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Case Analysis of Forced Seizure of Fiduciary Collateral Due to Non-Performing Loan Financing (Case Study of Decision Number 36/Pdt.G.S/2023/PN Pdg)

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ABSTRACT
Financial institutions are entities that aim to provide financial facilities to the public whose basic purpose is to raise funds and channel them into loans or credit, because financial institutions need legal certainty, then the Fiduciary Guarantee is present. This study aims to determine the legal protection obtained by debtors and creditors in the forced takeover of Fiduciary Guarantee Objects for bad credit financing and to understand the judge's consideration in realizing legal protection and justice in Decision Number 36/Pdt.G.S/2023/PN Pdg. The research method used in this research uses normative legal research methods which are studied using primary, secondary, and tertiary legal materials.
The results of the research and analysis obtained in the first study are that the agreement made by the debtor and creditor will create an obligation that must be fulfilled. If one of the parties is unable to fulfill it, it will be declared a default. The definition of default has been explained in 1243 KUHPer and is again discussed in the Fiduciary Guarantee Law. However, in the Law there is a vague understanding of default and the power of execution of the Fiduciary Guarantee Object. Because, the Fiduciary Guarantee Object can only be executed if there is an act of default and the act must be contained in the agreement. Thus, if the Fiduciary Guarantee Object is executed without explaining the understanding of default and executorial power in the agreement, then the execution will be classified as an act of forced takeover. The second research result is that PT Maybank is prosecuted and punished for the forced takeover of the Fiduciary Guarantee Object and unlawful acts against the Guarantee Object belonging to Yurneli Darti and Dwiki Maulana due to bad credit financing. Where, the consideration of the Panel of Judges is based on the Constitutional Court Decision Number 18 / PUU-XVII / 2019 which indirectly weakens the creditor's right to execute the Fiduciary Guarantee Object.

Introduction

An ancient Greek thinker, Aristotle (384-322 BC) stated in his teaching that humans are Zoon Politicon, so humans are seen as social creatures (Zulyadi, 2021). Humans will grow from babies to adults who will instinctively seek prosperity, peace, and happiness. Some humans believe that money can buy happiness and there are actually some situations that money can realize happiness.

Albert Gailort Hart is of the view that money symbolizes wealth that is used to pay off arrears according to a specific amount and time. So that in his understanding money will play a role in accordance with its function as money, not due to other functions (Adinugraha et al., 2023; Challoumis, 2023; Rosyda, n.d.).Typically, money acts as an intermediary in the exchange of goods for goods in order to avoid trade that carries out the barter process.

When talking about money, it will always be related to debt and credit, whose existence has been very cultured in the community. This is because debts and credits are indiscriminate regardless of one's financial health. In fact, debt is given on the basis of the integrity of the debtor (borrower) by creating a sense of trust in the creditor (providing loans) to be able to pay off all obligations properly and in accordance with what has been agreed upon. However, not all debtors are able to fulfill their obligations.

In order to realize the certainty that the debtor will pay his debt, collateral arises which is intended to reverse the value of the debt that has been given by the creditor. Coupled with the needs of a very dynamic society in the financial sector, especially in business or trade activities. So a guarantee is needed for creditors as a form of vigilance in order to avoid the risk of bad credit. With the existence of collateral, there will automatically be confidence and security for the creditor for the credit provided as referred to in Law Number 42 of 1999 concerning Fiduciary Guarantees which will hereinafter be referred to as UUJF (Hirwansyah & Heber Ambuwaru, 2023; Koto & Faisal, 2021, p. 775).

Initially, fiduciary guarantees emerged due to the encouragement of people who needed collateral due to the weakness of the pawn guarantee institution which required the object of collateral to be physically handed over to the creditor. This guarantee has been used since the Dutch East Indies era as a form of security institution that arose due to jurisprudence that allowed the fiduciary grantor to control the pledged object to carry out the business activities to be financed by the borrower.

Thus, the regulation of fiduciary guarantees came into existence in 1999 with Law No. 42/1999 as a solution. Fides, which means trust, is the original meaning of fiduciary. The definition reflects that the debtor and creditor have a legal relationship based on trust (Hartanto, 2020, p. 79). Because finance companies that provide facilities in the form of credit or periodic installments have a high risk. Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that:

"Fiduciary is the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object".

Meanwhile, Article 1 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees explains:

"Fiduciary Guarantee is a security right over movable objects, both tangible and intangible, and immovable objects, especially buildings, which cannot be encumbered by mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights, which remain in the control of the Fiduciary, as collateral for the repayment of certain debts, which gives the Fiduciary Recipient priority over other creditors".

Understanding that fiduciary security rights and mortgage rights are different types of rights, but there are still many people who do not understand the differences between them. Where the main point of difference is that mortgage rights are guarantees that are imposed on land rights with objects related to land with services that can be done electronically, which is motivated by the government's efforts to achieve Indonesia's Ease of Doing Business (EODB) ranking (Sitompul & Siahaan, 2024, p. 20).

In actuality, the majority of debtors who do not manifest their obligations as previously agreed are interpreted as unlawful acts as intended in Article 1365 of the Civil Code:

"Every unlawful act which causes damage to another person, obliges the person who caused the damage through his fault to compensate for the damage."

One of the cases of unlawful acts regarding the Fiduciary Guarantee Object can be seen in Decision Number 36/Pdt.G.S/2023/PN Pdg. Where this case began when PT Maybank Indonesia Finance Padang Branch as the creditor or in the decision is referred to as as the defendant, which will hereinafter be referred to as PT Maybank, provided a financing facility for the purchase of a motorized vehicle 1 unit of Toyota Raize-1000T G CVT One Tone Car with frame number MHKAA1BA7MJ0006977, police plate number BA 1139 PQ on credit to Yurneli Darti as the debtor or in the decision referred to as Plaintiff 1.

In Agreement Number: 57501210698, Yurneli Darti has an obligation to pay installments of the purchase of the Fiduciary Guaranteed Object for 72 months which are due every 21st and starting from September 21, 2021 to August 21, 2027 with installments of IDR 3,743,000/per month. So that the total that must be repaid by Yurneli Darti after 72 months is IDR 269,496,000.

In the Fiduciary Guarantee Object documents such as the Motor Vehicle Owner's Book (BPKB) and Motor Vehicle Number Certificate (STNKB) listed are the names of the debtor's son, Dwiki Maulana or in the decision as Plaintiff II. During the installment period, Yurneli Darti has paid 24 months of installments or Rp 89,832,000. However, on the 25th and 26th installments Yurneli Darti was late in paying installments.

Due to the delay, PT Maybank sent Somasi I to Yurneli Darti and not long after that Yurneli Darti paid the 25th installment. So, the total installment that is still in arrears is the 26th installment. On November 21, 2023, two people came to Yurneli Darti's house and introduced themselves as the defendant. Where the purpose of their arrival is to offer a year-end program that aims to ease

customer installments by inviting Yurneli Darti to come to the PT Maybank office and this is a statement from Yurneli Darti.

The next day, Dwiki Maulana along with his children, wife, and the Object of Fiduciary Guarantee came to the office. At that time, only Dwiki Maulana entered PT Maybank's office while his child and wife were in the car which became the Object of Fiduciary Guarantee. When Dwiki Maulana entered and met one of PT Maybank's parties, Dwiki Maulana was given a letter that was closed on his letterhead and PT Maybank directed Dwiki Maulana to sign the letter.

When Dwiki Maulana opened the letterhead, it was clearly written that the letter given by PT Maybank was a Vehicle Receipt Letter. At that time, Dwiki Maulana immediately left PT Maybank's office and realized that his children, wife, and all items in the Fiduciary Guarantee Object were scattered on the floor while the Fiduciary Guarantee Object was no longer there.

Therefore, from this case, the aspect that needs to be examined is the legal protection obtained from the litigants, both debtors and creditors. Article 15 paragraph (2) of the UUJF explains that the Fiduciary Guarantee Certificate has the same executorial power as a court decision that has obtained permanent legal force. One of these articles very firmly provides legal protection for creditors who are entitled to execute.

However, in the Supreme Court Decision No. 18/PUU-XVII/2019, it is explained that objects in collateral cannot be executed alone if there is no agreement between the debtor or creditor. Where the contents of the decision clearly have the potential as legal protection that will be utilized by the debtor as an effort to prevent the execution of the security object.

Therefore, in deciding a case the Panel of Judges needs to uphold justice. One of the tools that can be applied to assess and ensure the balance of a decision is Pancasila, more precisely the contents of the 5th precept. The Panel of Judges must be able to assess and consider all evidence and explanations provided by debtors and creditors before deciding the case.

However, it is not one party that is obliged to obtain justice, but justice must be shared proportionally so that each party can and is entitled to obtain justice. Although the contents of the UUJF aim to provide legal certainty for debtors and creditors, the realization may not necessarily reflect justice for them. Because it is not necessarily the debtor who suffers losses, but the creditor himself has the potential to experience it. Therefore, the role of the court is also needed, especially the judge in deciding a case to realize and uphold legal certainty and justice in deciding a case.

Material and Methods

This research is based on literature studies, including books, laws and regulations, as well as binding documents such as court decisions that have been inkracht van gewjisde, which are relevant to the focus of this research. The selection of a normative legal approach will be considered because this research systematically analyzes civil cases related to the forced takeover of Fiduciary Guarantee Objects due to bad credit from the perspective of legal certainty and justice with a focus on Decision Number 36/Pdt.G.S/2023/PN Pdg. This research uses data types of primary legal materials, secondary legal materials, and tertiary legal materials which will be collected through

literature study research, then an approach will be taken to laws and regulations and cases, which will then be analyzed qualitatively.

Research Results and Discussion

How is the form of legal certainty for debtors and creditors over the forced takeover of Fiduciary Guarantee Objects caused by bad credit financing?

Culpae Poena Par Esto, which means that the punishment should be proportional to the act (Babayigit, 2023; Topan, n.d.). The meaning of the adage seems to describe the contents of Article 28 D paragraph (1) of the 1945 Constitution, which in essence means that everyone has the same rights to recognition, guarantees, legal protection, fair legal certainty and equal legal treatment, so that everyone has their own fortress of defense because the punishment imposed must be appropriate regardless.

To state that there is an existence of legal certainty can only be stated if it at least reflects the principles of lex scirpta and lex certa. Where the principle of lex scripta is a punishment based on the Law or based on written law, while the principle of lex certa is a principle where the legislator must be able to explain clearly without being vague so that there is no ambiguous formulation.

Where the binding that arises between the creditor and the debtor arises due to the existence of a credit agreement between them, where the definition of credit itself has been explained in Article 1 paragraph (12) of Law Number 7 of 1992 concerning Banking, which basically means credit is a provision or bill based on borrowing and lending agreements and there is an obligation to pay off the debt after a certain period of time.

To provide credit loans, there are several principles that need to be considered, such as the principle of trust, the principle of prudence, the 5 C principle (Character, Capacity, Capital, Condition of Economy, and Collateral). Because in a fiduciary guarantee agreement the fundamental thing before an agreement is made is the trust that each party has in making an agreement.

Therefore, it is clear from the agreed agreement and the trust that is owned that if the debtor defaults, the creditor has the right to collect the debt from the debtor because the agreement has been agreed by both parties, where the basis of this right is based on the existence of an agreement, creating an obligation arising from this relationship as referred to in Article 1313 of the Civil Code.

Where with the existence of the obligation, the rights and obligations that must be fulfilled by each party are born due to the agreement made will be binding like a law for each party (pacta sunt servanda) by taking into account the contents of Article 1338 of the Civil Code which basically states that agreements made in accordance with the Law and apply as Law for those who make them, where the agreement cannot be withdrawn other than by mutual agreement or for reasons specified in the agreement with the agreement must be carried out in good faith.

In making an agreement, there is Article 1320 of the Civil Code which can be used as legal certainty and legal protection for debtors or creditors, where the contents of the article regulate the validity of an agreement must fulfill 4 conditions. If the first and second conditions are not met, the agreement can be canceled or canceled since it is declared void, while if the third and fourth

conditions are not met, the agreement will be null and void or considered never to have existed. Thus, this article can be used as legal certainty for both debtors and creditors if there is an agreement that does not meet the requirements of Article 1320 of the Civil Code and can cause losses and problems in the future.

As previously explained, there is the principle of pacta sunt servanda in an agreement, where the basis of the principle contains: (Wahyuna, 2023)

1) An agreement is a law for the parties that make it.
2) Implying that the denial of the obligations that exist in the agreement is an act of breaking the promise or default.

Thus, the principle of pacta sunt servanda also reflects legal certainty for parties who suffer losses due to the other party not carrying out the agreement or previously agreed upon achievements by not carrying out the achievement, then the act can be said to be in breach of promise or default. The definition of default has been explained in Article 1243 of the Civil Code, which basically means that a person can be declared negligent if after there is a statement of negligence or Somasi from the creditor against the debtor, so that a person will be considered in default if : (Wahyuna, 2023)

1) Not carrying out achievements;
2) Carry out achievements but late;
3) Perform the performance but not as promised; or
4) No cash to fulfill achievements.

So that it can be concluded that if the agreement between the creditor and the debtor has agreed on the implementation of the work, then with the passage of time the debtor will be deemed to have defaulted, whereas if the agreement does not agree on the time for carrying out the work, the creditor is obliged to give a warning/somasy/statement of negligence to the debtor in advance to carry out his obligations in accordance with the agreement (Wahyuna, 2023).

So with the passage of time the performance has been warned by the debtor to carry out the performance but the obligation is still not carried out, the debtor who commits an act of default will bear all the consequences of default. Where the creditor can claim compensation and other costs for the implementation of the work that has been carried out to the debtor (Wahyuna, 2023).

In this case, if analyzed more deeply, this provision provides legal certainty to the creditor to be able to claim compensation or costs incurred due to default committed by the debtor, by considering the debtor's actions that meet the characteristics or forms that can be classified as default. However, legal certainty will not always be directly addressed to the creditor, but the debtor is also entitled to legal certainty because the debtor who is accused of default must be given the opportunity to submit stances or self-defense, namely: (Sinaga & Darwis, 2020)

1) Non-fulfillment of the agreement (default) occurs due to force majeure (overmacht):

In accordance with the contents of Article 1244 of the Civil Code which reads:

"The debtor shall be liable to pay costs, damages and interest. If he cannot prove that the

non-performance of the obligation or the inaccurate time in performing the obligation was caused by an unforeseen event, which cannot be attributed to him. Even if there is no bad faith on his part".

Then, Article 1245 of the ICC also explains that:

"There is no reimbursement of costs, losses, and interest. If due to force majeure or by chance, the debtor is prevented from giving or doing something that is required, or doing an act that is forbidden to him".

The force majeure in question is a situation where the debtor cannot perform his performance because there is an event that is beyond his power, because the event was not expected to occur when making an agreement.

2) Non-fulfillment of the agreement (default) occurs because the other party also defaults.
3) Non-fulfillment of the agreement (default) occurs because the opposing party has waived its right to the fulfillment of the performance.

So that from the explanation that has been conveyed previously, it can be used as a parameter regarding actions that can be classified as acts of default, but what needs to be considered is that even though one party makes a default, his interests must still be protected to maintain balance so as to create legal certainty for them. There is legal certainty that needs to be applied, namely : (Sinaga & Darwis, 2020)

1) With certain mechanisms in terminating the agreement so that the termination of the agreement is not carried out arbitrarily even though the other party has defaulted. Then the law determines the mechanism, namely:
   a) Obligation to execute a summons (Article 1238 of the Civil Code)
   b) Obligation to terminate reciprocal agreements through the court (Article 1266 of the Civil Code)
2) Restriction to terminate the agreement. If one party has made a default, then the other party to the agreement has the right to terminate the agreement. However, the right to terminate the agreement by the injured party due to default needs to pay attention to several juridical restrictions, namely:
   a) Default must be serious, where the mechanism that determines the extent to which a default is serious or not against an agreement by looking at:
      (1) Seeing whether there are provisions in the agreement that emphasize the performance of obligations that are periodically considered as an act of default against the agreement, or
      (2) If there is a provision in the agreement, then the judge can determine whether the non-performance of the obligation is serious enough to be considered a default of the agreement in question.
   b) The right to terminate the agreement has not been waived. Waiver of the right to terminate the contract has legal consequences. The loss of the right to terminate the agreement and does not affect the receipt of compensation. In principle, the waiver

of the right is carried out by the party who is harmed by the act of default can be done in two ways, namely done expressly and done by action.

c) Termination of the agreement is not too late
d) Default is accompanied by an element of fault:
   (1) If there is an element of "fault" required to provide compensation, then the element of "fault" is also required to exercise the right of the injured party to terminate the agreement.
   (2) In principle, the termination of an agreement is at the discretion of the court.

Because the fiduciary deed is an official document that is used as a legal basis for execution so that if the creditor is unable to present the original fiduciary deed, the debtor can refuse to withdraw the goods. Where the implementation of the title of execution by selling the Fiduciary Guarantee Object through auction is usually carried out using Parate Execution. Parate Execution is an execution without the need to involve the court, so that parate execution is the authority given by law or court decisions to creditors to carry out independently the execution of the Fiduciary Guarantee Object in accordance with the contents of the agreement if there is a party who is in breach of promise or default (Aulia, 2022).

The implementation of title execution contains 2 main requirements, namely that the debtor has committed a breach of promise and has a fiduciary guarantee certificate with the inclusion of "For the Sake of Justice Based on God Almighty". However, although the procedure for executing a Fiduciary Security Object has been explained in the UUJF, the Parate execution referred to above has changed in line with the Constitutional Court Decision No. 18/PUU-XVII/2019.

Until finally in the decision, the Constitutional Court stated that Article 15 paragraph (2) of the UUJF that the phrase "executorial power" and the phrase "the same as a court decision that has permanent legal force" are contrary to the 1945 Constitution and have no legal force as long as they are not interpreted as "against fiduciary guarantees where there is no default agreement and the debtor objects to voluntarily surrendering the object that is the fiduciary guarantee, then all mechanisms and legal procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force".

Then, Article 15 paragraph (3) of UUJF along the phrase "breach of promise" is contrary to the 1945 Constitution and has no legal force as long as it is not interpreted that "the existence of a breach of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal efforts that determine the occurrence of a breach of promise".

Then, Article 15 paragraph (2) of the UUJF along the phrase "executorial power" is contrary to the 1945 Constitution and has no legal force as long as it is not interpreted as "for fiduciary guarantees there is no agreement on default and the debtor objects to voluntarily surrendering the object that is a fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision that has permanent legal force".

How are the considerations of the Panel of Judges in deciding the decision to realize legal certainty and justice for the forced takeover of the Fiduciary Guarantee Object caused by bad credit financing in Decision Number 36/Pdt.G.S/2023/PN Pdg?

Fiat justitia ruat coelum which means that even if tomorrow the sky will fall, even if the world will perish, or even if it has to sacrifice goodness, justice must still be upheld (Tim Hukum Online, 2024). The meaning of the adage provides a directive view that the law in a country must still uphold justice and one of them is a judge who is trusted as a justice enforcer due to the authority given to decide a case as fair as possible.

In deciding a case, what needs to be considered is how the judge gives his consideration, because the judge must be able to hear and consider all evidence and statements before the trial as one of the adages describing the role of the judge is audi et alteram partem which means that the parties must be heard when the trial begins, the judge must hear from both parties to the dispute, not just one party (Tim Hukum Online, 2024).

If it is reviewed that the theory of justice that will be a reference for researchers is the 5th Pancasila principle which reads "Social Justice for All Indonesian People" with the aim of emphasizing and explaining that social justice is very important in society, so that the existence of this principle will encourage a fair and equitable distribution of both resources and opportunities given to all Indonesian people.

The main issue in the decision is caused by the overdue installment payments when referring to the Agreement Number: 57501210698, where Yurneli Darti is obliged to pay installments for 72 months which will be due every 21st with the amount of installments of Rp 3,743,000 / month with a total installment that needs to be paid off by Yurneli Darti is Rp 269,496,000.

Referring to the trial facts, Yurneli Darti has paid 24 months of installments starting from September 21, 2021 to August 21, 2023, with overdue installments being the 25th installment and 26th installment and according to the statement from Yurneli Darti the reason for the delay has been conveyed to the collection employee, namely Fauzi.

Although Yurneli Darti has informed the delay, PT Maybank still sent Somasi I on November 03, 2024 with the essence of the letter ordering Yurneli Darti to pay the 25th and 26th installments, so with the Somasi I, Yurneli Darti sent the 25th installment on November 07, 2024 in the amount of Rp 2,000,000. However, as previously stated that the monthly installment amount is Rp 3,743,000, so Yurneli Darti still has arrears of the 25th installment and 26th installment.

Then on November 08, 2024 PT Maybank again sent Somasi II with the essence of the letter the same as Somasi I and with the receipt of Somasi II, Yurneli Darti again sent the shortage of the 25th installment of Rp 1,743,000, so that Yurneli Darti's installment arrears were the 26th installment which was due on October 21, 2023.

Then, according to the statement of Yurneli Darti and Dwiki Maulana that on November 21, 2023 there were 2 people who came to their house claiming that they were parties from PT Maybank who came with the aim of offering a year-end program to ease the burden of Yurneli Darti and Dwiki Maulana, so that due to this offer Dwiki Maulana came to the PT Maybank office with the intention of paying late installments and wanted to participate in the program in question.

Upon arrival at PT Maybank's office, the execution of the Fiduciary Guarantee Object was carried out suddenly and based on Dwiki Maulana's statement that he did not sign the Vehicle Receipt Slip given to PT Maybank at all, so that in the opinion of Yurneli Darti and Dwiki Maulana as the aggrieved party because the Fiduciary Guarantee Object was forcibly seized, giving material and immaterial losses.

After the incident of withdrawing the Fiduciary Guarantee Object, Fauzi again sent a document via Whatsapp (WA) regarding the Last Debt Repayment Obligation on November 24, 2023 with the purpose of the letter stating that PT Maybank refused to continue the Credit Agreement and ordered Yurneli Darti and Dwiki Maulana to pay the remaining debt of Rp 182,305,000 and if the obligation was not fulfilled, PT Maybank would sell the vehicle according to the prevailing market price.

Therefore, from the brief above, it illustrates that the core of the lawsuit of Yurneli Darti and Dwiki Maulana is the unlawful act committed by PT Maybank by executing the Fiduciary Guarantee Object without notice and without permission from them, although there are some of their statements that are denied by PT Maybank.

With the statement conveyed by PT Maybank, they invited Yurneli Darti to come to the office so that they voluntarily handed over the Fiduciary Guarantee Object, but the one who came to the office was Dwiki Maulana. Then, it can be seen that the reason for the withdrawal of the Fiduciary Guarantee Object is certainly caused by Yurneli Darti's negligence as a debtor to carry out his obligations or his performance as implied in the agreement letter.

By referring to the payment records that have been displayed in the trial that basically and based on the proof of payment received by PT Maybank, that Yurneli Darti has indeed neglected to carry out the obligation to pay installments in accordance with the agreed time frame and her actions that often make delays are not the first time she has done, but her negligence in carrying out her obligations has been negligent since the payment of the 3rd installment to the 26th installment.

Due to the negligence of the delays that he often does, he is obliged to pay the fines incurred in the amount of Rp 11,724,300, so for Yurneli Darti's actions that are proven based on the facts of the trial prove that he has been negligent in fulfilling his obligations when referring to Article 1338 of the Civil Code, because the ties arising in the agreement will become the law for each party (the principle of pacta sunt servanda).

By paying attention to Article 1320 of the Civil Code which contains the conditions that need to be met to declare the agreement valid before the law, where based on the facts of the trial Yurneli Darti has agreed to make an agreement in accordance with the contents of the Agreement Letter Number: 57501210698 with proof of signature so that the first condition has been fulfilled and the parties, namely PT Maybank and Yurneli Darti, are legally capable, then the second condition is fulfilled and there is a certain issue, where based on the agreement letter Yurneli Darti obtained a Fiduciary Guarantee Object financing facility in the form of a Toyota Raize car so that it fulfills the third condition, while the fourth condition is also fulfilled because in the agreement there is no unlawful cause because the agreement is a multipurpose financing agreement.

Thus, the validity of the agreement that arises between them causes the enactment of the principle of pacta sunt servanda which should be the content of the agreement will be binding for both parties and become law for them, so that if there is a party who neglects to carry out his obligations, he can be declared to have committed an act of default. The meaning of default itself has been defined in Article 1238 of the Civil Code and Article 1243 of the Civil Code, which basically states that a person can be declared negligent if he obtains a Somasi, does not perform the performance, performs the performance but is late, performs the performance but not as promised, and does not cash fulfill the performance.

In addition, Yurneli Darti and Dwiki Maulana's statement that the actions taken by PT Maybank are contrary to legal provisions as explained in the Constitutional Court Decision which states that Article 15 paragraph (2) of the UUJF contains the phrase "executorial power" and the phrase "the same as a court decision with permanent legal force" is contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted "for fiduciary guarantees where there is no default agreement and the debtor objects to voluntarily surrendering the Fiduciary Guarantee Object, then all mechanisms and legal procedures in carrying out the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision with permanent legal force".

Then the contents of Article 15 paragraph (3) of the UUJF are contrary to the 1945 Constitution and do not have binding legal force if it is not interpreted that "the existence of a breach of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or the basis of legal remedies that determine the occurrence of a breach of promise", Therefore, based on the understanding of Yurneli Darti and Dwiki Maulana, they conclude in their argument that "in carrying out the execution of the Fiduciary Guarantee Object, it cannot be executed alone (Parate Execution), if there is no agreement between the creditor and the debtor either related to default or voluntary surrender of the security object from the debtor to the creditor, then the execution cannot be carried out alone but rather submit a request for execution to the District Court".

Therefore, based on the results of the Constitutional Court Decision, it can be assessed that PT Maybank has the right to execute the Fiduciary Guarantee Object because there is an agreement regarding default, namely in Article 10 paragraph (1) and there is an explanation that if there is a default, PT Maybank has the right to execute, so that the lawsuit submitted by Yurneli Darti and Dwiki Maulana is no longer legally valid because it does not fulfill and is not in accordance with the contents of the ruling of the Constitutional Court.

Then, in the answer given by PT Maybank, it was explained that in carrying out the execution, the services of PT Putra Panglima Nusantara were used in accordance with Power of Attorney Number 575RAL20231100488 dated November 20, 2023, where in the letter PT Maybank gave the right to PT Putra Panglima Nusantara to visit the homes of Yurneli Darti and Dwiki Mualana to convey that they had to submit the Fiduciary Guarantee Object voluntarily at the PT Maybank office.

However, the Panel of Judges did not consider this answer: that the withdrawal of the

Fiduciary Guarantee Object was not an unlawful act, and PT Maybank did not forcibly seize it. Instead, it informed Yurneli Darti and Dwiki Maulana to voluntarily surrender the Fiduciary Guarantee Object.

Thus, in this context, the Panel of Judges has still not been able to realize the intent of the Audi et al. team partem adage because the Panel of Judges did not consider PT Maybank's statement at all, while Yurneli Darti and Dwiki Maulana claimed and stated that PT Maybank had committed a tort.

Conclusion

Legal certainty is a right that is owned by everyone, as the meaning of the adage Culpae Poena Par Esto seems to describe the contents of Article 28 D Paragraph (1) of the 1945 Constitution. The Fiduciary Guarantee will inevitably give rise to an engagement so that the bond aims for each party to carry out and fulfill all of its obligations by the contents of the agreement or the principle of pacta sunt servanda. However, the agreement made is not necessarily declared valid in the eyes of the law if the contents of Article 1320 of the KUHPer are not fulfilled. If, from the agreement made, a party does not carry out its performance, he will be considered in default. Even though the definition of default has been explained in Article 1243 of the Civil Code, there are still multiple interpretations of its meaning so that it has the potential to cause disputes, so that finally the definition was emphasized in the UUJF and the Constitutional Court Decision Number 18 / PUU-XVII / 2019 which again provided additional fortifications to each party so that they get better legal protection.

The UUJF and the Constitutional Court Decision reaffirm that the debtor still has the right to execute the Fiduciary Guarantee Object if there are arrangements regarding default in the agreement, in other words, the creditor has executorial power. Meanwhile, the debtor has the right to refuse execution if there is no arrangement regarding default in the agreement so that the legal effort that must be made is to file a lawsuit to the District Court, which reflects that the Fiduciary Guarantee Certificate no longer has executorial power, even though the certificate contains the phrase "For the Sake of Justice Based on God Almighty" so that all efforts made by the creditor to make an effort to execute will be considered an unlawful act.

Justice will be fulfilled if the sound of the 5th principle of Pancasila, which reads "Social Justice for All Indonesian People," is implemented. In this case, there is still a void of legal protection and justice for PT Maybank, where PT Maybank is declared to have committed an unlawful act due to the execution of the Fiduciary Guarantee. This is emphasized by the Constitutional Court Decision, which states that execution cannot be carried out by the provisions contained in the Fiduciary Guarantee Certificate if there are no provisions regarding default in the agreement made, whereas based on the agreement letter of PT Maybank with Yurneli Darti and Dwiki Maulana, the provisions regarding default have been explained in Article 10 paragraph (1) and paragraph (2). However, the Panel of Judges did not consider this, thus creating a loss of legal protection and justice that PT Maybank should have obtained.

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