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The Implications of Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 Have the Potential to Reduce the Financial Quality of Financing Companies

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Abstract

*This article examines the application of Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 regarding the judicial review of Law No. 42 of 1999 concerning Fiduciary Guarantees. These rulings have established a new paradigm for the enforcement of fiduciary guarantees specifically regarding the determination of default and the execution of *parate executie* (summary execution) practices that were previously carried out unilaterally by creditors. Such changes potentially affect the certainty and effectiveness of debt recovery in industrial financing and could lead to an increase in non-performing loan ratios if the enforcement process becomes protracted and reliant on court-based mechanisms.*

Keywords: *Constitutional Court Ruling, Object of Fiduciary Security, Executory Nature*

Abstrak

Jurnal ini akan menjelaskan implikasi Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 terhadap pengujian Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. Kedua putusan tersebut telah membentuk paradigma baru dalam pelaksanaan eksekusi jaminan fidusia, khususnya terkait penentuan cidera janji dan pelaksanaan parate eksekusi, yang semula dapat dilakukan secara sepihak oleh kreditur. Perubahan tersebut berpotensi memengaruhi kepastian dan efektivitas penagihan dalam industri pembiayaan, serta dapat berdampak pada meningkatnya rasio kredit bermasalah apabila proses eksekusi menjadi lebih panjang dan bergantung pada mekanisme pengadilan

Keywords: *Putusan MK, Objek Jaminan Fidusia, Eksekutorial*

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1. INTRODUCTION

Fiduciary guarantees are a crucial instrument in financing practices in Indonesia, providing creditors with tangible security for the repayment of debtors' debts without requiring the physical delivery of the pledged assets. The mechanism for executing fiduciary guarantees has historically been understood to be executorial, allowing creditors to withdraw or sell the collateral upon the debtor's default. However, this understanding has undergone a fundamental shift following Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021, which affirm that execution cannot be carried out unilaterally if the debtor objects to default or the delivery of the collateral.

This change in norms has both legal and economic implications for financing companies. From a legal perspective, the Constitutional Court's rulings strengthen debtor protection and require certainty regarding defaults before execution. From a business perspective, restrictions on unilateral execution may slow the collection process, increase the cost of resolving problem financing, and impact the quality of the financing portfolio. In this context, the increasing difficulty of securing collateral can lead to a higher non-performing loan ratio, ultimately affecting the stability and performance of financing companies.

Against this backdrop, this study is crucial for normatively examining how these two Constitutional Court decisions alter the legal framework for fiduciary enforcement and their implications for collection effectiveness in the financing industry. Therefore, this study is expected to provide a more comprehensive understanding of the relationship between legal protection, certainty of enforcement, and financing risk within the fiduciary guarantee system in Indonesia.

2. LITERATURE REVIEW

Doctrinal Shift: Reconceptualization of the Executorial Power of Fiduciary Certificates Following the Constitutional Court Decision

Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 represent a significant turning point in the fiduciary guarantee legal regime in

Indonesia, as they limit the practice of unilateral execution of fiduciary guarantees. Before these decisions, fiduciary guarantee certificates were understood to have executorial power, allowing creditors to directly seize the collateral upon default by the debtor. However, following these two decisions, the creditor can no longer unilaterally determine default if the debtor fails to acknowledge default and refuses to surrender the collateral voluntarily; in such circumstances, execution must be pursued through the courts. Theoretically, these changes create a shift between legal protection for debtors and certainty of repayment for creditors. On the one hand, the Constitutional Court decisions strengthen the principle of justice and prevent potentially arbitrary executions. On the other hand, unilateral enforcement restrictions can impact the effectiveness of financing companies' collection, delay non-performing financing resolution, and ultimately potentially increase the ratio of non-performing loans in the financing industry.

Several studies have assessed that the Constitutional Court's ruling has "eliminated" parate execution in its previously recognized form in fiduciary practice, requiring financing companies to adjust their contractual strategies and risk mitigation mechanisms. These adjustments include formulating more stringent agreement clauses regarding default, strengthening financing oversight, and optimizing agreement-based dispute resolution before resorting to litigation. Based on this description, it can be concluded that the Constitutional Court's ruling not only impacts the normative aspects of fiduciary guarantee law but also has economic implications for the asset quality of financing companies. Therefore, in the literature review, this issue is crucially positioned as a link between changes in fiduciary guarantee execution norms, collection effectiveness, and the potential deterioration in the financial quality of financing companies.

3. RESEARCH METHOD

This research is a normative legal study using statutory, conceptual, and case-based approaches. This approach is used to analyze changes in fiduciary guarantee execution norms following Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021, and their implications for the financial quality of

financing companies. The research focuses on interpreting the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees, specifically regarding executorial powers, determination of default, and the mechanism for execution.

This research is descriptive-analytical in nature, systematically describing the legal changes arising from these two decisions and then analyzing their normative and practical consequences for the financing industry. The data used in this study consist of secondary data, comprising primary, secondary, and tertiary legal materials, including laws and regulations, Constitutional Court decisions, scientific journals, and legal literature related to the execution of fiduciary guarantees.

The data analysis technique used is qualitative, interpreting legal materials to identify the relationship between unilateral execution restrictions and the potential for increased risk of problematic financing. Through this method, research can explain how changes in fiduciary execution norms affect the effectiveness of collection, creditor protection, and the stability of the quality of the financing company's portfolio.

4. RESULT AND DISCUSSION

Dynamics of Indirect Causality: The Transmission Mechanism of Constitutional Court Decisions on Financial Risks

The research findings indicate that Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 have changed the nature of fiduciary guarantee enforcement, from previously understood to be more direct, to relying more on agreement between the parties or court mechanisms when the debtor refuses to surrender the collateral. This change strengthens debtor protection, but simultaneously reduces creditor flexibility in quickly executing collateral. As a result, finance companies face a longer and more expensive collection process, particularly for non-performing loans. In the context of a finance company's financial quality, unilateral restrictions on enforcement can increase the risk of failure to recover receivables. When collateral cannot be immediately collected or sold, the company's cash flow can be disrupted, and the non-performing loan ratio can worsen. In practical terms, this situation can increase the

provision for possible losses, reduce profitability, and ultimately weaken the finance company's asset quality.

Furthermore, the Constitutional Court decisions also encourage finance companies to make contractual and operational adjustments. Companies need to formulate more stringent default clauses, strengthen debtor creditworthiness analyses, and improve risk mitigation from the outset of the agreement.

Thus, the negative impact on financial quality stems not solely from the Constitutional Court's ruling, but also from the ability of financing companies to adjust their business strategies and risk management. This discussion demonstrates an indirect causal relationship between changes in fiduciary enforcement norms and the financial quality of financing companies. The Constitutional Court's ruling does not automatically reduce financial quality, but rather creates legal conditions that can increase the risk of problematic financing if companies fail to adjust their collection and risk-control mechanisms. Therefore, the implications of this ruling should be interpreted as changes in the structure of certainty of enforcement that impact the efficiency of receivables recovery.

5. CONCLUSION

Based on the discussion outlined above, it can be concluded that Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 have brought fundamental changes to the legal framework for fiduciary guarantee enforcement in Indonesia. These two decisions do not abolish the validity of fiduciary guarantees, but rather limit the practice of unilateral execution by creditors by emphasizing that a determination of default cannot be made unilaterally if the debtor refuses to acknowledge the breach of contract or is unwilling to surrender the collateral voluntarily. In such circumstances, execution must be pursued through legitimate legal mechanisms, including the courts.

From a legal protection perspective, these decisions strengthen the debtor's position and uphold the principles of justice and legal certainty in the implementation of fiduciary guarantees. However, from the perspective of the financing industry,

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restrictions on unilateral execution have the potential to have significant economic consequences, particularly in the form of slowdowns in the collection process, increased costs for resolving problem financing, and impaired receivables recovery. This, in turn, can depress the quality of financing portfolios and trigger an increase in the non-performing loan ratio.

Therefore, the main implications of these two Constitutional Court decisions are indirect for the financial quality of financing companies. The Constitutional Court's ruling does not automatically reduce the financial quality of financing companies, but rather creates a new legal structure that increases the risk of problematic financing if companies fail to adjust their contractual strategies, risk management, and collection mechanisms. It means that the impact on financial quality depends heavily on the ability of financing companies to respond adaptively and preventively to changes in fiduciary enforcement norms.

Therefore, financing companies need to revise their agreement clauses, clarify provisions regarding breach of contract, strengthen debtor eligibility analysis, and optimize agreement-based dispute resolution before resorting to litigation. These steps are crucial to ensure legal protection for debtors remains effective without compromising the financial stability and operational effectiveness of financing companies.

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