Reconstruction of the Legal Regulations on the Execution of Fiduciary Guarantees in Realized Legal Certainty and Justice After the Constitutional Court Decision

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ABSTRACT

Fiduciary guarantee execution is a crucial instrument in the national financing system because it facilitates creditors' ability to obtain repayment of receivables through a parate execution mechanism. However, the enactment of Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 has changed the paradigm of fiduciary guarantee execution in Indonesia. These decisions stipulated a default agreement and voluntary surrender of the collateral as prerequisites for execution without going through the courts. Consequently, there has been disharmony in norms, legal uncertainty, and a degradation of the executorial title of fiduciary guarantee certificates. This study aims to analyze the problematic regulation of fiduciary security execution following the Constitutional Court decision and to formulate an ideal legal reconstruction to achieve a balance of legal protection between creditors and debtors. The research method used is empirical juridical legal research, namely research by examining legal principles, legal regulations, concepts and theories related to the execution of fiduciary guarantees before and after the Constitutional Court's decision and its implementation in the practice of executing fiduciary guarantees. The results indicate that the current regulation of fiduciary security execution does not provide legal certainty due to unclear norms regarding default, execution mechanisms, and the limits of creditor authority. Therefore, legal reconstruction is needed through harmonization of the Fiduciary Guarantee Law, the establishment of a simplified court-based execution mechanism, strengthening pre-execution mediation, and establishing standards for fair execution.

Keywords: Legal reconstruction, execution, fiduciary guarantee, legal certainty, Constitutional Court.

INTRODUCTION

Financing institutions and guarantee institutions in Indonesia have experienced significant development.[1] Collateral has an important role in ensuring the security of creditors' receivables.[2] Collateral is a very important thing for loans to banks.[3] Collateral is used by banks to anticipate credit risk.[4] Providing loan guarantees is very important to provide convenience for both parties, the lender (creditor) and the borrower (debtor). Creditors typically need debt collateral before a loan is approved.[5] One of the guarantees widely used by financial institutions is fiduciary collateral. The development of these financial institutions demonstrates that fiduciary collateral, as a form of material security, holds a strategic position in supporting national economic activity.

Fiduciary guarantees provide flexibility to debtors because the collateral object can still be used for business purposes even though it has been pledged to the creditor. Article 1 number 1 of Law Number 42 of 1999 states that "The transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object." Furthermore, Article 2 of the Fiduciary Guarantee Law states that ", Fiduciary Guarantee is a guarantee right on movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be burdened with mortgage rights as referred to in Law No. 4 of 1996, which remain in the possession of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives a priority position to the Fiduciary Recipient over other creditors. Thus, in a fiduciary guarantee, the object being pledged remains in the possession of the fiduciary giver, while the ownership rights are transferred to the fiduciary recipient. Transfer of ownership rights by means of fiduciary is usually interpreted as a transfer while retaining control over it (Constitutum Possesorium).[6]

In practice, the main strength of fiduciary guarantees lies in the existence of an executorial title as regulated in Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The mechanism for executing fiduciary guarantee objects has undergone significant changes following the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019. This decision declared Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees to be conditionally unconstitutional. [7]

Fiduciary guarantee certificates previously had execution power equivalent to a final and binding court decision, allowing creditors to execute the collateral if the debtor defaulted. However, the practice of unilaterally repossessing collateral by debt collectors often led to social conflict and violations of debtors' rights. This situation prompted a constitutional review of Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law in the Constitutional Court.

Through Constitutional Court Decision Number 18/PUU-XVII/2019, the Court stated that the execution of a fiduciary guarantee certificate cannot be carried out unilaterally if there is no agreement regarding the default and the debtor objects to voluntarily surrendering the collateral. This decision was later reaffirmed in Constitutional Court Decision Number 2/PUU-XIX/2021.

This Constitutional Court decision has serious implications for the fiduciary guarantee legal system. On the one hand, the decision was intended to protect debtors from repressive actions by creditors. However, on the other hand, the decision created legal uncertainty for creditors by reducing the effectiveness of the parate execution, which has long been a key feature of fiduciary guarantees. Several studies have shown that the post-Constitutional Court ruling execution mechanism has become longer, more complicated, and has the potential to increase non-performing loans.

This situation demonstrates the urgent need to reconstruct the legal regulations governing the execution of fiduciary guarantees in Indonesia. Reconstruction is necessary to achieve a balance between legal protection for debtors and the certainty and effectiveness of creditors' execution rights.

Based on this background, the research questions are formulated as follows:

1. What are the challenges in regulating the execution of fiduciary guarantees following the Constitutional Court Decision?

2. What is the ideal legal reconstruction of the execution of fiduciary guarantees to achieve legal certainty and justice?

RESEARCH METHOD

This study uses an empirical legal research method. Library research was conducted using both a statutory and conceptual approach. The primary legal materials consist of Law Number 42 of 1999 concerning Fiduciary Guarantees, the Civil Code, Constitutional Court Decision Number 18/PUU-XVII/2019, and Constitutional Court Decision Number 2/PUU-XIX/2021. Secondary legal materials were obtained from legal journals, books, and research findings relevant to the execution of fiduciary guarantees. The legal materials were collected through a literature review and analyzed qualitatively using descriptive-analytical methods.

Furthermore, field research was conducted by interviewing creditors at several finance companies in Semarang City, Central Java, Indonesia.

DISCUSSION

A. Problems in Executing Fiduciary Guarantees Following the Constitutional Court's Decision

1. Degradation of Executorial Title Powers

The ability of lenders to enforce their contracts with borrowers is fundamental to the credit market. Borrowers who cannot commit to repaying their loans will find it difficult, if not impossible, to obtain loans.[8] Therefore, collateral is a determining factor in ensuring that creditors obtain their rights to repayment of their receivables. Collateral is a strategy for securing debt financing.[9] One way is through material collateral.

One such material collateral is fiduciary collateral. Fiduciary guarantee institutions play an important role in Indonesia's financing system because they allow debtors to retain control of collateral while providing legal protection for creditors.[10] This was also stated by A.B. Kusuma [11] The practice of fiduciary guarantees provides a privileged position to the creditor, while the debtor retains control and use of the collateral. With a fiduciary guarantee, if the debtor defaults, the creditor can execute the collateral. Fiduciary guarantees can be executed in three ways, as stipulated in Article 29 of the Fiduciary Guarantee Law. Fiduciary guarantees can be sold in the following ways:

1. Based on the executorial title on the Fiduciary Guarantee Certificate

2. Based on the fiduciary recipient's authority to sell the collateral

3. Private sale.

One of the most significant implications of the Constitutional Court Decision Number 18/PUU-XVII/2019 on the fiduciary guarantee legal system in Indonesia is the degradation of the executorial title of fiduciary guarantee certificates. Prior to this decision, fiduciary guarantee certificates had very strong executorial power because they contained the irah-irah "For the Sake of Justice Based on the One Almighty God" as stated in Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. This provision gives fiduciary guarantee certificates a status equivalent to a court decision that has obtained permanent legal force (inkracht van gewijsde). Thus, creditors as fiduciary recipients can carry out direct execution of the collateral object if the debtor is in default without having to first file a lawsuit with the court.

This legal framework was initially established to provide legal certainty and protection to creditors in financing relationships. In modern financing practices, particularly motor vehicle and other consumer financing, speed and certainty of execution are key elements supporting the sustainability of the national credit system. Creditors require effective legal instruments to quickly recover receivables when debtors fail to fulfill their obligations. Therefore, the executorial title in a fiduciary guarantee certificate is a key characteristic of fiduciary security as a material security with preferential and droit de suite properties.

In practice, the implementation of parate execution of fiduciary security often gives rise to various social and legal issues. Many financing companies use debt collectors to forcibly seize collateral. This action is often carried out through intimidation, threats, and even violence against debtors. This practice has drawn criticism as it is considered contrary to the principles of human rights protection and due process of law.

This issue then became the basis for the constitutionality review of Article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law at the Constitutional Court. In Constitutional Court Decision Number 18/PUU-XVII/2019, the Constitutional Court did not, in principle, abolish the executorial power of fiduciary guarantee certificates, but rather provided a new constitutional interpretation regarding their execution. The Constitutional Court stated that the creditor's own execution may only occur if there is an agreement regarding the default and the debtor voluntarily surrenders the collateral. If the debtor refuses to surrender the collateral or does not acknowledge the default, the execution must proceed through the courts.

This decision substantively changed the fundamental nature of fiduciary guarantees. Prior to the Constitutional Court's decision, the executorial title granted the creditor direct authority to execute without court intervention.

However, after the decision, the exercise of the executorial title became limited because it depended on the debtor's consent. In other words, the executorial power, which was previously "automatic," changed to "conditional."

This change has resulted in a degradation of creditors' execution rights. In collateral legal theory, execution power is a fundamental element that distinguishes material collateral from personal collateral. If execution must still be carried out through the courts, the creditor's preferential rights become less effective because the dispute resolution process becomes lengthier and more complex. Creditors no longer have the certainty of receiving immediate repayment of their receivables from the proceeds of the sale of the collateral.

This degradation is also evident in the loss of effectiveness of the parate executie concept in fiduciary collateral. Historically, the concept of parate executie was created to facilitate and expedite execution for creditors without complicated litigation procedures. In the legal system of material collateral, such as mortgages and liens, the principle of parate executie is a crucial instrument for ensuring certainty in economic activities. When the Constitutional Court required the debtor's consent for the execution of fiduciary collateral, the essence of parate executie was significantly diminished.

Furthermore, the degradation of the power of the executorial title also created legal uncertainty in financing practices. Many debtors use Constitutional Court decisions as a basis for refusing to hand over collateral despite clear breaches of contract. Consequently, creditors must file lawsuits or requests for execution in court, which are time-consuming, expensive, and require complex administrative procedures. This situation increases the risk of non-performing loans and can impact the stability of the national financing sector.

On the other hand, the lack of clear technical regulations following the Constitutional Court's ruling exacerbates this legal uncertainty. The Fiduciary Guarantee Law has not been revised to align with the Constitutional Court's ruling, resulting in a legal vacuum regarding execution procedures. In judicial practice, there are also differing interpretations. Some courts consider that fiduciary execution must begin with a lawsuit for breach of contract, while others permit a direct execution request. This inconsistency indicates that the legal system for fiduciary execution is experiencing normative disorientation.

Furthermore, the degradation of the executorial title has also impacted the decline in confidence of financing institutions in the effectiveness of fiduciary guarantees. In the business world, certainty of execution is a crucial factor in determining the level of financing risk. When the execution process becomes difficult and takes a long time, financing institutions tend to tighten credit requirements. As a result, public access to financing becomes more limited.

From the perspective of legal certainty theory, this situation indicates an imbalance between debtor protection and creditor protection. The Constitutional Court's ruling is intended to protect debtors from becoming victims of arbitrary debt collectors. However, this protection actually creates new vulnerabilities for creditors because their executorial rights lose their effectiveness.

Philosophically, collateral law should be based on the principle of balance. Protection for debtors must not diminish the essence of material collateral as a means of certainty for creditors. Therefore, a legal reconstruction is needed that can restore the power of executorial rights without neglecting the principle of human rights protection.

This reconstruction can be achieved through a revision of the Fiduciary Guarantee Law by clarifying the definition of default, the enforcement mechanism, and debtor protection procedures. Furthermore, a simplified enforcement mechanism through fast and low-cost courts is needed so that creditors can still obtain legal certainty without having to face lengthy litigation procedures.

Thus, the degradation of the executorial title following the Constitutional Court Decision indicates a fundamental change in the fiduciary guarantee legal system in Indonesia. This change has consequences for the effectiveness of legal protection for creditors and the stability of the national financing system. Therefore, regulatory reform is urgently needed to create a fair and balanced fiduciary guarantee execution system that provides legal certainty for all parties.

2. Unclear Concept of Default

Debtors who fail to make credit or debt payments are often referred to as defaulters. This is an act of breach of contract or violation of the credit agreement agreed upon between the creditor and debtor, whether intentional or unintentional, where the act is not permitted by the agreement.[12] If the agreement is guaranteed by a fiduciary guarantee, then if the debtor fails to pay, the creditor can sell the object of the fiduciary guarantee.

One of the fundamental problems in the implementation of fiduciary guarantees following Constitutional Court Decision Number 18/PUU-XVII/2019 is the unclear concept of default. This Constitutional Court decision brought significant changes to the fiduciary guarantee enforcement mechanism, particularly regarding the determination of default by the debtor. Prior to the Constitutional Court decision, creditors generally had relatively broad authority to determine whether a debtor had defaulted based on the provisions contained in the financing agreement. However, following the Constitutional Court decision, the determination of default can no longer be made unilaterally by the creditor and must be based on an agreement between the parties or through legal mechanisms.

The Constitutional Court, in its decision, emphasized that the phrase "default" in Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees cannot be interpreted unilaterally by the creditor. The determination of default must be based on an agreement between the debtor and the creditor or a court decision. This interpretation is intended to protect debtors from becoming the object of arbitrary action in the implementation of fiduciary guarantees.

Although the aim of this legal protection is progressive, in practice, new problems have arisen in the form of unclear parameters for breach of contract. The Fiduciary Guarantee Law does not provide a detailed definition of the types of breach that can be used as a basis for enforcement. As a result, following the Constitutional Court's ruling, there has been a lack of clarity regarding when a debtor can be considered to have actually breached a promise.

In civil law, default is essentially a situation where one party fails to fulfill an obligation as agreed. This default can take the form of failure to perform at all, late performance, improper performance, or engaging in activities prohibited by the agreement. However, in fiduciary financing practices, the parameters of default are often administrative and determined unilaterally by the creditor through standard clauses in the financing contract.

Prior to the Constitutional Court ruling, a one- or two-month delay in installment payments was often immediately considered a form of default, granting the creditor the right to repossess the collateral. However, following the Constitutional Court ruling, this approach can no longer be applied absolutely due to the requirement for an agreement regarding the conditions of default.

Problems arise when the debtor refuses to acknowledge their default. In many cases, debtors argue that the late payment was due to specific circumstances, such as an economic downturn, force majeure, or administrative errors on the part of the financing company. However, creditors still consider late payments to be a breach of contract, granting the right to enforce the contract. These differences in interpretation ultimately give rise to disputes that hinder the process of resolving problematic loans.

The unclear concept of default also creates problems in law enforcement practices. Police officers often find themselves in a dilemma when receiving reports regarding the withdrawal of fiduciary assets. Some officers consider these cases to be civil disputes that must be resolved through the courts, while others continue to provide assistance during the withdrawal process. This disparity in understanding indicates the lack of clear legal standards regarding indicators of default in fiduciary guarantees.

Furthermore, courts have not yet reached a unified view regarding the requirements for proving default following the Constitutional Court's ruling. In some cases, judges require a default lawsuit before execution can be carried out. However, in other cases, judges permit execution as long as there is evidence of late payment and a warning to the debtor. These differing interpretations create legal uncertainty for both creditors and debtors.

The unclear concept of default also indirectly impacts the effectiveness of fiduciary guarantee institutions. In the financing system, certainty regarding the conditions of default is a crucial aspect for ensuring the security of credit transactions. If the default parameters are unclear, the execution process will be slow and potentially increase the number of problem loans or non-performing financing.

On the other hand, debtors are also in an uncertain position due to the lack of clear limits on the types of violations that can lead to the execution of the collateral. This situation can lead to misinterpretation by both creditors and debtors. Creditors can overuse contractual clauses to declare default, while debtors can exploit the legal ambiguity to avoid payment obligations.

Theoretically, the unclear concept of default indicates a vague norm in the legal regulation of fiduciary guarantees. This vague norm contradicts the principle of legal certainty, which should be the primary foundation of property security law. In a state governed by the rule of law, a norm must be clearly formulated to provide behavioral guidelines and ensure consistent legal application.

Therefore, regulatory reform is needed to determine default in fiduciary guarantees. The Fiduciary Guarantee Law needs to be revised to provide a more concrete definition of the forms of default, the tolerance limit for late payments, the mechanism for issuing a summons, and the procedure for resolving disputes before execution. In addition, it is necessary to establish technical guidelines that regulate the standards for proving default so that there are no differences in interpretation among law enforcement officials and the courts.

With clearer regulations, the implementation of fiduciary guarantees can be more fair and effective, and provide legal certainty for all parties. Debtor protection can still be achieved without eliminating the creditor's right to prompt and certain repayment of receivables.

3. Disharmony between Legal Protection for Debtors and Legal Certainty for Creditors

Constitutional Court Decision No. 18/PUU-XVII/2019 has brought about fundamental changes in the fiduciary guarantee enforcement system in Indonesia. One of the most significant implications of this decision is the emergence of disharmony between legal protection for debtors and legal certainty for creditors. On the one hand, the Constitutional Court seeks to strengthen the protection of debtors' rights to prevent them from becoming victims of arbitrary actions in the process of repossessing fiduciary guarantees. However, on the other hand, this protection has created legal uncertainty regarding the implementation of creditors' execution rights, which were previously expressly guaranteed by Law No. 42 of 1999 concerning Fiduciary Guarantees.

Normatively, fiduciary guarantees are established as a legal instrument that provides certainty and protection to creditors in financing relationships. The primary characteristics of fiduciary guarantees lie in the existence of preferential rights and execution powers, which enable creditors to obtain prompt repayment of their receivables in the event of default. This system is crucial in supporting modern economic activity because it provides a sense of security to financing institutions in disbursing credit to the public.

Prior to the Constitutional Court's ruling, creditors could execute parate against fiduciary collateral without a court decision. A fiduciary collateral certificate, bearing an executorial title, was considered sufficient legal basis for the withdrawal of collateral when the debtor defaulted. This mechanism was considered to reflect the principles of efficiency and legal certainty in the financing industry.

In practice, parate execution was often carried out repressively by financing companies through the use of debt collectors. Many debtors experienced intimidation, threats, and even violence when collateral was forcibly seized on the street or in public places. This situation gave rise to criticism that the fiduciary enforcement mechanism favored the interests of creditors and provided insufficient protection for their rights as consumers.

Based on this, the Constitutional Court then provided a new interpretation of Article 15 of the Fiduciary Collateral Law. The Court emphasized that direct execution can only be carried out if the debtor acknowledges the breach of contract and voluntarily surrenders the collateral. If the debtor refuses or objects, the creditor must file a petition through the courts.

This Constitutional Court decision was issued to provide legal protection for debtors from the arbitrariness of creditors because debtors have been placed in a lower position than creditors from the start when entering into financing agreements/credit agreements.[13]

The execution process, which involves first filing a fiat with the court, provides legal protection for the debtor and provides an opportunity for the debtor to defend themselves if they subsequently object to being declared in default. This opportunity to defend provides the debtor with legal protection in the implementation of the fiduciary guarantee agreement.

This ruling substantially strengthens the debtor's position in the fiduciary legal relationship. Debtors gain greater protection against unilateral execution. From a human rights perspective, this policy is seen as a form of protection for property rights and the right to a sense of security. The state, through the Constitutional Court, strives to ensure that execution remains within the bounds of due process of law.

This protection afforded to debtors has instead created new disharmony by weakening legal certainty for creditors. Creditors who previously had the ability to execute collateral quickly now face a lengthier and more complex legal process. When the debtor refuses to acknowledge default or refuses to surrender the collateral, the creditor is no longer able to effectively exercise the power of executorial title.

This situation has resulted in the degradation of the creditor's preferential rights. In collateral law, certainty of execution is the core of legal protection for creditors. When the exercise of executorial rights is dependent on the debtor's approval or litigation, the primary function of fiduciary collateral as a credit security is diminished. Consequently, financing institutions face an increased risk of non-performing loans and uncertainty in the recovery of receivables.

This disharmony is also evident in the imbalance in legal protection between the parties. Constitutional Court decisions tend to place greater emphasis on debtor protection, while the interests of creditors as collateral holders receive less proportional attention. In practice, many debtors exploit Constitutional Court decisions to avoid payment obligations by refusing to hand over collateral despite clear default.

As a result, creditors must file lawsuits or requests for execution in court, which require additional costs, time, and administrative procedures. This situation not only harms creditors economically but also impacts the stability of the national financing system. Financing institutions are becoming more cautious in disbursing credit, further limiting public access to financing.

Furthermore, this disharmony is exacerbated by the lack of clear technical regulations following the Constitutional Court's ruling. The Fiduciary Guarantee Law has not been revised to accommodate the shift in execution paradigm established by the Constitutional Court. As a result, law enforcement officials and courts have differing interpretations of the fiduciary execution mechanism. Some believe all fiduciary disputes must be resolved through a breach of contract lawsuit, while others still permit direct execution requests.

This disparity in interpretation further exacerbates legal uncertainty and demonstrates a normative disharmony within the Indonesian fiduciary legal system. This situation contradicts the principles of legal certainty and balance that should underlie the legal relationship between debtors and creditors.

From a justice theory perspective, protection for debtors is crucial to prevent abuse of power by creditors. However, such protection must not eliminate the creditor's fundamental right to certainty of repayment. Therefore, legal reform is needed to strike a balance between debtor protection and creditor certainty.

This reform can be achieved through a revision of the Fiduciary Guarantee Law, clarifying the enforcement mechanism, the limits of default, and procedures for protecting the parties' rights. Furthermore, a simple enforcement mechanism through the courts should be established that is expeditious and inexpensive so that creditors can maintain legal certainty without compromising debtor rights.

Thus, the disharmony between debtor protection and creditor certainty demonstrates that the fiduciary guarantee enforcement system in Indonesia still requires regulatory and institutional improvements. A balance of legal protection is a key requirement for fiduciary guarantees to remain effective as a financing instrument while ensuring respect for the parties' human rights.

4. Absence of an Effective Execution Mechanism

One of the main problems in the implementation of fiduciary guarantees following Constitutional Court Decision No. 18/PUU-XVII/2019 is the lack of an effective execution mechanism that provides legal certainty. The Constitutional Court's decision, which limited the implementation of parate execution without the debtor's consent, was essentially intended to protect debtors' rights from arbitrary actions by creditors. However, this decision was not followed by the establishment of a new, clear and operational legal mechanism regarding the procedures for implementing fiduciary guarantee execution. As a result, a normative vacuum and uncertainty arose in law enforcement practices.

Prior to the Constitutional Court Decision, the fiduciary guarantee execution mechanism was relatively simple, as creditors could directly withdraw the collateral based on the executorial title attached to the fiduciary certificate. Creditors simply needed to prove the debtor's default to then execute the execution. This system was considered efficient because it facilitated the speedy resolution of problem loans and provided certainty in the financing sector.

Following the Constitutional Court Decision, the execution process became more complex. The Constitutional Court emphasized that if the debtor does not acknowledge the default and refuses to voluntarily surrender the collateral, execution must be carried out through the courts. The problem is that the Constitutional Court did not provide further clarification regarding the legal procedures creditors must follow. Whether creditors must first file a default lawsuit, request immediate execution, or use other civil mechanisms is not clearly regulated.

The absence of these regulations has led to differing interpretations among law enforcement officials and judicial institutions. Some courts require creditors to file a regular civil lawsuit to prove default before they can execute the collateral. This process is certainly time-consuming, requiring a trial, evidence gathering, and a final and binding decision. Meanwhile, other courts permit direct execution requests based on fiduciary certificates without prior litigation.

These differences in practice demonstrate that the legal system for executing fiduciary collateral lacks uniform procedural standards. As a result, legal certainty for the parties is compromised. Creditors lack certainty regarding the legal process to be taken, while debtors also face uncertainty regarding the protection of their rights.

The ineffectiveness of the enforcement mechanism also increases the risk of non-performing loans in the financing sector. When the enforcement process is lengthy and expensive, financing institutions experience difficulty in recovering receivables. In practice, many fiduciary collateral assets are transferred, hidden, or experience a decline in economic value during the legal process. This situation causes financial losses for creditors and reduces the effectiveness of fiduciary collateral as a credit security instrument.

Furthermore, the lack of a clear mechanism has also fueled increased social conflict in the field. Some finance companies continue to use debt collectors to recover collateral, despite the weakened legal basis following the Constitutional Court's ruling. This often triggers disputes between debtors and debt collectors due to the lack of a fast and accessible official enforcement procedure.

From a legal certainty perspective, a collateral system should be supported by a simple, expeditious, and effective enforcement mechanism. When the law fails to provide a clear procedure, the primary function of fiduciary collateral as a means of creditor protection is diminished. Therefore, regulatory reconstruction is needed through a revision of the Fiduciary Guarantee Law, establishing a special enforcement mechanism that still guarantees debtor protection but does not eliminate the effectiveness of creditors' execution rights. This mechanism could take the form of a simple enforcement procedure through the courts with limited administrative examination of evidence of default and fiduciary certificates. This way, enforcement can proceed more quickly and efficiently, while remaining under fair legal oversight for both parties.

Based on interviews with several finance companies in Semarang, Central Java, Indonesia, it is clear that the Constitutional Court ruling, as outlined above, presents various obstacles that hinder finance companies from directly executing fiduciary collateral. This is due to several factors, including differing understandings among finance companies regarding the definition of default, the lack of clear technical regulations regarding enforcement procedures, standards for the use of debt collectors, and the mechanism for debtor objections. Consequently, some finance companies feel that their right to directly execute fiduciary collateral is less legally protected. This creates obstacles for creditors in addressing problem loans.

B. Reconstruction of Fiduciary Guarantee Execution Law

1. Harmonization of Fiduciary Guarantee Execution Regulations

The first necessary reform is to harmonize the Fiduciary Guarantee Law with the Constitutional Court Decision. The government and the House of Representatives (DPR) need to revise Law Number 42 of 1999 to provide clearer regulations regarding:

1. the definition of default;

2. enforcement procedures;

3. debtor objection mechanisms;

4. protection of creditor rights;

5. standards for the use of debt collectors.

This harmonization is crucial to eliminate conflicting norms and create legal certainty.

2. Establishment of a Simple Execution Mechanism through the Courts

Fiduciary guarantee enforcement needs to be directed towards a simple, fast, and low-cost judicial execution mechanism. The court only needs to conduct administrative verification of:

1. the existence of a fiduciary guarantee certificate;

2. evidence of default;

3. a summons to the debtor.

This model can provide a compromise between debtor protection and the effectiveness of creditors' execution rights.

3. Strengthening Pre-Execution Mediation

Before execution, the parties are required to undergo pre-execution mediation. The objectives of mediation are:

1. to provide an opportunity for credit restructuring;

2. to reduce social conflict;

3. to create an amicable settlement.

If mediation fails, the creditor may file a petition for execution with the court.

4. Standardization of Execution Implementation

The government needs to establish technical regulations regarding the procedures for executing fiduciary guarantees, including:

1. a prohibition on violence in the seizure of assets;
2. mandatory identification of execution officers;
3. involvement of police officers;
4. protection of consumer rights.

This standardization is crucial to prevent thuggery under the guise of debt collection.

5. Digitalization of the Fiduciary Guarantee System

Legal reconstruction must also be directed at strengthening the electronic fiduciary system through:

1. integration of national fiduciary data;
2. tracking the status of collateral objects;
3. automatic default warning systems;
4. electronic execution submissions.

Digitalization will increase the transparency and efficiency of the fiduciary guarantee system in Indonesia.

C. The Ideal Concept of Justice-Based Fiduciary Guarantee Execution

Fiduciary guarantee enforcement is a crucial component of the Indonesian security legal system because it directly relates to the protection of creditors' rights and the certainty of financing agreements. In practice, fiduciary security has become a key instrument in financing motor vehicles, trade, industry, and even micro and small businesses. The purpose of fiduciary security is to provide creditors with a sense of security regarding their receivables while still allowing debtors to use the collateral to support their economic activities.

The development of fiduciary security enforcement practices demonstrates a serious issue regarding the balance of legal protection between creditors and debtors. Prior to Constitutional Court Decision No. 18/PUU-XVII/2019, fiduciary security enforcement tended to favor creditors' interests because creditors could directly execute parate based on the executorial title attached to the fiduciary certificate. However, in practice, repressive seizures of collateral by debt collectors often occurred, violating debtors' rights.

In contrast, following the Constitutional Court's ruling, protection for debtors has become more dominant because enforcement must be based on an agreement regarding default and the voluntary surrender of the collateral. This ruling does provide protection for debtors from arbitrary actions, but at the same time creates legal uncertainty for creditors because the exercise of executorial rights becomes more difficult and complex.

This situation indicates that the legal system for fiduciary security enforcement in Indonesia does not fully reflect the principle of balanced justice. Therefore, an ideal concept for justice-based fiduciary security enforcement is needed, namely a system capable of providing proportional protection to debtors without diminishing legal certainty and the effectiveness of creditor rights.

This ideal concept must be built on the principle of balance. In financing relationships, debtors and creditors are legal subjects with equal rights and interests that must be protected. Creditors have the right to obtain prompt and certain repayment of their debts, while debtors have the right to be treated humanely and to receive protection from unlawful enforcement actions.

This principle of balance aligns with the goal of a state based on the rule of law, which positions the law as an instrument for the fair protection of all citizens. In the context of fiduciary guarantees, the state must not solely side with the creditor's economic interests or solely protect the debtor without regard for the certainty of business transactions. The law must be able to create a balance between economic efficiency and the protection of human rights.

The ideal concept of justice-based fiduciary guarantee execution must first be realized through clear legal norms. Currently, the regulation of fiduciary guarantee execution is still open to multiple interpretations, particularly regarding the concept of default and the procedures for implementing execution following a Constitutional Court Decision. Therefore, a revision to Law Number 42 of 1999 concerning Fiduciary Guarantees is urgently needed.

This revision must include more detailed provisions regarding indicators of default, the summons mechanism, the debtor's right to object, and the procedures for implementing execution. With clear norms, the parties will gain legal certainty and reduce the potential for conflict in the implementation of execution.

Furthermore, the ideal concept of fiduciary execution must also prioritize the principle of due process of law. Execution must not be carried out arbitrarily without clear legal procedures. However, the principle of due process of law does not mean that the entire execution process must be conducted through a lengthy and complicated civil lawsuit. Overly formal procedures will actually diminish the effectiveness of fiduciary collateral as a credit security instrument.

Therefore, a hybrid execution system is needed, combining the power of executorial title with limited judicial oversight. In this system, creditors retain the right to file for execution based on the fiduciary certificate, but its implementation is carried out through simple verification by the court.

In this case, the court only examines administrative aspects, such as:

1. the existence of the fiduciary collateral certificate;
2. evidence of the debtor's default;
3. a warning letter or summons;
4. the identity of the collateral object.

If these requirements are met, the court can issue an execution order quickly without going through the regular lawsuit process. This model will strike a balance between debtor protection and the effectiveness of creditor rights.

The next ideal concept is strengthening pre-execution mediation. Before execution, the parties should be required to undergo a mediation process. Mediation aims to provide an opportunity for financing restructuring, payment rescheduling, or other amicable resolution.

This approach is important because not all late payments are due to bad faith on the part of the debtor. In certain circumstances, debtors experience economic hardship due to force majeure or other external factors. Therefore, a mediation mechanism can be a means of creating a more equitable solution without immediately resorting to execution.

Furthermore, the concept of fairness in the execution of fiduciary guarantees must also be realized through standardization of execution implementation. The state needs to establish technical regulations governing the procedures for humane and professional withdrawal of collateral. The use of violence, intimidation, and threats in the withdrawal process must be expressly prohibited.

Execution officers must possess official identification and certification and work under clear legal supervision. The involvement of police officers may only be to maintain order and not as a means of pressure on debtors. This standardization is crucial to eradicate the practice of thuggery under the guise of debt collection, which has damaged the image of the national financing system.

The ideal concept for fiduciary guarantee execution must also take into account technological developments through the digitalization of the fiduciary system. Electronic systems can be used to increase transparency and efficiency in fiduciary guarantee management, including:

1. digital registration of fiduciary guarantees;

2. monitoring the status of collateral objects;

3. Electronic notification of default;

4. Online submission of execution requests.

Digitalization will facilitate coordination between creditors, debtors, courts, and law enforcement officials, making the execution process faster and more accountable.

The concept of justice in the execution of fiduciary guarantees must reflect substantive justice, not merely procedural justice. Substantive justice means the law must consider the actual circumstances of the parties and the social impact of the execution. In certain contexts, execution of an object that is the debtor's primary source of livelihood must consider humanitarian aspects and the economic sustainability of the debtor's family.

These humanitarian considerations should not be used as a justification for eliminating creditors' rights entirely. Balance is a key principle to prevent the dominance of the interests of one party.

Therefore, the ideal concept of justice-based fiduciary guarantee execution must be built through a harmony of legal certainty, human rights protection, and the effectiveness of the national financing system. This system must be able to create a fast, simple, and equitable execution mechanism without compromising the rights of either debtor or creditor.

Reconstruction of fiduciary guarantee law is an urgent need to ensure that fiduciary institutions remain relevant in supporting national economic development while reflecting the values of justice in Indonesia's rule of law.

PENUTUP

Conclusion

1. Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 have changed the paradigm of fiduciary security enforcement in Indonesia. These decisions have created various problems, including the degradation of the executorial title, the unclear concept of default, disharmony in legal protection between debtors and creditors, and the absence of an effective enforcement mechanism.

2. Legal reconstruction of fiduciary security enforcement is necessary through harmonization of the Fiduciary Security Law, the establishment of a simplified enforcement mechanism through the courts, strengthening pre-execution mediation, standardizing enforcement implementation, and digitizing the fiduciary system. This reconstruction aims to create legal certainty, protect the rights of the parties, and improve the effectiveness of the national financing system.

Recommendation

The government and the House of Representatives (DPR) need to immediately revise Law No. 42 of 1999 concerning Fiduciary Guarantees to align with the Constitutional Court's ruling and the needs of modern financing practices. Furthermore, the Supreme Court needs to issue technical guidelines on the procedures for executing fiduciary guarantees to ensure uniform application of the law in the courts.

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