



## The Meaning of "Strength Executive" in the Constitutional Court Decision for the Execution of Fiduciary Securities

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Article	Abstract
<p><b>Keywords:</b> Meaning; Decision; Fiduciary; Execution;</p> <p><b>Article History</b> Received: Nov 13, 2022; Reviewed: Nov 25, 2022; Accepted: Mar 3, 2023; Published: Mar 19, 2023.</p>	<p><i>Judicial decisions must have legal implications for relevant parties. PMK No. 2/PUU-XIX/2021 remains debatable between creditors and debtors because it seemingly weakens the protection of creditors' rights. Creditors cannot immediately carry out enforcement procedures that cut off the creditor's business flow because the position of the subject of fiduciary obligations is in the debtor's control, making it possible for disputes between debtors and creditors. This normative legal research was conducted using a philosophical, juridical approach covering statutory policies, conceptual and case approaches. PMK No. 2/PUU-XIX/2021 does not regulate creditor legal provisions in enforcing fiduciary securities, making it difficult for creditors to execute them. The Constitutional Court should decide to guarantee justice for all parties and provide a decision with clear content and sentence structure, so multiple interpretations will not occur. The execution of fiduciary securities during the Covid-19 pandemic should not be immediately carried out because the creditor had to follow the predetermined procedures.</i></p>



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### INTRODUCTION

Consumer finance, also known as consumer financing, is a financial activity that enables individuals to purchase consumer goods by paying for them in installments (Carè & Weber, 2023; Hidayah & Komariah, 2022). This type of

financing is popular in society due to its ease and efficiency of administration. In many cases, people can purchase items such as cars or motorcycles by paying cash or by taking out a loan and paying it back in installments, or by making the down payment with agreed loan terms between the creditors and debtors.

In the case of a financing institution, it is common for contracts between companies (creditors) and their customers (debtors) to include securities. These securities—the collaterals—can include movable objects such as cars or jewelry. They are used to secure the debt in case the debtor is unable to make payments as agreed. Such practices are regulated by law in general, yet no specific regulations apply (T. Li, Lu, & Chen, 2022; Xu, 2019). For instance, the Criminal Code articles 1131 and 1132 outline the legal implications of using securities. Collateral is one type of securities that is valued using money or certain materials. In this case, the debtor offers the collateral to the creditor as a guarantee for a debt or loan. If the debtor defaults on the loan before the end of the loan period, the creditor has the right to use the collateral to repay the debt. (Mgaiwa & Ishengoma, 2023; Muslih & Supeno, 2022) Physical collateral, such as a car, is considered an absolute security for a product that is used as collateral for a debt. The creditor's position in this physical collateral is the privilege of repayment or the privilege (preferred creditor). (Mao, 2021; Putri Hidayah & ., 2022)

The establishment of trust agencies addressed the need for guarantees in debt practices. If the collateral is in the form of movable property, the collateral is bound in the form of a promise, in which the object is transferred to the creditor (beneficiary). On the other hand, if the debt collateral is a fixed product, the collateral is required to be in the form of a mortgage right, where the collateral is owned by the debtor but has not been handed over to the creditor. (Hidayah, Anggraeny, & Hapsari, 2020; Purbawisesa, 2018)

In the past, financial contracts using a power of attorney were usually bound by a trust agency. However, because loan contracts were not drawn up in the presence of a notary, there were serious drawbacks and risks for both debtors and creditors due to lack of legal guarantees. This led to instances where the trust's securities were transferred or sold without proper legal protection. As the consequence, if the creditor collects the debtor's receivables, but the debtor defends himself, the creditor is not allowed to do unilateral actions such as confiscation. However, creditors can file a lawsuit which takes time and is costly regardless of the value of the collateral (Sanusi, 2017).

According to the principle of collateral, trust cannot be separated by contracts or agreements (Anggraeny & Al-Fatih, 2020). In a contract, both parties must respect the agreement signed and if one of them violates the provisions of the agreement, both parties need to bear the consequences (Saputra, 2021). The debtor and creditor must first obtain an agreement before the creditor can provide the

money as a transactional tool. (Kasim, 2020) The contents of the agreement involve the statement of the amount of deposit and the date, contract, etc. One of the basic rules of the deed of trust is when the debtor is considered default and matters that are experienced due to default. The clause supports related parties (debtors and creditors) interpreting each of their obligations. This clause is very crucial for creditors and fulfills their rights in the form of bills (Mahendra, Murni, & Putu, 2017).

The practice of fiduciary securities, also known as collateral trusts, often sparks ambiguity and misunderstanding between debtors and creditors. In November 2020, a petitioner named Joshua Michael Djami submitted a material review of the Fiduciary Collateral Law under the case No.2/PUU-XIX/2021, citing difficulties in carrying out his work as an internal collector due to the interpretation of the laws in question. He also noted that collectors often face problems when trying to confiscate fiduciary collateral because debtors often avoid it.

A review of the case revealed that the problems with fiduciary collateral stem from issues with processing and managing trust, both in terms of personnel and regulatory aspects or in terms of procedural technology (Asyhadi & Kusumawati, 2018). The petitioner claimed that the financial sector did not receive sufficient legal protection and that the cost of implementation was greater than the income of the object of the trust. However, the Constitutional Court rejected the request for review in its decision No.2/PUU-XIX/2021, stating that the contents were based on the Constitutional Court Decision No.18/PUU-XVII/2019. Based on the Constitutional Court, the applicant did not fully understand the contents of the Constitutional Court Decision Number MK 18/PUU-XVII/2019 regarding the executive authority of a trusted collateral deed. Judges' opinion as stated in the Constitutional Court Decision 18/PUU-XVII/2019 was examined thoroughly for validity and responds to the petitioner's constitutional questions. A regulation regarding the prohibition of single application generally balances the legal situation between creditors and debtors and minimizes the cruelty of law enforcers, even though requests for enforcement must be carried out in court (Supianto & Rumawi, 2022).

Submitting a deed of trusteeship through a district court is often the preferred procedure when there is no agreement between the creditor and the debtor for default or release of collateral. However, if the obligor defaults and is willing to release the collateral, the obligee or obligor can carry out mandatory execution. According to Article 15(2) of Law No.42/1999 concerning Fiduciary Collateral, the Fiduciary Security Certificate has the same executive power as a court decision that has obtained permanent legal force, which allows for the collateral trust agency to carry out enforcement without waiting for a court decision.

The decision on the Fiduciary Collateral Law has been controversial and leads to pros and cons. People share different interpretations of the decision, with

some thinking that the decision requires the trustee to first take an enforcement stance if the debtor defaults, while others believe that the collateral trust agency does not have to wait for a court decision in implementing securities.

The Execution of Fiduciary Collateral according to Article 29 of Law Number 42/1999 Regarding Fiduciary Collateral, can be carried out through these following methods.

1. Application of the executive title by trustees as stipulated in Article 15(2) UUJF;
2. Trading of secret securities by secret heirs in public auctions and settlement of bills by trade proceeds;
3. A secret sale and purchase carried out based on an agreement between the founder and the trustee, if using such a method the most profitable price for a few parties is achieved.

Default which refers to the failure of a debtor to fulfil their obligations as agreed upon in a contract, can be caused by a variety of factors. However, the current situation in Indonesia with the Covid-19 pandemic has added an additional layer of complexity. The prolonged economic crisis caused by the pandemic has led to widespread layoffs and salary cuts, making it difficult for many individuals to find another job and pay off their debts. This has resulted in delays in debt payments and even an inability to pay off debts.

## **METHOD**

This research focuses on the normative legal studies (Al-Fatih & Siboy, 2021) of Article 29 of Law No. 42/1999 concerning Trust Collateral and the Constitutional Court Decision No. 2/PUU-XIX/2021. The approach used in this research is a philosophical, legal approach, legal provisions, case and conceptual approaches. The research is based on the study of statutory policies, case law, and available legal doctrines, with an emphasis on understanding the legal implications of defaults caused by the Covid-19 pandemic and how they are being handled in the context of trust collateral.

## **RESULTS AND DISCUSSION**

### **Meaning of the Phrase "Executorial Power" in The Court Decision Number 2/PUU-XIX/2021**

The Constitutional Court has stated that when a debtor is being in default (presumption) and is willing to give up the assets included in the trust deed, the creditor is entitled to the full rights over them and can execute the trust agreement independently (Butarbutar, 2022; Horga, Rezine, Chattopadhyay, Eles, & Peng, 2022; Osler & Savaser, 2022). However, if the debtor does not accept the default and objects to the intentional termination of the trust agreement, the creditor cannot exercise their power of attorney independently and must ask the court to carry out the collateral letter. This protects the basic rights of both the debtor and the creditor.

The Court has also emphasized that the phrase "executive power" and the phrase "same as a court decision that has permanent legal force" must be considered constitutional at the time of interpretation, such as in the case of a "default contract" (W. Li & Dissanaiké, 2022; Putra, Ardiansyah, & Dwi, 2020). All legal procedures and mechanisms need to be followed in connection with the implementation of the Trust Deed and implemented using the same method as the implementation of a final court order. The Court also noted that a violation of the standards of Article 15(3) of Law No.42/1999, especially the term "default", can only be interpreted constitutionally to the extent that it means that the existence of a breach of contract 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 a legal remedy that determines that a breach of contract has occurred (Bahsan, 2018).

The Court also emphasized that the importance of legal certainty and justice (Aldyan & Negi, 2022) for parties bound by fiduciary agreements, including the fiduciary objects, must be considered so that they can be fully accounted for in evaluating the existence of issues related to types of legal protection (Prajitno & Andi, 2020). The regulation of the nature of the fiduciary security contract by norms, in particular the norms of the article being sued by the complainant, namely Article 15 (2) and (3) of Law No.42/1999 must be taken into account regarding the "executive title" on a fiduciary certificate and "equates it to a court decision that holds permanent legal force", meaning that a trust deed can be executed without a court order with a preliminary civil lawsuit and its implementation shall be addressed as a final court decision. Through the meaning contained in the norms of Article 15(2) of Law No.42/1999 above, it can be easily understood that the deed of trust gives such strong rights to the trustee, in this condition to the creditor. As a trustee, the deed takes effect immediately whenever the trustee, in this condition the debtor, is in default. According to the law, the trust deed transfers substantive ownership rights to the trustee (creditor) rights, allowing the creditor to receive the trustee's goods from the debtor and has full authority over the goods because they can be sold to someone who has it. A creditor may argue that the enforcement of a deed is equated with a court decision that has permanent legal force (Adisti, 2020).

The aspect of constitutionality in the norms of Article 15 (2) of Law 42/1999 does not provide equal legal protection for both parties involved in the trust contract, as well as for objects included in the trust guarantee of the determination law. This is because the article contains two main elements, namely "executive title" of "equated with a court decision that has permanent legal force", meaning that the trustee/fiduciary (creditor) can immediately enforce the law, which is a final court decision, without having to seek legal assistance in law enforcement. This condition indicates that on the one hand the creditor is given exclusive rights, while on the other hand, the rights of the debtor are overlooked, which should also be granted fair

legal protection, such as the right to defend against the presumption of breach of contract (negligence) and the ability to generate income from trading property trust in fair prices. Additionally, in this condition, the evaluation of "negligence" is determined unilaterally and exclusively by the debtor (trustee/fiduciary), without giving the debtor (trustee) the opportunity to defend themselves against the presumption of breach of contract (negligence) as well as the ability to obtain income from trading property trust in the fairness of prices. In other words, the evaluation of "negligence" is determined unilaterally and exclusively from the debtor (trustee/fiduciary), without giving the debtor (trustee) the opportunity to fight and/or defend himself (Kasmir, 2018).

The balance of legal protection for debtors and creditors in a trust deed is related to the principle that ownership rights in the trust collateral are transferred from the debtor, as the trustee (fiduciary), to the creditor, as the beneficiary. (Azahary, 2019) This principle illustrates the fact that the substance of the contract reflects a clear imbalance of bargaining power between the debtor (fiduciary) and the creditor. The approval of contract material from multiple parties occurs in a "state of not being perfectly free will," especially for the debtor (trustee). This is because free will in a contract is one of the main requirements for the validity of a contract, as stated in the Criminal Code, Article 1320.

Problems related to the constitutionality of the norms of Article 15 (2) of Law No. 42/1999, with the granting of "executive titles" and "equating it with a court decision that holds permanent legal force," have been proven to influence the unilateral attitude of creditors. This is because creditors often carry out their own execution on collateral goods on the grounds that the ownership rights to the entrusted goods are transferred without coercion. However, it must be a court decision that has permanent legal force. First powers must be requested in the district court. Consequently, the creditor's unilateral attitude as the recipient of the trust rights can (in fact) lead to arbitrary behavior and the use of inhumane methods such as physical and psychological threats. The creditor (or surrogate) often coerces the debtor.

There is no legal provision regarding enforcement procedures and when the trustee (debtor) will be considered "negligent" and lose the debtor's ability to obtain confidential collateral trades through price fairness. This can often cause "coercion" and "violence" by those who feel they have the authority to collect debts from the debtor, and can even lead to arbitrary actions on the part of the trustees (creditors); this insults the debtor. (Rio & Husni, 2021) The unconstitutionality of the norms stipulated in Article 15 (2) (3) of Law No. 42/1999. In the case of a credential with permanent legal force, which means that it can be enforced as a court decision that already is entitled to a strong legal ruling, the procedures for implementing this credential are regulated in HIR Article 196 or Article 208 RBg. (Meilaputri, Suryani,

& Saputra, 2019) Therefore, law enforcement cannot be carried out only from the recipient of the trustee and must be submitted to the district court. The full provisions of article 196 HIR and article 208 RBg apply (Rio & Husni, 2021).

*"If the defeated party is unwilling or negligent to comply with the decisions, the winning party may submit oral or written requests to the chairman of the district court referred to in the first paragraph of Article 195, to carry out the decision. The defeated party will be given warning and summoned to carry out the decision within the time determined by the chairman of eight days at maximum."*

A fiduciary can carry substantive rights to the guardian or creditor (fiduciary) to own the property for reasons of legal certainty and justice. This is because the existence of a balanced legal position between the guardian (debtor) and creditor (fiduciary) and stays away from arbitrariness in enforcement (Purnamasari, 2021). The exclusive authority of the transferee (creditor) can remain in effect as long as there is no definite issue when the debtor (fiduciary) "defaults" (defaults) and when the debtor voluntarily gives the goods that are the subject to be sold (Putra et al., 2020)

The trustee, or obligor, holds the full power of execution when they admit to a default and are willing to relinquish the main trust deed. However, if the trustee is not aware<sup>7</sup> of a default and is not willing to relinquish the subject matter of the trust deed, the trustee cannot be forced and must instead request legal enforcement through the District Court (Sandra & Kelib, 2019). This ensures that the constitutional rights of both debtors and creditors are protected.

The Constitutional Court holds the opinion that Law Article 15 (2) No.42/1999, specifically the phrases "executive power" and "same as a court decision that has permanent legal force," can only be considered constitutional when interpreted as meaning that in cases where there is no agreement of default and the debtor objects to voluntarily surrendering the object of the trust deed, all legal mechanisms and procedures must be followed and apply in the same manner as executing a court decision with permanent legal force. Additionally, Law Article 15 (3) allows for foreclosures to be carried out independently through agreements between debtors or confiscation by a district court, with the possibility of police assistance to maintain order and security during the procedures. This is a common occurrence in district courts handling civil matters, particularly in the enforcement of decisions by courts with permanent jurisdiction.

The legal review of the Constitutional Court stipulates that the application of trustee/fiduciary collateral certificates pertains to breaches of trustee contracts between debtors and creditors. When a creditor has not received the debtor<sup>7</sup>'s acknowledgment due to a breach of contract (negligence) and the debtor refuses voluntary transfers, the creditor, as the fiduciary recipient, cannot exercise self-

enforcement and must instead submit a request for enforcement to the PN (district court). This condition aims to balance the legal position of creditors and debtors and minimize arbitrary law enforcement. Furthermore, the PN's ability to enact trusteeship bonds is only an option that can be exercised when there is no agreement between the debtor and creditor regarding default or voluntary release.

The court holds that the charges used as a guide in granting the application in the case at hand include lengthy law enforcement activities, law enforcement costs that exceed income from the trustee's assets, and potential collateral products in the hands of the debtor, including losses. These are issues that can only be experienced in interpersonal relationships with such a complex and specific nature and cannot be considered by continuing to harmonize relevant legal norms within the framework of reasonable considerations. Additionally, the court finds no constitutional problems with the norm. If the debtor feels that the promise has been breached and agrees to release the subject of the fiduciary collateral, the fiduciary collateral can be enforced by the creditor or the debtor himself.

The court's interpretation of the phrases "executive power" and "same as a court decision that has permanent legal force" in the norms of Law Article 15 (2) and the explanation of Article 15 (2) No.42/1999 is that they provide a type of legal protection in the form of legal provisions or justice for parties involved in a fiduciary contract. In the absence of an agreement regarding default and the debtor objects to voluntarily handing over the object used as a fiduciary security, all legal mechanisms and procedures for executing the Fiduciary Security Certificate must be carried out and applied in the same way as executing court decisions that have permanent legal force.

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and applied in the same way as executing court decisions that have permanent legal force.

In the event of negligence and the debtor voluntarily handing over the protested product to the trustee, the creditor (fiduciary recipient) cannot order confiscation themselves, but the PN may request enforcement. This condition demonstrates that the legal remedies requested by the applicant in the case at hand cannot be obtained through filing a lawsuit, but it offers legal protection for parties to the trust agreement. As in a fiduciary security agreement, the object can be a transferable or non-transferable product, if it is not burdened with mortgage rights, and legal entities can be used as contractual parties to the agreement in question (debtor and creditor), legal protection such as legal provisions and justice is necessary.

The main points of the previous Constitutional Court Decision related to the interpretation of the norms in the phrase "executive power" and the phrase "same as a court decision that has permanent legal force". There is no agreement regarding default and within the case when the debtor objects to voluntarily surrendering the object that is a fiduciary security. Hence, all legal mechanisms and procedures in executing the Fiduciary Security Certificate must be carried out and apply the same as executing a court decision that has permanent legal force "reasonable and give the parties to the Certificate of Trust with various types of legal security, both legal provisions and justice. Especially for activities in related to complex laws, the expenditure on enforcement is not higher than income. The potential for loss and dependency on the debtor's guarantee is guided by matters. This condition can be experienced in complex and specific legal correlations between individuals. Consistent calculation is difficult and it might violate relevant legal norms and constitutional norm. Therefore, there is no legal reason and there are no differences in the basic requirements for the court to change its position on substantive issues regarding the application for a trustee/fiduciary certificate, especially activities in enforcing complex laws, but enforcement expenditures are not higher than income. The potential for loss and dependency on the debtor's guarantee is guided by matters.

### **Impacts of Decision of Constitutional Court Number 2/PUU-XIX/2021 For the Parties in The Pandemic Time of Covid-19**

The "Decision of the Constitutional Court Number 2/PUU-XIX/2021" strengthened the influence of the previous decision "Decision Constitutional Court number 18/PUU-XVII/2019" by rejecting all lawsuits. The previous decision created legal consequences that favor the debtor and do not provide adequate legal security for the creditor. The term "voluntary" in relation to fiduciary collateral to creditors is

a matter of concern, as it was originally made by contract and at the will of the parties.

A question occurs regarding the term "voluntary" in relation to fiduciary collateral to creditors which was originally made by contract also made at will between the parties, as well as the debtor. Without notification, the two parties understand that if the debtor as the giver of the secret collateral item breaks his promise or is being negligent, the sanctions agreed upon with the default debtor and the object of the fiduciary collateral will be transferred to the creditor.

The proportionality of the constitutional rights affected is limited to the financial industry. The existence of arbitrary collection agencies does not necessarily mean that all collection agencies are bad, and the actions of these agencies should not affect the rights of fair financial businesses that use certified debt companies. The rights to live properly with the company's finances have been affected by the law, which does not provide justice or legal security for these parties. The loss of justice in legal protection is due to the creation of a heavier position on one party, where the creditor must bring the case to court, while the debtor does not have to. The implementation of legal provisions in the country should aim to create legal certainty and predictability in society, guided by the principles of legality, constitutionality and the rule of law. This condition does not reflect the rule of law principle, as it provides a loophole for the debtor to buy time to escape goods, and legal policies need to be implemented to maintain equal rights. A fair government is one that carries out its duties of administering the state as mandated by the constitution that the justice can be truly realized (Mochtar & Afkar, 2022).

Loss of justice in legal protection is a result of the creation of a heavier position on one party, where the creditor must bring the case to court, while the debtor does not have to. This violates "Article 28D paragraph (1)". The implementation of legal provisions in the country should aim to create legal certainty and predictability in society, guided by the principles of legality, constitutionality and the rule of law. However, this condition does not reflect the rule of law principle, as it provides a loophole for the debtor to buy time to escape goods, and legal policies need to be implemented to maintain equal rights (Hasani, 2021).

The simplified role of law is needed to create the level of justice described: "law as a means of ordering (ordering), law as a means of maintaining balance (balancing), law as a catalyst which functions to maintain balance and harmony of existing interests"(Tan, 2021). A government that can be declared fair if the government carries out one of its functions or duties as appropriately as possible in accordance with the Constitution. The law cannot be challenged and legal policies need to be implemented. Individuals cannot seize the rights of others. Hence, justice is defined as equal rights (Rachmadi, 2021). Then Satjipto Rahardjo, requires the importance of consistency of the State, to carry out the duties of administering the

State, as mandated by the constitution, so justice is truly realized.” A government can be declared fair if the government carries out one of its functions or duties as properly as possible in compliance with the Constitution (Bachrudin & Soponyono, 2019).

There is a violation of obligations and rights between the parties "because it adds voluntarily to execution, even though voluntarily exists because when the contract is signed where the debtor agrees to pay according to the specified time period, so it is contrary to Article 28J paragraph (2)". The issue was explained by Johan Yazin that "stipulation Human rights and individual obligations as well as positive law seek to maintain a balance between the two parties, appreciate and respect them to defend the human rights of others. That is, no one can ignore or violate the human rights of others when exercising their human rights. (Yasin, 2021) By defining that "rights and obligations are two things that are proportional and inextricable to create justice as mandated by Article 28J paragraph (2) of the 1945 Constitution." Then it relates to the rights in "Suteki constituting the difference between social justice and individual justice, as follows: Individual justice is micro-justice, namely a justice whose implementation depends on personal will. The form required is clear and should treat everyone fairly. If we talk about justice as a sociological phenomenon, justice is no longer individual, but social and even structural. Therefore, it is called social justice or macro justice (Saputra, 2021).

There is an imbalance of rights in favor of the debtor, which is regulated in the contract but with terms of default written in writing and consequences. However, the debtor can still circumvent it by saying there are no default conditions, making it necessary for the creditor to prove it in court. This complicates the obstacles faced by creditors in implementing various law enforcement mechanisms in good faith and lacks legal certainty, as guaranteed by Article 28D paragraph (1) and the protection of their rights as guaranteed by Article 28J paragraph (2). This also creates legal uncertainty that is contrary to the principles of the rule of law. The legal ideals that must exist proportionally are legal certainty (*rechtszekerheit*), justice (*gerechtigheit*) and expediency (*zweckmasigkeit*). These principles are related to law enforcement theory as conveyed by Gustav Radbruch in his *idee des recht*. The most important aspects that are used as a reference for the use of legal provisions for the general public include (Tan, 2021):

1. The standard definition needs to be firm and clear about what is opposed and what is required
2. Legislation must have transparency or clarity, which is mandatory in order to avoid misunderstanding in the general public
3. The harmony of the legal system provides a description of public attitudes in the future

The concept of "voluntary execution" creates a conflict with the principles of the rule of law in Indonesia. The debtor may not do so due to coercion, and the principles of good faith require the debtor to willingly submit a request for reorganization to the creditor. The creditor finds it difficult to change the interpretation of "Law Number 42 of 1999 concerning Fiduciary Securities" as a result of the decision of the Constitutional Court Number 18/PUU-XVII/2019, due to the difficulties or obstacles experienced such as significantly reduced income and the implementation of execution which is quite complicated because the majority of debtors as fiduciary givers are always evasive when they want to be executed directly (Subagiyo, 2018).

The creditor or applicant in the PMK number 2/PUU-XIX/2021 and his professional colleagues have experienced many problems when applying to the court for execution. After PMK 18/2019 was decided, it became an interpretation in the community that an execution must go through a court decision (Hutabarat, 2020). This has resulted in significantly reduced income and complicated execution procedures for most debtors who are always evasive when they want to be executed directly. The problems that occurred can be proven by the statements from the applicant for PMK 2/2021 and his professional colleagues implying that in reality a debt-collecting job is prone to stigma from society. This also has an impact on the auction of collateral items carried out by the state auction office which cannot be performed prior to a decision from the Chairperson of the District Court. The statement is based on what happened previously, namely the condition where many submissions for this matter were not resolved in several district courts.

People in Indonesia, in this case, owe a lot for the purchase of movable objects such as 2 (two) or 4 (four) wheeled motorized vehicles, which are guaranteed by a fiduciary security. Fiduciary Securities in Law Number 42 of 1999 concerns Fiduciary Securities, including the requirements of its procedure and executions. The impacts of COVID-19 pandemic will be first identified to ensure that the impacts occurred to all aspects of the economy in Indonesia. Defaults are caused by several factors, including the impacts occurring from COVID-19 pandemic, including the prolonged economic crisis. Numerous layoffs, significant salary cuts during this pandemic, and many people are finding it difficult to find other jobs. These occurrences are intertwined chains followed by other consequences. Debtors who should have prepared funds to pay off debts in good installments had to postpone making the payment due to being unable to pay off these debts (Djia & Tan, 2022).

The COVID-19 pandemic, declared a global pandemic by the World Health Organization on March 11, 2020, has been officially recognized as a national disaster in Indonesia through Presidential Decree Number 12 of 2020 (Rizki, 2020). The pandemic has caused an increase in victims and damage to property, and has had far-reaching socio-economic implications in the country. As a result, many debtors have

defaulted on their payments. This raises the question of whether the pandemic can be considered a force majeure, or an unforeseeable event beyond the control of the parties involved, in the context of Indonesian law. The impact of the pandemic on the economy of Indonesia is undeniable and it is important to consider whether this can be considered as a force majeure in the context of Indonesian law and the agreement made between the creditor and the debtor.

According to the Indonesian Civil Code, force majeure, or *overmacht*, is a situation that is unexpected and beyond the control of the debtor or parties involved, and not caused by bad faith. As per the articles 1244 and 1245 of the Civil Code, if the debtor cannot prove that their inability to fulfill their obligations is due to a force majeure event, they may be liable to compensate for costs, losses and interest. However, if the event is proven to be a force majeure, the debtor may not be held liable<sup>1</sup>. The impact of the COVID-19 pandemic on the economy can be considered as a force majeure event, but it ultimately needs to be proven and evaluated considering the agreement between the creditor and debtor. It is important to note that force majeure events are not a complete release from the agreement but may cause a delay in fulfilling the obligations (Yurizal, 2019). A debtor is prevented from giving or doing something that is required, or from committing an act that is prohibited for him.

The two articles above can be interpreted that as long as the debtor has no bad intentions or bad faith, and there is an unexpected event beyond the fault of the debtor or the parties involved, then this condition can be deemed to be force majeure, although of course this matter must be proven first and refer to the agreement made between the creditor and the debtor which regulates the kind of force majeure (Kosasih, Henny, Afrida, & Zulkifli, 2019). The COVID-19 pandemic is indeed an unforeseeable condition. However, it should not necessarily make debtor let go of the agreement that has been made. Instead, delays will occur. A unilateral cancellation will be detrimental to the creditor (Suhantri, Anis, & Deasy, 2020). Basically, agreements made between debtors and creditors are based on good faith. Article 1338 of the Civil Code states that all agreements made in accordance with the law apply as laws for those who make them. Therefore, a situation like the COVID-19 pandemic is out of everyone's expectation. It is a condition that is unexpected by all parties (Muslim, Hadiwinata, & Mundzir, 2021).

It is important to note that while the COVID-19 pandemic can be considered a force majeure event, it does not necessarily absolve the debtor of their obligations. However, it may be beneficial for both parties to come to a mutually beneficial solution, considering the economic difficulties caused by the pandemic. The UUJF, or the Law on Fiduciary Securities, does provide for the execution of

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<sup>1</sup> Ridwan Khairandy, *Hukum Kontrak Indonesia dalam Perspektif Perbandingan*, Bagian Ketiga, Yogyakarta: FH UII Press, 2020

collateral in the event of default, but it is important to consider the specific circumstances and the impact of the pandemic on the debtor's ability to fulfill their obligations. It is also important to note that government policies and regulations related to the pandemic, such as Presidential Decree Number 12 of 2020 and Government Regulation Number 21 of 2020, may also play a role in the handling of these cases and should be taken into consideration.

It is important to note that the laws and regulations related to the COVID-19 pandemic and force majeure, including the Fiduciary Security Law, may vary in their application and interpretation. It is advisable to consult with legal experts to fully understand the implications of these laws in specific cases, and to potentially seek out a mutually beneficial solution for both debtors and creditors. The government policies and regulations related to the pandemic, such as the Presidential Decree and Government Regulation, also play a role in the handling of defaults and obligations during this time. It is important to consider the current economic situation and its impact on individuals and businesses when addressing defaults and seeking solutions (Usman, 2021).

The government policies issued in response to the COVID-19 pandemic, such as Government Regulation Number 21 of 2020 and Presidential Decree No. 12 of 2020, are legally binding regulations that have been delegated by laws such as Law Number 4 of 1984, Law Number 24 of 2007 and Law Number 6 of 2018. These laws and regulations fall under the category of "*allgemeene verbindende voorschriften*" which means regulations that are binding on the public (Peni, 2021). As per Article 100 of the Law of the Republic of Indonesia Number 12 of 2011, all Presidential Decrees, Ministerial Decrees, Governor Decrees, Regent/Mayor Decrees, or other official decisions of a regulatory nature that existed before this Law came into force, must be interpreted as regulations as long as they do not conflict with this Law, including Presidential Decree No. 12 of 2020) namely subordinate legislation delegated by law ( Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, Law Number 24 of 2007 concerning Disaster Management, Law Number 6 of 2018 concerning Health Quarantine).

In summary, the Presidential Decree No. 12 of 2020 declares the Covid-19 pandemic as a national disaster in the non-natural category and this can be considered as a force majeure situation. However, it is important to note that force majeure clauses are usually included in agreements between parties and it is the agreement that determines the rights and obligations of the parties.(Asti, 2019) The existence of the Covid-19 outbreak may have caused disruptions in the fulfillment of agreements, and it can be argued that the failure to fulfill the agreements was due to an unexpected event. It is important for the parties to consider this when addressing the effects of the pandemic on their agreements. The failure to carry out the achievement was due to 'an unexpected thing' as reinforced by the government

decree as outlined in Presidential Decree No.12 of 2020 (Khairini & Bustamam, 2018).

Presidential Decree of the Republic of Indonesia Number 12 of 2020 is relevant and fulfills Article 1244 and Article 1245 of the Civil Code. The Covid-19 pandemic is an unexpected situation, a condition that was not expected when the agreement was made. This is relevant to Article 1245 of the Civil Code: "No loss and interest costs must be reimbursed if due to coercive circumstances or due to an accidental event the debtor is unable to provide or act for as required, or because of the same matters due to which he has committed an act that is forbidden".

Based on the explanation above, the settlement of bad loans experienced by debtors, including arrangements before the COVID-19 pandemic, may not be fully implemented. In this case, the government has also issued related follow-up regulations against the President of the Republic of Indonesia Number 12 of 2020 concerning the Stipulation of Non-Natural Disasters with the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster:

1. Financial Services Authority Regulation (POJK) Number 14/POJK.05/2020 concerning Countercyclical Policies on the Impact of the Spread of Corona Virus Disease 2019 (COVID-19) for Non-Bank Financial Services Institutions (State Gazette of the Republic of Indonesia of 2020 Number 102, Addendum to State Gazette of the Republic of Indonesia Number 6489);
2. Financial Services Authority Regulation Number 58/POJK.05/2021 concerning the First Amendment to Financial Services Authority Regulation Number 14/POJK.05/2020 concerning Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019 (COVID-19) for Non-Bank Financial Services Institutions (State Gazette Republic of Indonesia of 2020 Number 287, Addendum to the State Gazette of the Republic of Indonesia Number 6595);
3. Financial Services Authority Regulation Number 30/POJK.05/2021 concerning the Second Amendment to Financial Services Authority Regulation Number 14/POJK.05/2020 concerning Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019 (COVID-19) for Non-Bank Financial Services Institutions (State Gazette Republic of Indonesia of 2021 Number 292, Addendum to the State Gazette of the Republic of Indonesia Number 6751).

The POJK policy was created as anticipatory measure in improving the performance of debtors and also maintain the stability of the performance of Financial Services Institutions (LJKNB) in order to avoid potential turmoil, including greater credit risk that could disrupt NBFIs stability (Muslim, 2022). Regarding bad credit / financing, or debtors who have been affected by the spread of COVID-19,

this credit / financing restructuring as stipulated in POJK Number 11/POJK.03/2020 concerning National Economic Stimulus is expected to serve as a countercyclical policies, including (Kafa & Sacipto, 2019):

1. Lower interest rates;
2. Term extension;
3. Principal arrears reduction;
4. Reduction interest arrears;
5. Additional credit/financing facilities; and/or
6. Conversion of credit/financing into temporary equity participation.

Those policies encourage the banking intermediary function to maintain financial system stability, and support economic growth as economic stimulus against the impacts of COVID-19. The government regards the interests of creditors and debtors. Creditors' responses toward the existing regulations and their application becomes the next challenges to deal with. Therefore, regarding this problem, it is better for the debtor and creditor to renegotiate or make a derivative agreement from the existing principal agreement, which might be done by reducing interest rates, extending the term, etc.

## CONCLUSION

The determination of default in cases of fiduciary bond objects is unclear and this slows down the enforcement process. As per a recent Constitutional Court No. 2/PUU-XIX/2021, creditors cannot impose the object of the fiduciary security on their own accord if the debtor defaults. Creditors can only execute the object if the debtor agrees to default and voluntarily releases the security. In such cases, the court must determine whether there has been a delay in payment. This prolongs the process and increases costs for creditors, who may also have to bear additional expenses in case of court disputes. The decision in question also creates uncertainty and unfairness for creditors. Despite clear guidelines provided by the UUJF on how to settle and execute, the procedure is not always straightforward, especially during the Covid-19 pandemic. A more effective solution would be for creditors and debtors to renegotiate and restructure existing agreements, in line with provisions outlined in POJK Number 48/POJK.03/2020, which aims to ease the burden on both parties by reducing interest rates, extending terms, and reducing principal arrears.



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