

## **DEBTORS LEGAL CERTAINTY POST CONSTITUTIONAL COURT'S DECISION NO 18/PUU-XVII/2019 CONCERNING PARATE EXECUTION FOR FIDUCIARY GUARANTEE OBJECTS\***

**Bhatara Eri Satya M<sup>1</sup>, Atik Winanti<sup>2</sup>**

Faculty of Law, Jakarta Veterans National Development University

<sup>1</sup> e-mail: [bhataramuhammad@gmail.com](mailto:bhataramuhammad@gmail.com)\*

<sup>2</sup> e-mails: [atikwinanti@upnvj.ac.id](mailto:atikwinanti@upnvj.ac.id)

### **Abstract**

*After the publication of PMK No. 18/PUU-XVII/2019, it essentially canceled the parate execution for the object of fiduciary guarantees over the debtor's control. However, until now, parate executions are still being carried out to resolve disputes between debtors and creditors. This research aims to examine the legal certainty of debtors and the legal consequences of PMK Decision No. 18/PUU-XVII/2019 in cases of partial execution of fiduciary collateral objects. This research method is normative law with a statutory approach, and the main data is secondary data. The results of this research: the legal protection given to debtors if the execution process continues after PMK No. 18/PUU-XVII/2019 can take legal action as an appeal as a stance to oppose the court's decision on a judge's decision which is deemed not to provide justice. The debtor can also take criminal legal action if the execution is still carried out using coercion because he has fulfilled the criminal offense. The impact of PMK Law No. 18/PUU-XVII/2019 on the legal certainty of debtors in cases of parate execution, the object of the fiduciary guarantee is to conditionally cancel the parate execution. However, many execution parate cases after the publication of PMK No. 18/PUU-XVII/2019 indicates that there is no legal protection for debtors as well as legal certainty regarding the application of the execution parate regulations. This further reduces the debtor's legal certainty because the judge's view of the two cases of execution parate for the object of fiduciary collateral did not consider execution parate as an unlawful act.*


**Keywords :** Debtor; Fiduciary; Legal certainty; Creditors; Execution Parate.

### **INTRODUCTION**

As time progresses, in this increasingly advanced era, society's needs also increase. Various fields are also experiencing development to support the needs of society, which are increasing day by day. One area that is developing quite rapidly is credit as a financing service for certain goods. Historically, "credere," which is quoted from Greek as a term for credit, has the meaning of trust, which nowadays is also closely related to trust, namely by requiring collateral in the form of objects, land, cars, and so on. Trust in the debtor to pay off his achievements and trust in the creditor by pledging an object

owned by the debtor to become the object of collateral (Heriawanto, 2019).

In a credit lending process, the debtor and creditor enter into a credit agreement first, in which the agreement usually contains a guarantee, one of which is a fiduciary guarantee. Fiduciary guarantees are not the main or main agreement in an agreement; fiduciary itself is often referred to as a subsidiary agreement (Kusumawati & Kelib, 2019). The inclusion of this guarantee is because there is no certainty that at maturity, the debtor will later default and will no longer have the good faith to repay the credit. With this guarantee clause, creditors can feel more secure if the debtor breaks their

\*  This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

Received: 21 September 2023, Received in revised form: 24 November 2023, Accepted: 23 Desember 2023

Doi: 10.3376/jch.v9i1.752

contract; however, to add a guarantee clause to the agreement, an additional agreement is needed in the form of a guarantee agreement (Koto & Faisal, 2021).

Trust between debtors and creditors is the basis for the implementation of fiduciary duties; however, the binding agreement still has loopholes, and debtors often default by not carrying out the previously agreed achievements. A well-known solution in cases of implementing fiduciary agreements is parate execution, namely a method of carrying out executions alone/without going through court, which is intended to make implementation easier and more time-efficient.

To overcome this problem, it is stated in Article 15, paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees, which will hereinafter be referred to as UUJF. However, this article is misused by creditors as an attempt to carry out parate execution, in which the debtor clause causes injury. The promise is completely determined by the creditor, and in such a position, the debtor needs further legal protection and certainty to prevent such things from happening. The concept of parate execution itself has been briefly explained in Constitutional Court Decision No. 2 / PUU-XIX/2021, which has a definition, namely execution that does not require an executorial title and does not require assistance from the court or cooperation with a bailiff.

Before the issuance of the Constitutional Court's decision Number 18/PUU-XII/2019 concerning the UUJF Review, the position of debtors was very weak in all legal actions legalized by UUJF against creditors. The power to take

legal action against debtors who are in default in fiduciary agreements with the parate execution mechanism, as explained at the beginning, is generally successful in resolving cases of default (based on the facts presented in the field such as forced withdrawal of fiduciary collateral objects with the help of a third party or debt collector). The existence of an immediate execution as one of the instruments for resolving the problem of defaulting debtors, which is legalized by the UUJF, does not create a sense of justice because the law does not look at the debtor's condition when the fiduciary object is forced to be withdrawn. Sometimes the delay in installments for the object of fiduciary guarantee is that more has been paid than the remaining debt. When an execution is carried out, the debtor becomes the party who suffers the greatest loss.

Fiduciary is defined as the transfer of property rights based on trust (Budi, 2017: 101). The fiduciary guarantee then becomes the object of execution if there is a default in an agreement. The execution makes it easier for creditors to resolve problems that arise in the agreement themselves without having to go through a court order, which will eliminate a lot of costs, time, and energy in the court process (Rumawi et al., 2022: 562). Therefore, The execution is a convenience provided by UUJF to creditors based on the provisions of Article 15 UUJF, namely:

"(1) The Fiduciary Guarantee Certificate as intended in Article 14 paragraph (1) includes the words For Justice Based on Belief in One Almighty God. (2) The Fiduciary Guarantee Certificate as intended in paragraph (1)

has the same executorial power as a court decision that has obtained permanent legal force. (3) If the debtor breaks his promise, the Fiduciary Recipient has the right to sell the object which is the object of the Fiduciary Guarantee under his authority."

Article 15 UUJF above is a regulation that has drawn a lot of criticism and controversies. Many empirical and normative studies explain how the practice of execution is unequal in its application as desired by the UUJF. In normative studies, which focus on discussing legal void, legal uncertainty, and conflict norms, Article 15 UUJF in normative research is included in the study of conflict norms, namely the existence of conflicts/contradictions with the execution mechanism itself which is contrary to Articles 195 HIR and 208 RBG that "if the debtor refuses If there is a breach of promise, the execution must comply with all the mechanisms and procedures in executing the fiduciary guarantee certificate must be the same as the execution of a court decision that has permanent legal force" (Syam & Mannas, 2022), or it is not relevant to carry out a forced withdrawal with all the provisions for forced withdrawal in general. unilateral. Another norm conflict is that the execution process is in conflict with the 1945 Constitution/unconstitutional (which was declared unconstitutional after the UUJF was tested).

Meanwhile, in empirical studies which are characterized by a gap between *das sollen* and *das sein*, many other researchers have argued that executions that are freed up by law are used with aspects of violence, abuse, and other things that can lead to the fulfillment of

offenses. criminal offense. For example, in the cases collected by Saut Parulian Manurung et.al, debt collectors as third parties carrying out executions made people afraid because they confiscated the object of fiduciary collateral in the form of a unit (motorbike) on one of the roads in Surabaya and the debtor received physical violence, namely being strangled. and beaten. Then, in another case in Banten, a debt collector forced the unit (car) to be withdrawn, the execution was carried out by the debtor being beaten and thrown onto the toll road (Manurung et al., 2021: 298)

Due to the validity of the execution by creditors against debtors who are in default in the fiduciary agreement without taking into account the condition or losses of the debtor after the withdrawal of the fiduciary collateral object, as well as the vulnerability to the use of violence in carrying out the execution, this is the basis for challenging Article 15 paragraphs (2) and (3) UUJF. Aprilliani Dewi and Suri Agung Prabowo are applicants I and II who are suing 15 paragraphs (2) and (3) of the UUJF, among the points of legal standing as outlined in decision Number 18/PUU-XVII/2019 is that the applicants feel disadvantaged due to unilateral withdrawal fiduciary collateral objects under his control. The petitioners were active parties in paying the unit installments, but due to one reason they failed to pay, the debt collector took the fiduciary guarantee by force, accompanied by coercive measures, without bringing evidence or documents which gave the impression of being an attack on the debtor and making threats in the form of murder. The withdrawal of the

fiduciary guarantee also caused losses to applicants I and II.

Decision Number 18/PUU-XVII/2019 concerning the lawsuit for judicial review of Article 15 paragraph (2) and Paragraph (3) UUF gives rise to legal consequences for creditors because the meaning of the executorial power of a fiduciary guarantee certificate must refer to the situation "if there has been an agreement regarding breach of contract (default) and the debtor does not mind voluntarily handing over the object which is the fiduciary guarantee, then the Fiduciary Guarantee Certificate has the same executorial power as a court decision that has obtained permanent legal force; and "If the debtor defaults, the Fiduciary Recipient has the right to sell the object which is the object of the fiduciary guarantee under his authority, as long as it is based on an agreement between the creditor and the debtor, or based on legal action that determines whether a breach of contract has occurred" (Naingolan et al., 2023: 366).

Therefore, the execution must be deemed not to be carried out as long as these requirements are not fulfilled but must go through court-order execution or court order. After the publication of Decision Number 18/PUU-XVII/2019, there has been a lot of research that examines and analyzes legal protection, especially for creditors who now no longer have a legal basis for carrying out immediate execution but resort to court-order execution. However, it does not discuss legal protection for debtors, which even though Decision Number 18/PUU-XVII/2019 has been issued, does not necessarily become an instrument of legal protection from arbitrary actions by

execution officials. In many of the cases that will be explained later, there are still many actions by creditors or other third parties that are detrimental to debtors. There is also research that is similar to this research, such as that studied by Indri Ike Nurcahyanti and Sukarmi "Legal Protection for Creditors Who Recipient of Fiduciaries After Constitutional Court Decision Number 18/PUU-XVII/2019," which explains that the Constitutional Court's decision does not convey a sense of justice to creditors so that they must be given legal protection in the form of filing a default legal action against the debtor (Sanjaya & Tamsil, 2022). The creditor does not get a sense of justice because the transfer to a court/fiat instrument tends to be more expensive for the creditor because he has to pay the costs of submitting a request for execution and the time to resolve the problem is no longer more efficient because it is difficult for creditors to get their rights back by auctioning fiduciary guarantees.

The studies mentioned above position creditors as weak parties in fiduciary agreements following the Constitutional Court decision No. 18/PUU-XVII/2019 and can easily make debtors as parties who do not have good intentions in paying their obligations in terms of debts and receivables. This research is a complement to the limitations of the three studies above by examining legal protection for debtors. Because even though there has been Constitutional Court decision No. 18/PUU-XVII/2019, it does not necessarily guarantee legal protection for debtors. The cases that recur are the execution parate which is often carried out by the creditor so that the debtor is

always in a helpless and unbalanced state even though there has been a Constitutional Court decision.

Based on the description above, this research is intended as a complement to the limited legal studies regarding legal protection for debtors following the Constitutional Court decision No. 18/PUU-XVII/2019. With a focus on the problem of 1) the legal protection given to the debtor if the execution process continues after the Constitutional Court decision No. 18/PUU-XVII/2019 and 2) the legal impact of the Constitutional Court's decision No. 18/PUU-XVII/2019 on the debtor's legal certainty in cases of the immediate execution of the object of fiduciary guarantee.

## **RESEARCH METHODS**

This research is a type of normative legal research, namely a research approach that focuses on the application of positive legal rules (Ibrahim, 2012: 22). This research approach is a statute approach or legislative approach, namely a review of all regulations related to the legal issue being researched (Marzuki, 2009: 30), as well as a case approach. After the case is clearly defined, the researcher will conduct in-depth research on the case, using documentation methods.

Data collection was carried out using library research, as is characteristic of normative research, so the data used is only secondary data (Mamudji, 2013), namely laws, court decisions, books, and scientific journals. All secondary data is then analyzed qualitatively to obtain conclusions to answer the problems raised.

## **RESULTS AND DISCUSSION**

### **1. Legal Protection Given to Debtors in the Event of Execution Parate Following Constitutional Court Decision No. 18/PUU-XVII/2019**

Execution parate is an execution instrument in the Fiduciary Guarantee Law, namely an effort to resolve a default on a fiduciary agreement which is carried out without litigation or based on a court decision, but rather is resolved by itself (direct execution) on the object of the fiduciary guarantee by the creditor over control of the defaulting debtor.

Parate execution in its application means self-execution, as defined by Subekti that parate execution is doing it yourself or taking what belongs to you, without intermediaries or a judge's decision so that the owner can then sell it (Poesoko, 2007: 22) . Initially, execution parate was justified as a mechanism for resolving cases of default between debtors and creditors, which made it easier for creditors because they did not need to go to court, which of course took up time, energy and other things. Default is something that is undesirable but is also the impact of an agreement that is not fully implemented in a contract/agreement (Khair, 2017: 40) . Article 15 paragraph (3) UUJF reads "If the debtor breaks his promise, the Fiduciary Recipient has the right to sell the object which is the object of the Fiduciary Guarantee under his authority", is the basis for fiduciary institutions to be able to carry out their execution of the object of the fiduciary guarantee under the control of the debtor. default.

The application of parate execution also often uses third parties or *debt collectors* as an instrument to facilitate

parate execution which then attracts a lot of criticism. It is stated in a crucial article, namely Article 15 UUJF, which legitimizes creditors to take fiduciary collateral objects at any time and anywhere if the debtor fails to pay within a certain time. Until the debtor has paid more installments on a unit than the outstanding balance, when the debtor defaults under difficult circumstances, the unit is forcibly confiscated. In such cases, it is very detrimental to debtors who have made more payments than those who have not on a unit.

Such cases then resulted in the submission of a judicial review of Article 15 paragraphs (2) and (3) UUJF which resulted in the Decision of the Constitutional Court of the Republic of Indonesia Number 18/PUU-XVII/ 2019. As a form of criticism of the application of Article 15 Paragraph (2) UUJF which does not provide balance in the legal position of debtors and creditors, including the absence of legal certainty regarding when it is said that the debtor has defaulted, and who has the right to determine the default case (Prasetyo, 2020: 45) . Apart from that, the legal basis for execution parate is challenged in Article 5 paragraph (3) UUJF because this provision only provides legal certainty to creditors, by making it legal to carry out separate execution immediately which creates many weaknesses. This weakness has direct implications for the violation of the debtor's rights, so that fair legal certainty, equal treatment before the law, and protection of personal property rights are not felt by the debtor.

In Decision Number 18/PUU-XVII/2019, it was then determined that:

"Declaring Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette 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 executorial power phrase and the phrase are the same as a court decision which has permanent legal force, is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as a fiduciary guarantee where there is no agreement regarding breach of contract (default) and the debtor objects to voluntarily surrendering the object which is the fiduciary guarantee, then all mechanisms and "The legal procedures in executing fiduciary guarantee certificates must be carried out and apply the same as the execution of court decisions that have permanent legal force"

"Declaring Article 15 Paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette 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 breach of contract is contrary to the Constitution of the Republic of Indonesia of 1945 and does not have binding legal force as long as it is not interpreted to mean that the existence of a breach of contract is not determined unilaterally by the creditor but based on an agreement between the creditor and the debtor or based on legal action to determine whether a breach of contract has occurred."

"Declaring the Explanation of Article 15 Paragraph (2) of Law Number 42 of

1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) insofar as the phrase executive power is contrary to the Constitution of the Republic of Indonesia 1945 and does not have binding legal force as long as it is not interpreted as a fiduciary guarantee where there is no agreement regarding breach of contract and the debtor objects to voluntarily handing over the object that is the fiduciary guarantee, then all legal mechanisms and procedures in executing the fiduciary guarantee certificate must be carried out and apply the same by executing court decisions that have permanent legal force."

This decision then took on a different color in several matters regarding the implementation of the UUJF, which emphasized that since the Constitutional Court decision No. 18/PUU-XVII/2019 with the subject matter of judicial review Article 15 paragraphs 2 and 3 of the UUJF is contrary to the 1945 Constitution, and provides a new law The significant difference is that before a material test is carried out, namely the loss of execution power in the fiduciary guarantee certificate, then the certificate no longer has the same legal force as the court decision.

Carrying out a material review of Article 15 paragraph (2) UUJF will bring justice to all parties. This is a different view in several other studies which view the material test as weakening creditors. The Constitutional Court's decision must exist to cancel all forms of injustice regarding Article 15 paragraphs (2) and (3) UUJF, where justice tends to side with

creditors with full authority to carry out execution parates. Because UUJF itself does not specifically regulate at what time or in what month it is said to be in default (in cases of failure to pay). In addition, creditors often use third parties, namely *debt collectors*, so that in cases like this, debtors with good intentions feel disadvantaged. Regarding the legal efforts that can be taken by debtors who feel disadvantaged by unilateral execution (before the UUJF test request), in the author's view there are not many efforts that can be taken by debtors because the execution parate is a legalized matter, debtors can only proceed with criminal proceedings if there is offense coercion or violence in the execution process.

However, the MK decision No. 18/PUU-XVII/2019 which cancels the execution parate except with certain terms and conditions, is not in line with what is desired by the material review of Article 15 paragraphs (2) and (3) of the UUJF. For example, in the case of decision number 157/Pdt.G/2021/Pn Skt, Plaintiff is the debtor of the financing company PT. Indomobil Finance Indonesia Cab. Surakarta as the Defendant and creditor is bound by an Investment Financing Agreement in the Form of a Financing Lease, namely a unit with a nominal price of Rp. 335,000,000.00 with a rental period of 48 months or 48 times the rent. At first, the plaintiff's installments went smoothly until the 30th installment, the problem started when Indonesia was affected by COVID-19 which caused the economy to decline, the plaintiff experienced difficulty in paying rent but the plaintiff continued to try in good faith to continue running his business even

though it was not optimal due to the situation and conditions. not yet possible.

Delays in paying Plaintiff's achievements made Defendant use the services of an external debt collector to carry out forced withdrawals. Then the creditor or defendant, through debt collector services, carries out a forced withdrawal without signing the Minutes of Delivery of the Vehicle by the Owner/on behalf of, without showing a Fiduciary Guarantee Certificate and without a legally binding Court Decision. In the case of decision number 157/Pdt.G/2021/Pn Skt, the judge decided that the defendant's action of forcibly withdrawing the object of fiduciary security in the plaintiff's control was not an unlawful act because the plaintiff's lawsuit was deemed to have insufficient grounds for the lawsuit to be rejected in its entirety.

This case occurred after the Constitutional Court decision No. 18/PUU-XVII/2019 was issued, which means that the creditor violated the Constitutional Court's decision and continued to carry out the execution process, even though the judge saw it as legal and not an unlawful act. Likewise, in the case of Decision 39/Pdt GS /2021/PN Mnd, one of the plaintiff's (debtor's) petitum was "Declaring according to the law that the Defendant's action of forcibly towing/detaining the Plaintiff's vehicle which is the object of the dispute is an Unlawful Act". However, in the judge's considerations and ruling, the judge refused to condemn the execution parate's actions as unlawful. This certainly occurs in conflict norms, where the conflict norm is a legal situation, namely that a regulation has

been made but it contradicts other regulations, namely the Constitutional Court's decision with the judge's legal considerations, deviation from the provisions of the Constitutional Court Decision *Number 18 / PUU - XVII / 2019 which eliminates the parate execution mechanism*.

*The two cases above are real forms of the failure to realize legal protection for debtors who are still experiencing parate execution despite the Constitutional Court's decision. Number 18 / PUU - XVII / 2019 has eliminated the execution parate throughout* There was no agreement between the debtor and creditor regarding default and the debtor voluntarily surrendered the object of the fiduciary guarantee the panel of judges in this case decided that the creditor's actions were not a form of unlawful act.

The two decision cases mentioned above clearly and contradict the Constitutional Court's decision *Number 18 good reasons in the PUU MK decision no. 18/PUUXVII/2019 and No. 2/PUU-XIX/2021*, parate execution may be carried out if the debtor admits that there has been a default on him and there has been a prior agreement regarding the existence of a default (Ma'rifah, 2022: 209). *The two debtors in each of these judgment cases can be identified as debtors* who have bad faith in paying installments/rental fees, as confirmed by each debtor in their case, but the plaintiffs/debtors are both experiencing difficulties in paying rental fees due to the Covid-19 outbreak which has weakened the global economy, however, the plaintiffs still trying to be in good faith to continue running its business even though



it is not yet optimal due to situations and conditions that are not yet possible.

Philipus M Hadjon views that law exists to provide legal protection to citizens by utilizing state power to be able to act to provide legal protection to every citizen (Hadjon, 2007: 88) If Hans Kelsen's theory of legal justice is integrated into decision number 157/Pdt .G/2021/Pn Skt, then you will get a sense of injustice. This sense of injustice arose from the fact of the trial that the financing period (rental period) was 48 months or 48 times the rent, while the plaintiff had been fluent in paying the rental fee of IDR 7,664,000.00 up to the 30th installment, meaning that the plaintiff had been 30 times fluent in rent payments and have only experienced difficulties since the last 18 times/month. So, it would be very unfair if the unit in the plaintiff's control was taken by force while the plaintiff had already paid more rent. This is what Hans Kalsen means, that in measuring the fulfillment of human needs, the priority is an approach in the form of rational knowledge, namely an assessment of value, and is determined by emotional factors and is therefore subject.

Initially, the Constitutional Court's decision No. 18/PUU-XVII/2019 was a form of legal protection for every debtor who had good intentions in carrying out his achievements, but then because of the use of the execution parate, he was also harmed. Even after the Constitutional Court decision No. 18/PUU-XVII/2019, the debtor's position, which was expected to be equal to the creditor, actually remains in an unfavorable position, namely that in many cases the creditor continues to carry out the execution parate, and does not take the route of

suing the court to obtain a decree of execution. from court. So it can be seen that Constitutional Court No. 18/PUU-XVII/2019 is no longer a form of legal protection as there are many cases similar to the decision case 39/Pdt GS/2021/PN Mnd and the decision case 157/Pdt.G/2021/Pn Skt. The Constitutional Court's decision is final and is characterized as a final decision and becomes a law that must be obeyed and is binding when it is read out in court. According to Agus Mauludi in his research, among the factors why the Constitutional Court's decisions are disputed and not implemented are the existence of a grace period for implementing the decision and anomalies in the provisions of regulation, so that there is no process or period to understand and apply the decision (Maulidi, 2019: 345 ). However, in these two cases it was quite far from the release of P MK No18/PUU-XVII/2019, so these creditors did not heed the provisions of P MK No18/PUU-XVII/2019.

Regarding the two cases of decision 39/Pdt GS /2021/PN Mnd and the case of decision 157/Pdt.G/2021/Pn Skt, moreover, each judge views that the execution parate is not an unlawful act, the debtor can take legal action as an appeal. To realize legal protection for him as a party who is not entitled by law, execution of the fiduciary guarantee object is carried out using the parate execution mechanism. The appeal effort is realized as a means to realize legal protection for the debtor to also get the opportunity to defend himself on suspicion that he has broken his promise and defaulted on it, especially in the case of decision number 157/Pdt.G/2021/Pn

Skt, where there are more plaintiffs. pay the monthly rent for the unit rather than the remaining monthly rent that is late in payment.

Filing legal appeals is carried out to ensure that the guarantee of legal protection for debtors in Constitutional Court Decision 18/PUU-XVII/2019 is implemented. Because it is clearly and without any other meaning that it is decided that if the debtor does not admit that there has been a breach of contract and refuses or does not volunteer to provide the object of fiduciary collateral, then the creditor must resort to *fiat* execution, not to resort to parate execution again. So in opposition to the court decision that has been accepted, the debtor as the plaintiff can take legal action to appeal. By appealing, it will provide an opportunity for the debtor as the party who has been injured by the defendant's legal actions and the court decision at first instance to seek correction of the results of the decision which are considered wrong. This is done so that any errors that occur in the decision can be corrected.

Apart from the appeal mechanism, if during the execution process, the debtor experiences violence or attack or any form of criminalization that fulfills a criminal offense, then this can be punished. The complaint is processed by the authorities because it fulfills the criminal elements, namely one form of ensuring legal protection for the debtor as a party who does not admit that there has been a breach of contract and refuses or does not volunteer to hand over the object of the fiduciary guarantee.

*debt collector* services that confiscate fiduciary collateral objects in the control

of debtors who do not voluntarily release the fiduciary collateral objects can be categorized as a criminal act of confiscation. Because the Constitutional Court Decision 18/PUU-XVII/2019 is final and binding, which states that every lesser, person who is their proxy cannot take their action in the form of taking by force the control of a debtor who is in default, but must do so by *fiat* of execution.

Constitutional Court decision No. 18/PUU-XVII/2019 stipulates that creditors do not have the legitimacy to carry out their execution but must submit a request for execution to the district court. So, if there is a forced withdrawal which is still often carried out, such as decision 39/Pdt GS /2021/PN Mnd and case decision 157/Pdt.G/2021/Pn Skt where the debtor does not voluntarily release the fiduciary guarantee, if it is indicated that this has been done forced withdrawal, the debtor can take the criminal route by referring to Article 368 paragraph (1) of the Criminal Code which provides provisions that those who force someone with violence or are threatened with violence to give a debt or write off a receivable will be threatened with extortion. The elements of Article 368 paragraph (1) of the Criminal Code include 1) intent to benefit oneself, 2) against the law, and 3) coercion (Ahmad, Amiruddin, 2022: 82). These elements are by the chronology of withdrawal of fiduciary guarantees in cases decision 39/Pdt GS /2021/PN Mnd and decision case 157/Pdt.G/2021/Pn Skt, criminal measures can be taken to provide legal protection for debtors.

Apart from the criminal aspect, namely offenses of violence and coercion

as well as threats arising from the unilateral execution *parate* process, the most important legal protection for debtors from Constitutional Court Decision No. 18/PUU-XII/2019 is the implication of this decision which eliminates the determination of when a debtor is declared to be in default by the creditor. Uncertainty in determining when the debtor is said to be in default will give rise to the interpretation that the determination of the debtor's default is in the hands of the creditor, which makes the creditor act arbitrarily and the debtor does not have the opportunity to defend himself. So the Constitutional Court Decision No. 18/PUU-XII/2019, immediately prevents the debtor from being in a weak position, namely that he is involved in determining whether or not there is a breach of contract in question, namely through court proceedings.

## **2. Legal Consequences of Constitutional Court Decision No. 18/PUU-XVII/2019 on Legal Certainty of Debtors in *Parate* Cases Executing Fiduciary Objects**

It has been explained in the previous description that there are several articles in the UUJF that conflict with the 1945 Constitution, such as contradicting the 1945 Constitution, especially Article 1 Paragraph (3), Article 27 Paragraph (1), Article 28D Paragraph (1), Article 28G Paragraph (1), and Article 28H Paragraph (4). Article 15 Paragraph (2) and Paragraph (3) of the UUJF, do indicate that there is inequality before the law, namely between creditors and debtors. There are several phenomena in society where there are many cases of withdrawal of fiduciary collateral objects that have

been paid more than the remaining payment, resulting in losses for the debtor. If the 1945 Constitution is allowed to continue unconstitutional, the most inevitable consequence will be that there will always be a legal imbalance between debtors who are always in a weak position, and creditors who are in a strong position in various legal execution parties, so that the implication of the execution *parate* does not bring legal certainty. and legal justice between both parties.

The legal consequences that emerged and came into force and are binding after P MK No 18/PUU-XVII/2019 are the provisions for the enactment of Article 15 paragraph (2) UUJF which no longer have executorial power because they conflict with the 1945 Constitution. In Article 15 paragraph 3, the phrase "Breach of promise" is also contrary to the 1945 Constitution and does not have binding legal force, after previously the fiduciary recipient had the right to sell the object which was under the control of the debtor without applying to the court. P MK No 18/PUU-XVII/2019 provides a new law regarding the execution of fiduciary guarantee objects, namely that the execution *parate* is permitted if two conditions are met, namely the debtor admits that he is in breach of promise and regarding when it is considered a breach of promise that it is given to the debtor or the debtor is without coercion. broadly the object of the guarantee.

After P MK No 18/PUU-XVII/2019, the position of creditors with their rights, namely carrying out executions without the debtor's consent, has become an illegal act. Because, if the creditor does not have agreement from the debtor regarding or the debtor is unwilling to

determine his default, then the execution must be returned to litigation or must go through a court decision so that any unilateral actions of the creditor can be based on law.

After Article 15 Paragraph (2) UUJF is deemed invalid by P MK No. 18/PUU-XVII/2019, creditors must resolve their cases by going to court. Then in Article 15 Paragraph (3) UUJF creditors are no longer allowed to sell themselves/unilaterally fiduciary collateral objects if there is no agreement between the debtor and creditor. When the debtor admits that he has defaulted and volunteers to return the object, the creditor can sell it to pay off the debtor's debt. The debtor's unwillingness to hand over the units can result in one of the two execution parate requirements not being achieved. In the case of decision 39/Pdt GS /2021/PN Mnd and decision case 157/Pdt.G/2021/Pn Sk, the debtor did not volunteer for the parate execution carried out by the defendant, as in one of the principal cases the debtor explained that the defendant carried out parate execution or forced withdrawal of the unit by the *External Debt Collector* violates Article 4 of Law Number 8 of 1999 concerning Consumer Protection and Law No. 42 of 1999 concerning Fiduciary Guarantees can even be categorized as a form of confiscation which violates Article 365 of the Criminal Code. In this case, the plaintiff even argued that the defendant committed an offense of confiscation. Because the plaintiff is a party who does not fulfill the element of "voluntarily handing over the object of the fiduciary guarantee", then the execution parate may not be carried out but must be resolved with a court

instrument, which will provide legal justice and bring balance between the positions of the two parties and can avoid the impression of being arbitrary. authority in execution.

This is also what Natalia Karelina emphasized in her research that there are two main things as a legal consequence of the Constitutional Court's decision No. 18/PUU-XVII/2019 on the legal certainty of debtors in cases of parate execution of fiduciary collateral objects, namely " 1) shift regarding the determination of injury legal promises and 2) shifts in the implementation of the Execution Parate which are not by the objectives of the formation, position, and function of the execution parate in material guarantees as protection for creditors, as well as the principle of easy and certain implementation of the execution of a material guarantee. "The arrangements set by the Constitutional Court and the various legal loopholes that can arise, make it necessary to make adjustments in the formulation of agreement clauses" (Karelina, 2022)

Norms (including MK decisions) must provide legal certainty regarding all implications of the decision. Because the role of norms is the basis and parameters for whether a legal act can be carried out or not. According to Jeremy Bentham, if a law is unable to bring benefits to society then it cannot be recognized as law (Hamzah & Adinda, 2022: 82) . The case of decision 39/PdtG.S/2021/PN Mnd and the case of decision 157/Pdt.G/2021/Pn Sk should not occur if the creditors implement the contents of the Constitutional Court decision No. 18/PUU-XVII/2019, namely by *fiat* execution and In this way, the

debtor's legal certainty, namely as a means of legal protection for him from acts of execution, can run as expected. However, the debtor's legal certainty that execution parate will not be carried out on him still always occurs. In cases involving the use of *debt collector services*, this is an illustration of the lack of legal certainty in the implementation of Constitutional Court No. 18/PUU-XVII/2019 and legal protection for debtors. The debtor's legal certainty regarding the avoidance of execution against him always creates confusion for every debtor. After the publication of Constitutional Court Decision No. 18/PUU-XVII/2019 and MK Decision No. 2/PUU-XIX/2021, execution parates continue to be carried out and the use of *debt collectors* leads to criminal acts of confiscation. So the debtor's legal certainty is not truly fulfilled.

## **CONCLUSION**

1. The legal protection given to debtors if the execution process continues after Constitutional Court Decision No. 18/PUU-XVII/2019 is that they can take legal action to appeal as a stance to oppose the court's decision on a judge's decision, which is deemed not to provide justice. A sense of justice is not felt when judges (after PMK No. 18/PUU-XVII/2019) continue to legalize execution parates for fiduciary collateral objects that do not meet the two conditions for execution parates. The debtor can also take criminal legal action if the execution process (which violates PMK No. 18/PUU-XVII/2019) is still carried out using coercion because it has fulfilled the criminal offense.
2. The effect of Constitutional Court Decision No. 18/PUU-XVII/2019 on

the legal certainty of debtors in cases of parate execution, the object of fiduciary guarantees, is to conditionally cancel the parate execution. This should bring legal certainty to the debtor so that no execution will be carried out against him. However, the large number of execution parate cases following the publication of Constitutional Court Decision Number 18/PUU-XVII/2019 indicates that there is no legal protection for debtors as well as legal certainty regarding the application of the execution parate rules. This further reduces the debtor's legal certainty because the judge's view of the two cases of execution parate for the object of fiduciary collateral did not consider execution parate as an unlawful act. So there is a need for confirmation of all legal instruments in overseeing the implementation of Constitutional Court decisions by all levels of society so that legal certainty can be realized as well as being an instrument of legal protection for debtors.

**THANK-YOU NOTE** The author would like to express his gratitude to the presence of Allah SWT who has bestowed His grace and guidance so that the author can complete the preparation of research with the title "Legal Certainty of Debtors Post Constitutional Court Decision Number 18/PUU-XVII/2019 Concerning Parate Execution of Fiduciary Security Objects." This journal can be prepared well thanks to the help of parties who have provided guidance and support as input for the author. For this reason, the author would like to thank the Chancellor, Dean, Deputy Dean, Head of Study Program, and Lecturers who helped the researcher during these 7 semesters, especially Mrs. Atik Winanti as the Final Assignment Supervisor who was willing to take the time to guide the author and provide direction in writing this journal,

parents who always motivate the writer, as well as friends who helped to encourage the writer who I cannot mention one by one.

## **BIBLIOGRAPHY**

- Ahmad, & Amiruddin, U. (2022). Aspek Hukum Pidana Terhadap Tindakan Debt Collector Dalam Penarikan Paksa Objek Perjanjian. *Jurnal Jatiswara*, 37(2), 176–184. <https://doi.org/https://doi.org/10.29303/jtsw.v37i2.390>
- Budi, S. (2017). Permohonan Eksekusi Kepada Pengadilan Negeri Berkaitan Dengan Perjanjian Fidusia Terhadap Jaminan Yang Digelapkan. *Jurnal Cendekia Hukum*, 3(1), 100–107.
- Hadjon, P. M. (2007). *Perlindungan Hukum Bagi Rakyat di Indonesia*. Peradaban.
- Hamzah, R., & Adinda, F. A. (2022). Eksistensi Norma Tentang Eksekusi Jaminan Fidusia Setelah Keluarnya Putusan Mahkamah Konstitusi Nomor 18/Puu/Xvii/2019. *Jurnal Penelitian Hukum De Jure*, 2(1), 81–92.
- Heriawanto, B. K. (2019). Pelaksanaan Eksekusi Objek Jaminan Fidusia Berdasarkan Title Eksekutorial. *Legality: Jurnal Ilmiah Hukum*, 27(1), 54–67.
- Ibrahim, J. (2012). *Teori dan Metodologi Penelitian Hukum Normatif*. Bayumedia Publishing.
- Karelina, N. (2022). Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 18/Puu/Xvii/2019 Dan Penegasannya Dalam Putusan Mahkamah Konstitusi Nomor 2/Puu-Xix/2021 Terhadap Eksekusi Jaminan Fidusia Dan Perumusan Klausula Perjanjian. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An*, 5(2), 187–201. <https://doi.org/10.23920/acta.v5i2.738>
- Khair, U. (2017). Analisis Yuridis Perjanjian Pembiayaan Konsumen Dan Akibat Hukum Jika Terjadi Wanprestasi Dalam Perjanjian Pembiayaan Konsumen Di Indonesia. *Jurnal Cendekia Hukum*, 3(1), 33–45.
- Koto, I & Faisal. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774–781. <https://doi.org/10.34007/jehss.v4i2.739>
- Kusumawati, S., & Kelib, A. (2019). Eksekusi Objek Jaminan Fidusia dalam Akad Murabahah Pada Perbankan Syariah. *Notarius*, 12(1), 386–397. <https://ejournal.undip.ac.id/index.php/notarius/article/view/27734>
- Ma'rifah, N. (2022). Kepastian Hukum terhadap Kreditur Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Nomor 2/PUU-XIX/2021. *Notary Law Journal*, 1(2), 204–226. <https://doi.org/10.32801/nolaj.v1i2.23>
- Mamudji, Sri & Soekanto, S. (2013). *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Raja Grafindo Persada.
- Manurung, S. P., Chrismanto, K., & Wilopo, N. (2021). Mereduksi Praktik Eigenrichting dan Menyeimbangkan Kedudukan Hukum Para Pihak dalam Eksekusi Jaminan Fidusia. *Jurnal Ius Constituendum*, 6(2), 284–305. <https://doi.org/http://dx.doi.org/10.26623/jic.v6i2.3197>
- Marzuki, P. M. (2009). *Penelitian Hukum*.

Kencana Prenada Media Group.

- Maulidi, M. A. (2019). Menyoal Kekuatan Eksekutorial Putusan Final dan Mengikat Mahkamah Konstitusi. *Jurnal Konstitusi*, 16(2), 340–362. <https://doi.org/DOI:https://doi.org/10.31078/jk1627>
- Syam, M & Mannas, Y,A. (2022). Kedudukan Parate Eksekusi Pada Jaminan Fidusia Dengan Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019. *Adhaper: Jurnal Hukum Acara Perdata*, 8(1), 149–165.
- Nainggolan, H. V., Kamello, T., Purba, H., & Leviza, J. (2023). Penerapan Putusan Mahkamah Konstitusi No.18/PUU- XVII 2019 dalam Putusan Pengadilan Terkait Eksekusi Jaminan Fidusia. *Locus Journal of Academic Literature Review*, 2(4), 365–372. <https://doi.org/https://doi.org/10.56128/ljoalr.v2i4.155>
- Poesoko, H. (2007). *Perate Execute Obyek Hak Tanggungan, Inkonsistensi,. Konflik Norma dan Kesehatan Penalaran Dalam UUHT*.

Laksbang Akademika.

- Prasetyo, E. S. (2020). Implikasi Putusan Mahkamah Konsitusi Nomor 18/PUU-XVII/2019 Terhadap Pelaksanaan Eksekusi Lembaga Jaminan. *Jurnal Ilmu Hukum Refleksi Hukum*, 5(1), 43–62. <https://doi.org/https://doi.org/10.24246/jrh.2020.v5.i1.p43-62>
- Rumawi, Basuki, Udiyo, Mellisa Towadi, S. (2022). Parate Executie dalam Fidusia Menurut Ratio Decidendi Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 19(3), p 557 (554-579). <https://doi.org/DOI:https://doi.org/10.31078/jk1933>
- Sanjaya, D. B., & Tamsil. (2022). Analisis Yuridis Terhadap Putusan Mahkamah Konstitusi 2 / Puu-Xix / 2021 Bagi Penerima Jaminan Fidusia ( Kreditur ). *Jurnal Vonum*, XX(XX), 107–121. <https://doi.org/https://doi.org/10.2674/novum.v0i0.49412>.