



**CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**JUDGMENT SUMMARY
CASE NUMBER 2/PUU-XIX/2021**

Regarding

Execution of Fiduciary Guarantee Certificate

- Applicant** : **Joshua Michael Djami**
- Case Type** : Review of Law Number 42 of 1999 on Fiduciary Guarantees (UU 42/1999) to the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Merits of Case** : Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2) of Law 42/1999 contradicts Article 27 paragraph (2), Article 28D paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution.
- Judgment** : In Injunctive Relief:
Reject the Applicant's injunctive relief.
In the Principal of the Request:
Reject the Applicant's request in its entirety.
- Judgment Date** : Tuesday, August 31st, 2021.

Judgment Summary :

The applicant is an individual Indonesian citizen, as an employee in a finance company with a position as an Internal Collector and has been certified as a professional in the field of billing. The applicant is constitutionally disadvantaged due to the enactment of Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of Law 42/1999 as interpreted by the Constitutional Court in the Judgment of the Constitutional Court Number 18/PUU-XVII/2019 because it is difficult to carry out executions of fiduciary guarantees that should go through a Court Judgment which results in a decrease in the income of the Applicant;

Whereas in relation to the authority of the Court, since the Applicant's request is an request to examine the constitutionality of the norms of the Law, in this case Law Number 42 of 1999 on Fiduciary Guarantees (UU 42/1999) to the 1945 Constitution, then based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Law on Judicial Power, the Court has the authority to hear the *a quo* request;

Whereas with regard to the legal position of the Applicant, according to the Court, the Applicant has clearly outlined and explained his qualifications and have explained specifically his constitutional rights which in his opinion are impaired by the request of the norms for which the review is requested, namely the right to legal protection and a decent living. Thus, it has been seen that there is a causal relationship between the Applicant's assumption regarding the loss of constitutional rights and the enactment of the norms of the law requested for review, so that if the request is granted, such loss will no longer occur. Therefore, regardless of whether the Applicant's argument is proven or not regarding the unconstitutionality of the legal norms requested for review, according to the Court, the Applicant has the legal position to act as the Applicant in the *a quo* request;

In Injunctive Relief

Whereas the Applicant filed an request for Injunctive Relief, which in essence stated that the request in the *a quo* case had an impact on various parties such as finance companies, law enforcement officers, fellow collectors, consumers and collector associations because it was related to legal actions after the Constitutional Court Judgment Number 18/PUU-XVII/2019 in the execution of the fiduciary guarantee certificate so that the *a quo* case needs to be carried out to the proof stage which can summon parties as witnesses and Related Parties for his statements to be heard. With regard to the reason for the Applicant's injunctive relief request, according to the Court, because the *a quo* case will be decided without proceeding with a follow-up trial with the agenda of proving and hearing the parties as referred to in the provisions of Article 54 of the Constitutional Court Law, the reason for the injunctive relief request submitted by the Applicant is not relevant to be considered. This is because the reasons for the summons of the parties and the further evidentiary hearing that the Applicant fears will affect the length of time the *a quo* case that will be decided by the Court, they will not occur. Thus, the reason for the Applicant's request for Injunctive Relief must be declared to be unreasonable according to law;

In the Principal of the Request

The Applicants basically argue that Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of Law 42/1999 as interpreted by the Constitutional Court in the Constitutional Court Judgment Number 18/PUU-XVII/2019 contradicts the 1945 Constitution for several reasons, namely a). there has been a disproportionation of the constitutional rights of the affected parties; b). the absence of fair legal protection as guaranteed by Article 28D paragraph (1) of the 1945 Constitution is experienced by the financing industry because the cost of execution is greater than the income of the fiduciary goods itself; c). there is no fair legal protection because a more severe position has been created on one party in which the creditor must take this case to court; d). providing an opportunity for the debtor to

procrastinate in the taking goods away so as giving chance for crime to occur; e). there is the destruction of legal professional land (collector and financing), resulting in loss of income and a decent living as guaranteed by Article 27 paragraph (2) of the 1945 Constitution; f). there is a violation of the rights and obligations of each party because it adds "voluntary execution" so that it is contrary to Article 28J paragraph (2) of the 1945 Constitution; g). the absence of clear parameters that may result in the Debtor evading and being used as a loophole to escape his responsibilities; h). the meaning of "voluntary during execution" is contrary to the principle that the rule of law should guarantee rules that prevent potential crimes from occurring.

Whereas because the *a quo* request is clear, by relying on Article 54 of the Constitutional Court Law and as also considered by the Court in Paragraph [3.7] in the legal considerations of the Applicant's injunctive relief request, the Court has the opinion that there is no urgency and relevance to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law in question;

Whereas the request to become a Related Party submitted by the Indonesian Financial Services Association (Asosiasi Perusahaan Pembiayaan Indonesia/APPI) dated May 4th, 2021, which was received at the Registrar's Office of the Court on May 5th, 2021, because of the *a quo* request based on the considerations in Paragraph [3.7] and Paragraph [3.10] was assessed by the Court has been clear enough so that there is no need for a further trial with an agenda of proof and summoning the parties as referred to in Article 54 of the Constitutional Court Law, then there is no relevance to accepting the request of the Related Party and therefore the request as a Related Party must be declared unreasonable according to law and for that the Court has issued the Adjudication Number 1.2/PUU/TAP.MK/PT/6/2021 concerning Related Parties in Case Number 2/PUU-XIX/2021, dated June 16, 2021;

Whereas the provisions of Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of Law 42/1999 have been previously filed and have been decided in the Judgment of the Constitutional Court Number 18/PUU-XVII/2019, dated January 6th, 2020. According to the Court, the substance of the Request from Case Number 18/PUU-XVII/2019 with the *a quo* case is the same, namely questioning the executive title in the fiduciary guarantee certificate. What distinguishes the *a quo* case from Case Number 18/PUU-XVII/2019 is related to the basis for testing, namely the *a quo* request to examine Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of Law 42/1999 to Article 27 paragraph (2), Article 28D paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution and the reasons for the request are also different, namely the assumption of creditors as parties affected by the *a quo* Court Judgment. Therefore, regardless of whether the *a quo* request is grounded or not, formally the *a quo* request based on Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021 has grounds for re-submission..

Whereas with respect to the Applicant's *a quo* argument, the Court is of the opinion that the *a quo* request has relevance to the substance of both the spirit and the reasons that have been considered by the Court in the Judgment of the Constitutional Court Number 18/PUU-XVII/2019, dated January 6th, 2020, namely that it has considered juridically and comprehensively answer the constitutionality issues disputed by the Applicants, particularly with regard to the execution of fiduciary guarantee certificates. Furthermore, in the legal considerations of the case, it has also been clearly stated that the execution of the fiduciary guarantee certificate when it comes to breach of contract by the fiduciary rights giver (debtor) to the creditor has not yet been acknowledged by the debtor as a breach of contract (default) and the debtor objected to voluntarily surrendering the object, which is the object of the fiduciary agreement, the recipient of the fiduciary right (creditor) may not carry out the

execution himself by force but must file a request for execution to the District Court and this has not been proven to result in not providing legal protection as argued by the Applicant in case *a quo*. On the other hand, this actually provides legal protection to the parties involved in the fiduciary agreement. Because, in a Fiduciary Guarantee agreement which objects are movable and/or immovable objects as long as they are not burdened with mortgage rights and legal subjects that can become parties to the agreement (creditors and debtors), then legal protection in the form of legal certainty and justice must be given to the three elements, those are creditors, debtors, and objects of mortgage.

Whereas furthermore, according to the Court, the Applicant did not fully understand the Judgment of the Constitutional Court Number 18/PUU-XVII/2019 in relation to the executorial power of the fiduciary guarantee certificate. The existence of a provision that the execution is not allowed to be carried out alone but must submit a request for execution to the District Court has basically provided a balance of legal position between the debtor and creditor and avoided the emergence of arbitrariness in the execution. The execution of a fiduciary guarantee certificate through a district court is actually only as an alternative that can be done in the event that there is no agreement between the creditor and the debtor, both related to default and voluntary submission of the object of guarantee from the debtor to the creditor. Meanwhile, for debtors who have acknowledged the existence of default and voluntarily submit the object of fiduciary security, the execution of fiduciary guarantees can be carried out by creditors or even the debtor himself;

Whereas in addition, if one examines the petitem of the Applicant's request, namely petitem number 2 which in essence asks the Court to declare Article 15 paragraph (2) of Law 42/1999 as contradictory to the 1945 Constitution as long as it is interpreted back to Article 15 paragraph (2) Law 42/1999 prior to its Judgment in the Constitutional Court Judgment Number 18/PUUXVII/2019 which, according to the Applicant, is precisely because of the

Court's Judgment, execution through the court has made it difficult for the Applicant as a collector or finance company, law enforcement officers, and consumers to carry out the execution of fiduciary collateral. According to the Court, the Applicant did not understand the substance of the previous Constitutional Court Judgment because the interpretation of the norm in the phrase "executory power" and the "same as a court Judgment with permanent legal force" phrase in the norm of Article 15 paragraph (2) and Elucidation of Article 15 paragraph (2) of Law 42/1999 is interpreted as "with respect to fiduciary guarantees where there is no agreement on breach of contract and debtors object to voluntarily submitting objects that become fiduciary guarantees, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate should be carried out and be applied the same as the execution of court Judgments that had permanent legal force" is appropriate and provides a form of legal protection, both legal certainty and justice for the parties involved in the fiduciary agreement;

Then it is important for the Court to emphasize that the arguments that are used as the basis for filing a request in the *a quo* case include the long execution process, the execution cost is greater than the income of the fiduciary goods, and the potential loss of the object of collateral in the hands of the debtor, in fact it is more on concrete issues. This can happen in a very specific and complex legal relationship between private persons. Within the limits of reasonable reasoning, these things cannot be accommodated by always aligning the norms of the law in question. Moreover, against norms that do not have constitutionality issues. Moreover, the norms requested by the Applicant have been considered and decided in the Judgment of the Constitutional Court Number 18/PUU-XVII/2019. Therefore, there are no legal reasons and fundamentally different conditions for the Court to change its stance on the main issues related to the execution of fiduciary guarantee certificates;

Whereas other matters of the Applicant's arguments were not considered because they have no relevance, and in fact the arguments which were not considered were the issue of the implementation of the norm which had nothing to do with the issue of the constitutionality of the norm. Therefore, if the arguments in question are true, then legal remedies can be taken by the Applicant in accordance with the mechanism of the prevailing laws and regulations.

Based on all of the above legal considerations, the Applicant's request is groundless according to law. Accordingly, the Court has issued a judgment which is as follows:

In Injunctive Relief:

Reject the Applicant's injunctive relief request.

In the Principal of the Request:

Reject the Applicant's request in its entirety.