International Journal Of Humanities Education And Social Sciences ***(IJHESS)*** *E-ISSN:* **2808-1765**
Volume 4, Number 2, October, *Page. 1123 – 1137*
Email : editorijhess@gmail.com

Legal Protection for Creditors Who Recipient of Motor Vehicle Fiduciaries After Constitutional Court Decision Number 18/PUU-XVII/2019 & Number 2/PUU-XIX/2021 (Study at BRI Finance Malang Branch)

Ahmad Shoifi[1)], Djumikasih[2)], Fathul Laila[3)]
[1,2,3)] Brawijaya University, Indonesia

*Corresponding Author
Email: ahmadshoifi@gmail.com

Abstract

Fiduciary is a material guarantee which is a development of other material guarantees, namely Pawning. This development is a living need in society because pawning collateral which requires control of the pledged collateral object by the creditor is felt to be less supportive of business because the debtor cannot benefit from the collateral object so material collateral is needed which is more beneficial for the debtor but also the creditor's interests can still be protected. Execution of fiduciary guarantees can be carried out in accordance with article 29 UUJF, namely if the debtor or fiduciary person breaks his promise, the execution of the object that is the object of fiduciary guarantee point 1 above is the priority given by the material guarantee institution which is referred to as Parate execution, which is regulated in Article 15 paragraph (3) of the Fiduciary Guarantee Law (hereinafter abbreviated to "UUJF") which states that "If the debtor breaks his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee under his own authority." The research method used is the Socio Legal Research Method or commonly used as empirical juridical research. Empirical legal research, namely data obtained directly from the community as the first source through field research. The research location is at the BRI Finance Malang Branch Office which is one of BRI's subsidiary entities which operates in the financing sector located in Malang City. One of the financing products from BRI Finance is Multipurpose Motor Vehicle Ownership Credit where the collateral is a motor vehicle tied to the institution fiduciary material guarantee. The results of the research show that the execution of credit collateral in the form of a motor vehicle tied to a fiduciary with the Constitutional Court decision Number 18/PUU/XVII/2019 which is confirmed by the Constitutional Court decision No.2/PUU-XIX/2021 becomes weaker because the creditor's preference rights are limited. The institution granted fiduciary material guarantees in the form of an execution parate cannot be carried out unilaterally because it must obtain the debtor's approval regarding the element of breach of contract/default and also the voluntary handover of fiduciary objects.

Keywords: Breach Of Contract; Execution Of Collateral; Fiduciary; Constitutional Court Decision.

INTRODUCTION

Fiduciary is a guarantee institution for movable objects other than pawning. The material guarantee institution aims to provide protection and confidence to creditors who have provided their achievements to debtors, one of which is through the establishment of parate execution legal institutions. Fiduciary is a material guarantee which is a development of other material guarantees, namely pawning. This development is a living need in society because pawning collateral which requires control of the pledged collateral object by the creditor is felt to be less supportive of business because the debtor cannot benefit from the collateral object so material collateral is needed which is more beneficial for the debtor but also the creditor's interests can still be protected. Execution of fiduciary guarantees can be carried out in accordance with article 29 UUJF, namely if the debtor or fiduciary person breaks his promise, execution of the object that is the object of the fiduciary guarantee can be carried out in 3 (three) ways, namely:

1. The implementation of the executorial title by the fiduciary recipient is because according to article 15 paragraph (2) UUJF, a fiduciary guarantee certificate has the same executorial power as a judge's decision which has permanent legal force.

2. Sale of objects that are the object of fiduciary collateral under the authority of the fiduciary recipient himself through a general release and repayment of the receivables from the sale proceeds.
3. Private sales are carried out based on an agreement between the fiduciary and the fiduciary if in this way the highest price can be obtained which is profitable for the parties.

Execution of objects which are the object of fiduciary guarantee point 1 above is a priority given by the material guarantee institution which is referred to as Parate execution, which is regulated in Article 15 paragraph (3) of the Fiduciary Guarantee Law (hereinafter abbreviated as "UUJF") which states that " If the debtor breaks his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee under his own authority."

Constitutional Court Decision Number 18/PUU/XVII/2019 which is confirmed by Constitutional Court Decision No.2/PUU-XIX/2021 confirms that a breach of contract must be determined through an agreement or a specific legal remedy, namely if the debtor does not agree to the breach of contract and execution is carried out. fiduciary guarantee, then the execution is carried out through the court as is the execution of a decision with permanent legal force. This provision has the potential to cause inefficiency and uncertainty in the implementation of the execution of fiduciary guarantees which is not in accordance with the principles of the existence of material guarantee institutions because it provides an opening for debtors with bad intentions to commit default by obstructing the execution of fiduciary objects. The Constitutional Court issued Decision Number 18/PUU-XVII/2019 as a result of a material review of Article 15 paragraph (2) and Article 15 paragraph (3) of the UUJF regarding the execution of fiduciary guarantees. The essence of the decision is that the execution parate rights owned by the creditor as a fiduciary holder can only be used if the debtor agrees regarding the breach of contract/default and voluntarily hands over the fiduciary object to the creditor as the fiduciary holder, this means that if the debtor does not agree to the breach of contract and execution is carried out. fiduciary guarantee, then the execution is carried out through the court just like the execution of a decision with permanent legal force. The considerations and decisions issued by the Constitutional Court are basically:

1. There is an imbalance in the bargaining position between the giver of fiduciary rights and the recipient of fiduciary rights because the fiduciary giver is in the position of a party in need, so that the agreement is made in a "state of not being completely free in will," especially on the part of the debtor (fiduciary giver). According to the Constitutional Court, this position has the impact of unilateral executions carried out by creditors in an arbitrary and less "humane" manner.
2. Unilateral actions carried out by creditors as recipients of fiduciary rights have the potential to give rise to arbitrary actions and are carried out in a less "humane" way, whether in the form of physical or psychological threats that creditors (or their proxies) often carry out against debtors, often even ignoring their rights. -debtor's rights.
3. Thus the phrase "executorial power" and "the same phrase as a court decision have permanent legal force" in Article 15 paragraph (2) UUJF and its explanation are legally binding as long as they are interpreted "towards fiduciary guarantees where there is no agreement regarding breach of contract (default) and the debtor objects voluntarily hand over the object that is the fiduciary guarantee, then all legal mechanisms and procedures in carrying out the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision which has permanent legal force."
4. The phrase "default" in Article 15 paragraph (3) UUJF is binding as long as it means "the existence of a breach of contract is not determined unilaterally by the creditor but is based on an agreement between the creditor and the debtor or on the basis of legal action to determine whether a breach of contract has occurred."

Constitutional Court Decision Number 18/PUU/XVII/2019 has been controversial, resulting in several proposals for reconsideration regarding the legal aspects of what has been stipulated in Constitutional Court Decision Number 18/PUU/XVII/2019. A material review of the Constitutional Court Decision Number 18/PUU/XVII/2019 was again submitted by one of the creditors. The request for material review was formulated, examined, considered and decided in Constitutional Court Decision No.2/PUU-XIX/2021. The Constitutional Court then gave considerations and issued a decision which essentially adhered to what had been previously decided. The Constitutional Court considers that the execution of fiduciary guarantee certificates through district courts is only an alternative that can be carried out in the event that there is no agreement between the creditor and debtor regarding either default or the voluntary handover of the collateral object from the debtor to the creditor.

RESEARCH METHODS

In this research, the type of research used is empirical legal research using a sociological juridical approach. he characteristics of sociolegal research methods can be identified through the following two things. First, sociolegal studies carry out textual studies, articles in laws and regulations and policies can be analyzed critically and their meaning and implications for legal subjects can be explained. In this case, it can be explained how the meaning contained in these articles is detrimental or beneficial to community groups. certain and in what way. Therefore, sociolegal studies also deal with the heart of issues in legal studies, namely discussing the constitution down to statutory regulations at the lowest level. In addition, the study of judges' decisions is very important (Hammerslev, 2005). Based on recent experience, for example, the UI Center for Women and Gender Studies (PKWJ) developed courtroom studies (Irianto et.al 2004, Irianto & Nurchayo, 2006, Irianto & Cahyadi, 2008). The method used is to study trial cases based on the text of the judge's decision and field data from observations and interviews with the actors and parties involved in a trial case. The point is to find out whether the judge's considerations are the basis for his decision, in which there is a breakthrough or legal discovery (rectsvinding) that takes into account the sense of justice for the victim. The juridical approach is an approach used to examine people's behavior in implementing regulations relating to credit agreements with collateral for inventory based on Law Number 42 of 1999 concerning Fiduciary Guarantees. Meanwhile, the sociological approach is focused directly on the facts that occur in the relationship between creditors and debtors whose credit collateral is fiduciary motor vehicles following the Constitutional Court Decision Number 18/PUU-XVII/2019 & NUMBER 2/PUU-XIX/2021 which occurred at BRI Finance Malang as an example.

The type of research that the author uses is field research and based on the nature of the problem, this type of research is qualitative descriptive, that is, the data collected is in the form of words, images, behavior, not expressed in the form of numbers or statistical figures but rather in qualitative form which has a richer meaning than just numbers or frequencies. All the data collected is likely to be the key to what has been researched. The location of this research is at BRI Finance Malang Branch. In order not to be too broad in the discussion, focus is needed in the research. Therefore, this research will focus on implementing the principle of legal protection for creditors who receive motor vehicle fiduciaries following the Constitutional Court decision Number 18/PUU-XVII/2019 & NUMBER 2/PUU-XIX/2021. The author conducted interviews, data processing and direct observation of the objects to be studied.

RESULT AND DISCUSSION

The This decision results in the determination of breach of contract and/or determining whether or not a fiduciary guarantee object can be executed will depend first on the debtor's agreement. The Constitutional Court's decision is: towards all so that all considerations and rulings in the decision must be considered as applicable law. Changes to the provisions of the Constitutional Court Decision may affect or limit the implementation of the execution parate in fiduciary guarantees. Debtors or collateral owners can take advantage of changes to these provisions to make things difficult for creditors by not giving approval regarding breach of contract or execution. Creditors, in such cases, must process the collateral execution in court or even have to go through a lawsuit first to determine whether there is a default or not. The creditor does not have adequate legal protection regarding whether he can execute the collateral object with his own authority without the constraints of the debtor's approval.

PT BRI Multifinance Indonesia ("BRI Finance" or the "Company") is one of BRI's subsidiaries which operates in the financing sector. BRI Finance was founded in 1983 as a joint venture between The Sanwa Bank Limited, Japan and PT Bank Rakyat Indonesia (Persero) under the name PT Sari Usaha Leasing. On September 30 2016, PT Bank Rakyat Indonesia (Persero) Tbk. and the Bank Rakyat Indonesia Employee Welfare Foundation purchased BRI Finance shares from The Bank of Tokyo Mitsubishi UFJ Ltd, Japan. The Company's share ownership is officially owned by PT Bank Rakyat Indonesia (Persero) Tbk at 99% and the Bank Rakyat Indonesia Employee Welfare Foundation at 1%. Along with the transfer of shares, the Company's name changed from PT BTMU-BRI Finance to PT BRI Multifinance Indonesia with the trademark BRI Finance. This change makes BRI Finance part of the largest integrated financial services and financial network in Indonesia to strengthen its position in the Indonesian financial industry. Until the end of 2023, BRI Finance has a business network consisting of 1 head office and 26 branch offices, spread across 36 major cities throughout Indonesia. BRI Finance places marketers at 193 (one hundred and ninety three) captive points throughout Indonesia. With optimism to continue expanding its operational reach, BRI Finance has developed a branchless financing system through synergy with the BRI Group.

One of the products available at BRI Finance is Motor Vehicle Credit (KKB), which is meant by KKB is the provision of credit provided by BRI in the context of financing 2-wheeled, premium 2-wheeled and 4-wheeled vehicles which is carried out through direct or 2-wheeled vehicle financing, and 4 or more wheels through a collaboration pattern with finance/multi-finance companies. The principal collateral in the KKB is a motor vehicle financed by the KKB and must be tied up in accordance with the applicable provisions to give preferential rights to BRI. Motor vehicle owners whose names are listed on the BPKB must sign a Collateral Binding Agreement or Fiduciary Deed.

In the legal relationship between credit or debts and receivables between the Bank as creditor and the Customer as debtor, the achievement has been carried out first by the Bank, namely the disbursement of credit used by the Customer to purchase a motor vehicle. Because the achievements of creditors have not been carried out, a fiduciary guarantee institution is used to ensure that the achievements of creditors to the Bank will be given in accordance with the agreement, but with the Constitutional Court Decision Number 18/PUU-XVII/2019 as a result of the material review of Article 15 paragraph (2) and Article 15 paragraph (3) UUJF regarding the execution of fiduciary guarantees and strengthened by the Constitutional Court Decision Number 2/PUU-XIX/2021, thus weakening the execution rights of fiduciary holders or creditors.

From the above, the author is interested in conducting research with a discussion entitled "Legal Protection for Creditors Who Recipient of Motor Vehicle Fiduciaries After the

Constitutional Court Decision Number 18/PUU-XVII/2019 & NUMBER 2/PUU-XIX/2021 (Study at BRI Finance Malang Branch)". What is the legal protection for creditors receiving motor vehicle fiduciaries after the Constitutional Court Decision Number 18/PUU-XVII/2019 & NUMBER 2/PUU-XIX/2021 with studies at BRI Finance Malang Branch?

Implications of Constitutional Court Decision Number 18/PUU/XVII/2019 and Constitutional Court Decision No.2/PUU-XIX/2021 regarding the Execution of Fiduciary Guarantees.

To mitigate credit risk, banks in disbursing loans generally require collateral, this collateral usually consists of principal collateral (a bank's belief in the Debtor's ability to repay the credit as agreed in accordance with Article 2 paragraph (1) of the Decree of the Directors of Bank Indonesia Number 23 /69/KEP/DIR dated 28 February 1991 concerning guarantees for granting credit) and additional guarantees. Additional collateral which is usually referred to as collateral consists of basic collateral, namely in the form of goods financed by the bank, namely usually goods in the form of inventory and/or additional collateral which is usually in the form of land and building assets or motor vehicles. Guarantees have a position and benefits in supporting economic development (H. Salim HS, 2004) bearing in mind that guarantees provide protection for creditors thereby increasing creditors' interest and confidence in providing credit, financing or loans to debtors.

The Civil Code contains rules governing guarantees in general. It is stated in Articles 1131 and 1132 of the Civil Code, according to Article 1131 of the Civil Code "All movable and immovable property belonging to the Debtor, whether existing or future, becomes collateral for the Debtor's individual obligations." So, based on this article, a person's entire assets are collateral for his debts. Arrangements related to guarantees are as follows:

1. General Guarantee
   In accordance with Article 1131 of the Civil Code ("Personal Code"), all goods owned by those who have debts, whether movable or immovable, current or future, become collateral for all personal obligations. This is called a general guarantee.
2. Special Guarantee
   Guarantee law specifically regulates goods used as collateral for debts, or what is known as material collateral.

One of the special guarantees or material guarantees is Fiduciary. Fiduciary is something that has long been known in Indonesia. The regulations governing fiduciaries are Law no. 42 yrs. 1999 which uses the word "fiduciary." Thus, the term "fiduciary" is an official word in our legal world. In Indonesian, this fiduciary is also called "Delivery of Property Rights in Trust"(Munir Fuady, 2003). With the existence and implementation of the Fiduciary Guarantee Law, it is hoped that this fiduciary guarantee institution can play more of its role as a guarantee institution and of course also in order to improve the quality of legal relations between creditors and debtors so that it can improve the country's economy. What must be paid attention to in legal reform is the means that can facilitate the running of the economy. According to a study conducted by Burg's regarding law and development, there are 5 (five) elements that must be developed so as not to hamper the economy, namely "stability", "predictability", "fairness", "education" (education), and "the special development abilities of the lawyer" ("the special development abilities of the lawyer"). (Leonard J Theberge, 1980)

Jaminan Fiduciary guarantees are formed to overcome the weaknesses of pledge guarantees which require control of the pledged collateral object by the creditor so that the debtor cannot obtain benefits from the collateral object. Fiduciary guarantees according to Article 1 number 2 UUJF are:

"Guarantee rights over movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights as intended in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary, as collateral for repayment certain debts, which give the Fiduciary Recipient a preferred position over other creditors"

Article 29 UUJF states that the execution of fiduciary security objects can be carried out in 3 (three) ways, namely the implementation of executorial title, the sale of goods under one's own authority through a public auction and private sales carried out based on the agreement of the parties. The implementation of executorial title is regulated in Article 29 paragraph (1) letter a UUJF. A Fiduciary Guarantee Certificate has the same executorial power as a decision with permanent legal force, as regulated in Article 15 paragraph (2) UUJF. The execution of a decision with permanent legal force or something equivalent can refer to Articles 195 to 224 HIR or Articles 206 to 258 Rbg, which is preceded by an application to the Chairman of the District Court. The Chairman of the District Court then issued reminder (warning) to the party required to perform the performance (debtor).

The second way is direct sales under one's own authority through a public auction, as in Article 29 paragraph (1) letter b UUJF. This is in accordance with Article 15 paragraph (3) UUJF which states that if the debtor breaks his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee with his own power. This power alone is the essence of the execution parate. Parate execution is the first creditor's right to sell certain goods belonging to the debtor at auction without first obtaining a court fiat.(Herawati Poesoko, 2008) The process of implementing the execution parate is not carried out through the court or bailiff but through public sale or auction. ,(Joni Alizon, 2019) Private sales are regulated in Article 29 paragraph (1) letter c UUJF which is intended to obtain the highest price that benefits the parties. The third way is private sales carried out based on the agreement of the parties. This method is a convenience provided by creditors to debtors with the aim of getting the highest price from the sale of fiduciary objects because it is like a normal sale but because there are no other costs in this sale and also the debtor can look for potential buyers himself so there is a possibility of getting a better price.

Constitutional Court Decision Number 18/PUU/XVII/2019 was preceded by a request for a judicial review of the arrangements for the execution of Fiduciary guarantees in the UUJF to the Constitutional Court. The Constitutional Court in consideration point 3.15 considers that there is an imbalance in the bargaining position between the giver of fiduciary rights and the recipient of fiduciary rights because the fiduciary giver is in the position of a party in need, so that the agreement is made in a "state of not being completely free in will," especially in the debtor (fiduciary). According to the Constitutional Court, this position has the impact of unilateral executions carried out by creditors in an arbitrary and less "humane" manner.
Determining when a debtor can be declared in default plays an important role because it determines whether the creditor has the authority to execute. The Constitutional Court is of the opinion that this uncertainty has resulted in the emergence of various interpretations that the determination of breach of contract is in the hands of the creditor so that the creditor can arbitrarily determine and carry out execution actions while the debtor has no opportunity to defend himself. The Constitutional Court through its decision emphasized that whether or not there is a breach of contract cannot be determined by the creditor unilaterally, but must be with the agreement of the debtor that it is true that he has breached the contract or by a legal remedy that can determine whether or not there is a breach of contract, such as through a process. court with a decision stating whether or not the debtor has breached his contract.

The existence of the Constitutional Court Decision Number 18/PUU/XVII/2019, as also confirmed in the Constitutional Court Decision No.2/PUU-XIX/2021 results in the creditor's

right to carry out direct execution without going through court as regulated in Article 15 paragraph (2) UUJF only can be implemented as long as there is approval from the debtor. If there is no agreement and the debtor objects to the execution, then all executions must be carried out and have the same effect as a court decision which has permanent legal force. This means that the execution of fiduciary guarantees when there is no agreement must be carried out through the courts, such as the execution of a decision with permanent legal force as regulated in HIR/Rbg. Execution by executorial title is necessary fiat from the Chief Justice, but selling based on the execution parate is a sale based on the creditor's own rights which have been agreed upon and therefore does not require Court permission. (J. Satrio, 1993) The Constitutional Court then confirmed this in a further decision, namely Decision No.2/PUU-XIX/2021, where execution through the courts is an alternative when there is no debtor's consent regarding breach of contract and execution of collateral. The procedures for execution through the court are basically carried out on orders from the Chairman of the District Court, which are then carried out by the bailiff, in accordance with the provisions in HIR and Rbg.

The provisions decided by the Constitutional Court are considered to have implications and ineffective implementation and are not in accordance with several juridical aspects. If the execution of guarantees and determination of default must first depend on the debtor's agreement or through the courts, then of course debt recovery and execution for creditors will be increasingly difficult and can be detrimental to creditors as parties whose receivables should be protected. The execution of the guarantee cannot be carried out directly, but it must be ensured whether or not there is agreement from all parties first. This arrangement makes it possible for debtors with bad intentions to deliberately not agree to a breach of contract and object to handing over the object of collateral, thereby hampering the execution process for creditors.

Execution through the courts does not guarantee a smooth resolution of bad debts. One way out is to look for other efforts that do not involve the courts. The Constitutional Court's decision actually restores the process of executing fiduciary guarantees by means of execution through the courts as in the more complicated pre-execution stage for recovering creditor receivables. If execution must go through court, creditors are also required to prove whether or not there is a default and inevitably have to rely on the court's assessment. The number of debtors who filed objections because they felt their rights had been violated was much smaller than the number of debtors as a whole, however the Constitutional Court was more inclined to consider a small portion of debtors while ignoring the majority of the amount of credit or financing provided, which could harm the rights and position of creditors more broadly. The Constitutional Court's decision may mean that the authority of creditors who have collateral is not much different from creditors who do not have collateral because in the end the creditor must rely on the agreement of the debtor to carry out what is actually detailed in the agreement.

The Constitutional Court's decision has implications for causing juridical inconsistencies with various other legal aspects, and also results in implications in the form of legal shifts regarding 2 (two) main things, namely:

1. shift regarding the determination of breach of contract; And
2. a shift in the mechanism or procedure for implementing execution parates as a creditor's right as well as the characteristics of material collateral that prioritizes protection for creditors.

Shifts in Law Regarding the Determination of Default and Incompatibility According to the Law

There are several considerations of the Constitutional Court which can be considered wrong. First, the Constitutional Court considered that the debt and receivable agreement was made by the debtor in a state of need so that it was not in a state of freedom and did not comply with the agreement in Article 1320 of the Civil Code (Consideration Point 3.15). The benchmark

for freedom and agreement is not whether a party is in a state of need or not, so that the consideration is not legally grounded. Making agreements is of course based on needs at first. The Constitutional Court thus seemed to annul or consider almost all debt and receivable agreements to be legally flawed. These erroneous considerations can actually become a legal reference to influence the validity of credit/financing agreements that are already widely applicable. Law Number 8 of 1999 concerning Consumer Protection and Financial Services Authority Regulation Number 1 of 2013 legally recognize credit or financing agreements made in the form of standard agreements between financial institutions and customers. All agreements that have been agreed upon are binding on the parties as law as per Article 1338 paragraph (1) of the Civil Code so that as long as the parties agree to the contents of the agreement without coercion, threats and mistakes, and the agreement complies with existing legal provisions, then the agreement should be is binding.

The provisions for breach of contract initially only depended on Article 1238 of the Civil Code which stipulates that breach of contract can occur after a warning letter is given or according to the strength of the agreement itself. The author is of the view that from the provisions of Article 1238 of the Civil Code, it is clear that what has been stated in the agreement has binding force for the sake of the agreement itself, so that if in the agreement a breach of contract has been determined with certain conditions then when the conditions occur for the sake of the agreement itself it is appropriate to do so. declared in default. Creditors basically have the authority to declare a default if, with clear evidence and circumstances, the debtor can be judged to be in default. The author's opinion is in line with the opinion of J. Satrio who states that if the creditor is sure of the truth of his credit and has fulfilled his own obligations, then he should not hesitate to carry out the execution parate.

If re-agreement or re-agreement regarding breach of contract is required in every implementation of the contents of the agreement, then of course this degrades the purpose of making and the strength of the agreement itself. The legal logic is, if the terms of the breach of contract have been clearly formulated and the debtor has in fact breached the contract, then there should be no need for further agreement because basically for the strength of the agreement itself the debtor has defaulted and the debtor and creditor should be able to be bound and carry out the existing legal consequences. as a form of implementation of the contents of the agreement itself based on good faith. The agreement itself, according to Article 1338 of the Civil Code, is binding as law for those who make it. For example, if the agreement states that if situation A occurs, the debtor can immediately be declared a breach of contract, then if situation A actually occurs then it should be for the strength of the agreement that the parties, especially the creditor, can immediately implement and comply with it. Such an agreement is actually intended or made to minimize conflict in the future, especially when dealing with debtors who are difficult and often evasive. The parties should no longer need to enter into an agreement to agree whether A has occurred or not.

The interpretation of an agreement is clearly guided by the fact that what has been clearly formulated in the agreement cannot be interpreted otherwise. Basically, agreements must be interpreted according to what the parties intended in making the agreement, so that they cannot deviate from it. In fact, the purpose of formulating the agreement and the conditions for breach of contract is clearly intended so that when a violation occurs, there are legal consequences that regulate it and can be immediately enforced/enforced. Article 1342 of the Civil Code states that if the words of the agreement are clear, it is not permitted to deviate from them in any other way. If in an agreement it is stated in any circumstances that the debtor is declared to be in breach of contract and it is clearly formulated what the consequences will be, then the parties should not be able to excuse themselves by interpreting these circumstances differently just to argue or argue that the situation has not been fulfilled or has another meaning.

Legal Shifts Regarding Execution Parate Mechanisms and Procedures and Their Incompatibility According to the Law

Fiduciary guarantee is a type of material right that provides guarantees, so that the principles and principles of material rights are attached to it. Property rights have an absolute nature, which means they are absolute and can be defended against anyone, as well resale right which means attached to objects wherever they are. Execution parate as part of a fiduciary guarantee should also be absolute and can be defended against anyone and attached to the object, even though the object is still in the hands of the debtor/guarantor. Creditors should be able to defend their rights against anyone, including debtors or collateral providers.

Parate execution is the first creditor's right to sell certain goods belonging to the debtor at auction without first obtaining a court fiat. (Herawati Poesoko, 2008) Basically, the execution parate is the right or power for the creditor to sell the collateral object directly if the debtor breaks his promise, which arises to provide convenience, protection and confidence for the creditor who is the fiduciary recipient. Through the Constitutional Court's decision, the implementation of the execution parate cannot be carried out directly by the creditor's own authority but must be through prior agreement from the debtor. Creditors, based on the absolute nature of property law, should be able to maintain their rights to collateral, including carrying out parate execution, despite objections from the debtor/security owner.

Material guarantees and execution parates are formed with the aim of accommodating legal protection and legal protection for creditors who have actually carried out their obligations by providing a certain amount of debt or loan to the debtor. The creditor's power to execute the collateral object directly (parate execution) should be a feature of material collateral to provide ease of execution for creditors. This is as stated in the applicable legal provisions and also from a historical perspective which is the background to the purpose of establishing the execution parate. The explanation of Article 15 paragraph (3) UUJF emphasizes that one of the characteristics of a fiduciary guarantee is the ease of its execution if a breach of contract occurs, which is realized by the institution of an execution parate.

The execution parate itself, in the aspect of its historical legal formation, was actually formed to facilitate the execution of material collateral in order to avoid bad credit or debtors/collateral owners who do not have good intentions so that creditors can immediately execute the collateral without needing to see the debtor's objections and without needing to go to court. The formation of an execution parate is a logical consequence of the aim of establishing a material guarantee institution whose nature is to provide convenience and a priority position for creditors in obtaining repayment of their claim rights.(Teddy Anggoro, 2007) The root of the formation of an execution parate is so that creditors have a way to directly execute collateral when difficulties arise with the debtor/guarantee, without the need to consider the debtor's objections and without the need to involve the court. An execution parate that is dependent on the debtor's agreement actually eliminates the characteristics and objectives of the execution parate itself. J. Satrio is of the same opinion that it is possible that the debtor can submit objections or counterclaims, but if the creditor is sure of the validity of the credit and has fulfilled his own obligations, then there should be no need to hesitate to carry out the execution parate. (Satrio, 1993)

The Constitutional Court's decision makes execution more complicated and does not provide protection because the determination of default and execution must depend on the debtor's agreement first. If there is no agreement, the creditor cannot immediately secure/execute the object of collateral but must go through procedures in court. These changes can certainly degrade legal protection for creditors. Execution mechanisms that should be implemented easily and efficiently can be hampered, because debtors can deliberately delay execution by

transferring/hiding collateral objects. If the problem ultimately has to be resolved in court because the debtor or collateral owner refuses, then of course it will waste time and money and therefore be incoherent with the easy and certain principle of implementing collateral execution.

Handling Problem Loans (Delinquent Debtors) related to the Execution of Collateral Tied to Fiduciaries at BRI Finance Malang Branch

At BRI Finance Malang Branch, one of the credits distributed is Multipurpose Motor Vehicle Ownership Credit. Based on Bank Indonesia Regulation Number 18/16/PBI/2016 concerning Loan To Value Ratio for Property Credit, Financing To Value Ratio for Property Financing, and Down Payments for Credit or Motor Vehicle Financing, the definition of Motor Vehicle Credit (KKB) is credit or financing provided by the Bank for the purchase of motor vehicles. A more complete understanding of Multipurpose Motor Vehicle Ownership Credit is the provision of credit provided by BRI Finance in the context of financing 2-wheeled, premium 2-wheeled and 4-wheeled vehicles which is carried out through a direct pattern or financing of 2-wheeled and 4-wheeled vehicles or more through a cooperation pattern with the company financing/multifinance.

The target market for multi-purpose credit for motor vehicle ownership at BRI Finance is as follows:

1. Individual Debtors, consisting of:

a. Fixed income debtors (fixed income), namely employees/employees/permanent workers from an agency/company. Included in the category of potential fixed income debtors are company directors who receive salaries/wages from their work as Directors. Such potential debtors are usually professional workers and not company owners.

b. Non-fixed income debtors, consisting of:

b.1. Professional

Namely prospective debtors who earn income from their special skills and usually have professional associations, for example: doctors, advocates/attorneys, notaries, public accountants, artists, etc. If a prospective professional debtor is bound as a worker/employee/employee at a certain agency/company and receives regular fixed compensation (salary/wages), then the prospective debtor must be categorized as a prospective debtor with a fixed income and cannot be categorized as a prospective professional debtor.

b.2. Self-employed/entrepreneur:

Namely potential debtors who have income from the business they run (business owner).

c. Business Entity Debtors

Prospective business entity debtors can be legal entities or non-legal entities.

To mitigate the risk of Multipurpose Motor Vehicle Ownership Credit at BRI Finance, the following are implemented:

A. Considering that providing motor vehicle credit is Collateral Based Lending, the principal collateral is the vehicle being financed, so banks must mitigate risks on vehicle collateral and cover it with loss insurance with banker's clause to BRI.

B. Carrying out loss insurance all risk or Total Loss (given according to the Credit Decision Decision based on the risk profile).

C. Life insurance can be provided according to the risk profile of the prospective debtor (given according to the Credit Decision Decision based on the risk profile).

D. Insurance coverage must use a BRI Finance partner insurer. If in consumer credit services the goods used as collateral have been insured with a non-partner loss insurance company BRI, then the insurance policy for the collateral goods can still be used until the maturity

of the policy with additional Banker's Clause for BRI Finance. Then the Insurance Company can be proposed to become a parallel partner of BRI Finance.

The data for Multipurpose Motor Vehicle Ownership Credit at BRI Finance for July 2024 is as follows:

No	Description	Amount
1.	Debtor KC Malang as of July 2024	1267
2.a	Coll 2 is due	91
2.b	Coll 3 is due	0
2.c	Coll 4 is due	8
2.d	Coll 5 is due	47
3	Auction units for the period Jan 23 to July 2024	20
4	Execution Fiat	-
5	Outgoing lawsuit (LP)	13
6	Entry Lawsuit (Debtor)	1

From this data, it is known that there are a total of 1267 Multipurpose Motor Vehicle Ownership Credit accounts and there are 146 non-performing credit accounts, namely from collectibility 2 to collectibility 5. Auction execution data from January 2023 to July 2024 there are 20 units of fiduciary collateral being auctioned for credit payment.

From BRI Finance's internal regulations, information regarding problem credit resolution can be obtained in the following way:

1. Restructuring, namely improvement efforts carried out by banks in credit activities for debtors who have the potential to experience difficulties in fulfilling their obligations. Some types of restructuring are as follows:
   a) Decrease in credit interest rates.
   b) Reduction of credit interest arrears and/or fines/penalties.
   c) Extension of credit period/rescheduling.
   d) Additional credit facilities/credit supplementation.
   e) Payment of obligations made later (deferred interest payment/interest balloon payment/secondary accrued interest).
   f) Changes in Credit Scheme and Installment Method.
   g) Reduction of principal arrears.
   h) Conversion of Credit into Temporary Capital Investment.
   i) PKPU impact restructuring
   j) A combination of the types of restructuring letters a to i mentioned above
2. Problematic Credit Settlement is an effort to resolve credit carried out by the Bank for debtors who have good faith or who do not have good faith; has no business prospects; or the business no longer exists; which is carried out either without going through legal channels or through legal channels and/or other efforts to settle the credit. Efforts to handle problem credit are divided into 3 (three) ways, namely as follows:
   a) Settlement without going through legal channels with sale/redemption of collateral: This is the sale/redemption of part or all of the debtor's collateral which is carried out privately, both collateral belonging to the debtor and belonging to the debt guarantor/III party. These sales include private sales without going through:
      - Auction to Third Party.
      - Voluntary Non-Execution auction sale.
   b) Credit Settlement Through Legal Channels or Mechanisms: Credit settlement through legal channels or mechanisms is any bank action intended to execute the collateral or

assets of debtors and guarantors through the assistance of institutions or through the intermediary of certain legal instruments based on applicable legal provisions. Credit settlement through legal channels or mechanisms, including:

- Sale of collateral under one's own authority (Execution Parate) to the State Auction Office.
- Execution of Title Executorial Binding of Fiat Collateral Execution of District Court).

c) Summons to Debtors by the District Court Bailiff: This is a written warning or warning delivered by BRI as a creditor to the debtor directly or through the District Court.

d) Lawsuit through the courts in Indonesia: This is a civil lawsuit brought by BRI as a creditor against the debtor and/or guarantor through the District Court.

A lawsuit through the District Court is carried out with the following requirements (alternatives apply):

- Only for debtors/guarantor who have bad intentions;
- For debts (total liabilities) up to IDR 500,000,000 (five hundred million rupiah) to use the Simple Claims procedure;
- For debts (total liabilities) above Rp. 500,000,000 (five hundred million rupiah) or total debts up to Rp. 500,000,000 (five hundred million rupiah) but cannot use the simple claim procedure, you can use the Civil Suit procedure.

If the lawsuit is accompanied by physical coercion (gijzeling), the conditions must be met:

- The maximum age of the debtor/guarantor is 75 years.
- Debt (total liabilities) minimum Rp. 1,000,000,000 (one billion rupiah)

The Terms and Conditions of Credit Settlement are as follows:

1. Credit settlement without going through legal channels must meet all of the following requirements:
   a) The debtor has good intentions to settle the credit.
   b) The main source of credit settlement can come from cash flow or not from cash flow.
   c) Problematic loans are classified as Substandard (KL), Doubtful (D), Loss (M) or Extracomtable (PH).
   d) If credit restructuring does not meet the requirements or is no longer possible, it is stated in the Minutes that restructuring cannot be carried out or stated in the Memorandum of Analysis in the context of credit settlement.
2. Credit settlement through legal channels must meet all the following requirements:
   a) The debtor has bad intentions.
   b) The main source of credit settlement can come from cash flow or not from cash flow.
   c) Problematic loans are classified as Substandard (KL), Doubtful (D), Loss (M) or Extracomtable.
   d) Efforts to settle credit amicably have been unsuccessful or it is impossible to carry out credit settlement that does not meet the requirements or it is no longer possible to carry out credit restructuring as stated in the Minutes. Restructuring/peaceful settlement cannot be carried out or stated in the Memorandum of Analysis in the context of credit settlement.

The results of the interview with Mr. Ruby Tjahjana (head of BRI Finance Legal Division) and Ms. Risca Komala (BRI Finance Malang Branch Manager) obtained the following information regarding the handling of problem loans:

1. Handling problematic Multipurpose Credit for Motor Vehicle Ownership is giving a written warning to the debtor that the debtor is in default (in arrears), namely with details of how much arrears must be paid by the debtor.

2. In parallel, if the debtor meets the requirements, restructuring is carried out (the debtor still has good faith in fulfilling his obligations, the debtor's business still exists and there is cash flow to pay his credit obligations) then restructuring is carried out in accordance with the debtor's current business capabilities.
3. If the debtor still has good intentions but no longer has a business with adequate cash flow, efforts are made to resolve the credit peacefully, namely by giving the debtor time to sell the collateral under his hands (usually given 3 months).
4. If the allotted time has passed, the debtor cannot find a buyer for the sale of the collateral under his hands, an auction will be held through an auction house that has collaborated with BRI Finance to settle the credit.
5. With the decision of the Constitutional Court Number 18/PUU/XVII/2019 which is confirmed by the decision of the Constitutional Court No.2/PUU-XIX/2021, what is most affected is the handling of problem loans for debtors who have bad intentions due to debtors for all baseless reasons. does not admit that there is a breach of contract/default and is not willing to hand over the fiduciary object that is used as collateral so that the creditor cannot use his parate execution rights and can only file a lawsuit in court to obtain his preferential rights. The creditor, in this case BRI Finance, did not take the step of suing the court to obtain its preferential rights because the costs and time spent on this were too high and usually in the process the goods had been sold/pawned/hidden by the debtor/other party who gave fiduciary rights to the creditor.
6. To handle problem loans for creditors who do not have good intentions who are proven to have transferred/mortgaged fiduciary objects used as collateral, BRI Finance takes legal steps to report criminal elements of embezzlement against debtors/other parties who provide fiduciary rights to creditors.

CONCLUSION

Constitutional Court Decision Number 18/PUU/XVII/2019 which is strengthened by Constitutional Court Decision No.2/PUU-XIX/2021 carries the implication of weak parate execution rights by creditors, especially for handling problem loans whose debtors do not have good intentions. Determination of breach of contract must be with the debtor's approval or a decision/determination of a legal remedy first. If there is no agreement, then the execution of the collateral object is carried out through the court as the execution of a court decision has permanent legal force, in accordance with the provisions of HIR and/or Rbg. This is contrary to the spirit of the purpose of the formation, position and function of the execution party in material guarantees as protection for creditors, as well as the principle of easy and sure execution of a Fiduciary material guarantee.

At the practical level, creditors do not take steps to handle problem loans by suing debtors regarding breach of contract/default and subsequent execution through court if there is no agreement from the debtor regarding breach of promise and execution of collateral because this requires costs and time that are not simple and characteristic. Fiduciary guarantees where the goods are movable goods, if it takes years, usually the goods have decreased in value or have been lost. Efforts that can be taken as legal protection for creditors receiving fiduciary guarantees are as follows:

1. By creditors

a. Setting out in the credit agreement the conditions of default in more detail and clarity, namely regarding when and when, thereby reducing the scope for debtors to disagree about the occurrence of conditions of default in the future.

b. The creditor gives a warning letter to the debtor regarding a breach of contract/default and if by a certain time limit the debtor is unable to eliminate the condition of default, the creditor will take action to exercise his right of execution.
c. The creditor gives a summons to the debtor if the fiduciary object is not handed over to the creditor at the time of breach of contract/default because he has committed a criminal act of embezzlement of the fiduciary object. bargaining position strong creditors.
d. If the debtor defaults, take an approach to credit restructuring, namely adjusting the installment amount according to the debtor's current capabilities provided that the debtor's character is considered good, the debtor's business still exists and there is still the ability to pay. If the conditions for restructuring are not met, an amicable credit settlement is usually carried out, namely selling the fiduciary object privately or offering repayment with reduced interest to the debtor.

2. By Lawmakers:

With the Constitutional Court Decision Number 18/PUU/XVII/2019 which is strengthened by the Constitutional Court Decision No.2/PUU-XIX/2021 which has the implication of weakening the position of creditors in exercising their parate execution rights, it is necessary to make rules for the lawsuit process in a special court for related claims. Simple fiduciary related to costs and time so that fiduciary material guarantees can grow and develop to improve the national economy but still protect the interests of recipients and providers of fiduciary guarantees.

Lawmakers need to hold meetings with banks (creditors) and business actors (debtors) to discuss legal protection related to fiduciary material guarantees so that the balance of rights and obligations can be determined and then positive legal provisions can be made that can support business traffic to develop.

REFERENCES

Abdul kadir Muhammad, 2006, Hukum Perikatan, Citra Aditya Bakti, Bandung.

Damanhuri Fattah, "Teori Keadilan Menurut John Rawls", Jurnal TAPIs, Vol. 9. No.2, Juli-Desember 2013.

H. Salim HS, Perkembangan Hukum Jaminan Di Indonesia, Jakarta: Raja Grafindo Persada, 2004.

Hammerslev, Ole, How to study Danish Judges, dalam Reza Banakar & Max Travers (ed), Theory and Method in Socio-Legal Research. Onati: Hart Publishing Oxford and Portland Oregon;2005.

Hartono Hadisoeprapto. Pokok-Pokok Hukum Perikatan dan Hukum Jaminan, Liberty, Yogyakarta: 1984.

Herawati Poesoko. Parate Executie Objek Hak Tanggungan. Cetakan Ke-II. Laksbang Pressindo. Yogyakarta: 2008.

Iqbal Hasanuddin, "Keadilan Sosial: Telaah Atas Filsafat Politik John Rawls", Jurnal Refleksi, Volume 17.Nomor 2, Oktober 2011.

Irianto, Sulistyowati & Antonius Cahyadi (2008), Runtuhnya Sekat Perdata dan Pidana. Studi Peradilan Kasus Kekerasan Terhadap Perempuan. Jakarta: Yayasan Obor Indonesia

Irianto, Sulistyowati & Lidwina Nurcahyo (2006), Perempuan di Persidangan. Pemantauan Peradilan Berperspektif Perempuan. Jakarta: yayasan Obor Indonesia

J. Satrio, Parate Eksekusi Sebagai Sarana Mengatasi Kredit Macet, PT. Citra Aditya Bakti, Bandung.1993.

Joni Alizon, "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019", Eksekusi (Journal of Law), Vol.2. No.1, 2020

John Rawls. Teori Keadilan (A Theory of Justice): Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial Dalam Negara. yang telah diterjemahkan oleh Uzair Fauzah dan Heru Prasetyo, Yogyakarta: Pustaka Pelajar. Cetakan ke II. 2011.

Mariam Darus Badrulzaman, 2001, Kompilasi Hukum Perikatan, Citra Aditya Bakti, Bandung.

Munir Fuady, 2007, Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis), Citra Aditya Bakti, Bandung.

Putusan Mahkamah Konstitusi Nomor 18/PUU/XVII/2019.

Putusan Mahkamah Konstitusi Nomor 79/PUU-XVIII/2020.

Putusan Mahkamah Konstitusi No.2/PUU-XIX/2021.

Teddy Anggoro, "Parate Eksekusi: Hak Kreditor yang Menderogasi Hukum Formiil (Suatu Pemahaman Dasar dan Mendalam)", Jurnal Hukum dan Pembangunan Tahun ke-3. No.4, Oktober-Desember 2007.

Undang-undang No. 42 Tahun 1999 tentang Jaminan Fidusia.