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Dispute Resolution in Consumer Financing Agreements for Bad Debts through the Fiduciary Guarantee Execution Process to Achieve Legal Certainty and Justice

Khairul Azwar Anas[1*], Johni Najwan[2], Rosmidah[3]
Doctoral Program in Law, Faculty of Law, University of Jambi, Indonesia
Corresponding Author: Khairul Azwar Anas khairulazwar007@gmail.com

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A B S T R A C T

This study aims to analyze and critique how the execution of fiduciary guarantees is carried out after the Constitutional Court (MK) Decision Number 18/PUU-XVII/2019, which changed the execution mechanism, particularly regarding unilateral execution by creditors in the event of a debtor's default. This decision requires the debtor's approval or court intervention if the debtor files an objection. This study also examines the form of legal protection for creditors and debtors in the implementation of fiduciary guarantee execution, and suggests ideal arrangements that provide legal certainty and justice. The main problems in this study include three aspects: (1) the Constitutional Court's interpretation of Article 15 paragraphs (2) and (3) of Law No. 42 of 1999, (2) the legal implications of unilateral execution, and (3) the balance of legal protection for creditors and debtors.

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INTRODUCTION

In Indonesia's civil law system, agreements are the primary basis binding parties in legal relationships, including consumer financing activities. Consumer financing based on agreements with fiduciary guarantees often encounters problems when the debtor defaults or fails to pay (bad debt). These issues give rise to legal disputes that require a resolution mechanism capable of providing legal certainty and justice for the parties. One available mechanism is through the enforcement process for fiduciary guarantees, as stipulated in Law Number 42 of 1999 concerning Fiduciary Guarantees.

Following the 1999 reforms, under the leadership of President BJ Habibie, popular policies emerged to revive the Indonesian economy. Investor confidence began to rebuild, and to anticipate future legal issues, a legal product was enacted, Law Number 42 of 1999 concerning Fiduciary Guarantees. This law was designed as a state response to the pressing demands of the growing business world, particularly regarding the availability of funds, providing a breath of fresh air for investors in the non-bank financial industry. However, in its implementation, many shortcomings remain in this legal regulation. Examining the periodicity of legislation in Indonesia reveals that regulatory changes often follow the dynamics of the government in power at the time.

Sociologically, law is a social institution that embodies values, rules, and behavioral patterns that revolve around basic human needs. Law functions to create order and justice, thereby fulfilling society's basic needs in the face of change and challenges.

"The existence of law is determined by the existence of humans. Humans are born, grow up, and mature in their own world. Humans determine everything they want and need, delving deeply into the meaning of every action and thought.

Following the issuance of Constitutional Court Decision Number 18/PUU-XVII/2019 concerning the impact of the implementation of fiduciary guarantee execution. This is important because it can reduce foreign investor interest in investing in Indonesia, especially in the financing industry. Changes to the context of the Constitutional Court Decision raise new legal issues and do not provide protection and legal certainty for creditors. This is due to a special interpretation of certain phrases in Article 15 paragraph (2) of Law Number 42 of 1999, which creates significant changes in the context of the executorial power of the Fiduciary Guarantee Certificate. This change highlights the legal implications related to the execution of fiduciary guarantees that are very important for the state to pay attention to.

Tan Kamelo stated that broadly speaking, there are two forms of collateral: personal collateral and material collateral. One type of material collateral recognized under Indonesian positive law is fiduciary collateral, which is widely used by the business community as a guarantee for movable property.

Based on the explanation of Law Number 42 of 1999 concerning Fiduciary Guarantees, fiduciary guarantee institutions allow the fiduciary to retain control of the collateralized assets to carry out business activities financed by loans with said collateral. Initially, fiduciary guarantee objects were limited to tangible

movable assets, such as equipment or vehicles. However, over time, the scope of fiduciary objects has expanded to include intangible movable assets, such as intellectual property rights, and even immovable assets.

In conventional banking practices, providing collateral in credit agreements is mandatory, as the funds disbursed come from public savings. Therefore, credit distribution must be conducted carefully, and the existence of collateral is a crucial instrument in risk mitigation. If we look at Law Number 42 of 1999 concerning Fiduciary Guarantees, this regulation does not actually contain any principles governing legal protection and justice in the context of resolving consumer financing agreement disputes related to bad debt through a fair fiduciary guarantee execution process.

Considering the substance of a Fiduciary Guarantee, it represents a form of trust granted by a creditor from a financing institution, acting as the fiduciary recipient, to a debtor, acting as the fiduciary provider. However, in reality, legal disputes often arise between the fiduciary provider and the fiduciary recipient. These issues are usually caused by the debtor's lack of good faith in seeking alternative solutions to issues arising from the agreement outlined in the consumer financing agreement.

In every agreement made by the parties, it must contain the conditions as regulated in Article 1320 of the Civil Code, namely:

1. Agreement between the parties: This means that the parties must mutually agree and be of one mind regarding the main points of the agreement, without any coercion (dwang), mistake (dwaling), or fraud (bedrog).
2. Competent to make an agreement: The parties must be legally competent, that is, be adults (21 years old) and not under guardianship.
3. Regarding a particular matter: What is to be agreed upon must be clear and detailed, including the type, quantity and price, as well as the rights and obligations of each party, so that there will be no disputes.
4. A lawful cause: The contents of the agreement must have a purpose (causa) that is permitted by law, morality or public order.

Non-performing loans have specific criteria, as stipulated in Bank Indonesia Board of Directors Decree No. 26/22/KEP/DIR dated May 29, 1993, concerning the Quality of Earning Assets. Under this regulation, a loan is classified as non-performing if it does not meet the criteria of current, substandard, or doubtful, or if there is no repayment within 21 months of its doubtful status. This reflects the importance of timely rescue and evaluation measures in credit management by banks.

Resolving problem/bad debt can be achieved through two strategies: credit rescue and credit settlement. Credit rescue is a step to resolve problem debt through renegotiations between the bank as the creditor and the borrower as the debtor. Problem debt settlement is a step to resolve problem debt through legal institutions.

Law Number 42 of 1999 grants the fiduciary recipient the authority to execute the collateral object, especially when the debtor or fiduciary provider does not fulfill their obligations. In line with this, Article 15 paragraph (2) stipulates that the Fiduciary Guarantee Certificate has the same executorial

power as a court decision with permanent legal force, thus allowing execution without additional court proceedings. The provisions in Article 29 paragraph (1) letter a and Article 15 paragraph (2) provide a strong legal basis for the fiduciary recipient to carry out execution in the face of violations by the fiduciary provider.

Thus, resolving problem loans can be considered a final step (when a loan goes bad) after rescue efforts through restructuring are no longer effective. Executing a fiduciary guarantee is the final step taken by the creditor, as the recipient of the fiduciary, if the debtor, as the fiduciary provider, defaults.

Currently, there is an urgent need for financial institutions to receive serious attention in the context of implementing fiduciary guarantees following the Constitutional Court Decision Number 18/PUU-XVII/2019, considering the important role of financial institutions in Indonesia's sustainable development, especially in the economic law sector. Rapid economic growth, especially in the services and trade sectors of Micro, Small, and Medium Enterprises (MSMEs), is always accompanied by an increase in the community's financial needs, including in terms of borrowing and lending funds from financial institutions guaranteed by fiduciary.

Formulation of the problem

The author begins with the empirical reality of the still-problematic practice of fiduciary execution, the disharmony between norms and practices, and the need for proportional justice that balances the interests of creditors and debtors. This is desired to be used as an instrument for social change and recognized as a means to transform society through law. Therefore, the author formulates the problems related to the title of his legal research as follows:

What is the ideal arrangement regarding the position of creditors and debtors in the execution of fiduciary guarantees in consumer financing agreements due to bad debts to create legal certainty and justice for both parties?

LITERATURE REVIEW

The provisions in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explain the concept of a state based on law in Indonesia, where law functions as an ideology to create order, security, justice and welfare for its citizens.

According to natural law theory, natural law produces metaphysical rights, as David Hume argued, while real law is law made by legislative bodies, as Bentham explained. The purpose of law is to create legal certainty, order, utility, and justice, as well as freedom of contract that stems from individual freedom.

So, the aim of law is to guarantee legal certainty, order, benefit and create justice. Freedom of contract stems from individual freedom, which leads to individual interests. Therefore, individual freedom gives parties the freedom to make agreements.

Real law then gives rise to real rights. Conversely, imaginary law, namely natural law, gives rise to imaginary rights. David Hume also argued that natural

law and natural rights are metaphysical and unreal. Therefore, Bentham argued that real law is not natural law, but rather law made by legislative bodies.

Based on the Constitutional Court Decision Number 18/PUU-XVII/2019 dated January 6, 2020, the Constitutional Court has provided a special interpretation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The comparison between Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) before and after the Constitutional Court Decision Number 18/PUU-XVII/2019 can be seen in the context of changes in the interpretation of certain phrases, namely:

1. Article 15 paragraph (2) before Constitutional Court Decision Number 18/PUU-XVII/2019: Fiduciary Guarantee Certificates have the same executive power as a court decision that has permanent legal force. This means that the certificate can be executed without the need for further court proceedings, and the decision is binding on all parties.
2. Article 15 paragraph (2) after the Constitutional Court Decision Number 18/PUU-XVII/2019: The Constitutional Court Decision stated that the phrases "executory power" and "equal to a court decision that has permanent legal force" in Article 15 paragraph (2) are contrary to the 1945 Constitution of the Republic of Indonesia. These phrases do not have binding legal force unless applied to situations where there is an agreement between the parties regarding a breach of promise (default), or when the debtor refuses to voluntarily hand over the object that is the fiduciary guarantee. In this context, the mechanism and procedures for executing the Fiduciary Guarantee Certificate must be carried out and applied in accordance with the implementation of the execution of a court decision that already has permanent legal force.

Based on Constitutional Court Decision Number 18/PUU-XVII/2019, it is emphasized that although fiduciary rights grant the fiduciary recipient (creditor) material rights to execute assets that are formally their own, this cannot be done arbitrarily. The Constitutional Court emphasized the need for a balance in the legal position between the fiduciary grantor (debtor) and the fiduciary recipient (creditor) to maintain legal certainty and a sense of justice.

The Constitutional Court stated that the creditor's exclusive authority to carry out execution remains valid as long as there are no problems regarding the certainty of the time when the debtor has "breached his promise" (default) and the debtor voluntarily surrenders the object of the fiduciary agreement for self-sale.

Financial Services Authority data at the end of 2023 recorded a non-performing financing ratio in the financing industry of 2.44 percent, with more than half of outstanding financing in the fiduciary-based consumer sector, particularly motor vehicles. Many cases have resulted in debtor resistance, social conflict, and even criminalization. This phenomenon demonstrates that fiduciary enforcement not only leaves legal issues but also has widespread social impacts. Legally, the problem is further complicated by the discrepancy between norms

and implementation. The Constitutional Court's ruling has provided a new interpretation emphasizing the importance of court mechanisms, but practice on the ground still falls short of these provisions.

Several cases of execution show that creditors continue to use unilateral methods by relying on the executorial title, even without involving legal authorities, thus creating a conflict with the principles of the rule of law. This situation demonstrates the weak implementation of the law and indicates the need for more decisive policy reform.

Philosophically, the issue of fiduciary guarantee enforcement concerns the nature of law as a means of achieving justice. The principle of proportionality affirmed by the Constitutional Court emphasizes that legal certainty for creditors must not compromise the protection of debtors' rights. The law must not merely uphold formal certainty but also ensure substantive justice that is felt by the community. From this perspective, the Constitutional Court's decision represents a crucial turning point in re-establishing the balance between business efficiency and social justice.

METHODOLOGY

The type of research used is normative legal research, which focuses on the analysis or study of positive law contained in relevant and applicable legal regulations (statutory regulations), as well as court decisions that have permanent legal force. The term normative legal research comes from the English "normative legal research" and the Dutch "normatif juridish onderzoek." Normative legal research, which is referred to in Anglo-American literature as legal research, is internal research within the legal discipline.

According to Mukti Fajar ND and Yulianto Achmad, normative legal research is legal research that positions law as a system of norms. The system of norms in question concerns principles, norms, rules, agreements, and doctrines (teachings). Another name for normative legal research is doctrinal legal research, also referred to as library research or document study. It is called doctrinal legal research because this research is conducted or directed only at written regulations or other legal materials. It is called library research or document study because this research is mostly conducted on secondary data found in libraries. This normative legal research focuses on the analysis of dispute resolution in consumer financing agreements related to bad debt through the fiduciary guarantee execution process, which reflects legal certainty to achieve justice. Therefore, the object of study discussed includes legal norms or legal principles, namely regulations regarding dispute resolution in the execution of fiduciary guarantees based on consumer financing agreements. This analysis includes regulations contained in the Law on Fiduciary Guarantees and Consumer Protection, as well as various decisions and other laws and regulations relevant to the research topic.

RESEARCH RESULT AND DISCUSSION

Before the author discusses further regarding the ideal arrangements regarding the position of creditors and debtors in the execution of fiduciary

guarantees in consumer financing agreements due to bad debts to realize legal certainty and justice for both parties, regarding the Settlement of Disputes in Consumer Financing Agreements Against Bad Credit Through the Fiduciary Guarantee Execution Process to Realize Legal Certainty and Justice, the author would like to first explain the parts that can be used as a measure to provide guidance on the results and discussion in the formulation of the problem related to this article.

The position of creditors and debtors regarding the settlement of disputes in consumer financing agreements regarding bad credit through the legal process of executing Fiduciary guarantees, after Decision Number 18/PUU-XVII/2019, related to the norms of Article 15 paragraph (2) and its explanation, as well as Article 15 paragraph (3), there are phrases such as "breach of promise," "executory power," and "the same as a court decision that has permanent legal force" which are very ambiguous and can be interpreted in various ways. This can make it easier for creditors to carry out execution (withdrawal) of fiduciary guarantee objects, which is basically not necessary if all parties comply with the court decision. However, in reality, not all parties comply with the decision completely. Therefore, there needs to be a rule that regulates the procedures for carrying out execution if the decision is not complied with. This condition creates a legal vacuum in the implementation of just executions.

Therefore, stricter regulations and oversight of the Fiduciary Guarantee execution process are needed, as well as education for debtors and third parties about their rights. This is in line with the increasingly significant development of fiduciary guarantees in Indonesia, along with the complexity of the business and financial sectors. This also takes into account consumer financing agreements that outline the rights and obligations of the parties, which can lead to future disputes if one party violates the agreed and signed agreement, which is a law for the parties, either through a breach of promise/breach of promise or an unlawful act.

History of Fiduciary Guarantee Law in Indonesia

Fiduciary guarantees in Indonesia have been used since the Dutch colonial era, which was initially established through jurisprudence. The existence of fiduciary institutions as debt collateral is recognized by Dutch jurisprudence, with the first ruling being on January 25, 1929, NJ 1929, 616, known as the Bier Brouwerij Arrest, particularly in the business community. After Indonesian independence, fiduciary practices continued despite lacking a comprehensive legal basis.

The Origins and Development of Indonesian Fiduciary Guarantee Law

The term fiduciary originates from Roman law, referring to the pledge of ownership rights to property as collateral for a debt based on trust. The institution of fiduciary guarantees is not new to Indonesia, having been known since the Dutch colonial era, under the term fiducia eigendom overdracht. The use of this guarantee at that time was based on customary law and supported by jurisprudence. Thus, fiduciary guarantees have developed in Indonesia since the

colonial era, primarily due to their simple, easy, and fast encumbrance process. However, this system has not been fully regulated by law, creating legal uncertainty and high risks for creditors seeking to enforce their rights over fiduciary guarantees. Fiduciary guarantee institutions have been in use in Indonesia since the Dutch colonial era.

The flexibility of fiduciary rights made them a primary choice for colonial entrepreneurs because the process was simpler than mortgage rights, without requiring the physical transfer of goods. This allowed fiduciaries to continue using movable assets, such as industrial machinery, in their business operations. However, without registration obligations, the problem of double transfer of fiduciary assets arose, which disadvantaged the initial creditor by losing exclusive rights to the collateral. Creditors were often unaware that the collateralized asset was also being used as collateral by another party.

The Influence of the Colonial Legal System and Changes After Indonesian Independence

Following the proclamation of independence in 1945, Indonesia inherited many elements of the colonial legal system, including the practice of fiduciary guarantees. Within the national legal context, this fiduciary practice persists despite lacking a strong legal basis and generally relying solely on colonial jurisprudence. Fiduciary guarantees are a form of guarantee institution that continues to be used in Indonesia, but until now, they have not been fully regulated by law. Consequently, numerous problems arise due to legal uncertainty for the parties involved in fiduciary transactions, both creditors and debtors.

In the 1980s and 1990s, the need for reform of fiduciary law became increasingly urgent in line with economic growth and the increasing demand for financing. Fiduciary law became the primary choice for the banking sector due to its simple process, but the lack of official registration raised concerns among creditors. Awareness of the importance of a structured fiduciary system led to the enactment of Law No. 42 of 1999. This law ended the reliance on the colonial system.

Article 15 of Law No. 42 of 1999 grants executorial power to fiduciary certificates. This means that creditors not only have preferential rights but can also directly execute the collateral if the debtor defaults, without going through the courts. This provision is intended to create efficiency, as court processes are often considered slow and create uncertainty. However, the existence of this executorial right has sparked debate. On the one hand, it strengthens creditors, but on the other hand, it risks reducing protection for debtors if execution is carried out unilaterally. This conflict was then tested by the Constitutional Court in Decision No. 18/PUU-XVII/2019, which ultimately emphasized the need for a balance between effective execution and the protection of debtor rights.

The Development and Reform of Indonesian Fiduciary Guarantee Law Up to Law Number 42 of 1999 concerning Fiduciary Guarantee

In the late 1990s, the government recognized the importance of legal reform to address various issues in fiduciary practices. Ultimately, Law No. 42 of 1999 concerning Fiduciary Guarantees was enacted, providing a clear legal basis and guidance for the implementation of fiduciary obligations in Indonesia. One of the key provisions of this law is the mandatory registration of fiduciaries with the Fiduciary Registration Office, which aims to provide legal certainty and protection for the parties involved and avoid potential conflicts between creditors that could arise without official registration.

Article 15 of Law No. 42 of 1999, along with its explanation, also grants creditors the right to execute fiduciary guarantees without going through the courts, provided the debtor is in default. The explanation of Article 15 of Law No. 42 of 1999 states that fiduciary creditors have the right to execute immediately without having to wait for the court process, which is usually time-consuming and expensive. This represents a significant breakthrough in the fiduciary system in Indonesia, which previously relied heavily on court processes for guarantee execution.

Article 15 paragraph (3) of Law No. 42 of 1999 states that the Fiduciary Recipient has the right to sell the object that is the object of the fiduciary guarantee if the debtor defaults. However, Constitutional Court Decision Number 18/PUU-XVII/2019 states that the phrase "default" in Article 15 paragraph (3) does not have binding legal force. Default is not determined unilaterally by the creditor, but must be based on an agreement between the parties or through legitimate legal remedies, thus ensuring the protection of the debtor's rights and upholding the principle of justice in the contractual relationship.

Concept and Principles of Fiduciary Guarantee Law

Fiduciary guarantees allow the debtor to retain control of the collateral even though ownership has temporarily transferred to the creditor. Unlike pawns or mortgages, fiduciary guarantees offer greater flexibility in asset use. Its primary principle, as stipulated in Law No. 42 of 1999, is creditor protection through registration, which grants the right of execution in the event of default. Fiduciary law aims to maintain credit security, support the business climate, and increase legal certainty for all parties.

1) Definition of Fiduciary and Its Difference from Other Forms of Guarantee

Fiduciary is a term that has long been known in Indonesian. Fiduciary security is a form of collateral regulated by Indonesian law, specifically Law Number 42 of 1999 concerning Fiduciary Security. In the Indonesian legal system, fiduciary is a concept that combines the transfer of ownership rights and trust between the fiduciary grantor (debtor) and the fiduciary recipient (creditor). Unlike other types of collateral, fiduciary security offers greater flexibility because it allows the debtor to retain control and use the collateralized object for the term of the agreement.

Article 1 number 1 of Law No. 42 of 1999 states that fiduciary is the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in the possession of the object's owner. This definition explains that fiduciary is not a form of guarantee that requires the object being pledged to physically change hands. Instead, the transfer of ownership rights is carried out on the basis of trust, with the condition that the object being transferred remains in the possession of the fiduciary provider, namely the debtor. In this case, the object being pledged does not need to be controlled by the creditor as in other forms of guarantee (for example, a mortgage or pawn). Thus, fiduciary provides a form of guarantee that allows the fiduciary provider to continue to use the object being pledged in their daily activities, while the ownership rights of the object are transferred to the fiduciary recipient (creditor) as collateral for debt repayment.

Fiduciary guarantee is a traditional instrument designed to provide special protection to creditors. Fiduciary guarantees are a form of collateral that has unique characteristics compared to other types of guarantees. The uniqueness of fiduciary guarantees lies in the transfer of ownership rights of an object based on trust, where the object being pledged remains in the possession of the fiduciary. This provides greater flexibility for debtors to continue using the pledged object in their daily activities. Furthermore, fiduciary guarantees priority to creditors in terms of debt repayment, a key advantage of this form of guarantee compared to other types of guarantees such as mortgages or mortgages. However, in practice, fiduciary guarantees also have limitations and provisions specifically regulated by law to ensure legal certainty and protection for the parties involved in the fiduciary agreement.

2) Basic Principles in Fiduciary Guarantee Law

Fiduciary security serves as a form of collateral that guarantees the repayment of a specific debt by a debtor to a creditor. Thus, a fiduciary security is a supplementary agreement that relies on a debt agreement or other agreement as its legal basis.

Articles 4 to 10 of Law No. 42 of 1999 regulate the main principles of fiduciary guarantees. This guarantee complements the principal agreement and aims to protect creditors' rights by providing legal certainty. A fiduciary deed must be drawn up through a notary and contain the identity of the parties, the collateral object, the value of the guarantee, and other important elements to ensure transparency and legal protection. Fiduciary guarantees are flexible, covering both existing and potential debts, and apply to assets that already exist or will be acquired in the future.

Based on this, there are seven main principles in fiduciary guarantee law according to Law No. 42 of 1999, namely:

a. Principles of Bonding with the Principal Agreement (Article 4);
b. Principle of Legal Certainty Through Notarial Deeds (Article 5);
c. Principle of Openness and Transparency (Article 6);
d. Debt Guarantee Flexibility Principle (Article 7);
e. Principle of Collectivity and Representation (Article 8);

f. The Principle of Flexibility for Collateral Objects (Article 9); and
g. Principle of Comprehensive Protection (Article 10).

The Purpose of Fiduciary Guarantee Law

Fiduciary guarantees aim to provide legal certainty for the parties and protection for the fiduciary provider of the collateral. Once the fiduciary provider's debt repayment obligation is fulfilled, the fiduciary recipient is required to immediately file for the cancellation of the fiduciary guarantee with the Fiduciary Registration Office. Legally, legal liability encompasses public law, such as state administrative and criminal liability, as well as private law, such as liability for default or unlawful acts.

Fiduciary guarantee law in Indonesia aims to support the national economy by providing legal certainty and security in financing transactions. Based on Law No. 42 of 1999, fiduciary guarantees facilitate sustainable economic development through a secure, flexible financing system that protects the rights of both creditors and debtors. This system allows for the granting of credit secured by movable or immovable property without eliminating the debtor's ownership, thus supporting business flexibility. Fiduciary guarantee registration grants priority rights to registered creditors, ensures transaction security, and prevents ownership disputes.

Legal Structure of Fiduciary Guarantee in Indonesia

The legal structure of fiduciary guarantees still requires clearer regulations and adequate supporting regulations to address the development of the creative economy. Fiduciary guarantee law in Indonesia is specifically regulated by Law No. 42 of 1999. This regulation plays a crucial role in providing a clear legal framework for lending and borrowing transactions involving movable property as collateral.

1) Basic Regulations and Provisions in Fiduciary Guarantee Law

Article 2 of Law No. 42 of 1999 stipulates that fiduciary guarantees apply to agreements that encumber objects as collateral. This guarantee includes movable objects, such as motor vehicles, machinery, or receivables, without transferring ownership to the debtor. This regulation makes it easier for businesses to obtain credit by pledging their assets without losing full ownership, supporting operational flexibility and efficiency.

Fiduciary security registration gives creditors priority rights in claims over the collateralized object, thus preventing disputes and ensuring transaction security. However, Article 3 of Law No. 42 of 1999 excludes several objects from fiduciary security, such as land and buildings (regulated in the Mortgage Law), mortgages on large vessels, aircraft, and pawns. These exclusions reflect the fundamental differences between fiduciary security and other types of security that have specific regulations. This distinction demonstrates that fiduciary security focuses on movable objects, while fixed assets require regulation through mortgages. These articles provide legal certainty for the parties involved, supporting fairness and transparency in fiduciary transactions.

2) Procedures for Registration and Execution of Fiduciary Guarantees

Fiduciary guarantees in Indonesia are an important legal instrument that provides security in financial transactions. This instrument protects the interests of creditors while facilitating debtors' access to financing. As a guarantee tool, fiduciary guarantees play a significant role in supporting the smooth running of economic and financial activities.

Fiduciary Guarantee is a legal instrument that provides security for a receivable or obligation by using movable property as its object, where the object remains in the possession of the debtor, but the creditor has the right to execute in the event of a breach of promise. The procedures for registering and executing fiduciary guarantees are regulated in Law No. 42 of 1999, which includes the registration procedure at the Fiduciary Registration Office, the issuance of certificates with executorial powers, and the execution mechanism if the debtor defaults.

This registration is carried out by the fiduciary recipient by attaching important documents and aims to provide legal certainty, transparency, and protection for related parties, including other creditors. The issued certificate has executorial power, allowing for execution without going through a court, in accordance with Article 15 of Law No. 42 of 1999.

Execution can be carried out through public auction, private sale, or other methods stipulated in Articles 29 to 34 of Law No. 42 of 1999, while maintaining transparency and protecting the rights of all parties. However, the implementation of this process requires strict supervision to prevent abuse, such as price manipulation or unfair sales practices. Overall, the regulated procedures provide protection and clarity of rights and obligations for the parties, but their successful implementation depends heavily on the compliance of the relevant parties and effective oversight by authorized institutions.

3) Position of Creditors and Debtors in Fiduciary Law

The implementation of fiduciary guarantees always begins with the existence of a principal agreement, namely a debt-credit agreement between the debtor as the fiduciary provider and the creditor as the fiduciary recipient.

The relationship between creditors and debtors in fiduciary law is crucial to understand, particularly in the context of implementing collateral agreements. The creditor, as the lender, has the right to receive payment of receivables and the right to enforce the fiduciary collateral if the debtor fails to fulfill its obligations. Conversely, the debtor, as the party receiving the loan, has an obligation to repay the debt according to the agreement and maintain the collateral in its possession.

Creditors who are referred to as “Fiduciary Recipients” before the pronouncement of Constitutional Court Decision Number 18/PUU-XVII/2019, have the right to execute collateral directly without a court based on Article 15 paragraph (2) of Law No. 42 of 1999. However, the law also protects the debtor's rights, such as receiving excess proceeds from the sale of collateral objects (Article 34) and the prohibition of repeated fiduciary on objects that have been pledged

(Article 17). This protection ensures that creditors do not take excessive profits, while the debtor still has the right to the remaining execution proceeds.

The position of creditors and debtors in fiduciary reflects a balance of rights and obligations, with creditors benefiting from efficiency of execution and debtors protected from arbitrary action, ensuring a fair and transparent relationship.

4) Consumer Financing from the Perspective of Fiduciary Guarantee Law

Consumer finance institutions act as an alternative funding source to meet the public's need for consumer goods. With this financing, people who previously had difficulty purchasing goods with cash can obtain a simpler and faster solution through an installment payment mechanism.

Definition and Characteristics of Consumer Financing

Consumer financing is the activity of a business entity to fund the procurement of goods or services needed by consumers through installment or periodic payment systems. In Indonesia, companies operating in this sector are called finance companies or multifinance companies. In addition to consumer financing, financing institutions' business areas include leasing, securities trading, factoring, venture capital, and credit cards. This scheme supports public access to funding and encourages increased purchasing power and economic turnover.

Consumer financing is a form of financing specifically aimed at supporting consumers in acquiring certain goods or services. Regulations regarding consumer financing in Indonesia are outlined in various laws and regulations to provide a clear legal basis, protect the parties involved, and support economic development.

Consumer financing involves two main parties: the consumer as the recipient of the financing and the financing company as the provider of the financing. Under a financing agreement, the consumer obtains the desired goods or services by paying in installments according to an agreed-upon schedule. Meanwhile, the financing company provides credit facilities in exchange for interest or administration fees.

Consumer financing agreements are a form of contract law development that is outside the provisions of the Civil Code (KUHPerdata). The main characteristic of consumer financing is its flexibility in meeting consumer consumption needs. This facility allows consumers to obtain goods or services without having to provide all the funds outright. However, this nature of credit also places a responsibility on consumers to fulfill their payment obligations as agreed. Therefore, financing companies typically conduct a creditworthiness assessment before approving financing applications to minimize the risk of bad debt.

In a legal context, consumer financing is often associated with the principle of consensual agreements, meaning these agreements are binding on both parties once an agreement is reached. Furthermore, consumer financing also encompasses legal protection for consumers, as stipulated in Law No. 8 of 1999

concerning Consumer Protection. This regulation governs consumer rights and obligations, as well as the responsibilities of financing companies to provide clear, transparent, and non-misleading information.

According to Munir Fuady, collateral in consumer financing is similar to collateral in bank credit, which includes primary collateral, principal collateral and additional collateral. From an economic perspective, consumer financing has a positive impact on consumer consumption growth. Easier access to financing increases purchasing power, thus driving growth in the trade and manufacturing sectors. However, consumer financing also carries risks if not managed properly, such as an increase in non-performing loans, which can negatively impact economic stability and public trust in financial institutions.

Legal Relationship between Creditors and Debtors in Consumer Financing

Consumer financing is a form of financing focused on providing funds to consumers for the purchase of goods from suppliers. Under this scheme, consumers make payments periodically or in installments according to a predetermined agreement.

The legal relationship between creditors and debtors in consumer financing is bound by a legal agreement that governs the rights and obligations of each party. This relationship is based on the principle of mutual trust and a balance between the creditor's rights as the financier and the debtor's obligations as the beneficiary.

The relationship between creditor and debtor in consumer financing is contractual, with the financing company providing funds for the purchase of an asset, and the consumer repaying the debt in installments. The seller of the goods typically acts on behalf of the financing company in this transaction. The creditor, as the party providing funds for consumer financing, has primary rights to the installments paid by the debtor. This right is based on the financing agreement agreed to by both parties. The creditor is entitled to receive periodic installment payments according to the schedule outlined in the agreement. The installment amount typically includes the principal and interest as a return on the use of the funds.

Theory of Justice

Justice and “injustice” are terms used to describe implementation, often implying that justice and ethics are interdependent.

When discussing justice, we cannot ignore the influence of the thoughts of great philosophers such as Plato, Aristotle, John Rawls, and Gustav Radbruch, who contributed to the development of legal science. Plato is known for his views on justice, namely that law is a tool for achieving justice. "Thus, it can be said that according to Plato's theory, law functions as a means to implement justice in unjust situations."

Plato's thinking stemmed from the conditions of the city-states of his time. At that time, city-states were ruled by uneducated individuals. Therefore, according to Plato, to achieve justice, power should be in the hands of nobles or philosophers.

According to JJH Bruggink, legal theory is all interrelated statements concerning the conceptual system of legal rules and legal decisions, and this system is to an important extent posited.

This Theory of Justice is a Grand Theory used to analyze legal materials and legal facts to describe the research object. Furthermore, this theory will be used as an analytical tool for legal protection and legal certainty regarding dispute resolution through mediation in consumer financing agreements for non-performing loans through a fair fiduciary guarantee execution process.

According to Aristotle, justice is a virtue related to human relations. Aristotle stated that justice can mean according to law, and what is proportional is what is appropriate. This also implies that someone is said to be acting unfairly if they take more than their fair share.

Then, according to Aristotle, justice is divided into three: commutative justice, distributive justice, and legal justice. Commutative justice is a policy of giving each person their due, or as close as possible to their due. Striving for commutative justice is the job of judges.

Plato in his theory put forward two types of justice. First, Moral Justice, which refers to an action that can be said to be morally just if it is able to provide balanced treatment between rights and obligations. Second, Procedural Justice, which states that an action is said to be procedurally fair if someone is able to carry out the action based on the expected procedures. Law is sociologically important and is a social institution which is a collection of values, rules and behavioral patterns that revolve around basic human needs.

Law is a reality in society because it regulates behavior in community life. Laws are created by authorized institutions through a specific process. Laws are also decisions of authorized officials and contain values relevant to community life.

John Rawls defines justice as fairness, or in Black's Law Dictionary's term "equal time doctrine," a condition that is generally accepted at a given time regarding what is right. According to Rawls, justice is called fairness because in developing his theory, Rawls starts from a hypothetical position where every individual who enters into a social contract has freedom (liberty).

This hypothetical position is also known as the original position. The original position is the initial status quo, asserting that the fundamental agreement reached in the social contract is fair. Based on the existence of this original position, the term "justice" as "fairness" was coined.

However, even though humans are equipped with the instinct to act and are born in a state of nature, with the development of life, pollution occurs to this nature, because in this life, humans are always between two poles that attract each other (positive and negative).

If the positive side in a person's life is stronger, then he will become a civilized human being and conversely if the negative side is more dominant then he will become a savage. Justice is often a major concern in legal discussions, but because of its highly abstract nature, throughout human history there has never been a definitive understanding of the true meaning of justice.

However, pure law is not directly related to the values of justice and utility. The issue of justice is not an aspect of legal science per se, but rather falls within the domain of legal philosophy, while considerations of utility fall within the realm of legal sociology. The quality of a law, whether good or bad, cannot be simply inferred by referring to its normative text. Stamler argued that the purpose of the idea of just law is to aid in the formation of a fundamental concept of life. In his work, "Theory of Justice," Stamler stated that just law is the most essential and universal element in any study of human social life. Just law is the only one that allows humans to understand the existence of society as a whole using a method that is absolutely valid.

Thomas Aquinas developed a crucial concept of the primary value, justice, which has inspired many thinkers. He explained that justice is a crucial aspect in regulating human relations. This concept of justice is divided into three main areas. First, distributive justice, which regulates matters of a general nature. Second, commutative justice, which relates to justice that arises in acts of exchange, not as an act of revenge. Finally, legal justice, which regulates all aspects of the previous two forms of justice within the framework of legal regulations.

Fair law provides guidance toward equality with other businesses that share the same foundation, which also leads to a just conscience. Disputes in the economic and commercial sectors, particularly those involving financial institutions as creditors who take fiduciary guarantees for consumer claims, are often triggered by the financial inability of the debtor or consumer to fulfill their obligations under a consumer financing agreement. This contract must clearly define the rights and obligations of the parties, which should be balanced and fair, and determine the contents of the consumer financing agreement. The agreement in this agreement becomes legally binding for the creditor, the financing institution, and the debtor.

CONCLUSIONS AND RECOMMENDATIONS

In the context of the implementation of fiduciary guarantees in Indonesia, Articles 23 and 24 of Law No. 42 of 1999 offer opportunities to strengthen the protection of debtors' rights and increase efficiency in the use of assets as collateral. Based on the explanation in the general section of this law, Law No. 42 of 1999 was created to address the public's need for legal certainty in the practice of fiduciary guarantees. By providing a simple and flexible means for guarantee providers, this policy supports the smooth running of businesses and other economic activities that are highly dependent on access to financing. However, challenges remain in practice, particularly regarding the registration mechanism and protection of related parties. In this context, the need for a complete revision of the execution provisions in the Fiduciary Guarantee Law needs to be seriously considered.

First, the Constitutional Court's ruling is corrective but not yet constructive. It only abolished some unconstitutional norms but did not replace them with new procedures. Consequently, lawmakers have not addressed this normative vacuum with clear and operational enforcement procedures. Without

new normative frameworks, law enforcement officials and contracting parties will continue to face confusion in implementing fiduciary obligations following the Constitutional Court's ruling.

Second, the normative structure of the Fiduciary Guarantee Law is now unbalanced. While previously heavily favored creditors, debtors are now in a position where they can exploit the law to delay or even avoid execution. This occurs because simply declaring no default can delay the execution process indefinitely. Revisions are needed to prevent the law from being one-sided and instead establish a symmetrical and balanced legal relationship between creditors and debtors.

Third, the current Fiduciary Guarantee Law does not provide a fast-track resolution mechanism for execution disputes. In the context of commercial financing, which demands certainty and speed, the lack of specific procedures complicates matters for both businesses and financing institutions. Countries with modern legal systems recognize streamlined procedures or brief court verification that safeguard debtors' rights without sacrificing efficiency. Indonesia needs to adopt a similar approach through legislative revisions.

Fourth, the lack of clarity surrounding the Constitutional Court's ruling has impacted the role of law enforcement officials, particularly the police and courts. In many cases, police officers are reluctant to provide assistance due to uncertainty about the validity of fiduciary obligations without the risk of legal violations. Similarly, judicial institutions lack standard procedural guidelines for verifying defaults or resolving debtor objections.

Fifth, the momentum for revision can be used to update the fiduciary regime to align with technological developments and the digital economy. Currently, fiduciary guarantees are no longer limited to tangible movable assets such as vehicles, but also encompass intellectual property rights, digital assets, and other intangible rights. Regulatory updates will enable a more inclusive, adaptive, and accommodating fiduciary guarantee system.

Based on the research and analysis conducted, it was concluded that one ideal form of regulation regarding the position of creditors in the execution of fiduciary guarantees following Constitutional Court Decision Number 18/PUU-XVII/2019 is the establishment of a Fiduciary Guarantee Execution Supervisory Committee under the supervision of the Financial Services Authority (OJK). This committee is expected to ensure a legitimate, transparent, and fair execution process through mediation, verification, and recommendation mechanisms, thereby increasing public trust in the fiduciary legal system. The existence of this committee is also expected to accelerate the execution process, reduce the potential for conflict, and contribute to national legal certainty.

ADVANCED RESEARCH

In the future, to ensure there are no loopholes in the legal system and no lack of legal certainty, both the Government, the Financial Services Authority, and related institutions need to conduct socialization and training for creditors of financing companies and debtors regarding the new fiduciary guarantee execution mechanism. This socialization is important to ensure all parties

understand the changes implemented and the procedures that must be followed, especially regarding the debtor's right to file objections and the importance of the mediation process before being brought to court. Through this research, it is hoped that it can provide insights for future researchers to find a clearer common thread regarding problem solving for legal issues that arise in the context of expected findings that can provide a clearer view of the complexity of Dispute Resolution in Consumer Financing Agreements Against Bad Credit Through the Fiduciary Guarantee Execution Process to Achieve Legal Certainty and Justice, identify challenges faced by creditors and debtors, and explore potential improvements in the legal framework that regulates this kind of transaction. This study aims to enrich the legal literature related to the resolution of disputes regarding the execution process of fiduciary guarantees and contribute to protecting the rights of both debtors and creditors, which have significant relevance in the financial context and the rate of economic and business growth. so that it can help in improving the regulations governing this kind of transaction. Moreover, it is hoped that the findings of this study can provide a significant contribution in ensuring the legal standing of balanced legal protection between creditors and debtors in fiduciary guarantee transactions in the future.

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