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FUNCTIONAL DEGRADATION OF FIDUCIARY CREDITOR'S PREFERENT RIGHTS AFTER THE CONSTITUTIONAL COURT'S DECISION

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Abstract

This article analyzes the functional degradation of fiduciary creditors' preferential rights after Constitutional Court Decision Number 18/PUU-XVII/2019. The study argues that the decision did not abolish fiduciary creditors' preferential rights, but transformed their practical realization from direct parate execution into conditional parate execution. Using normative legal research with statutory, case, and conceptual approaches, supported by documented socio-legal cases, this article examines the relationship between Article 15, Article 27, and Article 29 of the Fiduciary Security Law and the Constitutional Court's interpretation of default and voluntary surrender. The findings show that before the decision, fiduciary certificates and parate execution strengthened the economic value of preferential rights, but also enabled unilateral repossession practices. After the decision, debtor protection increased, yet disputed default or refusal to surrender the collateral creates procedural similarities with ordinary debt-collection disputes and produces economic consequences for creditors through higher transaction costs, longer recovery time, depreciation risks, and weaker recovery certainty.

Keywords: Constitutional Court; economic impact; fiduciary guarantee; parate execution; preferential rights.

INTRODUCTION

Fiduciary security is an important instrument in modern financing because it allows the debtor to retain control and use the collateral, while the creditor obtains property rights to guarantee the repayment of their receivables. The Fiduciary Security Law distinguishes fiduciary as the transfer of ownership rights based on trust, and fiduciary security as a security right over certain movable or immovable objects (Republic of Indonesia, 1999, Article 1, numbers 1-2). This characteristic distinguishes fiduciary from pawning because in fiduciary, the collateral object remains with the debtor through the construction of constitutum possessorium (Constitutional Court of the Republic of Indonesia, 2021, p. 20). This construction provides economic benefits for the debtor, but also creates a legal need for creditors to have an effective enforcement mechanism in the event of a debtor's default.

Law Number 42 of 1999 concerning Fiduciary Guarantees provides a normative basis for the position of fiduciary creditors. Article 27 recognizes the right of priority of fiduciary recipients over other creditors. Article 15 paragraph (2) places the fiduciary guarantee certificate as an executorial title that has the same force as a court decision that has permanent legal force, while Article 15 paragraph (3) and Article 29 regulate the basis for implementing the execution if the debtor or fiduciary giver defaults (Republic of Indonesia, 1999, Article 15, Article 27, and Article 29). Thus, preferential rights not only mean priority in the distribution of execution results, but also have functional value as a means of recovering creditors' receivables.

Prior to Constitutional Court Decision No. 18/PUU-XVII/2019, the relationship between preferential rights, executorial title, and parate execution was understood as a single entity that provided a strong position for creditors. Fiduciary guarantee certificates served as the basis for creditors to execute collateral when the debtor was deemed to have defaulted. In financing practices, particularly for motor vehicles and other movable assets, this construction had economic value because it accelerated the recovery of receivables, reduced transaction costs, and mitigated the risk of decline in the value of the collateral. However, this effectiveness raised issues when the determination of default was made unilaterally and the execution turned into a forced withdrawal by the creditor or a third party. Various studies have shown a tension between the creditor's interest in securing assets and the debtor's protection from withdrawal without consent, without proper documentation, or through physical and psychological pressure (Manik et al., 2020, pp. 174-176; Wulandari et al., 2020, pp. 61-66).

Constitutional Court Decision Number 18/PUU-XVII/2019 then interpreted Article 15 paragraph (2), the Explanation of Article 15 paragraph (2), and Article 15 paragraph (3) of the Fiduciary Guarantee Law as constitutionally conditional. The Court emphasized that if there is no agreement regarding the breach of promise and the debtor refuses to hand over the collateral object voluntarily, the execution of the fiduciary guarantee certificate must be carried out through a mechanism similar to the execution of a court decision that has permanent legal force. The breach of promise may also not be determined unilaterally by the creditor, but must be based on an agreement between the parties or legal remedies that determine that a breach of promise has occurred (Constitutional Court of the Republic of Indonesia, 2019, pp. 123-125).

The academic challenge of this article lies not in whether preferential rights still exist, but rather in how they are exercised after the parate executorial is no longer absolute. The Constitutional Court's decision did not abolish preferential rights, but rather changed the method of their implementation to become more conditional (Budi, 2020, pp. 255-257 and 272). As a result, creditors remain recognized as holders of preferential rights, but under certain circumstances must resort to court mechanisms that resemble ordinary debt disputes. The novelty of this article lies in the concept of functional degradation of preferential rights, namely a situation where preferential rights remain normatively valid, but their realizability is weakened because the implementation mechanism becomes longer, more expensive, and more dependent on the debtor's attitude. Therefore, this article analyzes the changes in the constitutional interpretation of fiduciary execution, its procedural similarities to ordinary debt disputes, and the economic impact borne by creditors.

LITERATURE REVIEW

Conceptually, property rights differ from personal rights because they grant direct control over an object and can be asserted against anyone. In collateral law, property rights confer a special status on the creditor regarding the particular object used as collateral. Usanti (2012, pp. 44-47) explains that the emergence of property rights is related to the absolute nature, the principle of publicity, and the direct relationship between the legal subject and the object. In fiduciary collateral, this property character forms the basis for the fiduciary recipient to obtain priority rights over the results of the execution of the collateral object.

Preferential rights in fiduciary collateral need to be distinguished from executorial title and parate execution. Preferential rights are the right to priority in the payment of the proceeds from the execution of the collateral object. Executorial title is the power inherent in the fiduciary collateral certificate, while parate execution is the mechanism for implementing the sale of the collateral object within the limits specified by law. The three are interrelated, but not identical. Therefore, changes to the execution mechanism do not necessarily mean the elimination of preferential rights. This distinction is important so that the Constitutional Court Decision is not misread as a decision that eliminates the preferential position of fiduciary creditors (Budi, 2020, pp. 255-257 and 272).

In the legal literature on guarantees, parate execution is understood as an efficiency instrument. The parate executie regulation is intended to provide certainty of repayment and expedite the process of realizing receivables when the debtor defaults (Utomo, 2011, p. 183). In the fiduciary regime, this idea is reflected in Articles 15 and 29 of the Fiduciary Guarantee Law. However, studies following the Constitutional Court Decision indicate that fiduciary execution can no longer be interpreted solely from the perspective of creditor effectiveness. The Constitutional Court Decision limits direct execution to compliance with constitutional requirements, while its implementation has consequences for creditors and debt collectors when the recognition of default and voluntary surrender are not met (Budi, 2020, pp. 255-257 and 272; Farida & Badriyah, 2024, pp. 364-365).

This article's theoretical framework utilizes three approaches. Hans Kelsen's theory of legal certainty is used to interpret the relationship between statutory and constitutional norms. Within the Kelsenian framework, lower norms derive validity from higher norms, thus Article 15 of the Fiduciary Guarantee Law remains valid, but its meaning is subject to the constitutional interpretation of the Constitutional Court (Asshiddiqie & Safa'at, 2006, pp. 98 and 100-104). Richard A. Posner's legal economic analysis is used to assess the impact of procedural changes on transaction costs, execution time, and the recovery value of receivables (Sudira et al., 2024, pp. 1-2 and 6-7). Aristotle's distributive justice is used to assess the proportionality of protection between creditors and debtors (Nasution, 2014, p. 121).

Based on this framework, the research gap lies in the lack of a strong explanation of the relationship between changes in execution procedures, the similarity of fiduciary execution to ordinary debt disputes, and the weakening of the practical value of preferential rights. This article emphasizes that fiduciary creditors retain their preferred status, but under certain circumstances the implementation path approaches ordinary civil dispute procedures, thus incurring additional costs, time, and the risk of a decline in the value of debt recovery.

METHOD

This study uses a normative legal research method with a statutory approach, a case approach, and a conceptual approach. The normative method was chosen because the main focus of this article is to analyze positive legal norms, Constitutional Court decisions, and the legal concept of material guarantees. The statutory approach is used to examine Law Number 42 of 1999 concerning Fiduciary Guarantees, especially Articles 15, 27, 29, and 30. The case approach is used to examine Constitutional Court Decisions Number 18/PUU-XVII/2019, Decision Number 2/PUU-XIX/2021, and Decision Number 71/PUU-XIX/2021. The conceptual approach is used to distinguish between preferential rights, executorial title, parate execution, debtor protection, and legal certainty in the implementation of fiduciary execution (Marzuki, 2017).

This article also utilizes limited socio-legal analysis as supporting evidence. The analysis is not intended as empirical field research, but rather as a reading of documented cases in decisions, journals, official publications, and verifiable news reports. This approach is necessary because fiduciary issues lie not only in the text of the law but also in the practice of withdrawing collateral in practice. Therefore, documented case data is used to demonstrate the relationship between fiduciary enforcement norms and their implementation practices (Afandi, 2022, pp. 231-235).

Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, the Fiduciary Guarantee Law, and related Constitutional Court decisions. Secondary legal materials include books, journal articles, and research results on property law, guarantee law, fiduciary execution, parate execution, legal certainty, distributive justice, and legal economic analysis. The analysis technique is carried out prescriptively and analytically by assessing the conformity of norms, the impact of changes in constitutional interpretation, the procedural similarity of fiduciary execution with ordinary debt disputes, and the economic impact of changes in the execution mechanism on creditors.

RESULTS AND DISCUSSION

Preferential Rights and Parate Execution Prior to Constitutional Court Decisions

Prior to Constitutional Court Decision Number 18/PUU-XVII/2019, the implementation of fiduciary creditors' preferential rights rested on three main elements: property rights over the collateral object, a fiduciary guarantee certificate with executorial power, and a parate execution mechanism. These three elements make preferential rights not only a normative position, but also a right that can be realized directly against the collateral object if the debtor defaults. In this configuration, fiduciary creditors have a stronger position than concurrent creditors because they have a specific object as a source of repayment and are entitled to priority from the results of the execution of that object (Utomo, 2011, pp. 177-179).

The practical value of preferential rights lies in the availability of an effective realization mechanism. Article 15 paragraph (2) of the Fiduciary Guarantee Law grants executorial power to fiduciary certificates, Article 15 paragraph (3) grants the fiduciary recipient the right to sell the collateral object at his own discretion, while Article 29 regulates the method of execution through the implementation of executorial titles, public auctions, or private sales based on agreement (Republic of Indonesia, 1999, Article 15 and Article 29). Thus, preferential rights before the Constitutional Court Decision have economic value because they are supported by a relatively fast and direct execution mechanism.

In financing practices, particularly for motor vehicles, this construction has strong economic rationality. The fiduciary object remains in the debtor's possession and continues to be used, so the longer execution is delayed, the greater the risk of the object being moved, hidden, damaged, or depreciated. From a legal economic analysis perspective, rapid execution reduces transaction costs and increases the predictability of receivables recovery (Sudira et al., 2024, pp. 1-2 and 6-7). Therefore, the execution parate prior to the Constitutional Court's decision can be understood as an efficiency instrument in credit relations.

However, this efficiency is not always proportional. Problems arise when creditors unilaterally determine a breach of contract and use it as a basis for repossessing collateral, including through third parties. The practice of repossessing vehicles on the road, without adequate documentation, or without the debtor's consent, indicates that the exercise of preferential rights can shift from a repayment mechanism to coercive physical control (Manik et al., 2020, pp. 174-176; Wulandari et al., 2020, pp. 59-62). From a distributive justice perspective, this situation is disproportionate because the creditor gains ease of execution, while the debtor bears the risk of unilateral action without adequate room for objection (Nasution, 2014, p. 121).

The main weakness of the Constitutional Court's pre-decision model lies in the absence of a clear procedural boundary between the exercise of property rights and the physical control of the collateral. In the event of a debtor's default, the creditor does have an interest in preserving the value of the collateral, but this interest cannot be exercised without prior consent, notification, and documentation. Because the fiduciary object remains in the debtor's possession, uncontrolled execution can easily degenerate into a factual act resembling confiscation. Therefore, the main problem before the judgment is not merely the existence of parate execution, but rather the use of parate execution without objective parameters regarding the breach of contract and without a verifiable procedure for handing over the object (Manik et al., 2020, pp. 174-176; Wulandari et al., 2020, pp. 59-62).

Changes in Constitutional Interpretation and the Birth of the Conditional Execution Parate

Constitutional Court Decision Number 18/PUU-XVII/2019 does not abolish fiduciary guarantees, does not abolish preferential rights, and does not eliminate all possibilities of direct execution. The decision reinterprets the implementation of Article 15 paragraph (2), the Explanation of Article 15 paragraph (2), and Article 15 paragraph (3) of the Fiduciary Guarantee Law to align with the principle of fair legal certainty. The essence of the Court's interpretation is that the executorial power of a fiduciary certificate can only be exercised directly if there is an agreement regarding the breach of promise and the debtor voluntarily surrenders the collateral object. If there is no agreement or the debtor refuses to surrender the object, execution must be carried out through the court mechanism (Constitutional Court of the Republic of Indonesia, 2019, pp. 123-125).

Constitutional Court Decision Number 2/PUU-XIX/2021 clarified this construction. The Court emphasized that execution through the District Court is an alternative if the conditions of the default agreement and voluntary surrender are not met. Therefore, the parate execution following the Constitutional Court Decision is not eliminated, but has changed from direct parate execution to conditional parate execution (Constitutional Court of the Republic of Indonesia, 2021, pp. 82-84). This change is significant because it demonstrates that the law still provides room for creditors to execute collateral, but this space is limited by the debtor's consent or determination through legal mechanisms.

The next development is evident in Constitutional Court Decision Number 71/PUU-XIX/2021. The Court emphasized that if the default has not been acknowledged and the debtor objects to voluntarily surrendering the object, the creditor must file a request for execution with the District Court. In the context of Article 30 of the Fiduciary Guarantee Law, the phrase "authorized party" is interpreted as the district court, not the police as the executor. The police only play a role in securing the execution process if requested by the court (Constitutional Court of the Republic of Indonesia, 2022, pp. 45-46).

From Kelsen's perspective, this change shows that legal norms cannot stand alone if their implementation conflicts with higher norms. Article 15 of the Fiduciary Guarantee Law remains in effect, but its meaning is limited by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia concerning fair legal certainty. Thus, the Constitutional Court Decision changes the focus of legal certainty from creditor-centric certainty to relational legal certainty (Asshiddiqie & Safa'at, 2006, pp. 98 and 100-104).

This restructuring also demonstrates that the Constitutional Court's ruling should not be interpreted as a complete weakening of collateral law, but rather as a constitutionalization of the enforcement procedure. Preferential rights remain in place as a legal consequence of collateral, while the executorial title remains attached to the fiduciary certificate. The limitation lies in operational requirements: direct enforcement can only occur if the breach of contract is undisputed and the transfer of the object is voluntary. Thus, the changes occur at the implementation level, not at the level of the right's existence. This distinction is important so that debtor protection is not interpreted as eliminating creditor rights, and conversely, creditor interests are not used as a justification for reviving unilateral withdrawal (Constitutional Court of the Republic of Indonesia, 2019, pp. 123-125; Constitutional Court of the Republic of Indonesia, 2021, pp. 82-84).

Table 1. Shifting Fiduciary Guarantee Execution Patterns (Constitutional Court of the Republic of Indonesia, 2019, pp. 123-125; Constitutional Court of the Republic of Indonesia, 2021, pp. 82-84; Farida & Badriyah, 2024, pp. 364-365)

Aspect	Prior to Constitutional Court Decision 18/2019	After the Constitutional Court Decisions 18/2019 and 2/2021
Preferential rights status	Recognized as the priority right of the fiduciary recipient of the results of the execution of the collateral object.	It remains recognized; what changes are the conditions and method of realization.
Fiduciary certificate	It is understood as an executorial title that can be the basis for direct execution.	Still has executive power, but its implementation is conditional.

Breach of promise	Tends to be determined based on creditor assessment and agreement clauses.	It cannot be determined unilaterally; it must be based on an agreement or legal action.
Submission of objects	Withdrawal of objects is often carried out directly by creditors or third parties.	Direct execution is only valid if the debtor surrenders the object voluntarily.
Court path	It is not a primary prerequisite for the execution of the parate.	Taken if there is no agreement on breach of contract or no voluntary surrender.
Main implications	Efficient for creditors, but prone to unilateral execution.	More protective of the debtor, but increases costs, time, and risk for the creditor.

Legal Uncertainty and Functional Degradation of Preferential Rights

Legal uncertainty following the Constitutional Court's decision primarily arises at the stage of implementing preferential rights. Normatively, the preferential rights of fiduciary creditors remain recognized in Article 27 of the Fiduciary Guarantee Law. However, when a debtor refuses to acknowledge a breach of contract or voluntarily surrenders the collateral, the creditor must resort to court mechanisms. At this point, a shift occurs from normative certainty to operational uncertainty. Creditors remain aware of their right to priority, but cannot always accurately estimate the timing, cost, and effectiveness of exercising these rights.

This situation can be described as functional degradation of preferential rights. Preferential rights are not formally lost, but their practical value weakens as the path to their realization becomes longer, more expensive, and more dependent on the debtor's attitude. This degradation differs from the elimination of preferential rights. What is weakened is not their legal status, but rather their ability to function as a fast, affordable, and predictable instrument for debt recovery. In motor vehicle financing, this issue is crucial because the collateral is a movable object that can easily be moved, hidden, damaged, or depreciated. The risks to these movable objects also arise in arguments regarding the need for swift action in fiduciary enforcement (Constitutional Court of the Republic of Indonesia, 2021, p. 37).

An economic analysis of law helps explain these impacts. From Posner's perspective, legal rules that increase transaction costs, prolong settlement times, and increase uncertainty will reduce the economic value of legally granted rights (Sudira et al., 2024, pp. 1-2 and 6-7). In the fiduciary context, additional summonses, clarification of defaults, tracking of objects, costs of execution requests, legal services, security, storage, auctions, and the risk of depreciation are costs that reduce the practical value of preferential rights. Therefore, although the Constitutional Court Decision has a constitutional purpose of protecting debtors from unilateral execution, its economic impact on creditors still needs to be taken into account in designing the execution mechanism.

Uncertainty also arises from the lack of uniform technical standards regarding the form of default agreements, the form of voluntary surrender, and sufficient documentation to prove a debtor's refusal. In practice, creditors can send a summons and demand the surrender of the object, but uncooperative debtors can refuse without clear reasons. If such refusals consistently force creditors to undergo lengthy court proceedings, debtor protection has the potential to become an instrument of delay. Therefore, legal certainty following the Constitutional Court's decision requires more detailed, objective, and documented operational standards (Constitutional Court of the Republic of Indonesia, 2019, pp. 95-96).

These operational standards should include not only formal requirements but also material measures regarding when a debtor can be considered uncooperative. For example, the existence of measurable arrears, a summons received, the opportunity for restructuring or payment, a request for voluntary surrender, and evidence that the debtor refuses without reasonable legal basis. Without such indicators, two risks arise simultaneously. On the one hand, creditors could reinterpret the breach of contract unilaterally. On the other hand, debtors acting in bad faith could use the terms of agreement and voluntary surrender as a tool to delay execution. Therefore, fair legal certainty demands standards that are proportionally binding on both parties.

Procedural Similarities of Fiduciary Execution with Ordinary Debt Disputes

The procedural similarities between fiduciary execution and ordinary debt disputes should be understood in a limited way. This similarity does not mean that fiduciary creditors become concurrent creditors or lose their preferential rights. Normatively, fiduciary creditors retain their property rights and priority over the results of the execution of the collateral object. Changes occur in the path of realizing these rights when constitutional requirements, such as a breach of contract and voluntary surrender, are not met. In such circumstances, creditors cannot directly take possession of the collateral object but must use legal mechanisms involving the courts.

The main similarities lie in the need for proof and the stages of implementation. In a typical debt dispute, the creditor must prove the existence of a debt relationship, default, and the basis for the claim. Following the Constitutional Court's ruling, fiduciary creditors must also provide evidence of financing agreements, fiduciary guarantee certificates, arrears history, summonses, requests for voluntary surrender, and evidence of the debtor's refusal. If execution must be pursued through the District Court, the process follows a similar pattern to civil execution, including an execution request, a warning or aanmaning (a warning), the possibility of execution seizure, and an auction sale (Farida & Badriyah, 2024, pp. 364-365).

This procedural convergence impacts the enforceability of preferential rights. In collateral law, the value of preferential rights lies not only in the priority distribution of sales proceeds, but also in the creditor's ability to effectively realize the collateral. If fiduciary execution is too closely aligned with ordinary debt procedures, the functional advantage of fiduciary rights as collateral is diminished. However, this procedural similarity retains a constitutional basis because it aims to ensure that the debtor does not lose the collateral through unilateral withdrawal without a reasonable opportunity for objection (Farida & Badriyah, 2024, p. 365).

These similarities also impact the perceived value of fiduciary collateral in financing practices. Creditors choose material collateral because it provides a stronger priority and path to settlement than conventional claims. If, in a dispute, the entire process must move closer to a conventional debt-receivable pattern, the added value of fiduciary collateral is not completely lost, but it becomes less robust than envisioned at the time of the agreement's formation. The difference in legal status remains: the fiduciary creditor retains ownership of the collateral and priority for repayment. However, their procedural advantage diminishes when control of the collateral and auction sale must await court verification. This is the basis for this article's use of the term "functional degradation" rather than "removal of preferential rights."

Economic Impact on Creditors

The primary economic impact following the Constitutional Court's ruling is increased transaction costs in exercising preferential rights. Creditors can no longer rely solely on fiduciary certificates and default clauses in agreements. Creditors must prepare additional documentation, send legal notices, negotiate, record debtor objections, prepare execution requests, utilize legal services, and bear the costs of securing, storing, and auctioning the collateral. The greater the costs of exercising rights, the lower the net economic value that creditors can recover.

The next impact is an increase in execution time and an increased risk of depreciation of the collateral. Time has economic value in financing because delays in receivables recovery impact cash flow, the non-performing loan ratio, and creditor risk calculations. At the same time, fiduciary assets are generally movable property, especially motor vehicles, whose value depreciates over time. The longer the execution process takes, the greater the likelihood that the auction value will not be sufficient to cover the remaining debt, interest, fines, and execution costs.

In motor vehicle financing, these risks are more concrete because the collateral is mobile, easily moved, and its value gradually decreases. Delays in execution not only increase direct costs but also reduce the value of the collateral, which forms the basis for calculating credit risk. If the auction value is lower than the remaining obligation, the creditor must still collect the shortfall from the debtor, but their economic position is already weakened because the primary recovery object is no longer sufficient to cover the receivables. From an efficiency perspective, this situation creates a deadweight loss in the financing relationship: the creditor bears greater costs, the debtor faces additional burdens, and the financing market may respond with tighter credit terms (Sudira et al., 2024, pp. 1-2 and 6-7).

These economic impacts cannot be used as a justification for reinstating the practice of unilateral withdrawal. The Constitutional Court's ruling remains important because it protects debtors from disproportionate actions. However, the economic impact on creditors must be taken into account in designing the enforcement mechanism. Without expeditious, measurable, and documented procedures, the costs and risks of enforcement could be shifted to the financing market through increased down payments, interest rates, administrative fees, or restrictions on credit access for high-risk debtors. The need for swift action and the risk of a lengthy execution process are also reflected in the case description regarding fiduciary objects as movable objects that are vulnerable to transfer or assignment (Constitutional Court of the Republic of Indonesia, 2021, pp. 37 and 84).

Thus, a more appropriate compromise is to establish a rapid execution mechanism that remains under legal control. This mechanism need not resemble a traditional civil lawsuit, which comprehensively examines the entire dispute, but rather simply focuses on verifying the underlying documents: the financing agreement, fiduciary certificate, evidence of arrears, summons, evidence of voluntary surrender requests, and the debtor's objections. If the debtor's objections are serious and well-founded, the case can be directed to a more comprehensive civil examination. Conversely, if the objections are merely baseless rejections, the court must be able to issue a speedy execution order. This model preserves the economic value of preferential rights without compromising the debtor's constitutional protections.

The idea of requesting expedited execution through the District Court should be considered a verification mechanism, not a new lawsuit that reiterates the entire debt relationship. The judge simply needs to verify that the fiduciary certificate exists, the financing agreement is valid, the arrears are proven, a summons has been served, the request for voluntary surrender has been executed, and the debtor's objections have a relevant basis. If all formal elements are met and the debtor's objections do not indicate a real substantive dispute, the order of execution should be granted quickly. Conversely, if the debtor demonstrates a serious dispute, such as an objection to the amount of the debt, the payment status, the validity of the agreement, or the identity of the collateral, further investigation can be initiated. In this model, the court becomes not an administrative obstacle, but a constitutional filter to distinguish legitimate execution from unlawful unilateral withdrawal .

]Debtor Protection and Limits of Abuse

The Constitutional Court's decision should be understood as a correction to enforcement practices that have the potential to create injustice for debtors. In financing relationships, debtors are often in a weaker position when faced with creditors or third parties who possess stronger resources, documents, and operational access. Withdrawing collateral without clear consent can cause economic losses, disrupt the debtor's sense of security, and demean the debtor's dignity. Therefore, limiting the unilateral determination of default is a necessary form of protection in a state governed by the rule of law (Constitutional Court of the Republic of Indonesia, 2019, pp. 95-96).

However, debtor protection should not be understood as a space to avoid obligations. Fiduciary obligations arise from a legitimate debt-credit relationship. The creditor provides financing, while the debtor is obligated to make installment payments or settle the debt according to the agreement. If the debtor truly breaches the promise and retains possession of the collateral without good faith, the creditor has the right to obtain effective legal recourse to realize their receivables. From Aristotle's perspective, distributive justice demands balance: the debtor is protected from unilateral action, but the creditor must not be left to bear the entire risk of unwarranted refusal (Nasution, 2014, p. 121).

The limits of abuse of protection can be determined through objective indicators, such as proven arrears, gradual summons, reasonable opportunity to pay or file an objection, documented requests for voluntary surrender, and debtor refusal without clear legal basis. These indicators help distinguish debtors with legitimate legal objections from those using protection as a delaying strategy. Within this framework, debt collectors should not be eliminated, but their role should be limited to communication, notification, negotiation, data collection, or acceptance of voluntary surrender. Threats, obstruction, intimidation, seizure, or physical possession of objects without the debtor's consent must remain prohibited to prevent the effectiveness of enforcement from becoming a violation of the law (Farida & Badriyah, 2024, pp. 366 and 368).

Limiting the role of third parties must also be linked to the creditor's accountability as a fiduciary. Creditors cannot absolve themselves of responsibility simply because the withdrawal is carried out by a party authorized to do so. In a fiduciary legal relationship, third parties should be positioned as administrative executors, not as holders of coercive authority. Therefore, every communication, field visit, request for surrender, and receipt of collateral must be documented in a verifiable report or correspondence record. This documentation serves a dual purpose: it protects the debtor from arbitrary action and protects the creditor from accusations of forced withdrawal if the debtor voluntarily surrenders the collateral.

Such a balance is crucial because fiduciary rights lie at the intersection of credit security and broad property rights protection. While debtors must not lose collateral through duress, creditors must also not lose the economic benefits of legally established property rights. If the law emphasizes only debtor protection without providing effective avenues for creditor recourse, fiduciary rights will lose their function as a credit security instrument. Conversely, if the law emphasizes only creditor efficiency without controlling the method of recourse, fiduciary rights can become a tool of coercive control. Therefore, a more appropriate concept is not to favor one interest over the other, but rather to establish a procedural balance: each execution must be objective, documented, verifiable, and still allow for the effective exercise of preferential rights.

Implications of the Fiduciary Execution Mechanism Update

The normative implication of this discussion is the need for a clearer distinction between the stages of determining default, the voluntary surrender request, and the execution stage. Determination of default must be based on verifiable indicators, such as the amount of arrears, the length of the delay, evidence of notification, and the debtor's opportunity to comply or raise objections. The voluntary surrender request must also be made in writing to avoid disputes regarding the debtor's consent. This ensures that debtor protection remains in place but does not open the door to completely unfounded objections.

From an institutional perspective, the District Court should be positioned as the guardian of the legality of execution, not as a substitute for all parate execution functions. If all the basic documents are available and there are no substantive objections from the debtor, the execution process should be carried out through a simple formal examination. This type of examination aligns with the Constitutional Court's ruling, which requires court involvement in disputes, but is not intended to make fiduciary execution always the same as a regular debt lawsuit. Thus, the court process remains present as a guarantee of fair legal certainty, without diminishing the economic value of fiduciary guarantees as a credit security instrument (Constitutional Court of the Republic of Indonesia, 2019, pp. 123-125; Constitutional Court of the Republic of Indonesia, 2021, pp. 82-84).

From a financing practice perspective, creditors need to strengthen execution governance through transparent operational standards. Financing agreements must clearly contain default clauses, summons procedures, objection mechanisms, and procedures for the transfer of assets. Financing companies must also ensure that third parties assisting with collection work within administrative boundaries and refrain from coercive actions. In this context, the design of fiduciary execution no longer relies solely on the speed of possession of assets, but rather on a combination of speed, documentation, proof, and accountability. This combination can safeguard the economic function of preferential rights while preventing abuse of execution against debtors.

At the contract drafting stage, these updates require careful consideration from the fiduciary encumbrance stage. A default clause cannot be formulated in general terms; it must outline the event of default, notification procedures, fulfillment timelines, objection mechanisms, and legal consequences if the object is not delivered. Fiduciary registration must also be ensured correctly, as only a guarantee that meets formal requirements can produce a certificate with executorial power. Therefore, certainty of execution does not begin when the debtor is in arrears, but rather when the principal agreement, fiduciary guarantee deed, registration, and documentation of the financing relationship are properly prepared. If this initial stage is weak, the application for execution in court will face evidentiary obstacles, and the preferential right will increasingly lose its practical value.

CONCLUSION

Prior to Constitutional Court Decision No. 18/PUU-XVII/2019, fiduciary guarantee certificates and parate execution played a crucial role in strengthening the exercise of creditors' preferential rights. Preferential rights not only provided priority in the distribution of proceeds from execution but also had economic value due to their rapid and direct execution mechanism. However, this effectiveness created problems when the default was unilaterally determined and the execution resulted in forced withdrawal of the collateral.

Constitutional Court Decision No. 18/PUU-XVII/2019, which was reaffirmed in Decision No. 2/PUU-XIX/2021, does not eliminate preferential rights or eliminate the possibility of direct execution. The decision changed the parate execution mechanism from a direct mechanism to a conditional one. Direct execution can only be carried out if there is an agreement regarding the breach of contract and the voluntary surrender of the object. If these conditions are not met, execution must be pursued through the courts.

These changes have resulted in a functional degradation of preferential rights. Normatively, preferential rights remain valid, but their enforceability is weakened when creditors face procedural similarities to ordinary debt disputes, additional transaction costs, longer settlement times, the risk of depreciation of the collateral, and uncertainty about the recovery of the receivables. Nevertheless, the limitation on direct execution retains a constitutional basis because it protects debtors from unilateral execution and forced withdrawal.

Therefore, reforming fiduciary execution should not be aimed at restoring absolute parate execution, but rather at establishing a swift, objective, and documented execution mechanism. Objective standards for breach of contract, phased summonses, evidence of the debtor's refusal, minutes of voluntary surrender, restrictions on the role of third parties, and requests for expedited execution through the District Court are necessary to maintain debtor protection without eliminating the economic value of creditors' preferential rights.

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