

Comparative Analysis of Legal Certainty in Fiduciary Guarantees for Defaulting Visit of Justice and Economic Analysis of Law

Wennie Melannie*, Suparno

Universitas Borobudur, Indonesia

Email: wwmelannie1576@gmail.com*, suparno@borobudur.ac.id

Keywords

Fiduciary Collateral; Credit Agreement; Default.

ABSTRACT:

In Indonesia, fiduciary guarantees serve as a critical mechanism for securing credit agreements by providing creditors with the right to execute collateral if debtors default. However, the issuance of Constitutional Court Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 has significantly altered the execution mechanism, shifting it from parate execution—direct execution without court involvement—to a mechanism that requires either mutual agreement between the creditor and debtor or a court order. This change has created legal uncertainty, particularly regarding the balance between creditor protection and debtor rights. This research aims to analyze the legal certainty of fiduciary collateral execution against defaulting debtors by integrating the perspectives of justice and the Economic Analysis of Law. The method used in this research is a normative legal approach, which examines and analyzes applicable legal provisions as well as theories related to justice and legal economics. In this context, the theory of justice is used to understand the principles of fairness that should be applied in resolving disputes over fiduciary collateral, while the Economic Analysis of Law is employed to evaluate the economic impact of legal practices related to the execution of fiduciary collateral on both creditors and debtors. The findings of this research are expected to provide insights into how the law can achieve a balance between legal certainty, justice for the parties involved, and economic efficiency in the application of fiduciary collateral execution against defaulting debtors.

INTRODUCTION

Indonesia is a country that upholds the rule of law. All rules and systems in this country are designed to create justice and prosperity for all people. Economic development is one of the main focuses to achieve this goal. This economic development is based on Pancasila and the 1945 Constitution, which aim to create a just and prosperous society (Asshiddiqie, 2012, p. 13).

National development is a joint effort that requires cooperation from all parties, including the government, the community, and the private sector. No single party can achieve development goals independently. Every individual and group depends on one another to meet their needs (Mayulu et al., 2024).

Financial institutions such as banks and financing institutions play an important role in the economy. They serve as intermediaries between parties with excess funds and parties in need of funds. Thus, financial institutions help drive the country's economy. Agreements

between financing institutions and consumers are generally in the form of credit agreements (Kizi & Elmira, 2018; Meher et al., 2021; Orza, 2021). In these agreements, financing institutions provide loans to consumers to purchase goods on credit. Consumers then repay the loan in instalments.

Credit agreements between financing institutions and consumers do not always run smoothly. Often, one party, usually the consumer, is unable to fulfill their obligation to pay installments as agreed. A situation where one party does not fulfill their obligations is called default (Windradi et al., 2020).

Anticipating the potential risk of default, financing institutions apply additional collateral mechanisms in credit agreements, in addition to the main agreement. Thus, collateral is required so that the principle of prudence can be applied with the submission of collateral in the form of objects or individuals (Podung, 2016).

As part of property law, property collateral has an absolute nature and gives special rights to the creditor holding the collateral. These rights include the right to priority in payment and the right to follow the property wherever it is located (Afra et al., 2023).

In a credit agreement, if the debtor defaults, the collateral can be executed directly based on the executory title attached to the collateral (Fauzia et al., 2022; Sriwati, 2021; Yasin et al., 2022). Thus, the creditor has the right to repossess the motor vehicle and sell it to pay off the debtor's debt. Based on Article 1131 of the Civil Code, several principles of the creditor's external relationship can be concluded, namely: first, the creditor has the right to collect repayment from any part of the debtor's assets; second, any part of the debtor's assets can be sold to satisfy the creditor's claims; and third, the creditor's claim rights are only guaranteed by the debtor's assets, not by the debtor's "person".

One such collateral is fiduciary collateral. The word "fiduciary" comes from the Latin word "fides," which means trust. This is in line with Article 1 paragraph 1 of Law Number 42 of 1999 concerning Guarantees, namely "Fiduciary is the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in the control of the owner of the object." The practice of fiduciary in Indonesia, based on Law Number 42 of 1999, refers to the jurisprudence of the Dutch Hoge Raad through the Bier Brouwerij Arrest ruling, in which collateral in this activity was first legalized by a judge (Merista, 2016). Guarantee Law, there were no clear and comprehensive guidelines on how fiduciary instruments work and are applied. Although several other laws mention guarantees, there are no specific technical rules (Arfiani, 2022).

The purpose of collateral institutions is to provide protection and certainty to creditors, one of which is through the legal institution of parate execution. Collateral is provided to creditors to ensure that debtors fulfill their obligations that can be assessed in monetary terms (Hadi Soeprapto, 1984, p. 50). Parate execution is regulated in Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees, which gives the fiduciary recipient the right to sell the object of the fiduciary guarantee if the debtor defaults. The explanation of this article emphasizes that one of the characteristics of fiduciary collateral is the ease of execution if the debtor defaults, which is realized through the institution of parate execution. This is a consequence of the purpose of the institution of collateral, which is to provide convenience and priority to creditors in the settlement of their claims (Anggoro, 2007).

The Constitutional Court issued Decision Number 18/PUU-XVII/2019 as a result of a judicial review of Article 15 paragraph (2) and Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees regarding the execution of fiduciary guarantees. The considerations and decisions issued by the Constitutional Court are essentially as follows:

1. Unilateral actions taken by creditors as recipients of fiduciary rights have the potential to lead to arbitrary actions and are carried out in a manner that is less than "humane," whether in the form of physical or psychological threats often made by creditors (or their representatives) against debtors, often even disregarding the rights of debtors.
2. Thus, the phrases "executory power" and "equivalent to a court decision with permanent legal force" in Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees and its explanation are legally binding as long as they are interpreted as "against fiduciary guarantees where there is no agreement on breach of contract and the debtor objects to voluntarily surrendering the object that is the fiduciary guarantee, then all legal mechanisms and procedures in the execution of the Fiduciary Guarantee Certificate must be carried out and apply in the same way as the execution of a court decision that has the force of law."
3. The phrase "breach of promise" in Article 15 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees is binding as long as it is interpreted as "the existence of a breach of promise is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal efforts that determine that a breach of promise has occurred"

Constitutional Court Decision Number 18/PUU/XVII/2019 drew criticism, prompting the resubmission of legal considerations related to the decision. A judicial review of the decision was filed by one of the creditors and decided in Constitutional Court Decision No. 2/PUU-XIX/2021. The Constitutional Court upheld its previous decision, considering that the execution of fiduciary guarantee certificates through the district court is only an alternative if there is no agreement between the creditor and the debtor, both in relation to default and the voluntary surrender of the object of the guarantee.

The ruling means that the execution of fiduciary collateral depends on the debtor's consent, both in relation to breach of contract and the execution of collateral. Because it is *erga omnes*, all considerations and rulings are considered applicable law. This change in provisions may limit the implementation of *parate execution*, where the debtor can make things difficult for the creditor by withholding consent. In this situation, the creditor must bring the execution process to court or file a lawsuit to determine the existence of default, so that the creditor does not have legal certainty to execute the collateral without the debtor's consent.

One effort to overcome the problem of fiduciary collateral execution is to draft clear clauses between the creditor and debtor or fiduciary provider from the outset. The Head of the Non-Bank Financial Industry Supervision Department 2B of the OJK stated that problems can arise if this is not clearly agreed upon from the outset (Rizki, 2020).

The formulation of the agreement clause must take into account the principles of the agreement, fiduciary collateral, and the provisions following Constitutional Court Decision Number 18/PUU-XVII/2019, which has become positive law *erga omnes*. Some parties argue that including a breach of contract clause in the agreement can solve the problem, but according to the author, this does not completely solve the problem. The clause only mentions the

conditions for breach of contract, but does not specify who has the authority to determine breach of contract in the implementation of the agreement. Whether or not the conditions for breach of contract have been met remains debatable, and without a clear formulation, the debtor can argue this point. This problem often arises between creditors and debtors, even though the conditions for breach of contract are clearly detailed in the agreement. A financing company that opposed the Constitutional Court's decision also expressed a similar view, namely that even though the conditions for breach of contract were complete, creditors still found it difficult to determine whether the debtor had breached the contract, and debtors could evade their responsibilities (Constitutional Court Decision No. 79/PUU-XVIII/2020).

Based on the above description, the author proposes the following problem formulation: how can the principles of economic analysis of law be applied in assessing legal certainty and justice for the parties to a fiduciary guarantee in cases of debtor default? This study aims to analyze the application of the concept of economic analysis of law in assessing legal certainty and justice for the parties to fiduciary guarantees in cases of defaulting debtors.

This research has both theoretical and practical benefits. Theoretically, this research contributes to the development of legal science, especially in the field of collateral law and economic law, by integrating the perspectives of justice (Gustav Radbruch, John Rawls, Hans Kelsen) and Economic Analysis of Law (Richard Posner) in analyzing the legal certainty of fiduciary guarantees. This research also enriches the literature on the balance between creditor and debtor protection in the Indonesian legal system after the Constitutional Court's ruling. Practically, this study provides policy recommendations for lawmakers in formulating a more balanced revision of the Fiduciary Guarantee Law, serves as a reference for financing institutions and creditors in drafting legally safer credit agreement clauses, and provides guidance for debtors in understanding their rights and obligations related to fiduciary guarantees.

METHOD

This research is normative juridical in nature, which means that the approach used is to analyze theories, concepts, and laws and regulations relevant to the research topic. Normative juridical research views law as a system of norms, which includes principles, norms, rules of law, agreements, and doctrines (Sunggono, 2016, p. 53). The legal materials used include primary legal materials (Law Number 42 of 1999 concerning Fiduciary Guarantees, Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021, as well as the Civil Code), secondary legal materials (textbooks, scientific journals, and previous research results), and tertiary legal materials (legal dictionaries). The technique of collecting legal materials is carried out through library research by tracing laws and regulations, court decisions, legal literature, and other relevant documents. The data analysis technique uses qualitative descriptive analysis through three stages: data reduction (selection and grouping of relevant data), data presentation (systematic narrative based on theme), and conclusion drawn, which is strengthened by legal interpretation (grammatical, systematic, teleological, and historical). The analytical framework is integrated from the theory of legal certainty, the theory of justice (Gustav Radbruch, John Rawls, Hans Kelsen), and the theory of Economic Analysis of Law (Richard Posner) to assess the balance between legal certainty, justice, and economic efficiency in the execution of fiduciary guarantees after the Constitutional Court's decision.

RESULTS AND DISCUSSION

Traces of Dutch colonialism are still evident in Indonesia's financial system, one of which is through fiduciary institutions. The emergence of fiduciary institutions cannot be separated from the dynamics of the global economy after World War I, where the need for credit led to the creation of more effective guarantee mechanisms (Sofwan, 1997, p. 104). Before the existence of fiduciary, pawnshops and mortgages were the main options for collateral. However, because mortgages require land as collateral, this option was not very effective for most people, especially those who did not own land assets (Sofwan, 1997, p. 104).

Fiduciary institutions give creditors a special position. Thus, if the debtor fails to pay the debt, the fiduciary creditor can immediately sell the collateral and use the proceeds to pay off the debt. This special right provides more protection for fiduciary creditors than other creditors. The development of fiduciary in Indonesia is driven by public demand and is also influenced by the Basic Agrarian Law (Lombogia, 2013). The development of fiduciary is in line with the public's need for a more practical and efficient guarantee mechanism. The flexibility of fiduciary, which allows the use of various types of assets as collateral, including assets that are restricted by the provisions of the Basic Agrarian Law, is one of the main driving factors (Lombogia, 2013).

In an observation of fiduciary in Indonesia, several conclusions can be drawn as follows (Hoey Tiong, 1984, p. 88): [bullet points dalam teks asli]

1. Fiduciary institutions using the *constitutum possessorium* method (a situation in which the debtor retains control of the property even though ownership of the property has been transferred to the creditor) have proven capable of covering the shortcomings of pawnshops.
2. After the recognition of fiduciary institutions by jurisprudence (in the Netherlands since January 29, 1929, and in Indonesia since August 18, 1932), fiduciary institutions continued to develop, both in terms of the position of creditors, the position of debtors, and the fiduciary object itself.
3. Case law plays an important role in developing fiduciary institutions by adjusting written law to the legal needs of society.
4. However, among these jurisprudences, there are some that hinder the development of fiduciary, such as the ruling that states that fiduciary can only be applied to movable objects (Supreme Court Decision No. 372 K/Sip/1970, dated September 1, 1971), or a ruling stating that an attorney-in-fact is responsible for legal acts performed for and on behalf of the principal (Supreme Court Decision No. 227 K/Sip/1977).
5. In its development, the regulation of fiduciary through jurisprudence has not always been in line with practical needs. For example, parties in practice want fiduciary to be applicable to buildings standing on land owned by others, but jurisprudence does not allow this.
6. Although there is still theoretical debate about the nature of fiduciary as a form of mortgage evasion, fiduciary guarantees have ultimately been recognized by jurisprudence in accordance with the needs of society.

7. In practice, fiduciary institutions play an important role in economic development, particularly in securing loans, including development loans and loans for small and medium-sized enterprises.
8. The construction of the transfer of objects by *constitutum possessorium* is not only recognized in Western law, but is also found in customary law, as seen in several jurisprudences related to customary law.
9. Along with the development of practice, fiduciary guarantees have proven to be used not only to guarantee the repayment of non-cash sales, which proves that weaknesses in installment sales or hire purchase institutions can be covered by fiduciary institutions.
10. Therefore, jurisprudence on fiduciary (such as *Arrest Hoge-Hogerechtshof* and *Arrest Hoge Raad*) can be used as a reference in the development of fiduciary in the future.

Operationally, fiduciary guarantee agreements are evidenced by the signing of a notarial deed. This deed serves as authentic evidence of the agreement (Satrio, 2005). The closed system in Book II of the Civil Code regarding property rights is the main obstacle to recognizing the rights of creditors in fiduciary agreements before the existence of specific regulations. The principle of this closed system requires that all property rights be explicitly stated in the law and does not allow for the creation of new rights outside the provisions of the law (Satrio, 2005). In fiduciary agreements, creditors generally include clauses that give them certain powers that are normally held by the owner of the property. This is done to provide assurance for the repayment of debts (Satrio, 2005).

In the event of default, creditors can actively take over the fiduciary property from the debtor. Furthermore, creditors have the right to sell the fiduciary property and obtain the proceeds from the sale. This sale process must be accompanied by the creation of a deed of sale and the transfer of the property to the buyer (Utrecht, 1959).

The enactment of Law Number 42 of 1999 is a manifestation of one of the functions of law, namely to provide legal certainty. An effective law is one that is able to provide broad certainty in various social relationships (Soegianto et al., 2019).

In its considerations, Law Number 42 of 1999 clearly states that the purpose of this law is to respond to the need for a comprehensive and definitive legal framework related to fiduciary guarantees. Given the importance of fiduciary guarantees in promoting economic growth, as well as the uncertainty of previous legal regulations, this law was drafted to provide legal certainty for interested parties and at the same time encourage a conducive investment climate.

One of the challenges in the execution of fiduciary guarantees is the prevalence of unlawful actions, such as vigilante justice (Salim HS, 2017, p. 42). In the execution of fiduciary guarantees, it is not uncommon for creditors to involve third parties, namely debt collectors. A common practice is for debt collectors to carry out direct or *parate* execution on behalf of creditors. This authority is based on a power of attorney agreement regulated in the Civil Code (Abdullah, 2016).

The execution of fiduciary collateral through debt collectors often causes conflicts between creditors and debtors. Acts of violence, intimidation, and arbitrary seizure of collateral by debt collectors are the main triggers of these conflicts (Abdullah, 2016).

Based on these issues, the Constitutional Court of the Republic of Indonesia issued Decision Number 18/PUU-XVII/2019 (hereinafter referred to as Constitutional Court Decision No. 18/PUU-XVII/2019). The case that formed the basis for the decision began when the petitioners, Apriliani Dewi and Suri Agung Prabowo (Apriliani Dewi's husband), agreed to enter into a multipurpose financing agreement with PT. Astra Sedaya Finance, which provided financing facilities for the purchase of a 2004 Toyota Alphard V Model 24 A/T vehicle. However, they became victims of arbitrary actions by debt collectors assigned by the creditor to seize the vehicle used as collateral without following the applicable legal procedures. These actions led the South Jakarta District Court to issue a ruling with registration number 345/PDT.G/2018/PN.Jkt.Sel, which stated that the creditor and debt collector had committed unlawful acts and ordered both of them to be liable for the material and immaterial losses suffered by the debtor. In 2019, PT. Astra Sedaya Finance, as the creditor, attempted again to repossess the vehicle used as collateral, on the grounds that the applicants had defaulted. This action was taken based on Article 15 paragraphs (2) and (3) of Law Number 42 of 1999, which considers the fiduciary agreement to be legally binding and enforceable. Therefore, the applicants filed a judicial review petition against Article 15 of Law Number 42 of 1999, as it was considered to be in conflict with the 1945 Constitution of the Republic of Indonesia (UUD 1945).

With the issuance of Constitutional Court Decision Number 18/PUU-XVII/2019, the mechanism for executing fiduciary guarantees has undergone significant changes. Previously, execution could be carried out directly without going through the judicial process (parate execution), but now execution must go through the courts. This change substantially weakens the rights of creditors to carry out quick and effective execution.

Following Constitutional Court Decision Number 18/PUU-XVII/2019, the mechanism for determining default in fiduciary agreements has undergone significant changes. Article 15 paragraph (3) of Law Number 42 of 1999, which previously gave full authority to creditors to determine default, is now limited. The determination of default must be made through mutual agreement between the creditor and the debtor, and the debtor must voluntarily surrender the collateral before enforcement can be carried out.

Constitutional Court Decision Number 2/PUU-XIX/2021 did not make any significant changes to the previous decision. This latest decision confirms that the execution of fiduciary collateral through the district court is an alternative option that can be chosen by the creditor. This option becomes mandatory if no agreement is reached regarding default and the debtor does not voluntarily surrender the collateral.

Prior to the Constitutional Court's decision, creditors had strong protection in enforcing fiduciary guarantees. However, these decisions have changed the legal landscape, reducing the protection for creditors. This is due to the new requirements that creditors must meet before enforcement.

Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUUXIX/2021 have had a negative impact on creditors' rights. Irresponsible debtors can exploit loopholes in these decisions to avoid their payment obligations, making it difficult for creditors to execute fiduciary collateral. Although there are two options for executing fiduciary guarantees, namely through the courts and parate execution, the common practice among

creditors is to choose the parate execution option. This is because the parate execution process is considered more efficient and faster than the court process.

Constitutional Court Decisions Number 18/PUU-XVII/2019 and Number 2/PUUXIX/2021 have reduced legal protection for creditors in terms of the execution of fiduciary guarantees. This is due to restrictions on the rights of creditors to carry out independent execution. In addition, the difficulty in tracking the location of collateral controlled by debtors further complicates legal proceedings, especially in filing simple lawsuits in court.

This situation disrupts the smooth running of the economy for creditors. Richard Posner, in his book *Economic Analysis of Law*, argues that an effective and efficient legal system can contribute significantly to improving overall economic performance. Posner states that good law not only serves as a tool for upholding justice, but can also increase efficiency in the economy. With a clear and structured legal system, the economic costs and social costs usually borne by business actors can be minimized. This will create a more stable business environment and support sustainable economic growth, as business actors no longer have to face legal uncertainty that could harm them. Therefore, the existence of a sound legal system is crucial to creating an efficient business ecosystem, which in turn will have a positive impact on the economy more broadly (Posner, 2014).

Regarding this issue, legal justice theory requires a close relationship between legal justice and legal certainty. It is important to interpret legal justice while maintaining legal certainty. Gustav Radbruch stated that there should be three main elements in law, namely justice, legal certainty, and legal utility. In addition, John Rawls also emphasized that legal justice is closely related to the principle of the rule of law (Ruman, 2012).

In contrast to the views of Gustav Radbruch and John Rawls, Hans Kelsen argued that legal justice does not lie with individuals, but rather in the consistent application of rules. According to Kelsen, linking justice to human nature will lead to subjectivity in interpreting the meaning of justice itself. Justice, according to him, focuses more on the practice of enforcing rules, where the rules are not a problem as long as they are applied consistently and without regard to differences. This view differs from that of Huijbers, who states that justice does not only lie in the enforcement of rules, but also in respect for human rights. For Huijbers, the content of the rules must also contain values of justice. According to him, the law cannot be considered valid if it is not fair (Ruman, 2012).

The debate on legal justice continues, especially regarding the application of fiduciary guarantees. The understanding of fiduciary has evolved in the legal world, where fiduciary guarantees are considered to have a special position. This privilege stems from the original purpose of establishing fiduciary institutions, which were designed to support economic interests by facilitating meetings between capital owners and parties in need of funds. Not limited to the banking or financing sectors, freedom of contract gives the parties involved the space to agree on the desired agreement. Fiduciary is related to agreements that create the right to obtain something of monetary value and the obligation to return that value. Fiduciary institutions are designed to provide legal certainty to creditors, especially in terms of ease of execution if the debtor defaults.

According to Hans Kelsen, legal justice is difficult to determine universally, because it is not easy to satisfy all parties. Therefore, good rules should be implemented consistently to

create legal justice. In the context of debt agreements or other agreements involving fiduciary guarantees, the process of creating them involves several lengthy stages. Based on the Fiduciary Law, fiduciary guarantee deeds must be drawn up before a notary. Notaries who have the authority to draw up these deeds also have ethical and moral responsibilities, as well as the obligation to verify that they are not biased towards either party and remain neutral. Therefore, there should be no fiduciary guarantee agreements that are considered fraudulent and only benefit the creditor. Prior to the Constitutional Court's decision, fiduciary guarantee certificates bearing the phrase "For the sake of justice based on the One Almighty God" or known as *Parate Eksekusi*, were a hallmark of fiduciary guarantee institutions.

From the perspective of Economic Analysis of Law, the application of fiduciary guarantees and related enforcement rules has a significant impact on economic efficiency. A legal system that makes it easy for creditors to execute fiduciary guarantees, as reflected in the principle of *Parate Eksekusi*, aims to reduce risks for lenders and create legal certainty in financial transactions. In this case, the law serves to reduce transaction costs that often arise in debt-credit relationships, as well as reduce uncertainty that can hamper the economy.

However, changes following the Constitutional Court's ruling limiting the application of execution without court proceedings raise questions about how the legal system can continue to support economic efficiency while maintaining a balance between the rights of creditors and debtors. Although efforts to protect the rights of debtors through stricter legal procedures can reduce the potential for abuse by creditors, this can also increase economic costs. Creditors may face longer waiting times and additional costs to recover collateral if debtors default. From a legal economic analysis perspective, this policy can be considered to reduce economic efficiency because more complicated and time-consuming processes have the potential to hamper the smooth flow of capital in the economy.

Based on the previous explanation, even though Constitutional Court Decision Number 2/PUU-XIX/2021 has a positive impact, the resolution of justice issues certainly does not stop there. Justice must be reflected in the substance of laws or regulations, as well as in law enforcement. Justice cannot be achieved simply by repealing certain provisions in the fiduciary law, as this could create legal uncertainty regarding the distinctive characteristics of the fiduciary guarantee institution. This uncertainty has the potential to cause injustice for all parties involved in the use of the fiduciary guarantee institution.

CONCLUSION

Constitutional Court Decision Number 2/PUU-XIX/2021 does have a positive impact, but the resolution of the issue of justice does not stop there. Justice must be reflected in the substance and enforcement of the law, not only by revoking some provisions of the fiduciary law, which could actually create legal uncertainty. This uncertainty could lead to injustice for the parties involved. From the perspective of Economic Analysis of Law, legal uncertainty has the potential to disrupt economic efficiency by increasing transaction costs and hindering capital turnover. Therefore, while justice must be upheld, existing regulations also need to provide certainty and support economic efficiency.

In enforcing the law, it is necessary to prioritize the principle of balance between the protection of creditors' and debtors' rights, by considering how the fiduciary guarantee execution process is carried out fairly, while still providing certainty for creditors, and

maintaining economic efficiency by minimizing transaction costs and legal uncertainty that can hamper capital circulation and access to financing.

REFERENCES

- Abdullah, J. (2016). Jaminan fidusia (Tata cara dan pendaftaran eksekusi). *Jurnal Bisnis dan Manajemen Islam UIN Imam Bonjol Padang*, 4(2).
- Afra, F., Purba, F. N. G., & Adilla, S. (2023). Analisis hukum konsep jaminan dalam penyelesaian kasus kredit jaminan fidusia di Indonesia. *Diponegoro Law Review*, 9(1), 59–72.
- Arfiani, M. (2022). Eksekusi objek jaminan fidusia pasca keluarnya Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019. *Ilmu dan Budaya*, 43(2), 202–228.
- Asshiddiqie, J. (2012). *Gagasan negara hukum Indonesia*. BPHN Departemen Kehakiman.
- Fauzia, A., Octavia, D. G. R., & Hamdani, F. (2022). The conflict of the norms in the execution of secured objects which are enforced by liability rights when the debtor is bankrupt. *Progressive Law Review*, 4(1), 1–9.
- HS, S. (2017). *Perkembangan hukum jaminan di Indonesia*. Raja Grafindo Persada.
- Kizi, S., & Elmira, F. (2018). Some aspects of the responsibility of the parties to the agreement of consumer lending. *Journal of European Law*, 290.
- Lombogia, R. (2013). Perkembangan lembaga jaminan fidusia di Indonesia. *Lex Privatum*, 1(4), 5–12.
- Mayulu, P., Dungga, W. A., & Abdussamad, Z. (2024). Upaya penyelesaian jika debitur wanprestasi dalam perjanjian kredit dengan jaminan fidusia pada BRI KCP Unit Paguyaman. *Jurnal Cakrawala Ilmiah*, 3(5), 1427–1436.
- Meher, M., Kamello, T., Sirait, N. N., & Saidin, O. K. (2021). Protection of consumer rights in bank credit agreements based on the principle of balance. *International Journal of Criminal Justice Sciences*, 16(2).
- Merista, O. (2016). Hak cipta sebagai obyek jaminan fidusia ditinjau dari Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. *Veritas et Justitia*, 2(1), 204–230.
- Orza, R. I. (2021). The loan agreement and consumer protection: An overview on credit agreements concluded in foreign currency. *Curentul Juridic*, 85(2), 68–86.
- Podung, D. M. (2016). Kredit macet dan penerapan prinsip kehati-hatian dalam perbankan. *Lex Crimen*, 5(3), 49–56.
- Posner, R. A. (2014). *Economic analysis of law*. Wolters Kluwer Law & Business.
- Rizki, M. J. (2020). Pasca putusan MK, OJK minta klausul perjanjian pembiayaan diperbaiki. *Hukum Online*. <https://www.hukumonline.com/berita/a/pasca-putusan-mk--ojk-minta-klausul-perjanjian-pembiayaan-diperbaiki-1t5e68a247e0293/>
- Satrio, J. (2005). *Hukum jaminan hak kebendaan fidusia*. Citra Aditya Bakti.
- Soegianto, D. S. R., & Junaidi, M. (2019). Eksekusi jaminan fidusia dalam kajian Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. *Jurnal Ius Constituendum*, 4(2), 207–219.
- Sriwati, S. (2021). Legal protection for creditor under cross default and cross collateral clause in a credit agreement. *Konfrontasi: Jurnal Kultural, Ekonomi dan Perubahan Sosial*, 8(1), 12–22.
- Sunggono, B. (2016). *Metodologi penelitian hukum*. Raja Grafindo Persada.
- Windradi, F., Ardjayeng, L., & Sulisty, H. (2020). Perlindungan hukum bagi kreditor terhadap debitur wanprestasi dalam perjanjian kredit pengakuan hutang. *Transparansi Hukum*, 3(2).
- Yasin, S., Dungga, W. A., & Mandjo, J. T. (2022). Responsibility of the default debtor in the

implementation of the credit agreement and settlement. *Estudiante Law Journal*, 4(2), 639–653.