

EXECUTION OF FIDUCIARY GUARANTEE AFTER CONSTITUTIONAL COURT DECISION NUMBER. 2/PUU– XIX/2021 (Study at PT. Pegadaian, Branch Tarandam, Padang)

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Abstract: Fiducia is ownership right shifting of an object on the basis of trust with a stipulation that the object is under control of the owner. Fiduciary guarantee is often used by finance companies in providing credit. PT. Pegadaian, Branch Tarandam, Padang, is one of the financial institutions as a lender with a fiduciary system. The decision of the Constitutional Court Number 18/PUU-XVII/2019 amending the provisions of Article 15 Paragraph (2) and Paragraph (3) of Law Number 42, 1999 about Fiduciary Guarantee raises several problems. The Constitutional Court rejected judicial review of Article 15 Paragraph (2) and Elucidation of Article 15 Paragraph (2). The decision of the Constitutional Court Number 2/PPU-XIX/2021 confirms that execution of fiduciary certificate through the District Court is only an alternative.

Key Words: Constitutional Court Decision, Execution, Fiduciary.

1. INTRODUCTION:

On August 30, 2021, the Constitutional Court issued Decision Number 2/PUU-XIX/2021. Basically, the decision of the Constitutional Court Number 2/PUU-XIX/2021 regarding the Review of Law Number 42 of 1999 concerning Fiduciary Guarantees only provides confirmation of the previous decision, namely the Constitutional Court Decision Number 18/PUU-XVII/2019 concerning the Judicial Review of Law Number 42 of 1999 concerning Fiduciary Guarantee. In addition, the decision of the new Constitutional Court also does not have a fundamental difference with the previous decision because it is only affirmative. As for the ruling, it reads as follows: In Provision: Reject the applicant's provisional application. In the Principal of the Application: Reject the Petitioner's application in its entirety.

PT. Pegadaian Tarandam Padang Branch is one of the credit institutions that distributes loan money with a fiduciary system. In this company, non-performing loans are still often encountered, due to the debtor's default or default on the signed financing contract. When the creditor is about to make a withdrawal of the collateral object, there is often a rejection from the debtor, namely by trying to prevent the creditor and run away from the guarantee so that it hampers the execution process.

2. THEORITICAL FRAMEWORK :

a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[1]

b. Theory of Collateral

According to Hartono Hadisoeparto, a guarantee is something that is given to creditors to create confidence that the debtor will fulfill obligations that can be valued in money arising from an engagement[2]

c. Theory of Agreement

According to Ridwan Syahrani, it is agreed that those who will bind themselves, contain the parties who made the agreement that have agreed or there is agreement of will or agree to the will of each party which is carried out by the parties without coercion, error and fraud.[3]

3. LITERATURE REVIEW:

Agreement, according to the formulation of Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people.

In Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees, we find the definition of fiduciary. Fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are held remains in the control of the owner of the object.

According to R. Subekti, execution is the effort of the party won in the decision to get what is their right with the help of legal force, forcing the defeated party to implement the decision.[4]

5. METHOD :

The method used in this research is an empirical juridical approach, which is an approach based on an approach to the problem by looking at the applicable legal norms and then connecting them to the legal facts found in the field.[5]

6. DISCUSSION :

Execution at PT. Pawnshops are carried out by company employees who are given the task or authority to carry out executions, can cooperate with law enforcement officials, such as the police, prosecutors, advocates, and can also work with partners *or debt collectors*. The execution process is carried out by visiting the debtor with a letter of assignment, the identity of the executor of the execution, a subpoena, and a fiduciary guarantee certificate. Every withdrawal of collateral, if carried out by law enforcement officers, must be accompanied by internal company employees. The decision of the Constitutional Court Number 18/PUU-XVII/2019 has brought new legal developments to the execution of fiduciary guarantees, because companies can no longer carry out unilateral executions. However, the Constitutional Court Decision Number 2/PUU-XIX/2021 only provides confirmation of the previous Constitutional Court decision Number 18/PUU-XVII/2019. Thus the change in execution will have an impact or have legal consequences on the creditor in this case PT. Pawnshops and debtors themselves.

7. ANALYSIS :

A. Execution of Fiduciary Guarantees After the Decision of the Constitutional Court Number 2/PUU-XIX/2021 at PT. Pawnshop Tarandam Padang City Branch

After the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019 concerning the Review of Law Number 42 of 1999 concerning Fiduciary Guarantees to the 1945 Constitution of the Republic of Indonesia, there were several changes related to the regulation of breach of contract or default and execution of fiduciary guarantees in particular Article 15 Paragraph (2) and Paragraph (3). In addition, the enactment of the decision has given legal consequences, especially in the execution of fiduciary guarantees. So that the fiduciary recipient (creditor) can no longer execute the fiduciary guarantee object arbitrarily to the fiduciary giver (debtor).

B. Obstacles in the execution of fiduciary guarantees after the Constitutional Court Decision Number 2/PUU-XIX/2021 at PT. Pawnshop Tarandam Padang City Branch

The process of implementing the execution of fiduciary guarantees after the Constitutional Court's Decision has been implemented at PT. Pawnshop Tarandam Padang City Branch. However, there are obstacles encountered in the execution process. When viewed from the internal aspects of the company, namely PT. Pegadaian as a creditor, the obstacles found are as follows:

- a. Execution through a request for execution to the court takes a longer time. This provides a loophole for debtors with bad intentions, because with the need to wait for a court decision that has permanent legal force, there will be an opportunity for debtors to deliberately buy time by choosing to settle cases through the courts and take actions that can harm PT. pawnshop.
- b. Creditors must carry out many stages of execution. Starting from submitting an application to the chairman of the court, the chairman of the court provides Aanmaning, laying the confiscation of executions, selling auctions. The implementation of these stages requires a long time in the execution process.
- c. If the execution takes a long time, then the value of the object that is the object of the fiduciary guarantee, namely the movable property, tends to shrink. The execution of the guarantee should be carried out in simple steps, and in a short time.
- d. If the value of the object of the collateral decreases, then at the time of the auction sale it will have the consequence that a lower value is obtained than the value of the debt borne by the object of the guarantee. While the remaining excess debt must wait for repayment by the debtor.
- e. Then, in terms of costs, it is also quite large, and these costs were initially borne by the company, but these costs will later be charged to customers when making sales.

8. CONCLUSION :

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) Implementation of the execution of fiduciary guarantees after the Constitutional Court Decision Number 2/PUU-XIX/2021, PT. The Pawnshop Tarandam Branch of Padang City has implemented the Constitutional Court's Decision Number 2/PUU-XIX/2021 in the execution of fiduciary guarantees.
- 2) Obstacles in the execution of fiduciary guarantees after the Constitutional Court Decision Number 2/PUU-XIX/2021 faced by PT. Pawnshop Tarandam Padang City Branch, namely: it takes a long time because of the many stages of execution of fiduciary guarantees, this provides an opportunity for debtors with bad intentions to buy time.

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