



JURIDICIAL ANALYSIS ON THE IMPLEMENTATION OF FIDUCIARY COLLATERAL EXECUTION IN THE POST- THE CONSTITUTIONAL COURT'S RULING NO. 18/PUU-XVII/2019

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Abstract

Fiduciary collateral as a type of collateral gives the rights of executorial to creditors to do parate execution on the object of fiduciary collateral when a debtor defaults. In practice, however, collateral misuses this right by seizing the collateral coercively and illegally. This becomes the basics for Judicial Review against Article 15, paragraphs 2 and 3 of Law No. 42/1999 on Fiduciary Collateral on January 6, 2020, and the Constitutional Court issued the Ruling No. 18/PUU-XVII/2019 which causes dispute in people. The research problems are whether the Constitutional Court's Ruling is contrary to the collateral which gives easiness for the execution, how about the implementation of parate execution in the post – the Constitutional Court's Ruling, and how about the legal consequence of debtor and creditor. The research use descriptive juridical normative method. The data were gathered by conducting library research. The gathered data were analyzed qualitatively. The result of the analysis shows that Ruling does not impede the right of executing by creditors so that it is in accordance with the executorial right in fiduciary collateral, and creditors can still play their role in doing parate execution when debtors default, on condition that debtors voluntarily hand in the fiduciary collateral. It may be difficult to do this in the foreclosure sale; therefore, it has to be certain in writing the clauses in the fiduciary contract. In this case, a Notary is required to add a clause about default in the contract and should refer to the Constitutional Court's Ruling No. 18/PUU-XVII/2019 as the legal ground in writing fiduciary collateral contract.

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I. INTRODUCTION

As a special guarantee, the fiduciary has the ease of right of execution, namely the existence of rights provided by the Laws for the creditors to sell the object fiduciary for parate execution. Indeed this will affect process execution of fiduciary will be very easy and cut time and cost, but in practice it is often found the existence of problems, among others, such as the debtor is still a question when expressed default/injury appointments and do not want to hand over the object of the guarantee, the presence of withdrawal of collateral object is forced by the creditors and even the object of the guarantee is not uncommon to have switch control to a third party. (Sutio Jumagi Akhirno: 2020).

On January 6, 2020, the Constitutional Court issued Decision No. 18/PUU-XVII/2019. Through this ruling, the Constitutional Court gave an interpretation of the phrase “the power of

excecution” and phrase “together with the court ruling force of the law”, as well as the phrase “breach of contract” in Article 15 Paragraph (2) and Paragraph (3) of the Law of Fiduciary. Judicial review of Article 15 Paragraph (2) and Paragraph (3) 1 of Law No. 42/1999 is asked two people the applicant that Apriliani Dewi and Suri Agung Prabowo (husband of Apriliani Dewi). In this case, the applicant becomes a victim of an act of arbitrary debt collector who was given the task by the Recipient of the Fiduciary to take the goods controlled without going through the correct legal procedures.

Some people argue that the court judgement could potentially hinder the execution of the object of fiduciary. However, after the court judgement, then there will be a judicial process, either the suit or application will spend energy, time, and money as well as the potential for the buildup of the case that now is still a problem of the judiciary. In addition, the presence of such a ruling also considered to put the debtor in a position that is more profitable compared to the creditor and also increase the business risk and the ratio of bad loans that are taken into account by a bank or a financing institution. The court judgement is assessed will change the way the parties to formulate the agreement on the provision of credit, such as the creation of an additional clause that the debtor will not object to the statement of breach or withdrawal of the object fiduciary to be executed. In this case, the Notary must change the Fiduciary Deed that during this time he had made, especially concerning the injury is a promise (by default) by varying with the contents of the decision of the Constitutional Court.

Based on the description above, the problem of the law is as follows:

1. Whether the decision of the Constitutional Court’s ruling No. 18/PUU-XVII/2019 contrary to the principles of insurance law material?
2. How does the implementation of parate execution of fiduciary after the Constitutional Court’s ruling 18/PUU-XVII/2019?
3. How might the legal consequences of a court judgement of the Constitutional Court’s ruling No. 18/PUU-XVII/2019 against the debtor and the creditor associated with the execution of fiduciary?

II. RESEARCH METHOD

This type of Research is normative juridical research, namely “a study of positive law, written or unwritten.” (Sri Mamudji: 2005, 4). The nature of this research is descriptive analytical. The source of the data used in this research is secondary data, namely “the data obtained from the literature (library research).” (Siahaan: 2020). In addition, this study also uses field studies (field research) to support the literature data. Data collection techniques used in this research is literature study (library research) and field studies (field research). In this study, interviews were conducted along with 2 informants, namely Meyzar Ahmad as Employees in KPKNL Banda Aceh and Risa Magdalena as Employees in the district Court, Banda Aceh. Data analysis in this study uses the research methods of qualitative data analysis.

III. RESULTS AND DISCUSSION

Based on the court judgement, the Constitutional Court granted the application the applicant's part, which states in Article 15 Paragraph (2), Article 15 paragraph (3), and the Explanation of Article 15 Paragraph (2) of Law No. 42 of 1999 on Fiduciary contrary to the 1945 constitution. Article 15 paragraph (2) the phrase "the power of eksekutorial" and "the same with the court ruling force of the law" proved to be contrary to the Law of 1945 so it does not have binding legal force throughout does not mean "against fiduciary who do not have an agreement in default and the debtor has objected hand over the object of fiduciary, whatever the mechanism and procedure for the execution of the Fiduciary must be implemented and the same with the implementation of execution based on a court ruling force of the law".

Based on the decision of the Constitutional Court, then the recipient of the fiduciary has retained legal protection to carry out the process of execution of the same with the court ruling force of the law through the mechanism and procedure of the law the same as the procedure of execution against the judgment of the court without going through the mechanism of an application to the judiciary, so that the results of the execution to the object and the procedure will strengthen the rights and protections guaranteed the recipient of a fiduciary or the creditors. (Hasani et al:2020, 26).

With the Constitutional Court Decision, this does not mean eliminating the power eksekutorial owned by the recipient of the fiduciary, but the court judgement was only provides the definition of the phrase strength eksekutorial in a fiduciary. It is mentioned in the Constitutional Court's ruling No. 18/PUU-XVII/2019 on points 3.17 that the court judgement is issued without intending to ignore the characteristics of the fiduciary (the creditor), so that the holder or beneficiary of a fiduciary (the creditor) can do his own execution against goods that formally was his own, for the sake of legal certainty and a sense of justice, namely the balance position between the employer and the rights of the fiduciary (the debtor) and the recipient of fiduciary (creditors) as well as to avoid the onset of arbitrariness in the implementation of the execution, The Constitutional court argued exclusive authority owned by the recipient's rights fiduciary (the creditor) can still be attached to the extent there is no problem with certainty the time about when a lender's rights fiduciary (the debtor) has a "default" (default) and the debtor voluntarily handed over the objects, which became the object of fiduciary agreement to the creditor to do their own sales. In other words, the giver of fiduciary admitted that he has been injured a promise so there is no reason not to hand over any objects that become the object of the agreement a fiduciary to the beneficiary of a fiduciary to do their own sales by the recipient of the fiduciary.

The judgment of the constitutional court this does not get rid titel eksekutorial owned by the creditor, so it can be said that the Judgment of the Constitutional Court is not contrary to the principles of the law of guarantees material that gives privileges of the holder of the guarantee in the case of amortization of the debt.

With the advent of parate execution such as in Article 15 paragraph (2) UU Fiducia Guarantee, the creditor acquires the facilities to perform the execution on the goods fiducia guarantee. With the board of parate execution of this, then the process of the implementation of execution will be a time-consuming and cost more short-lived, because not need for the intervention of the court. However, in practice the execution of the fiducia guarantee this often raises the problem of the ends to the detriment of one party. For example just purchase one unit of the car with the financing poured in an agreement. After a few months/ years running payment installment, the creditor menyatakan the debtor does not pay the dues in time the time fits contract and the debtor denies with the express was to pay the installment on time, without any apparent reason suddenly creditor execute the car that became the object of the guarantee is the way/worn the other person with excuses injured mortgage/breach of contract/not pay layaway. On the action of the creditor, the debtor filed a letter of complaint on the action creditor (company such financing), but didn't respond even got a commission of less pleasant.

Debtors feel wronged because the car is taken in the middle of the street and not ready return the car up to the entrance to the green table with the grounds of the lenders have committed acts against the law because perform an execution which is not compatible with the procedure of the law under the pretext that the certificate of fiducia guarantee have the strength eksekutorial the same with the court's court judgement. This is in accordance with Article 15 Paragraph (2) and (3) UU Fiducia Guarantee. That case is the one who become the grounds for the applicant Judicial Review over Article 15 Paragraph (2) and (3) UU Fiducia Guarantee that Apriliani Dewi and Suri Agung Prabowo (husband from Apriliani Dewi). In this regard, the applicant becomes a victim of the actions of arbitrary debt collector who is given the task by the Recipient of Fiducia to pick up items that are powered without going through the procedures of the law. Against the action of arbitrary-handedness of the district Court of Jakarta South issued a Court Judgement Number 345/PDT.G/2018/PN.Jkt. Court decided that the Creditor and Debt Collector that stated have committed acts in violation of the law and punish the creditor and debt collector for joint responsibility to pay the losses materiil and immateriil to the plaintiffs (the debtor).

However, the main problem, and finally encourage applicants to apply for judicial reviews, it is the law of the creditor date 11 January 2019 the permanent withdrawal of objects of research, on the basis that the approval of the Fiduciary is considered to have the permanent force by adding the legal provisions of Article 15 (2) and the Law No. / 1999. (Efferin:2020.40).

The chairman of the company-financial companies in Indonesia, Suwandi Wiratno, said today there is no wrong interpretation in the community associated with the constitution court's ruling No 18/PUU-XVI/2019 January 6, 2020 about the fiduciary. This is because the majority of people only read the title of the news, including "the debt collector can not complain of the vehicle without a court decision", but if it is then is read and digested one by one upon of the Constitutional Court's ruling no. 18/PPU-XVII / 2019, particularly on points 3,18 explains that the execution is better filed by the

creditors own because there is an agreement with the debtor and execution filed through the District Court, allowing the help of the police with the reason to maintain security and order in the execution process. This means, the Court is Constitutional does not reverse the Law of Fiduciary but be clear article 15 paragraph (2) and (3) associated with the execution of the vehicle.

In this case, it can be concluded that after the Constitutional Court's ruling No 18 / PUU - XVI / 2019 about the execution of the fiduciary, then the creditor still has the right eksekutorial law through certificate of a fiduciary, so because creditorial have the right to do execution on each debutor. However, the execution parate this can be done with the provision that the debtor has acknowledged the existence of the standard and voluntarily hand over the object becomes the object of the fiduciary agreement then become an authority completely, then if the debtor denies the existence of the tort and the mind surrender of the object of the guarantee voluntarily, then the decision of the law should be through the execution through the courts. In this case, in practice as the Chairman of APPI Suwandi Wiratno, said that today there is no one to interpret in the community associated with the Constitutional court's ruling no. 18/PUU-XVI/2019.

In the law of Fiduciary mentioned that in order to get legal protection, load the object with the deeds of the fiduciary must be made by authentic deed and recorded in the register book of the Fiduciary. If the conditions are not met, then the rights of the creditor does not get the protection of the law as mentioned in the Legislation. If then the debtor is dead, while the fiduciary has not been registered yet, basically against the agreement that guaranteed to be a fiduciary under the hand can not be done directly. The process of execution should be done by way of filing a civil lawsuit to the district court through the legal process show that the normal to the descendants of the court. In addition, the bank as a creditor does not have the right precedent (Article 27 paragraph(1) of Law No. 42 of 1999 on Fiduciary, against the other creditors in the payment of the loans as collateral in a fiduciary is not considered valid, if it is not listed.

In the case of an auction, the possibility of the existence of difficulties related to the physical delivery of the object of the guarantee to the winner of the auction. According to one of the employees at the Office of the State Service and the Auction the City of Banda Aceh, Mr. Meyzar Ahmad , that at the time of this auction process is performed entirely online. The process of online auction is done through auction sites.go.id. For people who want to be the auction participant can then create an account on the site and follow the auction online, in accordance with a predetermined schedule. In the auction process for this online, auction participants can see the specifications of the object of the auction based on the photos and description contained on the website of the auction, the bidder can not see directly the physical object of the guarantee. Related to the mastery of physical objects fiduciary, then the seller must master the physical object of the guarantee to be auctioned, it is stipulated in Article 13 Paragraph (2) of the Regulation of the Minister of Finance of the Republic of Indonesia No. 213/PMK.06/2020 On Guidelines For Implementation Of The Auction. It is then

amplified back on the part of the attachment of the PMK that one of the documents that must be provided the seller in this auction noneksekusi mandatory is the statement/letter from the Seller that the object of the auction in the physical control of the Seller, in case the object of the auction in the form of moving tangible. Based on this, then before the auction of the object fiduciary, the seller (or in this case it is assumed the seller is the creditor) must have been doing the withdrawal of the object fiduciary of the hands of creditors due when the auction is held the seller has had to master the physical object of the fiduciary. It is set in a Regulation of the Minister of Finance of the Republic of Indonesia No. 213/PMK.06/2020 On Guidelines For Implementation Of The Auction.

Associated with the transfer of the object of fiduciary, then to ensure that the debtor is not mengalihakn the object of the guarantee to the other party, usually the lender or agency leasing do the blocking of the Book the Owner of the Motor Vehicle (REG) objects fiduciary. This is done because in terms of the objects secured by the fiduciary, then the object will remain in the mastery of the debtor, thus opening opportunities for the debtor to divert the object of the guarantee to a third party. To be blocked, then it will prevent the debtor to divert the object of the guarantee to the other party, because later there will be problems in terms of execution. One of the characteristics of the best material is the presence of *Droit de Suite*, which is a right that continues to follow the owner of the object, or rights which follow the noun in the hands of anyone, so then if the debtor divert the object of the guarantee to the other party was, the fiduciary will remain attached and follow the object of the guarantee proficiency level.

Decision of the Constitutional Court is issued in order to provide legal protection for the debtor of the arbitrariness of the creditors because the debtor from the beginning has been placed in a lower position than the lender when entered into financing/credit agreement. The process of execution by filing a fiat to the court of first performed in order to provide legal protection for debtors and open the opportunity for the debtor to prepare a defense if then the debtor's objection to be declared in breach of contract. With the opportunity to conduct the defense of this, then the debtor protection law in the implementation of the agreement a fiduciary. (Rahman:2020,1570).

After the issuance of the Constitutional Court's ruling No. 18/PUU-XVII/2019, the creditors can say it is not advantaged/disadvantaged. The Constitutional Court's ruling No. 18/PUU-XVII/2019 rate that Article 15 Paragraph (2) and Paragraph (3) of the Law of Fiduciary has fixed the value of the constitutional and legal force throughout interpreted to mean that the execution of fiduciary, the debtor voluntarily handed over the objects that become the object of the fiduciary and the phrase "injury to the promise of" can only be said to be constitutional throughout interpreted that "the absence of injury to promise not determined unilaterally by the creditor but rather on the basis of an agreement between the creditor by the debtor or on the basis of the efforts of law which it determines has happened injuries promise.

Before issued a Ruling of the Constitutional Court No. 18/PUU-XVII/2019, the position of the creditor is considered to be more profitable and the position of the debtor is considered to be more harmed. It can be seen from the reason of the Applicant to apply for judicial review of the Act Fiduciary's own is because of the actions of arbitrarily from creditors in the case of the execution of the object of fiduciary. Not infrequently the execution of the object of fiduciary such as a car and motorcycle done by pulling forcibly direct the vehicle in a public place, either that the debtor acknowledges the injury is a promise or not. However, this changed after the Constitutional Court ruling No. 18/PUU-XVII/2019, the execution can be implemented if the debtor admitted to have made breach of contract. Along the giver of rights fiduciary (the debtor) has acknowledged the existence of injury to the promise (the breach of contract) and voluntarily handed over the objects that become the object of the fiduciary agreement, then became a full authority for the recipient fiduciary (the creditor) to be able to do his own execution.

At the end of 2020, the Collector of Internal Financing Company re-apply for Test Fiduciary Law. The application is submitted by Joshua Michael Djami, employee of a finance company with the office of the Collector of Internal who have professional certification in the field of billing. This resulted in loss of income and a decent livelihood for the Applicant.

Loading objects with the fiduciary made by notarial deed with the deed of Notary and made in the Indonesian language. Conditions for using the language of Indonesia in the notarial deed of this nature force (*dwingenrecht*) and an absolute requirement in terms of the validity/existence of a fiduciary. It is regulated in Article 5 of the LAW of Fiduciary.

After the Constitutional Court's ruling No. 18/PUU-XVII/2019, then on the premisses of the deed is added with the inclusion of the Constitutional Court's ruling No. 18/PUU-XVII/2019, so it is thus intended that the deed made by the parties submit to the decision of the Constitutional Court. In addition, after the Decision of the Constitutional Court regarding the Fiduciary, then the fiduciary deed, especially in the article that regulates the injury promise, it will be more emphasis on the willingness of the debtor to hand over the collateral object if then the debtor default. This is in accordance with the contents of the decision of the constitutional court that the creditor can do *parate* execution if the parties agreed about the breach of contract.

IV. CONCLUSION

With the Constitutional Court Decision, this does not mean eliminating the power *excecutorial* owned by the recipient of the fiduciary, but the Court Judgement was only provides the definition of the phrase strength *excecutorial* in a fiduciary. Recipient of the fiduciary can still have the right *eksekutorial* over the object of fiduciary. So in this case the Constitutional Court's ruling No. 18/PUU-XVII/2019, does not contradict with the principles of the law of the best material in terms of execution.

After the Constitutional Court's ruling No. 18/PUU-XVII/2019, then parate execution can still be implemented if then debtors default/default. However, parate execution this can be done with the provision that the debtor has acknowledged the existence of default/default and voluntarily handed over the objects that become the object of the agreement, if then the debtor denies the existence of the tort and mind handing over the object of the guarantee voluntarily, then the execution of the fiduciary must file a fiat execution to the district Court. Related to the auction, then prior to the auction held, then the seller of the auction (the creditor) must have mastered the physical object fiduciary, so that the debtor has to submit the object of the guarantee before the auction was held.

After the Constitutional Court's ruling No. 18/PUU-XVII/2019, then the result for the creditors and the debtor must betoken of injury to the promise in their agreements with more detailing. If the debtor does not want to voluntarily implement parate execution with the surrender of the object of fiduciary then the execution should ask the fiat of execution to the court. In this case, the Notary must add a clause injury to promise the fiduciary deed, and also refers to the Constitutional Court's ruling No. 18/PUU-XVII/2019 as the legal basis in the manufacture of a fiduciary deed is.

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