P-ISSN : 2337-9251
E-ISSN : 2957-9094

# JHR

# Jurnal Hukum Replik

Volume 10 No. 2 September 2022

Published by:
FACULTY OF LAW
UNIVERSITAS MUHAMMADIYAH TANGERANG

**DAFTAR ISI**

Jurnal Hukum Replik
Universitas Muhammadiyah Tangerang
P-ISSN: 2337-9251 E-ISSN: 2597-9094
Vol. 10 No. 2 (2022)
Submit: 25/09/2021 Revised: 29/09/2021 Published: 10/10/2022

# APPLICATION OF EXECUTION OF FIDUCIARY GUARANTEE OBJECTS IN FINANCE COMPANIES AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 18/PUU-XVII/2019 IN THE JURISDICTIONAL AREA SERANG DISTRICT COURT

**M. Lukman Hakim[1], Faridatul Fauziyah[2], Rani Sri Agustina[3]**

adv.lukmanhakim@gmail.com

Faculty of Law, Universitas Sultan Ageng Tirtayasa

Abstract

This article aims to find out the Implementation of the Execution of the Object of Fiduciary Guarantees after the Decision of the Constitutional Court Number 18/PUU-XVII/2019 in the Jurisdiction Area of the Serang City District Court. This study elaborates on two objects to determine the execution of fiduciary guarantees after the Constitutional Court Decision Number 18/PUU-XVII/2019 in the jurisdiction of the Serang District Court. This study uses a descriptive qualitative research method approach through in-depth interviews. The results of the study stated that the financing company carried out the execution of the object of the fiduciary guarantee based on the procedures, mechanisms and provisions according to their respective internals. This means that creditors are always guided by the Standard Operating Procedures. In addition, after the Constitutional Court Decision No. 18/PUU-XVII/2019 there are no changes in executing the object of fiduciary guarantee. Finance companies are reluctant to apply for execution through the courts because of bureaucratic problems. So that the use of collection service companies is still applied by a number of finance companies in the jurisdiction of the Serang District Court.

**Keywords:** Execution, Fiduciary Guarantee, Financing Company

## INTRODUCTION

Every individual or business entity certainly has many types of needs, along with the development of the times and sophisticated technology.(Sawitri et al., 2019) The fulfillment of these needs is inseparable from the issue of costs or necessary funds. In general, the need is greater than the funds available to meet the necessary needs. Both individuals and companies in the face of lack of funds one way out that can be done is to owe debts to other parties. One form of fulfilling the problem of funds is through capital loans. The creditor will provide a capital loan to the debtor. But, the creditor will not easily give his loan to just any debtor. In the banking world, for example, banks as creditors will first look at prospective debtors and the guarantees or collateral owned by the debtor.(Nery Intan, 2019)

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With the guarantee for the debtor, it can be a security of capital. As for the creditor, the guarantee provides a sense of security and legal certainty, that the funds lent to the debtor can be returned on time in accordance with the agreement. This is where a debt receivables agreement arises or the provision of credit.(Lauwda, 2015) The provision of loans of funds or working capital can be provided by creditors to debtors as long as the funds or capital can be returned by the debtor to the creditor. One form of guarantee that has long been known in Indonesia is fiduciary. Fiduciary agreements are accesoir (follow-up) because fiduciary agreements are complementary to debt receivable agreements. Regarding fiduciary and fiduciary guarantees themselves are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as the Fiduciary Law).(Tanjung, 2017)

The definition of fiduciary is mentioned in Article 1 number 1 which reads: "Fiduciary is the transfer of the right of ownership of an object on the basis of trust provided that the object whose right of ownership is transferred remains in the possession of the owner of the object".(Zulfikar, 2022) Meanwhile, the definition of fiduciary guarantee according to the provisions of Article 1 number 2 of the Fiduciary Law reads: "Fiduciary Guarantee is the right of guarantee for movable objects both tangible and intangible and immovable objects, especially buildings that cannot be burdened with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights that remain in the control of the Fiduciary giver, as collateral for the repayment of certain money, which gives the Fiduciary Recipient a preferred position over other creditors".(Kamello, 2022; Winarno, 2013)

It should be noted that before the Constitutional Court Decision Number 18 / PUU-XVII/2019, the Fiduciary Guarantee Certificate as evidence as article 15 paragraph (1) of the Fiduciary Guarantee Law, listed irah-irah "For the Sake of Justice Based on the Almighty Godhead", so that it has executory power which is equated with court decisions that have permanent legal force.(Toyib & Joesoef, 2020) Based on these norms, in the Fiduciary Guarantee Certificate, an executory power is attached that gives leeway to the creditor to carry

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out the execution without seeking court assistance if the creditor considers the fiduciary giver or debtor to be injury to the pledge.(Virgayanti et al., 2022)

The executory power is reaffirmed by Article 15 Paragraph (2) along with the Explanation of Article 15 Paragraph (2) which states that "In this provision, what is meant by "executory power" is that it can be directly exercised without the assistance of the court and is final and binding on the parties to carry out the judgment". Based on this explanation, the power of execution is without going through the courts and is final and binding on the parties to carry out the judgment. The execution force is to anticipate the risk of default or to reduce the risk of the creditor not experiencing losses to the money that has been lent to the debtor, it is necessary to have guarantees for movable objects and immovable objects in order to provide legal certainty to interested parties in this case the creditor.(Hutapea, 2019)

Furthermore, some problems will arise if the creditor can have executory rights without being given the option of being able to seek the help of the court if the debtor is deemed to be injury. The position between the creditor and the debtor is not aligned. The bargaining position of the creditor is higher than that of the debtor. The execution of fiduciary guarantees in their implementation gives rise to the arbitrariness of the creditor when making collections and even confiscates the object of the fiduciary guarantee (movable object) because the debtor is injured in promise. Another problem is that the timing of the default was not explained in Article 15 Paragraph (2) and Paragraph (3) of the Fiduciary Guarantee Law. The law does not specify the timing of the default whether it is still ongoing or when it is due. It is unclear when the timing of the default has the potential for arbitrary actions from the Creditor.(Rehulina & Sitorus, 2022)

Therefore the creditor has the freedom to determine the existence of an injury to the promise made by the debtor.(Kurniawati, 2021) The practice of implementing the Fiduciary Guarantee Act often creates legal uncertainty. Especially for the application of article 15 paragraphs (2) and (3) of the Fiduciary Guarantee Law also often ignores the protection of justice for debtors.(Risma, 2020) The above unilateral actions have the potential to give rise to arbitrary and inhumane actions both physical and psychic by creditors who often override the rights of debtors. In addition, the phrase "promise injury" in Article 15 paragraph (3) does not explain the factors that cause the debtor to renege on the

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agreement with the creditor. This results in the loss of the debtor's right to defend himself and sell the object at a reasonable price.(Nurcahyanti & Sukarmi, 2022)

For example, the application for Judicial review of Article 15 paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciaries, was backgrounded by the Application of the Applicant for a married couple Apriliani Dewi and Suri Agung Prabowo who were victims of the act of forcibly taking his Toyota Alphard car by PT. ASF on November 10, 2017. The Finance Company sent a representative to take the vehicle on the pretext of having committed a default. For the treatment received, this case was filed at the South Jakarta District Court with the qualification of an Unlawful Act Lawsuit with case Number 345/Pdt.G/2018/PN. Jkt.Sel whose ruling stated PT. ASF has committed unlawful acts. However, on January 11, 2018 PT. ASF again carried out a forced recall of the vehicle, witnessed by the police. The forced withdrawal of his vehicle, the Petitioner filed an objection but was not responded to until he received unpleasant treatment. Not accepting the treatment, the Petitioner submitted a judicial review to the Constitutional Court.

Furthermore, at the beginning of the year to be precise on January 6, 2020, the Panel of Judges of the Constitutional Court decided the Decision of the Constitutional Court Number 18 / PUU-XVII / 2019 concerning The Testing of Law Number 42 of 1999 concerning Fiduciary Guarantees against the Constitution of the Republic of Indonesia of 1945 (1945 Constitution). This judgment granted the petitioners' application in part and further stated that some of the phrases and their explanations contained in Article 15 paragraph (2) along with their explanations and paragraph (3) of the Fiduciary Law are contrary to the 1945 Constitution as long as they are not interpreted as interpreted by the Panel of Judges of the Constitutional Court contained in the relevant Judgment. The phrases in question are, First the phrases "executory power" and "equal to a court decision of permanent legal force" (and its explanation) contained in Article 15 paragraph (2) and Secondly, namely the phrase "default of promise" contained in Article 15 paragraph (3) of the Fiduciary Law.

The Panel of Judges of the Constitutional Court declared the applicability of Article 15 Paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, as long as the phrase "executory power" and the phrase "equal to a court decision of permanent legal force"

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are contrary to the 1945 Constitution and have no binding legal force. The Court also in its judgment held that Article 15 Paragraph (3) is unconstitutional to the phrase "default" so long as it is not interpreted that "the existence of a default of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of a legal remedy that determines the occurrence of the default" so that proportionally it is necessary to have equality of position (equality before the law) both to the debtor and the creditor without involving third parties (debt collectors) in the withdrawal of fiduciary guarantee objects that can cause conflicts during the implementation of the forced withdrawal of fiduciary guarantees, until finally the fiduciary provider suffers losses.

With the issuance of the Constitutional Court Decision No. 18/PUU-XVII/2019 on January 6, 2020, it has changed the procedure for implementing the execution of the fiduciary guarantee object because it can no longer be carried out directly (parate execution) by the creditor against the fiduciary guarantee, unless the debtor voluntarily submits the fiduciary object to the creditor.

## METHODOLOGY

The research method in writing this article focuses more on the results of the constitutional court's dari decisions related to fiduciary guarantees, such as the Constitutional Court Decision No. 18 / PUU-XVII / 2019 concerning Executory Rights Article 15 Paragraph (2) and Paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees, and Constitutional Court Decision No. 2/PUU-XIX/2021 concerning Executory Rights in Article 15 paragraph (2) and Explanation of Article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees. In addition, the data used is data from finance companies such as fif and also pt adira related to court decisions regarding fiduciary guarantees.(Gunawan, 2013)

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## RESULT AND DISCUSSION

### 1. Constitutional Court Decision No. 18/PUU-XVII/2019 concerning Executory Rights Article 15 Paragraph (2) and Paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees

The Constitutional Court in Decision Number 18/PUU-XVII/2019 considers the principle of legal certainty and justice which is a fundamental condition for the enactment of a norm of the Law, in the context of Law Number 42 of 1999 concerning Fiduciary Guarantees as a form of legal protection for parties who are the subject of law and objects that are collateral in fiduciary guarantee agreements. The issue of constitutionality regarding the principle of legal certainty and justice is contained in Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, the Constitutional Court in its consideration held as follows:

> "The constitutionality aspect contained in the norms of Article 15 paragraph (2) of Law 42/1999 does not reflect the provision of balanced legal protection between the parties bound by the fiduciary agreement and also the object that becomes the Fiduciary Guarantee, both legal protection in the form of legal certainty and justice. Because, the two fundamental elements contained in article a quo, namely "executory title" and "equated with a court decision that has permanent legal force", have the implication that it can be directly carried out an execution that seems to be the same as a court decision that has permanent legal force by the fiduciary recipient (creditor) without the need to ask the court for help in the execution. This shows that on the one hand there is an exclusive right granted to creditors and on the other hand there has been a waiver of the right of the debtor which should also receive the same legal protection, namely the right to apply/obtain the proceeds of the seller- an object of fiduciary guarantee at a reasonable price".

The provisions contained in the norms of Article 15 paragraph (3) of Law 42/1999 on Fiduciary Guarantees are a continuation of the norms of Article 15 paragraph (2) of Law 42/1999 concerning Fiduciary Guarantees which mutatis mutandis become a juridical consequence due to the existence of an "executory title" and "equated fiduciary guarantee certificates with court decisions that have permanent legal force" as stated in Article 15 paragraph (2) of the Fiduciary Guarantee Law, furthermore, regarding the norms of Article 15

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paragraph (3) of Law 42/1999 on Fiduciary Guarantees, the Constitutional Court held in its consideration as follows:

> "Considering that it has been declared unconstitutional to the phrase "executory power" and the phrase "equal to the judgment of a court of permanent legal force" in the norms of Article 15 paragraph (2) and the phrase "default" in the norms of Article 15 paragraph (3) of Law 42/1999, although the Petitioner did not apply for a test of the Explanation of Article 15 paragraph (2) of Law 42/1999 but due to the consideration of the Court had an impact on the Explanation of Article 15 paragraph (2) of Law 42/1999, then to the phrase "executory power" and the phrase "equal to a court decision of permanent legal force" in the Explanation of the norms of Article 15 paragraph (2) of Law 42/1999 must naturally be adjusted to the meaning which is the court's stance against the norm contained in Article 15 paragraph (2) of Law 42/1999 with the meaning "against fiduciary guarantees for which there is no agreement on the injury of the promise and the debtor objecting to voluntarily surrendering the object to which the fiduciary guarantees, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate shall be carried out and shall apply equally to the execution of a judgment of a court which has permanent legal force", as fully set forth in the judgment of the case a quo. Therefore the procedure for the execution of fiduciary guarantee certificates as provided in the other provisions of the Act a quo, is conformed to the Judgment of the Court a quo".

The Constitutional Court in case decision Number 18/PUU-XVII/2019 gave the following decision:

a. Granting the Petitioners' plea in part;
b. Stating Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (Statute Book of the Republic of Indonesia of 1999 Number 168, Supplement to the Statute Book of the Republic of Indonesia Number 3889) as long as the phrase "executory power" and the phrase "equal to a court decision with permanent legal force" are contrary to the Constitution of the Republic of Indonesia of 1945 and have no binding legal force as long as it is not interpreted "against fiduciary guarantees for which there is no the agreement on default and the debtor objecting to voluntarily surrendering the object to which the fiduciary guarantees are guaranteed, then all legal mechanisms and procedures in the execution of the

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Fiduciary Guarantee Certificate shall be carried out and apply equally to the execution of a court decision which has permanent legal force".

c. Declare Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees (Statute Book of the Republic of Indonesia of 1999 Number 168, Supplement to the Statute Book of the Republic of Indonesia 3889) as long as the phrase "default on promises" is contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force as long as it is not interpreted that "the existence of a promise injury is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the Creditor debtor or legal remedy basis that determines the occurrence of a default".

d. Stating the Explanation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (Statute Book of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executory power" is contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force as long as it is not interpreted "against fiduciary guarantees for which there is no agreement on default and the debtor objects voluntarily surrendering the object to which the fiduciary guarantee is guaranteed, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate shall be carried out and apply equally to the execution of a court decision that has permanent legal force";

e. the posting of this judgment in the State Gazette of the Republic of Indonesia as appropriate;

f. Rejecting the petitioners' application for other than and the rest

The Decision of the Constitutional Court Number 18 / PUU-XVII / 2019 mentioned above can be understood that there are 3 (three) provisions of legal rules as follows:

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1) That in judgment No. 2 The phrase "executory power" and the phrase "equal to the judgment of a court of permanent legal force" in Article 15 paragraph (2) do not apply legally binding to:
   a) A fiduciary guarantee for which there is no agreement is injury to promise; and
   b) The debtor objected to voluntarily surrendering the object to which the fiduciary guarantees

   If the two elements are met, then the mechanism and procedure for implementing the execution of the Fiduciary Guarantee Certificate must be carried out the same as the implementation of a court decision that has permanent legal force.

2) That in judgment No. 3 the phrase "Default" in Article 15 paragraph (3) is binding only as long as it is interpreted:
   a) The form of default has been specified in the agreement;
   b) The default is not determined unilaterally by the creditor but rather on the basis of an agreement between the creditor and the debtor;
   c) On the basis of legal remedies that determine the occurrence of a default of promise;
   d) The debtor voluntarily surrenders the object of the fiduciary guarantee

   If the four elements are met, it becomes the full authority for the fiduciary beneficiary (creditor) to be able to carry out the execution himself, without the need to ask for help through the courts.

3) That in the judgment no. 4 the phrase "executory power" contained in the Explanation of Article 15 paragraph (2) does not apply bindingly to:

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a) Fiduciary guarantees for which there is no agreement on the injury of promises;

b) The debtor objected to voluntarily surrendering the object to which the fiduciary guarantee was made.

If these two elements are met, then the legal mechanisms and procedures for the execution of the Fiduciary Guarantee Certificate must apply the same as the execution of a court decision that has a fixed legal force *(inkracht van gewisjde)*.

**2. Constitutional Court Decision No. 2/PUU-XIX/2021 concerning Executory Rights in Article 15 paragraph (2) and Explanation of Article 15 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees**

After the Constitutional Court Decision No. 18/PUU-XVII/2019 dated January 6, 2020, then the article was tested back to the Constitutional Court with case No. 2/PUU-XIX/2021 as decided on August 31, 2021. The petitioner requested that the Constitutional Court declare the proposed article to have no binding legal force as long as it does not mean "the fiduciary guarantee certificate referred to in paragraph (1) has the same executory power as a court decision that has obtained permanent legal force". In addition, stating the phrase "objection to voluntarily surrendering the object to which the fiduciary guarantees" is not interpreted as "voluntary when signing a fiduciary agreement".

The objection raised by the Petitioner, the Constitutional Court did not agree with the arguments of his application by giving a reaffirmation of the earlier judgment of the Court (Constitutional Court Decision No.18/PUU-XVII/2019) which further reads as follows:

> According to the Court, the legal considerations in the constitutional court decision No. 18/PUU-XVII/2019 have considered the juridical aspects and comprehensively answered the issue of constitutionality in question by the Petitioner, particularly

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> with regard to the execution of fiduciary guarantee certificates. Furthermore, in the legal considerations of the case, it has also been clearly stated that the execution of the fiduciary guarantee certificate if with regard to the injury of promises by the fiduciary rights giver (debtor) against the creditor is still not recognized by the debtor for the existence of a default (default) and the debtor objects to voluntarily surrendering the object of the fiduciary agreement, then the fiduciary beneficiary (creditor) must not carry out the execution himself by force but rather must submit an application for execution to the District Court and this has not been found to have rendered it unconstitutional in contemporaneous as postulated by the Petitioner in a quo case. On the contrary, it provides legal protection to the parties involved in the fiduciary agreement. Because, in a Fiduciary Guarantee agreement whose object is a movable and/or immovable object as long as it is not burdened with dependent rights and legal subjects who can be parties to the agreement in question (creditors and debtors), legal protection in the form of legal certainty and justice must be given to the three elements, namely creditors, debtors and objects of dependent rights.

The Constitutional Court in *a quo* case reiterated the meaning of the norms of Article 15 paragraph (2) and Explanation of Article 15 paragraph (2) as the Court had previously described in the decision of the Constitutional Court No. 18 / PUU-XVII / 2019, by giving the following considerations:

> According to the Court, the Petitioner did not fully understand the Constitutional Court Decision No. 18/PUU-XVII/2019 in relation to the executory power of the fiduciary guarantee certificate. The provision that the execution should not be carried out alone but must submit an application for execution to the District Court has basically provided a balance of legal position between the debtor and the creditor and avoided arbitrariness in the execution. The execution of the fiduciary guarantee certificate through the district court is actually only as an alternative that can be done in the event that there is no agreement between the creditor and the debtor either with regard to default or the voluntary surrender of the object of guarantee from the debtor to the creditor. Whereas for debtors who have acknowledged the existence of a default and voluntarily surrendered the object of the fiduciary guarantee, the execution of the fiduciary guarantee can be carried out by the creditor or even the debtor himself.

That in addition, if you look closely at the petitioner's petition petition, namely petitum number 2 which essentially asks the Court to declare Article 15 paragraph (2) of Law 42/1999 contrary to the 1945 Constitution as long as it is interpreted back to Article 15 paragraph (2) of Law 42/1999 before it was decided in the Constitutional Court Decision No. 18/PUU-

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XVII/2019 which according to the Petitioner is precisely with the court's decision, execution through the courts has made it difficult for the Petitioner as a collector or finance company, law enforcement officers, and consumers to carry out executions of fiduciary bail goods. According to the Court, the Petitioner did not understand the substance of the earlier Constitutional Court Decision because the interpretation of the norm in the phrase "executory power" and the phrase "equal to a court decision of permanent legal force" in the norms of Article 15 paragraph (2) and Explanation of Article 15 paragraph (2) of Law 42/1999 are interpreted "against fiduciary guarantees for which there is no agreement on the default of the promise and the debtor objects to voluntarily surrendering the object to which the fiduciary guarantees, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply equally to the execution of court decisions that have permanent legal force" are appropriate and provide a form of legal protection both legal certainty and justice to the parties involved in the fiduciary agreement;

The Constitutional Court considers that no issue of constitutionality of the norms and norms pleaded by the Petitioner has been decided and considered in the Constitutional Court Decision No. 18/PUU-XVII/2019. The Decision of the Constitutional Court No. 2/PUU-XIX/2021 dated August 31, 2021, essentially stated that it rejected the Petitioner's Application in its entirety. This is because the Constitutional Court remains consistent in its stance as stated in the Constitutional Court Decision No. 18/PUU-XVII/2019 dated January 6, 2020. So that the author can understand that there is no difference or there are new legal rules with the previous constitutional court decision (MK Decision No. 18 / PUU-XVII / 2019), the judgment only gives affirmations related to the execution of fiduciary guarantee certificates can be submitted to the district court by creditors who are alternative.

The alternative referred to by the Court is an option if the agreement of default is not reached and there is no voluntary surrender of the object of fiduciary guarantee by the debtor, then the choice of execution should not be made by the will of the creditor himself, but is obliged to apply for an injunction of execution through the Court and not filing through a suit

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like a civil case in general unless the object of the guarantee is not registered with the office of the registration agency fiduciary guarantees.

3. **Application of Executions on Fiduciary Guarantee Objects in Financing Companies After the Constitutional Court Decision No. 18/PUU-XVII/2019**

In general, execution is the execution of a court decision or deed. The execution of a fiduciary guarantee is the confiscation and sale of an object that is used as the object of a fiduciary guarantee. Furthermore, some meetings from the finance company will be explained as follows:

a. PT. Adira Dinamika Multi Finance Tbk Serang Branch

Regarding the mechanism for executing the object of fiduciary guarantee after the decision of the Constitutional Court No. 18 / PUU-XVII / 2019, based on the results of the author's interview with Mr. Acep Saepudin as Legal Adira Finance Banten Raya said the indicator of a consumer has committed a default, namely when the debtor reneges or does not carry out the contents of the financing agreement that has been agreed between the debtor and the creditor. Of course, in accordance with the company's SOP by: (1) Reminding consumers by telephone; (2) Remind consumers by visiting consumers' homes directly; (3) Sending the first, second and third warning letters (somasi); (4) Conducting a voluntary Execution Parate; (5) Make a police report if the fiduciary object is embezzled or transferred to another party without the consent of the finance company; (6) Apply for execution to the Court if the fiduciary object is in the consumer, but is not willing to voluntarily submit; (7) Request police assistance in accordance with the Chief of Police Regulation No. 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees;

Constitutional Court Decision No. 18/PUU-XVII/2019 there are obstacles faced by companies when they want to execute through the Court, if consumers do not want to voluntarily submit the object of fiduciary guarantees, the Court asks the

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company to ensure in advance that the object of fiduciary guarantee is still in the consumer. The complicated bureaucracy and the long process make the object of fiduciary guarantees rushed to another party, so that because it has been transferred to another party the company makes a report to the Police.

The execution of the fiduciary guarantee object in the Adira Finance company prioritizes internal collectors if the delay is still in the handling of the Branch Office, but if the delay has been more than 3 months, the company usually authorizes third parties (Advocates or Execution Implementing Companies that have been registered with the Financial Services Authority) to carry out executions in accordance with applicable legal rules. Execution implementing companies engaged in billing services that have been certified by the OJK Institution are required to bring documents including: (1) Collector's Identity Card; (2) A certificate of profession in the field of billing registered with the Financial Services Authority; (3) Letter of Assignment from the finance company; (4) A copy of the Fiduciary Guarantee Certificate; (5) The Agreement Document and proof that the debtor has been injured; The aforementioned procedure, carried out with the aim that the object of the fiduciary guarantee immediately returns to the creditor, the advantage is that the execution of the fiduciary guarantee becomes cheaper, faster and less complicated.

b. Federal International Finance (FIFGroup) Serang Branch

After the Constitutional Court Decision No. 18/ PUU-XVII / 2019 FIFGROUP as a business actor engaged in financing, is always committed to prioritizing methods that are in line with applicable regulations and seeks to mitigate the occurrence of potentially unlawful acts. Regarding the above, it was revealed by Mr. Edi Faisol Amin as the Branch Head of FIF Group Serang Branch, which at the time of this interview was conducted, has been transferred to FIF Group Surabaya Branch, in the implementation of financing business related to

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consumers who default, billing procedures are carried out in accordance with the matrix of payment patterns in accordance with consumer burdensAfter the Constitutional Court Decision No. 18/ PUU-XVII / 2019 FIFGROUP as a business actor engaged in financing, is always committed to prioritizing methods that are in line with applicable regulations and seeks to mitigate the occurrence of potentially unlawful acts. Regarding the above, it was revealed by Mr. Edi Faisol Amin as the Branch Head of FIF Group Serang Branch, which at the time of this interview was conducted, has been transferred to FIF Group Surabaya Branch, in the implementation of financing business related to consumers who default, billing procedures are carried out in accordance with the matrix of payment patterns in accordance with consumer burdens.

If the consumer pays, a receipt will be given as proof, but on the contrary, if he is not able to pay, he will be given a warning one and make a statement letter promising to pay. Unless, at the time of billing, other evidence is found in the form of a fiduciary object that was embezzled or transferred to another party, the company makes a report to the Police. Some of the obstacles that are difficult for FIF to face are facing consumers who have bad faith in a way that is difficult to find, the numbers that are usually contacted are inactive until the fiduciary object has been transferred to the community organization, whereas previously the company had followed the procedure by providing a solution so that there was a settlement that benefited both parties.

Financial Services Authority Regulation No. 35/POJK.05/2018 finance companies can cooperate with companies engaged in billing services that already have official permits and certifications from the OJK by being equipped with a Power of Attorney for Withdrawal, Letter of Duty, Identity (Identification), Warning Letter as proof that consumers have been injured in promises, Fiduciary Guarantee Certificate and Certification of The Collection Service Profession accompanied by the Police in accordance with the Regulations Chief of Police No. 8

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of 2011 concerning Securing the Execution of Fiduciary Guarantees. The Decision of the Constitutional Court No. 2/PUU-XIX/2021 in its consideration page 83 further confirms that the execution of the fiduciary guarantee certificate through the district court is only an alternative that can be done and is not an obligation or necessity for the financing institution in executing the object of the fiduciary guarantee.

4. ***Legal Consequences of Execution of Fiduciary Guarantee Objects by Finance Companies Contrary to the Constitutional Court Decision No. 18/PUU-XVII/2019***

In the context of fiduciary guarantee execution, due to actions committed by finance company institutions that do not carry out the execution of fiduciary guarantee objects as formulated in the Constitutional Court Decision No. 18 / PUU-XVII / 2019, of course, it can be categorized as unlawful acts so that it will have an impact on the provision of sanctions that will be received, depending on the actions taken by the financing institution. On the other hand, the creditor also has a risk of losing the fiduciary guarantee object, if there is no immediate execution if there is a default because the fiduciary guarantee object the transfer process is so fast that it is prone to being transferred or embezzled by the debtor. The following sanctions are given to finance companies that forcibly withdraw the debtor's vehicle can be in the form of:

*First*, Administrative Sanctions. Finance companies that do not comply with the provisions of the Financial Services Authority of the Republic of Indonesia Regulation No. 35 / POJK.05 / 2018 concerning Business Management of Financing Companies will be subject to administrative assistance in stages in the form of warnings, suspension of business activities, to business revocation. *Second*, Criminal Sanctions. The application of fiduciary guarantee agreements, many do not register fiduciary objects and only stop at making authentic deeds, then even though the fiduciary guarantee object has been registered, in practice there are still many using the services of third parties *(debt collectors)* to take the object of fiduciary guarantee by force. In fact, it is known that after

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the decision of the Constitutional Court No. 18 / PUU-XVII / 2019, finance companies or *debt collectors* are not allowed to forcibly take the object of fiduciary guarantee for any reason. If this happens, it will certainly have a legal impact on creditors (fiduciary recipients) who can be categorized as perpetrators in the alleged criminal act of Extortion and Stoning as referred to in the provisions of the Criminal Code.

*Third*, Indemnity Sanctions. Unlawful Acts are acts that violate Article 1365 of the Civil Code (BW), that it is explained that the party who is harmed by the other party has the right to demand compensation with the following elements: (1) The existence of an act; (2) The act is unlawful; (3) There is an error on the part of the perpetrator (either intentional or negligent); (4) There is a loss to the victim; (5) There is a causal relationship between deeds and losses. Generally but not always what must be sued / accepted responsibility if an act against the law occurs is the perpetrator of the unlawful act itself. That is, it is he who must be sued to the Court and he is also the one who must pay the damages as per the judgment of the Court.

Fiduciary guarantee agreements, sometimes debtors (fiduciary givers) who commit defaults. However, it is the creditor (fiduciary beneficiary) who must be sued and held accountable for the act. Against the liability for unlawful acts committed by this creditor, which in legal science is known as the theory of substitute responsibility *(vicarios lability)*. The elements of the Unlawful Act mentioned above, cause complex legal consequences and are at high risk. Unlawful acts and unilateral actions and the arrogance of *debt collectors* that continue to occur until now have caused unrest in the community. So that there is systematic resistance and attacks carried out by debtors who feel that they have been harmed both materially and immaterially against the rules and systems of financing companies that are not in accordance with applicable laws and regulations and have clearly harmed the state and society as consumers.

## CONCLUSION

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In this study, it was found that finance companies within the jurisdiction of the Serang District Court include PT. Adira Dinamika Multi Finance Tbk Serang Branch, PT. FIF Group Serang Branch, PT. Permata Finance Indonesia Cilegon Branch, and PT. Kresna Reksa Finance Cilegon Branch shows that the execution of fiduciary guarantee objects by finance companies has procedures, mechanisms and provisions in the internals of each company, creditors are always guided by SOPs (Standard Operating Procedures) in executing debtors who fail to fulfill their obligations in making installment payments that put the guarantee through fiduciary guarantees.

However, both before and after the Constitutional Court Decision No. 18/PUU-XVII/2019 there was no change in executing the object of fiduciary guarantee. Finance companies seem reluctant to apply for execution through the courts as formulated by the Constitutional Court because it will take time and convoluted bureaucratic processes and slow handling plus the condition of the existence of fiduciary guarantee objects that are often not in place. So that the use through the collection service company is still applied by finance companies in the jurisdiction of the Serang District Court which sometimes ignores the rights of debtors. This, according to the creditor as the fiduciary beneficiary, has the potential to cause arbitrary actions and is carried out in a less humane way, both in the form of physical and psychic threats that ignore the rights of the fiduciary or debtor.

Furthermore, in the context of the execution of the object of fiduciary guarantee carried out by a finance company (creditor) that does not carry out fiduciary execution as formulated in the constitutional court decision No. 18 / PUU-XVII / 2019, it can certainly be categorized as an unlawful act, so that it will have an impact on the provision of sanctions that will be received by the creditor himself. That the actions of the finance company (creditor) to the debtor that are contrary to the law will receive sanctions including: (1) Administrative Sanctions, in the form of revocation of the operating license of the finance company; (2) Criminal Sanctions, in the form of having committed an alleged criminal act of deprivation as per Article 368 of the Criminal Code with the threat of a criminal penalty of 9 (nine) years; and (3) Compensation

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Sanctions, in the form of losses suffered by the debtor for forced actions committed by the debtor so as to cause losses both material and immaterial through a civil lawsuit with the qualification of a Tort Lawsuit.

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