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Juridical Protection For Debitors From Execution Of Other Fidusion Garanties As Particular To Credit

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Abstract

Following the decision of the Constitutional Court No. 18/Law-XVII/2019, The execution of the security of the trust is no longer carried out unilaterally by the creditor by concluding unilaterally that there has been a breach of the promise on the trust security agreement. The ruling of the MK as a form of legal protection of the debtor's rights which are often neglected and deprived by the creditor by concluding unilaterally that debtor has been discharged. Thus, the execution of the security of the trust and the declaration of the debtor is no longer unilaterally carried out by the creditor, unless there is agreement between the creditor and the debtor, or there is a judgment of the court, which states that a debtor has lawfully committed an offence or a misconduct, so that the creditor or funding agency can enforce the security of the trust. So, of course, the execution will be easier to carry out if it is done after the Court's Decision. The method of research used approach using the method of regulation of legislation linked to the formulation of the problem discussed in it. Next, the author uses a method of approach using a legislative approach. The benefits of this research are expected to add to the scientific expertise especially in the field of civil law in the execution of security trusts.
Keywords : debtor, execution, security of trust, creditor, legal protection

A. Introduction

Today's rapid, competitive and integrated economic growth of Indonesia with increasingly complex challenges, as well as an increasingly advanced financial system, requires adjustments in the economic spheres including banking and financial institutions. As a result, it boosts the growth of the financing sector. Activities in the area of financing have become one of the most important sectors of economic growth. On the other hand, strengthening the cosmetic character of the Indonesian people has influenced the fertility of the activities in the financing sector. The public's need for certain goods by means of payment of credit or debt opens up the emergence of funding institutions as a party that helps the public in facilitating the financing of specific goods needed.

The Indonesian banks and financial institutions in carrying out their work based on economic democracy using the principle of caution, their main function is as collectors and regulators of public funds aimed at supporting the implementation of national development in

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order to enhance the economic growth, growth, and national stability towards the improvement of the well-being of many people for the realization of the social welfare of the Indonesians.[1]

The high level of public demand for motor vehicles is a special reason for the emergence of third-party funding institutions that help the public (debitor) to buy certain goods from the seller. (kreditur). Motor vehicles are becoming a very important need for society, especially two-wheeled vehicles because of their practicality and efficiency in use and purchase. There have been many emerging financial institutions that give low-interest loans, and there are even financial agencies that offer almost interest-free payments. Financing institutions race to each other to be able to give easy and practical credit to creditors. Financing institutions nowadays use a lot of collateral system, if the debtor cannot pay in time for the vehicle being seized, then the financing party will withdraw or reclaim the vehicle from the possession of the creditor.[2]

The emergence of funding institutions in Indonesia today, almost evenly throughout the region. These funding institutions are not only scattered across the big cities, but have also spread massively in several small cities across Indonesia. It is as a result of the increasing transportation needs of the public to be able to meet the needs of their lives so created mutually beneficial mutual relations between the funding institutions as the provider of payment with the people who apply for credit to buy vehicles. With the large number of funding institutions in Indonesia today, there are many unregistered funding agencies that have resulted in financial losses to the state. It was by the Chief Executive of Non-Banking Financial Industry (IKNB) of the Financial Services Authority (OJK) Firdaus Djaelani that "the results of the inspection of BPKP and KPK showed that motor vehicle financing activities have a potential state loss of up to 30 billion rupees from the unregistered trust."

In the world of trade, credit can be given in the form of money, goods or services. Regardless of any form of credit, there is a guarantee that the creditor will get his money back, assuming that the money will be returned in time. If the payment is not made, then he will try to obtain the exhaustion of the debtor's wealth.[3]

The custom of today's Indonesian people is to buy a commodity with payment in due course. It's not just done by the middle and upper economies, but it's taken from the bottom to the bottom as an alternative. For those who are under average economic conditions, this

[1] Muhamad Djumhana, 2000, *Hukum Perbankan di Indonesia*, PT. Citra Aditya Bakti, Bandung, pg.525
[2] Oey Hoey Tiong, 2006, *Fidusia Sebagai Jaminan Unsur-Unsur Perikatan*, Ghalia Indonesia, Jakarta, pg.66-67.
[3] *Ibid,* pg.67.

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method is very helpful in dealing with the need for the desired goods, including the need of the vehicle by paying it in cash or credit. So the best way to solve the problem for the buyer who cannot afford to buy the necessary goods in cash, is through the consumer financing agency, where the sale agreement the payment is made in batches or periodically.

A security is something given by a debtor to a creditor in order to give rise to the belief that the debtor will meet an obligation that can be measured with the money arising from an alliance. Therefore, "the law of guarantee is very strict with the law of things".[4] This guarantee is the absolute right to something that has characteristics and has a direct connection to a certain thing of the debtor and can be retained to anyone or follow its mark and transferable. One of these guarantees is the trust guarantee agency.[5]

The debtor's financing agreement with the financing company is a debt agreement between the finance company and the debtor. The financing company has paid the price of goods required by the debtor to the dealer/store and the financing firm handed over the goods to the Debtor on the basis of the belief that the debtors will pay in batches/percentage of the prices of such goods until payment in accordance with the size of the batch and the time period of payment as established by agreement between the finance company and debtor.[6]

In the practice of implementation in the society, the bonding of assets by means of a trust guarantee agency is often used by banks or motor vehicle financing companies in a credit agreement. In principle, in a credit agreement either by a bank or by a financing company, the bonding of the asset by means of a trust guarantee agency is intended to secure the assets of the bank/company granted to the debtor through a loan agreement from the risk that the debtors are unable to repay their debts to the bank or the financing firm. Thus, it can be said that the binding of an object by means of a trust guarantee agency is an accessory agreement, in which the credit agreement is first implemented as the principal agreement.[7]

According to Salim HS, an object guaranteed by a trust is a moving object consisting of items in inventory, merchandise, mortgage, machinery and motor vehicles. But under Act No. 42 of 1999 on Trust Guarantee, the object of trust guarantee can be divided into two:[8]

1. Moving things, whether real or non-real and,

[4] Gunawan Widjaja & Ahmad Yani, 2000, *Jaminan Fidusia, Raja Grafindo Persada Jakarta*, pg.8
[5] *Ibid,* pg.10.
[6] Faisal Darwanto, 2006, *Sekilas Tentang Perjanjian Sewa Beli Sebagai Perjanjian Tak Bernama*, Rajawali Press, Jakarta, pg.15.
[7] Gunawan Widjaja & Ahmad Yani, *Op. Cit.* pg.104
[8] Salim HS I, 2014, *Perkembangan Hukum Jaminan Di Indonesia, Raja Wali Pers*, Jakarta. pg.64

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2. Objects are not moving, especially buildings that are not burdened by the right of possession.

The debtor's financing agreement is a motor vehicle, especially a car, then the financing company will implement the bonding of the object of the trust guarantee on the car that has been handed over to the debtor. Pursuant to the provisions of Article 1 of the Regulation of the Minister of Finance No. 130/PMK.010/2012 concerning the Registration of Trust Guarantees for Financing Companies that Finance Motor Vehicles with Trust Guarantee, affirms that: 1) The Financing Company that carries out debtor financing for motor vehicles with the charge of a trust guarantee is obliged to register such trust guarantees with the Trust Registration Office, in accordance with the laws governing the trust guaranty. 2) The obligation to register a trust guarantee as referred to in paragraph (1) also applies to the Funding Company that does so.: a. Financing of motor vehicle debtors based on the principle of Shariah; and/or; b. Financing of motor vehicle debtors whose funding comes from financing; c. Channeling or joint funding (joint financing).[9]

On the basis of the above provisions, it may be concluded that the goods that may be included in the movable objects that can be bound by the Trust Guarantee include motor vehicles, trucks/heavy tools, office equipment, gold, and other valuable goods which are movable in nature. (mobile). A security agreement for a movable object in a credit agreement generally means that the debtor as the owner of the security still wishes to dispose of its assets for use in the conduct of its activities and business activities. Therefore, according to the provisions of the Act No. 42 of 1999 on the Guarantee of Trust, the granting of a trust is carried out through a process called the "Constitutum Prossesorium" or as a surrender to the choice of the object without the physical transfer of the goods.[10]

The purpose of disclosure of the vehicle that has been handed over to the debtor is to secure the creditor on the agreement that he has made against the risk of the blockage of the part or transferred by him the car which has been bound with the security of the trust. By bound the object of security of trust that is the car in an agreement of binding security of a trust in the implementation of such financing and registered it to the territorial office of the Department of Law and Human Rights.[11] Thus, the description of the object that is the object

[9] *Vide* Pasal 1 Peraturan Menteri Keuangan Nomor: 130/PMK.010/2012 Tentang Pendaftaran Jaminan Fidusia Bagi Perusahaan Pembiayaan Yang Melakukan Pembiayaan Untuk Kendaraan Bermotor Dengan Pembebanan Jaminan Fidusia.
[10] Munir Fuady I, 2005, *Pengantar Hukum Bisnis, Menata Bisnis Modern di Era Global*, Citra Aditya Bakti, Bandung, pg.36.
[11] *Vide* Pasal 11 Undang-Undang No. 42 Tahun 1999 tentang Jaminan Fidusia.

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of the Trust Guarantee must be clear in the trust guarantee act, both the identification of the item, as well as the explanation of proof of ownership, and for the inventory item that is constantly changing and or must still describe the type of the material, the brand and the quality of the product.[12]

According to the provisions of articles 11 and 12 of the Act No. 42 of 1999 on the security of trust, requires that movable objects that are loaded with security, must be registered at the trust registration office. These provisions stipulate that any security agreement must be made in the form of an act agreement authenticated by a notary and obliged to be recorded, then a trust agreement made with a contract under the hand that is only known to both parties or made by both parties alone is not in accordance with the latter, then the implications of the trust agreements made have no force as a treaty, this has been explicitly regulated in Article 15 (3) of the Law No.42 of 1999 concerning the guarantee of trust.

From the provisions of article 27, paragraphs (1), (2) and (3) of the Act No. 42 of 1999 on the security of trusts above, it can be said that the creditor of the guarantor of the trusts by law is granted a prerogative from other creditors in terms of taking the disbursement of his debt on the outcome of the execution of the thing that is the object of the security.

A trust guarantee agreement is an agreement that arises as a result of a financing credit agreement. (perjanjian pokok). If the debtor fails to perform, the financial institution may take the debt settlement from the proceeds of the sale of the security goods by conducting a auction against the security object of the trust executed from the debtors. In practice, there is a tendency that the security item of the fidusia will be controlled by the financial institutions by not conduct the auction in accordance with the Act No. 42 of 1999 on the trust, if the debitor is proven to have failed to perform.

A trust guarantee is a follow-up agreement. As a follow-up agreement, then before a trust agreement exists, at least there is a basic agreement that is the parent of a trust guarantee agreement. Pursuant to article 20 of Act 42/1999, it is stipulated that the security of trust remains the object of trust security in the hands of whoever the object is, unless there is a transfer of the item of supply which is the subject of such trust security. In the Explanation of Article 20 of Act 42/1999 it is stated that this provision follows the principle of the "droit de

[12] Munir Fuady, *Op. Cit,* pg.7.

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suite" which is part of the provisions of Indonesian legislation in relation to the absolute right to freedom. (in rem).[13]

If the debtor has committed a liability injury (waprestation), then according to the provisions of Article 15 paragraph (3) of Law 42/1999, the trustee has the right to sell the thing that is the object of the security of the trust in his own possession. However, it should be noted that the phrase "promised injury" is contrary to the Constitutional Law of the Republic of Indonesia of 1945 and has no binding legal force as long as it does not imply that the presence of a pledge's damage is not determined unilaterally by the creditor but on the basis of an agreement between creditor and debtor or on the grounds of a legal effort that determines the occurrence of a promise's loss. This is as decreed by the Constitutional Court in its Decision No. 18/Law-XVII/2019.[14]

Following the ruling of the Constitutional Court No. 18/Law-XVII/2019, the enforcement of the security of the trust is no longer carried out unilaterally by the creditor by concluding that there has been a breach of promise on the trust security agreement. Thus, the execution of the security guarantee and declaration of the debtor is no longer carried out unilaterally by the creditor, except that there must be an agreement between creditors and debtors, or there has been a court ruling that the debtors have legally committed a breach of promise or non-performance, so that the creditors or the financing agency can execute against the security of the trust. Thus, it is interesting to examine further how the legal protection for debtors against the execution of a security of trust unilaterally by the creditor and how the implementation of the security of a trust is based on positive national law.

B. Research Methods

The method of research is understood as a "path to", but the method is normally formulated with possibilities, that is: a type of thought used in research and judgment, or a technique common to science, or certain way of performing a procedure.[15] Research is the search for facts according to clear objective methods, to find the relationship of facts and produce evidence or law.[16] Legal research is an attempt to find and find true knowledge of law, that is, knowledge that can be agreed to answer or correctly solve a legal problem.[17]

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[13] Sigar Aji Poerana, Eksekusi Objek Jaminan Fidusi ajika Debitur Wanprestasi, https://www.hukumonline.com/klinik/a/eksekusi-objek-jaminan-fidusia-jika-debitur-wanprestasi-lt5cd91ec75e844/ accessed on August 13, 2024.
[14] *Ibid*
[15] Soerjono Soekanto, 2016, *Pengantar Penelitian Hukum edisi revisi,* UI-Press, Jakarta, pg.5.
[16] Moh. Nazir, 1998, *Metode Penelitian,* Ghalia, Jakarta, pg.14.
[17] M. Syamsudin, 2007, *Operasionalisasi Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, pg.21.

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The type of research carried out by the author is the type of jurisprudential normative research or Doctrinal Legal Research is the study that discusses a subject of a problem that is connected with the device of the rule of law and other sources of law after it is drawn conclusions between the complexity of the problem with the law that exists in the actualization or its application.[18]

There are some approaches that the author has taken in compiling this research.:

a. Approach by using the method of regulation of legislation associated with the formulation of the issues discussed in it.
b. Next, the author will use a method of approach using a legislative approach.

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Research uses data analysis in a qualitative descriptive way, i.e. by examining the data obtained from the library and selecting other sources that correspond to the object studied, after which it can be concluded and drawn the baseline objectively and systematically in the form of narrative. Based on the research that has been done.

C. Results and Discourse

1. The legal protection of the debtor against the unilateral enforcement of the security of the trust by the creditor

Article 29 of Law No. 42 of 1999 states that execution is the execution of an executive title by a Fiduciary, which means that an execution can be directly carried out without a court ruling process and its legal force is final and binds the parties to execute it[19].

On the basis of the above provisions, in practice it becomes common for the execution of the security of the trust to be carried out unilaterally without a judgment of a judge of a court of permanent jurisdiction.

The foregoing provision implies that in civil matters the term enforcement is an attempt by the creditor to recover his right from the debtor and is forced if a debtor does not voluntarily fulfil a promised legal obligation. In practice, the enforcement of a trust guarantee

[18] Victor Imanuel W. Nalle, *The Relevance Of Socio-Legal Studies In Legal Science*, https://jurnal.ugm.ac.id/jmh/article/view/15905 accessed on August 13, 2024.
[19] *Vide* Pasal 29 Undang-undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia

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can be carried out not only in respect of a judge's judgment, but also as the execution of a Grosse Act or a trust warranty certificate that has been agreed upon by the parties as well as the implementation of a decision by the authorized institution or even the creditor directly.[20]

The main problem arising is with regard to the legal force and legal status of a Trust Guarantee Certificate. Implementation has been interpreted that the Trust guarantee certificate has the same executive force as a court decision that has acquired fixed legal force, on the basis of which the execution of trust guarantee does not require a court ruling, thus the executive title provides the legal basis and legal force for the Trust Recipient to be able to directly carry out execution through a public auction on the object of trust Guarantee without having to go through a court before.[21]

In accordance with the provisions of Article 30 and the explanation of Law No. 42 of 1999 on Trustworthiness, affirms that the object of the trustworthy guarantee is in the possession of the Trustworthy as a characteristic feature of the Fundworthy Guarantee. Which means that the trust guaranteed object can take force from the hand of the trustee to be executed.[22]

Execution of trust guarantees is justified by the Act No. 42 of 1999 on trustworthiness, which can be seen in article 15, paragraph (2) of the Act a quo. Therefore, a trust guarantee certificate using the inscription "For the sake of justice based on the one God" means that its

legal force is equal to that of a court decision with a fixed legal force. These inscriptions give an executive title and mean that the act remains enforced without having to go through a court order.[23]

Execution of a judgment is the execution of the obligation of the party concerned to fulfil the performance contained in the judgement.[24]

Execution is "the effort of the winning party in a judgment to obtain that which is his right by the help of the force of law, forcing the defeated party to execute the judgement[25], R. Subekti further stated, that "the defeated party will not execute the judgment voluntarily, so that the decision must be imposed on him with the help of the force of law".

[20] Abdul Kadir, Muhammad, dan Murniati, Rilda, 2000, *Segi Hukum Lembaga Keuangan dan Pembiayaan*, Citra Aditya Bakti Bandung, pg.1.
[21] Gunawan Widjaja dan Ahmad Yani, *Op. Cit*, pg.150.
[22] *Vide* Pasal 30 dan penjelasan Undang-undang Nomor 42 Tahun 1999 Tentang Jarninan Fidusia
[23] Gunawan Widjaja dan Ahmad Yani, *Op. Cit*. pg.150-151.
[24] Sudikno Mertokusumo, 1989, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, pg.206.
[25] R. Subekti, *Op. Cit*, pg.128.

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Execution is an attempt by a creditor to realize a right forcibly because the debtor does not voluntarily fulfil his obligations. Thus, the execution is part of the process of settling legal disputes.[26]

In article 11 of the Trust Guarantee Act, it reaffirms that:

a. Faith Guarantee Act made compulsory on registration;

b. Trust Guarantee registration covers:

1) Acts of security of the faith that are in the country.

2) Whoever's abroad.

The purpose of this registration is to fulfil the requirement of publicity and openness, concerning all information available in the Registration Office of the Trust open to the public, other than the purpose of the registration of this is as a guarantee of certainty to other creditors about the truth of the thing burdened with the security of the trust. In article 29, paragraph (1) of Act No. 42 of 1999, the grounds for the birth of the right of enforcement are as follows::

a. There is a plague of promises, or the plague that is set forth in the law of the Lord, 1243 among other things :

1) Forgot to fulfill the agreement,

2) Failure to fulfil performance within the specified timeframe.

b. The agreement has been regulated in detail on matters relating to the event of default in the contract. A pledge may be made if the debtor fulfils his debt when it is due, or

if he fails to fulfil his pledges, whether in the treaty or in the guarantee, even if his own debt is not due. One of the forms of this pledge is credit lockdown.

Credit crashes do not occur just suddenly, in most cases there are various symptoms of a decrease in payment terms on a monthly basis. From some of the frequently emerging forms of deviation to the surface there was a debtor's request to extend the term of credit that had been stipulated in the credit agreement initially. In addition, there is a delay in the payment of interest or a loan that has expired.[27]

According to Subekti [28]Divide your performance into four kinds.:

a. Don't do what you're supposed to do.,

[26] Mochammad Dja'is, 2000, *Hukum Eksekusi Sebagai wacana baru dibidang hukum*, Fakultas Hukum Undip, Semarang, pg.7.
[27] M. Bahsan, 2017, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Raja Grafindo Persada, Jakarta. pg.14.
[28] R. Subekti, *Op. Cit*, pg.147.

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b. Do what you have promised, but don't do what you promised.,
c. Do what you promised, but it's too late.,
d. Doing something that the treaty forbids him to do.

Failure to perform occurs when a debtor cannot prove that his inability to perform performance is beyond his fault or, in other words, cannot prove the existence of force majeure, so in this case the debtor is clearly guilty.[29]

The act of non-performance has consequences for the emergence of the right of the injured party to demand the party who has committed the non -performance to pay compensation, so that by law it is expected that neither party will suffer from the default. Failure to perform may occur because:

a. By deliberation,
b. Because of negligence.
c. No mistakes. (without deliberate or negligent)

The basis of the agreement pacta sun servanda which states that agreements made by the parties agreeing, will become the law for both, remain valid and be the primary basis in the law of the treaty. But against a treaty that gives a guarantee of trust under the hand cannot be executed. The enforcement process must be carried out by submitting a civil action to the State Court through the normal legal process of the event until the court decision. This is the procedural choice of formal law in order to preserve justice and enforcement of the material law it contains.

This process would take a long time, if the parties used all the legal efforts available.Then the time and the expenditure will not be small. Of course, this is a very dilematic choice. The pretext of pursuing a large margin must also consider a sense of justice for all parties.People who generally become debtors should be more critical and careful in making transactions or making deals. While for the government, certainty, justice and the rule of law are important.

To guarantee the legal certainty of the creditor in concluding the financing agreement, it is then accompanied by an authentic document made by a notary and then confirmed to be registered with the Trust Registration Office. In order to provide legal certainty, the creditor will also obtain a trust guarantee certificate with passion "For Justice Based on the One Divinity". Thus, the certificate will have direct enforcement power when the debtor commits

[29] A. Qirom Syamsudin Meliala, *Op.Cit.* pg.26.

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a breach of a trust agreement to the creditors (parate of execution), in accordance with article 15, paragraph (2) of the Act No. 42 of 1999 on Trust Guarantee.

If the trustee is in trouble on the ground, then he can ask the local court through the sentencing officer to make an application for assistance in enforcement. This execution security aid can be directed at the police, praja and villages where the object of fidusia security is located. Thus, the creation of a trust guarantee certificate protects the recipient of the trust if the trustee fails to fulfil its obligations as stipulated in the agreement between the parties.

Trust guarantees without a trust guarantee certificate have complex and risky legal consequences. The creditor can exercise the right of enforcement because it is considered unilateral and can lead to the authority of the creditor. It may also be because considering the financing of the goods, the trust object is usually not full in accordance with the value of goods. Or, the debtor has fulfilled part of the obligation of the agreement made, so that it can be said that on the goods stands the right of part of debtor and part of creditor. Especially if the execution is not through an official pricing agency or a public auction agency. Such acts can be classified as unlawful acts (PMH) as provided for in Article 1365 of the Civil Code and can be sued for damages.

It can be referred to in Article 368 of the Covenant if the creditor commits enforcement and threat of seizure against the execution of the security of the trust without a court ruling.

1. Anyone who, in an attempt to gain himself or another person against the law, forces a person by force or by threat of violence to give something that belongs to him or to another person, in whole or in part, or in order to make a debt or to cancel the debt, shall be punished by extortion and imprisonment for a term not exceeding nine months.
2. The provisions of section 365 paragraphs two, three, and four apply to this crime.

This situation can occur if the creditor in execution carries out forced seizure and takes goods unilaterally, while it is known in the goods that belong partly or entirely to someone else. Although it is also known that some of the goods belong to creditors who want to execute but are not registered in the trust office.Even the application of other articles can happen considering that any execution is not an easy thing, for it requires legal guarantees and the support of the legal system legally. This is the urgency of balanced legal protection between creditors and debtors.

The potential losses suffered by the debtor as a result of a unilateral enforcement action by the creditor may take other legal means to restore the rights that have been deprived of him

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or her. By using the basis of article 15, paragraph 2, the creditor is forcibly taking over the object of the security of the trust without agreement or voluntarily from the debtor.

If the debtor is willing to surrender the security object of the trust to the creditor, then it may be justified by law because it has been signed by a contract or the existence of an agreement between the parties. However, if it is not signed with the presence of the agreement concerning non-performance, then if the Debtor objects to the execution of the security security, the creditors do not immediately unilaterally take over or execute the security without first submitting legal proceedings to the court until the court issued a fixed-force judgment.

The trust guarantee certificate in its implementation is often used as a legal umbrella by the creditors to carry out the execution of trust guarantees because the binding force and the legal force of the trust warranty certificate is said to be equal or equivalent to a court decision that has acquired a fixed legal force, thus it is said that the trust security certificate has the same executive force as the court decision.

The provision provides a very strong legal basis for the creditor to commit misconduct by interpreting subjectively that the debtor has committed a default so that it is considered to have met the grounds for carrying out the enforcement of the security of the trust without a mechanism in court.

This is what is at the root of the deviation in the field that disturbs the public and harms the debtor when making a trust guarantee agreement. The same is true of the involvement of the dept collector who seems to have been legally authorized to seize the security of the trusted object. The provisions of article 15 paragraph 2 of the Trust Guarantee Act are clearly contrary to the principle of equality of rights before the law and have been contrary also to the principles of agreement in the agreement, because when both parties do not list gamblingly or explicitly concerning the failure to perform in the contract, then one of the parties is not entitled to decide the other party has failed to perform because who has the right to legally terminate a person's failure is the court with a decision with fixed force of law. In this case, the parties or debtors who feel injured by the unilateral enforcement by the creditor may make legal efforts to restore their rights which have been deprived by the creditors.

A legal attempt may be made by bringing this matter to the police because the acts committed by the creditor are a violation of the law of the debtor's rights because most or a small portion of the object of security secured by a creditor is part of the right of a debtor which means that neither debtor nor creditor still has the right to the security object of the trust. The acts carried out by such creditor can also be prosecuted civily because the creditors

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have committed an act against the law that damages the rights held by the Debtor, in order to restore such rights can be brought before the court for such acts to be tried civily for having damaged the debtors and contrary to the principle of agreement between the two parties.

2. Methods of Implementation of Trust Guarantee Based on National Positive Law

The enforcement of the trust guarantee is carried out by reference to the provisions of Article 15 para. 2 of the Act No. 42 of 1999 on trust guarantees, which states that "the trust warranty certificate as referred to in paragraph 1 shall have the same enforceable execution as a court decision which has acquired fixed legal force". These provisions are reference for the creditor to carry out unilateral enforcing of the object of trust guaranty by using the dept collector as an executive team to take over part or all of the security object of a trust which was originally in the hands of the debtor.[30]

Article 29 of Law No. 42 of 1999 states that execution is the execution of an executive title by a Fiduciary, which means that an execution can be directly carried out without a court ruling process and its legal force is final and binds the parties to execute it[31].

On the basis of the above provisions, in practice it becomes common for the execution of the security of the trust to be carried out unilaterally without a judgment of a judge of a court of fixed law. The execution by the financing company or by the creditor against the security is deemed to have a binding legal force and is final.

On January 6, 2020, the Assembly of Judges of the Constitutional Court issued a judgment on the Test Matters of the Legislative Regulations, namely the Act No. 42 of 1999 on the Guarantee of Trust (Fidusia Act) against the Basic Law of the State of the Republic of Indonesia of 1945. (UUD 1945). This judgment "admits the petitions of the applicants in part" and further states that some of the sentences and their explanations contained in Article 15, paragraph (2) together with the explanation and paragraph (3) of the Fidusia Act are contrary to the UUD 1945 as long as they are not interpreted as provided by the Assembly of Judges of the Constitutional Court included in the relevant judgement. The phrases referred to are, firstly, the phrase "executive power" and "as with the judgment of a court of fixed law" (with its explanation) contained in Article 15, paragraph (2) and; secondly, that is the "promising"

[30] *Vide* Pasal 15 ayat 2 Undang-undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia sebelum diuji ke Mahkamah Konstitusi
[31] *Vide* Pasal 29 Undang-undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia

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phrase contained under Article 15 paragraph (3) of Act No.42 of 1999 on the Guarantee of Trust.

The existence of the Constitutional Court's ruling has serious implications for the various parties that have a direct interest in the implementation of the trust guarantee, whether it is a direct or an indirect interest. Of the various interests one can be said to have a direct impact is the Directorate-General of State Property and Directorate of Auction, or in practice one who is interested is the Office of State Wealth Services and Auctions (KPKNL) which carries out the process in the auction business in its activity. Pursuant to the provisions of article 29 of the Act No. 42 of 1999 on the security of trusts has also regulated that if the debtor injured the pledge, then the execution against the object of security can be carried out in several ways, namely:

1. Execution of the executive title as referred to in article 15, paragraph (2) by the Trust Recipient;
2. the sale of goods which are the Objects of Trust Guarantee over the power of the Trust Recipient himself through a public auction as well as taking the disbursement of the goods from the proceeds of the sale;
3. The sale under hand is carried out on the basis of an agreement between the Giver and the Receiver of the Trust if in this way the highest price can be obtained in favour of the parties.

According to the provisions above, as has also been affirmed earlier, then the execution of the trust guaranteed goods is through the auction. It has been confirmed with the existence of the Provisions of Article 6 of the Regulation of the Minister of Finance No. 27/PMK.06/2016 concerning the Instructions for the Implementation of Auction which has confirmed several categories of auction of the implementation of a trust guarantee as one of the parts of the type of auction of execution, as well as as as known execution type of an auction can only be carried out by a Class 1 auction office which is notabene exists only in the body of KPKNL.

According to the provisions of article 15, paragraph (2) of the Act No. 42 of 1999 on the guarantee of trust confirms that the execution of the security of trust and its arrangements can be carried out unilaterally by the creditor or subjectively interpret the existence of misconduct by the debtor in the trust agreement. These provisions have opened up the potential of problems that occur in the society and give a great opportunity to the creditors to

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execute the security on the grounds that the debtors have committed a discharge on the trust contract.

During this time what the creditor is doing is to ignore the process of execution through a judgment in court on the pretext that the certificate of security of trust under the provisions of article 15 paragraph (2) has the same binding legal force and holds the same as the judgement in the court, thus according to creditors does not need to make legal action in court to carry out the execution against the object guaranteed by trust, just use the collector as an officer.

The practices and provisions concerning the execution and security of such trusts have raised controversy among law practitioners, law academics and the general public. However, when referring to the provisions of civil law, the only authority entitled to issue an enforcement judgment against a particular object possessed by the defendant or the plaintiff is the court. In the same way, the creditors who declare that a default has been committed by the debtor are not judged by. The judge of the court is legally empowered to declare a person to have committed a defect or not to comply with what was promised in the mutual agreement.

If the debtor has made an agreement with the creditor, the creditors shall be granted the right to assert that they have made a promise, and if the debtors have done so, they shall be given the authority to make a declaration in accordance with the provisions of article 15, paragraph 2, and article 29 of the treaty. These provisions are justifiable because in the certificate the trust agreement contains an inheritance for justice based on the Divinity of the Most High, and has been made before a notary so that it becomes an authentic act.

The lawful force and certainty contained in the trust guarantee certificate cannot be enforced if the contract does not provide for the circumstances of non-performance, nor does the provisions apply when the execution is contested or questioned by the debtor and judges that the implementation has deprived the right of a debtor.

It can be concluded that when the execution by using a trust guarantee certificate raises an objection or rejection from the debtor then the creditor party may not unilaterally and arbitrarily seize the object of the security of the trust because according to the provision can only be done if the discharge relationship has been arranged.

Before applying for enforcement, the creditor party must first prove in court that the debtor party has performed a non-performance under the agreement of the object of security of the trust that has been agreed upon, if the court judges that the legal grounds put forward by the plaintiff in this case is that the creditors have fulfilled the criteria of investment under the provisions of civil law the court will drop and1 son who states that the Debtor has been

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guilty and proved to have committed the non-Performance thus can be performed enforcing or sit against the object guaranteed by the trust which is under the jurisdiction of the debtors.

From the various arguments above it can be concluded that the trust guarantee can be justified only using the trust warranty certificate when it has regulated the relationship or circumstances of non-performance in the contract and when carrying out the execution does not get a refusal from the debtor, which means that the party debtor voluntarily gives the object of security of trust or hand over the object guarantee of trust and acknowledges to have performed the pledge.

On the other hand, if the debtor refuses to execute the security object of the trust because he considers that the agreement does not regulate the circumstances of non-performance, then the procedure and the only option that the creditor can take is through the legal action of the court by proving that the debtors after having committed the non -performance. After the judgment of such a court when the court is not a claim of a creditor, the security enforcement of a trust object is carried out directly by the court using jurisdiction in the court and there is no need for execution by the creditors.

D. Conclusion

Based on research carried out by researchers on the legal protection of debtors against the execution of unilateral security claims by creditors, it can be concluded several things, among others :

1. Execution of a trust guarantee requires some important aspects to be met. In order to provide legal certainty and to provide guarantees of protection to the parties, the execution of a trust guarantee must take into account various normative provisions as the valid condition of the execuction of a fidusia guarantee. In practice, the potential losses suffered by the debtor often arise as a result of unilateral enforcement by the creditor. As a legal defence, a debtor can resort to legal procedures to restore his rights that have been deprived by a creditor or at least refuse enforcing the object of the security of a trust. The creditor carries out unilateral enforcement on the basis of article 15, paragraph (2) of Act No. 42 of 1999 on Trust Guarantee. However, if the creditor forcefully takes over the object of the security of the trust without agreement or voluntary consent from the debtor, then a debtor may file a lawsuit in court.
2. As for the procedure of enforcement of the security of the trust under the provisions of Article 15 (2) of the Act No. 42 of 1999 on the Security of the Trust, because the power

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of enforceability of security of a trust can be carried out without waiting for a judgment of the court in advance but binding power of a security certificate of trust as long as the debtor voluntarily gives or hand over the security object of trust to the creditor and acknowledges that a debtor party has committed a malpractice. However, if the debitor party refuses or objects to the execution of the creditors party then according to the judgement of the Constitutional Court No. 18/UU-XVII/2019 then the creditor party must file a lawsuit before the court prior to the fact that the security certificates of trust do not regulate the circumstances of malpractices in the previous agreement. So, of course, the execution will be easier to carry out if it is done after the Court's Decision.

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