Legal Protection of The Parties in The Execution of Fiduciary Guarantees After The Decision of The Constitutional Court Number 71/Puu-Xix/2021

Putu Ayu Sriasih Wesna [1*], Anak Agung Ngurah Bhaskara Ananda Putra[2]
putuayusriasihwesna@gmail.com
[1,2] Fakultas Hukum Universitas Warmadewa, Denpasar, Bali, 80239, Indonesia

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Abstract
The Constitutional Court has issued Decisions Number 18/PUU-XVII/2019, Number 2/PUU-XIX/2021, and Number 71/PUU-XIX/2021, in which the three decisions have a major impact on the special characteristics of fiduciary guarantees, namely the execution of guarantees that easy with parate execution. This research uses normative legal research methods. The results of this research are the Execution of Fiduciary Guarantees After the Constitutional Court Decision Number 71/PUU-XIX/2021 execution with parate execution becomes ineffective. The legal standing of the Fiduciary Giver is benefited, the Fiduciary Giver has legal protection over the execution parate of the fiduciary recipient. The legal standing of the Fiduciary Recipient is aggrieved due to the loss of legal certainty over the execution parate. The fiduciary recipient in his position as a creditor loses his legal protection in terms of making settlements for bad loans due to complicated execution conditions..

I. Introduction

Credit in everyday life is a term that is no longer unfamiliar to be heard by society. Based on history, it can be known that the use of the term credit is taken from the Greek "credere" which is interpreted as trust, so it is not wrong if in practice the provision of debt receivables as a creditor's achievement and counter debtor's achievement in the future requires trust (Thamrin Abdullah & Francis Tantri, 2002).

In civil law, it is known that the right of the treasury which in its nature provides guarantees and is specifically the object of study of the law of guarantees. The Guarantee Law is a set of provisions that regulate or relate to guarantors in the context of accounts receivable (money loans) contained in various laws and regulations currently in force (M.Bahsan, 2010). The definition of Fiduciary itself is based on article 1 number (1) of the Fiduciary Guarantee Act which states that "Fiduciary is the transfer of ownership rights of an object on the basis of trust provided that the object whose right of ownership is transferred remains in the possession of the owner of the object". A Fiduciary is an Institution of guarantees based on trust. Fiduciary institutions in their history were born to meet the legal need for a practical institution of guarantees for movable objects used as means of business that can be referred to as objects of capital. The object / object of guarantee in the fiduciary is to remain in the control of the debtor, so that if the object is a capital object, the debtor can still carry out his business as it should be (Susanti, 2005). As one of the schemes contained in the legal system of guarantees, fiduciaries are a preferred choice by the public. This is inseparable from the relatively easy, fast and affordable process which is considered suitable for the needs of the business world in meeting the various needs of the community. Another advantage that is the reason for the popularity of fiduciaries in the law of guarantees is that the possession of the guarantee remains with the owner of the guarantee (Nurwitasari 2014).

Fiduciary Guarantee Execution is divided into three ways, namely execution based on the executory title, based on the execution parate and underhand sale. These three ways are affirmed in Article 29 paragraph (1) of the Fiduciary Guarantee Act which states that if the debtor or Fiduciary Giver injures the promise, the execution of the Object of the Fiduciary Guarantee can be carried out by:

a. the exercise of the executory title as referred to in Article 15 paragraph (2) by the Fiduciary Beneficiary;

b. the sale of the Object of the Fiduciary Guarantee on the fiduciary's own power through a public auction and taking repayment of its receivables from the proceeds of the sale;

c. underhand sales made under the agreement of the Fiduciary Giver and Receiver if in such a manner the highest price can be obtained in favor of the parties.

The ease of execution of Fiduciary Guarantees becomes trouble, An application for a material test was filed with the Constitutional Court which

allowed the execution of the Fiduciary Guarantee with the title of executory and parate execution, which had been decided, namely by Judgment No. 18/PUU-XVII/2019 and Constitutional Court Decision No. 2/PUU-XIX/2021 which essentially required Article 15 paragraph (2) against fiduciary guarantees for which there was no agreement on default and the debtor objected to voluntarily surrendering the object to which the fiduciary guarantee was made, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force. In Article 15 paragraph (3) the existence of a promise injury 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 legal remedies that determine the occurrence of the default.

The application for a Material Test was subsequently filed against Article 30 and Explanation of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees. On the request for a Material Test, the Constitutional Court issued Decision Number 71/PUU-XIX/2021, which in its ruling mentioned the phrase "authorities" in the Explanation of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as a "district court".

The purpose of the Constitutional Court's ruling is seen as an attempt to equalize the position of creditors and debtors amid the many issues of creditor arbitrariness against debtors but on the other hand the fiduciary guarantee execution process becomes longer because they have to wait for court decisions, while the process of proceedings in court takes a relatively long time (Alizon 2020), a dynamic business world requires speed and ease. Thus the court's ruling become a momentum in improving laws and regulations in the field of fiduciary guarantees as a whole, especially on execution issues that are a problem in the decision of the Constitutional Court (Ageng Triganda, et.al., 2020).

II. Research Method

The type of research used in this research is normative legal research. Soerjono Soekanto presents the meaning of normative legal research or also known as literature research, which is legal research carried out by examining library materials or mere secondary data (Soerjono & Sri, 2010). In this legal research, there is a blurring of norms regarding default based on agreements

and voluntary submission of collateral objects in Article 15 paragraphs (2) and (3) of the Fiduciase Guarantee Law as stated in the Constitutional Court Decision Number 18 / PUU-XVII / 2019 and the Constitutional Court Decision Number 2 / PUU-XIX / 2021.

III. Results and Discussion

Execution of Fiduciary Guarantees After the Constitutional Court Decision Number 71/PUU-XIX/2021

Fiduciary Guarantee Execution is divided into three ways, namely the exercise of the executory title as referred to in Article 15 paragraph (2) by the Fiduciary Beneficiary; the sale of the Object of the Fiduciary Guarantee on the fiduciary's own power through a public auction and taking repayment of its receivables from the proceeds of the sale; and underhand sales made under the agreement of the Fiduciary Giver and Receiver if in such a manner the highest price can be obtained in favor of the parties.

Execution is the execution of a court decision or deed. In Article 29 paragraph (1) letter a of the Fiduciary Guarantees Act, the executory title referred to in Article 15 paragraph (2) of the Fiduciary Act belongs to the group of execution of a deed. The purpose of execution is the taking of the repayment of the debtor's obligations through the proceeds of the sale of certain objects belonging to the debtor or the guarantee provider (J. Satrio, 2002). Fiduciary Guarantee as an agreement must be stated in a Notarial Deed called a Fiduciary Guarantee Deed and then this Fiduciary Guarantee Deed must be registered with the Fiduciary Registration Office for the issuance of a Fiduciary Guarantee Certificate. Issuance of a Fiduciary Guarantee Certificate in which the words "For the Sake of Justice Based on the Almighty Godhead" are included, so that it has the same executory power as a court decision that has obtained permanent legal force.

The executory title is the power to be carried out by force with the help of state tools, while those who can have executory power are grosse judges' decisions, grosse deeds of mortgages and grosse deeds of recognition of debts made by a notary. In principle, what can be executed is a court decision and a certain authentic deed. If the debtor defaults on the pledge, then based on the ekequatorial title contained in the grosse deed, the creditor can execute the object of the fiduciary guarantee. Herowati Pusoko mentioned that the ejection

arrangement under article 224 of the HIR is an execution addressed to the grosse of the mortgage deed and the grosse of the deed of recognition of the debt. Both grosse deeds are intended, indeed, to have executory rights, which means that both grosse deeds have the power to be judgments of a court having permanent legal force. Hence his execution is submissive and obedient as is the execution of a judgment of the court, which must be carried out by order of the chief justice of the district court (Herowati, 2008).

Parate Execution is an execution that does not require an executory title and therefore does not require a court intermediary, does not require the Cooperation of a bailiff and does not require confiscation (J. Satria, 2002). According to Sri Soedewi Masjchoen Sofwan, parate executie is an execution that is carried out without having an executory title (Grosse Notarial Deed, Judge's Decision) is through the Execution Parate (Direct Execution) that is, the holder of dependent rights with the promise to sell on his own power can exercise his rights directly without going through the decision of the judge or Grosse Deed of Notary (Sri Soedewi, 1980).

The provisions of Article 29 paragraph (1) point b affirm the execution of the execution parate of Article 15 paragraph (3) which states that the sale of the Object of the Fiduciary Guarantee on the power of the Fiduciary Beneficiary himself through a public auction and takes repayment of his receivables from the proceeds of the sale. The execution of the Parate Execution does not involve the court or the bailiff if it meets the conditions of Article 29 paragraph (1) letter b of the Fiduciary Guarantee Act, the Creditor may directly contact the auctioneer and request that the collateral object be auctioned. What is important to remember is that parate execution always has to be carried out through a public sale or auction.

The Decision of the Constitutional Court No. 18/PUU-XVII/2019 ruled that the interpretation of the phrases "executory power" and "the same as a court decision that has obtained permanent legal force" must be interpreted against a fiduciary guarantee for which there is no agreement on default and the debtor objecting to voluntarily surrendering the object to which the fiduciary guarantee is guaranteed, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and applies equally to the execution of a court decision that has permanent legal force. Furthermore, the phrase "default" in Article 15 paragraph (3) must be interpreted as the existence of a promise injury not determined unilaterally by the creditor but on the basis

of an agreement between the creditor and the debtor or on the basis of legal remedies that determine the occurrence of the default of the promise.

An execution based on the title of executory i.e. an execution based on a fiduciary certificate that has the title "For the Sake of Justice Based on the Almighty Godhead" is equated with the same as a court decision that has obtained the force of law is still considered unconstitutional and must be interpreted to be against a fiduciary guarantee for which there is no agreement on default (default) and the debtor objecting to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply equally to the execution of a court decision that has permanent legal force.

Parate execution or the right to sell the Object which is the object of the Fiduciary Guarantee of its own power is considered unconstitutional by the Constitutional Court. The phrase "default" in Article 15 paragraph (3) must be interpreted as the existence of a promise injury not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine the occurrence of the default.

The Decision of the Constitutional Court Number 71/2021 further questions Article 30 and Explanation of Article 30 of the Fiduciary Guarantee Law explaining that the Fiduciary Guarantee Provider is required to submit the Object of the Fiduciary Guarantee in the context of implementing the execution of the Fiduciary Guarantee and the Fiduciary Recipient has the right to take the Object that is the object of the Fiduciary Guarantee and if necessary can ask for help from the competent authority. This phrase authority is often misunderstood that the authorities in providing assistance are one of them the police. The Decision of the Constitutional Court Number 71/PUU-XIX/2021 ruled that the phrase "competent party" in the Explanation of Article 30 of the Fiduciary Guarantee Law does not have binding legal force as long as it is not interpreted as a "district court". In its deliberations, the Court considered that with regard to the execution of fiduciary object guarantees, fiduciary agreements are legal relationships of a civil (private) nature therefore the authority of police officers is limited to securing the course of execution when necessary, not as part of the executor, unless there is an action that contains criminal elements then the new police officer has the authority to enforce the criminal law. Therefore, with regard to the phrase "competent party" in the Explanation of Article 30 of Law 42/1999,

it is interpreted as "district court" as the party requested for assistance to carry out the execution.

Based on the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2011 concerning The Security of Fiduciary Guarantee Execution in the weighing section of Perkapolri Number 8 of 2011, it is stated that as a state tool, the National Police of the Republic of Indonesia is authorized to provide security assistance in the implementation of court decisions or the execution of Fiduciary guarantees, the activities of other agencies, and community activities. In addition, the execution of the Fiduciary Guarantee has the same binding legal force as a court decision that has permanent legal force, so it requires security from the National Police of the Republic of Indonesia. Article 1 number 11 explains that The Security of Execution is a police action in order to provide security and protection to the executor of the execution, the execution petitioner, the execution respondent (executed) at the time the execution is carried out.

The Constitutional Court's ruling gives a loophole to debtors who have bad faith to delay execution of credit agreements that have been due/bad, due to certain conditions that must be met. The conditions or conditions that must be met to carry out the execution of fiduciary guarantees both with the Constitutional Court Decision Number 18 / PUU-XVII / 2019, Number 2 / PUU-XIX / 2021 and Number 71 / PUU-XIX / 2021 are to create a legal uncertainty for the Fiduciary Creditor / Recipient in terms of the execution of the Fiduciary Guarantee. The conditions are as follows:

a. Default Based on the Agreement

Default or also known as default; default; nonfulfillment; or breach of contract is a condition of non-performance of an achievement / obligation as it should be that has been mutually agreed upon – as stated in the contract (Nanda, 2012). Default is based on article 1238 of the Civil Code, that is, if the debtor is in a state of negligence and therefore default if it has been reprimanded (reprimanded) but still does not fulfill its obligations properly or he is for the sake of his own engagement, it must be considered negligent after the lapse of the specified time.

Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021 have ruled that in order to carry out the execution of fiduciary guarantees, the default of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor. The provisions of the Event of default or

Default have certainly been agreed at the beginning when the debtor and creditor sign a credit agreement, but with the Constitutional Court Decision, the state of default seems to be agreed in the back or "post factum". The reverse legal logic due to achievement and default was agreed at the beginning because it aims to avoid violations committed by debtors and creditors.

The default terms agreed at the end of the post factum are contrary to the principle of Consensualism which explains that a treaty has occurred if there has been a consensus or agreement between the parties regarding the points of the Agreement. Since the agreement is binding and has legal consequences (Abdulkadir Muhammad, 2010). For the occurrence of an agreement in general the conformity of the will that meets certain requirements is a contract that is valid according to law. The principle of consensualism can be summed up in article 1320 paragraph (1) of the Civil Code. In the article, it is determined that one of the conditions for the validity of the agreement is the existence of the word agreement between the two parties. This principle also relates to Adagium pacta sunt servanda recognized as the rule that all consents made by man reciprocally are essentially intended to be fulfilled and can be imposed if necessary, so that they are legally binding (Niru Anita Sinaga, 2018). In other words, a lawfully entered into agreement applies as a law applies to the parties who make it. It becomes irrelevant to regulate an agreement on the injury of promises as a condition for execution based on the executory title because the agreement should have been born since the debtor and the creditor agreed and signed the credit agreement. It is enough to underlie the default in Article 1238 of the Civil Code, namely the Debtor is said to be in default when the Creditor declares it in writing, namely through somasi.

It is studied with the economic theory of the posner with the Pareto Efficiency approach of whether the wisdom or change of the law makes a person better by not causing the other to get worse. Whereas the Kaldor-Hicks Efficiency review will ask the question of whether such discretion or change in law will result in sufficient benefits for those who experience the change, so that it can hypothetically compensate those who are harmed by such discretion or change in law or it can be known as cost-benefit analysis (Michael J. Trebilock, 1993). The terms of the agreement on the default of promise become very irrelevant to be regulated because this condition complicates the execution of fiduciary guarantees which causes the Fiduciary Recipient to be harmed due to the difficulty of executing the fiduciary guarantee, in addition to that the condition

of the injury of the promise specified by mutual agreement also injures the principle of Pacta Sunt Servanda which is the basis of the Principal Agreement of the Fiduciary Agreement that has been signed by the Fiduciary Giver and Receiver.

b. Voluntary Surrender of the Object of Fiduciary Guarantee

The decisions of the Constitutional Court 18/PUU-XVII/2019 and 2/PUU-XIX/2021 decide on the executory power and the phrase is the same as the court decision that has legal force to be interpreted if the debtor objects to voluntarily surrendering the object that is a fiduciary guarantee, then all legal mechanisms and procedures in the implementation of the execution of the Fiduciary Guarantee Certificate must be carried out and apply equally to the execution of the court decision that has permanent legal force

The terms of the Voluntary Surrender of the Object of the Fiduciary Guarantee are contrary to the principle of good faith in the agreement, this principle is the principle that the parties, namely the creditor party and the debtor party shall execute the substance of the contract based on the firm trust or belief or good will of the parties (H.P. Panggabean, 2010). In Article 1338 paragraph (3) of the Civil Code, it is stated that the agreement must be executed in good faith. As for an agreement executed in good faith or not, it will be reflected in the actual actions of the person who executed the agreement. Although good faith in the performance of the treaty lies in the heartstrings of human beings who are subjective in nature, but even good faith can be measured objectively.

In the Credit Agreement, it has been agreed regarding the rights and obligations of each party, including how the Debtor's obligations if he has committed a default and of course the Debtor promises to hand over the fiduciary guarantee object to the creditor. The condition of surrender of the object of fiduciary guarantee must be voluntarily submitted precisely to the principle of good faith in an agreement. The debtor by signing an agreement, the debtor is ready for the consequences, one of which promises to submit the object of the fiduciary guarantee and if the debtor is not willing to submit the fiduciary guarantee, it means that the Debtor violates the content of the binding agreement both to the debtor and the creditor (pacta sunt servanda) and assumes bad faith to violate the content of the agreement and delay the execution of the guarantee for the default act he has committed.

c. Remedies That Determine the Occurrence of a Promise Injury

Legal remedies can be known to be based on several opinions According to Retnowulan Sutantio, S.H. legal remedies are remedies given by law to a person or legal entity to in certain cases against the judge's decision (Retnowulan & Iskandar, 1995). According to Prof. Sudikno Mertokusumo, S.H. legal remedies are efforts or tools to prevent or correct errors in a decision. Constitutional Court Decision No.2/PUU-XIX/2021 requires that the element of "default" in Article 15 paragraph (3) of the Fiduciary Guarantee Law must be interpreted as an injury of promise not to be determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine the occurrence of a promise injury. So that in order to be carried out the execution of Article 15 paragraph (3) of the Fiduciary Guarantee Act, the creditor as the fiduciary beneficiary must take legal action to prove the act of default that has been committed by the debtor. The legal remedies that can be carried out are:

1. Somasi. Somasi is a reprimand from the debtor to the debtor in order to fulfill the achievement in accordance with the content of the agreement that has been agreed between the two. This somasi is regulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code (Ni Made Liana Dewi, 2019). The granting of somasi in the event of negligence or default on the part of the debtor must first be declared officially, that is, by warning the debtor, that the creditor wants payment immediately or in a short period of time. Somasi is a strong reprimand in writing from the creditor in the form of a deed to the debtor, so that the debtor must excel and be accompanied by a penalty or fine or punishment to be imposed or applied
2. Court application. The Fiduciary Guarantee Certificate contains an executory title so that it has the same power of a court decision of permanent legal force so that an application for execution of grosse deeds can be filed. In this way, it can be used as a way to resolve bad debts that is faster and easier than filing a civil lawsuit on the basis of default. Grosse Deed of Debt Recognition is an execution of an exception regulated by Article 224 of the HIR, which is an execution carried out through the determination of the Chief Justice of the District Court, and does not require a permanent court decision.

3. Court suit. Filing a civil suit through the District Court (PN) on the basis of default (breaking promises) can be used as an option by the Bank (creditor) to settle bad debts. This option can be pursued if the bank (creditor) is unable to execute the grosse deed through the District Court because, among other things, the credit agreement is not accompanied by the making of the grosse deed of debt recognition made notarially made by notarization.
4. The party authorized to provide assistance is only the District Court. The Fiduciary Grantor shall submit the Object of the Fiduciary Guarantee in the context of carrying out the execution of the Fiduciary Guarantee and the Fiduciary Recipient shall be entitled to take the Object of the Fiduciary Guarantee and if necessary may seek the assistance of the competent authority, namely the District Court. Police officers are only limited to securing the course of execution when necessary, not as part of the executor, unless there is an action that contains criminal elements, the new police officer has the authority to enforce the criminal law.

The Position and Legal Protection of the Parties in Fiduciary Guarantees After the Constitutional Court Decision Number 71/PUU-XIX/2021

The function of debt guarantee is the provision of confidence to the creditor in the payment of debts that have been given to the debtor where this happens because of the law or there is an agreement that is accessoire to the main agreement, namely the agreement that issues receivables (Kumaladewi N.A, 2015). The provisions of Article 4 of the Fiduciary Guarantees Act which affirm the accessoire nature of the fiduciary agreement provide for the protection of the fiduciary grantor's rights to the collateral object due to the repayment of the debt, then automatically the fiduciary agreement also becomes abolished.

When viewed from Article 25 paragraph (3) of the Fiduciary Guarantees Act, the party obliged to notify the Fiduciary Registration Office of the removal of fiduciary guarantees is the creditor as the fiduciary beneficiary. This is for later removal by the Fiduciary Registration Office and a certificate is issued stating that the fiduciary guarantee certificate is no longer valid as stipulated in Section 26 of the Fiduciary Guarantees Act (Farah Diana, et.al.). In other words, the transfer of ownership rights is solely as collateral for the repayment of the debt, not to be owned further by the creditor or fiduciary beneficiary (Sri Ahyani, 2011).

Article 33 of the Fiduciary Guarantees Act, which states that "Any promise that authorizes the Fiduciary beneficiary to possess the Object of the Fiduciary Guarantee in the event of the debtor's injury of the promise, is null and void". The promise as mentioned in Article 33 in the doctrine referred to as "Beding's Property", is considered inappropriate because it can give rise to an injustice. In general, creditors are only willing to provide a loan, for an amount that is below the value of the collateral. A logical way of thinking because the value of the collateral object which is above the value of the bill will further encourage the debtor to free the collateral object from the collateral bond and by itself belong to the creditor. It is against the possibility of creditor benefits such as that Section 33 of the Fiduciary Guarantees Act is granted.

Article 20 of the Fiduciary Guarantees Act provides legal Protection for the interests of creditors that the article 20 states that a Fiduciary Guarantee retains following the Object of the Fiduciary Guarantee in the hands of whomever the Object is in, except for the transfer of the item of supply which is the object of the Fiduciary Guarantee. The article is the main characteristic of treasury rights or commonly referred to as droit de suite (Satrio, J., 2002). Further protection is seen in Article 23 subsection (2) whereby the Fiduciary Grantor is prohibited from transferring, pawning, or leasing to another party The object of the Fiduciary's guarantee which is not a stock item, except with the prior written consent and the Fiduciary Beneficiary."

Fiduciary guarantees as with collateral rights to other treasury, such as liens, dependent rights and mortgages, adhere to the principle of "droit de preference" which is valid from the date of its registration in the Fiduciary Registration Office. The provisions of Article 28 of the Fiduciary Guarantee Act which states that If the same Object is the object of a Fiduciary Guarantee of more than 1 (one) Fiduciary Guarantee agreement, then the right that takes precedence as referred to in Article 27, is granted to the party who first registered it with the Fiduciary Registration Office. The article gave birth to an adagium that reads "first registered, first secured" that the fiduciary beneficiary has the right to take repayment of his receivables on the proceeds of the execution of the object of the fiduciary guarantee ahead of other creditors. Thus, even if the fiduciary grantor is insolvent, the right to the fiduciary beneficiary is not abolished because the thing that is the fiduciary guarantee is not included in the fiduciary guaranteeor's property which also means giving the fiduciary beneficiary a position belonging to the separatist creditor (Jatmiko Winarno, 2013).

Constitutional Court Decision Number 18/PUU-XVII/2019 which is affirmed by Constitutional Court Decision Number 2/PUU-XIX/2021, the Constitutional Court questioned the unconstitutionality of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The Court held that the position of the debtor who objected to surrendering the object of the fiduciary guarantee was weaker because the creditor could execute without a court execution mechanism. In addition, the Constitutional Court questioned the unconstitutionality of Article 15 subsection (3) regarding the phrase promise injury which does not explain the factors that cause the fiduciary giver to renege on the agreement with the fiduciary beneficiary and result in the loss with which the fiduciary giver's right to defend himself and sell the object of the fiduciary guarantee at a reasonable price.

The Constitutional Court in its ruling declared Article 15 paragraph (2) on the phrase "executory power" and "equal to the judgment of a court that has obtained permanent legal force" to be against a fiduciary guarantee for which there is no agreement on default (default) and the debtor objecting to voluntarily surrendering the object to which the fiduciary guarantee is, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply is the same as the execution of a court decision that has permanent legal force. Furthermore, stating that the phrase "default" in Article 15 paragraph (3) must be interpreted, the existence of a promise injury 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 legal remedies that determine the occurrence of the default.

The Constitutional Court Decision Number 71/2021 questioned Article 30 and Explanation of Article 30 of the Fiduciary Guarantee Law which has a vague meaning related to the phrase authority, where in Article 30 of the Fiduciary Guarantee Law it is stated that the Fiduciary Recipient has the right to take the Object of the Fiduciary Guarantee and if necessary can ask the competent authorities for help. This phrase is often misinterpreted, one of which is with police officers based on the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

The Constitutional Court Decision Number 71/2021 in Stating the phrase "authorized party" in the Explanation of Article 30 and Explanation of Article 30 of the Fiduciary Guarantee Law is unconstitutional as long as it is not interpreted

as "district court". The Court also affirmed that the fiduciary agreement is a civil (private) legal relationship therefore the authority of the police officer is only limited to securing the course of execution when necessary, not as part of the executor' party, unless there is an act that contains an element of criminal procedure, the new police officer has the authority to enforce the criminal law. Therefore, with regard to the phrase "competent party" in the Explanation of Article 30 of Law 42/1999, it is interpreted as "district court" as the party requested for assistance to carry out the execution.

The comparison of the position between the Fiduciary/Debtor and the Fiduciary Recipient/Creditor is studied with Aristotle's theory of justice regarding distributive justice, where Distributive justice according to Aristotle focuses on the distribution, honor, wealth, and other goods that are the same-can be obtained in society. Leaving aside mathematical "proofs," it is clear that what Aristotle did was the distribution of wealth and other valuables based on the prevailing value among citizens. A fair distribution may be a distribution that corresponds to the value of its goodness, that is, its value to society (Carl Joachim, 2004). Fair distribution may be a distribution that corresponds to the value of its goodness, that is, its value to society, as seen in the comparison of rights and obligations between the Fiduciary Giver and the Fiduciary Recipient. When compared between the two, it can be found that after the Constitutional Court Decision No. 71/PUU-XIX/2021 the position of the Fiduciary Giver is to benefit while the position of the Fiduciary Recipient becomes disadvantaged because the fiduciary recipient's right to execute fiduciary guarantees based on the Execution Parate becomes limited.

IV. Conclusion

Execution of Fiduciary Guarantees After the Constitutional Court Decision Number 71 / PUU-XIX / 2021 both based on the executory title and the execution parate must meet the conditions, namely the agreement on the default that has been made by the debtor, the submission of fiduciary guarantees must be voluntarily, and can only ask the Competent Party, namely the District Court, so that the execution of fiduciary guarantees becomes ineffective and has the potential to lose the execution parate if faced with the with debtors in bad faith. The legal position of the Fiduciary Giver is to be the party that benefits from the Constitutional Court Decision 71/PUU-XIX/2021 because the Fiduciary Giver can refuse the parate of executions carried out by fiduciary Creditors/Recipients

either done alone or with state officials such as the police other than the district court. The Fiduciary Grantor is given legal protection from the execution parate in the form of the right not to agree to the injury of the promise, the right to object to voluntarily surrendering the object of the fiduciary guarantee. The legal position of fiduciary recipients has been harmed by the Constitutional Court Decision 71/PUU-XIX/2021 due to the loss of legal certainty over execution parate as an ease of execution of fiduciary guarantee objects. The fiduciary beneficiary has legal protection for the execution parate, namely by submitting an application for execution to the district court if faced the Fiduciary Grantor does not agree to a default and objects to submitting the fiduciary guarantee object.

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