

Reconstruction of Legal Norms for the Execution of Fiduciary Guarantees by Limiting the Involvement of Debt Collectors by Creditors in the Context of Protecting Debtors' Constitutional Rights Based on Contractual Justice

Parisman Sihaloho*, Boy Nurdin

Borobudur University, Jakarta, Indonesia, parismansihaloho@gmail.com

Borobudur University, Jakarta, Indonesia, Drboynurdin_ppslaw@yahoo.com

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*Correspondence: Parisman Sihaloho

Email: parismansihaloho@gmail.com

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Abstract: *This study aims to analyze the weaknesses of the legal construction of the execution of fiduciary guarantees and reconstruct just legal norms in the context of protecting the constitutional rights of debtors. By using normative juridical methods through statutory and conceptual approaches, this study finds that the provisions in Law Number 42 of 1999 concerning Fiduciary Guarantees still contain gaps in norms related to the involvement of debt collectors and open up room for abuse of authority through unilateral execution practices that contradict the principles of due process of law, the principle of good faith, and the guarantee of constitutional rights in the 1945 Constitution. The reconstruction offered emphasizes strict restrictions on the use of third parties, affirmation of execution mechanisms through agreements or court decisions, and the integration of the principles of contractual justice and human rights protection, thus producing a model of legal reform that is fairer, certain, and oriented towards debtor protection.*

Keywords: *Fiduciary Guarantee, Execution, Debt Collector, Debtor Protection*

Introduction

The development of the fiduciary guarantee institution in the Indonesian legal system shows significant dynamics from customary business practices to more formal regulations through Law Number 42 of 1999 concerning Fiduciary Guarantees (Wahyu 2024). Prior to the codification, fiduciary practices developed as a form of trust guarantee that made it easier for debtors to maintain control over the collateral object (Harahap 2017). However, after the enactment of this regulation, fiduciary gained legal legitimacy with the main characteristic of executorial power as stipulated in A fiduciary assurance certificate has the same executive authority as a court ruling with permanent legal effect, according to Article 15 paragraph (2). This character then gave birth to the concept of parate executie, which

allows creditors to execute collateral objects without going through the judicial process (Soeikromo 2016).

In practice, this convenience actually gives rise to inherent problems, namely the potential for abuse of authority by creditors who interpret executive rights unilaterally without paying attention to the principles of prudence and protection for debtors. As stated in Articles 1313 and 1320 of the Civil Code, which demand an agreement between the parties, the legal relationship between creditors and debtors is normatively founded on an agreement (Salim 2024). However, in modern financing practices such as leasing and multifinance, there is a very striking imbalance of bargaining power. Debtors are generally faced with standard contracts drafted unilaterally by the creditor, so that the room for negotiation is very limited. This disregards the good faith requirement outlined in Article 1338 paragraph (3) of the Civil Code and is counter to the ideal equality concept of freedom of contract (Miswanto 2024).

Creditor dominance is reflected in unilateral execution clauses that legitimize creditors to assess the condition of default themselves and carry out execution actions without adequate control mechanisms. This condition indicates a deviation from the principle of contractual balance that should be the foundation of the agreement relationship. Empirical practice shows that in the execution of fiduciary guarantees, creditors often involve third parties or debt collectors through a delegation of authority mechanism. However, this delegation of authority is not expressly regulated in laws and regulations, resulting in various forms of actions that deviate from legal norms, such as forced seizure, intimidation, and even physical violence against debtors (Bouzen 2021). These actions clearly contradict legal principles that uphold the protection of legal subjects and have the potential to violate criminal provisions, such as unpleasant acts or confiscation, as stipulated in the Criminal Code (Sipahutar 2022). This phenomenon demonstrates a gap between written legal norms and actual practice, while also demonstrating weak oversight of the implementation of fiduciary guarantee execution.

Legally, the involvement of debt collectors in the execution of fiduciary guarantees raises serious problems due to the lack of explicit and comprehensive regulations. Law Number 42 of 1999 concerning Fiduciary Guarantees does not provide clear boundaries regarding who is authorized to carry out execution, thus opening up room for multiple interpretations regarding the legality of third parties (Sopamena 2021). This creates a conflict of norms between civil law, which provides space for the exercise of rights based on agreements, and criminal law, which prohibits acts of violence or confiscation. This legal vacuum creates legal uncertainty and has the potential to lead to violations of debtors' rights. Therefore, it can be said that the current legal system is unable to accommodate the complexity of fiduciary security enforcement practices, particularly regarding the involvement of third parties (Faniyah 2024).

The shift in the legal paradigm regarding fiduciary security enforcement was significantly influenced by Constitutional Court Decision No. 18/PUU-XVII/2019, which affirmed that enforcement cannot be carried out unilaterally if there is no agreement regarding default between the creditor and debtor (Dinata 2020). The Constitutional Court emphasized the importance of legal mechanisms through the courts as a form of protection for debtors. This decision implicitly limits the practice of *parate executie*, which has long

been interpreted as absolute by creditors. However, in practice, debt collector involvement continues without significant adjustments to the ruling (Karelina 2022). It indicates a mismatch between the legal norms resulting from the Constitutional Court's ruling and the empirical reality on the ground, ultimately harming debtors as the weaker party.

Execution practices involving debt collectors have the potential to violate debtors' fundamental rights as protected by the 1945 Constitution, particularly Article 28H paragraph (4) and Article 28G paragraph (1), which both provide the right to security and protection from the threat of dread, which guarantees private property rights. Furthermore, the weak provisions in Law Number 42 of 1999 concerning Fiduciary Guarantees regarding execution mechanisms and the involvement of third parties indicate an urgent need for legal reform (Suryono 2020). The discrepancy between execution practices and the principles of contractual justice, which demand fairness, proportionality, and reasonableness, further reinforces the urgency of reconstructing legal norms. Therefore, a legal reformulation is needed that not only provides legal certainty, but also guarantees the protection of debtors' constitutional rights and balances the legal relationship between creditors and debtors fairly within the framework of a state based on the rule of law.

Methodology

In order to analyze positive legal norms as a cohesive system, this study applies a normative juridical research technique., with a focus on the examination of legal concepts, standards, and principles pertaining to the implementation of fiduciary assurances and debtor protection. The legislative approach and the conceptual approach are the methods employed. The 1945 Constitution, Law Number 42 of 1999 concerning Fiduciary Guarantees, the Civil Code, and the interpretation of Constitutional Court Decision Number 18/PUU-XVII/2019 as part of the development of binding law are all examined in order to implement the statutory approach. Meanwhile, the conceptual approach is used to analyze and construct legal concepts such as contractual justice, legal protection, the principle of balance, and good faith that have developed in legal doctrine and literature, to find in-depth theoretical arguments for the problems studied. The legal materials used include primary, secondary, and tertiary legal materials collected through literature studies and analyzed qualitatively using systematic, grammatical, and teleological interpretation techniques, thus producing a new, comprehensive legal construction to address the gap in norms and provide a basis for a more just reconstruction of the law on the execution of fiduciary guarantees.

Result and Discussion

Legal Construction of Fiduciary Guarantee Execution and Problems of Third-Party Involvement from a Statutory Regulation Perspective

The rules of Law Number 42 of 1999 concerning Fiduciary Guarantees, which give creditors significant validity through the provisions of Article 15 paragraphs (2) and (3), form the foundation of the legal framework for the implementation of fiduciary guarantees in the Indonesian legal system. This article confirms that a fiduciary guarantee certificate gives the creditor the authority to sell the collateral at their own discretion in the event of a debtor default and has the same enforceable power as a legally binding court ruling. This

norm gave rise to the concept of *parate executie*, which is essentially intended to provide efficiency in resolving problem loans. However, conceptually, granting direct executive authority to creditors without a judicial oversight mechanism raises serious problems in the context of a state governed by the rule of law, as it potentially disregards the principle of due process of law, which should be the basis for any action to take someone's property (Hidayat 2025).

From a civil law perspective, the relationship between creditors and debtors is based on an agreement as stipulated in Articles 1313 and 1320 of the Civil Code, which requires the parties to agree. Article 1338 paragraph (1) affirms that all legally made agreements are valid as law for those who make them, while paragraph (3) requires that agreements be executed in good faith. However, in the practice of executing fiduciary guarantees, these principles are distorted, particularly when creditors unilaterally interpret a breach of contract and immediately execute without the debtor's consent (Rozi 2025). The situation demonstrates a discrepancy between the norms of the agreement and the practice of exercising executive rights, thus creating tension between the principle of freedom of contract and the principle of protection for the weaker party.

Law Number 42 of 1999 respecting Fiduciary Guarantees does not specifically control the practice of assigning execution authority to third parties or debt collectors, which exacerbates the issue. This normative vacuum creates room for multiple interpretations regarding the legality of third parties' actions in repossessing collateral. Normatively, execution is an authority inherent in the creditor as the holder of the collateral rights, not any other party outside the legal relationship. When this authority is transferred without a clear legal basis, such actions potentially violate the principle of legality. Furthermore, the lack of regulations regarding operational standards and limitations on debt collector authority often leads to practices in the field deviating from applicable legal provisions (Handayani 2019).

From a criminal law perspective, actions taken by debt collectors in the process of executing fiduciary guarantees often involve elements of criminal acts, such as confiscation or coercion. This can be linked to provisions in the Criminal Code, particularly Article 368 concerning extortion and Article 365 concerning theft with violence, if in practice there is an element of threat or violence in the seizure of the collateral. It is where a disharmony arises between civil law, which legitimizes execution based on agreements, and criminal law, which prohibits acts that violate the rights of others by force. This lack of synchronicity indicates that existing legal structures are unable to harmoniously integrate various legal regimes, creating legal uncertainty for the parties (Supriyanto 2022).

Constitutional Court Decision No. 18/PUU-XVII/2019, which revised the terms of Article 15 of the Fiduciary Guarantee Law, marked a substantial change in the legal paradigm concerning the implementation of fiduciary promises. The Constitutional Court stressed that if there is no agreement about the default, the creditor cannot unilaterally carry out execution, and if a dispute arises, execution must be carried out through the judicial mechanism. This decision implicitly limited the application of *parate executie*, which was previously interpreted in an absolute manner. Thus, there was a shift from a paradigm of

efficiency to a paradigm of legal protection and justice for debtors. However, in practice, this decision has not been fully implemented consistently, particularly regarding the service of debt collectors (Prasetyo 2020).

The ambiguity of the norms in Law Number 42 of 1999 concerning Fiduciary Guarantees and the weak regulations regarding the involvement of third parties have opened up room for abuse of authority by creditors. Multiple interpretations of the concept of *parate executie* and the lack of clear boundaries regarding execution procedures often lead to field practices that deviate from the legal principles that should be upheld. This indicates that the current legal construction is normatively flawed because it does not provide legal certainty and adequate protection for debtors. Therefore, a reconstruction of legal norms is needed that can fill this gap, harmonize various legal regimes, and ensure that the execution of fiduciary guarantees is carried out fairly, proportionally, and in accordance with the principles of the rule of law.

Implications of Debt Collector Involvement on Violations of Debtors' Constitutional Rights and Contractual Injustice

The involvement of debt collectors in the practice of executing fiduciary guarantees has empirically resulted in various violations of debtors' constitutional rights as guaranteed by the 1945 Constitution. While Article 28H paragraph (4) provides the right to private property, Article 28G paragraph (1) clearly ensures everyone's right to a sense of security and protection from the threat of terror for doing or not doing something, which may not be taken arbitrarily. However, in practice, debt collectors often forcibly seize collateral in public spaces, accompanied by psychological pressure, verbal intimidation, and even physical violence. This situation not only creates fear and insecurity for debtors but also indicates that the enforcement mechanism has shifted from a legal framework to a coercive practice that contradicts the principles of the rule of law. Therefore, this practice can be classified as a clear form of constitutional violation, not merely an administrative or contractual violation.

From a communication perspective, aggressive verbal interactions, threats, and psychological pressure used by debt collectors constitute a form of coercive communication that undermines the debtor's dignity and autonomy. Such practices shift the interaction from a legal debt recovery process into an intimidation-based communication dynamic, where debtors are positioned in a state of fear and psychological vulnerability. This condition disrupts the principle of equal legal standing between parties and may lead to the erosion of voluntary consent in resolving disputes.

Furthermore, coercive communication practices can be understood as a violation of constitutional and human rights because they interfere with the debtor's right to security, personal dignity, and freedom from psychological violence. The use of threats or persistent intimidation creates psychological pressure that may force debtors to accept demands without due process or legal clarity. In this sense, debt collection practices that rely on intimidation not only distort communication but also risk violating constitutional protections and fundamental human rights principles by replacing lawful negotiation with coercive control.

Empirically, the unequal relationship between creditors and debtors is a primary factor underlying this practice. In the financing industry, debtors are generally in a weak position because they are faced with standard contracts drafted unilaterally by creditors without adequate room for negotiation. The phenomenon of inequality of bargaining power forces debtors to accept all clauses, including those granting creditors broad enforcement authority. In many cases, debtors do not fully understand the legal implications of these clauses, so when a default occurs, they are highly vulnerable to unilateral action by the creditor. This reality demonstrates that empirically, the principle of freedom of contract does not function ideally, but instead becomes a tool to legitimize creditor dominance.

The unequal bargaining position also has direct implications for legal communication and debtors' understanding of execution clauses in fiduciary contracts. Because contractual terms are presented in standardized, non-negotiable forms, debtors often engage in only formal acceptance without meaningful comprehension of the legal consequences attached to fiduciary execution provisions. In this context, understanding of rights and obligations is frequently limited, particularly regarding clauses that grant creditors broad enforcement authority under fiduciary arrangements. As a result, many debtors do not genuinely grasp the implications of execution mechanisms at the time of contract formation. This communicative limitation further explains why, in practice, debtors are highly vulnerable when default occurs, as execution is perceived as unilateral action rather than a mutually understood legal consequence.

This situation is further exacerbated by violations of the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code. In practice, creditors often do not prioritize communication or negotiation with debtors before executing, but instead directly use debt collectors as an instrument of pressure. This action demonstrates a deviation from the obligation to execute the agreement in good faith, as the execution was carried out without considering the debtor's objective circumstances, such as a reasonable delay in payment or a genuine intention to settle the obligation. Furthermore, the principle of balance in the agreement is also ignored, as the entire decision-making mechanism rests with the creditor without any effective control mechanism.

From a practical perspective, the use of debt collectors in the enforcement of fiduciary guarantees can be categorized as a form of abuse of power by creditors. It is evident in the tendency to use force or pressure outside of formal legal mechanisms to enforce the exercise of rights. Execution, which should be carried out through legitimate legal procedures, is instead carried out directly in the field without involving law enforcement officials or court decisions. This practice is known as extrajudicial enforcement, which involves enforcing rights outside the judicial system, which fundamentally contradicts the principle of due process of law. Empirically, this phenomenon frequently occurs in the repossession of motor vehicles by finance companies, where debtors often lack the opportunity to defend themselves or raise objections.

From the perspective of contractual justice theory, this practice clearly violates the principles of fairness, proportionality, and reasonableness. Contractual justice demands a balance between the rights and obligations of the parties and fair treatment in the

implementation of the agreement. However, in practice, unilateral and coercive enforcement actions demonstrate a significant imbalance, with the creditor possessing far greater power than the debtor. Furthermore, forced withdrawal without considering the proportionality between the debtor's violation and the sanctions imposed also demonstrates a lack of compliance with the principles of justice. In this context, the agreement is no longer an instrument of justice, but rather a tool to legitimize actions that harm one of the parties.

Based on this empirical analysis, it can be concluded that the involvement of debt collectors in the enforcement of fiduciary guarantees not only violates positive law but also contravenes constitutional principles and contractual justice. This practice reflects the failure of the legal system to provide effective protection for debtors as the weaker party. Therefore, legal reconstruction efforts are needed that not only improve normative aspects but also address empirical realities on the ground, thus creating an enforcement mechanism that is fair, proportional, and in accordance with the principles of human rights protection within the framework of a state governed by the rule of law.

Reconstruction of Legal Norms for the Execution of Fiduciary Guarantees Based on Contractual Justice and Protection of Debtors' Constitutional Rights

The reconstruction of legal norms for the execution of fiduciary guarantees must begin with a restructuring of the basis of execution authority, which currently rests on Law Number 42 of 1999 respecting Fiduciary Guarantees, Article 15. This standard must be reinterpreted to highlight that a fiduciary guarantee certificate's executive authority cannot be used unilaterally without legal supervision. A concrete action that must be taken is to reformulate the meaning of *parate executie* to limited execution, which can only be implemented if there is an explicit agreement regarding the default between the creditor and debtor. If such an agreement is not reached, execution must be carried out through a court decision. This reconstruction incorporates the constitutional interpretation of Constitutional Court Decision Number 18/PUU-XVII/2019, which opposes the practice of unilateral execution, and is consistent with the due process of law principle.

The role of communication asymmetry in fiduciary agreements lies in the unequal access to legal understanding and bargaining power between creditors and debtors. Creditors generally have superior knowledge of contractual drafting, fiduciary law, and execution procedures, while debtors often face limitations in understanding the legal consequences of standard-form agreements, particularly clauses related to *parate executie*. This creates a one-directional communication structure in which consent is formally obtained but not always accompanied by full comprehension of the execution implications, thereby producing an unequal bargaining position.

This asymmetry becomes more significant at the execution stage, where creditors may interpret default and enforce fiduciary certificates without prior judicial clarification. As a result, communication gaps between the parties can lead to contested understandings of breach and legitimacy of execution. Therefore, the reconstruction of fiduciary execution norms, particularly by limiting *parate executie* to cases with explicit agreement on default or requiring court involvement, serves as a corrective mechanism to address this

communicative imbalance and to ensure a more equitable and constitutionally consistent fiduciary relationship.

Strict restrictions on the use of debt collectors must be a central component of the reconstruction model. Specifically, a new norm should be added to Law Number 42 of 1999 concerning Fiduciary Guarantees that explicitly prohibits the delegation of execution authority to third parties without legal authority. In certain cases, if third parties are still involved, they should be limited to administrative assistance and not as executors. Furthermore, the state needs to establish certification and oversight mechanisms for third parties involved in the debt collection process, including requiring them to have official permits and adhere to strict ethical standards. Another concrete action is to impose administrative and criminal sanctions on creditors who continue to use debt collector services illegally or engage in actions outside of legal procedures.

The design of a new debt collection system must be based on transparent and accountable legal procedures. Specifically, the debt collection mechanism needs to be regulated in several clear stages: first, written notification of default to the debtor; second, providing an opportunity for restructuring or amicable settlement; third, determining the default status based on an agreement between the parties; and fourth, implementing the debt collection through the courts if no agreement is reached. This mechanism must be integrated with a simple and expeditious judicial system to avoid hindering creditors' interests. Thus, debt collection will no longer be carried out coercively in the field, but rather through a legal process that guarantees protection for both parties.

To strengthen this reconstruction, new norms need to be formulated in the form of additional articles. As an initial formulation, the following provision can be proposed: "The execution of fiduciary collateral objects may only be carried out directly by the creditor based on a default agreement with the debtor or through a legally binding court decision. Any delegation of execution authority to a third party lacking legal authority is declared null and void." Furthermore, a norm should be added stating that "In cases where execution is conducted through the courts, the execution must involve authorized officials to ensure security and legal certainty." This formulation supplies clear boundaries and closes the loopholes for abuse that have occurred to date.

The reconstruction of norms must also integrate the principles of contractual justice and the protection of human rights as guaranteed in the 1945 Constitution, specifically Articles 28G and 28H. Specifically, every execution process must ensure the absence of threats, violence, or arbitrary action against the debtor. Furthermore, a debtor protection clause should be mandatory in every fiduciary agreement, including the right to receive notification, the right to defend oneself, and the right to file an objection. The integration of fairness, proportionality, and reasonableness must also be realized in the form of binding standard operating procedures (SOPs) for all financing institutions. Thus, agreements serve not only as a means of legitimacy but also as an instrument of balanced legal protection.

This reconstruction model produces a comprehensive legal reform framework that not only addresses normative weaknesses but also addresses empirical issues in the field. Concrete actions that must be taken include revising laws, establishing and implementing

regulations, increasing oversight by relevant authorities, and educating the public about the rights and obligations under fiduciary agreements. This approach is expected to create a fair fiduciary guarantee enforcement system, provide legal certainty, and guarantee the protection of debtors' constitutional rights without neglecting the interests of creditors. This model also represents a major scientific contribution, offering concrete solutions to problems that have so far remained unresolved in Indonesian legal practice.

Conclusion

The conclusion of this study indicates that the legal framework for Law Number 42 of 1999 Concerning Fiduciary Guarantees' implementation of fiduciary guarantees still contains serious normative weaknesses, particularly in allowing for multiple interpretations regarding the implementation of *parate executie* and the lack of precise rules governing the participation of debt collectors or third parties. This situation is made worse by the unbalanced contractual relationship between creditors and debtors, which goes against the Civil Code's good faith principle and may violate the debtor's constitutional rights as protected by the 1945 Constitution, especially the right to security and property rights. Despite the restricted unilateral execution of Constitutional Court Decision Number 18/PUU-XVII/2019, in practice, deviations still occur through the use of debt collectors who engage in coercive actions outside the legal mechanism. Therefore, it can be emphasized that the current practice of fiduciary guarantee execution is not only legally problematic but also unconstitutional and does not meet the principles of contractual justice, thus requiring a comprehensive reconstruction of legal norms oriented towards debtor protection.

The proposed recommendations call for concrete steps in the form of revising Law Number 42 of 1999 concerning Fiduciary Guarantees by adding strict regulations regarding the prohibition or restrictions on the use of third parties in execution, as well as affirming that execution must be based on a default agreement or through a court decision as an implementation of due process of law. Furthermore, implementing regulations are needed that regulate standard execution procedures in detail, including monitoring mechanisms and sanctions for violations by creditors. Financing institutions must be required to apply the principle of contractual fairness by improving agreement clauses to be more balanced and transparent, and by providing legal education to debtors. Furthermore, law enforcement officials need to increase their oversight and take action against unlawful debt collector practices, thereby creating legal certainty and effective protection for the public. Thus, the legal reforms undertaken will not only be normative but also implementative in realizing a fair, humane, and law-abiding fiduciary guarantee execution system.

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