Analysis of The Bargaining Position Asymmetry IfiduciarySecurity Execution From Theperspectives of Rechtsstaat and machtsstaat (Case Study of Supreme Court Decisionnumber 1311 K/Pdt/2023)

Gyna Nur Areza[1*], Rizka Amalia Azis[2]

[1,2]Faculty of Law, Esa Unggul University Jakarta, Indonesia.
* Corresponding author:
Email: gyna.nur@student.esaunggul.ac.id

Abstract.
The institution of fiduciary security in the Indonesian civil law system plays a crucial role in economic growth, yet in its practical implementation, it is frequently entangled in the problem of bargaining position asymmetry between creditors and debtors. This study aims to critically analyze the legal protection of debtors' rights in the Supreme Court Decision Number 1311 K/Pdt/2023 and to formulate concrete operational procedures for executing fiduciary security through auctions so that the rights of the parties are balanced. The research method applied is normative legal research utilizing a statutory approach, a case approach, and an analytical approach. The results indicate that the legal reasoning of the Supreme Court at the cassation level in Decision Number 1311 K/Pdt/2023 tends to prioritize rigid administrative formalities of auction procedures while explicitly disregarding the material facts of the debtor's good faith, who had pursued credit restructuring through Addendum I and II. Such a judicial paradigm reflects the dominance of formalistic enforcement (machtsstaat) over substantive justice (rechtsstaat). The Supreme Court failed to see that the existence of an active addendum effectively nullifies the status of default. Consequently, it is imperative to reconstruct execution procedures to strictly incorporate independent appraisal processes and periodic notification systems to restore contractual equilibrium. The study concludes that independent appraisal is non-negotiable to prevent arbitrary price-setting by banks.
Keywords: *Fiduciary Security, Bargaining Position, Debtor Protection, Supreme Court Decision.*

I. INTRODUCTION

The institution of fiduciary security is a fundamental pillar in supporting the stability and growth of the national economy in Indonesia. Through the mechanism of transferring ownership rights based on trust while maintaining physical possession of the object with the debtor, fiduciary security provides the flexibility highly needed by business actors to gain access to capital. Theoretically, Law Number 42 of 1999 concerning Fiduciary Security was designed to synchronize the interest of legal certainty for creditors (banking institutions) with the protection of economic rights for debtors. However, contemporary legal discourse frequently highlights the gap between this ideal norm and empirical reality in the field. A fundamental issue that consistently arises is the extreme bargaining position asymmetry between banking institutions with immense capital strength and customers as parties in need of capital (Sjahdeini, 2016).

This bargaining position asymmetry often manifests in the use of adhesion contracts or standard agreements unilaterally drafted by the bank (Gautama, 2012). From a civil law perspective, Article 1338 paragraph (1) of the Indonesian Civil Code establishes the principle of freedom of contract (pacta sunt servanda); however, in practice, this freedom is often illusory for debtors. Debtors are faced with a "take it or leave it" choice, which reduces the essence of party autonomy in contracting. This condition creates judicial vulnerability, where onerous clauses are often inserted, particularly regarding security execution mechanisms in the event of default. The classical paradigm conferring an absolute right of parate execution upon creditors has long been regarded as an instrument with the potential to spawn arbitrary actions, prompting the Constitutional Court to intervene through Decision Number 18/PUU-XVII/2019 (MK RI, 2019).

The Constitutional Court decision explicitly states that creditors may not execute unilaterally unless there is an agreement regarding default and the voluntary surrender of the security object (Kina, 2023). This constitutional intervention represents an effort to restore the dignity of the Rechtsstaat (State based on Law), which prioritizes the protection of citizens' rights over capital dominance. However, this spirit of substantive protection frequently clashes with practice in civil courts, where judges tend to employ a Machtsstaat approach that prioritizes procedural administrative formalities over material justice. This phenomenon is

clearly evident in Supreme Court Decision Number 1311 K/Pdt/2023, which forms the central focus of analysis in this study (MARI2023).

In Amelia's case, there is a sharp collision of interests between the debtor's right to receive protection for her good faith and the bank's claim of legal certainty. Amelia, as the debtor, demonstrated exceptional good faith (te goeder trouw) by initiating credit restructuring through Addendum I and Addendum II (Sari, 2021). Juridically, the existence of these addenda represents a new agreement that should invalidate prior claims of default (Subekti, 2010). Nevertheless, the bank disregarded the ongoing restructuring process and abruptly conducted an auction through the State Assets and Auction Service Office (KPKNL) with a reserve price unilaterally set at Rp3,003,000,000, without involving an independent appraiser (Hutapea & Sulistiyono, 2024). The Supreme Court's reluctance to address the substance of the dispute, choosing instead to hide behind the completeness of formal auction administrative documents, indicates a crisis in civil law enforcement. When the judiciary merely serves as a rubber stamp for rigid administrative procedures, the law no longer functions as a protector of the people, but rather as a tool of legitimation for economically powerful parties. This raises a fundamental question regarding the extent to which the Rechtsstaat principle is truly implemented in protecting debtors' rights in Indonesia. This analysis dissects this asymmetry using progressive legal theory and substantive legal protection to formulate directions for a more humane and equitable reform of fiduciary executionlaw(Rahardjo,2009).

Based on the background above, the research problems of this study are: (1) How is the legal protection of debtors' rights regarding bargaining position asymmetry in fiduciary security execution under Supreme Court Decision Number 1311 K/Pdt/2023? and (2) What legal efforts and execution procedures through auction can be established to ensure the balanced protection of debtors' rights?

II. METHODS

This study applies a doctrinal normative legal research method (juridical-normative). The main focus of this study is to systematically examine legal norms, legal principles, and legal doctrines relevant to the execution of fiduciary security.

The theories utilized in this study include Legal Protection Theory by Philipus M. Hadjon, Progressive Legal Theory by Satjipto Rahardjo, and the Doctrine of Misbruik van Omstandigheden (Abuse of Circumstances) by Munir Fuady. Legal Protection Theory by Philipus M. Hadjon is used to analyze how the law provides preventive and repressive protection for legal subjects, where preventive protection serves to prevent disputes and maintain the balance of contractual clauses to avoid abuse, while repressive protection serves as a dispute resolution instrument through judicial bodies to ensure that fundamental individual rights are not reduced by greater power (Hadjon, 1987). Furthermore, Progressive Legal Theory by Satjipto Rahardjo is employed to examine and evaluate whether law enforcement in fiduciary security execution truly upholds substantive justice for human beings or is trapped in rigid administrative formalities, thereby demanding judicial courage to make legal breakthroughs for the public good (Rahardjo, 2009). On the other hand, the Doctrine of Misbruik van Omstandigheden by Munir Fuady is used to analyze the practice of abuse of circumstances in the banking industry, where the dominant economic position of banks is frequently exploited to unilaterally impose onerous conditions and establish auction reserve prices below fair market value without independent appraisal, thereby granting judicial authority to intervene and correct such contractual injustice (Fuady, 2014).

III. RESULT AND DISCUSSION

A. Case Study of Supreme Court Decision Number 1311 K/Pdt/2023

Case Position

The dissection of the legal dispute involving debtor Amelia reveals a narrative of systematic contractual and structural injustice that harmed the weaker party. The case originated from a commercial credit agreement, wherein Amelia acted as the debtor obtaining loan facilities from a banking institution by delivering collateral in the form of fiduciary security. Over time, amidst fluctuations in financial capacity influenced by various economic and operational business factors, Amelia, as a law-abiding legal subject,

consistently demonstrated good faith (te goeder trouw). This was tangibly demonstrated by Amelia's cooperative stance; she never attempted to abscond or evade her contractual obligations, but proactively and openly approached the bank to seek credit rescue solutions through a debt restructuring scheme.

These mitigation and negotiation efforts ultimately culminated in a formal agreement through the signing of Addendum I to the Credit Agreement, which was subsequently updated through the execution of Addendum II to the Credit Agreement between the debtor and the bank. Juridically and normatively, the existence of these addenda constitutes a new, valid, and binding legal obligation possessing full legal force equivalent to law for the parties who executed them, as imperatively stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code (KUHPerdata).

A crucial material fact serving as the turning point in this dispute is that while the restructuring period was actively in effect, Amelia continued to exhibit high good faith by regularly fulfilling ongoing interest payments and fines according to the schedule and amounts agreed upon in the addendum clauses. Under civil law, the realization of payments and compliance with adjusted credit terms through the addendum should automatically paralyze, negate, or extinguish past default status, as the parties agreed to update their contractual relationship.

However, a legal irony occurred when the bank unilaterally and arbitrarily—while the active restructuring protection remained in place and while the debtor was dutifully paying interest—submitted an application for auction execution over Amelia's fiduciary security assets through the State Assets and Auction Service Office (KPKNL). This unilateral action by the bank constituted a clear violation of the pacta sunt servanda principle, as the bank breached and ignored the contract modification clauses (addenda) that they themselves formulated and signed.

This structural injustice reached its peak during the critical stage of setting the auction reserve price. The bank unilaterally and subjectively set the reserve price of the debtor's assets at Rp3,003,000,000 (three billion three million rupiahs) solely to expedite the liquidity of their non-performing loans, without involving or requesting assistance from an independent and professional Public Appraisal Office (KJPP).

As a consequence of the absence of an independent valuation, the reserve price setting was presumably far below fair market value, which in turn had the potential to severely harm the debtor by depriving her of the economic right to any potential asset surplus that should belong to the debtor after deducting total outstanding debt obligations.

The bank's action in conducting an abrupt auction execution amidst the debtor's compliance with interest payments strongly indicates an exploitation of economic power or an attempt at instant recovery without regard for the protection of the debtor's civil rights. This structural inequality was aggravated by the judiciary's refusal to delve deeply into material facts. When the issue of bargaining position inequality and material legal defects was brought to the highest judicial level at the Supreme Court, the Panel of Cassation Judges fell into narrow legal formalism. The Panel failed to see the substantive material truth and legal defects behind the auction process, choosing instead to hide behind formal administrative validity without considering substantive justice protection for the debtor who acted in good faith (MA RI, 2023).

Legal Protection Analysis: Analysis of Asymmetry in the Supreme Court Decision

Supreme Court Decision Number 1311 K/Pdt/2023 paints a grim picture of civil law enforcement in Indonesia, which remains trapped in the Machtsstaat (Power State) paradigm (MA RI, 2023). In its considerations, the Cassation Panel tended to examine only outward aspects of auction procedures. The judges held that as long as the administrative procedures required by auction regulations were fulfilled by the KPKNL, the auction was deemed legally valid. This approach represents a disregard for the principle of material truth. The court turned a blind eye to the fact that the auction process was triggered by a legally flawed default claim due to the active addenda. From the perspective of the Rechtsstaat (State based on Law), the law ought to function as a shield protecting individual rights against arbitrary actions by stronger parties. The Supreme Court should have applied progressive legal theory by conducting a thorough examination of the parties' good faith pursuant to the mandate of Article 1338 paragraph (3) of the Civil Code. By ignoring the restructuring facts, the Supreme Court indirectly signaled to the banking industry that addenda may be disregarded and executions carried out as long as formal paper procedures are complete.

This damages public trust in the national credit restructuring system and leaves debtors highly vulnerable. Judicial failure in this decision is also evident in permitting unilateral reserve price setting. Substantive legal protection requires economic balance in execution. Without an independent appraisal from a Public Appraisal Office (KJPP), banks have wide latitude to commit an abuse of circumstances (misbruik van omstandigheden). This decision demonstrates that even at the cassation level, legal formalism frequently overrides substantive justice. As judex juris, judges must not only ensure that rules are applied, but also ensure that the application of those rules does not violate the constitutionally protected civil rights of citizens.

B. Legal Remedies and Reconstruction of Balanced Execution Procedures

To achieve substantive justice grounded in Rechtsstaat principles, a debtor facing unilateral execution during active credit restructuring must understand and pursue clear legal avenues, both out-of-court and through judicial channels (Hadjon, 1987).

In non-litigation channels, the debtor's initial step is to draft and serve a formal letter of objection or counter-notice through legal counsel to the bank (Harahap, 2016), attaching authentic evidence of credit restructuring documents (such as Addenda I and II) and proof of ongoing payments, which legally demonstrates that the bank's default claim was extinguished due to the debtor's good faith (te goeder trouw) (Subekti, 2010; Suadi, 2021). Should the bank disregard the formal notice, the debtor may lodge an official complaint with the Financial Services Authority (OJK) consumer service or the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK), wherein the OJK will summon the bank for clarification, facilitate banking mediation, and urge the suspension of physical execution or auction during alternative dispute resolution (Kina, 2023).

Meanwhile, if out-of-court channels prove unsuccessful, the debtor may pursue litigation by filing an Unlawful Act (Perbuatan Melawan Hukum / PMH) lawsuit in the local District Court based on Article 1365 of the Indonesian Civil Code (KUHPerdata) against both the bank and the State Assets and Auction Service Office (KPKNL) (Atsar, 2018; Fuady, 2014). Within the PMH lawsuit, the debtor must include a specific application for provisional relief, requesting the Panel of Judges to issue an order staying or suspending the auction execution of the fiduciary security object until a final and binding judicial decision (inkracht van gewischt) is rendered (Satrio, 2012).

In addition to a PMH lawsuit, if the execution process has reached the stage of an execution order from the court, the debtor may file an opposition to execution (derden verzet) grounded in Constitutional Court Decision Number 18/PUU-XVII/2019, which strictly prohibits unilateral parate execution of fiduciary security absent an agreement on default and voluntary surrender by the debtor (MK RI, 2019). Furthermore, as an operational standard that creditors must observe during auction execution to ensure balanced bargaining positions, the execution process must adhere to

strict Standard Operating Procedures (SOP) for auction execution (Rahardjo, 2009). Before an auction application is submitted to the KPKNL, the creditor and debtor must conduct a joint verification to confirm default status. If active restructuring documents or addenda are verified, default status must be declared void by law, or judicial determination required in the event of interpretive disputes (Hutapea & Sulistiyono, 2024). Moreover, under these SOPs, the reserve price must not be determined subjectively or unilaterally by internal bank officers to expedite asset liquidity; rather, creditors must engage an independent Public Appraisal Office (KJPP) registered with the OJK to determine the fair market value of the fiduciary security object, preventing abuse of circumstances (misbruik van omstandigheden) detrimental to the debtor (Fuady, 2014). This auction SOP sequence must also incorporate a structured notification system requiring written notice to the debtor at least 14 (fourteen) business days prior to public auction announcements, granting the debtor the right to be heard and an opportunity to settle the debt or redeem the asset. Finally, the execution process must conclude with an audit and transparent accounting of auction proceeds surplus. If net auction proceeds exceed total outstanding principal, interest, and legitimate fees, the bank must immediately remit the surplus balance to the debtor without bureaucratic delay, preserving the fiduciary security mechanism strictly as a debt recovery tool rather than an instrument of arbitrary asset forfeiture.

IV. CONCLUSION

Conclusion

Based on the comprehensive scientific examination, in-depth analysis, and case study of the legal dispute addressed in this research, it is concluded that legal protection for debtors' civil rights in Supreme Court Decision Number 1311 K/Pdt/2023 remains extremely weak, disregarding the true essence of substantive justice. The Cassation Panel trapped itself in narrow legal formalism by merely validating formal administrative auction aspects while refusing to examine crucial material facts. These material facts included the debtor's tangible good faith (te goeder trouw) in attempting to resolve financial obligations through credit rescue and restructuring via Addenda I and II. Such a judicial stance reflects the dominance of the machtsstaat (power state) paradigm, wherein capital supremacy and banking interests are legitimized over the protection of structurally weaker citizens' fundamental rights. Consequently, the bargaining position asymmetry experienced by debtors is systematically exploited without corrective intervention from the judiciary as the ultimate bastion of justice.

To establish contractual equilibrium and protect debtors from arbitrary actions, law enforcement and procedural reconstruction of fiduciary security execution through auction must be comprehensively reformed. Non-litigiously, debtors facing unilateral execution during active restructuring can proactively issue formal objection notices and seek mediation through the Financial Services Authority (OJK) or the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK). In litigation, remedies include filing an Unlawful Act (PMH) lawsuit in the District Court with a petition for provisional relief staying the auction, or lodging an opposition to execution (derden verzet) under Constitutional Court Decision Number 18/PUU-XVII/2019. Furthermore, fundamental revisions to banking and KPKNL SOPs are mandatory: requiring joint verification of default, mandatory independent appraisal (KJPP) to prevent abuse of circumstances (misbruik van omstandigheden) in reserve price setting, structured notification to safeguard the right to be heard, and transparent accounting and prompt return of surplus auction proceeds.

Suggestions

Based on the conclusions above, strategic recommendations are offered to the judiciary to adopt a progressive paradigm shift when adjudicating banking disputes.

Judges should prioritize substantive justice focused on material truth rather than strictly adhering to administrative formalisms, thereby protecting vulnerable debtors facing standard contract asymmetries. Banking disputes must be rigorously examined to evaluate the debtor's good faith demonstrated through valid restructuring before legal sanction is granted to forced execution.

Additionally, the Financial Services Authority (OJK) is urged to promptly enact binding regulations mandating independent appraiser (KJPP) involvement and joint verification in fiduciary security executions. This regulatory step is essential to eliminate subjective reserve price setting by banks and eradicate economic exploitation, ensuring balanced, fair, and humane legal protection for all contracting parties.

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