

# OBJECT EXECUTION FIDUCIARY GUARANTEE POST DECISION CONSTITUTIONAL COURT NUMBER 18/PUU-XVII/2019 (CASE STUDY DECISION NUMBER : 32/Pdt.G.S/2021/PN Pdg)

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**Abstract:** *This thesis discusses the execution procedure after the issuance of the Constitutional Court decision Number 18/PUU-XVII/2019. The problem discussed in this research is How is the Execution of Fiduciary Guarantees After the Constitutional Court Decision Number 18/PUU-XVII/2019 and How the Judge Considers in Cases of Execution Fiduciary Guarantee After Constitutional Court Decision Number 18/PUU-XVII/2019*

**Key Words:** *Fiduciary, Execution, and Judgment Constitutional Court.*

## 1. INTRODUCTION:

With the decision of the Constitutional Court Number 18/PUU-XVII/2019, there has been a shift in Article 15, which states that before a person has broken a promise there must be an agreement between the two parties to state that the party who is unable to carry out the agreement does not determine unilaterally that the existence of default and all mechanisms in the execution of fiduciary guarantees must be based on a court decision that has permanent legal force, but after this decision was issued a legal effort was made to carry out a judicial review of the decision of this constitutional court, with decision number 2/PUU-XIX/ 2021, the judge stated that the lawsuit was rejected in its entirety, the judge stated that the previous decision was valid and had permanent legal force.

## 2. THEORITICAL FRAMEWORK:

### a. Legal Certainty Theory

The theory of legal certainty according to Bachsan Mustafa, is that positive administrative law must be able to guarantee legal certainty to the population.[1]

### b. Legal Protection Theory

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law[2].

## 3. LITERATURE REVIEW:

Hartono Hadisoewpprpto argues that what is meant by guarantee is something given to creditors to create confidence that the debtor will fulfill obligations that can be valued in money arising from an agreement.[3]

According to Retnowulan Sutantio and Iskandar Oerip kartawinata, execution is a forced action by the court against a party that loses and does not want to carry out the decision voluntarily.[4]

## 4. METHOD:

The method used in this study is a normative juridical approach, which is an approach based on research methods carried out by examining literature (secondary data), which is related to legal issues and applicable norms in accordance with the thesis. [5]

## 5. DISCUSSION:

In connection with the decision of the Constitutional Court Number 18/PUU-XVII/2019 by unilaterally selling objects that are fiduciary guarantees has violated this decision, based on Article 29 of the Fiduciary Guarantee Law, in carrying out sales there must be prior notification both to the fiduciary giver and the fiduciary recipient and the

sale must be made in public and carried out by the auctioneer, by carrying out the act of selling unilaterally it has violated the fiduciary guarantee law itself and the decision of the Constitutional Court Number 18/PUU-XVII/2019.

## 6. ANALYSIS:

### A. Execution of Fiduciary Guarantees After Constitutional Court Decision Number 18/PUU-XVII/2019 (Decision Case Case Number: 32/Pdt.G.S/2021/Pn Pdg)

The position of the execution that has been carried out by the defendant is that the author can conclude that in confiscating or taking objects that are fiduciary guarantees there should be an agreement beforehand, and in Article 15 of the Fiduciary Guarantee Law a different meaning has been carried out because with the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019. The meaning of Article 15 can no longer be relevant to use, every action must have an agreement and also in the sound of the narrative the equating of execution with a court decision can no longer be connected with a court decision. In its realization, it must comply with the procedures and standards used by the court, the procedure cannot be carried out by the creditor itself, and the sale of the execution of the fiduciary collateral object is not carried out based on the corridor, the sale does not use an authorized party for the sale, whether it is carried out by the Head The State Assets and Auction Service Office (KPKNL) and private auction officials, this sale was carried out under the hands and was not carried out by agreement of the parties and the sale was at a price that did not match the price of the car, the defendant only thought of his own interests because the sale was not carried out with the highest price, the seller of the collateral object is sold at a very low price. The execution carried out by the defendant was wrongly carried out by the defendant coupled with the issuance of Constitutional Court regulation Number 18/PUU-XVII/2019 regulating the execution of fiduciary guarantees that can no longer be carried out unilaterally by creditors.

### B. Judge's Considerations in the Case of Execution of Fiduciary Guarantees After the Constitutional Court's decision Number 18/PUU-XVII/2019 (Case Number 32/Pdt.G.S/2021/PN Pdg)

The decision must be based on interrelated legal considerations which assess the demands desired by the plaintiff, the judge gives consideration to give a fair decision, in this criminal case the judge is not active, but the judge is passive in which the plaintiff and the defendant must prove against whether his actions were right or not, but the judge will judge based on evidence and facts and based on statements from witnesses presented at the trial, one of the legal considerations in this case the judge is referring to Law Number 42 of 1999 concerning Fiduciary Guarantees and the Court's decision Constitution Number 18/PUU-XVII/2019 which forms the basis of the regulations regarding the implementation of Fiduciary Execution.

## 7. CONCLUSION :

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

- 1) Whereas the actions taken by the defendant in carrying out the execution of the Fiduciary collateral object were not in accordance with the procedure which was regulated in the Constitutional Court decision Number 18/PUU-XVII/2019.
- 2) Whereas the judge in his consideration, gave his legal reasoning.

## REFERENCES:

1. Bachsan Mustofa, 2001, *Sistem Hukum Administrasi Negara Indonesia*, Cipta Aditya Bakti, Bandung, page 53.
2. Satjipto Raharjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, page 53.
3. Hartono Hadisoeparto, 2004, *Pokok-Pokok Hukum Perikatan dan hukum Jaminan*, Liberty, Jakarta, page 50.
4. Salim Hs, 2003, *Pengantar Hukum PerdataTertulis (BW)*, SinarGrafika, Jakarta, page 132.
5. Ediwarman, 2015, *Monograf Metodologi Penelitian Hukum*, Sofmedia, Medan, page 25.