Fulfillment of Creditors' Rights in The Execution of Fiduciary Guarantees Post Constitutional Court Ruling Number 18/PUU-XVII/2019

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Abstract. The issuance of Constitutional Court Decision Number 18/PUU-2019 has brought significant changes to the execution of fiduciary guarantees. Creditors can no longer carry out executions through executorial titles if the constitutional requirements set by the Constitutional Court are not met, namely an acknowledgment of default from the debtor and voluntarily surrendering the collateral object. If these conditions are not met, the creditor must apply for a stipulation through the court in carrying out the execution. This article discusses the implementation of the execution of Fiduciary Guarantee objects in relation to the position of executorial title in the Fiduciary Guarantee Certificate and the protection of creditors' rights in the implementation of execution after the decision a quo from the philosophical perspective of the formation of Law Number 42 of 1999 concerning Fiduciary Guarantees after the decision.

Keywords: Creditor Rights, Execution, Fiduciary.

1 Introduction

The rapid growth rate of trade, industrial, and banking activities within the framework of economic escalation on both micro and macro scales requires high capital/fund circulation. The high demand for capital/funds also requires a guarantee regarding the certainty of the return of the capital/funds provided by the Creditor and on the Debtor's side in the form of freedom in the use of capital/funds without the need to hand over an object that is physically owned as collateral [1]. This condition is one of the main factors in the institutionalization of 'fiduciary' in the legal system of legal guarantees [2] which has formally demonstrated its existence since 30 September 1999 through the establishment of Law Number 42 of 1999 concerning Fiduciary Guarantee (hereinafter abbreviated as UUJF). [3]

More than two decades into the implementation of fiduciary institutions in the legal guarantee system that specifically guarantees movable objects with all the problems that follow, precisely on January 6, 2020, the Constitutional Court (hereinafter abbreviated to the MK) issued a decision on the case of material review of Article 15 paragraph (2) and paragraph (3) UUJF. The Constitutional Court then tried the quo case and issued a conditionally unconstitutional decision [4] with a verdict that stated that the phrase "executorial power" and "the same as a court decision with permanent legal force" contained in Article 15 paragraph (2) UUJF[4] were in direct opposition to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945), and as long as it is not interpreted as "for fiduciary

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guarantees where there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily surrendering the object that is collateral fiduciary, then all legal mechanisms and procedures in executing the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force," they.[5]

However, the Constitutional Court also made a decision regarding Article 15 paragraph 3 UUJF in the same case.[6] based on an agreement between the creditor and the debtor or based on legal action to determine whether a breach of contract has occurred, the Constitutional Court stated that the phrase "breach of promise" in the quo article is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted to mean that "there is no breach of contract." determined unilaterally by the creditor."[5] The existence of Constitutional Court Decision Number 18/PUU- the object of fiduciary security at his own will." Prior to the a quo Constitutional Court decision, creditors had the right to execute if the Debtor broke their promise due to the legitimacy of the executorial title in the Fiduciary Guarantee Certificate. However, now that creditors must use a court decision (the same applies to the execution of a court decision that has entered into force fixed law), creditors no longer have this right).

The existence of Constitutional Court Decision Number 18/PUU-XVII/2019, apart from giving birth to new legal norms as described above, in the author's view has also given rise to problems and ambiguity, specifically about fulfilling the rights of creditors in the execution of fiduciary collateral objects. The problems and ambiguities as intended by the author cover at least 2 (two) main aspects, namely juridical arguments for testing norms and *racio decidenci* in *a quo* decisions, inconsistencies, and incoherence between norms.

Starting from the first aspect, namely regarding the juridical arguments of the Petitioners and the Constitutional Court's rationale in its decision. The petitioners based their petition's arguments stating that[5]: "The existence of the phrase "executorial power" and the phrase 'the same as the court decision' can be interpreted differently and differently. The *a quo* provision gives power/legitimacy to the fiduciary recipient (the creditor) to directly execute the fiduciary object in the event that it is deemed to have committed a breach of promise. This execution mechanism can be carried out immediately without going through the correct legal procedures with the orientation of taking over the fiduciary object; this mechanism can actually give rise to arbitrariness by the fiduciary recipient in carrying out the execution of the fiduciary object, as was experienced by the Petitioners."

The argument of the petition submitted by the applicant above questions the existence of a direct execution mechanism by the Creditor if the Debtor is deemed to have committed a breach of contract as a manifestation of the embedded 'executorial title' in the fiduciary guarantee certificate as embedded in the provisions of Article 15 paragraph (2) UUJF which has the potential - and even This has actually been experienced by the applicants - giving rise to acts of arbitrariness which have resulted in acts of coercion and violence by creditors. The existence of the phrase a quo by the petitioners is not only considered contrary to the 1945 Constitution of the Republic of Indonesia but also contrary to the principle of legal certainty, the principle of equality, treatment, and protection before the law, the principle of guaranteeing protection of property rights. Apart from that, the applicants also questioned the clarity of the phrase "default" in the provisions of Article 15 paragraph (3) UUJF. The petitioners stated that the a quo phrase was not followed by clear indicators and a clear assessment regarding 'who' is authorized and has the right to determine whether the Debtor has committed an act of "default" or not.[5]

Regarding the arguments presented by the applicants, the Constitutional Court consideration stated that Article 15 paragraph (2) UUJF does not reflect equal and balanced

legal protection between Creditors and Debtors, both from the perspective of legal certainty and justice. The existence of the phrases 'executorial title' and 'equated to a court decision which has permanent legal force' is a presentation of the exclusive rights of the Creditor. On the other hand, it is a form of neglect of the Debtor's rights. The existence of the a quo phrase also results in unilateral action by the Creditor to carry out the execution. The logical consequence of unilateral action by Creditors has the potential to be carried out in an arbitrary manner and can even be carried out in ways that are not 'humane', either through physical or psychological threats, as has been experienced by the applicants.[5]

The explanation of the arguments for the petition and the ratio decidendi in the a quo case is based on the practical arguments of the petitioners. The factual experience that the applicants have gone through is the main reason that 'executorial title', 'equated to a court decision that has permanent legal force', and "default" in Article 15 paragraphs (2) and (3) UUJF are declared not to reflect a form of protection law against the Debtor. If examined carefully, the formalities contained in both the arguments and the ratio decidendi regarding the provisions in Article 15 paragraphs (2) and (3) are based on practical constructions that are dynamic and tentative in nature. This practical construction is then used as a foundation in questioning the normativity and legality of the theoretical and even philosophical constructions contained in the a quo article. This means that it would be irrelevant - in the author's view - of the factual events experienced by the applicants (case by case) were used as a basis for questioning the constitutionality of the a quo article, and in the future there is an opposite situation where the Debtor does not has good faith to carry out its obligations and even transfers the objects pledged as collateral in various ways. For this reason, the execution mechanism by the fiduciary recipient (the creditor) for the collateralized object, if the debtor fails to carry out his obligations, is a logical consequence of one of the characteristics of the fiduciary guarantee institution, namely the *constitutum possessorium*.[7]

The second aspect relates to the incoherence and inconsistency of the norms contained in the UUJF. This statement is based on the fact that the phrases "executorial power", 'equated to a court decision which has direct legal force' and "default" contained in Article 15 paragraphs (2) and (3) are declared to conflict with the 1945 Constitution of the Republic of Indonesia. This norm, at least according to the author's notes, has caused inconsistency and incoherence between norms, where as stated in Article 4 UUJF, fiduciary guarantees are follow-up agreements or accessorial agreements, which means that the birth, transfer, and elimination of a fiduciary guarantee depends on the main agreement (in general, it is debt agreement or credit agreement). For this reason, the consequence of this additional agreement or *accessoir* is that if the main agreement is invalid or for any reason loses its force or is declared invalid, then legally the additional agreement/*accessoir* is also void.[8]

The Constitutional Court interpreted the phrase "breach of promise" in Article 15 paragraph 3 of the UUF to mean that "a breach of promise is not determined unilaterally or based on legal action to determine whether a breach of promise has occurred, which in the author's view is an inaccurate interpretation." In light of these provisions, the phrase was interpreted. Article 15 paragraph 3 UUJF is combined with Article 1234 of the Civil Code, which states that "an agreement is intended to give something, to do something, or not to do something" and Article 1338 of the Civil Code, which basically makes the agreement the law for the parties (pacta sunt servanda). If the parties do not carry out the terms of an agreed-upon agreement, then it is appropriate to state that the agreement has been violated.[9]

The two formulations of this article become relevant when linked to fiduciary security institutions, where in general, the principal agreement is debts or credit, then the formulation of Article 1238 of the Civil Code which reads "The debtor is declared negligent by a warrant, or

by a similar deed, or based on the strength of the agreement itself, that is, if this agreement results in the debtor being deemed to be in default after the specified time has passed," this is a further rule that must be fulfilled. Based on this article, if there is bad credit, in other words, achievements are not met, the Debtor will be completely unable to make payments. then the debtor needs to be warned in writing, with an order or similar deed stating that the Debtor will immediately or at a certain time stated to fulfill his achievements; if it is not fulfilled, he has been declared negligent or in default. On the other hand, in connection with demands for performance fulfillment, the object used as collateral can be sold by the Creditor in order to realize the performance that is his right if the Debtor turns out to be in default.[10] The achievement here does not need to go through a judge, because the debtor himself has agreed to this method from the start. This kind of fulfillment of achievements carried out by creditors themselves is called "parate execution" (direct execution).[11]

In the author's opinion, the two provisions, as described above, are the main reasons causing inconsistency and incoherence in the new interpretation of the phrase a quo. Article 15 paragraph (3) UUJF regarding "default" is not determined unilaterally by the Creditor but also the debtor, where if the principal agreement is a debt or credit which has determined the procedure and deadline for installment payments and the debtor is negligent in carrying out his obligations then It is appropriate for the debtor to be said to have breached his contract/default. For this reason, the debtor's failure to carry out his contractual obligations can also be legally enforced by the passage of time, namely until the time limit specified in the agreement turns out that the debtor has not carried out his obligations, then he is declared negligent.[12] Apart from the provisions contained in the three articles in the Civil Code, the interpretation of the norms contained in Article 15 paragraphs (2) and (3) has also had an impact on the provisions contained in Article 11 UUJF regarding the obligation to register objects encumbered with fiduciary guarantees. The intended impact is that as long as there is a clause that can prove that the debtor breached his contract and voluntarily handed over the object being pledged as collateral; the Creditor should be freed from the obligation to register the object being collateral for reasons of expenditure efficiency.

These two aspects are the main reasons for the research plan for this thesis, although there are still other aspects that will be explained comprehensively in the next section, one certain thing is that after the *a quo* decision, the mechanism for implementing the execution of fiduciary collateral objects has undergone significant changes. Considering that one of the characteristics of fiduciary collateral is the constitutum possessorium, the obligation to register the object of fiduciary collateral, and the legality of the executorial title in legal construction of guarantees with a research focus to find out about the implementation of the execution of Fiduciary Guarantee objects after Constitutional Court Decision Number 18/PUU-XVII/2019 related to the position of the executorial title in the Fiduciary Guarantee Certificate and protection of creditors' rights in carrying out executions.

2 Result and Discussion

2.1 The Execution of Fiduciary Guarantee Objects will be carried out in accordance with the Executorial Title's position in the Fiduciary Guarantee Certificate following Constitutional Court Decision 18/PUU-XVII/2019.

According to the Constitutional Court's interpretation of the new norms regarding the a quo articles based on the Petitioners' arguments (background and scope), the provisions of Article 15 paragraphs (2) and (3) UUJF (executorial rights) are in direct opposition to the 1945 Republic of Indonesia Constitution. In addition, the petition's arguments are divided into three distinct parts that cannot be separated. First, the phrase "executorial power" and the phrase "the same as the court decision" in Article 15 paragraph (2) UUJF are in violation of the principle of legal certainty. Second, Article 15 paragraph (2) UUJF's use of the terms "executorial power" and "equal to a court decision" as well as Article 15 paragraph (3) UUJF's use of the term "default" are in direct opposition to the concepts of equality before the law, recognition, guarantee, protection, and equal treatment before the law. Thirdly, Article 15 paragraph (2) UUJF's use of the terms "executorial power" and "equal to a court decision" as well as Article 15 paragraph (3) UUJF's use of the term "default" go against the guarantee protection for property rights.

The Constitutional Court provided an assessment of the form of legal protection, both legal certainty and justice, for the parties in a contractual legal relationship with a fiduciary guarantee, in response to the arguments made by the Petitioners regarding the constitutional meaning of the phrases "executorial power" and "the same as a court decision." The Court believes that the a quo provision was drafted on the basis of legal logic, which states that the provision of "arbitrary" space for the creditor to remove the collateral object from the debtor's control and sell it at any time is affected by the debtor's transfer of ownership of the collateral object to the creditor. This content's meaning does not reflect a guarantee of equal legal protection for the parties, both in the corridors of legal certainty and justice. This is a constitutional issue.

The Court also considered that the existence of "executorial title" and "equating it with a court decision which has permanent legal force" had an impact on the implementation of direct execution by Creditors as a reflection of the imbalance in the position of the parties. Creditors are held exclusively in a position of leeway to carry out various actions, while debtors are isolated in their right to present a plea regarding the creditor's actions.

The arguments for the petition as presented above are the following considerations from the Constitutional Court in the a quo Decision, specifically regarding the existence of the phrase "executive title" in Article 15 paragraph (2) of the UUJF which is equated with a judge's decision with permanent force and results in the potential for arbitrary actions from Creditors, at least in the author's view, it is full of 'mistakes' as stated at the beginning of the article (background). Ratio *legis* The Constitutional Court declared the a quo norm unconstitutional based on arguments constructed from factual/practical events (which were directly experienced by the applicants) which were both dynamic and case by case.

From a simple perspective, not all legal relationships (fiduciary guarantees) have the same pattern and end as those experienced by the Petitioners, although the requirements for testing a norm do not have to be based on communal losses/violations of rights, but it is a premature conclusion if the constitutionality of a norm determined or based on practical reasons (testing an abstract norm rather than implementing a norm).[13] The applicant's argument which states "arbitrary action by creditors", even leads to acts of violence both verbally and physically when carrying out the execution of fiduciary collateral objects where the creditor with the existing fiduciary certificate as capital, being described as having full authority and being able to do or act anything and the debitor can only accept all existing actions without being able to defend himself is a contradictory argument.[14]

If the creditor's actions, as experienced by the applicants, occur during the execution of the object of collateral, in that context, it is carried out with verbal threats and/or actions that

even physically injure the Debtor. These two legal events are clearly different even though they originate from the existence of a civil legal relationship, an agreement with a fiduciary guarantee. In this section, it is clear that both the Petitioners through the arguments of their petition, and the Constitutional Court in their considerations relied on legal logic in the form of "the fusion of two different and contradictory legal events as a result of the existence of a legal relationship."

Based on such legal logic, isn't it the same as stating that in every civil legal relationship where one of the parties is unable to carry out performance, then this situation is equivalent to committing a criminal act of fraud or embezzlement without the need to first prove the fulfillment of the elements subjectively and objectively, including the nature of violating formal or material law (negligence or deliberate) as well as other circumstances beyond the will of the parties (overmatch/force majeure)?[15] The author's disagreement with the Court's consideration of the constitutionality of the phrase "executorial title" and "equating it with a court decision that has permanent legal force" in Article 15 paragraph (2) UUJF does not stop at the point of negating various provisions of horizontal norms and the legal logic that is based on the argument which is not quite right. The Constitutional Court also failed to consider the correlation between other norms contained in the UUJF, even though the Constitutional Court stated bluntly that "the norms of Article 15 paragraph (2) are a continuation of the provisions regulated in the norms of Article 15 paragraph (3)."

Correlation with other norms as previously intended is the provisions of Article 4 concerning the *accessoir* nature of fiduciary guarantees and Article 11, Article 12, and Article 13 concerning the obligation to register fiduciary guarantees by fiduciary recipients at the fiduciary guarantee registration office (under the Ministry of Justice and Human Rights and located in each provincial capital).[16] Starting from the obligation to register fiduciary collateral by the fiduciary recipient, it is intended to fulfill the "principle of publicity, as well as a guarantee of certainty to other creditors regarding objects that have been encumbered with Fiduciary Guarantee" as described in the Explanation to Article 11 UUJF. The essence of "fulfillment of legal certainty for creditors" in the above provisions is based on a misunderstanding of the nature of the *constitum posseorium* in the fiduciary guarantee itself by the fiduciary (debtor). A debtor (fiduciary giver) who considers his obligations cannot be fulfilled properly and has seen signs of impending confiscation of the collateral object can easily declare that the object, which is the object of the fiduciary guarantee, has been lost or destroyed (in this case, it was deliberately removed or destroyed) or even re-pledge the same object by hiding behind the excuse that the object has been 'lost or destroyed'. The high potential for "deception" from debtors whose truth is difficult to prove is the main reason that fiduciary guarantees must be registered as a form of fulfilling the principle of publicity, which means that the more public a debt guarantee is, the better it will be so that creditors or the general public can know or access important information.[17]

Even though the author's argument above is based on mere assumptions, one must pay attention again to the accessorial nature of the fiduciary guarantee itself as stated in Article 4 UUJF. A fiduciary guarantee will never be created without a principal agreement, and in general, the principal agreement commonly used is a credit or debt-receivables agreement. For this reason, the purpose of registering a fiduciary guarantee is as a guarantee of repayment of a debt if a debtor is unable to carry out his obligations in the main agreement. These two aspects were not found in the considerations of the Constitutional Court in handing down its decision, specifically, the part which declared unconstitutional the phrase "executive title" and the phrase "equated to a judge's decision with permanent power" in Article 15 paragraph (2) UUJF. If the execution through an "executorial title" must go through the same procedure as the judge's

decision, can it still be said that a fiduciary guarantee is an accessory agreement? In this context, it is aligned with the obligation to register fiduciary guarantees on creditors in terms of fulfilling appropriate aspects of effectiveness and efficiency owned by fiduciary security institutions compared to other material security institutions.

2.2 From a philosophical point of view, the formation of Law No. 42 of 1999, which deals with Fiduciary Guarantees, and the protection of Creditors' Rights in Execution

The Constitutional Court in Decision Number 18/PUU-XVII/2019 firmly stated that the norms contained in the UUJF, specifically regarding the implementation of executions through executive titles as regulated in Article 15 paragraph (2) and paragraph (3) do not reflect "the legal protection that balanced between the parties bound by a fiduciary agreement, both legal protection in the form of legal certainty and justice" where the creditor's position is associated with all inherent exclusivity, both in terms of determining "default", inappropriate execution procedures and potential authority arbitrary actions and on the other hand, the debtor is placed in a position where he is only able to accept and even has the right to just question the actions of the creditor, and is not given room, let alone to refuse.

The a quo decision and its implications have made the implementation of fiduciary guarantees lose their "*Paraat*" element. Creditors in carrying out the execution must first request a ruling from the Court (fiat decision) if the condition "the debtor does not admit that there is a breach of contract and voluntarily surrenders the object of collateral" is actually a "personification". This means that with this provision, the debtor will always refuse to admit a 'default' even if there are clear facts. On this basis, this section will explore the philosophy of establishing UUJF, specifically in relation to fulfilling creditors' rights in carrying out executions. Searching for the UUJF formation documents, as stated in the government's statement before the plenary meeting on July 19 1999, the fiduciary guarantee institution is intended "in response to the public's desire to have a kind of guarantee where the movable objects/goods which are guaranteed remain in the hands of their owners (debtors), for used in carrying out business in the economic and trade sectors, because if you use collateral as a pledge, the object being pledged as collateral must be handed over to the pledgee (creditor)."[18]

Apart from that, it is important to understand collectively that the presence of a fiduciary institution in Indonesia through UUJF coincided with the economic crisis experienced by Indonesia at that time. It was conveyed by the ABRI Fraction in its Final Opinion in the discussion session on the Draft Law on 9 September 1999, where "the economic crisis was linked to efforts to obtain working capital for both weak, middle and strong economic entrepreneurs, so fiduciary guarantees were used to obtain work in the form of money while still being able to control and use the objects that are collateral to facilitate business in the economic and trade sectors. Therefore, the presence of this law has strategic value and meaning in national economic development."[18]

It would not be an exaggeration to say that the fiduciary guarantee institution is one of the best breakthroughs in the dynamics of the development of national guarantee law. Flexibility regarding the object guaranteed is the main characteristic offered by this institution (the object being guaranteed remains in the control of the debtor). This is a feature that other conventional collateral institutions, such as pawning, do not have. In the national context, it is felt that collateral institutions in the form of pawning as regulated in the provisions of Book II of the Civil Code do not meet the needs of the community, considering the provisions in Article 1152 paragraph (2) of the Civil Code, which requires that the collateral object must move and be

under the control of the creditor, while the item is still needed by who owe. This condition is the embryo of the presence of fiduciary security institutions in the national material security legal system.[19]

The existence of this fiduciary institution is, from an etymological point of view, a legal relationship based on a sense of trust. After the debt is paid, the debtor believes that the creditor will return ownership rights to the goods that were given to him, and vice versa. The creditor is confident that the debtor will safeguard the object guarantee and refrain from misusing the debtor's control over the collateral.[20]

The interpretation of "transfer of ownership rights of an object on the basis of trust" in Fiduciary Guarantee is not correct to connote the existence of rights that are actually transferred, as in a sale and purchase agreement, in this case, the creditor is the owner of the new rights to the object that has been guaranteed but only provides collateral rights, only to the creditor as the purpose of the word "transfer" is none other than to provide a guarantee for the fulfillment of claim rights upon execution of the collateral.[21]

As a binding legal relationship based on trust, a fiduciary guarantee agreement, an accessory, must be registered by the creditor. The purpose of registration is "to provide legal certainty to parties and third parties. Through this registration system, the perfect characteristics of fiduciary guarantees are regulated, so that they acquire the characteristics of material rights (*zakelijk recht*, real right, right on rem) and not again as an agreement. As a material right, a fiduciary guarantee has principles, including that the security right follows the object (droit de suit), except for inventory goods. With the registration of the fiduciary object, the fiduciary guarantee has a position primary (preferential rights) in relation to other creditors, and fiduciary objects are not included in the bankruptcy assets if the debtor is declared bankrupt."[18]

This obligation to register is the beginning of fulfilling the legal aspects of the fiduciary agreement, both for creditors and debtors. Therefore, if a creditor "breaks his promise" then, through the registered fiduciary, the creditor can execute at the same level as a court decision with permanent legal force without going through a lawsuit procedure (litigation) if the debtor breaks his promise.[18]

A Debtor's "default" is the opposite of carrying out achievements as specified in the Explanation to Article 4, namely "giving something, doing something, or not doing something, which can be valued in money." Thus, a debtor's "default" is if the debtor "does not give something, does not do something, or does something that should not be done, which can be valued in money." If this provision is injected with consideration by the Constitutional Court, which still questions who and when a debtor breaks a contract, this is a presentation of a lack of understanding of a norm.

In relation to the last aspect, namely the meaning of the provisions of Article 15 paragraph (2), namely the position of "executorial title" and "equal to a judge's decision with permanent legal force". Examining the differences in the work of the Special Committee on the Fiduciary Guarantee Bill on 27 August 1999, the ABRI faction began discussing the definition of 'executorial' in the a quo article. The ABRI fraction considers the difference between the gross execution of the deed and the execution as intended, even though it has been stated in the explanation that the execution model of the a quo article is based on the execution not requiring a court decision anymore.[18] The PPP Fraction also expressed the same thing, which recommended the use of a direct execution model as stipulated in Article 1131 of the Civil Code, which was imitated from a pawn guarantee institution rather than using the *parate* model.[18]

Regarding the views of the two factions, the government then explained the original interpretation of the *a quo* article where the term *parate* execution comes from Dutch, means "his own authority" and is based on the mortgage-specific provisions of Article 1151 of the Civil

Code and Article 1178 paragraph 2 of the Civil Code. Court approval is not required for these two provisions. This description makes it abundantly clear that, contrary to what is stipulated in Article 196 HIR, the initial format for the execution of fiduciary guarantees is carried out through execution parate institutions. In its consideration, the Constitutional Court based it on the wrong norm because even if it is followed by the condition "the debtor admits a breach of contract and voluntarily surrenders the object of collateral" it is a form of error in the interpretation of the *a quo* provision. The original construction of the execution of fiduciary guarantees from the philosophical perspective of establishing UUJF was transfigured with Gustav Radbruch's understanding of legal certainty which must reflect 4 (four) basic things related to the meaning of legal certainty.[22] Positive Law, meaning that positive law is legislation, so The argument that states that Article 15 paragraphs (2) and (3) conflict horizontally and vertically is a manifestation of a misunderstanding of the philosophical understanding of the execution *parate* institution itself.

3 Conclusion

After the Constitutional Court issued Decision Number 18/PUU-XVII/2019, the Fiduciary Guarantee object must be executed in accordance with the Constitutional Court's requirements regarding the executorial title in the Fiduciary Guarantee Certificate, namely an acknowledgment from the debtor that he has broken his promise and voluntarily surrenders the collateral object, a fiduciary guarantee. If these prerequisites are not met, the creditor must request an order from the court for execution. The change in execution procedures through the executorial title is based on inappropriate considerations because it negates the efficiency and effectiveness of the fiduciary security institution itself, as well as incoherent considerations.

From a philosophical standpoint, the new procedure in the a resulted in a reduction in the formation of Law Number 42 of 1999 concerning Fiduciary Guarantees, which was related to the protection of creditors' rights in the implementation of execution following the Constitutional Court Decision Number 18/PUU-XVII/2019 quo decision which was firmly based on considerations which are inaccurate in assessing the constitutionality of the execution *parate* institution where the Supreme Court equates it with the decision fiat model as regulated in Article 169 HIR employs an execution parate derived from Article 1151 of the Civil Code (pawn) or Article 1178 paragraph 2 of the Civil Code (mortgage).

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