INTERPRETATION AND IMPLICATION OF DEFAULT BY THE CONSTITUTIONAL COURT RELATED TO THE EXECUTION OF FIDUCIARY

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Abstract

The purpose of this research is to find out how the interpretation of promise injury related to the execution of the object of Fiduciary in the Constitutional Court Decision No. 18 / PUU-XVII / 2019 and to find out what are the implications of the Constitutional Court Decision. The research method in this research is normative legal research. Normative legal research is a process to find legal rules, legal principles, and legal doctrines in order to address legal issues. The result of this research is application for testing Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999 has been decided by Constitutional Court on January 6, 2020. The purpose of this study is to find out how the interpretation of Constitutional Court on meaning of "default" related to fiducia security execution and what implications are. This research used normative legal research method. The results showed that Constitutional Court interpreted: first, the existence of "default" was not determined unilaterally by creditor, but on the basis of an agreement between creditor and debtor. Second, for fiduciary security objects for which there is no agreement "default", then all legal mechanisms in execution apply as same as implementation of a court decision with permanent legal force. The implication: first, the meaning of "default" must be agreed by both parties. Second, if debtor refuses execution, then creditor must file a lawsuit in court. Third, the potential for widespread testing of Mortgage Law. Fourth, the court will be far more active and creditor will incur more expensive fees. Fifth, there will be potential debtor who deliberately gain time through a lawsuit in court. In addition to juridical implications, this can also have implications for economic sector.

Keywords: Constitutional Court, default, fiduciary**.**

INTRODUCTION

Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 Concerning Fiduciary (hereinafter referred to as Law No. 42/1999) has been submitted for a review of the 1945 Constitution. The application for a review of this Article was submitted by Aprilliani Dewi and Suri Agung Prabowo as debtors in the execution of the fiduciary. The request for review was partially granted and the Constitutional Court decided on January 6, 2020. This verdict certainly has implications both juridically and in relation to the economic sector related to fiduciary itself.

The polemic between debtors and creditors regarding the execution of fiduciary collateral objects does in fact often occur. Creditors confiscate objects that are the object of Fiduciary themselves without going through the District Court, for example by ordering their

employees who are in charge of collectors to confiscate or confiscate objects of Fiduciary. The enactment of the provisions of Article 15 paragraph (2) and paragraph (3) of Law Number 42/1999 provides an opportunity for creditors to commit acts or at least self-interpret the matter of 'default', so that it can potentially have arbitrary actions authority to execute the Fiduciary object. Basically, collateral is a creditor's need to minimize risk if the debtor is unable to settle all obligations arising from debt or credit that has been issued.[1] The provision of this material guarantee provision, in fact, implicitly the legislators advised economic actors that when providing credit (from the word credere which means trust), it should not be based solely on trust.[2]

Registration of Fiduciary is a fulfillment of the principle of publicity. The application of the Fiduciary publicity principle is regulated in Article 11 Paragraph (1) of Law No. 42/1999 which states: "Objects that are burdened with Fiduciary must be registered". With regard to the procedure for registering Fiduciary online, on April 6 2015 Government Regulation Number 21 of 2015 regarding Procedures to Register Fiduciary Security and Fees, that replaced Government Regulation No. 86 of 2000 concerning Registration Procedures for Fiduciary and Fees Making a Fiduciary Deed.[3] In the Fiduciary certificate issued by the Fiduciary Registration Office, it states the words "For Justice Based on Almighty Godhead",

In the agreement law, if the debtor does not fulfill the contents of the agreement or does not do the things that have been agreed upon, then the debtor has defaulted with all the legal consequences.[4] Law No. 42/1999 does not recognize the term default, but uses the term *Cidera Janji* (breach of contract).[5] The term Default in a credit agreement can be said to be the cause of bad credit or bad credit. Article 15 paragraph (3) of Law No. 42/1999 states that if a debtor is in default, the Fiduciary has the right to sell objects which are the object of the Fiduciary under his own power.

The purpose of this research is to find out how the interpretation of promise injury related to the execution of the object of Fiduciary in the Constitutional Court Decision

[1] Badriyah Harun, 2010, *Penyelesaian Sengketa Kredit Bermasalah,* Yogyakarta: Pustaka Yustisia, p.13.

[2] Pangemanan Gledi Ester, 2018, *Penilaian Dan Penetapan Nilai Taksasi Objek Jaminan Kredit Bank Berdasarkan Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan. Jurnal Lex Privatum*, Volume VI, Nomor 1. p. 116

[3] Risfa Sadiqah, 2017, *Tinjauan Yuridis Pelaksanaan Pendaftaran Jaminan Fidusia Berdasarkan Peraturan Pemerintah Nomor 21 Tahun 2015 Tentang Tata Cara Pendaftaran Jaminan Fidusia Dan Biaya Pembuatan Akta Jaminan Fidusia,* Diponegoro Law Journal, Volume 6, Nomor 1. p. 7.

[4] Andreas Albertus Andi Prajitno, 2010, *Hukum Fidusia.* Malang: Selaras, p. 15.

[5] Tan Kamelo, 2006, Hukum Jaminan Fidusia Suatu Kebutuhan yang Didambakan. Bandung: Penerbit Alumni, p. 34.

No. 18 / PUU-XVII / 2019 and to find out what are the implications of the Constitutional Court Decision. The juridical implication of the interpretation of the Constitutional Court Decision No. 18 / PUU-XVII / 2019 which was decided on January 6, 2020 can be a novelty form of the discussion in this research.

RESEARCH METHODOLOGY

The research method in this research is normative legal research. Normative legal research is a process to find legal rules, legal principles, and legal doctrines in order to address legal issues.[6] The data collection technique used in the study was literature search. Sources of research data include primary legal materials and secondary legal materials. The primary legal materials are the Decision of the Constitutional Court No. 18 / PUU-XVII / 2019 and Law No. 42/1999. Secondary legal materials are legal materials consisting of text books written by legal experts, legal journals, opinions of scholars and symposium results relevant to this research. Analysis method in this study uses a qualitative descriptive.

DISCUSSION

The Constitutional Court's Interpretation of Defaults Related to the Execution of the Fiduciary Object

The case for the testing position of Article 15 paragraph (3) of Law No. 42/1999 originated from Aprilliani Dewi and Suri Agung Prabowo (the test applicant) entered into a Multipurpose Financing Agreement for the purchase of a Toyota Alphard V Model 2.4 A / T 2004 car. at PT. Astra Sedaya Finance (ASF) valued at Rp222,696,000 in installments for 35 months starting from 18 November 2016. From 18 November 2016 to 18 July 2017, the applicant has paid installments accordingly. On November 10, 2017, PT ASF sent a representative to retrieve the applicant's vehicle with the argument of default. For this treatment, the applicant submitted a case to the South Jakarta District Court on April 24, 2018 with a lawsuit against the law with case registration number 345 / PDT.G / 2018 / PN.jkt.Sel. PT ASF has committed an act against the law.

After South Jakarta District Court decision, then on January 11, 2019, PT ASF again carried out the forced withdrawal of the applicant's vehicle in the presence of the police. Regarding the forced treatment, the

[6] Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, 6th Printing, Jakarta: Prenada Media Kencana, p. 66.

petitioner assessed that PT ASF had taken cover behind Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999 regarding the executorial power of Fiduciarys. In fact, the decision of the South Jakarta District Court has a higher position than Law No. 42/1999. Thus, the petitioners are of the opinion that there is no compelled juridical reason whatsoever for PT ASF to carry out forced acts including on the basis of Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999.

The Petitioners assess that the protection of personal property, honor, dignity and protection guaranteed by the 1945 Constitution has been violated by the enactment of the provisions of Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999 which provides opportunities for recipients fiduciary to commit acts or at least interpret Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999 so that it acts arbitrarily by suppressing dignity as well as the honor of the Petitioners. Mutatis mutandis the constitutional losses suffered by the Petitioners are specific and actual in nature as well as the losses suffered by the Petitioners have a causal relationship with the coming into effect of the provisions of the article petitioned for review.[7]

The Petitioner considers that excessive power and without proper legal mechanism control, by equalizing the position of the Fiduciary Certificate with a court decision with permanent legal force, has resulted in arbitrary actions by the Fiduciary to carry out the execution of the object of Fiduciary, even by legalizing all kinds of means and without going through proper legal procedures. Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999 is deemed by the applicant to be contrary to Article 1 paragraph (3) Article 27 paragraph (1) and Article 28D paragraph (1), Article 28G paragraph (1)) and Article 28H paragraph (4) of the 1945 Constitution.[8]

The Constitutional Court in Decision No. 18 / PUU-XVII / 2019 gave that verdict:

1. Partially granted the Petitioners' petition;
2. State Article 15 paragraph (2) of Law No. 42/1999 as long as the phrase "executorial power" and the phrase "are the same as a strong court decision permanent law "contradicts the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted" against Fiduciarys where there is no agreement on default (default) and the debtor objected to voluntarily handing over the object that became Fiduciary, then all legal mechanisms and procedures in the execution of the Fiduciary Certificate must be carried out and apply the same as the

[7] Constitutional Court Decision No. 18/PUU-XVII/2019, p. 7

[8] Constitutional Court Decision No. 18/PUU-XVII/2019, p. 72.

execution of court decisions that have permanent legal force ";

3. State Article 15 paragraph (3) of Law No. 42/1999 insofar as the phrase "default of promise" is contrary to the Constitution of the Republic of Indonesia Year 1945 and does not have binding legal force as long as it does not mean that "the existence of a default 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 remedies which determine the failure of the promise".
4. Declare the Elucidation of Article 15 paragraph (2) of Law No. 42/1999 insofar as the phrase "executive power" is contrary to the Constitution of the Republic of Indonesia in 1945 and does not have binding legal force as long as it is not interpreted "against Fiduciarys where there is no agreement on default and debtors object to voluntarily handing over objects that become Fiduciarys, then all legal mechanisms and procedures in the execution of the Fiduciary Certificate must be carried out and applies the same as the execution of court decisions which have permanent legal force ";
5. Order the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate;
6. Reject the Petitioners' petition for other than and the rest.[9]

The Constitutional Court in Decision Number 18 / PUU-XVII / 2019 considers the principles of legal certainty and justice which are fundamental requirements for the enactment of a norm of law, in the context of Law No. 42/1999, as a form of legal protection for the parties. who are legal subjects and objects of objects that are guaranteed in the Fiduciary agreement. Regarding the constitutionality issue of Article 15 paragraph (2) of Law No. 42/1999, the Constitutional Court is of the opinion that:

"The constitutionality aspect contained in the norms of Article 15 paragraph (2) Law 42/1999 does not reflect the provision of balanced legal protection between parties bound by a fiduciary agreement and also objects that become Fiduciary, both legal protection in the form of legal certainty and justice. This is because the two fundamental elements contained in the a quo article, namely "executorial title" and "being equated with a court decision that has permanent legal force", implies that an immediate execution can be carried out as if it were the same as a court

[9] Constitutional Court Decision No. 18/PUU-XVII/2019, p. 125-126.

decision that has permanent legal force. by the fiduciary recipient (creditor) without the need to seek court assistance for the execution. This shows, on the one hand, the existence of exclusive rights granted to creditors.[10]

With regard to the considerations of the Constitutional Court, regarding the absence of equal legal protection for creditors and debtors in a fiduciary agreement, it is important to link this matter with the principle of the transfer of property rights to the object of Fiduciary from the debtor as the fiduciary to the creditor as the fiduciary recipient. In other words, the parties agreeing to the substance of such an agreement covertly takes place in a "condition that is not completely free at will," especially for the debtor (the giver of fiduciary). In fact, freedom of will in an agreement is one of the fundamental conditions for the validity of an agreement (vide Article 1320 of the Civil Code).

The Constitutional Court in its decision also observed that the provisions stipulated in the norms of Article 15 paragraph (3) of Law No. 42/1999 are a continuation of the provisions stipulated in the norms of Article 15 paragraph (2) of Law No. 42/1999 which is substantially a juridical consequence due to the existence of "executorial title" and "the equality of the Fiduciary certificate with court decisions that have permanent legal force" as the substance of the norms contained in Article 15 paragraph (2) of the Fiduciary. In connection with the norms of Article 15 paragraph (3) of Law No. 42/1999, the Constitutional Court stated:

"Whereas the substance of the norm in Article 15 paragraph (3) of Law 42/1999 is related to the existence of a" default "debtor who then gives the fiduciary recipient (creditor) the right to sell objects that are the object of Fiduciary on his own power. The question is when is this "default" considered to have occurred and who has the right to determine? This is what is not clear in the norms of the a quo Law. In other words, nothing This clarity brings juridical consequences in the form of legal uncertainty regarding when in fact the fiduciary (debtor) has committed a "default" which results in absolute authority on the fiduciary recipient (creditor) to sell objects that are the object of fiduciary collateral which is under the control of the debtor". [11]

The Constitutional Court in its decision also considers the provisions stipulated in the norm of Elucidation of Article 15 paragraph (2) of Law No. 42/1999:

"Considering that with the declared unconstitutionality of the phrase" executorial power "and the phrase" equal to a court

[10] Constitutional Court Decision No. 18/PUU-XVII/2019, pp. 117-118.

[11] Constitutional Court Decision No. 18/PUU-XVII/2019, p. 119.

decision having permanent legal force "in the norms of Article 15 paragraph (2) and the phrase" default "in the norms of Article 15 paragraph (3) of Law 42/1999, although the Petitioner did not request a review of the Elucidation of Article 15 paragraph (2) of Law 42/1999, however, because the Court's consideration had an impact on the Elucidation of Article 15 paragraph (2) of Law 42/1999,then the phrase "executorial power" and the phrase "equal to a court decision having permanent legal force" in the explanation of the norms of Article 15 paragraph (2) must automatically be adjusted to the meaning which becomes the Court's stand against the norms contained in Article 15 paragraph (2) of the Law. 42/1999 with the meaning "of the Fiduciary where there is no agreement on default and the debtor objected to voluntarily hand over the object which is a Fiduciary, then all legal mechanisms and procedures in the execution of the Fiduciary Certificate must be carried out and apply the same as the execution of court decisions. which has permanent legal force ", as in full will be stated in the ruling of the a quo case.Therefore, the procedure for executing the Fiduciary certificate as stipulated in other provisions in the a quo Law, is adjusted to the a quo Court Decision".[12]

Based on the decision of the Constitutional Court, the Constitutional Court has interpreted the default in Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999. In the case of the execution of the object of the Fiduciary by the creditor, the meaning of 'default' must be agreed by both parties. Giver of fiduciary rights (debtor) and recipient of fiduciary (creditor). Insofar as the fiduciary right (debtor) has acknowledged the existence of a "default" and voluntarily surrenders the object which is the object of the fiduciary agreement, it becomes the full authority of the fiduciary recipient (creditor) to be able to carry out the execution by themselves. However, if the opposite happens, where the giver of fiduciary rights (debtor) does not recognize the existence of "default" and object to voluntarily surrendering the object that is the object of the fiduciary agreement, the fiduciary right recipient (creditor) may not carry out the execution. Itself, but must submit a request for execution to the district court.

Implications Constitutional Court Decision No 18 / PUU-XVII / 2019.

The juridical implication of this Constitutional Court decision is that in the implementation of the execution of the Fiduciary, the meaning of 'default' must be

[12] Constitutional Court Decision No. 18/PUU-XVII/2019, pp. 122-123

agreed by both parties. 'Default' should not be interpreted unilaterally by the creditor. "Default" must be seen whether there are objections between the two parties, because so far the creditors have determined the default. If there are still objections to the debtor, then they must follow the applicable legal procedure, namely to file a lawsuit in court. This provides legal protection to the debtor, so that the creditor does not act arbitrarily in executing the Fiduciary object.

The Fiduciary Recipient (Creditor) is prohibited from forcibly taking the fiduciary object from the hand of the Fiduciary Giver (Debtor). If this is done by the Fiduciary Recipient (Creditor) then according to the law, the Fiduciary Recipient can be deemed to have committed "vigilantism" (*eigenrichting*) which is prohibited by law.[13] This is as according to Sudikno Mertokusumo that:

"Civil Procedure Law has the meaning" legal regulations governing how to ensure compliance with material civil laws with intermediary judges. The prosecution in this case is nothing but an act that aims to obtain legal protection provided by the court to prevent *'eigenrichting'* or acts of self-judgment. The act of self-judgment is an act of exercising rights according to one's own will which is arbitrary, without the consent of other interested parties, so that it will result in losses. Therefore, the act of self-judgment is not justified if we want to fight for or exercise our rights. "[14]

Execution is a continuous act of the entire civil procedural law process.[15] The meaning and principles of execution itself must be seen in terms of its function to use execution in general, and when the act of execution is a must, as stated by M. Yahya Harahap that:

"Execution is a legal action taken by a court against the party that loses in a case, it is the rules and procedures for the continuation of the case examination process. Therefore, execution is nothing but a continuous act of the entire civil procedural law process. Execution is an integral part of the procedural rules contained in the HIR or RBg. For everyone who wants to know the guidelines for the execution rules, they must refer to the laws and regulations stipulated in the HIR or RBg."[16]

If the execution of the object of the Fiduciary is carried out without involving the

[13] Constitutional Court Decision No. 18 / PUU-XVII / 2019, p. 95.

[14] Sudikno Mertokusumo, 2009, *Hukum Acara Perdata Indonesia*, Eight Edition, Yogyakarta: Liberty.

[15] Kukuh Sugiarto Kurniawan, Desember 2013, *Prinsip Hukum Pengamanan Eksekusi Benda Jaminan Fidusia Oleh Kepolisian Negara Republik Indonesia*, Jurnal Rechtens, Volume 2, Nomor 2, pp. 38-55.

[16] M. Yahya Harahap, 2009, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata,* Jakarta: Gramedia Pustaka Utama.

court or the bailiff, then the creditor naturally bears the risk, if he carries out his rights incorrectly with the result that the creditor bears the risk of claiming compensation from the fiduciary.[17] Regarding legal protection, creditors get absolute legal certainty when Fiduciarys are registered, on the other hand when a creditor misuses their authority, legal protection for the debtor can be through civil or criminal lawsuits.[18] If carefully examined and scrutinized in Law No. 42/1999 on Fiduciary, it does not mention execution through a lawsuit to court, but of course the interested parties can undergo the execution procedure through a lawsuit to court. As Article 10 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power states:

"The court is prohibited from refusing to examine, try and decide a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and try it."

In executing the Fiduciary the creditor is also required to submit a security application to the Police. In line with the fulfillment of the objectives of legal protection for the execution of the object of Fiduciary, namely justice and legal certainty, the provision of assistance for the execution of the object of the Fiduciary is regulated in Article 2 Indonesian National Police Chief Regulation Number 8 of 2011 Concerning Fiduciary Execution Protection mention that:

a. The implementation of the execution of the Fiduciary in a safe, orderly, smooth, and accountable manner; and
b. The safety and security of the Fiduciary Recipient, Fiduciary Giver, and / or the public is protected from actions that may cause property loss and / or life safety.

In addition, subpoena is a step that must be taken by the creditor in the event that the debtor commits "default" as stipulated in Article 1238 of the Civil Code. A new debtor is said to be in default if he has been given a summons by the creditor or bailiff. The creditor or bailiff has made the warrant at least three times. If the summons is not heeded, then the creditor has the right to bring the matter to court. And the court will decide whether the debtor defaults or not.[19]

The a quo Constitutional Court decision also raises pros and cons, especially on the juridical implication of understanding the power of the executorial title on the possibility of widespread testing of the Mortgage Rights Law. If a similar understanding is used to test

[17] J. Satrio, 2005, *Hukum Jaminan Hak Jaminan Kebendaan Fidusia*, Bandung: Citra Aditya Bakti.

[18] Debora R. N. N. Manurung, 2015, *Perlindungan Hukum Debitur Terhadap Parate Eksekusi Obyek Jaminan Fidusia*, Jurnal Ilmu Hukum Legal Opinion, Edisi 2, Volume 3. pp 1-7.

[19] Salim H.S, 2009, *Pengantar Hukum Perdata Tertulis (BW)*, Jakarta: Sinar Grafika, p. 138.

the Mortgage Rights Law, it will certainly have implications for the auction business process, because the auction for the collateral object is categorized as an Execution Auction, as is the Fiduciary Execution Auction.[20]

Apart from that, another implication is that the courts will also be much more active because of the large number of fiduciary collateral cases, especially in the field of bailiffs, so that Creditors will incur more expensive and inefficient costs or fees. The court must have sufficient resources to deal with disputes between creditors and debtors. Therefore it is necessary to efficiently handle disputes in court between creditors and debtors, if the value of the Fiduciary is not that large.[21] With the obligation to wait for a court ruling that has permanent legal force, there will be potential debtors who deliberately buy time by using court channels.

On the other hand, apart from the juridical implications, the Financial Services Authority also assesses that there are implications that need to be anticipated by the industry, especially for the economy, namely:

1. Potential increase in financing interest rates.
2. Low confidence in financing companies to debtors.
3. Decreased distribution of financing.
4. The disruption of the financial industry, because the Constitutional Court decision not only affected the financing industry, but also the banking industry, pawnshops, and financial technology.
5. Disruption of the automotive industry, due to reduced financing which can have an impact on the country's economy.
6. Less investor confidence in the financing sector.
7. The government will find it increasingly difficult to increase ease of doing business. This is counterproductive to the agenda to invite investment into Indonesia.[22]

CLOSING

Regarding promise injury as the basis for executing the object of Fiduciary contained in Article 15 paragraph (2) and paragraph (3) of Law No. 42/1999, the Constitutional Court interprets, namely First, the existence of a

[20] Direktorat Jenderal Kekayaan Negara, Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019: Apa Implikasinya Bagi Proses Bisnis Lelang?. https://www.djkn.kemenkeu.go.id/kpknl-bekasi/baca-artikel/12953/PUTUSAN-MAHKAMAH-KONSTITUSI-NOMOR-18PUU-XVII2019-APA-IMPLIKASINYA-BAGI-PROSES-BISNIS-LELANG.html. Access on 22 January 2020.

[21] Huzaini, Moh. Dani Pratama, Advokat Ini Bicara Soal Dampak Putusan MK tentang Eksekusi Jaminan Fidusia. https://www.hukumonline.com/berita/baca/lt5e210756c2b40/advokat-ini-bicara-soal-dampak-putusan-mk-tentang-eksekusi-jaminan-fidusia/. Access on 17 January 2020.

[22] Pratama, Wibi Pangestu, Putusan MK soal Eksekusi Objek Fidusia, Ini 7 Dampaknya bagi Perekonomian. https://finansial.bisnis.com/read/20200210/89/1199588/putusan-mk-soal-eksekusi-objek-fidusia-ini-7-dampaknya-bagi-perekonomian. Access on 10 February 2020

default 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 remedies determining the occurrence of default. Second, for the object of Fiduciary for which there is no agreement on default and the debtor refuses to submit, all legal mechanisms and procedures in the execution of the execution must be carried out and apply the same as the execution of court decisions that have permanent legal force. This means that creditors may not carry out the execution by themselves.

The juridical implications of the interpretation of the Panel of Justices of the Constitutional Court regarding promise injury as the basis for executing the object of Fiduciary are, First, in the execution of the Fiduciary, the meaning of 'default' must be agreed by both parties. Second, if there are still objections to the debtor, then the creditor must follow the applicable legal procedure, namely to file a lawsuit in court. Third, the potential for widespread testing of the Mortgage Rights Law. Fourth, the courts will also be much more active because of the large number of fiduciary collateral cases, especially in the field of bailiffs, so that Creditors will incur higher and inefficient costs or fees. Fifth, with the obligation to wait for a court ruling with permanent legal force, there will be potential debtors who deliberately buy time by using court channels. In addition to the juridical implications, the interpretation of the Panel of Justices of the Constitutional Court regarding default as the basis for executing the object of Fiduciary can also have implications for the economic sector.

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