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## The Nature of Execution Regarding the Object of Fiduciary Security (Judicial Review of the Gorontalo District Court Judge's Decision)

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Received: 24-June -2023

Revised: 27-July -2023

Accepted: 21-August -2023

### Abstract

This research aims to: find out, analyze, explain and discover the essence of the execution of fiduciary collateral objects. Juridical analysis of the Gorontalo District Court Judge's decision. The type of research in the results of this research uses empirical normative legal research methods. This research is a combination of a normative legal approach with the addition of various empirical elements. The normative-empirical research method focuses on the implementation of normative legal provisions (laws) in action on each particular legal event that occurs in a society. The research results show that the essence of the execution of fiduciary collateral objects is a guarantee of legal certainty and certainty of rights for creditors. The problems that occur must of course be based on the principles of justice and proportionality giving something in proportion. If you look at the many fiduciary cases that occur in the Gorontalo area, they are resolved more unilaterally by directly executing property rights against the debtor by the party. *Creditors* without going through a judge's decision at the Gorontalo District Court, namely litigation in court, the results can be accounted for before the law because the court's decision has valid legal force.

**Keywords:** Execution, Object; Fiduciary

### Introduction

With rapid developments in the economic sector, the Indonesian nation is required to always follow economic developments and see the opportunities that exist.<sup>[1]</sup> There are many ways people use to fulfil their income, including running a business or becoming a business actor who can provide employment opportunities and improve the welfare of the community. The business referred to here can be interpreted as an organization that provides goods or services to make a profit (profit). And one of the opportunities that can be seen is business in the field of leasing. In the development of the business world in Indonesia, *leasing* has a significant role in improving the economy and development<sup>[2]</sup>.

If we look at the prospects for the current lifestyle needs of Indonesian people, business *leasing* is a business that can grow rapidly and play an active role as a new financial institution that provides services in the form of providing funds or goods to be used.

*Leasing* according to Article 1 Number 5 Presidential Regulation Number 9 of 2009 concerning Financing Institutions is a financing activity in the form of providing capital goods either on a lease basis with option rights (*poor finance*) or leasing without option rights (*operating lessons*) for use by lessons over a certain period of time-based on instalment payments<sup>[3]</sup>. Leasing is an agreement related to financing activities in the form of the provision of goods by the lessor (lessor) for use or benefit by lessons (tenant) in a certain period of time-based on periodic payments.

Agreements have become a daily activity in trade. In conventional trading<sup>[4]</sup>, the birth of an agreement can occur through direct action or indirect action from both parties, each of whom plays a role, either acting for and on behalf of themselves or acting on behalf of a company they represent, where the first party makes an offer and is accepted by the recipient with clear legal conditions and the aim of creating a legal relationship (*legal relationship*)<sup>[5]</sup> In other words, leasing is essentially a rental agreement where the lessor (lessor) hands over goods to be used by the lessee (lessee). Therefore, leasing is also commonly referred to as a business lease agreement<sup>[6]</sup>.

The parties or subjects in a leasing agreement are generally between a company and a company, but in development, it can also occur between a company and a person as a personal legal subject. Leasing objects can be movable goods such as motorized vehicles, or immovable goods such as factory machines, etc.

The public's interest in leasing is currently high because the process is quite simple and easy compared to banking services, which must provide a house certificate or other collateral. Everything promises convenience and sweet promises when people commit themselves to the services of financial institutions. However, when consumers are negligent with their instalments and do not make monthly instalments, fines will be imposed due to late payment. This also includes administrative sanctions and also forced collection by the collection agency from the financing institution which can be carried out at any time if there is a delay in payment.

Based on the Decree of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991 concerning Business Leasing Activities, it is stated that every business leasing transaction must be bound by an agreement. A lease is usually always followed by a fiduciary agreement. A fiduciary is a debt and receivable agreement to a debtor which involves guarantees. The guarantee is still under the control of the owner of the guarantee.

Leasing is bound based on a standard agreement or standard contract. According to Munir Fuady, a standard agreement is a written agreement made only by one of the parties, often even printed in the form of forms made by one of the parties, in this case when the agreement is signed, generally the parties only fill in the data. - only certain informative data with little or no change in the clauses, where the other party in the agreement has no opportunity or only a small opportunity to negotiate, change the clauses made by one of the parties so that usually the standard agreement is very one-sided. Likewise regarding the standard conditions in agreements that are still to be made, the amount of which is not certain, without the need to negotiate the contents first. So a standard agreement is essentially an agreement in which the conditions for dismissal are standardized and stated in the form<sup>[7]</sup>.

The standard agreement clauses had previously been determined unilaterally by one of the parties, namely the party which could generally be said to be the determining party, because it had a bargaining *position* who is far above the other party, both in economic position, knowledge and experience regarding the object of the agreement. However, if viewed in terms of content, there is an imbalance between the rights and obligations of the parties. This means that entrepreneurs tend to protect their interests in such a way by establishing several rights while limiting the rights of opposing parties. On the other hand, entrepreneurs minimize their obligations and regulate as many of the obligations of opposing parties as possible. Entrepreneurs have a stronger position compared to their counterparties so various exoneration clauses are provided. made by entrepreneurs tends to benefit the entrepreneur while burdening the opposing party to the agreement. In other words, a standard agreement is not an agreement, because the position of the entrepreneur in the agreement is like that of a private lawmaker, the conditions determined by the entrepreneur in the agreement are a law, not an agreement.<sup>[8]</sup>

The leasing agreement is bound by a fiduciary guarantee. A fiduciary guarantee is one of the material guarantees known in positive law. Therefore, fiduciary assignments are carried out using an instrument called a fiduciary guarantee deed which must meet the requirements, namely in the form of a Notarial Deed and be registered at the fiduciary registration office. With this registration, the fiduciary recipient has preferential rights, namely the right to collect the receivables for the proceeds of the execution of the object that is the object of the fiduciary guarantee. New preferential rights are obtained when the fiduciary is registered at the Fiduciary Registration Office and these rights are not extinguished due to bankruptcy and/or liquidation of the fiduciary. In practice, even though UUJF has regulated the obligation of fiduciary recipients to register fiduciary guarantee deeds at the Fiduciary Registration Office, there are still many fiduciary recipients who have not or do not register fiduciary guarantee deeds.<sup>[9]</sup> If the receivables are transferred to another party, the fiduciary that guarantees the debt also transfers to the party who received the fiduciary transfer. So, if for whatever reason, the fiduciary object passes into the hands of another person, then the fiduciary for the object remains in effect and there is no obligation and responsibility from the fiduciary recipient for the consequences of the error (intentional or negligence) of the fiduciary provider arising from the contractual relationship. or because of unlawful acts in connection with the use and transfer of objects that are the object of the fiduciary guarantee. In contract law, three principles are interrelated, namely the principle *ofkonsensualisme* (*the principle of consensualism, het consensualisme*), the

basis of the binding force of the contract (*the principle of the binding force of contract*), and the basis of freedom of contract (*principle of freedom of contract*)<sup>[10]</sup>. Standard forms of contracts have appeared at every level of business transactions, from large-scale business transactions to street vendors. The emergence of contract standards is an indirect result of the introduction of the principle of freedom of contract (Article 1320 and Article 1338 of the Civil Code).

*Debtor* or the fiduciary giver if there is a breach of promise, then the execution of the object that is the object of the fiduciary guarantee in the form of selling the object of the fiduciary guarantee can only be carried out after 1 (one) month has passed since being notified in writing by the giver and recipient of the fiduciary to the interested parties and announced in at least 2 (two) newspapers circulating in the area concerned. The fiduciary giver is obliged to hand over the object that is the object of the fiduciary guarantee to execute the fiduciary guarantee. If the object that is the object of fiduciary collateral consists of trading objects or securities that can be sold in the market or on the stock exchange, the sale can be carried out at these places by the applicable laws and regulations.<sup>[11]</sup>

Financing institutions generally use agreement procedures that include fiduciary guarantees for fiduciary objects. In practice, many financing institutions provide movable goods requested by consumers (such as motorbikes or industrial machines) and then put them in the name of the consumer debtor (credit/loan recipient)<sup>[12]</sup>. The consequences *debtor* submitted to creditors (credit provider) on a fiduciary basis. It means the debtor as the owner in the name of the goods becomes a fiduciary to creditors who are in a position as a fiduciary recipient. This simple practice in fiduciary guarantees is debtor/ the party who owns the goods applies for financing to *Creditors*, then both parties agree to use fiduciary guarantees for property objects debtor and a notarial deed is made and then registered at the Fiduciary Registration Office. *Creditors* as fiduciary recipients, will receive a fiduciary certificate, and a copy of it will be given debtor<sup>[13]</sup>.

Facts on the ground show that financing institutions in making financing agreements include the words fiduciary guarantee. But ironically some are not made in a notarial deed and are not registered at the Fiduciary Registration Office to obtain a certificate, such a deed can be called a fiduciary guarantee deed below. hand<sup>[14]</sup>. Fiduciary guarantees that do not produce fiduciary guarantee certificates give rise to complex and risky legal consequences. If it is not registered at the fiduciary registration office, then legally the fiduciary agreement contained in the leasing agreement has no rights executorial and can be considered as ordinary debts and receivables, so the leasing company is not authorized to carry out executions such as withdrawing motor vehicles.

Many financing institutions carry out executions/withdrawals on goods that are encumbered with fiduciary guarantees that are not registered. However, since 2012 the Ministry of Finance has issued regulations prohibiting leasing from forcibly withdrawing vehicles from customers who are in arrears on vehicle loan payments.<sup>[15]</sup>

As for formal legal procedural options to maintain justice and enforce the material law contained in it, the execution process must be carried out by filing a civil suit with the District Court through the normal procedural legal process until the court decision is issued. This is based on the Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees. The execution that will be carried out must be through a court decision that has permanent legal force. The leasing party has no authority to carry out such withdrawals. Execution must be carried out by an official price assessment body or Public Auction Body. If the motorbike is withdrawn by the leasing party without showing a fiduciary guarantee certificate, this is an unlawful act.

But the case is different if creditors in this case the fiduciary recipient have first registered the Fiduciary Agreement between himself and the Debtor as Fiduciary Provider at the Fiduciary Registration Office. If the fiduciary default (defaults) to the fiduciary agreement with the fiduciary provider accreditors, then the withdrawal of goods guaranteed by the Fiduciary Guarantee certificate by the Fiduciary Recipient is permitted as stipulated in Article 29 paragraph (1) letter a) in conjunction with Article 15 of Law Number 42 of 1999 concerning Fiduciary Guarantees based on title executorial “*FOR JUSTICE BASED ON ALMIGHTY GOD*”. Vehicle withdrawal carried out by the Fiduciary Recipient when the Fiduciary Giver fails to pay his obligations under the Fiduciary Guarantee Law is referred to aspartate *Ekseskusi* or implementation in advance or having the understanding that the Fiduciary Recipient can implement the contents of the fiduciary guarantee financing

agreement which has become law for those who agree first without going through the legal process of a trial procedure in court.

The people of Gorontalo are an example of a community that makes extensive use of the services of financial institutions to obtain credit for goods. Financing institutions can be said to be competing to attract consumer interest by providing the conveniences offered by these institutions. The community is given easy financing to realize their hopes. Examples of the convenience of financing provided include financing for buying and selling vehicles and purchasing goods such as furniture in collaboration with showrooms or dealers. They provide easy, fast and satisfying financing services for all people in Gorontalo Province. Only by pledging BPKB or other securities can the public get financing services offered by financing institutions.

With the convenience provided by public financing institutions, they often neglect their obligations to make instalment payments, so financing institutions also sometimes carry out collection efforts using debt collection services. It can be seen that many cases occur in the practice of a Financing Institution (Leasing), if any debtor who is in arrears in payments for several months, sometimes makes withdrawals from fiduciary collateral objects. It is not uncommon for withdrawals from fiduciary collateral objects to be carried out forcefully by debt collectors who receive fiduciaries, although some are done voluntarily by fiduciary givers. Leasing action through debt collector Those who forcibly take a vehicle along with its STNK and vehicle keys may be subject to criminal sanctions. Forced actions carried out by debt collectors include criminal acts of confiscation and can be subject to criminal sanctions under Article 368 of the Criminal Code. and this action includes a violation of consumer rights as stated in the Consumer Protection Law Number 8 of 1999.

A few of the problems that arise and exist in the Gorontalo community above are the widespread problems with withdrawing fiduciary collateral objects carried out by fiduciary recipients accreditors towards fiduciary collateral objects which are under the control of the fiduciary giver as a debtor or when the object of the fiduciary guarantee is under the control of another party, it is an interesting topic which for the author is appropriate to use as background to the problem, it is necessary to research this matter. The breadth of the topic of executing fiduciary guarantees seems necessary to be researched further so that the true nature of the execution of fiduciary guarantees can be revealed. The large number of fiduciary cases registered civilly in the district courts in Gorontalo, especially in the Gorontalo District Court, adds to the writer's interest in uncovering the extent of the resolution of the judiciary in fiduciary disputes which are rife. There is a lawsuit, trial evidence and a judge's decision regarding the fiduciary case that occurred as a result *execution parade*, which is done by creditors as a fiduciary recipient of the object of fiduciary guarantees is certainly unique in itself and certainly interesting so it needs to be studied through research.

### Research methods

This research uses normative legal research methods to answer the first problem formulation and empirical research to answer the second and third problem formulations. This research is a combination of a normative legal approach with the addition of various empirical elements. The normative-empirical research method focuses on the implementation of normative legal provisions (laws) in action on each particular legal event that occurs in a society. In this normative-empirical legal research, the author chose a judicial *Case Study*, where the judicial *case study* is a legal case study approach due to conflict so it will involve intervention with the court to provide a resolution decision (Jurisprudence). So it can be said that existing legal research is taken from facts in a society, legal entity or government agency. The research in this dissertation was carried out at the Gorontalo District Court. This is based on research conducted that often occurs acts of forced withdrawal and confiscation of fiduciary collateral objects by Fiduciary Recipients as *Creditors* towards fiduciary collateral objects which are under the control of the Fiduciary Giver as debtor occurred in Gorontalo City. The withdrawal and confiscation of the fiduciary object then end in the execution of the fiduciary guarantee carried out by the party creditors as Fiduciary Recipients by conducting an auction of fiduciary collateral objects. This is of course considered detrimental to the party *Debtor* as Fiduciary Provider. Regarding the execution of the fiduciary guarantee object, from here the researcher wants to carry out in-depth research based on problems which are then often filed in Civil Lawsuits at the Gorontalo District Court.

## Discussion

The effectiveness of resolving civil disputes related to fiduciary guarantees decided in Indonesian courts is highly dependent on various factors, such as the complexity of the case, the parties' understanding of fiduciary law, and the efficiency of the legal process. Here are some relevant aspects:

1. **Legal Understanding:** The level of legal understanding of the parties regarding fiduciary regulations is very influential. For example, do they understand their rights and obligations, the guarantee execution process, and the legal consequences?
2. **Case Complexity:** The complexity of fiduciary cases also affects the effectiveness of dispute resolution. For example, disputes may be more difficult to resolve if there are many parties involved if the fiduciary collateral object is used for more than one debt, or if the collateral object is difficult to sell or value.
3. **Legal proceedings:** The efficiency of the legal process also has an influence. Even though the Fiduciary Guarantee Law states "parade execution" (execution without going through court), in practice court proceedings are often required to resolve disputes, for example, if the debtor opposes the execution. Long and complicated court processes can hamper the effectiveness of dispute resolution.
4. **Court ruling:** Court decisions also have an impact. If court decisions are considered fair and adequate by all parties, this can increase confidence in the legal system and encourage faster and more effective dispute resolution.
2. **Enforcement or Law Enforcement:** The effectiveness of dispute resolution also depends on the extent to which court decisions can be implemented. In some cases, even though the creditor wins the lawsuit, in practice legal enforcement of court decisions can be a challenge.

Courts also often act as mediators, helping both parties reach a settlement, which is fair and mutually beneficial. However, there are also cases where out-of-court settlement can be a more effective and efficient option, such as through direct negotiations between creditors and debtors, or mediation or arbitration. In resolving a dispute, two ways can be taken, namely litigation (court) and non-litigation (negotiation, mediation and arbitration). These two methods have their respective advantages and disadvantages, but in this research, the researcher will focus on settlement through court.

The litigation process is a person's first choice when faced with a dispute, let alone a business dispute. Certainly, the first thing that comes to mind is the court. Everyone wants existing disputes to be tried according to applicable law, by submitting the dispute case to a legal entity, namely the court. This submission to a legal body or court is often called a litigation process. In this litigation process, all litigants face each other directly in front of the judicial panel. The parties are usually accompanied by their respective lawyers and they both defend their rights and argue. Decisions resulting from the litigation process are usually coercive and also have permanent legal force, some parties lose and some parties win. Both must carry out all proceeds from the litigation. The process of resolving disputes through justice or litigation is often called *ultimum remedium*. What this means is that litigation is the final means of resolving disputes. The final result of litigation has binding legal force on the parties involved in the dispute.

Having a dispute with another party is not a favourable situation. A lot has to be sacrificed including time and money. Before moving on to the resolution, what is a dispute? The term dispute in the Big Indonesian Dictionary (KBBI) is a situation where there is something that causes a dispute. It can be in the form of a small dispute or a big dispute. Parties who are dissatisfied with the dispute can negotiate to find a resolution.

Resolving disputes through litigation has its advantages. The benefits include:

1. The process is carried out formally by state-appointed institutions (Courts to the Supreme Court)
2. The decision is made by the judge where there is no involvement from both parties
3. Legal facts become the orientation of the judge's decision-making
4. The trial process is carried out openly and the time required is also relatively short.

The decision made by the judge is final and binding on the parties concerned. In the process of carrying out legal resolution of disputes, a professional person is needed to accompany you. The law even regulates the existence of a competent party, for example, a law firm. Being accompanied by a competent party is considered important so that the parties concerned with the dispute receive proper legal enlightenment and defence. So that every step taken always follows clear considerations and is by applicable regulations.

To find out how many examples of cases regarding fiduciary matters in the Gorontalo District Court which are the focus of this research, the researcher saw that many judges' decisions rejected lawsuits from debtors who sued creditors who were recipients of fiduciary collateral objects, in the Gorontalo District Court which the researcher found since 2018 – 2020 totalled 13 decisions related to fiduciary cases.

Researchers will present data obtained while conducting research at the Gorontalo District Court by taking data sources from Gorontalo District Court decisions on civil cases relating to fiduciary disputes that were decided between 2018 and 2020. The data was obtained through field studies by obtaining original copies of the Judge's Decisions. Gorontalo District Court. The thirteen decisions are

1. Decision Number: 47/Pdt.G/2018/PN.Gto
2. Decision Number: 54/Pdt.G/2018/PN.Gto
3. Decision Number: 64/Pdt.G/2018/PN.Gto
4. Decision Number: 66/Pdt.G/2018/PN.Gto.
5. Decision Number: 68/Pdt.G/2018/PN.Gto
6. Decision Number: 71 /Pdt.G/2018/PN.Gto.
7. Decision Number: 54 /Pdt.G/2019/PN.Gto.
8. Decision Number: 4/Pdt.G/2020/PN.Gto
9. Decision Number: 8/Pdt.G/2020/PN.Gto
10. Decision Number: 9/Pdt.G/2020/PN.Gto
11. Decision Number: 30/Pdt.G/2020/PN.Gto
12. Decision Number: 56/Pdt.G/2020/PN.Gto
13. Decision Number: 66/Pdt.G/2020/PN.Gto

The following are cases related to fiduciaries that researchers found where the plaintiff, namely the debtor, experienced more defeats in the judge's decision:

**Table 1. Gorontalo District Court Judge's Decision**

Decision Results		
Acceptance	Not Accepted	Rejected
Case Number: 66/Pdt.G/2018/PN Gto	Case Number: 64/Pdt.G/2018/PN Gto Case Number: 71/Pdt.G/2018/PN Gto Case Number: 54/Pdt.G/2019/PN Gto Case Number: 4/Pdt.G/2020/PN Gto Case Number: 8/Pdt.G/2020/PN Gto Case Number: 66/Pdt.G/2020/PN Gto	Case Number: 47/Pdt.G/2018/PN Gto Case Number: 54/Pdt.G/2018/PN Gto Case Number: 68/Pdt.G/2018/PN Gto Case Number: 9/Pdt.G/2020/PN Gto Case Number: 30/Pdt.G/2020/PN Gto Case Number: 56/Pdt.G/2020/PN Gto

From the data table above, the research can see that the lawsuit received was only one of 13 cases from 2018 - 2020 at the Gorontalo District Court. settlement of civil cases regarding fiduciary disputes which researchers have analyzed based on the Gorontalo District Court Judge's Decision which was decided between 2018 and 2020.

In general, the settlement of civil cases that have been carried out in litigation by Gorontalo District Court Judges regarding civil cases relating to disputes arising from the execution carried out on fiduciary collateral objects that occurred in the jurisdiction of the Gorontalo District Court which was finally decided at the first level during 2018 to In 2020, dispute resolution can be described as follows.

**Table 2. Things decided**

No.	Year of Decision	Case Number	Amount
1	2018	Number: 47/Pdt.G/2018/PN Gto Number: 54/Pdt.G/2018/PN Gto Number: 64/Pdt.G/2018/PN Gto Number: 66/Pdt.G/2018/PN Gto Number: 68/Pdt.G/2018/PN Gto Number: 71/Pdt.G/2018/PN Gto	6 things
2	2019	Number: 54/Pdt.G/2019/PN Gto	1 Item
3	2020	Number: 4/Pdt.G/2020/PN Gto Number: 8/Pdt.G/2020/PN Gto Number: 9/Pdt.G/2020/PN Gto Number: 30/Pdt.G/2020/PN Gto Number: 56/Pdt.G/2020/PN Gto Number: 66/Pdt.G/2020/PN Gto	6 things
Total Number of Civil Cases Relating to Fiduciary Disputes which were resolved through litigation at the Gorontalo District Court in 2018-2020			13 things

If you look at the many fiduciary cases that occur in the Gorontalo area, which are resolved more unilaterally by directly executing property rights against the debtor by the creditor without going through a judge's decision at the Gorontalo District Court, this is via litigation in court, the results can be accounted for before the law because of the decision. from the court has valid legal force. According to researchers, there will be many new conflicts related to confiscation of property rights, and arbitrary actions by fiduciary institutions against the directors, if they choose to resolve them independently. If you look at the research data above, if it is resolved through court, it will be proven that the debtor or creditor who committed the unlawful act from the data above has been proven legally and convincingly that the debtor has been negligent in carrying out his obligations to the creditor as stated in the agreement. valid before the law.

According to researchers, if all fiduciary-related issues between debtors and creditors are resolved through the courts, it will guarantee legal certainty and justice for both parties to the dispute, in contrast to just choosing a direct execution settlement for the creditor against the debtor, it will give rise to new and prolonged legal problems, resulting in carrying out the orders of Law Number 42 of 1999 concerning fiduciary guarantees, it will not run optimally as intended by the UUJF as a means to assist business activities and to provide legal certainty to interested parties.

After the researcher carried out the research and obtained the results described above, the researcher stated that the data the researcher found in the field showed that the judge's decision on fiduciary cases was effective. to achieve the values of legal certainty and justice for the parties so that the creditor when carrying out the execution has a strong legal basis, but on the other hand, according to researchers, settlement through the courts is quite time-consuming, material and energy-intensive.

In practice, the execution of fiduciary guarantees often gives rise to polemics, because this is carried out according to the norms of Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees which refers directly to Article 15 paragraph (2) and paragraph (3) of the quo Law. To answer the existing polemic, interpret Article 15 paragraph (2) and paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees as an appropriate solution to serve as a basis for the parties involved in a fiduciary guarantee agreement. Initially, Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees stated that a fiduciary guarantee agreement certificate has binding legal force like a court decision which has permanent legal force. This is interpreted in absolute terms so that the execution of fiduciary guarantees against defaulting debtors does not require a court decision. The norms of Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, have caused a lot of polemics, because the quo article only mentions the condition of breach of

contract, but the indicators of breach of promise are not specifically explained and the party who has the authority to do so is not specified. stating the condition of breach of contract against the parties involved in the fiduciary agreement<sup>[16]</sup>.

Initially, Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees stated that a fiduciary guarantee agreement certificate has binding legal force like a court decision which has permanent legal force. This is interpreted in absolute terms so that the execution of fiduciary guarantees against defaulting debtors does not require a court decision. The norms of Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, have caused a lot of polemics, because the quo article only mentions the condition of breach of contract, but the indicators of breach of the promise are not specifically explained and the party who has the authority to do so is not specified. stating the condition of breach of contract against the parties involved in the fiduciary agreement.

In general, the word effectiveness indicates success in terms of whether or not the targets that have been set are achieved. If the results are closer to the target, it means the effectiveness is higher.<sup>[17]</sup> In the context of law, grammatically the effectiveness of the law can be interpreted as the success of the law, namely success in implementing the law itself in the social order.

As in Article 1 paragraph (3) of the 1945 Constitution, it is clearly stated that Indonesia is a legal state. One of the important principles in 'the rule of law is *res judicata pro veritate habetur* (the judge's decision must be considered correct no matter what)'. Because judges in a legal state are the holders of power over justice. That is why the judge's decision in a state of law is the only decision that must be respected, followed and obeyed by all citizens, as a form of citizen obedience to the state of law.

The process of resolving conflicts through legal channels takes a long, long and tiring time, but must be considered the most effective way to decide whether a violation of the law is right or wrong. Therefore, during the process of examining cases related to fiduciary guarantees at the Gorontalo District Court, all parties must prioritize legal objectivity, without including elements of subjectivity which are often clouded by certain interests. The law will not work well if one party relies on their subjectivity. Law is the only middle-ground institution that is the most objective in a country based on law, especially in resolving civil cases related to fiduciary security property rights disputes. That is why as a civilized nation we believe in democracy and law as pillars of the running of the country.

From the above conception, it can be concluded that the community, government and state institutions must comply by respecting and implementing every decision that has been determined by the district court. By complying with the judge's decision, it will indicate that society is complying with state law. In other words, if there is a fiduciary institution (Creditor) or debtor that does not implement or even annuls the decision of the judge at the Gorontalo District Court, then it is the same as the fiduciary institution (Creditor) or debtor that has overruled the law in the country. As *a tool of social control* course, realizing harmony and balance in life between one another is the aim of establishing a law in people's lives. In this case, the law is used as a 'preventer' or 'dissolver' of conflicts due to various clashes of interests. Not only by paying attention to when the law was born, as a society we of course also pay attention to the effectiveness of the implementation of the law.

This is based on Achmad Ali's opinion which states that effectiveness is used as a benchmark for the realization of a goal or target that is to be achieved and has been determined in advance. This opinion is also the basis for researchers' thinking that the effectiveness of legal implementation is considered important to pay attention to realize all dreams of harmony and balance in life between human beings.

The decision from the Gorontalo District Court must be used as a reference or further reference for creditors and debtors in treating their rights and authorities. Of course, this is in line with the opinion put forward by Hans Kelsen, namely that "unconstitutional" laws cannot be implemented by any organ or other state institution. However, in practice, the implementation of the Gorontalo District Court judge's decision, especially regarding fiduciary guarantee cases between the creditor and the debtor, does not always proceed according to the orders of the judge's decision. This will certainly have an impact on the level of compliance of the fiduciary institutions at the time of the decision. Disobedience to the judge's decision can be considered disobedience to state law. The same thing then happened in Constitutional Court Decision No.18/PUU-XVII/2019 regarding the Review of Law No. 42 of 1999 concerning Fiduciary Guarantees. The Constitutional Court tested the constitutionality of Article



15 paragraphs (2) and (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees. The Constitutional Court thinks that this provision could create an imbalance in legal rights between creditors and debtors because the execution authority is given to creditors on their behalf without having to go through a civil lawsuit in court or ask for assistance from the authorized state apparatus for this purpose, such as in executing court decisions.

Apart from that, the Constitutional Court thinks regarding the provisions of Article 15 paragraph (3), namely regarding the condition of breach of contract. The Panel of Judges confirmed that the existence of provisions governing breach of contract creates legal uncertainty because in Law No. 42 of 1999 concerning Fiduciary Guarantees does not explicitly regulate when a debtor is declared to be in breach of contract and to whom the authority to determine the state of breach of contract is given, this will have implications for legal uncertainty regarding when the debtor has committed a breach of contract which results in the emergence of absolute authority on the part of the party. Creditors sell objects that are the object of fiduciary collateral which are under the debtor's control.<sup>[18]</sup>

Thus, the Constitutional Court confirms that paragraphs (2) and (3) of Article 15 of the Fiduciary Guarantee Law are 'unconstitutional'. The Constitutional Court then gave an address that the execution of fiduciary guarantees must be within the jurisdiction of a civil suit before the District Court.

Debtors' concerns about unilateral execution or arbitrary withdrawals by creditors will not occur. Thus, the Creditor cannot carry out its execution by force, for example by requesting assistance from the police, if there is a breach of contract (default) by the giver of fiduciary rights (the debtor) against the Creditor which has not yet been recognized by the debtor and the debtor objects to voluntarily handing over the object that is object in a fiduciary agreement.

In this case, the Court has reaffirmed in Constitutional Court Decision Number 2/PUU-XIX/2021 that creditors must submit a request for execution to the District Court. In assessing effectiveness, according to Soerjono Soekanto,<sup>[19]</sup> whether a law is effective or not is determined by 5 factors, namely:

1. Legal factors (laws).
2. Law enforcement factors.
3. Facilities or facilities factors that support law enforcement.
4. Community factors, are the environment where the law is applied.
5. Cultural factors.

The reality that occurs in society is that legal factors, law enforcement factors, facilities and cultural factors are sufficient in society. The obstacles to the effectiveness of decisions in this research are society and statutory regulations which, according to the researchers, are that the public (debtors) and creditors do not fully understand the rules regarding fiduciaries, and the statutory regulations still conflict with each other, causing their meaning in the field subject to multiple interpretations by both creditors and debtors.

## Conclusion

The essence of executing fiduciary guarantees is to provide guarantees of legal certainty and guarantee certainty of rights for creditors. Settlement of fiduciary disputes in Indonesian courts has not been effective in deciding fiduciary disputes for fiduciary givers and fiduciary recipients as well as in achieving efficiency in the legal processes implemented. To increase the effectiveness of dispute resolution, it is necessary to continue to improve understanding of the law, speed up the court process, and ensure independence and integrity in the justice system.

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