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Implementation of the Execution of the Fiduciary Guarantee Object After the Decision of the Constitutional Court Number 18 PPU XVII 2019

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A B S T R A C T

This paper analyzes the application of fiduciary guarantees following the issuing of Constitutional Court Decision Number 18/PUU-XVII/2019. This ruling upholds the debtor's entitlement to legal protection against the wrongful execution of fiduciary obligations that contravene legal stipulations within the framework of Indonesian law. This research employs a normative juridical approach by examining documents and interpreting legal statutes, Constitutional Court rulings, and pertinent field activities.
The study's findings indicate that, following the Constitutional Court's ruling on enforcing fiduciary assurances, numerous changes have transpired, particularly on procedural aspects and safeguarding debtors' rights. The current issues are legal ambiguity and the necessity for more comprehensive rules. This report advocates for amending regulations and enhancing law enforcement officers' capabilities to ensure the execution of fiduciary assurances aligns with legal provisions.

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INTRODUCTION

A fiduciary guarantee is a security interest in movable assets that serves as collateral for the repayment of designated debts. Consequently, the fiduciary occupies a preferential position in relation to other creditors. A fiduciary might be an individual or an entity that holds the asset under fiduciary obligation. Conversely, the fiduciary may be a financial institution that possesses funds secured by the fiduciary guarantee.

Articles 11 and 12 of Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF) specify the requirements that must be met when entering into a fiduciary guarantee agreement, including the obligation to register these guarantees at the Fiduciary Registration Office. The Constitutional Court (MK) Decision Number 18/PUU-XVII/2019 alters the implementation procedure for fiduciary guarantee objects in Indonesia. This ruling evaluated Law Number 42 of 1999 concerning Fiduciary Guarantees, specifically refining the preceding execution method. If an agreement exists on the debtor's default, the creditor or fiduciary may execute without prior court reservation before this determination.

Following the Constitutional Court's verdict, the execution procedure became further complex and required further official legal actions. According to the Procedural Modifications Subsequent to the Constitutional Court's ruling, the enforcement of fiduciary guarantees is not necessarily required to take place inside a judicial context. In the event of a dispute between the debtor and the creditor, execution must be presented in court to obtain a judicial ruling. The aim is to guarantee legal protection for all parties involved in the fiduciary agreement.

Many legal practitioners and corporate representatives view the alterations to execution practices as making the process more intricate and time-consuming. Although the fiduciary guarantee system in Indonesia originated during the Dutch colonial era, current regulations continue to depend on jurisprudence. The Supreme Court's verdict on August 18, 1932, which upheld the legitimacy of motor vehicle warranty agreements grounded in fiduciary principles, was a pivotal decision. In response to the insufficient regulation of the fiduciary guarantee law, Law No. 42 of 1999 was established to delineate legal criteria and protect all parties involved. According to Article 15, Paragraph (1) of this Law, the Fiduciary Guarantee Certificate has executory authority equivalent to that of a permanent court judgment. Per Article 29, Paragraph (1b), the Fiduciary is empowered to unilaterally liquidate the fiduciary collateral, designated as the Execution Part, upon the debtor's contractual default. Creditors can no longer act unilaterally without first following the litigation process. This could diminish the efficacy of fiduciary assurances as a financial instrument and negatively impact the economy. The Constitutional Court's ruling requires that corporations and the public understand the new procedure and protect their rights under fiduciary agreements. Subsequent to the promulgation of Constitutional Court Decision Number 18/PUUXVII/2019, substantial modifications will occur in implementing fiduciary commitments in Indonesia. All parties must acquaint themselves with the new legal procedures and adapt accordingly to effectively fulfill their rights and obligations.

LITERATURE REVIEW

Fiduciary

The word fiduciary is derived from the Latin word fiducia which according to the Legal Dictionary means trust.3 The term fiduciary in Indonesian is the transfer of property rights in trust, while in Dutch terminology it is also called fiduciare eigendom overdracht. Fiduciary comes from the word fieds which means trust. Trust means that the guarantor believes in the transfer of his property rights not intended to actually make the creditor the owner of the property and if the fiduciary principal agreement is repaid, then the collateral will return to the property of the guarantor (Tunisa, 2015).

Legal Aspects of Fiduciary Guarantees

For small entrepreneurs in particular and generally medium entrepreneurs to advance their business often have difficulties in terms of capital, where to get additional capital by looking for money loans to banks/financial institutions must be able to show collateral in the form of certified land with the status of property rights (HM) and building use rights (HGB) or business use rights (HGU) which are then burdened with dependent rights (Law No. 4 Th. 1996) which were previously mortgaged. Fiduciary guarantees were initially only based on jurisprudence, because it was necessary to be able to create legal certainty in loans with guarantees. The object is immovable goods, in addition to immovable goods that cannot be encumbered by a mortgage. A person can obtain fiduciary guarantees, a Fiduciary Guarantee Deed must be made in front of a Notary, then registered with the Fiduciary Registration Office. A criminal offence in a Fiduciary Guarantee may be imposed on a person who deliberately falsifies, alters, omits or in any way provides misleading information, which if known to one of the parties does not give rise to the Fiduciary guarantee. (Yasir, 2016).

It seems that to overcome capital difficulties for small entrepreneurs in particular and medium entrepreneurs in general, a forum has been created to be able to help capital for these small entrepreneurs, namely through Fiduciary Guarantees regulated by Law No. 42 of 1991 concerning Fiduciary Guarantees, namely as collateral is movable goods. With this Fiduciary guarantee, the entrepreneur does not need to hand over the goods that are used as collateral, the goods can still be used for the smooth running of their business. In this fiduciary, there is trust from the capital owner to the users, for example taxi entrepreneurs, taxi cars are still operated.

In Islamic law, the right of dependent/guarantee is known as Ar Rahn (collateral), Ar rahn in the hands of al mutahin (the debtor) only functions as a guarantee for the debt of Ar rahin (the debtor). The collateral can only be sold/appreciated if within the time agreed by both parties, the debt cannot be repaid by the debtor. Therefore, the rights of the creditor are only related to collateral, if the debtor is unable to pay off the debt. Fiqh scholars state that the ar-rahn contract is permissible in Islam, based on the Quran and the Sunnah of the Prophet.

METHODOLOGY

Normative research methods in law analyze prevailing legal standards present in statutes, regulations, doctrines, or jurisprudence and their suitable application within society. This research seeks to analyze and understand the legal underpinnings of the legal system and investigate legal facts or events that occur within the domain. Researchers commonly examine legal sources in normative studies, encompassing statutes, governmental regulations, and municipal ordinances. Legal theory (the perspectives of legal authorities), jurisprudence (relevant judicial decisions), and legal custom (recognized legal practices). The principal aim of normative research is to clarify legal ideas, evaluate the conformity of regulations with principles of justice, and recommend alterations or improvements to the current legal framework. This method is commonly utilized to analyze unclear regulations, compare different legal systems, and measure the congruence between statutory laws and prevailing moral or ethical standards in society.

RESEARCH RESULT AND DISCUSSION

Analysis of Government Policy Regarding Fiduciary Guarantee Clients Following the Constitutional Court Ruling.

Implementation of fiduciary assurances prior to the Constitutional Court's decision. If the debtor or fiduciary incurs damage owing to a promise or default, the fiduciary guarantee may be enforced prior to the verdict of the Constitutional Court. The debtor is unable to fulfill his obligations as outlined in the agreement. Debtors are unable of meeting their commitments for two principal reasons. The primary cause originates from the debtor's intentional or negligent mistake. The second arises from coercive circumstances, or overmacht. Four circumstances may be categorized as defaults: inaction, delays in task execution, unapproved actions, or unlawful behaviors as stipulated in the agreement. Upon the expiration of the contractually specified deadline, the debtor is considered to be in default.

For the debtor to be deemed in default, the court must issue a written reprimand, known as a summons, under Article 1238 of the Civil Code. The Supreme Court Circular Letter Number 3/1963 declares Article 1238 of the Civil Code to be illegal. Subekti asserts that a verbal or personal reprimand is sufficient for creditors to compel the debtor to act expeditiously.

In actuality, financial institutions, sometimes referred to as leasing organizations, do not uniformly enforce verbal or written reprimands as suggested by Subekti. Leasing companies often utilize debt collection agencies to operate directly without a court summons. Occasionally, leasing companies that use debt collectors may unilaterally repossess the vehicle, perhaps resulting in criminal prosecution. According to Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees, goods employed as fiduciary collateral must be registered at the fiduciary registration office of the Ministry of Law and Human Rights. The fiduciary submits a registration application in accordance with the provisions specified in Article 13, paragraph (1). Following the registration process, the fiduciary registration office will provide a fiduciary guarantee certificate, valid from the date of application receipt (Article 14 of Law

Number 42 of 1999). Article 15, paragraph 1 mandates that the fiduciary assurance certificate contains the phrase, "For the sake of justice based on the One Godhead," and holds executory power comparable to a final court order. Article 15, paragraph (1) stipulates that a fiduciary pledge lacks enforceability and cannot be executed through the court if the debtor defaults on their obligations.

The main aim of fiduciary registration is to safeguard the interests of creditors in their role as fiduciaries. The creditor may promptly pursue the fiduciary guarantee if the debtor, acting as the fiduciary, fails to fulfill its obligations. Furthermore, Article 15, paragraph (3) specifies that the fiduciary has the exclusive authority to sell the goods as fiduciary collateral in the case of the debtor's contractual default. The fiduciary, in this case, may perform the parate by liquidating the collateral without engaging with the defaulting debtor. In contrast, Subekti argued that creditors are required to provide verbal or written notifications prior to declaring the debtor in default. Moreover, Article 15, paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees prioritizes creditor interests over those of the debtor. In fact, financial institutions routinely intervene immediately when debtors default on their obligations, frequently without prior notice to encourage compliance, and may also utilize debt collection companies.

Thus, it may be concluded that the debtor supplying the fiduciary is at a disadvantage if he neglects to meet his responsibilities. If the debtor defaults on the duty or fails to fulfill the promise, the fiduciary is entitled to pursue the provisions of the fiduciary guarantee. Creditors may act autonomously through a fiduciary certificate, which carries the same enforceable power as a judicial decision with lasting legal significance. This will certainly disadvantage the debtor who provides the fiduciary. Article 29, paragraph (1), regulates the execution of fiduciary guarantees prior to the issuance of Constitutional Court Decision Number 18/PUU-XVII/2019.

This article delineates three approaches for implementing a fiduciary guarantee. Initially, by employing an executory title, the fiduciary certificate asserts "For Justice Based on the One Godhead" and holds legal authority akin to a court judgment with lasting legal implications. Secondly, the creditor or fiduciary has the authority to sell the collateral asset in a public auction to produce revenue for the settlement of debts. Third, direct sales may transpire under the accord between the grantor and the fiduciary, with price expected to benefit all parties concerned. The execution must be carried out through the judicial system. The fiduciary may concurrently conduct a sale via designated, legally sanctioned mechanisms, such as the stock market or auction, as long as the execution process does not require judicial involvement. The regulation of this sales method protects the interests of the debtor or fiduciary about stocks and securities traded in the capital market.

Implementation of Fiduciary Guarantees Following the Constitutional Court's Ruling

The Constitutional Court's Panel of Judges concluded the material assessment of Law Number 42 of 1999 on Fiduciary Guarantees on January 6, 2020. The Constitutional Court's decision validated several petitions from the petitioner, since some terminology and clarifications in Article 15, paragraphs (2) and (3) of the Law, are incongruent with the 1945 Constitution. This includes the expression "injury to promise" referenced in Article 15, paragraph (3) of the Fiduciary Law, along with the term "executory power," which is equivalent to a court order with enduring legal authority. The Constitutional Court also claimed that court verdicts with permanent legal force, as articulated in Article 15 paragraph (2), lack binding legal authority because the term "executory power" is irreconcilable with the 1945 Constitution.

This interpretation remains valid unless there is disagreement concerning the breach of promise; this is especially relevant when the debtor voluntarily refuses to surrender the fiduciary collateral. The enforcement of a fiduciary assurance shall be conducted and treated in an identical manner to the execution of a definitive and enforceable court ruling. The financing entity may operate autonomously without judicial involvement if the debtor and creditor concur on the default injury provision. As a result of the Constitutional Court's ruling, creditors are barred from executing the fiduciary promise personally; all executions must go through the District Court. This exception applies solely when a pre-existing agreement for breach of promise exists between the debtor and the creditor, in which the debtor willingly assigns the object of the fiduciary guarantee to the creditor.

The Constitutional Court stated that the phrase "injury of promise" in Article 15 paragraph (3) of the Fiduciary Guarantee Law does not possess binding legal force unless interpreted as "injury of promise unilaterally defined by the party." Therefore, parate execution may occur after to the Constitutional Court's decision, contingent upon an agreement between the debtor and the creditor, and the debtor's voluntary surrender of the object of execution.

The Constitutional Court ruled that, although a material test was sought to assess the stipulations of Article 15 paragraph (2) of the Fiduciary Guarantee Law, it deemed the phrases "executory power," "equivalent to a court decision with permanent legal force," and "injury to promise" in Article 15 paragraph (3) of Law Number 42 of 1999 to be unconstitutional. Consequently, the Court determined that the interpretation of Article 15 paragraph (2) of the Fiduciary Guarantee Law, specifically the term "executory power," lacks binding legal authority and is inconsistent with the 1945 Constitution, unless interpreted as follows: "for fiduciary guarantees where no agreement exists concerning the breach of promise and the debtor who opposes the voluntary surrender of the fiduciary guarantee object, all mechanisms and procedures shall apply."

The beneficiaries of fiduciary rights or creditors receiving the fiduciary are prohibited from executing independently (Parate Execution) following the Constitutional Court ruling No. 18/PUU-XVII/2019. They must petition for implementation in the District Court. A ceasefire of execution can only occur if there is consensus regarding a violation of a prior agreement, and the debtor is prepared to voluntarily relinquish the object of the fiduciary assurance.

This ruling establishes that not all executions are required to occur via the judicial procedure. Assume there is a lack of consensus between the creditor and the debtor concerning the breach of contract or default, and the debtor declines to voluntarily relinquish the fiduciary guarantee certificate. The fiduciary guarantee certificate must be executed as a court ruling with enduring legal authority. A finance business, or lessor, may reclaim the fiduciary guarantee if there is a consensus on the default provision and the debtor consents to relinquish the collateral. Otherwise, the courts may get inundated with numerous execution cases while other matters remain unaddressed. Thus, parate can be executed. The Constitutional Court's ruling does not eliminate the execution powers of finance corporations that violate agreements without a settlement. For instance, judicial enforcement may occur if the debtor fails to make timely installment payments and declines to surrender the fiduciary collateral. This is substantiated by Article 15, paragraph (3), which stipulates that in the event of debtor default, the fiduciary is entitled to sell the fiduciary guarantee asset. The Constitutional Court underscored that a default determination cannot be unilaterally established by creditors; rather, it necessitates the debtor's consent. In the event of a default agreement, the execution of the fiduciary guarantee must be conducted via an application for execution in the District Court.

The Constitutional Court's ruling seeks to guarantee legal certainty and equity between the lessor and the debtor, while inhibiting creditors from conducting capricious executions. Subsequent to the ruling, the fiduciary rights holder is barred from independent execution and must pursue execution via the District Court.

The Constitutional Court's opinion indicates that the enforcement of fiduciary commitments does not require a court procedure; it may be executed through parate execution. However, if the fiduciary agreement does not contain a paragraph addressing breach of promise between the creditor and debtor, the execution must conform to a court ruling with enduring legal authority. If the fiduciary agreement does not include a breach of promise requirement and the debtor refuses to relinquish the collateral to the creditor, execution must take place in district court.

The retrieval of collateral is not necessarily mandated to occur through legal proceedings. When the leasing firm provides credit for vehicle acquisition and the debtor faces difficulties in making payments, the leasing corporation may repossess the car if the debtor, having violated the agreement, agrees to willingly surrender it. The leasing business cannot unilaterally retrieve the motorcycle if the debtor refuses to relinquish it as a fiduciary assurance; they must seek enforcement through the district court.

The Constitutional Court further ruled that a breach of the commitment, such as the debtor's failure to make timely payments, does not invalidate the financing entity's enforcement right. In the event of debtor default, the fiduciary has the right to unilaterally liquidate the fiduciary collateral in accordance with Article 15, paragraph (3). This provision remains valid even if the right lacks legal effectiveness without the filing of an execution application to the district court. The Constitutional Court's decision in this case aims to provide legal certainty and fairness between creditors and debtors, while preventing creditors from conducting arbitrary executions. According to Decision No. 18/PUU-XVII/2019, creditors (lease) are barred from executing or seizing fiduciary collateral assets, including vehicles or real estate, purely based on the presence of a fiduciary guarantee certificate. Financial institutions seeking to repossess vehicles must file a petition with the District Court.

The Constitutional Court confirmed that creditors can initiate unilateral execution if the debtor admits to the violation of commitment and freely agrees to forfeit the object of the fiduciary guarantee. Therefore, this verdict does not nullify the executory power specified in Article 15 of Law Number 42 of 1999, contingent upon the aggrieved debtor's commitment to relinquishing the fiduciary collateral.

The conditions subsequent to the Constitutional Court's decision on execution have become increasingly prolonged and difficult. If the debtor disputes the assumption of default, the creditor is barred from directly enforcing the guarantee without initiating legal actions following the Court's ruling.

The necessary legal procedure is both time-consuming and expensive, hindering asset or receivable recovery and augmenting Debtor Protection. Debtors now have enhanced alternatives: they may refuse execution if they assert they are not culpable. Debtors commonly seek to escape or resist execution, while law enforcement personnel typically deny help without a clear legal basis. Emerging Challenges Faced by Creditors and Leasing Companies. If the debtor contests the default claims, the financing entity must initiate civil litigation. This increases the probability of negative credit consequences. Notwithstanding a decrease, automobile repossessions by debt collectors continue, often in violation of legal statutes.

Amendments to Fiduciary Agreements. Some creditors seek to clarify the default clause and integrate the execution agreement into the contract; nevertheless, this must adhere to the stipulations set forth by the Constitutional Court's verdict. In everyday operations, financial institutions, or creditors, frequently refrain from registering fiduciary assurances with the Fiduciary Registration Office to reduce costs. The creditor agrees that the fiduciary transfer of title becomes effective at the signing of the contract. Consequently, the consumer is no longer seen as the owner of the items upon signing; they are merely viewed as borrowers or users. Fiduciary guarantee registration is crucial for ensuring legal clarity for finance companies and customers as debtors.

The Regulation of the Minister of Finance of the Republic of Indonesia No. 130/PMK. 010/2012 mandates that finance companies offering consumer financing for motor vehicles secured by fiduciary guarantees must register these guarantees within 30 calendar days following the approval of consumer financing. Furthermore, Article 3 stipulates that finance businesses are prohibited from removing fiduciary collateral in motor vehicles until the Fiduciary Registration Office provides a fiduciary guarantee certificate and presents it to the financing company.

The retraction of this fiduciary guarantee must adhere to the relevant legal regulations governing fiduciary guarantees and receive approval from both parties involved in the consumer finance agreement. If they fail to comply, the financing firm will face fines including warnings, suspension of business operations, or revocation of business licenses, as stipulated in Article 3, paragraph 1 of the Regulation. Written warnings are issued up to three times and remain valid for 60 calendar days.

The finance firm will be absolved from the warning if the fiduciary guarantee is registered prior to the conclusion of the warning period. Should the third remembrance period conclude without collateral registration, the Minister of Finance will suspend commercial activities. Within 30 calendar days of sending the business activity freeze letter, the freezing sanction will be formally communicated in writing to the financing firm. If the finance company records a fiduciary guarantee during the inactive phase of business operations, the Minister of Finance may annul the freezing sanction. However, if the frozen period has concluded and the financial business neglects to establish a fiduciary guarantee. In such circumstances, the Minister of Finance may impose punishment by revoking business licenses. This pertains to the Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK. 010/2012 about the Registration of Fiduciary Guarantees for financial institutions that offer financing to motor vehicle users.

Prior to the promulgation of Regulation Number 130/PMK by the Minister of Finance of the Republic of Indonesia. Police Chief Regulation Number 8 of 2011, designated as Number 010/2012, was implemented in June 2011. This order of the National Police Chief was established to mitigate the negative consequences frequently associated with the collateral removal process, which often incites opposition from borrowers. This regulation by the National Police Chief aims to ensure the execution of fiduciary guarantees is conducted safely, orderly, and accountably, while safeguarding fiduciary guarantee recipients, fiduciary guarantors, and the public from threats to property and life safety.

The application for execution security must be submitted in writing to the Chief of Police or the Chief of Police overseeing the execution, by the recipient of fiduciary guarantees or their legal representative. This submission must include copies of the deed, certificate of fiduciary guarantee, warning letter to the debtor, identification of the execution executor, and letter of assignment for the execution executor. The police have a crucial role in preserving security and order during the implementation of fiduciary bail, serving as a security force rather than as executors. Police intervention is discretionary and occurs solely if the application request fulfills the stipulated criteria.

The debtor's legal recourse in instances of compelled withdrawal of the fiduciary guarantee asset.

Fiduciary guarantees are the legal safeguards provided by the government to debtors when obtaining a vehicle from a financing firm. This is essential, as financial institutions often endeavor to confiscate collateral. If a debtor faces collateral seizure in a consumer financing agreement, they may solicit the finance firm for a Fiduciary Guarantee Certificate from the Fiduciary Registration Office. In the absence of this document, the finance firm is devoid of the ability to seize the items, and the debtor is not compelled to relinquish the collateral. The debtor is entitled to report the financing firm to the Ministry of Finance or the Financial

Services Authority to avert potential consequences imposed under applicable regulations.

The debtor or the proprietor of the goods is entitled to notify the withdrawal of the fiduciary guarantee object in the event that it occurs forcibly or incites a dispute. The removal of the fiduciary asset must comply with the relevant legal provisions, including Constitutional Court Decision No. Per 18/PUU-XVII/2019, creditors or debt collectors are prohibited from executing a forcible seizure unless the debtor consents to the surrender freely.

The retrieval of goods may only occur via the courts if the debtor declines to surrender them. Moreover, withdrawal may be classified as forfeiture (pursuant to Article 368 of the Criminal Code), destruction of property (under Article 406 of the Criminal Code), threats (as defined in Article 335 of the Criminal Code), or other criminal offenses if executed with violence, threats, intimidation, or in violation of legal protocols. The involuntary removal of the fiduciary collateral from the premises without the debtor's consent and absent a judicial ruling may be deemed an unlawful act (PMH), particularly following the Constitutional Court's decision number 18 of the PUU of 2019. The debtor is entitled to initiate legal action in the district court if the compulsory withdrawal is deemed unlawful.

CONCLUSION AND RECOMMENDATIONS

Prior to the Constitutional Court's ruling No. 18/PUU-XVII/2019, various methods were available for executing the fiduciary assurances outlined in Article 29. The statement "For Justice Based on the One Godhead" on the fiduciary assurance certificate is tantamount to a court ruling with enduring legal authority. Secondly, the fiduciary may liquidate the collateral in a public auction. The revenue from the sale will be allocated to settle receivables. Third, pursuant to the grantor and fiduciary agreement, a clandestine sale may also be executed at a price mutually agreed upon. Subsequent to the Constitutional Court's ruling No. 18/PUU-XVII/2019, the process for implementing fiduciary guarantees experienced substantial modifications. Court rulings with lasting legal authority are deemed inconsistent with the 1945 Constitution, particularly the term "executory power" in paragraph 2 of Article 15. Consequently, the creditor's fiduciary is no longer permitted to unilaterally enforce the collateral asset. They must instead petition for execution with the District Court. Furthermore, it was determined that the term "injury of promise" in Article 15, paragraph (3) of the Fiduciary Guarantee Law lacks enforceable legal authority and contravenes the 1945 Constitution. The creditor cannot unilaterally execute the fiduciary collateral unless there is an agreement concerning the breach of the promise, in which case the debtor is prepared to relinquish the collateral object willingly.

The government's strategy emphasized the court's role in safeguarding debtors' rights and ensuring legal clarity for creditors following the Constitutional Court's ruling on fiduciary guarantee execution. The Constitutional Court Decision No. 18/PUU-XVII/2019 and its revisions are governed by the Constitutional Court Decision No. 2/PUU-XIX/2021; the unilateral actions of creditors without judicial processes contravene the constitution. Consequently, execution may only proceed if there is a consensus on the default and the debtor willingly relinquishes the object of the guarantee. The Regulation of the Minister of Finance of the Republic of Indonesia No. 130/PMK.010/2012 governs the registration process for fiduciary guarantees applicable to finance businesses offering consumer financing, particularly for motor vehicles, alongside the enforcement of fiduciary guarantees. If these prerequisites are not satisfied, the creditor must submit an application for an execution determination to the district court as an alternative in the execution process. The government establishes these restrictions to safeguard debtors, consumers, or beneficiaries from the unilateral activities of financing institutions that frequently seize collateral without authorization.

In a consumer finance agreement, the debtor possesses multiple legal avenues concerning the relinquishment of collateral. One may request the finance business to provide a Certificate of Fiduciary Guarantee provided by the Fiduciary Registration Office. As the finance company lacks the authority to execute, the debtor is not obligated to surrender the collateral if the company fails to provide a certificate. Additionally, the debtor may complain the acts of the financing business to the Ministry of Finance or the Financial Services Authority. This action aims to guarantee that the corporation will face penalties in accordance with the regulations set forth by the Minister of Finance. The debtor is recommended to oversee the sale or auction of the collateral contingent upon the finance firm issuing a Fiduciary Guarantee Certificate. The debtor must ascertain the market value of the products, which will be utilized to determine the outstanding obligation. The debtor may claim a part of the auction earnings if the outstanding debt exceeds that amount.

Suggestion

Consumer finance agreements create a connection between creditors and consumers. To yet, no conclusive regulations exist for financing businesses concerning the inclusions or exclusions in these agreements. Drafting financing agreements is expected to protect the interests of both parties. Regulatory reforms and improved law enforcement are essential to safeguard the interests of all parties and enable the effective implementation of fiduciary assurances under legal provisions.

ADVANCED RESEARCH

Following the Constitutional Court's Decision No. 18/PUU-XVII/2019, significant changes were introduced to the enforcement of fiduciary guarantees, particularly limiting the unilateral execution powers of creditors. Future research could explore the practical implications of this ruling on consumer financing practices, especially within the motor vehicle sector. Studies may examine how the requirement for court involvement affects the efficiency of debt recovery and the legal protection of both creditors and debtors. Additionally, further investigation is needed into the impact of the fiduciary registration process as governed by Regulation No. 130/PMK.010/2012, particularly in cases where the finance company fails to provide a fiduciary certificate. Research can also focus on the effectiveness of debtor complaint mechanisms through institutions such as the Ministry of Finance or the Financial Services Authority, and their role in ensuring accountability of finance companies. This area remains crucial for assessing how legal reforms shape debtor-creditor relations and the broader financial system in Indonesia.

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