta, 1987, hal.11.*
11 *Ibid.*
12 *Gunawan Widjaja dan Ahmad Yani, Op.Cit, hal.80.*
13 *Ibid.*
14 *Djuhaendah Hasan, Hak Jaminan Perorangan dan Kepailitan (Security Rights in Personam and Bankruptcy Law), National Law Magazine, National Legal Development Agency, Ministry of Justice and Human Rights of the Republic of Indonesia, No.1, 2000, p.83.*
15 *Ibid.*
16 *Gunawan Widjaja dan Ahmad Yani, Loc.Cit.*

only be made personally by the creditor as the owner of the receivable under guarantee, and cannot be used to harm other parties for any reason.[17] Whereas in material guarantees, the guarantee is placed on a certain object, if the debtor defaults, through applicable legal procedures and channels, it can be used as a "means of payment" to pay off the debtor's debt.[18]

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

In principle, an object that is the object of collateral is in the power of the creditor. This is felt to hinder the economic needs that develop in the community, especially if what must be submitted as collateral are capital goods that need to be used to run the business of the guarantor. As with pand (pawn), ownership of the collateral remains with the debtor, but physical control of the goods is in the hands of the creditor. Because the movable goods that are pledged as collateral are essentially the main business facilities for the debtor in their business activities, then if the provisions for pawning are used, namely the collateral goods must be controlled by the creditor, of course the debtor cannot work or stop his business. Therefore, the way to transfer property rights is based on trust is taken. As a result of the needs of the community, the Fiduciary Guarantee institution was born.

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

The issue of breach of contract in the execution of fiduciary guarantees is not directly resolved through the courts. However, the parties' agreement must be preceded to determine when the alleged breach of contract occurred.

The Constitutional Court's decision related to the interpretation of Article 15 paragraphs (1-3) of Law no. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default) in the execution of fiduciary guarantees continues to be a hot topic in the community. Initially, the article was interpreted if the debtor (consumer) is injured/broken, the fiduciary recipient (leasing company) has the right to sell the object of collateral with his own power (auction) as is the case with an inkracht court decision.

However, after the issuance of the Constitutional Court's decision numbered 18/PUU-XVII/2019 dated January 6, 2020, the Court gave a different interpretation from the previous article. Now, the fiduciary guarantee certificate, which contains instructions "For the sake of Justice Based on the One Godhead", no longer automatically has executive power.

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

The implementation of Article 15 paragraph (2) and paragraph (3) of the Fiduciary Guarantee Law related to the execution of this fiduciary guarantee in practice creates arbitrariness of the creditor when collecting, withdrawing the object of the fiduciary guarantee (movable object) on the pretext of the debtor's breach of contract. Thus, the issue of breach of contract in the execution of fiduciary guar-

17 *Ibid.*
18 *Ibid, hal.81.*

antees is not directly resolved through the courts. However, the parties' agreement must be preceded to determine when the alleged breach of contract occurred. If there is an agreement between the parties, the creditor can immediately execute it.

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

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

In its consideration, the Court is of the opinion that the norms of Article 15 paragraph (2), (3) of the Fiduciary Guarantee Law have no legal certainty, both with regard to the execution procedure or the time when the fiduciary giver (debtor) is declared "breach of promise" (default) and the debtor's loss of opportunity to obtain sale of the object of fiduciary security at a reasonable price.

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

CONCLUSION

Based on the descriptions that have been put forward, the following conclusions can be drawn: First, the Constitutional Court Decision Number 18/PUU-XVII/2019 dated January 6, 2020 regarding the interpretation of Article 15 paragraphs (1-3) of Law No. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default) in the execution of fiduciary guarantees. The Constitutional Court gave a different interpretation from the previous article. Now, the fiduciary guarantee certificate, which contains instructions "For the sake of Justice Based on the One Godhead", no longer automatically has executive power. Second, the Constitutional Court number 18/PUU-XVII/2019 dated January 6, 2020 has provided legal certainty for creditors and debtors considering Article 15 paragraphs (1-3) of Law No. 42 of 1999 concerning Fiduciary Guarantees related to breach of contract (default), the article is interpreted if the debtor (consumer) is injured/broken, the fiduciary recipient (leasing company) has the right to sell the

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