

Legal Analysis of Constitutional Court Decision Number 18/PUU-XVII/2019 Regarding the Execution of Guarantees Fiduciary (Study of Debtor Collateral Execution Financing Institutions)

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Abstract

The background of this research is based on the dominant use of fiduciary guarantees in the financing industry and the widespread practice of parate execution before the Constitutional Court decision which allowed creditors to unilaterally withdraw collateral objects without going through the judicial mechanism. The Constitutional Court decision then changed the interpretation of Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 by requiring an agreement on default and voluntary surrender as a prerequisite for direct execution. This research aims to analyze the effectiveness of the implementation of Constitutional Court Decision Number 18/PUU-XVII/2019 and its implementation in balancing legal certainty for creditors and justice for debtors in the practice of fiduciary guarantee execution by financing institutions. This research uses a normative juridical method with a statutory, jurisprudential, and conceptual approach, and is supported by secondary empirical data. The results of the study indicate that the decision normatively strengthens legal protection for debtors and corrects the practice of unilateral execution. However, its implementation has not been effective due to the unclear criteria for default and the concept of voluntary surrender which are open to multiple interpretations, as well as the continued prevalence of forced withdrawal practices by debt collectors. This study concludes that further regulations and clear technical guidelines are needed to ensure a balance between legal certainty for creditors and protection of debtors' rights.

Keywords: *Fiduciary Guarantee, Constitutional Court Decision, Execution, Default, Debt Collector, Legal Certainty.*

INTRODUCTION

In the era of modern economic development, fiduciary guarantee instruments have become a crucial pillar of Indonesia's financing system, particularly in multipurpose loans and motor vehicle financing, providing legal certainty for creditors in the event of default. Industry survey data shows that nearly 99% of financing companies in Indonesia implement fiduciary guarantees as a credit requirement (APPI, 2022), reflecting the dominance of this instrument in national financing practices.

The banking system, including goods financing, plays a crucial role in driving national economic growth. Multifinance (leasing) debt reached Rp 470.86 trillion in December 2023, according to data from the Financial Services Authority (OJK). This trend is driven by post-COVID-19 economic growth, with banking credit increasing by 10% annually (OJK, 2023). This proves that the minutes of receivables through fiduciary guarantees are very important. Fiduciary guarantees allow debtors to retain control of collateral objects (such as motor vehicles) while providing certainty of debt repayment for creditors. Making the financing system operate well.

To bridge this, the government plays a role through Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF), this is designed to balance the interests of both parties, making it easier for creditors to get back their receivables when. If there is a default (breach of promise) and provides legal protection for the debtor, this underlines the relevance of Fiduciary Guarantee as a credit security instrument.

However, until now the practice of executing fiduciary guarantees has become a complicated dynamic. Before legal reform, the State used Law Number 42 of 1999 UUJF to bridge the interests of creditors with debtors by providing "executory power" to fiduciary

guarantees that have the same force as a court decision, a concept known as parate execution. This provision is often misinterpreted by Creditors to withdraw the collateral object directly without going through the judicial process, after claiming a unilateral default.

To respond to this problem, the Constitutional Court (MK) issued Decision Number 18/PUU-XVII/2019 on January 6, 2020. This decision changed the interpretation (conditional constitutional) of Article 15 paragraph (2) and paragraph (3) of the UUF, which essentially states that the executorial power of the Fiduciary Guarantee Certificate without going through the courts can only be carried out if: 1) There is an agreement regarding the conditions for the occurrence of a breach of promise (default) as stated in the agreement, and 2) The debtor voluntarily surrenders the object of the fiduciary guarantee. If there is no agreement regarding the default, or the debtor objects to voluntarily surrendering the object of the guarantee, then the execution must be carried out through applicable legal procedures such as the execution of a court decision. This phenomenon causes massive social anxiety and conflict, creates legal uncertainty, and violates the constitutional rights of debtors as citizens. On the other hand, this is a new dynamic for creditors because the difficulty of executing fiduciary guarantees because it is stated that surrendering goods voluntarily makes it subjective and not objective.

Following Constitutional Court Decision Number 18/PUU-XVII/2019, practice in the field shows that the problem is not immediately resolved. Despite changes in the interpretation of norms, there are still many reports of the use of debt collector services that carry out unilateral execution of debtors' collateral and violate procedures established by the Constitutional Court. Based on the National Commission on Human Rights' annual report in 2022, the Commission received 3,190 complaints of human rights violations. Corporations (including financial institutions) ranked third after the police and the central government, as the party most frequently complained to by the public (KOMNAS HM RI, 2023). This reflects the still widespread practice of forced fiduciary withdrawal by creditors and debt collectors who ignore legal procedures after Constitutional Court Decision Number 18/PUU-XVII/2019. This withdrawal action is also sometimes carried out without proper legal procedures, often in public places, in intimidating ways, to the point of attacking the dignity and honor of debtors (Aulia, HS, & Danang, AR, 2024).

Another challenge is the legal inconsistency between creditors and debtors, which often triggers protracted disputes. Constitutional Court Decision Number 18/PUU-XVII/2019 emphasizes that the execution of fiduciary guarantees must go through a judicial mechanism if the debtor does not admit to a default and does not voluntarily hand over the collateral object (MK RI, 2020). However, the implementation of this decision still faces obstacles, including the slow judicial bureaucracy (Saffanah, AH, & Ramadhani, DA., 2024), as well as the low practical understanding of the parties regarding changes in the fiduciary guarantee execution mechanism following the Constitutional Court decision.

Several relevant previous studies have examined the impact of the Constitutional Court decision Number 18/PUU-XVII/2019. For example, research by F. Jadidah, .(2022). Which focuses on legal protection for creditors regarding the implementation of fiduciary guarantee execution, emphasizing the creditor's perspective. Another study by, I Gusti Ayu Sherly Mayasari and Ni Komang Fatmawati Octariana.(2020). Namely the Criminal legal position of the forced seizure of a debtor's vehicle by debt collectors and financing institutions, which emphasizes debtor protection. Some of this research has succeeded in describing the ratio decidendi (legal basis for consideration) of the Constitutional Court decision and its impact on changes in formal and material legal norms for the execution of fiduciary guarantees (F. Jadidah, 2022). emphasizing the creditor's perspective. Another study by, I Gusti Ayu Sherly Mayasari and Ni Komang Fatmawati Octariana.(2020). Namely the legal position of the Criminal Law on the Forced Seizure of Debtors' Vehicles by Debt Collectors and Financing Institutions, which emphasizes the protection of debtors. Some of this research has succeeded in describing the ratio

decidendi (legal basis for consideration) of the Constitutional Court's decision and its impact on changes in formal and material legal norms for the execution of fiduciary guarantees.

Although previous studies have provided a strong foundation for normative change following Constitutional Court Decision No. 18/PUU-XVII/2019, limitations remain, creating a research gap. Existing research tends to be macro-juridical in nature, focusing on the ruling's implications for the UUJF (Fiduciary Law) or fiduciary contracts in general. A significant gap lies in the specific and in-depth legal analysis of the legality and legal consequences of the actual use of debt collector services to enforce debtors' collateral following the Constitutional Court ruling. Most studies have not explicitly and comprehensively examined the legal standing, limitations of authority, and criminal/civil sanctions for companies violating the Constitutional Court's interpretation. They have emphasized differing perspectives, which are the root of the conflict in the field.

This research aims to complement and address this gap. Through a normative approach, this research will further analyze how the legal principles contained in the Constitutional Court's Decision should be implemented to limit the scope for abuse of authority by financial institutions and provide legal certainty for them. By focusing on the legal study of debt collector practices within the context of the limitations set by the Constitutional Court, this research makes a new contribution by offering a more detailed analytical framework regarding the implementation of debtor protection laws and legal certainty for legitimate creditors, thereby bridging the discourse between ideal norms and existing practices

RESEARCH METHODS

This research uses a normative legal research method (doctrinal legal research), namely legal research that focuses on the study of applicable legal norms, principles, and rules. Normative juridical research is a method of legal research conducted by researching library materials or mere secondary materials. This study is a normative juridical research on the issues which concerns the synchronization of local regulations with human rights (Achmad Ali, 2009). This approach is used to analyze in depth the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees and the legal implications of Constitutional Court Decision Number 18/PUU-XVII/2019 in the practice of fiduciary guarantee execution. Normative legal research was chosen because the main focus of this research lies in analyzing the legal vacuum, particularly regarding the absence of explicit regulations regarding sanctions for violations of fiduciary guarantee execution procedures. Thus, this research aims to discover, interpret, and evaluate legal norms to provide systematic and comprehensive legal arguments.

This research uses a statutory approach as its primary approach. This approach is carried out by examining various laws and regulations related to the research object, specifically Law Number 42 of 1999 concerning Fiduciary Guarantees, Constitutional Court Decision Number 18/PUU-XVII/2019, and the Civil Code (KUHP_{perdata}), particularly regarding contracts and unlawful acts. Through this approach, the researcher analyzes the consistency, harmony, and gaps in norms within existing legal regulations, particularly in relation to the implementation of fiduciary guarantees by financing institutions

RESULTS AND DISCUSSION

Effectiveness of the Implementation of Constitutional Court Decision Number 18/PUU-XVII/2019 in Fiduciary Guarantee Withdrawal Disputes

Constitutional Court Decision No. 18/PUU-XVII/2019 is essentially a constitutional

response to the previously exploitative and unbalanced practice of fiduciary guarantee execution. Prior to this decision, the provisions regarding the executorial title in the Fiduciary Guarantee Certificate were often interpreted absolutely by creditors as a basis for unilaterally executing the debt without going through the judicial process and without providing any opportunity for the debtor to defend themselves. This situation not only creates an imbalance in the positions of the parties but also potentially violates the principles of the rule of law, particularly the principle of due process of law.

Through this ruling, the Constitutional Court emphasized that the execution of fiduciary guarantees without going through the courts can only be carried out if two cumulative conditions are met: an agreement regarding the occurrence of default and the voluntary surrender of the collateral object by the debtor. If these conditions are not met, then the execution must be carried out through the judicial mechanism, as is the case with the execution of a legally binding court decision. Normatively, this construction demonstrates an effort to re-establish the execution of fiduciary guarantees within a legal framework that upholds procedural justice and the protection of human rights.

From the perspective of legal effectiveness, the implementation of the Constitutional Court Decision in the practice of fiduciary guarantee withdrawal disputes has not been optimal. Referring to the theory of legal effectiveness, which emphasizes three main components: legal substance, legal structure, and legal culture, several fundamental obstacles can be identified that affect the implementation of the decision in practice.

First, from a legal substantive perspective, the Constitutional Court's decision has not yet provided clear and operational normative parameters regarding the criteria for default and the concept of "voluntary surrender." In civil law practice, default is essentially a condition that must be proven through specific legal mechanisms, such as clear negligence and the issuance of a warning (summons). However, in the context of fiduciary guarantees following the Constitutional Court's decision, there is no standard for when a debtor can be legally declared in default without giving rise to a dispute. A similar situation applies to the concept of voluntary surrender, which is conceptually abstract and highly dependent on factual conditions on the ground. This lack of operational definition leaves the resulting norms open to multiple interpretations and opens up room for subjectivity on the part of each party.

Second, from a legal structural perspective, the effectiveness of Constitutional Court decisions is also hampered by the lack of uniformity in law enforcement practices. Law enforcement officials, both the police and the courts, lack clear technical guidelines for handling disputes over the execution of fiduciary guarantees. In practice, there is disparity in case handling, with some officials still tolerating the practice of debt collection by debt collectors as long as it does not lead to open conflict, while others qualify such actions as unlawful or even criminal acts. This inconsistency not only creates legal uncertainty but also undermines the authority of Constitutional Court decisions as norms that should be generally binding.

Third, from the legal culture aspect, there is still resistance from financing industry players to the changes in norms brought about by the Constitutional Court's ruling. Financing institutions generally still maintain old patterns of collecting and recovering collateral, including through the use of debt collectors. This is due to considerations of business efficiency and effectiveness, where non-litigation mechanisms are considered faster and more economical than judicial procedures. This situation indicates that the internalization of legal norms in socio-economic practices has not been optimal.

Furthermore, the effectiveness of this decision is also influenced by procedural efficiency within the judicial system. The obligation to pursue litigation in the absence of a default agreement or voluntary surrender is often considered an obstacle for creditors in recovering their rights. The relatively lengthy judicial process, high costs, and procedural complexity are factors that encourage creditors to continue using non-litigation channels, despite the potential for

violating applicable legal provisions. In this context, there is a tension between the demand for legal certainty and the need for efficiency in business practices. The effectiveness of the Constitutional Court Decision is also hampered by the absence of norms regarding sanctions for violations of execution procedures. When violations occur, positive law does not provide a specific enforcement mechanism within the fiduciary guarantee regime. Consequently, dispute resolution tends to use general legal approaches, such as lawsuits for unlawful acts or the application of articles in criminal law. This situation indicates that the norms produced by the Constitutional Court Decision are not yet supported by comprehensive legal instruments to ensure compliance by the parties.

Taking these various factors into account, it can be concluded that the effectiveness of the implementation of Constitutional Court Decision No. 18/PUU-XVII/2019 in disputes over the withdrawal of fiduciary guarantees remains relatively low. Although normatively, this decision has brought significant changes in debtor protection efforts and limited creditor authority, in practice, various structural, normative, and cultural obstacles remain that hinder its optimal implementation. Therefore, further steps are needed, such as strengthening regulations, developing technical guidelines for law enforcement officials, and increasing legal awareness among financing industry players so that the objectives of the Constitutional Court decision can be effectively achieved.

Implementation of Constitutional Court Decision Number 18/PUU-XVII/2019 in Balancing Legal Certainty for Creditors and Justice for Debtors

Constitutional Court Decision No. 18/PUU-XVII/2019 was essentially a correction to the practice of fiduciary security execution, which has tended to place creditors in a dominant position. Prior to this decision, provisions regarding the executorial power of fiduciary security certificates were often interpreted in an absolute manner, legitimizing parate execution without going through the judicial process. This situation not only creates an imbalance in the relationship between creditors and debtors but also potentially disregards fundamental principles of the rule of law, particularly the protection of property rights and the guarantee of a fair legal process.

The Constitutional Court's ruling represents a paradigm shift in the enforcement of fiduciary guarantees. The Court did not eliminate the creditor's right to enforce the debt, but rather limited and conditioned its implementation to prevent unilateral action. By requiring an agreement regarding default and voluntary surrender by the debtor, the Court essentially sought to strike a balance between the creditor's interest in obtaining repayment of the debt and the debtor's right to protection from arbitrary action.

In assessing the extent to which the implementation of the decision is able to create a balance between legal certainty and justice, the approach of the theory of legal objectives proposed by Gustav Radbruch is relevant to use. This theory places three fundamental legal values, namely justice (*gerechtigkeits*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*), as benchmarks in assessing the quality and effectiveness of a legal norm. Viewed from the aspect of justice, the implementation of the Constitutional Court Decision shows significant improvements. Debtors who were previously in a subordinate position now have more proportional space to defend their rights, especially in terms of rejecting the determination of default made unilaterally by creditors.

The requirement for an agreement regarding default reflects recognition of the principle of equality of the parties in a contractual relationship, thereby reducing the unilateral domination that previously often occurred. In addition, the provisions regarding voluntary surrender confirm that the debtor's control of the collateral object remains under legal protection as long as there has not been a valid legal process. Thus, this decision can be seen as a corrective instrument for structural inequalities in financing practices.

On the other hand, this strengthening of the justice dimension has not been fully balanced

by the creation of legal certainty, particularly for creditors. In its implementation, this decision has actually created a number of ambiguities at the practical level. The absence of clear criteria regarding the limits of default and objective indicators related to "voluntary surrender" makes the norm open to multiple interpretations and difficult to apply uniformly. As a result, creditors lack clear guidelines for determining the appropriate legal action when debtors fail to fulfill their obligations. In fact, in certain situations, this ambiguity has the potential to be exploited by debtors to avoid their responsibilities, thus creating a risk of moral hazard in financing practices. Legal uncertainty is further exacerbated by the lack of explicit provisions regarding the legal consequences of violating execution procedures. The Constitutional Court's ruling only stipulates the limitations and conditions for execution, but does not provide any provisions regarding sanctions for violations. Consequently, when executions that violate procedures occur, law enforcement lacks a specific basis within the fiduciary guarantee regime. Law enforcement officials then tend to use general legal constructs, such as unlawful acts in civil law or general criminal provisions. This situation indicates a normative vacuum that results in inconsistent law enforcement and weak legal certainty for the parties.

This lack of regulation ultimately confirms that the restrictions imposed by the Constitutional Court's ruling have not been accompanied by a comprehensive regulatory system. Legally, Law No. 42 of 1999 concerning Fiduciary Guarantees still legitimizes creditors to execute collateral objects through their executorial title. This means that Indonesian positive law does not essentially prohibit execution by financial institutions. The Constitutional Court's ruling does not eliminate this right, but merely regulates the conditions and mechanisms for its implementation to prevent arbitrary action.

Problems arise when execution is carried out without meeting predetermined requirements, such as the absence of an agreement regarding default or the absence of voluntary surrender by the debtor. Under such circumstances, there is no norm that explicitly qualifies such actions as violations with specific sanctioning consequences within the fiduciary guarantee legal regime. This lack of regulation indicates that the legal system does not yet provide adequate instruments to bridge the gap between normative prohibitions and concrete sanction enforcement.

The implications of handling unauthorized execution practices depend on the interpretation of law enforcement officials. In the civil realm, such actions are often classified as unlawful under Article 1365 of the Civil Code. Meanwhile, in the criminal context, the approach used tends to associate such acts with general crimes such as robbery or extortion. The use of this general legal construction indicates that there is no *lex specialis* regulation specifically governing violations in the execution of fiduciary guarantees.

This situation not only creates legal ambiguity but also increases the potential for conflict between creditors and debtors. Creditors continue to cling to the legitimacy of the executorial title, while debtors base their legal protection on Constitutional Court decisions. Meanwhile, law enforcement officials face difficulties in determining the appropriate legal basis for prosecuting violations, leading to inconsistencies in law enforcement practices.

In terms of utility, the implementation of the Constitutional Court's decision is ambivalent. On the one hand, the decision provides tangible benefits in the form of protection for debtors from intimidating and inhumane forced withdrawal practices. This contributes to the creation of social order and respect for human rights. However, on the other hand, the decision also has consequences for the efficiency of the financing system. The obligation to pursue judicial mechanisms under certain circumstances makes the execution process longer, more complex, and more costly. This has the potential to increase credit risk and impact stricter financing policies by financial institutions.

Thus, it can be said that the implementation of Constitutional Court Decision No. 18/PUU-XVII/2019 has successfully strengthened the aspect of justice, but has not yet fully

guaranteed legal certainty and benefits in a balanced manner. The expected balance between the interests of creditors and debtors has not yet been optimally achieved, primarily due to weaknesses in the formulation of norms and the absence of clear sanctions regulations. This situation indicates the need for further steps in the form of regulatory strengthening, either through a revision of the Fiduciary Guarantee Law or the development of more technical and applicable implementing regulations. These regulations should include an operational definition of default, objective standards for voluntary surrender, as well as classification of violations and applicable sanctions. With clear norms and a structured law enforcement mechanism, it is hoped that the balance between legal certainty, justice, and benefits can be more optimally realized in the practice of fiduciary guarantee execution in Indonesia.

Based on these conclusions, several recommendations can be put forward for future improvement. First, regulatory strengthening is needed through a revision of Law Number 42 of 1999 concerning Fiduciary Guarantees, specifically by adding provisions that explicitly regulate the criteria for default, objective standards for voluntary surrender, and the classification of violations and sanctions that can be imposed on parties who carry out unlawful execution. These regulations are crucial for filling the gap in norms and creating legal certainty.

Second, the government and relevant institutions need to develop implementing regulations or operational technical guidelines for law enforcement officials, financing institutions, and the public. These guidelines are expected to create uniformity in the interpretation and application of the law, thereby reducing the potential for differences in interpretation in the field.

Third, increased oversight of financing institutions' practices, particularly regarding the use of debt collectors in fiduciary guarantee enforcement, is necessary. This oversight mechanism can be implemented by relevant authorities by establishing clear ethical standards and procedures to prevent unlawful practices that harm debtors.

Fourth, efforts are needed to increase awareness and legal literacy among all parties, both creditors and debtors, regarding their respective rights and obligations following the Constitutional Court's decision. This is crucial for building a legal culture that adheres more closely to procedures and reduces the potential for conflict.

Fifth, in the long term, it is necessary to consider the formation of legal norms of a *lex specialis* nature in the field of fiduciary guarantees which specifically regulate violations in the implementation of execution, so that it no longer relies on general legal constructions which have the potential to give rise to uncertainty.

CONCLUSION

Based on the results of the analysis of the Constitutional Court Decision Number 18/PUU-XVII/2019 in the practice of executing fiduciary guarantees, several important things can be concluded.

First, from an effectiveness perspective, the implementation of the Constitutional Court Decision in disputes over the withdrawal of fiduciary guarantees has not been optimal. This is due to unclear norms regarding voluntary surrender, inconsistencies in law enforcement by authorities, and the lack of a legal culture that supports a shift in the execution paradigm. Furthermore, procedural efficiency is also a barrier, as the mandatory judicial mechanisms under certain circumstances are considered to slow down the resolution process for creditors.

Second, from the perspective of balancing legal values for creditors and debtors, the Constitutional Court's decision has successfully strengthened the aspect of justice by providing greater protection to debtors and reducing the practice of arbitrary unilateral execution. However, this strengthening of the aspect of justice has not been accompanied by the creation of adequate

legal certainty, particularly for creditors. The absence of operational parameters and the absence of explicit regulations regarding sanctions for violations of execution procedures indicate a normative vacuum within the fiduciary guarantee legal system.

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