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LAWSUIT FOR UNLAWFUL ACTS OF EXECUTION OF FIDUCIARY GUARANTEES IN LEASE ACTIVITIES

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ABSTRACT - Constitutional Court Decision No. 18/PUU-XVII/2019 dated January 6, 2020, caused a polemic in practice, both among legal experts and business people. The Panel of Judges of the Constitutional Court (MK) made a phenomenal decision which abolished the institution for the execution of guarantees listed in Article 15 paragraphs (2) and (3) of Law Number: 42 of 1999 concerning Fiduciary Guarantees or known as parate executions. Parate Execution is a preferential right for the lessor in financing leasing in the event that the lessee commits an act of default. The decision of the Constitutional Court (MK) stated that the lessor's action was declared as an unlawful act on the execution of the guarantee stated in the fiduciary guarantee law. The aims of this research are to examine the (1) unlawful acts in contractual relationships in leasing activities and (2) the decision of the Constitutional Court (MK) No 18/PUU-XVIII/2019 on the re-interpretation of the constitutionality of Article 15 paragraph (2) on the phrase “executory power” and “same as a court decision that has obtained permanent legal force”. This research is normative juridical with a conceptual approach, legislation and cases. The findings in the study explained that the panel of judges considered that the lessor’s action in withdrawing collateral that legally still belongs to the lessor given based on the principle of trust (fiduciary) is an act against the law and ignores the contractual relationship that occurs between the parties.

Keywords: Unlawful Acts, Rent, Fiduciary Guarantee Execution

I. INTRODUCTION

The Constitutional Court (MK) with case number: 18/PUU-XVII/2019 dated February 15, 2019. The applicants in this case are Aprilliani Dewi and Suri Agung Prabowo, both entrepreneurs, residing at Jalan H. Wahab II Number 28 A, Jatibening, Bekasi, West Java. This application, initially in the form of a dispute between the applicant as a debtor and PT. Astra Sedaya Finance as a creditor related to financing (lease). The decision of the Constitutional Court above is a phenomenal decision that has caused a polemic among legal experts and business people, where the Constitutional Court stated that the withdrawal of guarantees made unilaterally by the lessor is categorized as an unlawful act. Furthermore, the Constitutional Court stated that the rights of the lessor as stated in Article 15 paragraph (3) and Article 29 paragraph (1) of Law Number: 42 of 1999 concerning Fiduciary were declared unconstitutional by the 1945 Constitution.

In connection with the provisions of the two articles above, with collateral rights of a material nature, related to their nature which takes precedence to facilitate collection rights for creditors, there are institutions which are special features of guarantees in particular,

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where one of them is parate execution, namely the right of a creditor to make a sale on his own power over objects that have been pledged by the debtor for the settlement of his debts, carried out in public under conditions that are commonly applicable, in a very simple way and without involving the debtor and without (fiat) judge's permission, and the executive title (Anggoro, 2007).

This research examines and analyzes (1) unlawful acts in contractual relationships in leasing activities and (2) the decision of the Constitutional Court (MK) No 18/PUU-XVIII/2019 on the re-interpretation of the constitutionality of Article 15 paragraph (2) on the phrase “executory power” and “same as a court decision that has obtained permanent legal force”

II. RESEARCH METHOD

This research is a normative legal research. The normative legal research used in this research consist of the statutory approach, a conceptual approach and a case approach. The data in this study are secondary data, with primary legal sources, secondary legal sources and tertiary legal sources. The data were analyzed qualitatively by using deductive thinking method.

III. RESULT AND DISCUSSION

Leasing Financing from Financial Perception

Lease (hereinafter referred to as: leasing) is a financing activity in the form of providing capital goods, either on a capital lease or lease without an operating lease to be used by the lessee for a certain period of time based on payment periodically.

In the Decree of the Minister of Finance of the Republic of Indonesia Number 48/KMK.013/1991, the definition of Leasing is a financing activity in the form of providing capital goods, either on a finance lease or an operating lease. to be used by the lessee for a certain period of time based on periodic payments (Purwaningsih, 2010).

There are several types of leasing that are known, among others, as follows: Direct finance lease, if the lessor buys goods at the request of the lessee for the benefit of the production process; Cross border lease, where the lessor and the lessee are domiciled in different countries; Full Service lease, where the lessor is responsible for maintaining the goods, paying for insurance and taxes; A captive lease is a lease offered by a lessor to a lessee; Third party lease, as opposed to captive lease, so the lessor is free to offer the lease to anyone; Operating lease, which is a leasing agreement that does not exercise option rights; A financial lease is the opposite of an operating lease, in that the lease is entitled to exercise its option right to purchase capital goods which is calculated based on the residual value (Purwaningsih, 2010).

Leasing as a financial institution has a market share which of course must have a strategy in order to penetrate business competition. Leasing competition and the business situation in today's market are changing very rapidly. Leasing as a financial institution that provides financing services requires a marketing strategy to market its products. In addition, leasing must know the marketing environment, including Product, Price, Place, and Promotion. Especially for service companies plus People Strategy, Process and Customer. Service (service) with a strategy known as the marketing mix (marketing mix). Basically the marketing mix shows the factors that need to be considered when determining the marketing strategy of a service company, especially a leasing service company.

The market share that is mostly targeted by leasing institutions is the vehicle segment, both cars and motorcycles. This segment provides profitable opportunities and profits. In this regard, leasing companies must be able to identify consumer needs appropriately and create the right product at a low cost. The relationship between the lessor as an institution providing funds and the lessee who requires financing is bound in the leasing contract. Leasing Contracts and Financing Contracts are basically in order to answer the community's need for funds, namely to support the various needs of the community itself, both consumptive needs and other larger needs in the business scope (Admiral, 2018).

In Indonesia, there is no law that specifically regulates leasing. The provisions governing this matter are still in the form of decisions of the Minister of Finance and other

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regulations. In 1974, a Joint Decree of three Ministers was issued, namely the Minister of Finance, the Minister of Industry and the Minister of Trade and Cooperatives Number Kep-122/MK/IV/1/1974, Number 32/M/SK/2/1974 and Number 30/Kpb/ I/1974, dated February 7, 1974, between Article 1 the definition of leasing is given as follows:

> "Every company financing activity in the form of providing capital goods to be used by a company, for a certain period of time, based on periodic payments accompanied by the right to choose (optie) for the company to buy the capital goods in question or extend the period of time leasing based on the salvage value that has been mutually agreed upon" (Nahrowi, 2013).

Functions of Guarantee Institutions in Leasing Financing

Collateral is a means of protection for the lessor's security, namely the certainty of debt repayment or the performance of an achievement by the lessee. The existence of a guarantee is a requirement to minimize leasing risk in channeling financing. However, in principle the guarantee is not the main requirement, leasing prioritizes the feasibility of the business it finances as the main guarantee for its return in accordance with a mutually agreed schedule. Collateral is the last alternative, if the business feasibility of the lessee's business prospects no longer supports the return of financing in the step of withdrawing the funds that have been disbursed. As an anticipatory step in withdrawing funds that have been distributed to the lessee, the guarantee should be considered two factors, namely:

a. Secured, meaning that the guarantee can be legally binding, in accordance with the provisions of the law and legislation. If in the future there is a default from the lessee, the leasing has the juridical power to carry out execution actions;
b. Marketable, meaning that if the guarantee is about to be executed, it can be immediately sold or cashed to pay off all of the lessee's obligations.

Normatively, the provisions of Article 1131 of the Civil Code are guarantees born from law. Here the law provides protection for all creditors in the same position or the principle of parity creditorum applies, where payments or debt repayments to creditors are carried out in a balanced manner (ponds-ponds gewijs). Thus, creditors only have the position of concurrent creditors competing in the fulfillment of their receivables, unless someone gives a preferential position (droit de preference). Preferred position as stipulated in Articles 1133 and 1134 of the Civil Code. The right to take precedence for a creditor because a balanced position does not provide certainty of guaranteed credit returns. Creditors are not aware of other creditors that may appear in the future. The more creditors from the debtor concerned, the smaller the opportunity for creditors to the possibility of credit repayment if the debtor is in a state of insolvency (unable to pay his debts) (Kosasih & Haykal, 2020).

Fiduciary as Collateral Agreement in Leasing (Lease)

Fiduciary issues have been considered by the Supreme Court Justices in the Netherlands with the Hoge Raad decision dated January 25, 1929 NJ 1929, which became known as Bierbrouwerij Arrest and the Hooggerechtshof decision dated August 18, 1932, known as Bataafsche Petroleum Arrest. In the consideration of the two decisions, it was stated that the surrender of property rights as collateral is a valid title. Meanwhile, after independence, the Supreme Court has also decided on the transfer of property rights in the guarantee of movable objects, namely in Decision No. 372 K/Sip/1970 dated September 1, 1971.

The two jurisprudence above provide the basis for understanding that fiduciary is a form of binding collateral in which the debtor surrenders his property rights to movable objects as collateral to the creditor, because the object is required by the debtor in trust, the creditor gives it back to the debtor. The jurisprudence above is the basis for the development of fiduciary in Indonesia which is supported by subsequent courts. Other jurisprudence that supports the application of fiduciary include:

1) The decision of the Surabaya High Court dated March 22, 1951 which reads: the transfer of property rights in trust may only concern movable goods because the

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transfer of property rights is allowed as an opportunity for interested parties to enter into other agreements from the pledge agreement.

2) Supreme Court decision dated September 1, 1971 Reg. No. 372 K/Sip/1970 which reads: the surrender of absolute property rights as collateral by a third party only applies to movable objects.

In essence, fiduciary is a material guarantee as a development of a pledge or pand guarantee that does not provide room for movement for the lessee in carrying out its business activities. In a pawn or pand, the object that is used as collateral is left in the hands of the lessor, while the existence of the object is used in carrying out the lessee's business operations, for example machinery for operational activities, raw materials for production, receivables for business cash flow. These objects cannot be tied to a mortgage, mortgage and lien or pand guarantee institution. The issuance of the Fiduciary Law as an effort to provide legal certainty, where previously fiduciary arrangements were still in the form of jurisprudence and legal protection for interested parties. Interested parties here include financial institutions (Anggoro, 2007).

Parate execution at fiduciary guarantee institutions is regulated in two articles, namely, Article 15 Paragraph (3) which states:

> "If the debtor is in breach of contract, the fiduciary recipient has the right to sell the object which is the object of the fiduciary guarantee on his own power"; and
>
> Article 29 Verse (1) Letter (b) of Law no. 42 of 1999 concerning Fiduciary, which states:
>
> "If the debtor or Fiduciary Giver is in breach of contract, the execution of the object that is the object of the Fiduciary Guarantee can be carried out by: ... b. selling the object that is the object of the Fiduciary Guarantee on the authority of the Fiduciary Recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale".

If we look at the arrangements of the articles above, the authority to carry out parate executions, in fiduciary, is given by law (by law) without the need for an agreement by the parties.

Unlawful Acts in Civil Engagement

The term "unlawful acts" is used in various doctrines on the provisions contained in Article 1365 of the Civil Code. Although in fact, when examined from the contents of the article, the provisions referred to are focused on the consequences of unlawful acts that cause losses, as the provisions state:

> "Every act that violates the law, which brings harm to another person, obliges the person who because of his fault published the loss, compensates for the loss".

In that article, it can be seen that an act is against the law if the action causes harm to another person and in carrying out a lawsuit based on an unlawful act, the following conditions or elements are met:

a) There must be an unlawful act
b) There must be an error
c) There must be a cause and effect relationship between the action and the loss
d) There must be a loss

First, the element of action or daad in violating the law is not only a positive act in the sense of doing an act, but also includes a negative act, namely not doing something according to its subjective obligation. An act is positive if someone does something that violates the law, while an act is negative if someone by law or by subjective obligation should do something, but he does not do the act to the detriment of others. The attitude of not doing something or being silent can be qualified as an act against the law. Wirjono Pradjodikoro mentions actions in Article 1365 of the Civil Code, including actions that are active and actions that are passive or silent (Prodjodikoro, 2018).

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A person's liability for unlawful acts is not only for actions that are intentionally done (or not done), but also due to someone's negligence or carelessness, causing harm to others. This is regulated in Article 1365 of the Civil Code which states that "Everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness". Thus, it is not only people who intentionally violate the law who must be held accountable, someone who due to negligence or carelessness in doing so causes harm to others, must be held accountable for his actions.

An act that violates the law can also occur in a contractual legal relationship, provided that the elements of the unlawful act mentioned above can be proven. If the above elements are not fully met, then an act cannot be said to be an act violating the law as regulated in Article 1365 of the Civil Code. A lawsuit on the basis of an unlawful act will be rejected by the judge if all the elements contained in Article 1365 of the Civil Code are not fulfilled. Therefore, before a person files a lawsuit on the basis of an unlawful act, he must be able to prove all the elements of the unlawful act.

Acts that violate the law are considered to have occurred by observing the actions of the perpetrators who are thought to have violated the law, are contrary to the legal obligations of the perpetrators, are contrary to decency and public order, or are contrary to decency in society, both towards themselves and others. However, an act that is considered a violation of the law must still be accounted for, namely whether it contains an element of error or not.

Second, the element of error or schuld is something that is reprehensible related to behavior and its consequences, namely the emergence of losses. Such behavior and losses can be blamed and therefore accountable to the perpetrators of the acts. Theoretically, errors in unlawful acts can be narrow, namely only involving intentional acts. Meanwhile, mistakes in a broad sense do not only involve intention, but also include actions resulting from negligence or carelessness.

In the Dutch legal system, unlawful acts prior to 1919 by the Dutch Hoge Raad are defined narrowly as any act that is contrary to the rights of others arising from the law or any act that is contrary to one's own legal obligations arising from the law. With this understanding, the party who feels aggrieved is sometimes unable to claim compensation because there is no regulation in the law, even though the act is clearly and can be proven to be contrary to the norms in society or contrary to the things required by the law society or in this case contrary to decency in society.

Unlawful Acts by the Dutch Hoge Raad were only comprehensively interpreted on January 31, 1919 in the Lindenbaum case against Cohen in which the Hoge Raad (Djojodirdjo, 1982), considered that:

> "...with an unlawful act (onrechmatige daad) is defined as an act or omission, which is or is contrary to the rights of others, or is contrary to the legal obligations of the perpetrator or is contrary to decency, whether socializing with other people or objects, while whoever because of his fault as a result of his actions has caused harm to another person, is obliged to pay compensation".

Thus, unlawful acts are not only acts that are prohibited by law, but also all actions that violate the rights of others, actions that are contrary to decency and caution, appropriateness, and propriety in social life in society. Furthermore, unlawful acts can also be referred to as a collection of principles in society whose purpose is to control and regulate dangerous behavior, and will later create a balance in the balance of society.

Decision of the Constitutional Court on Case: 18/PUU-XVII/2019 dated January 06, 2020

The petitioners in this case are Aprilliani Dewi and Suri Agung Prabowo, both self-employed, residing at Jalan H. Wahab II Number 28 A, Jatibening, Bekasi, West Java. This application, initially in the form of a dispute between the applicant as a debtor and PT. Astra Sedaya Finance as a creditor related to financing (lease), with the following issues that:

a. "On November 18, 2016 Petitioner I and PT. Astra Sedaya Finance has agreed to enter into a Multipurpose Financing Agreement with Registration Number

01100191001653145 where PT. Astra Sedaya Finance provided financing facilities to Applicant I in the form of providing funds for the purchase of 1 (one) unit of Toyota Type Alphard V Model 2.4 A/T Year 2004, metallic light gray color, No. ANH100081947 frame, No. 2AZ1570674 engine;

b. In accordance with the multipurpose financing agreement, Petitioner I has an obligation to pay debts to PT. Astra Sedaya Finance in the amount of Rp 222,696,000,- (two hundred twenty two million six hundred ninety six thousand rupiah) which will be paid in installments for 35 (thirty five) months, starting from November 18, 2016;
c. On November 10, 2017 a representative from PT. Astra Sedaya Finance who claims to be a representative of PT. Astra Sedaya Finance by bringing a power of attorney signed by an official from PT. Astra Sedaya Finance visited the Plaintiff's house with the intention of taking the Toyota Type Alphard V Model 2.4 A/T Year 2004 vehicle belonging to Petitioner I on the pretext that Petitioner I had defaulted;
d. Action PT. Astra Sedaya Finance on November 15, 2018, which repeatedly tried to take the vehicle of Petitioner I at the house of Petitioner I."

This dispute has been decided by the South Jakarta District Court Number 345/PDT.G/2018/PN.Jkt.Sel which states that the Fiduciary Recipient's action is by hiring the services of a debt collector, to take over the goods controlled by the Applicant without going through the correct legal procedure. There are several moments of forced action, without showing evidence and official documents, without authority, by attacking personal self, honor, dignity, and threatening to kill the Petitioners is an act against the law. Therefore, Fiduciary Recipients have even been given sanctions to pay both material and immaterial fines, in the form of:

"Accepted the plaintiff's claim in part;

1. To declare that T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), and T3 (M. Halomoan Tobing) have COMPLETED ACTIONS AGAINST THE LAW which were detrimental to APPLICANT I;
2. Sentencing T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), and T3 (M. Halomoan Tobing) jointly and severally pay material losses to the plaintiff in the amount of Rp. 100.000,-;
3. Sentencing T1 (PT. Astra Sedaya Finance), T2 (Idris Hutapea), and T3 (M. Halomoan Tobing) jointly and severally pay compensation for immaterial losses to the plaintiff in the amount of Rp. 200,000,000,-;
4. Punish TT (Financial Services Authority) to comply with the contents of this decision."

Even though there has been a Court Decision regarding the dispute between the Giver and the Fiduciary Recipient mentioned above, the Fiduciary Recipient still ignores it by continuing to withdraw the object of the Fiduciary guarantee on January 11, 2019, basing that the Fiduciary Agreement is deemed to have permanent legal force based on the provisions of Article being asked a quo. Based on this, the Petitioners feel that the constitutional losses experienced are specific and actual, where if the provisions of the a quo article do not exist or at least can be interpreted as the aquo petition, the Petitioners' constitutional losses will not occur.

Furthermore, the Petitioners considered that the protection of private property rights, honor, dignity, and dignity guaranteed by the 1945 Constitution had been violated by the enactment of the provisions of Article 15 paragraph (2) and paragraph (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees, which provided an opportunity for to the fiduciary recipients to perform acts or at least interpret the aquo article so that they act arbitrarily by suppressing the dignity and honor of the Petitioners, so that mutatis mutandis the constitutional losses suffered by the Petitioners are specific and actual as well as the losses suffered by the Petitioners have causal relationship with the enactment of the provisions of the article being petitioned for a quo examination

Based on the above description, the Petitioner feels that he has fulfilled the quality and capacity as an Petitioner for reviewing Law No. 42 of 1999 concerning Fiduciary Guarantees

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against the 1945 Constitution as stipulated in the Law on the Constitutional Court, Regulations of the Constitutional Court, as well as a number of decisions of the Constitutional Court which provide explanations regarding the requirements to become applicants for judicial review of the Act against the 1945 Constitution. Therefore, it is also clear that the Petitioners have the right and legal interest to file a petition for judicial review of Article 15 paragraph (2) and paragraph (3) of Law No. 42 of 1999 Regarding Fiduciary Guarantee against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

As for the Norms Requested for Examination (Law No. 42 of 1999 concerning Fiduciary Guarantees) and the 1945 Constitution:

a. The principal of the application is in the form of a material review of Law Number 42 of 1999 concerning Fiduciary Guarantees:
   Article 15 paragraph (1):
   "In the Fiduciary Guarantee Certificate as referred to in Article 14 paragraph (1), the words "For Justice Based on the One Almighty God" are included.
   Article 15 paragraph (2):
   "The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force"
   Article 15 paragraph (3):
   "If the debtor is in breach of contract, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee on his own power".

b. Norms of the 1945 Constitution
   Article 27 paragraph (1) of the 1945 Constitution:
   "Everyone has the right to develop himself through the fulfillment of his basic needs, the right to education and to benefit from science and technology, art and culture, in order to improve the quality of his life and for the welfare of mankind".
   Article 28D paragraph (1) of the 1945 Constitution:
   "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law".

Unlawful Acts in the Leasing Agreement

The engagement that occurs between the lessor and the lesse in the lease agreement (leasing) based on the agreement. Both parties must comply with the clauses in the agreement. In the event of a dispute, it is not uncommon for a claim to be filed through a lawsuit against the law. To file a lawsuit against the law other than default, the following elements must be met:

1. There is an action. Unlawful acts will be preceded by the actions of someone who commits the act. Generally, the act is accepted as an assumption that the act in question is an act in the realm of doing something or not doing something, so that in the realm of unlawful acts there is no element of agreement or agreement and there is also no element of "lawful cause" as contained in the law contract.
2. The act committed is an unlawful act. The act carried out must then be against the law, this has been interpreted by the Dutch Hoge Raad in 1919 in the broadest sense, which includes the following rights (Muhammad, 2000):
   a) Acts that violate applicable laws;
   b) Which violates the rights of others guaranteed by law;
   c) Actions that are contrary to the legal obligations of the perpetrator;
   d) Actions that are contrary to morality (goede zedeen);
   e) Actions that are contrary to good attitudes in society to pay attention to the interests of others are contrary to their own legal obligations given by law. Thus, breaking the law (onrecthmatige) is the same as violating the law (onwetmatige).

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3. It is the fault of the person who did the act. In order to be held accountable for someone who has committed an unlawful act based on Article 1365 Burgelijk Wetboek, that person must have an error in it. However, in practice it is the judge who determines what kind of wrong that person has done to the party who has harmed him.

4. The person's actions cause harm. The next element is when the unlawful act causes harm to the other party. These losses can be in the form of material losses and can also be in the form of immaterial losses. Material losses are losses that can consist of losses that are actually suffered and profits that should be obtained or received by the injured party, so that in general the party who commits the unlawful act must compensate not only for the loss that was actually suffered, but also for the loss, also to the benefits that should be obtained by the aggrieved party if it is not affected by that person. Immaterial losses are losses caused by unlawful acts that occur to psychological factors of the injured party such as fear, pain, loss of enjoyment of life, and so on. An example of this loss is due to the impact of humiliation (Article 1372 of the Civil Code), injury or disability of a limb / body (Article 1371 Article 1372 of the Civil Code).
5. There is a causal relationship between the perpetrator's actions and the losses incurred. To be able to claim a compensation, then in addition to the existence of mistakes, losses, and actions, there must also be a causal relationship between the three elements. Thus, the loss can actually occur and arise as a result of the actions of people who are unlawful acts.

Furthermore, there are 2 (two) possibilities for liability for this unlawful act, the first is that the person who is harmed also has a fault for the loss he suffered. In this sense, the person who is harmed is also guilty of the loss, then part of the loss will be charged to him unless the unlawful act is committed intentionally. Second, if the unlawful acts are carried out jointly, causing more than one maker of unlawful acts. If so, then each of these people can be sued or sued to meet the losses they have done in their entirety.

Decision of the Constitutional Court Number: 18/PUU-XVII/2019 on the re-interpretation of the phrase Article 15 Paragraphs (2) and (3)

The consideration of the Constitutional Court in its decision Number: 18/PUU-XVII/2019 explains that the material in Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees has unconstitutionality issues. According to it, the position of debtors who object to submitting the object of fiduciary guarantees is weaker because creditors can execute them without a court execution mechanism. One-sided actions have the potential to cause arbitrariness and inhumanity, both physically and psychologically to debtors who often override the rights of fiduciary givers.

In addition, the Constitutional Court detects unconstitutionality in Article 15 paragraph (3) regarding the phrase “breach of promise”, does not explain the factors that cause the fiduciary giver to deny the agreement with the fiduciary recipient, further said "this results in the loss of the fiduciary giver's right to defend himself and sell the object at a fair price”.

Therefore, the Constitutional Court reinterpreted the constitutionality of Article 15 paragraph (2) in the phrase “executory power” and “the same as a court decision that has obtained permanent legal force” so that it becomes:

“With respect to fiduciary guarantees for which there is no agreement on breach of contract or default and the debtor objecting to voluntarily submitting the object of the fiduciary guarantee, all legal mechanisms and procedures in the execution of the fiduciary guarantee certificate must be carried out, and shall apply in the same way as the implementation of court decisions which have permanent legal force”.

Meanwhile, the phrase “breach of promise” in Article 15 paragraph (3) must be interpreted as a breach of contract not determined unilaterally by the creditor but on the

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basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine that a breach of contract has occurred.

IV. CONCLUSION

Based on the discussion above, it can be concluded as follows:

1. An unlawful act is an engagement that arises between parties who are not bound by a contractual relationship. The use of Article 1365 of the Civil Code is used to file a claim in the event that the aggrieved party can prove 4 (four) elements of an unlawful act. The use of unlawful acts as the basis for lawsuits against cases based on agreements is a loop hole by utilizing the decision of the Constitutional Court (MK) which reinterprets the phrase in Article 15 paragraphs (2) and (3).
2. Decision of the Constitutional Court No. 18/PUU-XVII/2019 has an impact on the distribution of financing facilities. The provisions in Article 15 paragraphs (2) and (3) prior to the decision of the Constitutional Court (MK) provide legality in carrying out parate executions in the event that the lesse commits an act of default. The principle in leasing activities, not all of them require a fiduciary guarantee legal institution because legally ownership is still in the hands of the lessor practice, so it is necessary to take appropriate steps in mitigating financing risk, especially in the middle to upper market share and leasing business activities in big cities where consumers are more aware of loopholes from existing policies by filing claims based on acts against law.

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Surat Keputusan Bersama tiga Menteri yaitu Menteri Keuangan, Menteri Perindustrian dan Menteri Perdagangan dan Koperasi Nomor Kep-122/MK/IV/1/1974, Nomor 32/M/SK/2/1974 dan Nomor 30/Kpb/I/1974, tertanggal 7 Februari 1974 tentang Perizinan Usaha Leasing [Joint Decree of three Ministers, namely the Minister of Finance, the Minister of Industry and the Minister of Trade and Cooperatives Number Kep-122/MK/IV/1/1974, Number 32/M/SK/2/1974 and Number 30/Kpb/I/1974, dated 7 February 1974 concerning Leasing Business Licensing].

Surat Keputusan Menteri Keuangan Republik Indonesia Nomor 48/KMK.013/1991 tentang Kegiatan Sewa Guna Usaha (Leasing) [Decree of the Minister of Finance of the Republic of Indonesia Number 48/KMK.013/1991 concerning Leasing Activities].

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