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EXECUTION OF FIDUCIARY COLLATERAL POST CONSTITUTIONAL COURT DECISION NUMBER 18/PUU-XVII/2019 IN SHARIA FINANCING SAVING AND LOAN COOPERATIVES BAITUL MAL WA TAMWIL

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Abstract
This research is included in the type of normative juridical legal research. Empirical juridical research is a type of research that uses and processes facts such as books, journals, and other literacies such as interviews and real behavior obtained by direct observation. Fiduciary as collateral is one of the elements in a process of financing, credit and receivables. In this process, there is first a subject or parties involved in a consumer financing legal relationship. Second, there are objects or everything the consumer needs that will be agreed upon. Furthermore, the agreement itself contains clauses and articles that are agreed, of course, with everything that is agreed upon by both parties along with all rights and obligations. Finally, there is a guarantee that will be used in the engagementTo obtain this research material, the researcher uses the literature study method, namely by studying legal materials and with field studies that examine the facts in the field.

I. Introduction

Fiduciary as collateral is one of the elements in a process of financing, credit and receivables. In this process, there is first a subject or parties involved in a consumer financing legal relationship. Second, there are objects or everything the consumer needs that will be agreed upon. Furthermore, the agreement itself contains clauses and articles that are agreed, of course, with everything that is agreed upon by both parties along with all rights and obligations. Finally, there is a guarantee that will be used in the engagement (Robert Bouzen Dkk, 2021).

Of the four types of material guarantees recognized in Indonesia, this fiduciary guarantee is different from the others. The main difference is that the debtor controls movable collateral and money from receivables, credit or financing agreements. Fiduciary guarantees are carried out in a constitutum

possessorium manner, in the sense that the object has been handed over for collateral, but physically the object is still controlled by the fiduciary giver for the benefit of the fiduciary recipient. On the basis of trust, the transfer of property rights to the fiduciary giver to continue to control the collateral item with a loan-to-use system for a while and no longer as the owner (Ni Kadek Diah Feryantini, dkk).

In practice, fiduciary guarantees have rights and obligations that must be fulfilled by the principal. The responsibility of the trustee is prohibited from transferring, restocking, selling, renting, controlling or changing the use of the collateralized goods. The creditor must also maintain and maintain the trust object as well as possible. With respect to taxes and other obligations in connection with the escrow papers, these are the responsibility of the trustee. The trustee must also be responsible for third party claims in relation to the trustee's collateral object (Arifatul Uyun, 2022).

In Indonesia, fiduciary guarantees have received certainty and legal basis since 1999. The government has passed Law Number 42 of 1999 concerning Fiduciary Guarantees, hereinafter referred to as the Fiduciary Guarantee Law, in the State Gazette of the Republic of Indonesia of 1999 Number 168 and the Supplement to the State Gazette of the Republic of Indonesia. Indonesia Number 3889. Meanwhile, in its history, the beginning of the emergence of Fiduciary in Indonesia was based on Arrest Hooggerechtshop jurisprudence August 18, 1932. (Wiwin Dwi Ratna Febriyanti, 2019) The law contains all rules relating to fiduciary guarantees.

In its development, the Fiduciary Guarantee Law underwent a judicial review process (law review). Judicial review is a process of reviewing the law which is under it which is tested again with the law above it to obtain improvements, feasibility and usability as it should be which is processed by the Constitutional Court (MK). The judicial review carried out on the Fiduciary Guarantee Law was only on a few articles related to the executorial. The emergence of the Fiduciary Guarantee Law is expected to guarantee legal certainty, especially for material guarantees and creditors. This is because the Civil Code does not clearly regulate this fiduciary right. Then came the Fiduciary Guarantee Act which specifically and more clearly regulates fiduciary so that it can be implemented based on clear and clear laws. This means that everything related to all transactions using fiduciary guarantees has been clearly regulated in the Fiduciary Guarantee Law. This includes the settlement of all forms of disputes, disputes both in breach of contract and default.

It should be explained that based on Article 4 of the Fiduciary Guarantee Law, it states explicitly that a fiduciary guarantee is an accessory agreement (accessoir) to a main agreement. So this fiduciary agreement cannot stand alone as an agreement without a principal agreement, which in this case is a financing

agreement. The position of the follow-up agreement, in this case the fiduciary agreement, must always depend on the main agreement. The validity of the fiduciary agreement always follows the validity of the main agreement. The accesoir has a principal agreement, namely a debt agreement which is followed by a follow-up agreement, namely a fiduciary guarantee to become collateral for the principal agreement (Gunawan Widjaja, Dkk, 2022).

Disputes that occur in accounts receivable, credit or financing agreements are only events of default or default. The Fiduciary Guarantee Law clearly regulates the event of a breach of promise or breach of contract, what if a breach of contract occurs between one of the parties. If a breach of contract occurs, the Fiduciary Guarantee Law then regulates the procedure for executing the guarantee as outlined in the main agreement and the fiduciary agreement. The Fiduciary Guarantee Law regulates that fiduciary guarantee certificates have executorial power in accordance with court decisions that have permanent legal force. This rule is contained in Article 15 paragraph (2) of the Fiduciary Guarantee Law which reads, "The fiduciary guarantee certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force".

Court decisions that have obtained permanent legal force, which means that in this case they are inkracht. A case that is inkracht means that it already has executorial power, that is, it can be executed in accordance with its decision. This means that the fiduciary guarantee certificate has the same degree of legal force for its executorial rights. This means that the execution of a fiduciary guarantee that already has a certificate does not need to wait for a court decision, because it is equivalent to an inkracht court decision. Further executorial information is in paragraph (3) of the Fiduciary Guarantee Law which reads, "if the debtor defaults, the fiduciary recipient has the right to sell objects that are objects of fiduciary guarantees on his own power". This article has the meaning that in the event of a breach of contract or default in the main agreement, the creditor does not need to file a lawsuit and wait for a court decision to execute the guarantee. It can also be interpreted that the event of default on the debtor's promise can be determined by the creditor himself, then the creditor has the right to execute and sell objects that are objects of fiduciary guarantees on his own power.

In the Fiduciary Guarantee Law, the implementation of execution is regulated in Article 29, which in essence there are three ways of executing fiduciary guarantees. The first is carried out with executorial titles, the second is the sale of objects that are the object of collateral and the third is private sales. All three are regulated in detail about the executor of the execution. But in practice, sometimes when executing, the guarantee turns out to have been transferred and controlled by a third party without the approval of the fiduciary recipient (Setia Budi, 2017)

In practice, the execution of fiduciary guarantees often raises issues that become other legal issues. Execution of fiduciary guarantees carried out outside of legal procedures is therefore considered as an act of taking the law into your own hands when one of the parties commits a default, especially if it is carried out by the debtor. The absence of derivative regulations for the Fiduciary Guarantee Law makes multiple interpretations of the articles in it, especially regarding execution. Particularly the use of third parties, in this case the eagle eye (debt collector) in carrying out executions in the field. The National Police of the Republic of Indonesia (Polri) responded to the Fiduciary Guarantee Law in order to secure the execution of fiduciary guarantees by issuing the Chief of Police Regulation (Perkap) No. 8 of 2011. Perkap No. 8 of 2011 came into effect on June 22, 2011, in response to the many complaints and reports from the public about troubling eagle eyes in handling bad credit cases in fiduciary agreements. The purpose of issuing this Perkap is essentially to provide a sense of security for all levels of society in carrying out the execution of fiduciary guarantees. The National Police hopes that fiduciary execution can run in an orderly, safe, smooth manner and can be legally accounted for, namely carried out in a manner that is in accordance with legal procedures.

There are many interpretations of this Fiduciary Guarantee Law, one of which states that this law is contrary to the 1945 Constitution. They are Apriliani Dewi and Suri Agung Prabowo, two people who argue that this Fiduciary Guarantee Law lacks legal certainty because it creates many legal issues and conflicts in its implementation. Apart from that, according to them, the Fiduciary Guarantee Law also lacks a sense of justice and contradicts the basic rights to freedom of Indonesian citizens as stipulated in Article 27 paragraph (1) and Article 28 D paragraph (1) of the 1945 Constitution. On that basis, as a citizen, he filed a legal review of several important articles of the Law on Trustee Guarantee to the Constitutional Court. After the trial, this lawsuit was decided by Decision Number 18/PUU-XVII/2019 dated January 6 2020. The Constitutional Court basically interpreted Articles 2 and 3 Article 15 of Law No. 42. Trustee Certificate (1999) that the executive authority over the Trustee Certificate is no longer absolute, and is a court decision that is permanent and final.

Coercive power must be exercised directly as long as the debtor voluntarily surrenders the trustee guarantee, and if the debtor opposes the delivery of the trustee guarantee, enforcement must be carried out permanently by a court with permanent legal force. In the following standards, the determination of negligence must be based on the agreement of the parties, or the determination of negligence must be determined by a court decision. With the issuance of this MK decision, creditors who were previously able to directly execute fiduciary guarantees either by themselves or with the help of third parties, are no longer able to carry them out. In addition, many creditors are experiencing confusion in interpreting this MK decision. One of the parties is the Baitul Mal wat Tamwil

Sharia Financing Savings and Loans Cooperative (KSPPS BMT). KSPPS BMT in practice is included in the Non-Bank Financial Institutions (LKNB). This institution is engaged in the financial sector which has the authority to collect public funds as a bank financial institution (banking). The difference is only in the values (value). KSPPS BMT is a sharia-based cooperative as the name implies, which has services to its members. This institution is under the supervision of the Office of Cooperatives in its working area. Apart from being bound by positive law, the operation of KSPPS BMT as an Islamic financial institution is of course inseparable from the corridors of Islamic law. In this case the KSPPS BMT operation refers to the fatwa of the Indonesian Ulema Council (MUI). MUI fatwa issued by the MUI National Sharia Council (DSN). In implementing fiduciary KSPPS BMT also pays attention to the DSN fatwa related to fiduciary. What about the DSN fatwa regarding fiduciary, which is the operational basis for KSPPS BMT.

In KSPPS BMT itself, fiduciary practices have been carried out as other financial management institutions. Fiduciary agreements made by KSPPS BMT also have potential problems, because of course there are risks in this practice. From fiduciary practice, it must also really be strengthened by an understanding of sharia so that the legality and value of an agreement can really be accounted for both legally and sharia. From the point of view of fiduciary law, it also has the potential for complex problems, especially after the Constitutional Court decision No. 18/PUU-XVII/2019. KSPPS BMT before the Constitutional Court decision No. 18/PUU-XVII/2019 carried out the execution of fiduciary guarantees against members who were stuck resulting in internal defaults. In accordance with the Fiduciary Guarantee Law, the right to execution can be immediately carried out when the conditions have been met and a breach of achievement occurs. In order to carry out the execution of fiduciary guarantees when there are problems in the field that cannot be resolved alone, it can use the help of a third party. After the Constitutional Court decision No. 18/PUU-XVII/2019, the BMT KSPPS could no longer do it again, because of the implications of the decision

2. Research Method

This research is included in the type of normative juridical legal research. Empirical juridical research is a type of research that uses and processes facts such as books, journals, and other literacies such as interviews and real behavior obtained by direct observation. Furthermore, the agreement itself contains clauses and articles that are agreed, of course, with everything that is agreed upon by both parties along with all rights and obligations. Finally, there is a guarantee that will be used in the engagementTo obtain this research material,

the researcher uses the literature study method, namely by studying legal materials and with field studies that examine the facts in the field.

3. Results and Discussion

2.1. Fiduciary Practice in Indonesia

All systems in society cannot be separated from the legal system, to regulate order and ensure security for each individual. This is why all countries make laws for their people. Basically the law was created to direct society to be better. The way to regulate and direct human behavior is by making the rule of law in society. These legal rules are made in the form of written laws and unwritten norms (Satjipto Raharjo, 2005).

Law has many facets and dimensions so that in essence it is a set of rules, both commands and prohibitions. The law is an agreement made by the state as the representative of the people. The law is made to take care of the order of a society so it must be obeyed. Law is also a rule as a system that must be obeyed together. Law is not just one rule, but a system with many applicable rules so that it is impossible to understand law if you only pay attention to one rule. The same thing applies to civil law in Indonesia (Jimly Asshidiqie, Dkk, 2006).

The main purpose of the existence of law is the need for order in society, one of which is in the form of civil relations. In Indonesia, civil law is regulated in such a way with various legal rules, one of which is about guarantees. Guarantees are needed in every financing both carried out by banks and non-bank financial institutions, one of which is sharia-based cooperatives. These two financial institutions play an important role in the economic system in society.

Cooperatives are one of the legally recognized non-bank financial institutions in Indonesia. Cooperatives themselves are original products of the Indonesian nation which are a matter of economic power. The birth of cooperatives in Indonesia cannot be separated from the liberal economic system during the Dutch East Indies colonial era, where many investors invested their funds in colonial countries. With the development of the times, cooperatives are also growing to adapt. Cooperatives today are just like banks, there are conventional and sharia-based cooperatives. Both of them enter into non-bank financial institutions which are also subject to and comply with the rules that apply in Indonesia (Kamaralsyah, Dkk, 1987).

Almost all the pulse of the economy in this modern era cannot be separated from financial institutions, both banks and non-banks. This happened because of the shift in the conventional economic system to digital transactions. The public's need for money to meet their needs makes the role of financial institutions increasingly important. These institutions provide facilities or services ranging from storage in the form of savings, time deposits and many other products. Meanwhile, other facilities that are also primary in financial institutions are financing or credit facilities.

Financing or credit facilities are not just given by financial institutions to customers or members. Provision of financing basically must be based on a belief in the ability and ability of the debtor to fulfill its obligations, considering that the financing provided contains risks. In financing or credit to minimize risk, it is known that there is a guarantee or collateral as one of the mandatory requirements. Guarantees are provided to guarantee the fulfillment of obligations that can be valued in nominal money arising from a legal agreement, in this case a contract or financing or credit agreement. In the world of guarantee law, it is closely related to material law which is regulated in the Civil Code (KUHPerdata). Collateral also means an object given to creditors to create confidence that the debtor will fulfill obligations that can be valued in money arising from an agreement (Bahsan, M. 2002).

The development of agreements using guarantees in society that are often widely used, namely material guarantees. Fundamentally, the guarantee function is to provide assurance and security for creditors about the existence of calculations that are not in accordance with what was agreed in the future or the existence of defaults. Guarantees since the Dutch East Indies colonial era have been regulated by law, namely in Book II of the Civil Code and Stb. 1908 Number 542 was later amended in Stb. 1937 Number 190 concerning Credietverband. After Indonesia's independence, civil law still uses the Civil Code to this day. The Civil Code regulates guarantees in 1150 to Article 1232. There guarantees are known as pledges (pand) and mortgages. Each for pawning is in Article 1150 to Article 1160. Meanwhile, mortgages are regulated in Article 1162 to Article 1232.

In Indonesia itself, there are four types of material guarantees: lien, mortgage, mortgage and fiduciary. In its development in the realm of financial institutions, it is known as collateral for movable objects and guarantees for immovable objects. These two types of guarantees are also regulated in different laws. Guarantees for immovable objects, formerly better known as mortgages, were previously included in Law Number 5 of 1960 concerning Basic Agrarian Regulations as mortgage rights. Subsequently, Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land was issued. This regulation is the most recent regulation governing guarantees for immovable objects (Miranda Nasihin, 2012)

Fiduciary comes from French, namely from the word fiduciary or in English from the word fides. The two words fiduciary and fides literally mean trust. Trust to surrender material property rights as collateral for the settlement of one's debt obligations. The delivery of material ownership rights is intended only as collateral for the settlement of certain receivables in the event of default or breach of contract. As a guarantee or collateral, fiduciary is not specifically regulated in the Civil Code, because it applies the principle of freedom of contract. Article 1338 of the Civil Code states that all agreements made are valid for the parties who make them and apply as laws for those who make them (Rachmadi Usman, 2011). The history of fiduciary development began in the Roman era, although in terms of legal institutions it was not like today's modern times. Roman legal institutions only laid legal foundations so that they often become the principles of modern legal institutions. The Romans recognized and enforced two types of fiduciary namely fiducia cum creditore and fiducia cum amico. Both types of fiduciary occur because of an agreement called pactum fiduciae. After the agreement takes place, the debtor transfers the rights or in iure cession.

Fiducia cum creditore is also known in its full form, namely fiducia cum creditore contracta, which is defined as a trust agreement made by a creditor. In this concept, the debtor will transfer ownership of an object to the creditor as collateral for his debt. In this agreement it is also agreed that the creditor will return to transfer the ownership of the goods used as collateral to the debtor if the debt has been paid in full according to the agreement. Another term in this definition is that the debtor entrusts authority over an item to the creditor for the benefit of the creditor himself as a guarantee of fulfillment of the agreement.

The second is about fiducia cum amico which is in principle, but in this case only jurisdiction, not ownership. In this form it differs from fiducia cum creditore, where power is transferred to the giver or in other words the recipient uses his power for the benefit of another party. whereas fiducia cum amico occurs when someone hands over power to another party or transfers assets to another party to be managed.

Fiduciary itself has been around for a long time, or it's not a new thing used by the business world. Fiduciary both developing in Indonesia and abroad. In tracing fiduciary history with its various variations it has been practiced in several other developed countries besides the Netherlands. Fiduciary in Dutch is fiducie, while English calls it fiduciary transfer of owner ship. So that in English terms this is analogous to trust. Trust gives property rights by the debtor to the creditor as collateral for receivables until all obligations are paid off (Munir Fuady, 2003)

In Indonesia, the existence of fiduciary guarantees is inseparable from its past history, namely as a colony of the Netherlands. Almost all applicable laws in Indonesia are adopted from Dutch law. This reason causes the fiduciary

guarantee law in Indonesian civil law to be the same as that enforced and used by the Netherlands. The reason is that until now the Civil Code has not been renewed by the government. it was only in 2022 that the Criminal Code (KUHP) which was updated and passed by the DPR became law, even though it is still three years into effect since it was enacted.

In the past, in Indonesia, which was still in the Dutch East Indies, the application of fiduciary guarantee law did not have specific regulations in the form of laws, but still according to the jurisprudence of decisions in the Netherlands. Fiduciary law is a derivative or sub-system of guarantee law which is regulated in Dutch law. In the Netherlands itself the application of the legal rules of fiduciary guarantees is based on the decision of the judge Hoge Raad: Bierbrouwerij which was decided on January 25, 1929.

In Indonesia, fiduciary in the form of an institution has been recognized since the Dutch East Indies era in jurisprudence. Jurisprudence is recorded as in the Oogstverband (Staatsblad 1886 Number 57), the contents of which are loans that are given with a guarantee of yields to be obtained from a plantation. Then there was the Arrest Hooge-rechtshof (HGH) decision dated August 18, 1932 in the Pedro Clignett case with the Bataafsche Petroleum Maatschappji (BPM). There is also the decision of Arrest Hoge Raad 1929 dated January 25 regarding the case of Aw de Haan against Heineken Bierbrouwerij Maatschappji. Meanwhile, after independence, the first fiduciary decision was recorded, namely Supreme Court Decision No. 372K/Sip/1970 in the case of BNI Semarang Branch against Lo Ding Siang, as well as Decision No. 1500K/Sip/1978 for the 1946 BNI case against Fa Megaria (Andhika Desi Fluita, 2017)

2.2. Fiduciary Agreement at KSPPS BMT

KSPPS BMT stands on two legs, namely financial institutions in the form of cooperatives and also financial institutions with sharia principles. This institution is an intermediary institution and provider of financial services for its members who work using the Islamic value system. Islamic ethics which is upheld is the basis of the KSPPS BMT work system, namely free from usury, especially interest, free from gharar, namely things that are unclear and doubtful, free from elements of masir in this case speculative activities. KSPPS BMT also adheres to the principles of justice (al adl) and is only used to finance halal activities and businesses.

KSPPS BMT has two main roles as a cooperative with sharia principles as its name implies, namely as a business entity (tamwil) and a social agency (mall). In

Arabic morphology, baitul is literally interpreted as a house, but contextually, baitul is defined as an institution or management body. KSPPS BMT as a business entity has several functions in the context of financial institutions. Those functions are investment management, namely as investment managers, investors and services. This function is carried out by collecting funds from the public who have joined as members to become investors with several sharia principles.

This principle is the basis of every transaction made by KSPPS BMT. In this case KSPPS BMT in investment activities uses three principles in its investment namely wadi'ah yad al-damanah (deposit), mudarabah (profit sharing) or ijarah (leasing) principles. As an investor, KSPPS BMT distributes funds or provides credit to its members through investment activities with the principles of profit sharing, buying and selling or leasing. KSPPS BMT also provides service activities in the form of financial services and non-financial services. (Ascarya, 2011).

Financial services at KSPPS BMT are carried out, among others, by the principles of wakalah (mandatory), kafalah (bank guarantee), hiwalah (debt transfer), rahn (debt or mortgage guarantee) and qard (loan policy for bailout funds). In addition, non-financial services in the form of agency services with the principle of mudarabah muqayyadah, namely mudharabah contracts where the owner of the fund places limits on the fund manager, including regarding the place, method and or object of investment.

In terms of its function as a social agency, KSPPS BMT manages social funds for the collection and distribution of zakat, infaq, and sadaqah (ZIS). KSPPS BMT also has a qard al-hasan (policy loan) distribution program into a revolving fund for members and members of the community they are assisted by. In its development, KSPPS BMT transformed itself into a professional cooperative and then established a foundation to manage social funds and became part of KSPPS BMT as its social band.

In the context of fiduciary guarantees, the sharia concept used is the rahn principle. This is because fiduciary requires guarantees in the form of movable objects, even though the meaning of rahn itself is a guarantee of both movable and immovable objects. An example is vehicles as movable collateral and gold as immovable collateral. Of course this guarantee is an object that has economic value so that the legal requirements of the guarantee are met. Self-assurance in

Islam has existed since the time of the Prophet Muhammad. The Prophet himself practiced guarantees in terms of his debts.

Rahn is a guarantee in the form of an object that is handed over with the principle of trust both physically and only the ownership rights of the object by the debtor to the creditor to strengthen the certainty of the smoothness and timeliness of the payment of the debtor's debt (rahin) to the creditor (murtahin), and can be used as a substitute for repayment of debt who are not paid murtahin. in practice at KSPPS BMT several contracts are used for this rahn, such as murabaha and ijarah contracts. Meanwhile, in positive law, binding is carried out with a fiduciary contract.

In positive law, Rahn is included in Article 1 Paragraph 26 of the Sharia Banking Law. This section states that plugins are referred to as plugins, ie. H. additional collateral, both movable and immovable property, submitted by the owner of the guarantee to an Islamic bank or Islamic business entity to guarantee the fulfillment of the obligations of the beneficiary customer. The concept of rahn in Islam is enforced to guarantee and encourage debtors to pay their debts within a predetermined period of time and to avoid actions that can harm the party paying the debt (Muhammad Sabir, 2020)

In a sharia perspective, the term guarantee is known as a trust strengthening contract, namely the kafalah, dhaman and rahn contracts. In order to accommodate the existence of a fiduciary guarantee contract, the National Sharia Council of the Indonesian Ulema Council (DSN MUI) issued a fatwa in 2008. DSN MUI Fatwa No: 68/DSN-MUI/III/2008 concerning Rahn Tasjily is the answer to the challenge of having a fiduciary contract which is also a the needs of the people, especially the world of sharia financing. After conducting an in-depth study, the DSN MUI chose rahn tasjily as the equivalent of the legal concept in a fiduciary guarantee agreement.

In the rahn tasjily guarantee, the collateral object called marhun is not handed over to the collateral recipient or creditor which in this contract is called murtahin. But only limited to proof of ownership of the marhun that is submitted by the guarantor or debtor (rahin) to murtahin as collateral for his debt (marhun bih). This concept is similar to the concept of guarantee in a fiduciary agreement, so that the MUI DSN issued a fatwa on Rahn Tasjily as a basis for values for Islamic financial institutions in the practice of fiduciary agreement contracts.

In every activity carried out by sharia-based bank financial institutions and non-bank financial institutions, there are already rules of the game and fatwas

that govern everything. Included in the practice of fiduciary agreement contracts, which are regulated in the DSN MUI fatwa No: 68/DSN-MUI/III/2008. Whereas the fatwa does not contain the execution of fiduciary guarantees in Islamic financial institutions. So that the execution is carried out if there is a default on the fiduciary agreement contract using the Fiduciary Guarantee Law. However, the flow of completion of the execution of the fiduciary agreement on objects that are objects of fiduciary guarantees is carried out in a manner that is in accordance with sharia principles.

In resolving sharia economic disputes one must pay attention to sharia principles, including not complicating ('adam al-haraj), reducing burdens (taqlil al-taklif), periodic law enforcement, in line with universal benefit, and equality and justice (al-musawah wa al-ada). In terms of execution in the Rahn Tasjily case or fiduciary guarantees, KSPPS BMT should also pay attention to these principles. Even though the reality on the ground to unite the principles of sharia and civil law that apply is very large inequality. There are still several fatwa points issued by the MUI DSN as a guideline for Islamic financial institutions in Indonesia which have been overlooked or not implemented, including the principles in executing fiduciary guarantees (Norcholis, 2021)

4. Conclusion

In accordance with the description of the research results that the authors convey and describe in the previous material. So the conclusions can be drawn, among others :

KSPPS BMT is a non-bank financial institution engaged in financial services with a cooperative legal basis. KSPPS BMT is a cooperative institution with a sharia basis, so apart from using a positive legal basis, they also use sharia values in running their business. The institutionalization of sharia values is carried out by the DSN MUI which issues fatwas and regulations regarding sharia-based financial service activities. One of them is to legitimize sharia values in fiduciary agreements by issuing the DSN MUI fatwa No: 68/DSN-MUI/III/2008 concerning Rahn Tasjily. This fatwa forms the basis for the value of KPPS BMT conducting financial transactions with fiduciary guarantees.

The Fiduciary Guarantee Law regulates the execution of guarantees against fiduciary guarantee objects in the event of a breach of contract. Execution of fiduciary guarantees is the confiscation and sale of objects that are objects of fiduciary guarantees due to defaults or non-fulfillment of achievements on time

by the debtor. In the event of a breach of promise or default, the creditor who is a fiduciary recipient can immediately execute the object of the fiduciary guarantee.

Direct execution or parente execution can no longer be carried out after the issuance of the Constitutional Court decision Number 18/PUU-XVII/2019, stating that Article 15 paragraph (2) along with its explanation and Article 15 paragraph (3) states several phrases contrary to the 1945 Constitution, even though the phrase that has been the legal basis for the implementation of parental executions. The loss of some of these phrases has major implications for the financial world when there is an event of default in a fiduciary agreement.

When a financial institution resolves a fiduciary dispute it does not find a middle point with a customer or member who becomes a debtor, it must file a lawsuit with the competent court. The Fiduciary Guarantee Law is no longer a lex specialist in the position of execution issues, because execution, like other civil disputes, requires a court decision to carry it out. The executorial title which was previously regulated in detail in the Fiduciary Guarantee Law is repealed and the mechanism for the event returns to the Civil Code.

Refrences

Andhika Desi Fluita, "Tinjuan Sejarah Lembaga Fidusia di Indonesia", Jurnal Repertorium Volume IV No. 1 Januari-Juni 2017.

Arifatul Uyun, Abdul Mujib, "Penyelesaian Sengketa Jaminan Fidusia Dalam Praktik Gadai", Al' Adl : Jurnal Hukum, Volume 14 Nomor 2, Juli 2022.

Ascarya, Akad dan Produk Bank Syariah, (Jakarta: Raja Grafindo Persada, 2011).

Bahsan, M. 2002, Penilaian Jaminan Kredit Perbankan Indonesia, Rejeki Agung, Jakarta.

D.Y. Witanto, Hukum Jaminan Fidusia dalam Perjanjijan Pembiayaan Konsumen, (Bandunng : CV. Mandar Maju, 2015).

Djaja S.Meliala, Hukum Perdata Dalam Perspektif BW, (Bandung: Penerbit Nuansa Aulia, 2014).

Edillius, Sudarsono, Koperasi Dalam Teori dan Praktek,(Jakarta: Rineka Cipta, 1993), hlm.40

Gunawan Widjaja, Karunia Ilham Karim, Dheas Syahreza Muslim, "Perjanjian Penyerahan Sebagai Perjanjian Ikutan Atau Kewajiban?", Jurnal Cakrawala IlmiahVol.1, No.6, February 2022

H. Salim HS, Perkembangan Hukum Jaminan di Indonesia, (Jakarta : PT. Raja. Grafindo Persada, 2005).

Jimly Asshidiqie dan Ali Safa'at, Teori Hans Kelsen tentang Hukum,(Jakarta: Sekjen dan Kepaniteraan MK-RI, 2006).

Kamalia Firdausi, "Perlindungan Hukum Bagi Pemegang Jaminan Fidusia Dalam Akad Murabahah Yang Jaminan Fidusianya Tidak Didaftarkan", Lex Librum : Jurnal Ilmu Hukum, Vol. 8 No 2, Juni 2022.

Kamaralsyah, Dkk, Pancawindu Gerakan Koperasi 1947-1987 (Jakarta: Dewan Koperasi Indonesia Cetakan I,1987).

M. Bahsan, "Hukum Jaminan Dan Jaminan Kredit Perbankan Indonesia", (Jakarta: PT. Raja Grafindo Persada, 2007).

Mariam Darus Badrulzaman, 1987, Bab-bab tentang Credietverband, Gadai, dan Fiducia, Cetakan IV. Bandung.

Miranda Nasihin, Segala Hal Tentang Hukum Lembaga Pembiayaan (Yogyakarta: Buku Pintar, 2012).

Muhammad Sabir, "Jaminan Fidusia Dalam Transaksi Perbankan (Studi Komparatif Hukum Positif dan Hukum Islam)", Mazahibuna: Jurnal Perbandingan Mazhab Volume 2, Nomor 1, Juni 2020.

Munir Fuady, "Jaminan Fidusia", (Bandung: PT. Citra Aditya Bakti, 2003) Cet. II.

Ni Kadek Diah Feryantini, Komang Febrinayanti Dantes, Muhamad Jodi Setianto, "Tinjauan Yuridis Terhadap Pelaksanaan Eksekusi Jaminan Fidusia Menurut Undang - Undang Fidusia Nomor 42 Tahun 1999", e-Journal Komunikasi Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum (Volume 5 Nomor 1 Maret 2022).

Norcholis, "Prinsip-Prinsip Syariah Dalam Penyelesaian Sengketa Ekonomi

Syariah Di Pengadilan Agama", SYARIKAT : Jurnal Rumpun Ekonomi Syariah Volume 4 Nomor 1, Juni 2021,

Rachmadi Usman, Hukum Kebendaan (Jakarta: Raja Grafindo Persada, 2011).

Robert Bouzen, Ashibly, "Pelaksanaan Eksekusi Jaminan Fidusia Terhadap Debitur Yang Wanprestasi Setelah Keluarnya Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019", Jurnal Gagasan Hukum, https://journal.unilak.ac.id/index.php/gh/.

Setia Budi, "Permohonan Eksekusi Kepada Pengadilan Negeri Berkaitan Dengan Perjanjian Fidusia Terhadap Jaminan yang Digelapkan", Jurnal Cendekia Hukum, Vol. 3 Nomor 1 2017.

Sigit Nurhadi Nugraha, Nurlaili Rahmawati, "Cidera Janji (Wanprestasi) Dalam Perjanjian Fidusia Berdasarkan Pasal15 Ayat (3) UU Nomor 42 Tahun 1999 Pasca Putusan Mahkamah Konstitusi Nomor: 18/PUU-XVII/2019 Dan Putusan Mahkamah Konstitusi Nomor: /PUU-XIX/2021", Al WASATH Jurnal Ilmu Hukum Volume 2 No. 2 Oktober 2021.

Sutjipto Raharjo, Ilmu Hukum, (Bandung: Citra Adtya Bakti, 2005).

Vincenzo Verano M Keraf, "Analisis Yuridis Eksekusi Objek Jaminan Fidusia Setelah Putusan Mahkamah Konstitusi No. 18/Puu-XVII/2019", Fiat Iustitia: Jurnal Hukum, Volume 2 No. 1 September 2021.

Wiwin Dwi Ratna Febriyanti, "Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUUXVII/2019", Jurnal Hukum Acara Perdata ADHAPER, Vol. 6, No. 2, Juli – Desember 2020.

Yeyen Wahyuni, "Parate Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019", IDJ, Volume 02, Issue 1 (2021).

Yeyen Wahyuni, "Parate Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019", Interdisciplinary Journal On Law, Social Sciences And Humanities, Volume

02, Issue 1 (2021).

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