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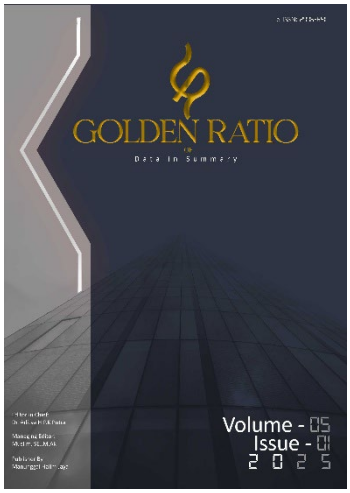

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Legal Analysis of The Auction Process in The Fiduciary Guarantee Execution System

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Abstract: The auction process in the fiduciary guarantee execution system is integral to resolving debt-debt disputes involving movable goods collateral. This research aims to analyze the legal aspects related to implementing auctions in the execution of fiduciary guarantees, which refers to the provisions of Law No. 42/1999 on Fiduciary Guarantees. The main focus of this research is to examine the auction procedure, the rights and obligations of the parties involved, and potential disputes that may arise during the process. In addition, this study evaluates the applicability of precautionary principles and the protection of debtor rights in executing auctions. The analysis results show that although the law has regulated the execution of fiduciary guarantees in detail, some challenges remain, such as unclear auction procedures and potential abuse of authority by creditors. Therefore, this study recommends stricter law enforcement and strengthening supervisory mechanisms in the auction process to protect debtors' rights and achieve justice.

Keywords: Auction, Execution of Fiduciary Guarantees.

1. INTRODUCTION

In society, many parties provide money loans to both individuals and institutions. One institution that provides money loans to the community is a financial institution, either a bank financial institution (LKB) or a non-bank financial institution (LKBB). A financial institution is a business entity whose assets are mainly financial assets or claims compared to non-financial or tangible assets (non-financial assets). Financial institutions are intended as intermediaries between parties who have excess funds (surplus of funds) and those who lack and need funds (lack of funds). Financial institutions are part of the financial system in a modern economy that serves the community of financial service users (Kasmir, 2002).

There is a fiduciary institution in the guaranteed institution. The origin of the word fiduciary is fides, which means "trust." That is why understanding Fidusiaire Eigendomsoverdracht is often associated with understanding the transfer of collateral based on trust. Associated with the relationship formed between the debtor and the creditor, this principle of trust is central because the fiduciary giver (the debtor) believes that the fiduciary recipient (the creditor) will return the ownership that has been transferred after the fiduciary giver has paid off his debt. While the creditor also believes that the debtor will guard the collateral under his control (Sanusi, 2013).

The term guarantee is a translation of the Dutch language, namely zekerheid or cautie. Zekerheid or cautie generally covers how creditors guarantee that their bills will be met in addition to the debtor's general responsibility for their goods (Salim, 2004). A guarantee is an agreement between a debtor and a creditor in which the debtor promises an asset or property by the law to be used as a payment for financing when the debtor experiences problems in paying the financing (Arba & Mulada, 2020). Thus, it can be concluded that a guarantee is an additional guarantee in the form of movable or

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immovable objects given to creditors to guarantee the payment of the debtor's debt when there is a problem in paying the debtor's debt.

Making agreements concerning Contracts under Indonesian law is regulated in Book III of the Civil Code (hereinafter abbreviated as KUH Perdata). Book III of the Civil Code regulates general provisions that apply to all agreements and regulates named agreements. Based on Article 1338 paragraph (1) of the Civil Code, an agreement binds the three parties who make it as a law. A deal made legally by the parties will bind and apply them as a law. This means that the parties must carry out the contents of the deal in good faith. If the parties do not carry out the agreement that has been agreed upon, then a state of breach of promise (default) will arise.

Article 1313 of the Civil Code states, "An agreement is an act by which one or more persons bind themselves to one or more other persons." According to Wirjono Prodjodikoro, an agreement is a legal act concerning property or wealth between two parties in which one party promises or is deemed to have promised to do something or not to do something. In contrast, the other party has the right to demand the implementation of the pledge (Prodjodikoro, 2003).

The parties to the agreement are the debtor and the creditor. The debtor is the party that has the obligation. The debtor is the one who must carry out the performance. The creditor is the party that has the right or demands the fulfillment of performance from the debtor. In a reciprocal agreement (bilateral), the obligation lies with both parties. The debtor is seen from the side of the obligation. In a loan agreement, the debtor, when seen from the side of the obligation to make payments, the borrower is in the position of the debtor. The creditor is seen from the obligation; the creditor must hand over the money that has been agreed to be given to the debtor without cheating or reduced, and the borrower is in the position of the creditor. An agreement must have a particular object, and an agreement must be about a sure thing (certainty of terms), meaning what is agreed upon, namely the rights and obligations of both parties. The goods referred to in the agreement can at least be determined in type (determinable). As explained above, the parties who agree must carry out the obligations arising from the agreement. The obligations that must be fulfilled by the parties in the agreement, either because of the agreement, because of the law, or propriety and customs, are called performance.

Default or breach of promise is a condition in which the debtor does not carry out the obligations stipulated in the agreement, especially the agreement. A default can also occur when the debtor does not carry out the duties specified in the law. The default comes from the original Dutch term *"wanprestatie."* Wan means terrible, and *prestatie* implies a responsibility the debtor must fulfill in every agreement. So, default is a bad or lousy performance. Generally, it means not fulfilling the obligations stipulated in the contract, both from the agreement and the law (Muhammad, 1982).

The application for the auction of the execution of the fiduciary guarantee must be accompanied by a statement from the seller that the goods to be auctioned are in the seller's possession because they have been voluntarily handed over. The debtor has agreed to the occurrence of a breach of promise (default), and there is no objection from the debtor.

2. LITERATURE REVIEW

An agreement is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill that demand. The party with the right to demand something is called a creditor, while the obliged party is called a debtor. The relationship between the two parties is legal, meaning that the creditor's rights are guaranteed by law or statute (Subekti, 2014). According to Article 1233 of the Civil Code, the sources of an agreement are laws and agreements. Agreements that originate from statutes can be divided into two sources, namely, agreements that originate from laws alone and agreements that originate from laws due to human actions, which today can be divided into agreements that arise from an act that is permitted and from an act that is against the law (Suryodiningrot, 1985). One form of agreement is a credit agreement. A credit agreement is an agreement to provide credit between the

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creditor and the credit recipient. According to Subekti, in whatever form the credit is given, in essence, what happens is a loan agreement as regulated in the Civil Code (Subekti, 1986). The definition of borrowing and lending according to Article 1754 of the Civil Code is as follows:

> *"Lending and borrowing is an agreement in which one party gives to another party a certain amount of goods that are depleted through use, on the condition that the latter party will return the same amount of the same kind and condition."*

A bank credit agreement is a preliminary agreement *(voor overeenkomst).* This initial agreement results from a deal between the lender and the borrower regarding the legal relationship. This agreement is consensual (pasta de contracted), including a condition (bedding) that the borrower will guarantee the credit with a material guarantee. The promise to provide a guarantee does not stand alone but is part of the credit agreement, which is an accessory (Badrulzaman, 1989).

The word fiduciary comes from the Dutch word "fiduciary," which means transfer of ownership based on trust. Article 1, paragraph 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees explains that "fiduciary is the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in possession of the object's owner." By the Fiduciary Law, the burden of an object on a fiduciary guarantee is made with a notarial deed in Indonesian. The parties involved in the fiduciary guarantee must have a sense of trust between the fiduciary giver (Debtor) and the creditor recipient (Creditor) so that the fiduciary guarantee mechanism runs appropriately. This is because the Debtor can hold the collateral object until the debt payment to the Creditor is complete.

The provisions of Article 5 Paragraph (1) of the Fiduciary Law stipulate that the encumbrance of objects with fiduciary guarantees is made with a notarial deed in Indonesian and is a fiduciary guaranteed deed. On that basis, Fiduciary Law requires or requires that the encumbrance of objects guaranteed with fiduciary be made with a notarial deed. The choice of the notarial form is intended so that the parties are protected from rash actions and errors for an action with broad legal consequences.

Objects that can be used as fiduciary collateral objects are regulated in Article 1 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Collateral, which reads: "Fiduciary Collateral is a collateral right over tangible or intangible movable objects and immovable objects, especially buildings, which cannot be burdened with Mortgage Rights as referred to in Law No. 4 of 1996 concerning Mortgage Rights which remain in the possession of the Fiduciary Provider, as collateral for the settlement of certain debts, which gives the Fiduciary Recipient a priority position over other Creditors". It can be concluded that the objects of fiduciary collateral are movable objects and immovable objects.

The definition of an execution auction is stated in Article 1 number 4 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Auction Implementation Guidelines, which reads:

> *"Execution Auction is an auction to implement a Court Decision or Ruling, other documents that are considered equivalent to it, and/or to implement provisions in statutory regulations."*

Furthermore, the definition of credit restructuring is stated in Article 1 number 26 of Bank Indonesia Regulation Number 14/15/PBI/2012 concerning the Assessment of Asset Quality of Commercial Banks, which reads: Credit Restructuring is an improvement effort carried out by the Bank in credit activities for debtors who are having difficulty in fulfilling their obligations, which is carried out, among others, through:

1. Reducing Credit interest rates;
2. Extension of the Credit term;
3. Reducing Credit interest arrears;
4. Reducing Credit principal arrears;
5. Adding Credit facilities and/or;
6. Converting Credit into Equity Participation.

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In the first method, namely execution auction, creditors can only conduct execution auctions if default by the debtor indeed causes the bad credit. In the second method, namely credit restructuring, creditors can provide credit restructuring to debtors that are first requested by the debtor to the creditor if the debtor does not fulfill the elements of default but rather a force majeure due to events beyond the debtor's reach. Credit restructuring can be successful if the debtor runs smoothly and fulfills the performance within the specified time. Still, when the creditor has provided credit restructuring to the debtor but is not running smoothly in fulfilling its performance, the debtor can only be considered to have genuinely defaulted. In determining Default and Force Majeure committed by the debtor, the creditor must be able to prove it by assessing the debtor when the lousy debt occurred. The obligation to pay compensation for the debtor or party who must carry out the performance in the contract but commits a new default can be carried out if it has met 4 (four) conditions, namely:

1. He has indeed been negligent in committing a default;
2. He is not in a state of force.
3. He does not make a defense to fight the claim for compensation;
4. He has received a statement of negligence or a summons.

The agreement requires both parties to carry out their respective rights and obligations; if one party does not perform, the result is a fault. Thus, the existence of a compensation system is an obligation imposed on a person who acts unlawfully and causes losses to others due to his/her mistake, as stated in Article 1243 of the Civil Code, which states: "Reimbursement of costs, losses, and interest due to failure to fulfill an obligation begins to be required if the debtor, after being declared negligent in fulfilling the obligation, continues to neglect it or if something that must be given or done can only be given or done within the time limit that has passed." Default as regulated in Article 1267 of the Civil Code that: "The party to whom the obligation is not fulfilled can choose to force the other party to fulfill the agreement if it can still be done or demand the cancellation of the agreement with compensation for costs, losses, and interest." A claim for compensation due to default by the debtor against the creditor must be by the agreement's contents. Before discussing the contents of an agreement, Article 1320 of the Civil Code first regulates the requirements for the validity of an agreement. So, this Article is very influential on an agreement that will be made.

3. RESEARCH DESIGN AND METHOD

Normative legal research is also called library legal research, which is research conducted by examining existing library materials, namely primary legal materials, secondary legal materials, and tertiary legal materials, so that these legal materials are then systematically arranged, studied, and then a conclusion is drawn about the problem being studied (Soekanto, 2010). The intended literature study will invent legal materials from various sources. The intended literature study will inventory legal materials from multiple sources. This research uses a normative legal research type that focuses on the execution of fiduciary guarantees and auctions of fiduciary guarantee objects, both reviewed based on national legal provisions regulating general regulations on auctions.

1) Secondary data that will be used in this study consists of:
   a. Law Number 42 of 1999 concerning Fiduciary Guarantees
   b. Civil Code
   c. Regulation of the Minister of Finance (PMK) Number 27/PMK.06/2016 Juncto. PMK Number 106/PMK.06/2013 Juncto. PMK Number 93/PMK.06/ 2010 concerning Auction Implementation Guidelines; Court decisions that have become jurisprudence;

2) Secondary legal materials in the form of all publications on law that are not statutory regulations, including:
   a. Library books related to civil law, banking law, auction law, and guarantee law;

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b. Legal dictionaries;
c. Legal journals.

4. RESULT AND DISCUSSION

4.1. Fiduciary Guarantee Execution Procedures According to the Laws and Regulations in Indonesia

The provisions in Article 15 Paragraph (3) of the Fiduciary Law stipulate that if the debtor defaults on his promise, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee under his authority. This is one of the characteristics of a strong and definite fiduciary guarantee that there is ease in executing its execution if the debtor (fiduciary giver) defaults on his promise. Moreover, it manifests the position that precedes the creditor (fiduciary recipient). Therefore, the Fiduciary Law has specifically regulated the execution of the object of the fiduciary guarantee based on the execution parade through or through a public auction. The provisions in Article 29 Paragraph (1) sub b of the Fiduciary Law that the right is given to him to sell the object that is the object of the fiduciary guarantee provided that the debtor (fiduciary giver) is in default and that must be made through or through a public auction (Auction Office) without requiring the consent of the debtor (fiduciary giver). The proceeds of the sale after being reduced by the state's preferential rights (including auction costs), the creditor (fiduciary recipient) can take payment of the receivables. The execution of this type of fiduciary guarantee object does not require a fiat of execution from the court.

The existence of provisions in Article 29 Paragraph (1) sub b of the Fiduciary Law eliminates previous doubts as if execution through a public auction office must be with a court order. This assumption is not valid at all. Based on the provisions in Article 29 Paragraph (1) sub b in conjunction with Article 15 Paragraph (3) of the Fiduciary Law, legally, the Fiduciary Law grants the right or authority to creditors (fiduciary recipients) on their own (separate execution) to sell objects that are the object of fiduciary collateral to obtain payment of their receivables. This means that without asking for help from the chairman or bailiff from the relevant District Court, creditors (fiduciary recipients) can execute the object of the fiduciary collateral in question by asking for help from the auction office to conduct a general sale or auction of the object that is the object of fiduciary collateral (Usman, 2009). In the provision of installment credit with this fiduciary system, the position of the creditor receiving the fiduciary is the collateral holder. At the same time, the authority of the owner that he has is the authority that is still related to the collateral itself. Therefore, it is also said that his authority as the owner is limited. As long as the debtor has not neglected to fulfill his obligations, the creditor is in the position of the collateral recipient; only because the collateral is in the form of property rights can the creditor take several actions that are owned by an owner, such as supervision of the collateral because the creditor as the recipient of the property rights guarantee does not control the collateral himself but the debtor controls it. Thus, the creditor, who has an interest in the collateral but whose authority over the collateral is delegated to the debtor, should have the right to supervise the collateral (Andriyani, 2007).

The execution by the Creditor does not directly take the collateral object, but there are stages in carrying out the execution. In collecting, the Creditor must use a warning letter (SP) by the specified period. The warning letter to the Debtor is a maximum of 3 (three) times. The warning letter contains information regarding the number of days the Debtor is late in paying, the outstanding principal from the Debtor, the interest owed, and the amount of fines still owed.

The next stage after giving the letter to the Debtor is the mediation process between the parties. The mediation occurs after issuing the second warning letter (SP 2). Mediation is carried out in the presence of a third party as a neutral party and provides input that aims to solve the problem with a win-win solution. If mediation is unsuccessful, an arbitration process can be carried out. Arbitration, according to Article 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, is a method of resolving civil disputes that can be carried out outside the general court based on a written agreement agreed upon by both parties to the conflict. According to Article 5 of Law No. 30 of 1999, arbitration is usually carried out in disputes whose rights are recognized in the

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eyes of the law, and the disputing parties fully control statutory regulations. The arbitration results are win-lose judgment, and the decision is final and has permanent legal force. This is stated in Article 60 of Law No. 30 of 1999.

Implementing execution against the object of fiduciary guarantee is regulated in Article 15, paragraphs (2) and (3) of the Fiduciary Guarantee Law. This article provides legal protection for the Creditor against the Debtor. This is because the Creditor has the right of parade execution, namely the right to conduct a public auction of the guarantee object without permission from the Chief Justice. Execution against the object of fiduciary guarantee can also be carried out in three ways, namely the implementation of the executorial title, the sale of the object that is the object of fiduciary guarantee at the authority of the Fiduciary Recipient himself through a public auction, and taking payment of receivables from the proceeds of the sale and private sales with an agreement between the Creditor and the Debtor. In 2019, a debtor filed a judicial review application to the Constitutional Court against Article 15 paragraph (2) and (3) of Law Number 49 of 1999 concerning Fiduciary Guarantees, which regulate the executorial power held by creditors. According to the debtor, the article is unconstitutional. The applicant felt constitutionally disadvantaged because the execution process was carried out without reasonable legal mechanism control and excessive power. Based on this background, the Constitutional Court issued Constitutional Court Decision Number 18/PUU-XVII/2019, which states that executing fiduciary guarantee objects through the Court is an alternative step for creditors. This method can be taken if no agreement on default is reached between the creditor and the debtor. If there is no such agreement, the creditor may not execute the collateral object but must apply for execution in court. Creditors who file for execution through the Court may not commit themselves but must be carried out by the Court through a bailiff.

Article 1155 paragraph (1) of the Civil Code states that: "If the parties have not agreed otherwise, then the creditor has the right if the debtor or the pawnbroker defaults, after the given grace period has passed, or no grace period has been determined, after a warning to pay has been given, to order the pawned goods to be sold in public according to local customs and under the conditions that are generally applicable, to take payment of the amount of the debt along with interest and costs from the proceeds of the sale." In the Republic of Indonesia Law Number 42 of 1999 concerning Fiduciary Guarantees, some provisions underlie creditors' right to execute fiduciary guarantees, as regulated in Article 15, namely:

1) In the Fiduciary Guarantee Certificate, as referred to in Article 14 paragraph (1), the words "FOR JUSTICE BASED ON GOD ALMIGHTY" are included.
2) The Fiduciary Guarantee Certificate, as referred to in paragraph (1), has the same exceptional power as a court decision that has obtained permanent legal force.
3) If the debtor defaults, the Fiduciary Recipient has the right to Sell the Object that is the object of the Fiduciary Guarantee at his discretion.

Starting from the problem of default by the creditor, Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees further regulates the execution of fiduciary guarantees as regulated in Article 29. Execution of fiduciary guarantees is the seizure and sale of objects that are the objects of fiduciary guarantees. The cause of the execution of this fiduciary guarantee is that the debtor or fiduciary giver defaults or does not fulfill his performance on time to the fiduciary recipient, even though the fiduciary giver has been given a warning. In Article 29 of Law Number 42 of 1999, it is regulated that there are 3 (three) ways to execute fiduciary guarantee objects, namely:

1) If the debtor or Fiduciary Provider defaults, execution of the object that is the object of the Fiduciary Guarantee can be carried out in the following ways:

    a. Implementation of the executorial title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient;
    b. Sale of the object that is the object of the Fiduciary Guarantee under the authority of the Fiduciary Recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale;

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c. Private sale is carried out based on an agreement between the Fiduciary Provider and Recipient if the highest price can be obtained that is beneficial to the parties.

2) The implementation of the sale, as referred to in paragraph (1) letter c, is carried out after 1 (one) month has passed since the Fiduciary Giver and Recipient have notified the interested parties in writing and announced in at least 2 (two) newspapers circulating in the relevant area.

4.2. Mechanism for Implementing Auctions in Executing Fiduciary Guarantees According to the Law in Force in Indonesia

Article 29 of the Fiduciary Law also stipulates that if the debtor defaults, execution of the Fiduciary Guarantee Object can be carried out in several ways, namely:

1) implementation of the executorial title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient;
2) sale of objects that are Fiduciary Guarantee Objects under the authority of the Fiduciary Recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale;
3) underhand sales are carried out based on an agreement between the Fiduciary Giver and Recipient if, in this way, the highest price can be obtained that benefits both parties.

Referring to the provisions, as stated in letter "b," the execution of fiduciary collateral is through auction. This is also emphasized by the provisions of Article 6 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 concerning Auction Implementation Guidelines (PMK 27/2016) which categorizes Fiduciary Collateral Execution Auction as one of the types of Execution Auction, and as is known that the implementation of the type of Execution Auction can only be carried out by Class I Auction Officials who are only found in KPKNL (Asnul, 2019).

Based on the description in this Introduction section, the Constitutional Court Decision No. 18/2019 will have more or less implications for the Auction business process carried out by the KPKNL. Article 15, paragraph (2) and paragraph (3) of the Fiduciary Law, according to the Constitutional Court Decision No. 18/2019, are fundamental norms. Because, from the norms contained in the article, the power of execution is issued, which can be carried out by the Fiduciary Guarantee Holder (creditor) himself, which then causes many problems, both related to the constitutionality of the norm and the implementation that regulates the execution of fiduciary collateral. One way to execute fiduciary collateral is through an auction; the implementation can only be carried out by the KPKNL. Thus, the relevance related to the quo Constitutional Court Decision and the implications that (may) arise for the auction business process carried out by the KPKNL can be understood.

If observed, Constitutional Court Decision No. 18/2019 is more related to the execution processes that chronologically can be placed in the period before the auction or pre-auction. The background of applying for judicial review of the Fiduciary Law by the Applicants to the Constitutional Court illustrates this. The decision decided by the Panel of Judges of the Constitutional Court also provides an interpretation of the execution process of fiduciary collateral between creditors and debtors, which processes certainly occur in the period before the creditor submits an application for sale by auction to the KPKNL. Although it is understood that the Constitutional Court Decision has more implications for events before the auction is submitted to the KPKNL, the events before the auction are carried out are often the basis for filing lawsuits against the auction by debtors. So, if it is not observed, it can cause legal problems in the future, such as the defeat of the KPKNL in the trial process. In PMK No. 27/2016, auction implementation can be categorized into three major stages: Auction Preparation, Auction Implementation, and Post-Auction. The Auction Preparation Period, as the stage most affected by the quo Constitutional Court Decision, can be understood as the stage of activities or conditions carried out or fulfilled before the auction is implemented, including the Auction Application, Seller, Auction Place, Determination of Auction Implementation Time, Land Certificate/Land Registration Certificate (SKT/SKPT), Cancellation Before Auction, Auction Bid Guarantee, Limit Value, and Auction Announcement. The main objective of the Auction Preparation stage is to achieve the Formal Legality of the Subject and Object of the Auction, namely a condition

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where the Seller has fulfilled the auction requirement documents according to the type of auction. There is no difference in data indicating the legal relationship between the Seller (auction subject) and the goods to be auctioned (auction object) to convince the Auction Official that the auction subject has the right to auction the auction object, which can be auctioned. After issuing the quo Constitutional Court Decision, the KPKNL needs to review each auction application for fiduciary collateral and whether the Formal Legality conditions of the Subject and Object of the Auction have been met. To fulfill these conditions, the Directorate of DJKN Auctions needs to emphasize or add requirements for auction submission documents. The quo Constitutional Court Decision states that the determination of a breach of promise is not determined unilaterally by the creditor but instead based on an agreement between the creditor and the debtor or based on legal efforts that determine that a breach of promise has occurred so that in the fiduciary collateral auction application submitted to the KPKNL, the verifier at the KPKNL needs to ensure that there is a document of agreement between the creditor and the debtor regarding the occurrence of a breach of promise or a court decision stating that a breach of promise has occurred. Furthermore, the Constitutional Court's decision interprets that there is no agreement on breach of promise for fiduciary guarantees. Suppose the debtor objects to handing over the object, which is the fiduciary guarantee voluntarily. In that case, all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and applied in the same way as the execution of a court decision that has permanent legal force. In such conditions, the document verification officer for the auction application at the KPKNL needs to ensure that the competent court issues an execution order.

Public auctions are not the primary option for finance companies to execute their fiduciary collateral objects. Underhand sales remain the first choice for finance companies except when the debtor is undergoing bankruptcy proceedings. When bankruptcy occurs, the finance company, as a separatist creditor, will use the executorial power of its fiduciary collateral certificate to obtain debt repayment from the debtor. The auction applicant submits an auction request verbally or by telephone, which a written application must immediately follow. The Auction Office cannot reject the auction application unless the application does not meet the requirements specified in the auction provisions. Suppose the Auction Office has received the auction application. In that case, the auction applicant must immediately complete the auction application letter with documents or evidence of his rights and authority to sell goods by auction. In addition, the auction applicant, as the seller, can determine the terms of the auction sale as long as the terms do not conflict with the applicable auction provisions. After the auction office examines the auction application along with the supporting documents and obtains certainty regarding the auction subject's legality and the auction object's legality, the Auction Office will determine the auction's time and place by considering the auction applicant's wishes. Immediately after the time and place of the auction are determined by the State Assets and Auction Service Office, the auction applicant, as the seller, will announce the auction in newspapers/dailies and/or other mass media (Salim, 2004). To provide an opportunity for the public interested in participating in the auction to obtain information about the goods to be auctioned, all documents complete with the auction application and auction requirements from the seller, as well as evidence of the auction announcement, must be submitted to the State Assets and Auction Service Office no later than 3 (three) days before the auction. The auction is open because, in principle, everyone can become a participant as long as they are not excluded, as described above. At the specified time, the auction is carried out and led by the Auction Officer from the State Assets and Auction Service Office. If the highest bid in the auction is by the seller's wishes, the goods will be released, and the Auction Officer will determine the highest bidder as the auction winner. However, if the highest bidder has not reached the selling price desired by the seller (or the price limit set), the auction officer will determine that the auction object is withheld (or the winner is not appointed) unless the seller agrees to release the goods. If the auctioned goods are sold, the buyer is obliged to pay the Auction Principal in the amount of his bid plus the Buyer's Auction Fee, which is collected by the provisions of the Government Regulation on Auction Fee Staatblad 1949 Number 390 (Government Regulation on Auction Fee), which is 9% (nine percent) for movable goods and 4.5% (four point five percent) for immovable goods, as well as Land and Building Acquisition Fee of 5% (five percent) of the auction principal after deducting a tax-free value determined by each regional government where the goods

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are located, Poor Money collected based on Article 18 of the VenduReglement of 0.7% (zero point seven percent) for movable goods and 0.4% (zero point four percent) for immovable goods.

5. CONCLUSION

The Constitutional Court issued Constitutional Court Decision Number 18/PUU-XVII/2019, which states that executing fiduciary collateral objects through the Court is an alternative step for creditors. This method can be taken if no agreement on default is reached between the creditor and the debtor. If there is no such agreement, the creditor may not execute the collateral object but must apply for execution by the Court. Creditors who submit an execution through the Court may not manage it themselves, but the Court must carry it out through a bailiff. If examined closely, Constitutional Court Decision No. 18/2019 is more related to the execution processes, which can be chronologically placed in the period before the auction or pre-auction. The background to applying for judicial review of the Fiduciary Law by the Applicants to the Constitutional Court illustrates this. The decision by the Panel of Judges of the Constitutional Court also provides an interpretation of the process of executing fiduciary collateral between creditors and debtors, which occurs before the creditor applies to sale by auction to KPKNL.

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