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EXECUTORY POWER OF FIDUCIARY GUARANTEE CERTIFICATE IN CONSUMER FINANCING AGREEMENT BASED ON LAW NUMBER 42 OF 1999 CONCERNING FIDUCIARY GUARANTEE

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ABSTRACT

Based on the discussion, it can be seen that the legal arrangements in financing agreements with fiduciary guarantees are subject to the Civil Code by the terms of the validity of Article 1319, Article 1320, and Article 1338 agreements, as well as the provisions in Presidential Decree 61 of 1988 concerning Financing Institutions and Presidential Regulation No. 9 of 2009 concerning Financing Institutions. Legal protection for consumers due to the sale of fiduciary guarantee objects in financing agreements is that they must not violate the principles of consumer protection and provide legal certainty and legal protection for those interested and guarantees, primarily related to consumer rights and the sale of objects that are objects of fiduciary guarantee by Law Number 42 of 1999 concerning Fiduciary Guarantees agreed by the fiduciary grantor and recipient. The judge's legal consideration in the Decision of the Supreme Court of the Republic of Indonesia Number 441 K / Pdt.Sus-BPSK / 2019 is the legal relationship between consumers and finance companies, namely financing agreements so that if one party does not fulfill or violate the agreement, it causes an act of breach of promise/default; when there is a default, the withdrawal or execution must be by the decision of the Constitutional Court, but if there are actions outside the procedural such as coercion and violence, then would be against the law.

Introduction

The provision of fiduciary guarantee is an agreement that is accessory to a principal agreement, as mentioned in the explanation to Article 6 letter b of Law No. 42 of 1999 concerning Fiduciary Guarantee, and must be made by a notarial deed called the Fiduciary Guarantee deed (Soegianto, RS, & Junaidi, 2019).

Banking institutions provide conventional lending. This credit is carried out based on the trust of the fund's owner in the party who needs the funds. Generally, the required funds can be provided by banking institutions through credit facilities. The main agreement must be by the provisions of article 1320 of the Civil Code regarding the legal conditions of the agreement, namely:

a. Agree to bind
b. able to make agreements
c. about a particular matter
d. a lawful cause.

However, credit facilities from banks are minimal, and not all business actors can access funding assistance from banks. In addition, this banking institution also requires guarantees that sometimes cannot be fulfilled by the business actors concerned, so it needs another effort, namely without guarantees and easier processes (Ahmad, 2018).

To support economic growth, the means of providing funds needed by the community need to be further expanded so that its role as a source of development funds can be done through a type of business entity, namely through Financing Institutions (Karmila & Fariah, 2023). Financing institutions are regulated by Article 1 point (2) in Presidential Decree No. 61 of 1988 concerning Financing Institutions and Decree of the Minister of Finance No. 1251 / KMK.013 / 1988 concerning Provisions and Procedures for the Implementation of Financing Institutions, from now on referred to as financing institutions, with the understanding that they are business entities that carry out financing activities in the form of providing funds or capital goods by not attracting funds directly from the public.

Business entities outside banks and non-bank financial institutions specifically established to carry out activities that constitute within or all business fields of financing institutions are called Finance Companies or multi-finance companies. Including the business fields of financing institutions are leasing, securities trading, factoring, venture capital, consumer financing, and credit cards.

Consumer Financing is a financing institution whose activities are in the form of providing funds by consumer finance companies to consumers for the purchase of an item from a supplier (supplier), whose payments are made periodically (installments) by consumers. Thus, in consumer financing transactions, three parties are involved in the legal relationship of consumer financing: consumer finance companies, consumers, and suppliers. Consumer financing is nothing but a type of consumer credit; it is just that finance companies carry out consumer financing while banks provide consumer credit.

The Fiduciary, as collateral for the repayment of certain debts, gives the Fiduciary a preferred position over other creditors (Putra, 2019). Article 4 states that a Fiduciary Guarantee is a follow-up agreement and a principal agreement that creates an obligation for the parties to fulfill an achievement. The fiduciary arrangement above certainly provides explicit legal guarantees related to problems in implementing fiduciary guarantees. However, there are still many problems with vigilante actions that occur when one party defaults (Gosan & Tanawijaya, 2022).

One of the conditions for registering a fiduciary guarantee is that the fiduciary beneficiary is obliged to carry out the imposition of (movable) objects with a fiduciary guarantee deed that must be done with a Notary.

This Fiduciary Guarantee is regulated by Law Number 42 of 1999 (starting now referred to as UUJF). However, the reality is that most fiduciary beneficiaries do not perform a fiduciary guarantee deed, and consequently, objects with fiduciary guarantees cannot be registered with the Fiduciary Registration Office. They may also give rise to fiduciary guarantees if the debtor violates creditors. In Article 37 of the UUJF, creditors have no right to have priority in or out of liquidation or bankruptcy.

To guarantee legal security, creditors must register a deed drawn up by a notary and then register with the Fiduciary Registration Office at the Office of the Ministry of Law and Human Rights, after which the creditor will obtain a fiduciary guarantee certificate. At first, the fiduciary agreement is drawn up as a deed under hand and a notarial deed. However, after the issuance of the UUJF, the object collected as the object of Fiduciary Guarantee, in Article 5 paragraph (1) of the UUJF, must be carried out by notarial deed and in Indonesia and with fiduciary guarantee (Sintia, 2016). The use of fiduciary guarantees by BPR because fiduciary guarantees are a way to provide legal protection for bank security so that debtor customers will repay their credit loans.

Notaries are subject to legal regulations and professional codes of ethics in carrying out their duties. The professional code of ethics explains that a notary must act reasonably, honestly, and impartially and protect the parties' interests. The notary must take legal action by applicable laws and regulations.

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This act is found in two Kendari Court Decisions Number 92/Pdt.G/2019/Pn Kdi on behalf of Sitti Amin Against PT BCA Finance Kendari Branch and Kendari Court Decision Number 102/Pdt.G/2020/PN. The fact on behalf of NURLINA NURDIN against PT MNC Finance shows that the execution of fiduciary guarantees is still found in some finance using debt collector services.

Pirate Execution by a finance company against the fiduciary collateral object can sometimes lead to rejection and commotion because the debtor does not want to surrender the fiduciary object voluntarily (Sari, 2021).

The refusal occurs because the debt collector or collector takes the method directly by force, even by using force against the fiduciary security object controlled by the debtor when withdrawing the fiduciary object.

Whereas in the Regulation of the Minister of Finance of the Republic of Indonesia number 130 / pmk.010 / 2012 concerning the registration of fiduciary guarantees for finance companies that conduct consumer financing for motor vehicles with the imposition of fiduciary guarantees as stipulated in article 4 that the withdrawal of fiduciary guarantee objects in the form of motor vehicles by finance companies must meet

the provisions and requirements as stipulated in the law regarding fiduciary guarantees and have been agreed by the parties to a motor vehicle consumer financing agreement.

The execution of fiduciary guarantees in Kendari City still causes polemics both before the Constitutional Court decision on the Execution of Fiduciary Guarantees and after the Constitutional Court Decision is still found in some Finance that executes fiduciary guarantees without the consent of the fiduciary party or execution without an application to the District Court.

Research Methods

The type of legal research entitled "Legal Protection of Fiduciary Guarantees in Consumer Financing based on Law Number 42 of 1999 concerning Fiduciary Guarantees" is empirical. Empirical legal research, commonly referred to as research on the work of law in society, views law as necessary to be implemented by society.

Empirical legal research methods are field research, namely research on secondary data. The nature of this study is descriptive analysis, which describes the state of the object under study and several factors obtained, then collected, compiled, explained, and then analyzed.

This research uses an empirical juridical approach method, which is an approach that examines secondary data first and then continues to conduct primary data research in the field. Empirical juridical research examines the legal provisions that apply in society and what happens in reality. Secondary data has been documented so that it is ready data. Therefore, the focus of this research is on data obtained from the public or the enactment of laws and is the primary reference for this research, such as the Constitution of the Republic of Indonesia Year 1945, Civil Code, Law Number 42 Year 1999 concerning Fiduciary Guarantee, Law Number 48 Year 2009 concerning Judicial Power, Constitutional Court Decision Number 18/PUU-XVII/2019, and primary data as well as secondary legal data and other tertiary legal data.

Results and Discussion

Fiduciary guarantee arrangements against defaulting debtors

The focus of attention when it comes to fiduciary guarantees is if the debtor fails to comply. In treaty law, if the debtor violates the agreement or does not maintain the content of the contract that has been concluded, it is considered that the debtor has violated it. In banking practice, credit contracts are generally made with certificates in hand because it minimizes or optimizes time and facilitates debtors who will take credit quickly without having to wait for the deed to be drawn up by a notary and save money or fees for making certificates in credit (Pramudyaningtyas, 2022).

Especially for banks that guarantee the object of the guarantee, the notary makes a certificate of guarantee if the guarantee is fiduciary. Credit agreements made with fiduciary guarantees are not guarantees derived from law but arise because there is a need for a contract between the bank as the creditor and the customer as the debtor.

Therefore, in legal agreements, fiduciary guarantees are more distinctive or memorable than guarantees that arise under the law regulated in Article 1131 of the Civil Code. The legal function of binding the fiduciary object in the fiduciary guarantee deed is inseparable from the credit agreement (Rufaida, 2019).

If the debtor as a fiduciary defaults, the last resort that the creditor can make as a fiduciary beneficiary is to execute the fiduciary guarantee. The default form in question is the non-performance of obligations (performance) that should be carried out by fiduciary, principal, and other guarantee agreements (Karmila & Fariah, 2023). Article 2 of the Fiduciary Guarantee Act has a scope limit for fiduciaries, which applies to any contract that intends to impose objects that use fiduciary guarantees. The affirmation of the form of fiduciary guarantee agreement made by notarial deed and by the producer of fiduciary law should be considered an imperial legal norm, described in Article 37 Paragraph 3, fiduciary guarantee law, if the fiduciary guarantee agreement is made in the form of a notary deed.

Then, juridically, a fiduciary guarantee agreement does not guarantee title to materials. Suppose it relates to the fiduciary guarantee process when registering with the Fiduciary Registration Office (Khairina & Bustamam, 2019). In that case, the above can be seen, especially since the request for registration of a fiduciary guarantee must be accompanied by a copy of the notarial deed relating to the imposition of such fiduciary guarantee. Fiduciary guarantees. From here, you can feel the vital role of a notary for legal security and protection of the interests of the parties.

Arbitrary treatment by the Fiduciary by hiring debt collector services to take over the goods controlled by the Applicant without going through the correct legal procedures.

There is some momentum for coercive action, without showing evidence and official documents, without authority, by attacking self, honor, dignity, and dignity. Based on case studies in the Kendari District court, it is still found that the execution of fiduciary guarantees does not pay attention to regulations, so actions committed by some finance are categorized as unlawful acts (Bouzen & Ashibly, 2021).

Unlawful acts are regulated in Book III of the Civil Code Articles 1365-1380 of the Civil Code, including an engagement arising from the law; this is what is meant by an engagement, which is a legal relationship between two people or two parties, based on which the party is obliged to fulfill the demand.

Article 1233 BW states that the engagement exists by consent or by law. So, based on the type, the engagement is divided into an engagement born because of a contract or agreement and an engagement born because of the law. At the same time, a covenant is an event where one person promises to another, or two people promise each other to do something.

By the provisions in Article 1365 of the Civil Code, an unlawful act in civil law must contain the following elements:

1. The existence of an action;
2. The act is against the law
3. There is guilt on the part of the perpetrator;

4. There are losses to victims;
5. There is a causal relationship between actions and losses.

However, the execution carried out by creditors through debt collector services sometimes causes new problems between creditors and debtors. Relating to unlawful acts in legal science, there are 3 (three) categories of unlawful acts, namely:

1. Intentional unlawful acts;
2. Unlawful acts without fault (without elements of intentionality or negligence);
3. Unlawful acts due to negligence
4. An act against the law can be considered negligence and must meet the following main elements:
5. The existence of an action or ignoring something that should be done
6. The existence of a duty of prudence
7. The precautionary obligation is not carried out.

This is because the way debt collectors execute fiduciary security is by violence, intimidation, and even by seizing fiduciary collateral on the road, which causes resistance from the debtor. For this reason, the police decided on the Regulation of the Chief of the Indonesian National Police Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantees.

The execution of fiduciary guarantees has the same binding legal force as court decisions with permanent legal force, so they require security from the National Police of the Republic of Indonesia. What is meant by Execution Security is police action to provide security and protection to the execution executor, execution applicant, and execution respondent (executed) at the time the execution is carried out.

An act of the perpetrator precedes an unlawful act. It is generally accepted that doing here meant either doing something (in the active sense) or not doing something (in the passive sense), for example, not doing something, even though he has a legal obligation to make it, which obligation arises from the applicable law (because there are also obligations arising from a contract). Therefore, concerning unlawful acts, there is no element of "consent or agreement" or "permissible causa" as contained in the contract.

Decision Number 102/Pdt.G/2020/PN. Kdi, in the judgment of the panel of judges, granted the plaintiff's claim in part. Declaring the actions of the defendants (defendant I through the order of defendant II) towing the vehicle belonging to the plaintiff and forcing the plaintiff's husband and the plaintiff to pay at once the entire arrears of the plaintiff and also has been done not through the correct procedure is an arbitrary and unlawful act that has harmed the interests of the plaintiff and the plaintiff's husband both materially and immaterially. Punish the defendants to pay the losses suffered by the plaintiff and the plaintiff's husband due to the defendants' unlawful acts, both material and immaterial losses.

Fiduciary Guarantee is a security right to movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with dependent rights as referred to in Law Number 4 of 1996 concerning Dependent Rights

that remain in the control of the Fiduciary, as collateral for the repayment of certain debts, which gives the Fiduciary a preferred position over other creditors.

In the practice of executing fiduciary guarantees, it should be noted that, in general, companies or financing institutions carrying out the sale of movable goods to consumers using agreements that include fiduciary guarantees for fiduciary guarantee objects in the form of Motor Vehicle Owner's Proof (BPKB).

If the debtor or Fiduciary defaults, the execution of the Thing that is the object of the Fiduciary Guarantee can be carried out by:

1. Implementation of executory title as referred to in Article 15 paragraph (2) by the Fiduciary
2. Sale of Objects that are the object of the Fiduciary Guarantee on the Fiduciary Beneficiary's power through public auction and take repayment of his receivables from the proceeds of the sale;
3. An underhand sale made under the agreement of the Fiduciary Grantor and Beneficiary if, in such a way, the highest price in favor of the parties can be obtained.

The execution of fiduciary guarantees has always caused polemics both before the Constitutional Court ruling on the Execution of Fiduciary Guarantees and after the Constitutional Court Decision is still found in some Finance that executes fiduciary guarantees without the consent of the fiduciary party or execution without an application to the District Court.

Fiduciary Guarantee Institutions allow fiduciaries to take control of collateralized objects to conduct business activities financed from loans using fiduciary guarantees. In implementing financing between creditors and debtors, sometimes there is a default or breach of promise. So, when the debtor breaks the promise, the creditor can execute objects guaranteed through fiduciary guarantees.

However, it must pay attention to the provisions of the Constitutional Court ruling. The execution of fiduciary guarantees as described above, based on the provisions of Article 15, paragraphs (2) and (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The provisions of Article 15, paragraphs (2) and (3) expressly state that the fiduciary guarantee certificate, as referred to in paragraph (1), has the same executory power as a court decision that has obtained permanent legal force and on that basis, if the debtor defaults, the Fiduciary Recipient has the right to sell the object that is the object of fiduciary guarantee in his power.

If we look at the sound of the Constitutional Court decision Number 18/PUU-XVII/2019 at points 2 and 3, as the author has quoted above in connection with the legal considerations of the Constitutional Court Judges, there is the following affirmation:

1) a fiduciary guarantee as an accessory agreement can only be executed if the conditions are met. The conditions that must be met in the execution of fiduciary guarantees are the debtor's default in carrying out its performance in the principal agreement;
2) To be declared that there has been a default of the debtor for its performance, the statement of the occurrence of default is not only stated unilaterally by the creditor

but must be by mutual agreement with the debtor that the debtor has defaulted or through a legal remedy mechanism, in this case, is the filing of a default lawsuit;

3) Debtors who have admitted and implicitly or explicitly have agreed with creditors that they have broken promises (default) must then hand over the objects that are the object of fiduciary guarantees to creditors for execution. Suppose the defaulting debtor does not want to voluntarily surrender the object that is the object of the fiduciary guarantee to be executed. In that case, the execution process of the object that is the object of the fiduciary guarantee must be carried out through the execution process as a decision that has the force of law, namely court fiat. In other words, the execution process by parade execution is considered invalid according to the decision of the Constitutional Court on the object of guarantee if the debtor does not voluntarily hand over the object of fiduciary guarantee for execution;
4) Similarly, in a statement of default by a creditor against a debtor, where the debtor disagrees with the creditor that he has defaulted and is not willing to deliver the object of fiduciary guarantee to the creditor voluntarily, then the execution process of the fiduciary security object cannot be carried out through execution parade, but through execution grosse deed, even through execution preceded by a tort lawsuit to declare that it is true Whether or not the debtor has defaulted.

Contrary to the Constitutional Court Decision. No 18/PUU/XVII/2019

Based on the provisions in Law Number 42 of 1999, especially Article 15, there are different interpretations related to the execution or withdrawal of fiduciary guarantees in the form of motor vehicles if the credit is problematic. Some interpret that recalling motor vehicles must go through the courts. Still, some consider that based on the authority granted by law, they can make withdrawals alone or unilaterally, which then happens in the community of forced withdrawal of motor vehicles by debt collectors.

In 2019, the Constitutional Court decision Number 18/PUU-XVII/2019 was issued, with the hope that there would be uniformity of understanding regarding the execution of fiduciary guarantees in general and, in particular, the withdrawal of motor vehicles whose credit is problematic, the same as the execution of court decisions that have permanent legal force.

It is declaring Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees (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 "default" is contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force as long as it is not interpreted that "the existence of a default is not determined unilaterally by the creditor but based on an agreement between creditors with the debtor or based on legal remedies that determine that a default has occurred."

Declaring the Explanation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (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 "executory power" is contrary to the Constitution of the Republic of

Indonesia of 1945 and has no binding legal force as long as it is not interpreted "against fiduciary guarantees where there is no agreement on default, and debtors object voluntarily submit the object of fiduciary guarantee, 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 a court decision that has permanent legal force. Order the making of this decision in the State Gazette of the Republic of Indonesia as appropriate, Rejecting the petition of the Petitioners for other than and the rest.

With the decision of the Constitutional Court mentioned above, it turns out that the practice of withdrawing motor vehicles whose credit is problematic still has different interpretations in the execution process; some argue that it is increasingly evident that execution or withdrawal is mandatory through the court, while others consider that execution or withdrawal can be carried out directly by the creditor or through debt collectors as long as there has been an agreement related to default and agreement submission of fiduciary guarantees or their vehicles.

Based on the information above, it can be concluded that the execution or withdrawal of motor vehicles with problematic credit still has differences of opinion regarding the technical implementation even though there has been a Constitutional Court decision Number 18 / PUU-XVII / 2019. However, some things have been agreed that the process of execution or withdrawal of vehicles by debt collectors must be completed with:

1. Existence of a Fiduciary Certificate
2. Power of attorney or letter of assignment of withdrawal
3. Professional certificate card
4. ID card
5. A copy of the financing agreement

However, direct execution (Parate Execution) by the finance company against the fiduciary guarantee object can sometimes lead to rejection and commotion because the debtor does not want to surrender the fiduciary object voluntarily where the refusal occurs. After all, the debt collector or debt collector uses the method by taking directly by force, even by using force against the fiduciary security object controlled by the debtor when withdrawing the fiduciary object. "Most finance companies assume that they have the authority to execute the object of fiduciary guarantees directly without having to go through and without any court intervention. This is done because the finance company considers it the authority to execute the collateral object directly (Parate Execution) based on Article 15 of the Republic of Indonesia Law Number 42 of 1999 concerning Fiduciary Guarantee. Pirate Execution, according to Bachtiar Sibarani, is "self-carrying out execution without the assistance or interference of a court or judge.

Meanwhile, according to R. Subekti, an execution parade is "self-executing or taking one's own what is rightfully (in the sense of being without the intermediary of a judge. The issuance of the Constitutional Court decision Number 18 / PUU / XVII / 2019, which states that Article 15 paragraph (2) of Law Number 42 of 1999 concerning

Guarantees, as long as the phrase "executory power" and the phrase "the same as a court decision with permanent legal force" contradict the Constitution of the Republic of Indonesia Year 1945 and have no binding legal force as long as it is not interpreted "against fiduciary guarantees where there is no agreement on default and debtors Objection to voluntarily surrendering the object of fiduciary guarantee, 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 a court decision that has permanent legal force.

The executory power of fiduciary guarantee certificates in consumer financing

Regarding the execution of fiduciary guarantees, we refer to Article 15 of the Fiduciary Law, which provides as follows:

In the Fiduciary Guarantee Certificate, as referred to in Article 14 paragraph (1), the words "FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY LORDSHIP" ARE INCLUDED. As referred to in paragraph (1), the Fiduciary Guarantee Certificate has the same executory power as a court decision that has obtained permanent legal force. In the event of a debtor's default, the Fiduciary Receiver has the right to sell the Thing that is the object of the Fiduciary Guarantee in its sole discretion. Then, against the articles above, the Constitutional Court, through Constitutional Court Decision Number 18/PUU-XVII/2019, stated (pp. 125 - 126):

Against Article 15 paragraph (2) of the Fiduciary Law: The phrases "executory power" and "the same as a court decision of permanent legal force" have no binding legal force as long as it is not interpreted that "for a fiduciary guarantee where there is no agreement on default, and the debtor objects to surrender the object of the fiduciary guarantee voluntarily, 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 a court decision that has the force of law." Against Article 15 paragraph (3) of the Fiduciary Law: The phrase "default" has no binding legal force as long as it is not interpreted that "the existence of a default is not determined unilaterally by the creditor but based on an agreement between the creditor and the debtor or based on legal remedies that determine the occurrence of a default."

Based on these provisions, on the possession of a fiduciary guarantee certificate, the fiduciary beneficiary (the creditor) has the right to execute the object of the fiduciary guarantee if Default or default is not determined unilaterally but based on an agreement between the creditor and the debtor, or specific legal remedies have been taken that determines that there has been a default or default. However, suppose the creditor and the debtor disagree on the default, and the debtor objects to voluntarily surrendering the object of the fiduciary guarantee. In that case, the fiduciary beneficiary (creditor) may not execute himself but must apply for execution to the district court (p. 122).

Thus, to execute the object of the fiduciary guarantee, it is necessary to review the conditions described above. Then, what is the implementation procedure? The Supreme Court, in its book Administrative and Technical Guidelines for General Civil and Special Civil Justice (Book II), explains the procedures and procedures for subsequent

executions, such as the execution of dependent rights (p. 94), which are carried out like the execution of court decisions with permanent legal force (p. 91).

Excerpted from Steps If the Defendant Does Not Want to Carry Out the Court Decision, two types of execution are known, namely fundamental/real execution and execution of the payment of a sum of money, with the following procedure:

The execution applicant applies to the Chief Justice of First Instance for the judgment to be executed; The Chief Justice of First Instance summoned the losing party (respondent) for aanmaning to have him execute the contents of the judgment within eight days under Article 196 Herzien Inlandsch Reglement ("HIR") /207 Rbg.

If the execution respondent still refuses to execute the judgment, the Chief Justice of first instance issues an order containing an order to the clerk/bailiff/substitute bailiff to carry out executorial beslag on the property if previously not placed on bail by the provisions of Article 197 HIR/Article 208 Rbg;

There is an auction sale order, followed by an auction sale after an announcement is first made by the auction provisions. Then, it ends with submitting the auction proceeds to the execution applicant by the amount stated in the judgment. Therefore, to answer your question, throughout our search, there are no specific provisions governing the time limit for an application for an order of execution of fiduciary guarantees. As long as there is no agreement on the occurrence of default and the debtor objects to voluntarily surrender the object of the fiduciary guarantee, the fiduciary recipient must apply for execution to the district court.

Conclusion

If the debtor as a fiduciary defaults, the last resort that the creditor can make as a fiduciary beneficiary is to execute the fiduciary guarantee. The default form in question is the non-performance of obligations (performance) that should be carried out by fiduciary, principal, and other guarantee agreements. Explanation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (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 "executory power" is contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force as long as it is not interpreted "against fiduciary guarantees where there is no agreement on default and the debtor objects to surrender voluntarily the object of fiduciary guarantee, 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.

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