**CREDITOR'S RESPONSIBILITY FOR FORCED WITHDRAWAL OF FIDUCIARY OBJECTS (Case Study Post Constitutional Court Decision No. 18/PUU-XVII/2019 and Constitutional Court Decision No.2/PUU-XIX/2021)**

**Nabil Luthfi Abyan1, Wardani Rizkianti2**

Fakultas Hukum, Universitas Pembangunan Nasional “Veteran” Jakarta,Indonesia

2010611075@mahasiswa.upnvj.ac.id

**ABSTRACT**

The study falls within the responsibilities of creditors for the forced pulsing of fiduciary objects in a legal framework created following the two-ruling constitutional court, which is no.18 / PUU-XVII /2019 and No. 2/ PUU-XIX /2021. The normative juridical research approach was used, which entailed delving into many elements of law, court judgments, and associated literature.

Significant study findings indicate that Constitutional Court judgments considerably influence the power of Indonesia's oil withdrawal dynamics. As the essential interested party, creditors must successfully manage their obligations, keep an eye out for the borrower's rights, and follow established processes.

An in-depth study highlights several legal difficulties originating from the execution of the judgments, such as the need for additional clarification on forced withdrawal procedures, improved debtor rights protection, and attempts to improve the efficacy of interval-related policy solutions.

 The study found that this analysis adds to understanding the transition in the credit-credit-liability paradigm toward the forced pulsing of fiduciary tokens. Recommendations for future revisions to relevant legislation and regulations are made to promote legal clarity and safeguard the interests of all parties participating in fiduciary bail transactions.

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

1. **INTRODUCTION**

In general, lending and borrowing activities can create a relationship between legal subjects, namely creditors and debtors. From the existence of creditors and debtors, undesirable impacts will arise between the parties. One of the fiduciary guarantee institutions recognized by modern society today is a fiduciary guarantee, which binds creditors and debtors towards legal certainty for all parties involved in a fiduciary agreement. A fiduciary agreement is a consideration agreement.

In a fiduciary agreement, considerations are exchanged between the creditor and the debtor. Consideration is an exchange of value or benefits provided by each party involved in the agreement as the basis for the contract. So, based on this understanding, in the fiduciary deal, the debtor gives property rights (ownership) over movable assets to the creditor as collateral for the credit granting. In this case, the portable support becomes a consideration the debtor gives to the creditor. The debtor gives ownership rights to movable assets in exchange for credit provided by the creditor. This agreement has a function to anticipate if the creditor breaks his promise to pay off his debt. This agreement is stated in a notarial deed to guarantee that the parties are confident in carrying out a contract. Fiduciary guarantees are assessors, meaning the deal will always follow the principle. When the principal agreement is void, the guarantee is also invalid.

Based on the Consumer Protection Study in the financial services sector issued by the OJK in 2018, fiduciary guarantees have always been an option for the public, especially finance companies, in providing financing to consumers. Fiduciary guarantees are considered unique because the system of borrowing objects that are the object of fiduciary guarantees only guarantees their ownership and the rights to the objects will be under the control of the debtor. Unlike a mortgage guarantee, the property rights are under the control of the creditor. In implementing the agreement, the creditor cannot arbitrarily use coercion and violence to withdraw the property rights of the debtor who pays the instalments.[[1]](#footnote-1) Finance companies (creditors) that provide this guarantee must register the fiduciary guarantee first. If it is not registered, creditors or third parties cannot confiscate the debtor's assets. Fiduciary collateral assets must be registered with the fiduciary registration office, in accordance with the law governing fiduciary guarantees[[2]](#footnote-2).

For creditors, if the debt is not fulfilled, the creditor has authority over the item and sells the object guaranteed by the debtor to the creditor through auction. After buying and selling the collateral, if the goods from the auction exceed the target, the proceeds must be returned to the creditor, which the debtor or a third party can do. According to the provisions in Article 34 of Law no. 42 of 1999, if the goods that are the object of the auction have a value that exceeds the amount of the debt still to be paid, then the goods must be returned to the fiduciary. On the other hand, if the auction proceeds of the goods are insufficient to cover the entire value of the debt borrowed, the borrower is still responsible for paying off the remaining outstanding debt.[[3]](#footnote-3)

A fiduciary guarantee is the confidence in surrendering ownership rights to an object as collateral for debt repayment. This transfer is designed to serve as security for certain obligations, giving the creditor priority over others. The fiduciary assurance certificate carries the same legal weight in court. In practice, auctions or executions occur due to the debtor's violation of the contract; as a result, the law promotes the execution of fiduciary assurances. The fiduciary assurance certificate has the line "for the sake of justice based on the Almighty God." As a result, this certificate is legally valid for execution[[4]](#footnote-4).

According to Law Number 42 of 1999, Article 29 stipulates that in the case of a fiduciary guarantee, if the debtor defaults, the recipient of the collateral object has the authority to execute the collateral.[[5]](#footnote-5) The recipient of the collateral object can acquire the proceeds from auctions or sales of the collateral, and private sales are permissible with the agreement of the involved parties. The contract may result in profits based on advantageous terms[[6]](#footnote-6). The fundamental principle is publicly auctioning fiduciary collateral objects to ensure the highest possible returns.

According to the government's policy on fiduciary guarantees, a significant development has been reflected in Constitutional Court Decision Number 18/PUU-XVII/2019, which reviewed Law Number 42 of 1999. The Constitutional Court tested the law for compatibility with the 1945 Constitution of Indonesia. According to the court, if the fiduciary rights provider (the debtor) confesses default and freely surrenders the object, the fiduciary rights recipient (the creditor) can execute without contacting the district court. If the debtor denies ruin, the creditor must go through the district court and cannot run directly.[[7]](#footnote-7)

This method seeks to balance debtors' and creditors' constitutional rights. The decision granted part of the applicant's request, specifically deeming certain phrases in Article 15, paragraphs 2 and 3, along with their explanations in Law Number 42 of 1999, as contradictory to the 1945 Constitution. Despite Constitutional Court Decision Number 18/PUU-XVII/2019, Decision Number 2/PUU-XIX/2021 followed, addressing concerns that the former was overly protective of debtors without considering potential creditor losses[[8]](#footnote-8).

In respect of its executory effects, Constitutional Court Decision Number 18/PUU-XVII/2019 presents practical techniques for enforcing fiduciary guarantees without changing the essential meaning of Article 15 UUJF. The method of issuing fiduciary guarantees was confirmed in Decision Number 2/PUU-XIX/2021, allowing other creditors to seek relief from the district court and upholding the previous verdict (MK Decision Number 18/PUU-XVII/2019).[[9]](#footnote-9).

In Indonesia, there have been significant advancements addressing the creditor's responsibility for the compelled withdrawal of fiduciary security objects, most notably with Constitutional Court Decisions 18/PUU-XVII/2019 and 2/PUU-XIX/2021. These rulings represent a substantial shift in the procedure of executing fiduciary guarantees, precisely outlining creditors' duties and obligations in carrying out forced withdrawal proceedings.[[10]](#footnote-10)

If the fiduciary debtor concedes default and willingly surrenders the fiduciary object, the fiduciary creditor is permitted to carry out full execution (parate execution) without the intervention of the district court, according to Constitutional Court Decision No. 18/PUU-XVII/2019. However, if the debtor contests the default and refuses to voluntarily renounce the fiduciary object, the fiduciary beneficiary (creditor) must seek execution through the district court and is not permitted to seek direct execution[[11]](#footnote-11).

The creditor's option to seek the execution of fiduciary promises before the district court is also confirmed by Constitutional Court Decision 2/PUU-XIX/2021. This underlines the need of the creditor formally requesting execution through the district court as a regulated process when the debtor objects to the execution. These incidents highlight the need of maintaining a constitutional balance between debtors' and creditors' rights, prohibiting arbitrary executions, and guaranteeing legal safeguards for both sides.

As a result of these two opinions, the creditor's liability for the compelled withdrawal of fiduciary security items has been clarified and limited. Creditors must guarantee that forced withdrawal measures are conducted in line with applicable legal laws and within the parameters established by the Constitutional Court's judgment. Furthermore, creditors are obligated to conduct the execution procedure in good faith while respecting the debtor's fundamental rights.

Overall, the changes in the legal framework after Constitutional Court Decision No. 18/PUU-XVII/2019 and Constitutional Court Decision No. 2/PUU-XIX/2021 underscore the importance of transparency, fairness, and protection of constitutional rights in the practice of forced withdrawal of fiduciary security objects. The creditor's responsibility becomes more stringent and focused on fulfilling fair legal procedures and respecting the principles of applicable law in Indonesia.

1. **RESEARCH METHODS**

This study employs normative juridical research. The normative juridical technique is a research strategy focusing on legal norms in statutory rules. Normative legal research aims to provide juridical arguments in situations where there is a void, ambiguity and conflict of legal norms. Therefore, normative legal research plays an important role in maintaining important aspects of legal science as a normative science. The author collects data or material for this study using a legislative method and a case approach. Secondary legal resources were employed as data sources, including the 1945 Constitution, the Civil Code, Law No. 42 of 1999, Law No. 18 of 1999 concerning Consumer Protection, Constitutional Court Decision Number 18/PUU-XVII/2019, and Constitutional Court Decision Number 18/PUU-XVII/2019.

1. **RESULTS AND DISCUSSION**
	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**

The compelled retrieval of fiduciary collateral objects is a separate execution action that involves secured rights over moveable assets, including tangible and intangible goods and immovable assets. The researcher's discoveries indicate instances where debtors appear to intentionally neglect their responsibilities as outlined in the mutually agreed financing agreement. They only seem willing to meet their obligations after becoming embroiled in minor legal disputes. Conversely, it was also observed that the creditor undertook one-sided execution by forcefully reclaiming the fiduciary collateral object, disregarding the provisions outlined in the Fiduciary Guarantee Law[[12]](#footnote-12).

Suppose we compare the explanation above with the application in society by examining 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.

On March 26 2021, there was an oral agreement between the Plaintiff and the Defendant's representative with an agreement that the Plaintiff would pay the installments according to the agreement to the Defendant in April 2021, but on Sunday April 4 2021, the debt collector stopped the Plaintiff on a student street in Manado City, then the debt collector confiscated the vehicle keys. belonging to the Plaintiff without showing identity or a fiduciary certificate or court decision.

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.

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.[[13]](#footnote-13)

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. [[14]](#footnote-14) 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[[15]](#footnote-15).

In another case in Depok's court ruling number 0518/Pdt.G/2020/PA.Dpk, the plaintiff, who is the lawful wife of the accused, dropped divorce. The plaintiffs are dropping the divorce because the plaintiff is not open to the financial problems that the defendants have to deal with with a creditor without the plaintiff's knowledge. In the case of the decision, the state minister said that the creditor and the plaintiffs were often referred to by debt collectors because of the high inflationary pressure on state receipts.

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.

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 rospita 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. In the Bitung District Court decision Number 4/Pdt.GS/2021/PN Bit, the process of taking fiduciary guarantees was carried out arbitrarily by blocking them on the highway, without showing a court order, this should be the basis for the illegality of the action and also violates consumer rights[[16]](#footnote-16).

In the case of the District Court decision **Batam Number 295/ Pdt.G/ 2020 / PN Batam 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.**

* 1. **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.**

Generally, the responsibility of creditors toward settling fiduciary bail issues that are not in line with Constitutional Court ruling may involve some considerations[[17]](#footnote-17):

First, Conformity to a constitutional court ruling: the creditor has the responsibility to understand and comply with the order of the constitutional court, which has the binding power of the law. Creditors must also ensure that their practices and policies are consistent with the terms outlined in the verdict.

Second, Involvement in settling: creditors are expected to participate in the settling of the issue if fiduciary issues are not in accord with constitutional court rulings, which can include negotiation, mediation, or other alternative methods.

Third, Fiduciary agreement review: creditors may need to review current fiduciary agreements to ensure that the conditions correspond to mk. When required, an agreement can be amended or tailored.

Fourth Please consult a lawyer: creditors may consult a lawyer to ensure that their policies and actions comply with the current ruling and the rule of law. Lawyers can give specific recommendations based on the context and case details.

Fifth, Monitoring of law changes: Because of frequent changes in the law, creditors are also responsible for monitoring changes in the direction that involve fiduciary guarantees and settling issues[[18]](#footnote-18).

Creditors engaging in compelled withdrawals typically represent leasing companies. The Constitutional Court addressed this issue through Decision Number 18/PUU-XVII/2019, dated January 6, 2020. This decision arose from a judicial review request for Law 42/1999 submitted by Apriliani Dewi and Suri Agung Prabowo, a married couple. Apriliani, functioning as a fiduciary, incurred direct losses due to the creditor's enforced withdrawal of the fiduciary collateral object.

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[[19]](#footnote-19).

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.

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.

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[[20]](#footnote-20).

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. 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. 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:



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

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[[21]](#footnote-21). 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.[[22]](#footnote-22)

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.

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[[23]](#footnote-23).

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[[24]](#footnote-24).

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 the debtor refuses to surrender the fiduciary-guaranteed object and the breach of contract is determined unilaterally by the creditor[[25]](#footnote-25).

1. Conclusion

From the discussion above, several conclusions can be drawn:

Fiduciary execution: The forced withdrawal of Fiduciary Security Objects following the Constitutional Court (MK) Decision Number 18/PUU-XVII/2019 and Number 2/PUU-XIX/2021 must be carried out through the courts and may no longer be done unilaterally. Several cases in society, such as the decisions of the Bitung District Court and the Batam District Court, show violations of legal procedures in the forced withdrawal of fiduciary collateral objects. There needs to be stricter law enforcement against forced withdrawal practices that do not comply with regulations. Regarding Creditor Responsibility after the Constitutional Court Decision, the creditor's position becomes weaker because the determination of breach of contract becomes dependent on the acknowledgment of the debtor, no longer on Law no. 42 of 1999. Creditors must understand that withdrawal of collateral must be done through a court decision, and arbitrary actions can be considered a violation of the law. The importance of negotiation and peace as an alternative before involving forced withdrawal, in accordance with National Police Chief Regulation Number 8 of 2011.

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