



**The Constitutional Court
of the Republic of Indonesia**

SUMMARY OF DECISION ON CASES NUMBER 18/PUU-XVII/2019

About

**Executorial Power in Fiduciary Guarantee Certificate and Default Conditions in Fiduciary
Guarantee**

Petitioner : Aprilliani Dewi and Suri Agung Prabowo

Judicial Review : Examination of Law Number 42 of 1999 concerning Fiduciary
Guarantee (Law 42/1999) against the 1945 Constitution of the Republic
of Indonesia (UUD 1945).

Case of Lawsuit : Article 15 paragraph (2) and paragraph (3) of Law 42/1999 contradicts
the 1945 Constitution.

Injunction : 1. Partially granted the Petitioners' petition;
2. State Article 15 paragraph (2) of Law Number 42 of 1999 concerning
Fiduciary Security (State Gazette of the Republic of Indonesia of 1999
Number 168, Supplement to the State Gazette of the Republic of

Indonesia Number 3889) 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 fiduciary guarantees where there is no agreement on default (default) and the debtor objected to voluntarily handing over the object which became fiduciary security, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force";

3. State Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) insofar as the phrase "default of promise" is contrary to the Constitution of the Republic of Indonesia Year 1945 and has no binding legal force as long as it does not mean that "the existence of a breach of contract is not determined unilaterally by the creditor but based on an agreement between the creditor and the debtor or based on legal remedies which determine the failure of the promise";

4. Declare the Elucidation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) insofar as the phrase

"executive power" is contrary to the Constitution of the Republic of Indonesia Indonesia in 1945 and does not have binding legal force as long as it is not interpreted "for fiduciary security where there is no agreement on default, and the debtor objected to voluntarily handing over the object which is a fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee 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.

Date of the Decision : Monday, 6th January 2020

Decision Overview:

The Petitioners are individual Indonesian citizens who feel aggrieved by the provisions of Article 15 paragraph (2) and paragraph (3) of Law 42/1999 because these provisions are without a proper legal mechanism, namely by equalizing the position of the Fiduciary Guarantee Certificate with a court decision having permanent legal force. This resulted in the recipient of the Fiduciary's arbitrary action in executing the fiduciary security object without any legal procedure but instead using a debt collector's services.

Whereas what the Petitioners tested was Law Number 42 of 1999 concerning Fiduciary Guarantee, the Court has the authority to petition a quo.

Whereas in the provisions of the norms of Article 15 paragraph (2) and paragraph (3) of Law 42/1999, it contains the power of execution which can be carried out by the fiduciary security holder (creditors) which then causes many problems, both related to the constitutionality of norms and implementation.

The phrase "executorial title" on the fiduciary certificate and "equates a court decision which has permanent legal force" in the provisions of Article 15 paragraph (2) of Law 42/1999 in it contains the meaning that a fiduciary certificate has the power of execution without requiring a prior court decision. By the existence of a lawsuit in a civil manner, the execution is treated the same as against a court decision with permanent legal force. This does not provide balanced legal protection between creditors and debtors and also objects that become Fiduciary Security, both legal protection in the form of legal certainty and justice.

The creditor as the recipient of fiduciary rights has the potential (even actually has) led to arbitrary actions and is carried out in a less "human" manner, in the form of physical or psychological threats that creditors (or their proxies) often make against debtors who often even ignore their rights. -debtor's rights.

Furthermore, the provisions of Article 15 paragraph (3) of Law 42/1999 relate to the uncertainty of when a debtor is declared "in default", whether since the installment stage was delayed or not fulfilled by the debtor or since the due date of debtor's loan which must be repaid. Such uncertainty also results in an interpretation that the right to determine the existence of a "default" rests with the creditor (fiduciary recipient). The existence of such legal uncertainty automatically results in the loss of the debtor's rights

to defend himself and the opportunity to get the sale of the fiduciary security object at a fair price.

According to the Court, in the substance of the norms of Article 15 paragraph (2) and paragraph (3) of Law 42/1999, there are constitutionality issues that cannot be separated. Whereas the Court then gave meaning to the norms of Article 15 paragraph (2) and paragraph (3) of Law 42/1999 (which is fully stated in the ruling)

Whereas the establishment of the Court as stipulated in the ruling does not necessarily eliminate the validity of laws and regulations relating to the execution of fiduciary certificates which aim to provide legal protection to parties bound by a fiduciary agreement, as long as it is in line with the considerations and stance of the a quo Court.

Whereas even though the Petitioners did not request a review of the Elucidation of Article 15 paragraph (2) of Law 42/1999, due to the Court's consideration having an impact on the Elucidation of Article 15 paragraph (2) of Law 42/1999, the phrase "executorial power" and the phrase "are the same as the court's decision having permanent legal force "must automatically be adjusted to its meaning.

Whereas based on all the considerations mentioned above, Article 15 paragraph (2) of Law 42/1999 the phrase "executive power" and the phrase "the same as a court decision having permanent legal force" and Article 15 paragraph (3) of Law 42/1999 the phrase "default of promise. " The Court believes that the Petitioners' petition is legally grounded in part.

Based on the considerations above, the Court shall subsequently issue a decision which rulings are as follows:

1. Partially granted the Petitioners' petition;
2. State Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) insofar 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 fiduciary guarantees where there is no agreement on default (default) and the debtor objected to voluntarily handing over the object that became fiduciary security, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of court decisions that have permanent legal force";
3. State Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) insofar as the phrase "default of promise" is contrary to the Constitution of the Republic of Indonesia Year 1945 and has no binding legal force as long as it does not mean that "the existence of a breach of contract is not determined unilaterally by the creditor but based on an agreement between the creditor and the debtor or based on legal remedies which determine the failure of the promise";
4. Declare the Elucidation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantee (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia

Number 3889) insofar as the phrase "executive power" is contrary to the Constitution of the Republic Indonesia in 1945 and does not have binding legal force as long as it is not interpreted "against the fiduciary guarantee where there is no agreement on default, and the debtor objected to handing over the object which is the fiduciary guarantee voluntarily, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee 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.