

# Revisi Jurnal Nabil Luthfi Abyan dan Wardani Rizkianti

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# Creditor's Responsibility For Forced Withdrawal Of Fiduciary Objects after Constitutional Court decision no. 18/PUU-XVII/2019

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## ABSTRACT

This research aims to examine the changing dynamics of fiduciary security execution after the Indonesian Constitutional Court Decisions No. 18/PUU-XVII/2019. The focus of this research lies on the creditor's responsibility in the context of forced withdrawal of the fiduciary object after the debtor's failure. This research uses a normative juridical research method with a legal source approach and case analysis. Through in-depth analysis of legal sources such as the constitution, laws, and relevant court decisions, this research identifies significant changes in the practice of fiduciary security execution. The case approach is used to understand the implementation of legal decisions in concrete situations. The results show that, in the case of a default agreement, parate execution can be an acceptable alternative, providing flexibility in settlement. However, when there is no agreement, court intervention is required to ensure fairness. This research provides a deeper understanding of the changes in the practice of fiduciary security execution, as well as a new outlook on creditor responsibilities, and the need for adjustments in legal practice. Therefore, the novelty of this research lies in the in-depth understanding of creditor responsibilities in situations of forced withdrawal of fiduciary objects, especially after recent legal changes.

**Keywords:** Creditor's Responsibility ; Fiduciary Object : Forced Pulsing

## 1. INTRODUCTION

In the realm of law, the relationship between creditors and debtors forms a complex dynamic that supports the development of legal institutions. The Constitutional Court Decision No. 18/PUU-XVII/2019, followed by the Constitutional Court Decision No. 2/PUU-XIX/2021, introduced significant new dynamics regarding creditor liability in the forced withdrawal of fiduciary objects.<sup>1</sup> Fiduciary guarantees involve an exchange of consideration between the creditor and the debtor, and to maintain the integrity of the transaction, the creditor needs to register the fiduciary guarantee before it can seize the debtor's property. The forced withdrawal must comply with the fiduciary registration regulations.<sup>2</sup>

Law No. 42/1999, Article 29, authorizes the beneficiary of the security object to execute the fiduciary guarantee when the debtor defaults. In this context, a public auction is conducted to ensure maximum proceeds. In turn, the basic principle of a fiduciary guarantee contract is to generate profits on favorable terms.<sup>3</sup> The development of government policy regarding fiduciary guarantees is reflected in the Constitutional Court Decision Number 18/PUU-XVII/2019. The decision confirms that if the debtor admits default and voluntarily surrenders the property, the creditor can execute without involving the district court. However, if the debtor refuses, the creditor must go through the district court. This approach aims to balance the constitutional rights of debtors and creditors.<sup>4</sup>

In the context of execution, Constitutional Court Decision Number 18/PUU-XVII/2019 provides techniques for the execution of fiduciary guarantees without changing the fundamental meaning of Article 15 of the UUF. The procedure for granting fiduciary guarantees is further emphasized in Decision Number 2/PUU-XIX/2021, making it easier for other creditors to request relief from the district court. There are efforts to clarify and facilitate the legal process, maintain a balance between the rights of debtors and creditors, and reduce the potential losses of the parties involved.<sup>5</sup>

Research related to the Forced Withdrawal of Fiduciary Guarantee Objects after the Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-

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<sup>1</sup> Enni Martalena Pasaribu et al., "Analisis Hukum Terhadap Benda Jaminan Fidusia Yang Digadaikan Oleh Debitur Kepada Pihak Lain," *arbiter: Jurnal Ilmiah Magister Hukum* 1, no. 1 (May 2, 2019): 53–65, <https://doi.org/10.31289/arbiter.v1i1.105>.

<sup>2</sup> Siti M. Badriyah R. Suharto and Agnia Zahradinda, "Perlindungan Hukum Kreditor Atas Eksekusi Obyek Jaminan Fidusia Yang Dialihkan Kepihak Ketiga (Studi Kasus Di Koperasi Simpan Pinjam Artomoro Sejahtera Semarang)," *Diponegoro Law Journal* 8, no. 1 (2019): 22–35, <https://doi.org/10.14710/dlj.2019.25326>.

<sup>3</sup> *Law No. 42/1999 on Fiduciary Guarantee*, 1999.

<sup>4</sup> Budi Junaedi, Merry Tjoanda, and Teng Berlianty, "Perlindungan Hukum Pada Debitur Atas Penarikan Objek Jaminan Fidusia Melalui Parate Eksekusi," *PATTIMURA Legal Journal* 1, no. 2 (August 18, 2022): 124–32, <https://doi.org/10.47268/pela.v1i2.6433>.

<sup>5</sup> Khifni Kafa Rufaida, "Tinjauan Hukum Terhadap Eksekusi Objek Jaminan Fidusia Tanpa Titel Eksekutorial Yang Sah," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 1 (October 31, 2019): 21–40, <https://doi.org/10.24246/jrh.2019.v4.i1.p21-40>.

XIX/2021 has been conducted by three previous researchers, First research by riskawati in 2021. This research discusses the legal considerations of the Constitutional Court related to the execution of fiduciary guarantees, the ratio legis of the Constitutional Court's decision, its legal implications in legal practice, and legal uncertainty in the implementation of parate execution in fiduciary guarantees. the strength of this research is that it presents an in-depth analysis of the impact of the decision of the Constitutional Court (MK) Number 18 / PUU-XVII / 2019 related to fiduciary guarantees, while the shortcomings of this research are the lack of analysis of the debtor's perspective in the context of the decision of the Constitutional Court (MK) Number 18 / PUU-XVII / 2019 related to fiduciary guarantees.<sup>6</sup>

The second research by Febrianti in 2021. this research discusses changes in the meaning of Article 15 paragraph (2) and paragraph (3) of the UUJF after the Constitutional Court's decision, which equates the fiduciary guarantee certificate with a court decision which raises the question of whether the executorial power can override a court decision. The strength of this study is that the author outlines the practical impact of the Constitutional Court's decision on fiduciary execution, while highlighting the need for socialization. However, there are weaknesses related to the lack of focus on the legal protection aspect.<sup>7</sup>

The third research By Janwarin in 2022, this research discusses legal certainty related to the forced execution of fiduciary guarantees and legal protection for debtors as well as issues related to forced execution without a court decision and legal protection for debtors who experience losses. The strength of this research lies in the in-depth analysis of the legal certainty of the execution of fiduciary guarantees after the decision of the Constitutional Court, while the weakness is that it does not provide concrete solutions to improve the legal certainty of the execution of fiduciary guarantees.<sup>8</sup>

Based on previous research, there is at least some novelty in this article. After the two decisions of the Constitutional Court, we see the application of the Fiduciary Guarantee Execution system in the community by looking at several existing case studies. besides that, after the decision of the Constitutional Court, the creditor's power has become less strong, so that to fulfill the rights of creditors, several stages are needed. currently, the process of withdrawing a fiduciary guarantee object must be based on the agreement of

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<sup>6</sup> Shanti Riskawati, "Rasio Decidendi Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Perubahan Konstruksi Norma Eksekusi dan Wanprestasi Dalam Sistem Hukum Indonesia" 5, no. 1 (2021): 33–48, <https://doi.org/10.23920/acta.v5i1.613>.

<sup>7</sup> Wiwin Dwi Ratna Febriyanti, "Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019," *Adhaper: Jurnal Hukum Acara Perdata* 6, no. 2 (March 8, 2021): 39, <https://doi.org/10.36913/jhaper.v6i2.128>.

<sup>8</sup> Katarina Zein Angelica Janwarin, Ety Mulyati, and Aam Suryamah, "Eksekusi Jaminan Fidusia Tanpa Melalui Putusan Pengadilan Pasca Putusan Mahkamah Konstitusi Nomor 2/Puu-Xix/2021," *Syntax Literate ; Jurnal Ilmiah Indonesia* 8, no. 2 (February 23, 2023): 1002–15, <https://doi.org/10.36418/syntax-literate.v8i2.11379>.

both parties or through a court order, so on that basis, this research aims to detail the creditor's responsibility in the forced withdrawal of fiduciary guarantee objects and provide a concrete solution to the legal uncertainty and see the application of fiduciary guarantee execution in the community.

## 2. RESEARCH METHOD

This research falls into the category of normative juridical research, using legal sources such as laws, regulations, court decisions, contracts, legal theories, and scientific opinions. The methodology used in this study is the statute approach which involves a comprehensive review of all laws, regulations and legal provisions related to the legal issues discussed.<sup>9</sup> In addition, the use of the case approach method requires the examination of relevant legal cases that are closely related to the legal issues investigated.

This research uses secondary data. There are three legal elements that are the main focus of discussion, namely: (1) Primary legal sources include a collection of laws and regulations. This study is based on the 1945 Constitution, Civil Code, Law No. 42 of 1999 concerning fiduciary guarantees, Law No. 18 of 1999 concerning Consumer Protection, Constitutional Court Decision Number 18/PUU-XVII/2019, and Constitutional Court Decision Number 02/PUU-XIX/2021. as the main legal source.<sup>10</sup> (2) Secondary legal materials refer to a collection of legal sources including books, legal journals, theses and other reference materials. (3) Tertiary legal materials refer to legal sources that provide explanations of primary legal materials and secondary legal materials derived from reputable legal references such as the Indonesian Dictionary, Legal Dictionary, and English Dictionary.<sup>11</sup>

This research collects data through library research, which includes physical and digital literature. Then, to increase the credibility of the research by seeking information from other reputable websites.<sup>12</sup> In addition, this research used text data rather than numerical data, so qualitative data analysis techniques were also used.

## 3. RESULTS AND DISCUSSION

### 3.1 Application of Forced Withdrawal Settlement for Fiduciary Security Objects Post Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021

Involuntary retrieval of fiduciary guarantees is an execution practice involving rights to movable objects, both tangible and intangible, as well as immovable objects. This phenomenon creates complex dynamics between debtors and creditors, where the liability of the parties involved is often the subject of conflict and legal disputes. Through an in-depth understanding of concrete cases, such as those in Bitung, Batam, Cibinong, and

<sup>9</sup> Muhaimin, *Metode Penelitian Hukum* (NTB-Mataram University Press, 2020).

<sup>10</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Penerbit Qiara Media, 2021).

<sup>11</sup> Nanda Dwi Rizkia and Hardi Fardiansyah, *Metode Penelitian Hukum (Normatif Dan Empiris)* (Widina Media Utama, 2023).

<sup>12</sup> Ani Purwati, *Metode Penelitian Hukum Teori & Praktek* (Jakad Media Publishing, 2020).

Depok, the aim is to explore various aspects related to the application of fiduciary execution and its impact on legal certainty and Creditor's responsibility.<sup>13</sup> On this basis, it is deemed necessary to look at the application of forced execution practices that will be analyzed from cases that occurred in decisions in Bitung, Batam, Cibinong and also Depok, as well as the in-depth implications of these case studies on important aspects of the fiduciary legal system.

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When examined regarding the forced withdrawal of fiduciary security objects after the issuance of the Constitutional Court Decision Number 18/PUU-XVII/2019 compared to its application in the community through the case at the Bitung District Court Number 4/Pdt Decision.GS/2021/PN Bit, the Plaintiff obtained a Credit Facility from the Defendant through a Debt Collector by pledging a 2012 Toyota Veloz Avanza as collateral. Initially, since the agreement, Plaintiff has regularly paid installments for up to 7 consecutive months. The lawsuit was related to the forced withdrawal of an Avanza Veloz car taken by PT Sinarmas Multifinance based on late installment payments. The plaintiff claimed that the car's withdrawal was unlawful because it was not supported by an execution order from the court or a fiduciary certificate. The court decided to partially grant the Plaintiff's claim, stating that the forced withdrawal of the car was unlawful. The Supreme Court stated that the Plaintiff was entitled to compensation and to have the car returned or replaced with a sum of money. While some of the Plaintiff's petitions could not be granted due to lack of evidence and fundamental reasons. Finally, the Defendant was ordered to pay court costs.

This Court Decision consists of several pages that look like excerpts from a court decision relating to a dispute over a white Toyota Avanza Veloz car with police number B 1950 CFU. The judgment is set out in Decision Number 4/Pdt.G.S/2021/PN Bit. The plaintiff, Wisna Evelina, ST, won the case and was ordered to return the car to the plaintiff or compensate the plaintiff with Rp. 135,000,000.

In other cases, in the decision Batam District Court Number 295/ Pdt.G/ 2020 / Batam District Court. That the Plaintiff obtained a Credit Facility from the Defendant by pledging a Toyota Rush Car to the Defendant, who is the Toyota Astra Company. On September 2 2020, the Defendant ordered his Debt Collector to confiscate the Plaintiff's car, but the Plaintiff asked the Defendant to produce a Court Determination Letter, but he could not show the letter, so the forced withdrawal of the guarantee could not be carried out. The defendant continued to do this on September 12 2020 at 12.00. After that, on October 10 2020, the Defendant, in the same condition, still did not have a court order, and finally insisted on confiscating the Fiduciary Guarantee. However, in the end, even though the judge's decision said that the Plaintiff's claim was not accepted because according to the judge the Plaintiff was not clear in explaining the position of the claim.

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<sup>13</sup> Marhaeni Ria Siombo, "Implementasi Mekanisme Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor : 18/PUU- XVII/2019" 32, no. 2 (2023), <https://doi.org/10.33369/jsh.32.1.88-111>.

In another case in Depok District Court No. 518/Pdt.G/2020/PA.Dpk is actually not a case of forced withdrawal of a fiduciary security object, but a divorce case. However, there were matters related to the Forced Withdrawal of the Fiduciary Security Object between the Plaintiff and the Defendant and the Debt Collector which was one of the reasons the plaintiff filed for divorce with the defendant. In August 2019, was the peak of the dispute and quarrel in the household of the Plaintiff and the Defendant due to intense arguments, where the Plaintiff was often terrorized and visited by debt collectors to take responsibility for the Defendant's debt, where finally the Plaintiff left the house where they lived together and lived with his brother.

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Furthermore, in another case in the court of Cibinong District Court number 71, PDT. G/2019/PN CBI, In this case, the defendant, who is a friend of the defendant iii, has rendered financial assistance to the plaintiff iii without the knowledge of the plaintiff as her lawful husband. The grant involved loaning money and the transfer of land certificates as security for debt. The accused and accused II, also as lenders, demanded the assurance with physical threats and demanded the accused hand over the deed to the land. The plaintiff's lawful husband should get approval from the plaintiff before delivering the bail. However, all these actions were performed without the knowledge and permission of the plaintiff. This would be contrary to the law of marriage, in which a treasure obtained during marriage is a common treasure, and such an act could be viewed as unlawful

When we consider the four cases above, Bitung District Court, Batam District Court, Depok District court and Cibinong Districk Court there are a number of comparisons that can be evaluated. In the Bitung case, the seizure of the car keys on April 4, 2021 took place without a clear legal basis, while in Batam, although the request for a court order was rejected, the creditor still proceeded with the seizure without a clear court decision on October 10, 2020. The comparison shows that both faced execution problems involving violations of legal procedures. In Bitung, the foreclosure action was conducted without any written agreement or clear court decision. In Batam, despite a request for a court order, the seizure proceeded without a proper court decision.

Although the Batam case was rejected by the court due to lack of clarity in the claim description, this does not invalidate the fact that the execution was carried out without sufficient legal basis. Both raise serious questions regarding consumer protection and legal certainty, pointing to the need for reforms in fiduciary execution procedures and stricter law enforcement to ensure fairness and compliance with the law. Therefore, Based on this decision, the actual execution conducted deviated from the legal provisions that were supposed to be followed, even post Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021. This discrepancy poses a challenge to the principles of legal certainty and justice. Ideally, there is a desire for the legal framework

to establish a pattern consistent with societal values, aiming to safeguard and promote the values cherished by the community.<sup>14</sup>

The condition for the validity of an execution in accordance with applicable regulations is that there is a request for execution after a court decision has permanent legal force, which basically means that the termination of this decision must be carried out by the losing party voluntarily.<sup>15</sup> After that, the chairman of the court gave a warning so that he could carry out the decision voluntarily within the specified time after the chairman of the court received the request for execution. However, if the result remains the same, namely the losing party insists on not complying with the decision, then in accordance with the decision the court will follow up by issuing a decree containing orders to the clerk and bailiff to confiscate the defendant's assets and carry out the execution. After the execution process, the proceeds from the confiscated collateral can be auctioned.

In the case of the Batam District Court decision there was also a violation of the procedures for taking fiduciary objects because they were unable to submit a court order. Although the judge rejected the Plaintiff's lawsuit because of the lack of clarity in the explanation of the position of the lawsuit, this decision did not cancel the fact that the forced withdrawal was carried out without any basis. clear law. This shows the importance of the government involving the judiciary and following applicable legal procedures in every act of forced withdrawal or confiscation. In addition, some of the above cases such as the case that occurred at the Depok Religious Court if it is related to the forced withdrawal of the fiduciary guarantee object, the existence of Debt Collectors who make forced withdrawals of fiduciary guarantee objects is also still a problem that haunts the community and indicates that the process of executing fiduciary guarantees still exists that is not in accordance with the provisions of the Fiduciary Guarantee Law, especially after the Constitutional Court Decision.<sup>16</sup>

On the other hand, the Cibinong case highlights the urgency of protecting the wife's rights from threats and physical coercion that may occur during the forced execution process. In this context, the clarity of legal rules on execution procedures and the protection of the rights of consumers, especially wives, is important. From both cases, further legal actions such as protection of wife's rights, strict law enforcement, and public education are also relevant in the context of forced execution of fiduciary security objects. The protection of consumer rights, including the rights of wives in financial transactions, should be the

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<sup>14</sup> Yeyen Wahyuni, "Parate Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XVII/2019," *INTERDISCIPLINARY JOURNAL ON LAW, SOCIAL SCIENCES AND HUMANITIES* 2, no. 1 (May 31, 2021): 47, <https://doi.org/10.19184/ijl.v2i1.22760>.

<sup>15</sup> Fitriani Welfiandi, "Eksekusi Terhadap Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019 Dan Bentuk Perlindungan Hukum Terhadap Debitur," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 1 (January 4, 2022), <https://doi.org/10.58258/jisip.v6i1.2742>.

<sup>16</sup> Firmansyah, "Implikasi Putusan Mahkamah Konstitusi Nomor 18/Puu Xvii/ 2019 Tentang Eksekusi Objek Jaminan Fidusia Terhadap Penegakan Hukum Ditinjau Dari Siyasah Dusturiyah" (Universitas Islam Negeri Fatmawati Soekarno Bengkulu, 2022).



main focus of reforms or improvements in fiduciary execution practices to maintain justice, legal certainty, and individual rights.<sup>17</sup>

In addition, there was extortion and threats of violence committed by the defendants and defendants II, resulting in the release of the land certificate without the plaintiff's consent. Although the plaintiffs and the defendants also tried to file a police report, they encountered an obstacle and suspected coordination between the defendant and defendant II with the local police. In addition, the defendants 1, 2, and the early hospita and their debtors were forcibly brought into the house by breaking the door of the plaintiff and then by threatening to take it. Based on the flow of the execution, the two decision cases above still do not meet the standards for good execution as explained in National Police Chief Regulation Number 8 of 2011.<sup>18</sup>

After the Constitutional Court Decision Number 18/PUU-XVII/2019, individuals receiving fiduciary guarantees or creditors are no longer permitted to carry out independent executions (self-execution). Instead, they are required to formally request execution through the District Court. The concept of self-execution, known as 'parate execution,' is limited to cases where there exists a predefined agreement on default in the initial contract, and the debtor agrees to willingly surrender the fiduciary object. The Constitutional Court's decision explicitly states that not all executions involving fiduciary objects must be channelled through the court system. In situations where there is no mutual agreement on default between the creditor and debtor, and the debtor is resistant to voluntarily handling over the fiduciary object, all procedural and legal mechanisms for executing fiduciary guarantees must be strictly adhered to and be equivalent to the final and binding decisions made by the court.<sup>19</sup>

The Constitutional Court's ruling emphasizes the necessity of aligning the execution of fiduciary guarantees with the established legal mechanisms and procedures applied in court decisions with legal authority. This implies that, when there is no predefined default or if the debtor refuses voluntary surrender of the fiduciary object, the complete legal process, inclusive of court supervision, must be followed. The court plays a pivotal role in overseeing the execution process to ensure fairness, legality, and protection of the rights of both creditors and debtors involved in fiduciary relationships. This transition in the execution process underscores the paramount importance of legal procedures and

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<sup>17</sup> Dewa Bagus Komang Mahendra Krisna Putra, Anak Agung Istri Agung, and I Made Minggu Widyantara, "Penarikan Objek Jaminan Fidusia Oleh Kreditur Tanpa Adanya Sertifikat Jaminan," *Jurnal Konstruksi Hukum* 3, no. 2 (March 29, 2022): 390–94, <https://doi.org/10.55637/jkh.3.2.4842.390-394>.

<sup>18</sup> Johannes Ibrahim Kosasih, Anak Agung Istri Agung, and Anak Agung Sagung Laksmani Dewi, "Parate Eksekusi Pasca Putusan Mahkamah Konstitusi (MK) NO. 18/PUU-XVII/2019 Dan No: 02/PUU-XIX/2021 Terhadap Eksekusi Jaminan Fidusia Atas Lembaga Pembiayaan Leasin," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (April 24, 2022): 114–35, <https://doi.org/10.29303/ius.v10i1.971>.

<sup>19</sup> Robert Bouzen and Ashibly Ashibly, "Pelaksanaan Eksekusi Jaminan Fidusia Terhadap Debitur Yang Wanprestasi Setelah Keluarnya Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019," *Jurnal Gagasan Hukum* 3, no. 02 (December 29, 2021): 137–48, <https://doi.org/10.31849/jgh.v3i02.8907>.

oversight in safeguarding the interests and rights of all parties involved in fiduciary relationships.<sup>20</sup>

when looking at the case, this has implications for the effect of the Constitutional Court Decision N0.18 / PUU-XVI / 2019 on the implementation of the execution of fiduciary guarantees in the community. The implementation of the execution of fiduciary guarantees that still uses violence and coercion and the absence of the basis of the fiduciary guarantee execution process using a court order and agreement between the two parties makes the lack of benefits received by the community. In terms of legal reform itself in the form of the Constitutional Court Decision in 2019, it can be said that it is good because it reduces the power of creditors not to be arbitrary in carrying out the execution of fiduciary guarantees. the lack of knowledge and awareness between creditors and debtors makes the forced execution of fiduciary guarantees still occur in the community.<sup>21</sup>

By looking at some of the implications received by the community in the above cases, it can be seen that there are several impacts received by the community, including the existence of legal uncertainty due to violations of fiduciary guarantee execution procedures, as seen in the Bitung and Batam district court cases, which can harm both creditors and debtors, and harm public confidence in the legal system. Furthermore, social and economic impacts also arise, especially in the cases of Depok and Cibinong, where physical threats and violence during the execution process can create instability in the community. Fourth, the cases demonstrate the need for reforms in the fiduciary guarantee execution process to address deviations from the legal provisions that should be adhered to.

Finally, serious challenges to the principles of justice and legal certainty arise from the gap between execution practices and the applicable legal provisions. This can hinder the development of a legal system that should provide fair protection to all parties. Therefore, there is a need for concrete measures, such as legal reform and enhanced law enforcement, to improve compliance with the law, protect consumer rights, and maintain fairness and legal certainty in the application of fiduciary guarantee execution.

### **3.2 Creditors Responsibilities in Resolving Fiduciary Disputes That Are Not in Accordance with Constitutional Court Decision Number 18/PUU-XVII/2019 and Constitutional Court Decision Number 2/PUU-XIX/2021.**

In carrying out forced withdrawal of fiduciary security objects, creditors usually represent leasing companies. The Constitutional Court addressed this issue through Decision

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<sup>20</sup> Dr. Soegianto, Diah Sulistiyani R S, and Muhammad Junaidi, "Eksekusi Jaminan Fidusia Dalam Kajian Undang- Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia," *Jurnal Ius Constituendum* 4, no. 2 (September 15, 2019): 191, <https://doi.org/10.26623/jic.v4i2.1658>.

<sup>21</sup> Saut Parulian Manurung and Kevin Chrismanto Nugroho Wilopo, "Mereduksi Praktik Eigenrichtung Dan Menyeimbangkan Kedudukan Hukum Para Pihak Pasca Putusan Mahkamah Konstitusi No. 18/PUU-XVII/2019," *Jurnal Ius Constituendum* 6, no. 2 (October 15, 2021): 284, <https://doi.org/10.26623/jic.v6i2.3197>.

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Number 18/PUU-XVII/2019, dated January 6, 2020. This decision stems from an application for judicial review of Law 42/1999 filed by Apriliani Dewi and Suri Agung Prabowo, a married couple. Apriliani, who functions as a fiduciary, suffered direct losses due to the forced withdrawal of the fiduciary security object by the creditor.

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Following the ratification of Constitutional Court Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021, the creditor's position weakened. This was attributed to the shift in determining breaches of contract, now reliant on the debtor's acknowledgment. Consequently, the facilitation of execution, as outlined in Law No. 42 of 1999, lost its previous significance. The constitutional court's decision requires the parties to agree on the idea of oath harm and a voluntary concession on the borrower's fiduciary bail to the creditor to carry out the bail. Suggests a notary document as a binding relationship between the two parties. Notary deeds were necessary to clarify and certify the integrity of the numerous fiduciary conditions. Furthermore, creditors and debtors should be able to grasp the meaning of each agreed-upon paragraph to avoid misunderstandings.

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The implication of the constitutional court ruling no. 18/ puu-xvii /2019 on January 6 is the execution process, followed by the auction registration process. With the limited time available for creditors to liquidate what is essentially a secured object for repayment of debts, there is no doubt that the risk will remain hidden. Creditors are, therefore, required to make the most of the time spent.<sup>22</sup> In the context of a credit agreement, when a debtor experiences late payments, this can be considered a default in accordance with the provisions regulated in the Civil Code. Considering these conditions, creditors generally send debt collectors if the debtor is proven to have defaulted or not fulfilled his obligations in paying installments. As a consequence of this default, based on legal reasons, the creditor has the right to withdraw the goods used as collateral by the debtor.<sup>23</sup>

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The process of withdrawing collateral must go through a court decision, and if the creditor continues to withdraw the goods without court approval, this is considered a violation of the law which has the potential to become a criminal offense. Creditors are not allowed to arbitrarily and use force to tow the debtor's vehicle, especially if the plaintiff is late in paying installments without a summons or prior notification.

Creditors' forced removal of objects from fiduciary collateral may be considered a criminal act if it includes elements of violence or compulsion. This assertion is consistent with the decision of the Constitutional Court, which holds that Article 15, paragraphs 2 and 3, of Fiduciary Guarantee Law Number 42 of 1999 lack legally binding force when

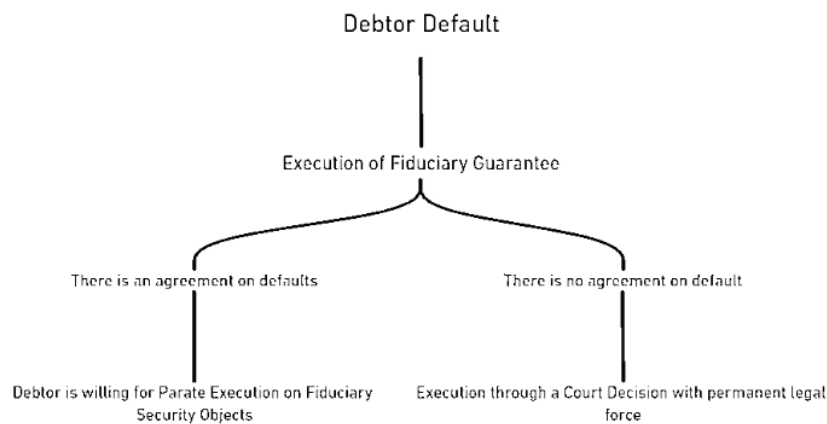
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<sup>22</sup> Joni Alizon, "Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019," *EKSEKUSI* 2, no. 1 (June 1, 2020): 58, <https://doi.org/10.24014/je.v2i1.9741>.

<sup>23</sup> Fajri Hasrul, Busyra azheri, and Muhammad Hasbi, "Perlindungan Hukum bagi Kreditur dalam Penarikan Paksa Objek Jaminan Fidusia di PT. Astra Credit Companies Kota Padang," *UNES Law Review* 6, no. 1 (September 15, 2023), <https://doi.org/10.31933/unesrev.v6i1.934>.

19 the debtor refuses to surrender the fiduciary-guaranteed object and the breach of contract is determined unilaterally by the creditor<sup>24</sup>.

This approach is strengthened by National Police Chief Regulation Number 8 of 2011 which regulates securing the execution of fiduciary guarantees. Alternatively, rather than resolving cases with harsh measures, it is advisable to achieve peace through negotiations.<sup>25</sup> The fiduciary guarantee execution process in accordance with Law No. 42/1999 and National Police Chief Regulation No. 8/2011 is presented in the following figure:



44 **Figure 1.** the flow of execution of fiduciary guarantees in accordance with law number 42 of 1999 and police regulation number 8 of 2011

Based on Figure 1, it can be explained that in the context of a fiduciary agreement, there are two scenarios underlying the implementation of forced execution of the security object. First, if from the outset the debtor and creditor have determined the mechanism for forced execution in the fiduciary agreement, the debtor is expected to allow the fiduciary security object to be withdrawn in the event of default. This agreement gives the creditor the right to carry out forced execution without involving the court, as the debtor has previously agreed to this possibility as a consequence of non-compliance with payment obligations. On the other hand, in situations without an agreement on forced execution from the outset, the creditor must follow stricter legal procedures. The creditor

20 <sup>24</sup> Imaculata Sherly Mayasari and Nynda Fatmawati Octarina, "Kedudukan Hukum Pidana Atas Pengambilan Kendaraan Paksa Debitur Oleh Debt Collector Lembaga Pembiayaan," *JURNAL RECHTENS* 9, no. 2 (December 30, 2020): 141–52, <https://doi.org/10.36835/rechtens.v9i2.788>.

<sup>25</sup> Ardianto Candra et al., "Eksekusi Objek Jaminan Fidusia Oleh Kreditur (Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019 Tentang Pengujian Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia)," *Bhirawa Law Journal* 2, no. 2 (November 29, 2021): 111–21, <https://doi.org/10.26905/blj.v2i2.6829>.

must prove the debtor's default through filing a lawsuit to the court. The court's decision then becomes the legal basis that gives permission to carry out forced execution. This process provides protection to the debtor, as forced execution can only be carried out after proving the default and obtaining approval from the court, preventing abuse of rights by the creditor.<sup>26</sup>

It can be seen that the creditor's role is increasingly narrowed, making the creditor unable to be arbitrary in executing the fiduciary security object. However, when viewed from another perspective, this makes the debtor's power even stronger, because if the debtor in this case is guilty of default and the debtor does not want to surrender the fiduciary security object, then this makes the creditor have to apply for a court order and permission from the local police to carry out forced execution. However, this is certainly aimed at providing legal protection to the debtor and the creditor's<sup>27</sup>

If a finance company neglects to register the fiduciary collateral object with the Fiduciary Office, the act of forced repossession becomes void, as the substantive rights derived from the fiduciary agreement remain undefined<sup>28</sup>. Consequently, finance companies, in their capacity as creditors, are unable to invoke Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantees. Conversely, proper registration of the fiduciary-guaranteed object necessitates police involvement, as stipulated by National Police Chief Regulation Number 8 of 2011. This ensures a secure, organized, smooth, and accountable execution process.<sup>29</sup>

In addition to going to court, creditors can apply to curators to lift either a reprieve or change the terms of a saving on the creditor's right. Creditors had to utilize curators to increase the ceasefire. If the curator declined the request, creditors or a third party might apply with the acting judge. Next, one day after the request to the curator to lift the deferral or change the terms of the suspension was received, the presiding judge at the lowest level was required to order the curator to immediately call, by written letter or by Courier, a creditor or third party to be heard at the hearing on the curator's appeal. The overseer's judge was then obligated to designate an application for the most time within ten days of receiving the request.

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<sup>26</sup> James Ridwan Efferin, "Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019," *Yuriska : Jurnal Ilmiah Hukum* 12, no. 1 (April 2, 2020): 39–49, <https://doi.org/10.24903/yrs.v12i1.789>.

<sup>27</sup> Syafrida Syafrida and Ralang Hartati, "Eksekusi Jaminan Fidusia Setelah Putusan Mahkamah Konstitusi Nomor 18/Puu/Xvii/2019," *ADIL: Jurnal Hukum* 11, no. 1 (August 24, 2020), <https://doi.org/10.33476/ajl.v11i1.1447>.

<sup>28</sup> Edy Hermanto and Sigit Irianto, "Perjanjian Pembiayaan Konsumen Dengan Jaminan Fidusia Pada Perusahaan Multifinance," *Notary Law Research* 1, no. 1 (December 29, 2020): 21, <https://doi.org/10.56444/nlr.v1i1.1383>.

<sup>29</sup> Nur Hidayat, "Penarikan Paksa Kendaraan Bermotor Dalam Jaminan Fidusia Setelah Adanya Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019," *Jurnal Yustitia* 22, no. 2 (December 23, 2021), <https://doi.org/10.53712/yustitia.v22i2.1337>.

When an appeal to the curator is granted to lift a reprieve or change the terms of the suspension, creditors may apply to the police for security reasons to retrieve the item to be used as an object of fiduciary assurance following the previously mentioned 2011 regulations of the state police chief Indonesian Republic number eight on the security of fiduciary execution. Creditors could also apply for execution to the commercial court after the presiding judge's appointment of a prison term. But in this case, the appeal is denied by the supervisor judge, the creditor can apply to the court for a minimum of five days after the judge's ruling, and the compulsory court renders the resistance within ten days after it has been accepted. No judicial effort can be made to the court's ruling, including any courtesies or reviewing<sup>30</sup>.

When practical and effective execution efforts were effective and successful in selling fiduciary items, creditors were required to account for the curator concerning the sale of those that became collateral and leave the remainder of the proceeds after deducting the amount of interest, debt, and cost to the curator. When practical and effective execution efforts were effective and successful in selling fiduciary items, creditors were required to account for the curator concerning the sale of those that became collateral and leave the remainder of the proceeds after deducting the amount of interest, debt, and cost to the curator. If the demands of the curator or the privileged creditor were higher than that of the fiduciary creditor, then the creditor holder was obliged to hand over a portion of the proceeds to the same amount as the amount granted. If the proceeds from the sale of the property are inadequate for the payment of the dividends, then the creditor for the loan could be issued for the liquidity of the loan after the loan application was made<sup>31</sup>.

When looking at the problems that arise based on the previous explanation, there are several things that need to be considered regarding the creditor's responsibility for the forced withdrawal of the fiduciary guarantee object that is not in accordance with the decision of the Constitutional Court Number 18/PUU-XVII/2019 in order to avoid things that are not desirable. First of all, creditors are expected to fully comply with the Constitutional Court's decision regarding the practice of executing fiduciary guarantees, carrying out every action in accordance with the stipulated provisions. Second, in providing information to debtors, creditors have the responsibility to present clear information regarding execution procedures, debtor rights, and the consequences of each step to be taken, with the aim of increasing the legal awareness of related parties.<sup>32</sup>

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<sup>30</sup> Misnar Syam, "Pelaksanaan Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Vii/2019 Pada Masa Pandemi Covid 19 Di Kota Padang," *UNES Journal of Swara Justisia* 7, no. 2 (July 1, 2023): 335, <https://doi.org/10.31933/ujsj.v7i2.349>.

<sup>31</sup> Deystia Ayesha Rae, "Implikasi Putusan Mahkamah Konstitusi No. 18/PUU-XVII/2019 Terhadap Hak Melakukan Parate Eksekusi Oleh Pemegang Jaminan Fidusia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 2 (March 1, 2021), <https://doi.org/10.36312/jisip.v5i2.1808>.

<sup>32</sup> Fahmi Ali Ramdhani, "Perlindungan Hukum Konsumen Terhadap Penarikan dan Penyitaan Objek Jaminan Fiducia Yang Tidak Didaftarkan Kreditur," *Adliya: Jurnal Hukum Dan Kemanusiaan* 15, no. 1 (March 31, 2021): 51–66, <https://doi.org/10.15575/adliya.v15i1.9939>.

In addition, creditors are also expected to consider the debtor's financial condition and be willing to seek alternative solutions before deciding to execute. A more cooperative approach and thoughtful dispute management can create a fairer outcome for both parties. Creditors are also required to encourage mediation or negotiation before entering the execution stage, creating room for amicable settlement and reducing the potential for lengthy legal disputes.<sup>33</sup>

In addition, it is important for creditors to draft financing agreements and fiduciary guarantees that are clear and transparent, take into account applicable legal provisions and provide sufficient protection for both parties. Supervision of third parties, such as debt collectors, is also the creditor's responsibility, ensuring that they operate in accordance with legal and ethical principles. Furthermore, in the case of disputes that end up in court, creditors are expected to accept and respect the court's decision, helping to maintain confidence in the legal system and supporting legal certainty in general. By understanding and implementing these responsibilities, creditors can play a role in creating a more equitable and sustainable business environment.

#### **4. Conclusion**

In examining the dynamics of fiduciary guarantee execution, this research has provided in-depth insights into significant changes following Constitutional Court Decision No. 18/PUU-XVII/2019 and Decision No. 2/PUU-XIX/2021. The focus of this study lies in the creditor's responsibility concerning the forced withdrawal of fiduciary objects in the context of debtor default. Firstly, the research identifies that in cases of agreement on default injury, parate execution becomes an acceptable option. Debtors acknowledging default can agree to the execution process without involving the court, expediting the process and providing flexibility for both parties. Secondly, when there is no agreement on default injury, this research asserts that the execution of fiduciary guarantees must involve a court decision. The court plays a central role in handling cases where debtors disagree with default or when there is no agreement on the execution process. In responding to the research question, namely, how Constitutional Court Decisions affect creditor responsibility in the forced withdrawal of fiduciary objects, it can be concluded that these decisions create a clear and adequate legal foundation for both execution scenarios. While providing flexibility with default injury agreements, the decisions also emphasize the necessity of court intervention when no agreement is reached.

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<sup>33</sup> Fikrotul Jadidah, "Perlindungan Hukum Bagi Kreditur Terhadap Pelaksanaan Eksekusi Jaminan Fidusia (analisis putusan mahkamah konstitusi no 18/puu-xvii/2019)," *IBLAM LAW REVIEW* 2, no. 2 (May 30, 2022): 17–37, <https://doi.org/10.52249/ilr.v2i2.69>.

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