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Juridical Analysis of the Withdrawal of Fiduciary Security Objects by Creditors Based on Law Number 42 of 1999 on Fiduciary Security

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ABSTRACT

Fiduciary security is a form of proprietary security widely used in financing agreements in Indonesia, as it provides creditors with preferential rights and executorial power while allowing debtors to retain possession of the secured object during the term of the agreement. The regulation of fiduciary security is governed by Law Number 42 of 1999, including the mechanism for executing the secured object in the event of default. However, in practice, the execution of fiduciary security frequently gives rise to legal issues, particularly unilateral repossession of secured objects without clear agreement on default or judicial procedures, which may prejudice the rights of debtors. This research aims to analyze the legal regulation governing the mechanism for executing or repossessing fiduciary security objects and to examine the forms of legal protection afforded to creditors and debtors following Constitutional Court Decision Number 18/PUU-XVII/2019. This study employs normative legal research using statutory and conceptual approaches. The findings indicate that the Constitutional Court Decision emphasizes that the executorial power of fiduciary certificates cannot be exercised unilaterally without an agreement regarding default and voluntary surrender by the debtor or a court decision with permanent legal force. This decision strengthens the principle of due process of law and promotes a more balanced legal protection framework for both creditors and debtors in the execution of fiduciary security.

Keywords: Constitutional Court, Default, Execution, Fiduciary Security, Legal Protection.

ABSTRAK

Jaminan fidusia merupakan instrumen jaminan kebendaan yang banyak digunakan dalam perjanjian pembiayaan di Indonesia karena memberikan kedudukan preferen dan kekuatan eksekutorial bagi kreditur, sementara debitur tetap menguasai objek jaminan selama perjanjian berlangsung. Pengaturan mengenai jaminan fidusia diatur dalam Undang-Undang Nomor 42 Tahun 1999, termasuk mekanisme eksekusi apabila debitur wanprestasi. Namun, dalam praktik, pelaksanaan eksekusi jaminan fidusia kerap menimbulkan permasalahan hukum, khususnya terkait penarikan objek jaminan secara sepihak tanpa kesepakatan wanprestasi atau prosedur peradilan, yang berpotensi merugikan debitur. Penelitian ini bertujuan untuk menganalisis pengaturan hukum mengenai mekanisme eksekusi atau penarikan objek jaminan fidusia serta bentuk perlindungan hukum bagi kreditur dan debitur pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukkan bahwa Putusan Mahkamah Konstitusi menegaskan eksekusi jaminan fidusia tidak dapat dilakukan secara sepihak tanpa adanya kesepakatan mengenai wanprestasi dan penyerahan sukarela dari debitur atau tanpa putusan pengadilan. Putusan ini memperkuat prinsip due process of law



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serta mendorong keseimbangan perlindungan hukum bagi kreditor dan debitur dalam pelaksanaan eksekusi jaminan fidusia

Keyword: Eksekusi, Jaminan Fidusia, Mahkamah Konstitusi, Perlindungan Hukum, Wanprestasi.

1. Introduction

The development of economic activities and the increasing public demand for financing have encouraged the use of credit institutions as a means to fulfill both consumptive and productive needs. Within credit relationships, the existence of collateral serves as an important instrument to provide legal certainty and protection for creditors in the event that debtors fail to fulfill their obligations. One form of collateral that is widely used in Indonesia is fiduciary security, which is specifically regulated under Law Number 42 of 1999 concerning Fiduciary Security (Fuady, 2000).

The Fiduciary Security Law grants a strong legal position to creditors through a fiduciary security certificate that has executorial power and is equated with a court decision having permanent legal force. This regulation allows creditors to execute the collateral object if the debtor is declared in default, as stipulated in Article 29 of Law Number 42 of 1999. On the other hand, the law also imposes obligations and prohibitions on debtors to maintain the fiduciary security object, including the prohibition against transferring the collateral object without the creditor's written consent.

In practice, the implementation of the withdrawal of fiduciary security objects frequently gives rise to legal problems. It is still common to find transfers of collateral objects without the creditor's consent, as well as unilateral withdrawals conducted by financing companies through third parties (debt collectors) using methods that do not comply with legal procedures (Liono et al., 2021). Such conditions often lead to conflicts, resistance from debtors, and even potential violations of criminal law, indicating a gap between normative legal provisions and their practical implementation in the field.

As an effort to regulate and supervise the execution of fiduciary security, the Indonesian National Police issued Regulation of the Chief of the Indonesian National Police Number 8 of 2011 concerning the Security of Fiduciary Security Execution. This regulation aims to ensure that the withdrawal of fiduciary security objects is carried out in a safe, orderly, and legally compliant manner. Furthermore, Constitutional Court Decision Number 18/PUU-XVII/2019 further emphasizes that the execution of fiduciary security cannot be conducted unilaterally without an agreement regarding default or a court ruling, thereby strengthening legal protection for debtors.

Based on these conditions, the implementation of fiduciary security object withdrawal in Indonesia still presents various juridical issues, particularly concerning execution mechanisms and legal protection for both creditors and debtors. Therefore, a comprehensive juridical study is required to examine the conformity between legal regulations and the practical execution of fiduciary security withdrawals in order to realize legal certainty, justice, and legal utility (Marzuki, 2013). In line with this objective, this research is directed at examining the legal framework governing the mechanism of execution or withdrawal of fiduciary security objects as regulated in Article 29 of Law Number 42 of 1999 concerning Fiduciary Security and the provisions of Regulation of the Chief of the Indonesian National Police Number 8 of 2011 concerning the Security of Fiduciary Security Execution. In addition, this study also analyzes the forms of legal protection for creditors and debtors in the implementation of fiduciary security execution, including the juridical implications following the enactment of Constitutional Court Decision Number 18/PUU-XVII/2019.

2. Research Methods

This research is a normative legal study employing a statutory approach and a conceptual approach. The data used consist of primary legal materials, including Law Number 42 of 1999 on Fiduciary Security, relevant implementing regulations, and pertinent court decisions, as well as secondary legal materials in the form of legal literature, scholarly journals, and expert doctrines. The collection of legal materials was conducted

through a library research method, which was subsequently analyzed qualitatively using a descriptive juridical analysis method to examine the conformity between positive legal provisions and the practical implementation of fiduciary security object withdrawals, in order to draw prescriptive conclusions.

3. Results and Discussion

3.1 Legal Regulation Regarding the Mechanism of Execution or Withdrawal of Fiduciary Security Objects

In the dynamics of the legal relationship between creditors and debtors, the existence of a collateral institution plays a crucial role in providing certainty, protection, and balance for the parties in a credit agreement. The increasing economic activity of society, particularly in the consumptive and productive financing sectors, requires a collateral instrument that is not only effective in its implementation but also has clear executorial power in the event the debtor defaults or fails to fulfill their obligations. In this context, fiduciary security has become one of the widely used forms of collateral by financing institutions, given its flexible nature while still allowing the debtor to retain physical control of the collateral object during the credit period.

Law Number 42 of 1999 on Fiduciary Security was enacted as a special legal basis (*lex specialis*) regulating the creation, registration, rights and obligations of the parties, as well as the execution mechanism of the collateral object. The fiduciary security certificate, bearing the motto “For Justice Based on the One Almighty God,” provides a strong position for creditors because the certificate is equated with a court decision having permanent legal force. Consequently, creditors, in principle, may carry out execution if the debtor is declared in default.

The term “fiduciary” in Dutch is fully referred to as *Fiduciaire Eigendoms Overdracht (FEO)*, and in English as *Fiduciary Transfer of Ownership* (Subekti and Tjitrosudibio, 2008). Law Number 42 of 1999 officially adopts the term fiduciary in legal terminology. Article 1 paragraph (1) defines fiduciary security as the transfer of ownership of an object based on trust, with the provision that the object remains in the control of its owner. According to A. Hamzah and Senjun Manulang, fiduciary security is a method of transferring ownership rights from the owner (debtor) to the creditor under a principal agreement; however, only the legal rights are transferred and held in trust by the creditor, while the object itself remains under the debtor’s control, not as the owner (*eigennar*) or possessor (*bezitter*), but as a custodian (*detentor* or *houder*) on behalf of the creditor (*eigenaar*).

The formation of a fiduciary security agreement under Law Number 42 of 1999 generally involves two main stages: the encumbrance stage and the registration stage. Article 5 paragraph (1) stipulates that the encumbrance of an object with fiduciary security must be made in the form of a Notarial Deed in Indonesian, which simultaneously functions as the fiduciary security deed. This notarial deed constitutes an authentic deed as regulated in Article 1868 of the Civil Code. Following the encumbrance stage, the fiduciary security deed must be registered as mandated in Article 11 paragraph (1) of the Fiduciary Security Law, which requires that every object encumbered with fiduciary security undergoes a registration process.

The enactment of Law Number 42 of 1999 is fundamentally intended to provide legal certainty, protection, and strengthen the rights and obligations of creditors in financing relationships, particularly through granting preferential proprietary rights with executorial power. This legal framework provides creditors with a clear legal basis to demand repayment, execute collateral objects in the event of debtor default, and ensure that debtor obligations are fulfilled in accordance with the agreement, thereby minimizing creditor losses and ensuring legal certainty. In line with strengthening the creditor’s position, the law also emphasizes the debtor’s obligation to maintain the fiduciary object, including prohibited actions as regulated in Article 23 paragraph (2):

“The Fiduciary Grantor is prohibited from transferring, pledging, or leasing the object of Fiduciary Security that is not inventory, except with prior written consent from the Fiduciary Recipient.”

This provision is reinforced in Article 36, which states:

“A Fiduciary Grantor who transfers, pledges, or leases the object of Fiduciary Security as referred to in Article 23 paragraph (2) without prior written consent from the Fiduciary Recipient shall be punished with imprisonment for a maximum of 2 (two) years and a fine of up to IDR 50,000,000 (fifty million rupiah).”

This obligation represents the debtor’s legal responsibility not to undertake actions that could reduce or eliminate the value of the collateral object, thus ensuring the creditor’s legal position as the holder of fiduciary rights is protected and maintaining the balance of rights and obligations in the financing relationship.

Fiduciary security is a collateral instrument that grants preferential rights to creditors in financing relationships, with the main characteristic being that the collateral object remains under the debtor’s control throughout the credit term (Fuady, 2000). In the context of fiduciary security implementation, the execution or withdrawal mechanism of collateral objects is a crucial aspect determining the effectiveness of legal protection for the parties. Normatively, the legal regulation on fiduciary security execution is governed by Article 29 of Law Number 42 of 1999, which provides a legal basis for creditors to execute in the event of debtor default (Hamzah & Manulang, 1987).

Article 29 of the Fiduciary Security Law regulates three execution mechanisms: execution based on the executorial title of the fiduciary security certificate, public auction of the collateral object, and private sale based on the parties’ agreement. The fiduciary security certificate, bearing the motto “For Justice Based on the One Almighty God,” grants executorial power equivalent to a court decision with permanent legal force. Conceptually, this regulation aims to provide convenience and legal certainty for creditors in collecting debts without undergoing lengthy judicial procedures (Satrio, 2002). However, this execution authority is not absolute and must be exercised in accordance with applicable legal procedures and the principle of prudence (Marzuki, 2013).

Execution based on the executorial title requires certain legal elements, including proof of debtor default and formal requirements such as the creation of a fiduciary security deed by a notary and registration at the Fiduciary Registration Office. Registration is crucial because it constitutes the birth of proprietary rights and executorial power for the creditor. Without registration and a fiduciary security certificate, the creditor-debtor relationship remains a conventional debt relationship, and the creditor has no authority to directly execute the collateral object (Satrio, 2002).

In addition to the executorial title mechanism, public auction sales of collateral objects aim to ensure transparency and objectivity in execution. Through this mechanism, fiduciary objects are sold openly to achieve a fair price, protecting the creditor’s interests while preventing disproportionate losses for the debtor. The private sale mechanism provides flexibility as long as it is based on mutual agreement and aims to obtain the highest price benefiting both parties. Although Article 29 normatively provides a clear legal framework, the practical execution of fiduciary security often raises legal issues (Liono et al., 2021). A primary problem is the unilateral interpretation of default by creditors, used as a basis to withdraw collateral objects without transparent and accountable procedures.

To ensure order and security in execution, the Indonesian National Police issued Regulation of the Chief of the Indonesian National Police Number 8 of 2011 concerning the Security of Fiduciary Security Execution. This regulation functions as a technical complement to the execution provisions of Law Number 42 of 1999. It does not regulate execution authority but focuses on security to ensure that execution is orderly, safe, and legally compliant. Accordingly, the regulation clarifies that the

police do not have the authority to directly withdraw fiduciary objects, but only provide security for lawful execution processes.

Article 7 of the Regulation explicitly lists the requirements that must be met before police security is granted, including a request from the applicant, existence of a fiduciary security deed, registration at the Fiduciary Registration Office, and possession of a valid fiduciary security certificate. This indicates that police security can only be provided if all legal procedures under the Fiduciary Security Law are fully met, preventing unauthorized collateral withdrawal.

Normatively, this reflects the prudential principle in execution. The police act as a state institution ensuring that execution does not disturb public order or violate debtor rights. Thus, Regulation Number 8 of 2011 functions as a control instrument for fiduciary security execution, preventing arbitrary actions by creditors or third parties acting on their behalf. Furthermore, the regulation impacts the use of third parties in execution. Police may refuse security for executions carried out by parties lacking legal legitimacy, such as debt collectors without a fiduciary certificate or lawful execution procedures. This ensures that execution security is only provided for legally compliant actions, protecting the debtor's position as the holder of the collateral object.

In conclusion, Regulation Number 8 of 2011 occupies a strategic position in Indonesia's fiduciary security legal system. It clarifies police authority in execution, strengthens legal certainty, and safeguards the rights of the parties. The regulation bridges the abstract legal norms in the Fiduciary Security Law with real-world execution, supporting orderly, fair, and legally compliant fiduciary security execution.

3.2 Legal Protection for Creditors and Debtors in the Implementation of Fiduciary Security Execution Following Constitutional Court Decision Number 18/PUU-XVII/2019

Legal protection for creditors and debtors in the implementation of fiduciary security execution is a fundamental aspect of financing law, considering the potential imbalance of positions between the parties. Creditors, as holders of proprietary rights, are granted preferential rights and executorial power to obtain repayment of their receivables, while debtors retain control of the collateral object during the term of the agreement. This situation often leads to conflicts when the debtor is declared in default, particularly in the execution of fiduciary security object withdrawals (Fuady, 2000).

Prior to Constitutional Court Decision Number 18/PUU-XVII/2019, the provisions of Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 on Fiduciary Security were often interpreted as granting creditors direct authority to execute fiduciary security objects based solely on the fiduciary security certificate. In practice, this interpretation frequently resulted in unilateral collateral withdrawals, often carried out through third parties such as debt collectors, without a clear agreement regarding default or voluntary surrender by the debtor, thus potentially violating the rights of the debtor (Satrio, 2002).

Constitutional Court Decision Number 18/PUU-XVII/2019 was then issued as a corrective measure against this practice, affirming that the executorial power of a fiduciary security certificate cannot be exercised unilaterally. The Court interpreted that execution may only be carried out directly if there is an agreement regarding default and the debtor voluntarily surrenders the collateral object. If these conditions are not met, the creditor must follow judicial mechanisms to obtain legal certainty. This decision emphasizes the importance of the principle of due process of law in fiduciary security execution.

In practice, fiduciary security execution often involves the seizure of vehicles by leasing companies through debt collectors, allegedly carried out without proper legal procedures and without debtor consent. One notable case in Indonesia involved a client of PT CIMB Niaga Auto Finance, Rizki Adam, who filed a civil lawsuit against the leasing company due to the forced seizure of his Toyota Fortuner on the street without a court decision or debtor approval. The lawsuit was registered at the Tangerang District Court with a claim amount of IDR 2.5 billion, covering material and immaterial damages for what was allegedly vehicle seizure and

extortion by the leasing executor. According to reports, the vehicle was taken while being driven by the plaintiff's personal staff, without official notice or proper legal procedures.

In his complaint, the plaintiff's legal representative argued that the unilateral seizure violated Constitutional Court Decision Number 18/PUU-XVII/2019, which stipulates that fiduciary security execution cannot be carried out unilaterally without voluntary debtor consent or a legally binding court decision. The lawsuit also included allegations of extortion, as the plaintiff was asked to pay a sum of money for negotiation and administrative costs for returning the vehicle, which had not yet been returned at the time of publication. This case reflects recurring legal issues in fiduciary security object withdrawals, namely weaknesses in understanding and applying lawful execution mechanisms, as well as potential abuse of authority by leasing companies or debt collectors. Such situations not only harm the debtor's rights but also create doubt about the legal certainty that should be guaranteed by law and Constitutional Court decisions.

From the perspective of legal protection, this case reinforces the argument that although the legal framework for fiduciary security execution has been normatively regulated through Law Number 42 of 1999 and clarified by the Court's decision, field implementation still faces serious challenges. This highlights the need for stricter supervision of execution practices, improved legal understanding among the parties, and consistent law enforcement to ensure that execution is not carried out arbitrarily and continues to respect the debtor's rights as the lawful holder of the collateral object until lawful execution occurs.

From a legal protection standpoint, the case illustrates that debtors are potentially disadvantaged if execution is carried out without complying with applicable law. Collateral withdrawal without a valid legal basis not only contravenes the Fiduciary Security Law and Constitutional Court Decision but can also constitute an unlawful act, resulting in civil liability for the leasing company and third parties acting on its behalf. Thus, the Constitutional Court Decision functions as a preventive instrument protecting debtors from coercive actions during execution.

On the other hand, Constitutional Court Decision Number 18/PUU-XVII/2019 does not remove legal protection for creditors. Creditors retain the right to execute fiduciary security objects as long as default can be proven and execution is carried out according to legal procedures, whether through mutual agreement or a court decision. Therefore, legal protection for creditors remains guaranteed through legitimate and measured legal mechanisms, preserving the principle of legal certainty (Marzuki, 2013).

This legal protection is further reinforced by Regulation of the Chief of the Indonesian National Police Number 8 of 2011 concerning the Security of Fiduciary Security Execution. The regulation emphasizes that police involvement in execution is limited to security aspects and may only occur if all legal requirements have been met. In cases of forced vehicle seizure such as the Tangerang case, the police should not provide security if execution is carried out without a valid fiduciary security certificate or a clear legal basis. This demonstrates the function of the Police Regulation as a control mechanism to prevent arbitrary actions in execution practices.

4. Conclusion

The legal regulation regarding the execution mechanism of fiduciary security in Indonesia has provided a clear normative basis through Law Number 42 of 1999 on Fiduciary Security, particularly Article 29, which regulates alternative methods of executing collateral objects. The existence of a fiduciary security certificate bearing an executorial title is intended to ensure legal certainty and efficiency for creditors in obtaining repayment of their receivables. However, this executorial power is not absolute and still requires the fulfillment of formal and material aspects, including proof of debtor default as well as compliance with the procedures for creating and registering fiduciary security.

Constitutional Court Decision Number 18/PUU-XVII/2019 emphasizes restrictions on unilateral execution practices by establishing the principle of due process of law as the main foundation. Fiduciary security execution may only be carried out directly if there is an agreement regarding default and voluntary surrender of the collateral object by the debtor. In the event of a dispute, the creditor is required to pursue judicial mechanisms. This decision strengthens legal protection for debtors without eliminating the creditor's preferential rights, thereby creating a balance of interests in the financing relationship.

Such legal protection is further reinforced by Regulation of the Chief of the Indonesian National Police Number 8 of 2011, which stipulates that the role of the police is limited to security aspects and may only be provided for legally valid executions. The synergy between the Fiduciary Security Law, the Constitutional Court Decision, and the Police Regulation indicates a legal reform direction towards a more orderly, proportional, and just implementation of fiduciary security execution. The main challenge moving forward lies in the consistent implementation in practice to optimally achieve the objectives of legal certainty, protection of the parties' rights, and the overall usefulness of the law.

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