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THE URGENCY OF DISPUTE RESOLUTION IN CONSUMER FINANCING AGREEMENTS FOR BAD CREDITS THROUGH THE WARRANTY EXECUTION A FAIR FIDUCIARY

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Abstract: The realistic Indonesian society always follows changes from time to time towards a better era, including in the era of digitalization and transformation in the legal field where sometimes the law itself is left behind by the increasingly rapid and dynamic development of society. Therefore, it is a challenge for society and the government to immediately design and formulate legal instruments, especially in the field of contract law regarding the execution of fiduciary guarantee objects based on consumer financing agreements. In order to advance the people in a democratic manner, the state must have a strong legal foundation so that there is no disharmony in laws and regulations between Law No. 42 of 1999 concerning Fiduciary Guarantees and Law Number 8 of 1999 concerning Consumer Protection, there is a blurring of internal norms so that both business actors in When a legal conflict arises, a financing institution or creditor and a consumer/debtor cannot provide justice for the parties if one of the parties is in a weak position which is not as profitable as the position of the debtor/consumer in implementing the provisions of the consumer financing agreement. If you look at Law Number 42 of 1999 concerning Fiduciary Guarantees, this regulation actually does not contain principles or principles governing legal protection and justice in the context of resolving consumer financing agreement disputes related to bad credit through a fair fiduciary execution process.

Keywords: Dispute Resolution, Consumers, Fiduciary Guarantee

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Introduction

With the development of technology, it not only benefits consumers by making it easier to get the goods they need, but producers can also benefit by reducing the risk of capital spent. There are various kinds of trading via the internet network, one of which is pre-order. Pre order comes from the abbreviation purchase by order, this trade focuses on payments that consumers must make before ordering the desired needs. In the past, orders through the pre-order system were carried out through direct communication between buyers and sellers. This communication was carried out in conventional ways, namely meeting in person or through communication tools such as letters or telephone. However, since the advent of the internet, traders have tried to create online stores and sell products to those who frequently surf the internet. Customers can visit online stores easily and comfortably and can even make transactions anywhere. Online business is also the same as other business activities that are usually carried out every day, the difference with conventional business is that in online business all business activities are carried out online using internet media. Because the relationship between business actors and consumers in the business world is oriented towards the principle of efficiency, in realizing this relationship, practical forms or models of relationships tend to be sought, this is what causes business actors and consumers in the business world today to start switching to online commerce.

The principle of freedom of contract is a principle that occupies a central position in contract law, even though this principle is not translated into legal rules, it has a very strong influence on the contractual relationship between the parties. This principle is based on the idea of individualism which was embryonic in origin from the Greek era. The open system of book III of the Civil Code, hereinafter referred to as the Civil Code, is reflected in the substance of Article 1338 (1) of the Civil Code which states that, "all agreements that are legally made are valid as law for those who make them," according to subekti The way to conclude the principle of freedom of contract is by emphasizing the words of the agreement. It is said that Article 1338 paragraph 1 seems to make a proclamation statement that we are allowed to make any agreement and that it will bind us as binding laws restricting freedom only in the form of what is called public order and decency. The terms all contain the principle of partij autonomy; freedom of contract; beginningsel van de contract vrijhed is completely up to the parties regarding the content and form of the agreement they will make, including setting it out in a standard contract form. Freedom of contract here gives the parties the freedom to make an agreement in any form or format as well as with content and substance according to what the parties wish.

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Pre-order business people in the online shop sector, when marketing their products, always make a standard agreement format. In this standard agreement, there are things that are detrimental to consumers and there are things that benefit consumers. However, it is often found that the standard agreement clauses that are detrimental (hereinafter referred to as exoneration clauses) are not in accordance with the placement of the clauses required in each standard agreement. Regarding statements and agreements to accept all terms and conditions determined unilaterally and provisions for signing documents that have been prepared in advance by the developer, are stated in the order letter which is often called a standard agreement.

A standard agreement is an agreement in which almost all of its clauses are standardized and the other party basically does not have the opportunity to negotiate or ask for changes. Such agreements tend to substantially only express and highlight the rights of the party in a stronger position while the other party forced to accept this situation because of his weak position. Often when carrying out a transaction there will be an obligation that arises from the sale and purchase agreement by signing/agreeing to a standard contract that has been prepared in advance by the seller so that this causes the position between the seller and the buyer to become unbalanced in the sale and purchase agreement, because This agreement is very burdensome for the buyer, so this agreement is known as a standard agreement that ensnares consumers or an exoneration agreement. This agreement is often found and permitted. However, researchers found that there were clauses that were ensnaring but not in accordance with what the law should apply in placing contractual agreements and considered that these clauses were not in accordance with the principles of agreements in Indonesia.

An agreement based on Article 1313 of the Civil Code is a legal act by which one or more people bind themselves to one or more other people. The terms of the agreement are in Article 1320 of the Civil Code, namely:

1) They agreed to bind themselves
2) The ability to create an engagement
3) A certain thing
4) A legitimate cause

In addition to the legal requirements of the contract, there are several principles of contract law that are the subject of discussion in this writing, namely the principle of freedom of contract and the principle of balance. The principle of freedom of contract is a principle that states that everyone can basically make a contract (agreement) of any kind and content as long as it does not conflict with the Law, morality and public order. While the principle of balance is a principle that is intended to harmonize the legal provisions

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and the basic principles of contract law known in the Civil Code which is based on the thought and background of individualism on the one hand and the way of thinking of the Indonesian nation on the other.

In the making of any agreement that is based on the principle of freedom of contract, one must pay attention to the elements that must be present in an agreement, among others: Essentialia elements, are elements that must be present for the contract to be born, meaning the elements that build the contract itself. If this element is not there, then the agreement will not be born or exist. Naturalia element, is an element that is not explicitly included in a contract, but exists and is considered to exist by the parties, is an innate nature (natuur). Accidental element, is an element that arises based on a firm promise between the parties.

The realistic Indonesian society always follows changes from time to time towards a better era, including in the era of digitalization and transformation in the legal field where sometimes the law itself is left behind by the increasingly rapid and dynamic development of society. Therefore, it is a challenge for society and the government to immediately design and formulate legal instruments, especially in the field of contract law regarding the execution of fiduciary guarantee objects based on consumer financing agreements.

Likewise with the role of financial institutions, both banking and other financial service institutions which have helped the public to obtain credit in the form of consumer financing for motor vehicle ownership with financial institutions whose business focuses more on the financial function, namely in the form of providing funds or capital goods whose funds are not directly funded. withdrawn from society. Banks generally require prospective debtors to provide collateral whose value is more than the value of the goods pledged, such as certificates of ownership of land and buildings to the extent required by creditors as business actors other than banking institutions that provide funds or goods to civil law subjects (Natuurlijk Person) as well as civil legal entities (Recht Person).

Sociologically, law is important and is a social institution which is a collection of values, rules and patterns of behavior that revolve around basic human needs. Special attention needs to be given to legal development in the field of guarantees in an effort to advance the Indonesian economy. This is a natural step and is part of the responsibility in legal development, with the aim of harmonizing the growth of the trade, industry, transportation and development project sectors.

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Furthermore, consumer finance refers to financing practices that enable consumers to obtain goods according to their needs and pay through installments or periodic payments. The four key elements are:

1) consumer financing is one alternative financing that can be provided to consumers;
2) the object of financing is consumer goods, such as computers, electronic goods, motor vehicles and others;
3) installment payment system is made periodically, usually monthly and billed directly to consumers;
4) The return period is flexible, not tied to certain conditions.

As a non-bank financial institution, the existence and activities of financial institutions cannot be separated from the national financial system. Financing institutions are a subsystem of non-bank financial institutions, and non-bank financial institutions are a subsystem of financial institutions together with bank financial institutions. Considering the human need to support the business world, the services of financial institutions are very important in advancing Indonesia's economic growth. One form of this support is in the form of financial guarantees provided by statutory regulations. In this context, all forms of financial guarantees, such as certificates of ownership of houses, buildings, cars, airplanes and other properties that are guaranteed by Fiduciary, no longer have to be used as collateral to obtain financing. Financial institutions provide opportunities for Indonesian people to support their needs in the business world.

1945 Constitution of the Republic of Indonesia before it was amended. The article states, "The economy is structured as a joint effort based on the principle of kinship. Production branches that are important for the state and that affect the lives of many people are controlled by the state. "The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Then, in 2002, a fourth amendment was made to the contents of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. This amendment stated that "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, environmental insight, independence , as well as by maintaining the balance of progress and national economic unity."

If the makers of legislative regulations refer to the article above, then from a philosophical, juridical and sociological perspective, any resulting legislative regulations will not give rise to norm conflicts or norm confusion. For example, in Law Number 42 of 1999 concerning Fiduciary Guarantees, fiduciary is defined as the process of transferring ownership rights to an object based on trust, while the object remains in the ownership of the party

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making the transfer. Fiduciaries are generally used in motor vehicle credit agreements, such as Consumer Financing Agreements. In this agreement, the debtor pays a fiduciary guarantee fee based on the legal relationship between the Fiduciary Provider (usually a financing institution or creditor) and the consumer or debtor, which is regulated in the form of a Consumer Financing Agreement contract.

Basically, only debtor customers who have the trust of a financial institution or bank can receive a loan from the bank. However, banks must be careful in providing loans because several undesirable events may occur, especially in the case of bad faith from debtors who may try to claim ownership of the vehicle. Late loan payments are caused by the poor financial condition of the debtor. Debtors are unable to pay off their debts because they face financial problems, one of which is failure in their business which results in bankruptcy. Creditors usually provide warnings before payment failure occurs. In Indonesia, apart from the written legal regulations that have been regulated in the Civil Code which includes four books, namely Book I on Persons and Family Law (van persoon), Book II on Property and Inheritance Law (van zaken), Book III on Engagement (van verbentennissen), and Book IV on Evidence and Expiration (van bewijs en varjaring), there is also unwritten law, namely Customary Law which is still valid and developing in Indonesian society to this day.

In principle, the legal relationship between the debtor (recipient of the fiduciary collateral object) and the creditor/financial institution of the business actor is based on a consumer financing agreement which contains the applicable terms and conditions regulated in book III of the Civil Code concerning Engagements, the regulation of which adheres to an open system. This means that everyone is free to enter into agreements, whether regulated or not regulated by law. Referring to Article 1338 of the Civil Code, the parties are given freedom to:

1) Make or not make an agreement;
2) Enter into an agreement with anyone;
3) Determine the contents of the agreement, its implementation and requirements;
4) Determine the form of agreement, namely written or oral.

Then, in every valid agreement that will be made by the parties, it must contain the conditions as regulated in Article 1320 of the Civil Code. The conditions for the validity of the agreement are:

1) An agreement between the binding parties. This means that the parties entering into an agreement must mutually agree and be in agreement regarding the main matters of the agreement to be entered

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into. Agree without coercion (dwang), mistakes (dwaling) and deception (bedrog).

2) Able to make an agreement. This means that the parties must be legally competent, that is, adults (21 years old) and not under guardianship.
3) Regarding a certain matter. This means that what will be agreed must be clear and detailed (type, quantity and price) or information about the object, the rights and obligations of each party should be known, so that there will be no dispute between the parties.
4) A lawful cause, meaning that the contents of the agreement must have a purpose (causa) that is permitted by law, morality or public order.

Consumer financing agreements are the legal basis for all parties involved. However, this agreement was not designed or formed by the debtor, but is a standard contract product prepared by the creditor. When the debtor's application is accepted and they receive a loan in the form of financing for a vehicle, the creditor draws up a consumer financing agreement containing the rights and obligations of the parties. However, practically, the debtor's position tends to be unbalanced because they are asked to sign a prepared agreement, without the opportunity to check the suitability of the contents of the agreement. This may cause disagreements between debtors and creditors in the future.

According to Peter Mahmud Marzuki, understanding the nature of legal relationships is important to determine the legal regime that regulates these relationships. This has significance because it will determine the jurisdiction of the court which has absolute authority to resolve disputes that may arise in that context. If the relationship has private characteristics, then private law regulates it. When there is a dispute in the relationship, regardless of how many parties are involved in the dispute, civil courts have the authority to resolve the dispute, unless the dispute has special characteristics that require special jurisdiction.

In connection with the above, Bank Indonesia has issued BI Circular Letter No.15/40/DKMP dated 23 September 2013 which regulates the amount of motor vehicle deposits (DP) according to the type of vehicle. For two-wheeled vehicles, the DP is at least 25%, for three-wheeled vehicles 30%, and 20% for non-production vehicles with three or more wheels. However, there are still many people who do not understand their rights as consumers in this regard, and it is necessary to explain their rights to clear information, so that conflicts and disputes in the future can be avoided and the interests of both parties are protected. Therefore, responsive and fair legal regulations are needed to overcome this problem. The problem of non-compliance with statutory regulations, both at the national and regional levels, is still an

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unresolved issue, which in the end can harm the people who receive fiduciary guarantees.

Therefore, it is important to have legal certainty that can provide fair legal protection for both creditors and debtors, especially debtors who receive fiduciary collateral objects. Conflicting legal norms relating to the same subject can cause disagreement due to differences in understanding of the concepts used in the agreement. Blurring and conflicting norms can also produce diverse interpretations among parties who tend to seek the most favorable interpretation for themselves, especially creditors. Thus, situations like this often lead to legal disharmony which ultimately hinders efforts to seek justice in the applicable legal system. So, the main aim of all laws implemented is to achieve justice. However, there is no guarantee that following the rule of law will actually lead to justice. First, because the rule of law itself is limited by its nature and has no weaknesses, because the state of law itself is man-made. Second, because there are many opportunities for distortion in the implementation and application of the law. Against the above, in 2006 the Minister of Finance issued Regulation Number 84/PMK.012/2006 concerning Financing Companies. Then in 2014 the Financial Services Authority issued Regulation no. 29/POJK.05/2014 concerning the Implementation of Financing Company Business. The aim of issuing this POJK is to support the dynamic development of finance companies and create a finance company industry that is tough, contributive, inclusive and contributes to maintaining a stable and sustainable financial system.

Based on the description of the background of the problem stated above, the problems that are the subject of study in this research are as follows:

1) What are the executorial limitations in the context of creditor protection in fiduciary guarantees according to Constitutional Court Decision Number 18/PUU-XVII/2019?
2) To what extent is there a balance of legal protection between creditors and debtors in changes to the interpretation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees?
3) How to adjust or revise legal procedures to ensure balanced protection for creditors and debtors

Methods

The research used is normative juridical legal research which focuses on positive legal studies. Normative juridical research is legal

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research that places law as a building system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, as well as doctrines or teachings. Another name for normative legal research is doctrinaire legal research, also referred to as library research or document study. It is called doctrinal legal research, because this research is carried out or aimed only at written regulations or other legal materials. It is said to be library research or document study because this research is mostly carried out on secondary data in libraries.

In accordance with the character of normative legal science, the study of positive law includes the study of legal dogmatics, the study of legal theory, and the study of legal philosophy. At the level of legal dogmatics, emphasis is placed on identifying several laws and regulations related to the social system in Indonesia, while at the level of legal theory, a study is carried out on theories that can be used to analyze the legal system, legal certainty, the operation of the law and property rights. towards the legal construction of copyright as an object of fiduciary security based on legal certainty and usefulness. A research approach is a method or way of conducting research so that researchers obtain information from various aspects to find the issue they are looking for an answer to. In accordance with the type of research, namely normative juridical, the research approach used in this research is: Normative/Statute Approach

Namely by reviewing all laws and regulations related to the legal issue being handled. In this case, the approach is taken by examining the laws and regulations relating to copyright as an object of fiduciary guarantee starting from the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 28 of 2014 concerning Copyright , Law Number 42 of 1999 concerning Fiduciary Guarantees. Conceptual Approach (Conceptual Approach) Is a departure from the views and doctrines that have developed in legal science. By studying views and doctrines in legal science, researchers will find ideas that give rise to legal understandings, legal concepts and legal principles that are relevant to the content at hand.

A conceptual approach can also carry out research on legal concepts such as; legal sources, legal functions, legal institutions, and so on. This legal concept is in three domains or levels according to the level of legal science itself, namely: the level of dogmatic legal science, the legal concept is technical juridical, the legal theory level is the general concept of law, the legal philosophy level is the basic concept of law. In this case, the approach taken is to examine the concepts of copyright as an object of fiduciary guarantee. Case Approach: This approach is carried out by examining cases related to the legal issues being faced that have received court decisions and have permanent legal force. These cases can be cases that occur in Indonesia or in other countries. The main study in the case approach is

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ratio decidendi or reasoning, namely the court's considerations in arriving at a decision. Both for practical purposes and for academic studies, ratio decidendi or reasoning is a reference for preparing arguments in solving legal issues.

In this research, we examine cases or decisions regarding the regulation of copyright as an object of fiduciary guarantee. Historical Approach (Historical Approach) This approach is carried out within the framework of understanding the philosophy of legal rules over time, as well as understanding changes and developments in the philosophy that underlies these legal rules. This approach is carried out by examining the background of what is being studied and developments in regulations regarding the legal issues being faced. Such research is needed by researchers when researchers really want to reveal the philosophy and thought patterns that gave birth to something being studied. From a historical perspective, the history of the development of the immigration control function that has been in force in Indonesia and looks at the implementation of a combination of copyright regulations as an object of fiduciary security before the 1945 Constitutional Amendment. Also looks at the history of the Indonesian government system.

Comparative Approach (Comparative Approach) The comparative approach is carried out by conducting comparative legal studies. Comparative legal studies are activities to compare the laws of one country with the laws of other countries or the laws of one particular time with the laws of another time. In Bambang Sunggono's view, quoted by Suratman and Philips Dillah, the comparative approach uses elements of the legal system as the starting point for the comparison, where the legal system includes three main elements, namely: 1) legal structure which includes legal institutions; 2) legal substance which includes a set of rules or regular behavior; and 3) legal culture which includes the set of values adhered to. Legal comparisons can be made for each element or cumulatively for all of them. With this comparative approach, legal research can be carried out on various legal sub-systems that apply in a particular society, or cross-sectorally on the legal systems of various different societies. This research tries to compare the implementation of a combination of copyright regulatory systems as fiduciary guarantees in America, Japan and Malaysia.

Results / Discussion

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1. What are the executorial limitations in the context of creditor protection in fiduciary guarantees according to Constitutional Court Decision Number 18/PUU-XVII/2019

Constitutional Court Decision No. 18/2019, if you look closely, is actually more related to execution processes which chronologically can be placed in the pre-auction or pre-auction period. This is illustrated by the background of the Petitioners' application for review of the Fiduciary Law to the Constitutional Court. The ruling issued by the Constitutional Court Panel of Judges also provides an interpretation of the process of executing fiduciary collateral between creditors and debtors, which of course occurs during the period before the creditor submits an application for sale by auction to the KPKNL. Even though it is understood that the Constitutional Court's decision has more implications for events before the auction was submitted to the KPKNL, in reality the events that occurred before the auction were held often become the basis for lawsuits being filed against the auction by debtors. So if it is not examined carefully, it could give rise to legal problems in the future, such as KPKNL losing in the trial process.

In PMK No. 27/2016, auction implementation can be categorized into three major stages, namely Auction Preparation, Auction Implementation, and Post-Auction. The Auction Preparation Period, as the stage most affected by the a quo Constitutional Court Decision, can be understood as the stage of activities or conditions carried out or fulfilled before the auction is held, namely the Auction Application, Seller, Place of Auction, Determination of Time for Auction, Certificate Land/Land Registration Certificate (SKT/SKPT), Cancellation Before Auction, Auction Bid Guarantee, Limit Value, and Auction Announcement. The main objective of the Auction Preparation stage is to achieve the condition of Formal Legality of the Auction Subject and Object, namely a condition where the auction requirements documents have been fulfilled by the Seller according to the type of auction and there are no differences in data, showing the legal relationship between the Seller (auction subject) and the goods to be auctioned. (auction object), thereby convincing the Auction Officer that the auction subject has the right to auction the auction object, and the auction object can be auctioned. After the issuance of the a quo Constitutional Court Decision, KPKNL needs to review each auction request for fiduciary collateral, whether the formal legality conditions for the subject and object of the auction have been met. In order to fulfill these conditions, the DJKN Auction Directorate may need to confirm or add to the requirements for tender submission documents. In the a quo Constitutional Court Decision, it is stated that the determination of a breach of contract (default) is not determined unilaterally by the creditor,

but rather on the basis of an agreement between the creditor and the debtor or on the basis of legal action that determines whether a breach of contract has occurred, so that in the application for an auction of fiduciary guarantees submitted to the KPKNL, The verifier at KPKNL needs to ensure that there is a document of agreement between the creditor and the debtor regarding the occurrence of a default or a court decision stating that a default has occurred.

Furthermore, the a quo Constitutional Court Decision interprets that for fiduciary guarantees where there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily handing over the object that is the fiduciary guarantee, then all legal mechanisms and procedures in carrying out the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same with the execution of court decisions that have permanent legal force. In such conditions, the auction application document verifier at KPKNL needs to ensure that there is a decree of execution issued by the competent court. Based on the description above, the true implications of Constitutional Court Decision No. 18/2019 regarding the auction business process at KPKNL is related to the process before the auction is held. This needs to be taken seriously so that in the future it does not cause other legal problems.

The a quo Constitutional Court decision certainly raises pros and cons, especially regarding the understanding of the power of the executive title as currently understood. The a quo Constitutional Court decision means that the executorial title does not necessarily have the same force as a court decision which already has binding legal force under certain conditions as confirmed in the Decree. Furthermore, it is also necessary to consider that the a quo Constitutional Court Decision can also give rise to a similar understanding of other security legal institutions, such as Mortgage Rights and Pawning. The characteristics between Fiduciary and Mortgage Rights, which are both collateral legal institutions, can be said to be similar, only differing in terms of the object of the collateral. The characteristics of both are similar in terms of execution, which is based on the executorial title which is symbolized in the irah-irah "FOR JUSTICE BASED ON THE ALMIGHTY GOD". The question that then arises is whether the logic of interpretation in Constitutional Court Decision No. 18/2019 is used to carry out an examination of the Mortgage Rights Law, as far as its execution provisions are concerned? Of course we cannot answer with certainty, because the right to make a request is given to every citizen who feels they have suffered a constitutional loss due to the enactment of certain laws, in this case the Mortgage Rights Law.

One thing is certain, if a similar understanding is used to carry out an examination of the Mortgage Rights Law, it will certainly also have

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implications for the auction business process, because auctions for mortgage objects are categorized as Execution Auctions, just like Execution Auctions for fiduciary guarantees. Article 6 of the Mortgage Rights Law, which is the basis for the execution of Mortgage Rights objects, editorially, also requires a breach of contract as a condition for requesting an auction to the KPKNL. Based on the provisions of these provisions, the determination of breach of contract in the case of Mortgage Rights will be determined in the same way as the determination of breach of contract in the Fiduciary context. Furthermore, the level of strength of the executorial title stated in the Mortgage Rights certificate which has been the basis for the auction of Mortgage Rights objects is also questionable. Concerns regarding the widening of this impact need to be considered more seriously by the DJKN cq Auction Directorate, because the Auction Execution of collateral objects, both Fiduciary and Mortgage Rights, is under its authority. This concern actually emerged in the trial which later gave birth to Constitutional Court Decision No. 18/2019, which was conveyed by one of the experts from the Government. Such potentials also need to be considered as a form of risk mitigation that might have an impact on the organization.

2. To what extent is there a balance of legal protection between creditors and debtors in changes to the interpretation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees

The birth of the a quo Constitutional Court Decision also needs to be seen as momentum to carry out orderly improvements in legislation relating to auctions, especially as currently the DJKN is still perfecting the Auction Draft Law (RUU). Apart from that, the birth of the Constitutional Court's Decision also left several questions or legal problems in the field of auctions which should be answered by the Auction Bill as Ius Constituendum. One of the problems concerns the emergence of confusion in the case of auction requests with objects in the form of fiduciary collateral. The regulations currently in force differentiate between Fiduciary Execution Auctions and Court Execution Auctions. Based on Constitutional Court Decision No. 18/2019, it can be understood that in certain conditions an executorial title cannot be implemented immediately unless a decision for execution has been requested from the court. In the event that the execution of a fiduciary guarantee must be preceded by a court order, confusion arises as to which category the auction falls into, whether a fiduciary guarantee Execution Auction or a court Execution Auction. As with the question above, of course the problems caused by the issuance of Constitutional Court Decision No. 18/2019 which has a direct impact on the process of

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verifying tender application documents at KPKNL and the possibility of widespread testing of the Mortgage Rights Law also needs to be answered in the Auction Bill. Thus, the momentum for the birth of Constitutional Court Decision No. 18/2019 must also be used to create a better ius constituendum for auctions.

A fiduciary guarantee agreement is a form of guarantee agreement in the form of a loan or debt guarantee agreement, where the nature of the agreement is an accessory (assessoir). The provisions governing the nature of this fiduciary agreement are contained in article 4 of Law no. 42 of 1999 concerning Fiduciary Guarantees, namely "Fiduciary Guarantees are a subsidiary agreement to a main agreement which creates an obligation for the parties to fulfill an achievement" What is meant by achievement in the provisions above is giving something, doing something, or not doing something that can valued in money.

According to Munir Fuady, "a fiduciary guarantee agreement is a guarantee agreement for another debt security agreement, such as a pawn agreement, mortgage or security right, so the fiduciary guarantee agreement is also an assessoir agreement." What this means is that the assessor agreement cannot stand alone, but follows or follows other agreements which are the main agreement. In this case, the main agreement is the debt and receivables agreement. Then Sri Soedewi Masjchum Sofwan's opinion is that fiduciary agreements are assessor in nature and depend on the main agreement which is usually in the form of a money lending agreement to a bank. Meanwhile, according to Mariam Badrulahman, fiduciary is a guarantee that has assessor properties because it is attached to the main agreement (borrowing money).

The various opinions expressed by the scholars mentioned above are basically the same as the provisions in Article 4 of Law no. 42 of 1999 concerning Fiduciary Guarantees, which essentially states that the agreement is a subsidiary of a main agreement. The consequence of the nature of the fiduciary agreement which is an accessory or assessoir is that the main agreement is invalid, or for whatever reason it loses its validity or is declared invalid, then legally the fiduciary agreement as an assessoir agreement is also invalid. For an object that is the object of fiduciary collateral, there must be an encumbrance placed on it, tied to the encumbrance of the object. We can see the object of this fiduciary guarantee in the provisions of Law no. 42 of 1999 concerning Fiduciary Guarantees, namely Article 6 paragraph (1), as follows: "The encumbrance of objects with fiduciary guarantees is made by notarial deed in Indonesian and is a Fiduciary guarantee deed"

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In the fiduciary guarantee deed, apart from stating the day and date, the contents of the fiduciary guarantee deed itself are also stated in article 6 of Law no. 42 of 1999 concerning Fiduciary Guarantees. In Article 6 itself, it is stated that the fiduciary guarantee deed as referred to in Article 5 above, at least contains the identity of the party giving and receiving the fiduciary. What is meant by "identity" in this article includes full name, religion, place of residence or place of domicile. , place and date of birth, gender, marital status and employment. Principal agreement data guaranteed by fiduciary What is meant by the words "principal agreement data" are the types of agreements and debt data guaranteed by fiduciary. A description of the object that is the object of the fiduciary guarantee, a description of the object identifying the object, and an explanation of the proof of ownership. Guarantee value and value of objects that are the object of fiduciary collateral.

Fiduciary Registration Considering how important the registration function is for a debt guarantee, including fiduciary guarantees, the Law on Fiduciaries, namely Law No. 42 of 1999, then regulates it with the obligation for every fiduciary guarantee to be registered at the Fiduciary Registration Office. The obligation to register fiduciaries with the authorized institution comes from Article 11 of Law No. 42 of 1999 concerning Fiduciaries. Fiduciary registration is carried out at the Fiduciary Registration Office at the domicile of the party giving the fiduciary. Fiduciary registration is carried out for the following matters:

1) Objects of fiduciary collateral located within the country (Article 11 paragraph (1)).
2) Objects of fiduciary collateral located abroad (Article 11 paragraph (2)).
3) Regarding changes to the contents of the fiduciary guarantee certificate (Article 16 paragraph (1)). Fiduciary recipients are required to submit an application for registration of these changes to the Fiduciary Registration Office.

3. How to adjust or revise legal procedures to ensure balanced protection for creditors and debtors based on changes in the interpretation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees

Article 15 paragraph (2) of Law 42/1999 explains that a fiduciary guarantee certificate has the same executorial power as a court decision that has obtained permanent legal force. It should be noted that the phrases "executorial power" and "court decisions that have obtained

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permanent legal force" were decided against the 1945 Constitution of the Republic of Indonesia ("1945 Constitution") and do not have binding legal force as long as they are not interpreted as "against fiduciary guarantees." If there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily handing over the object which is the fiduciary guarantee, then all legal mechanisms and procedures in implementing the execution of the fiduciary guarantee certificate must be carried out and apply in the same way as the execution of a court decision which has permanent legal force. "This was decided by the Constitutional Court in Constitutional Court Decision Number 18/PUU-XVII/2019.

Apart from that, if the debtor breaks his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee under his own authority. However, in the same Constitutional Court decision, the phrase "breach of contract" was ruled contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted to mean that "the existence of a breach of contract is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of efforts law that determines whether there has been a breach of contract." Based on this description, the form of default in a fiduciary guarantee agreement must also be mutually agreed upon between the parties or through other legal measures to determine that the debtor is in breach of promise, and must not be declared unilaterally.

Apart from that, the existence of a fiduciary guarantee certificate does not necessarily mean that the fiduciary recipient can immediately execute the object of the guarantee. The legal mechanisms and procedures for carrying out the execution of the certificate, like the execution of a court decision that has permanent legal force, must still be carried out, if there is no agreement regarding breach of contract and the debtor objects to handing over the collateral object voluntarily. All legal information on Klinik Hukumonline.com is prepared solely for educational purposes and is of a general nature (see complete Disclaimer Statement). To get specific legal advice for your case, consult directly with a Justika Partner Consultant.

Conclusion

Conclusions from research regarding the impact of Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 on creditors highlight two main aspects. First, this decision causes a

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reduction in the protection of creditors' rights due to changes in the meaning of breach of contract or default and restrictions on the execution process, resulting in creditors losing their authority to carry out fiduciary guarantees. This can disrupt the economic progress of creditors and has the potential to create disagreements between creditors and debtors. Second, regarding procedures for executing fiduciary guarantees, the decision does not provide adequate legal certainty for creditors, especially regarding the lack of clarity in determining breach of contract which hampers the execution process, making creditors face difficulties in exercising rights related to fiduciary guarantees.

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B superior executorial boundaries in the context of creditor protection, balanced legal protection between creditors and debtors, as well as adjustments to legal procedures after changes to the interpretation of Article 15 paragraph (2) of Law Number 42 of 1999. Meanwhile, the results of Nurul Ma'rifah's research provide more conclusions general regarding the reduction in creditor rights protection and legal uncertainty resulting from the Constitutional Court's decision without conducting an in-depth analysis regarding the executorial limitations or proposed procedural solutions.

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